

States must do more to protect media freedom

Governments and authorities around the world may be increasingly bigging up the action they are taking to ensure the freedom of the press, but they must put those promises into action



Speaking during a session hosted by the High-Level Panel of Legal Experts on Media Freedom on the United Nations' (UN) international day to end impunity for crimes against journalists, panellists insisted on the urgent need for more action by countries to ensure the protection of journalists in the exercise of their profession was needed, and quickly.

"We have engaged in bilateral and multilateral discussions with states to try to get to concrete action," said Catherine Amirfar, litigation partner in Debevoise & Plimpton's international dispute resolution group. "There's been a lot of talking the talk, and not enough walking the walk, so that's what we've been focused on."

Opened by Baroness Helena Kennedy, director of the International Bar Association's Human Rights Institute (IBAHRI), the session addressed some of the ways in which states can help. Freedom of the press and of expression are two fundamental principles lying at the very heart of any liberal democracy worthy of its name. As such, when one of them is threatened, it usually isn't a good sign.

"When there is an emergence of authoritarian rule, or when democracies fall apart, the first sign you find is repression against the media, the judiciary, and law enforcement departments," said Seong-Phil Hong, who served for seven years on the UN Human Rights Council's working group on arbitrary detention, including as chair.

"When there's a sign of repression, and news of arbitrary detention exerted on a journalist, or simply people who want to exert freedom of expression, you know that something is coming," he added.

Setting a sad record, 2022 marked the year with the highest number of arbitrarily detained journalists ever since Reporters Without Borders has been keeping track, with 500 members of the press detained worldwide.

"We're supposed to be living in a better world with less incidents of human rights violations, and more freedom for people to exert their ideas," said Hong. "But the truth is, we see increasing number of human rights violations relating to

persecutions against journalists and human rights defenders."

This year also marked the 10-year anniversary of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, which provides an overarching framework for cooperation between member states on issues such as arbitrary detention.

"Many of us in the room bear witness to this disturbing trend: there is significant uptake in investment disputes involving media companies that are being harassed and otherwise taken up because of their independent reporting," said Amirfar. "In our human rights practice, we almost routinely represent detained journalists who are experiencing arbitrary detention around the world with various UN mechanisms."

Set up in 2019 as a shared initiative between the UK and Canada, the Media Freedom Coalition now counts over 50 countries, which the High-Level Panel has been making recommendations to on how to proceed.

"As a body of independent legal experts, we've come to fulfil a Venice

Continued on page 6



VOX POPS

What has been your social highlight of the week so far?

PAGE 2



SESSION PREVIEW

Do bad clients deserve good lawyers?

PAGE 7



SHOWCASE PREVIEW

Peace, justice and strong institutions

PAGE 13



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QUESTION

What has been your social highlight of the week so far?



Nélia Daniel Dias
Baker Hughes
Angola

“All of the events that have been prepared where we have networking with lawyers have been productive. We can start with the corporate breakfast, then we have the dinners and the parties that have been organized by law firms, those are very interesting.”



Ashok Kumar Ranai
Skrine
Malaysia

“The brunch at MILA, which was hosted by Amarchand Mangaldas, which is also a member of the IBA was the social highlight for me.”



Thais de Barros Meira
BMA Advogados
Brazil

“My social highlight of the week was the tax dinner hosted by the IBA, it was a great place to meet like minded people who care as much as I do about tax.”



Rusmaini Lenggogeni
SSEK Law Firm
Indonesia

“The IBA Opening Party was great, and the social functions that are hosted by the firms like Clayton Utz, McDermott Will & Emery and Bennett Jones.”



John Crabb
GlobalCapital
USA

“Obviously the IBA is as much about the social aspect as it is the educational. People come from all across the world to mingle at these parties, and this year in Miami is no different. Last night we had a great time at Peters & Peters, but of course everyone is most excited about the Stikeman Elliot After Hours event this evening. Those Canadians sure know how to throw a party!”



Ohio Omiunu
De Montfort University
United Kingdom

“I went to the business district and got to explore the restaurants around Lincoln Road. Miami is a melting pot of different culinary expressions, I really enjoyed eating out yesterday.”



Alistair Bridges
Moulis Legal
Australia

“I went to the Peters and Peters event, that was pretty fun. It was a proper Miami environment with palm trees and a nice pool.”



Christelle Vaval
Cabinet Salès Avocats
Haiti

“The White & Case party at the Time Out Market was interesting. The environment was nice and we were able to meet and discuss interesting topics, and of course it was a nice venue and the food was excellent.”



Martin Wilson Phillips
United Kingdom

“I think the cultural property committee dinner was the best. It was full of like minded people all interested in the same subject and it was a nice crowd. We see each other every time there's an IBA, so like other years this has been great.”



Maria Fernanda Loll
Tricon Energy
USA

“Building new connections in many countries has been fantastic. I went to the Latin American Lunch and that was great. I met some Brazilian lawyers and colleagues, and it was very enriching experience overall.”



Titilola Vivour Adeniyi
Lagos State Domestic and Sexual Violence Agency
Nigeria

“I am looking forward to going to the Nigerian Bar Association party. It will be good to see my Nigerian colleagues there.”



David Paterson
Paterson Law Office
Canada

“The opening party was the biggest and the most spectacular of all the parties so far, I really enjoyed it.”



Federica Mena Latuff
Araquereyna
Venezuela

“At the Latin American lunch I got the opportunity to meet lawyers from different parts of Latin America where we work a lot and have a lot of strong alliances. I have attended a lot of drinks and cocktail parties, it's been a really good and fulfilling experience on the social part.”



Threenuch Bunruangthaworn
ZICOLaw
Thailand

“The social highlight for me was simply meeting a lot of lawyers from all over the world. We used to meet online, but now we meet face to face. I think it's very good networking.”



Juan Diego Martínez García
Serrano Martinez
Colombia

“The Latin American regional forum has been very good for networking. Some of the dinner events have been excellent, good food and a great way to meet peers.”

Don't be a lawyer!

As competition for jobs has become tougher, retention efforts for younger employees with a different attitude to work are key

Don't be a lawyer. This surprising message started off Wednesday morning's session *All you need to know to keep (young) talent in your firm/in-house department*. The message was used to highlight the negative stigma surrounding the legal profession today, and how teams should work to tackle these to ensure retention.

"I have seen it become more and more challenging for law firms to retain talent," said Samaa Haridi, partner at King & Spalding in New York. "There are more options, there's more flexibility. The pandemic has taught us that we can be in different parts of the world and fulfilling life in different ways. We've all heard about the quiet quitting phenomenon – but what do we do?"

Bringing in junior lawyers is important for several reasons.

"As well as opening up bandwidth for senior members of the team, younger employees bring in new perspective and energy," said Pranav Srivastava, partner at Phoenix Legal in New Delhi and co-secretary on the IBA's Young Lawyers' Committee. "Added to this, home-grown talent tends to be more loyal to the firm later and assimilate better in firm culture."

For Haridi, the key to retaining young talent is to allow ownership of their work.

"I've been fortunate to work in law firms that have always believed you don't need to earn a number of strikes before you're allowed to speak up,"



she said. "I was fortunate to grow up in an environment where if you wanted the opportunity to get that first advocacy experience, all you needed to do was show interest and capability. So now as someone who supervises a team, I am very sensitive to that and to looking around me to make sure every person feels they are an integral member of the team."

While this advice applies to all firms, retention for in-house legal teams and law firms does differ. The importance of promotion for retaining talent for example is much more important at law firms than in-house.

"It's absolutely standard for associates to have a promotion each year within the associate umbrella," said Juan Hugues Arthur, international associate at Foley Hoag in Washington D.C. "With that in mind, not getting a promotion is a very serious problem as an associate."

This is very different for young in-house lawyers.

"When you're a young lawyer at a law firm you know that if you do things right then you go from first year to second year," said Catalina

Carmona, senior legal counsel for Latin America at Spotify.

"In-house organisations tend to be flatter so you have a ton of legal counsel and a ton of senior counsel, but this thins at the top because you can only have one GC whereas at a law firm you can have multiple partners."

This means managers must use different techniques.

"Sometimes you need to help people find the passion needed to perform at a certain level before they're promoted," said Carmona. "When you don't have the room for formal growth, there's so much room for skills building so that when the opportunity does come, they're ready and already performing at that level."

However, the prospect of a future promotion is unlikely to be enough so tools such as enabling employees to feel ownership of their work are helpful.

"As a law firm partner, I worry that it's becoming increasingly difficult to incentivise because it's a demanding profession and it's increasingly more demanding because of the immediacy of communication and you're expected to be online 24/7," said Haridi.

In these instances, areas such as ensuring all team members feel valued and have ownership of their work is important.

As well as discussing how to keep young lawyers at law firms, panellists also offered their best advice for young lawyers in the industry.

"The number one thing I've learned in 22 years is to build a thick skin," said Haridi. "It's impossible to survive unless you build very thick skin and don't let yourself get offended or upset at everything. Once you go down that rabbit hole then you're going to start getting resentful and negative. Taking the high road, not focusing on pettiness or the people who are insecure and always looking for the negative. Focus on forging your own path."

For Srivastava, getting other people on side is an important part of building a career.

"Identifying and having a sponsor is integral in this day and age," he said. "Find people who promote younger talent and would wish you ahead in life, become visible to those sponsors so that they recognise you and start taking steps to sponsor you."

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FDI rules ramp-up modifies buyer and seller behaviour

Increased scrutiny from the regulators has also been delaying the closing of M&A transactions

Expanded foreign direct investment (FDI) screening regulations have been affecting interactions between sell-side and buy-side and holding up M&A transactions across the globe.

In the aftermath of the Covid-19 pandemic and in the context of increased geopolitical uncertainty and cybersecurity threats, a natural reflex for governments and regulators has been to apply more nationalist and protectionist policies to protect their countries.

The tightening of FDI screening rules is one of the many ways in which this is reflected. Some recent examples include the passing of the wide-ranging National Security and Investment Act (NSI) in the UK this year as well as local updates to FDI regimes in the US, Japan, Australia, Canada and New Zealand.

In the EU, an FDI screening regulation went live in October 2020, while France, Spain and Germany ramped up their local rules significantly during the pandemic, deciding to enact some of those changes permanently.

"That is the current environment that we're working in and are trying to figure out," said Susan Meisel, senior vice president and corporate deputy general counsel at Sony Music Entertainment.

Several panellists at the *IBA Increased government intervention in deal-making: the impact of FDI regulation and merger control on M&A transactions* session, which focused on rising government intervention in deal-making described the impact that increased FDI screenings and merger controls have had on M&A transactions as a "constant learning process".

"A trend that has emerged from approvals regime being put in place or reinforced across the world, is that you don't usually end up with vetoed transactions – there have been maybe one or two vetoed digital transactions in over 20 years of application of this regime," said Jean-Claude Rivalland, corporate and M&A partner at Allen



& Overy in Paris. "What you have in practice, is every commitment request from the authorities being motivated by antitrust or investment control."

These commitments can range from maintaining employment and IP safe harbours, to ensuring that a certain plant is kept in a specific country and are being introduced earlier and earlier in the transaction.

"We have to make very clearly to the bidders that these are the types of commitments that we require because we anticipate that they will be requested by the authorities," said Rivalland. "Requesting from the bidders in advance and getting their agreement to be prepared and commit to these undertakings is clearly something that you may want to bear in mind."

Ramped up screenings have not only added further complexity to cross-border transactions – they have also had the effect of stretching out transaction completion processes, which often causes adverse impacts for the involved parties.

"We definitely see buyers wanting more from the sell-side earlier on in the process in terms of their analysis of antitrust risks," said Harry Coghill, partner at Macfarlanes in London. "Meanwhile, the sell-side has become more demanding in terms of analysis, and more conscious of who to use their time on in the bidder selection process. There's definitely a need to weigh up the benefit of a higher price against deliverability and execution risk."

Remedies to the negative impacts of delayed transactions, however, are not always available, with purchase

price mechanisms not necessarily catering to those situations.

"One thing you can do is change your accounting treatment, but mainly we just have to suffer the consequences," said Meisel. "In terms of lessons learned, next time, we would have a plan B, anticipate these kinds of circumstances and what their impact could be, and how we can manage them so that we're not caught off-guard and implement quickly to minimise financial loss."

Typical aspects to take into consideration when it comes to FDI screenings are the investment's origin, its extraterritorial scope, the industries and sectors involved, the type of transaction as well as its due date, thresholds for review and notifications, as well as potential penalties – which can range from penalties to actual imprisonment.

"It's best to make an early assessment of where you need to file, and if there are uncertainties, to try and figure them out together with the regulators, where possible beforehand," suggested Isabelle Ramsay, partner at Mannheimer Swartling in Stockholm.

Other than anticipating, lawyers and investors can also learn lessons from past processes and based on their conclusions, assess what can be done better in the future.

From the buyer side, once you've gone through the process with the Competition Commission of India (CCI), you can sometimes look back to the questions that were asked and try to understand the rationale behind," said Kosturi Ghosh, partner at Trilegal in Bangalore. "You have to debrief from each of these

interactions, go line by line and see what cues you can pick up to make the process easier."

Ultimately, Ghosh added, the idea is to choose the vendor offering the best price and best prepared for the most doomsday scenario.

"In India, trying to arrive at the price and justification for that price is complicated enough in and of itself," she added. "If you are looking to change the price, or if the seller is pushing you to acknowledge that market conditions have changed, is the buyer forced to accept a new price? These are things that you have to think about: have you used a lock-box kind of mechanism, are you going to do a lookback?"

According to Ghosh, the answer to these questions mostly depends on the type of buyer and seller.

"In India, you have to ensure that by the time the price goes out, it is justified," she added. "It's a tricky process. You have to find a valuation expert who is willing to back that price. It takes a fair amount of time to get the right type of documentation in front of the valuation expert, and you have to convince him that either the new price makes sense, or the old price still holds good."

Meanwhile, in Brazil, antitrust authorities have begun to view remedies as a fix-it-first approach, explained Sao Paulo-based Mattos Filho partner Paula Vieira de Oliveira.

"The authorities tell upfront what type of buyer would be acceptable for them, so it's easier to understand what the outcome could be – even if a strategic buyer is the chosen one and the reason behind it was the price."

Return to office has damaged retention

The pandemic has changed the professional landscape and raised concerns for the return to office

Retaining employees hired during the pandemic has proven difficult for law firms at the stage of returning to office working.

This has raised questions on balancing flexibility and employee development in a changed world.

"We hired a lot of people in the pandemic," said Pranav Srivastava, partner at Phoenix Legal in New Delhi, during yesterday's *All you need to know to keep (young) talent in your firm / in-house department session*. "When we came back to office 70-80% of hires made during Covid left, which was clearly an impact of going back to office after the pandemic."

While this is an issue that has impacted business across sectors, there have been challenges specific to lawyers.

In particular, the tension between higher-ups who believe the best development comes from in-person interactions compared to young people who want the flexibility and work-life balance that working from home provides.

"This is one major challenge or obstacle to personal interaction that has been both negative and positive but if law firms have not 100% tackled this obstacle specifically then they need

to," said Juan Pablo Hugues Arthur, associate at Foley Hoag in Washington D.C. suggesting there are many things associates only learn from working alongside others in person.

"My first lesson at law school was that most of the learnings would be in the law firm hallways," he said. "At law school you learn the rules, but learning how to succeed in the practice of law is not something professors can teach you, but it's something the supervisor who decides if you succeed will teach you through working alongside them."

For more senior members of the team, it can be challenging to ensure employee development is being properly managed remotely.

"I find it challenging to replicate [retention and employee development opportunities] in a work from home environment," said Samaa Haridi, partner at King & Spalding in New York. "The way we've tackled it is making sure that at least 2-3 days a week we gather because there's no substitute in training to just being able to stop by someone's office. That's when the opportunities arise for that talent and boosting teamwork."

However, returning to the office



full-time and ignoring the new workstyle created could lose many new positive developments.

"Before the pandemic we were strapped to work location, and I agree there are personal interactions that cannot be mimicked by Zoom," said Catalina Carmona, senior legal coun-

sel for Latin America at Spotify. "I just had a baby and the ability for me to stay home a couple of days a week and be with the baby is crucial, that's what the pandemic has changed."

As firms look to find the balance, such benefits for working parents and other groups will be important.

Continued from page 1

Commission-like role for the media freedom coalition of states," said Can Yeginsu, an English barrister at 3 Verulam Buildings. "In the first two years of its life, the panel researched, drafted and published four advisory reports to the coalition states as a blog."

Each of these reports, Yeginsu explained, focused on a specific recommendation to improve mechanisms for journalists' safety, taking into account the state of play and legal positions.

"The panel worked very hard to set out specific and concrete recommendations that states could actually give effect to so that their words on improving promoting media freedom would be followed by concrete deeds," said Yeginsu.

Some of the recommendations put

"When there is an emergence of authoritarian rule, or when democracies fall apart, the first sign you find is the repression against the media, the judiciary, and law enforcement departments"

forward by the panel included calling on member states to establish a system of emergency visas for journalists at risk of arbitrary arrest or violence in their home countries, to strengthen consular support for journalists facing arrest, prosecution and detention overseas, as well as to use targeted travel and financial sanctions against individuals and entities responsible for abuses against journalists.

"Finally, one of our most important and challenging recommendations was to call for the build-up of real capacity to properly investigate abuses against journalists, including through the creation of an independent investigative taskforce," Yeginsu continued. "All of these recommendations have been formally endorsed by the UN Special Rapporteur on the freedom of opinion and expression, as well as all of

the major international civil society organisations working to promote media freedom worldwide."

Happily, he added, some states have already started to give effect to some of the panel's recommendations. "We've seen states act on our advice, and I think there is some cause for cautious optimism that they will do more," said Yeginsu, ending his address on a positive note.

Do bad clients deserve good lawyers?

This interactive panel will look to engage with the audience on a fascinating topic

Ethics in the legal profession is a cornerstone that has come under fire in recent years, partially due to the prominence of social activism. Lawyers are supposed to be neutral in representing clients within the parameters of the law.

That being said, accusations of enabling criminal and other unethical activities are growing increasingly common, leading to amplified scrutiny of the industry, with mostly corporate lawyers being targeted.

Naturally, this has led to heated debate within the legal community, which threatens internal division. Thursday afternoon's session: *Do 'bad' clients deserve 'good' lawyers?* begins to tackle this complex issue.

Unlike other sessions, this will not be held in the usual format of a panel discussion. "The goal of the session is to be as interactive as possible," said session chair and partner in the Paris office of Paul Hastings, Nicola Bonucci. "We want to engage with the audience. The main goal is to have an open discussion about some of the issues that we have been hearing for some time, especially in the last two or three years, about the ethical values that should surround the legal profession."

In fact, Bonucci welcomes questions from the audience, saying: "I don't discard the possibility of raising a question because the alchemy of the discussion leads to that. What I said to the panellists is to be ready to be surprised, because we don't want this to be controlled."

This topic hits close to home for Bonucci, who has been in private practice with Paul Hastings for just three years following a 26 year stint at the Organisation for Economic Co-operation and Development (OECD), most recently serving as the director for legal affairs.

"Given my background, I under-



"We want to engage with the audience. The main goal is to have an open discussion about some of the issues that we have been hearing for some time, especially in the last two or three years, about the ethical values that should surround the legal profession"

stand how regulators think and what they're looking for," he said. "I am a bit worried by a certain disconnect between the legal profession and other stakeholders. We are making substantive points such as recalling client-attorney privilege, non-identification between the client and lawyer and the fact that there are abuses, but from a very limited number of lawyers."

All those points may be valid, but they don't seem to resonate outside the legal community or with civil society. "What worries me is that they seem to resonate even less and less with governments and regulators, so that's why you start to have developments like the ENABLERS Act in the United States,"

he added. "It is not for me to comment on the substance of the draft put presenting lawyers as enablers is unfortunate, to say the least."

Another important element of the session that the panel will rely on to stimulate discussion is the diversity of the audience. There are many different perceptions and discourses between lawyers – civil and common law, developed and developing countries, maybe even from a practice point of view. Criminal lawyers naturally have a certain frame of mind, whereas transactional lawyers will have another one.

"I think there is a perception from the outside that the legal community

SESSION: Do 'bad' clients deserve 'good' lawyers?
TIME: Today, 16.15 – 17.30
VENUE: Room 206, Level 2

is a monolithic group, and we all know that it is not true," said Bonucci. "There are a number of sensitivities and differences within the legal community and it's good to acknowledge them on an issue which is not simple."

Diversity of thought can also be seen within the rest of the panel, which is supported by a number of IBA committees, with the hope that numerous subcommunities would intermingle and listen to each other on certain topics. "It is for each national bar to self-regulate the profession, and the IBA is very conscious of that, but I think confrontation of ideas and different sensitivities amongst the legal community may launch a more open discussion than that between a lawyer and non-lawyer where the lawyer may feel under attack because of the points they made and this general perception," he added.

Above all, Bonucci's main desire for attendees is: "Come. Come with your ideas and your views. Express them, but listen to each other and listen to other views and ideas. It's very easy to come with sweeping statements on both sides of the equation, but the reality is that these are complex issues that, at the end of the day, if you get to the bottom of the matter, really put into question the ethical values and priorities of each of us as lawyers."

"It's very easy to come with sweeping statements on both sides of the equation, but the reality is that these are complex issues that, at the end of the day, if you get to the bottom of the matter, really put into question the ethical values and priorities of each of us as lawyers"

Now more than ever: understanding the rule of law

Rule of Law Symposium: Ukraine – the role and rule of law in modern conflict Friday, November 4 09.30 – 10.45

This panel will focus on the role of international law in modern conflict generally and the Ukraine crisis specifically. Panellists will discuss war crimes enforcement and accountability, de-escalation and conflict resolution, the role of sanctions and the role of private business. As it concerns the Ukraine crisis, panellists will consider whether or not the rule of law exists in conflicts involving superpowers and what can be done, through the enforcement of international norms and instruments, to restore the international rule of law in Ukraine.

The session will be chaired by Federica D'Alessandra, deputy director of the Oxford Institute for Ethics, Law and Armed Conflict and a member of the War Crimes Committee advisory board. Panellists include Wendy Betts of the IBA eyeWitness project and Abhijit Mukhopadhyay of the Hinduja Group and committee liaison officer of the Corporate Counsel Forum.

Rule of Law Symposium: leadership and the powers of the executive Friday, November 4 11.15 – 12.30

In 2015, the world observed the 800th anniversary of the signing of the Magna Carta, a key milestone in the development of the rule of law which acknowledged, among other things, the subordination of the executive to law. While great strides have been made across the globe to deepen and solidify the rule of law in those 800 years, new challenges have emerged since 2015 to threaten progress made in countries where the rule of law previously seemed stable and uncontroversial.

This diverse and prominent panel of speakers, including some who have served at the highest levels in government, will explore the role of the executive in ensuring domestic rule of law, and how executive overreach can result in rule of law failures. Speakers will also consider how leaders' commitment to the rule of law results in success versus failure.

The session will be chaired by

Joanna Weller of LexisNexis and co-chair of the Rule of Law Forum. Speakers include Irwin Cotler of the Raoul Wallenberg Centre for Human Rights, Diego Garcia-Sayan, rapporteur on the independence of judges of the UN, and Alberto Mora of the American Bar Association.

Rule of Law Symposium: misinformation – what can the United States, and others, do to counter disinformation and its potentially destructive consequences? Friday, November 4 13.45 – 15.15

This session is part of the IBA Foundation's Rule of Law Town Hall series. Speakers will discuss the phenomena of misinformation, disinformation and their widespread acceptance; the risks that they can pose to democratic societies and the rule of law; and how inaccurate information can most effectively be countered and its destructive potential avoided.

While propaganda is not new, our



generation has seen what can happen to the rule of law when misinformation and disinformation are combined with the power of social media. We have seen a grand false narrative in Russia, the hacking and weaponisation of information for political purposes, and the widespread dissemination of false information in the US that has further polarised the country. Not only can disinformation threaten the rule of law but, as the January 6 attack on the US Capitol has shown, it can threaten and destabilise democratic societies.

This session will discuss how the US and other countries might deal with this new phenomenon. Various approaches have been debated, includ-

ing credible investigations that document facts and expose disinformation; prosecutions of those who, based on misinformation, violate the law; regulation of dissemination of disinformation on social media; a re-examination of traditional free speech standards and protections; updated journalistic standards and techniques for reaching the public; election of candidates who are problem-solvers rather than ideologues; and improved civic education and a better-informed citizenry.

In this town hall-style session, knowledgeable speakers with relevant first-hand experience from the US and around the world will explore these topics in a non-partisan debate that encourages audience participation.

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Keeping up with crypto regulations

Digital asset control has come to the fore in recent years due to concerns over financial stability, currency control and its potential use as a sanctions workaround

Supervisory bodies around the world are increasingly turning their attention to crypto regulation, making for an ever-changing landscape for market participants to stay on top of.

On Wednesday afternoon, panelists at the *Crypto, sanctions and AML – where the worlds collide* session updated the room on the regulatory efforts from Italy to Singapore.

“This panel will be entirely different next year in terms of the way regulatory frameworks are developing,” said Ari Redbord, head of legal and government affairs at TRM Labs in Washington D.C.

For example, in the EU, attention on crypto assets is only accelerating after the recent agreement on the Markets in Crypto-Assets (MICA) regulation.

“I was in Europe last week talking to legislators and they’re already onto the next thing, which is going to be a MICA 2.0, on how to handle decentralised finance,” he continued.

The EU is not the only jurisdiction active in regulating the market.

“The makeup of today’s panel has focussed discussion on the US, the UK and EU,” continued Redbord. “But the reality is that everybody on Earth is thinking in some way or another about how to regulate this space. The Monetary Authority of Singapore is becoming a real leader, meanwhile Dubai is the first jurisdiction in the world to have a [dedicated] regulator just for crypto with the Virtual Assets Regulatory Authority (VARA).”

Bitcoin has now been around for 15 years, but virtual asset service



“The reality is that everybody on Earth is thinking in some way or another about how to regulate this space”

providers have only been regulated for the past few years. A key challenge for lawyers working with regulation will be tackling the varying approaches across different technologies.

Most of the regulatory action so far has been around anti-money laundering (AML). Global approaches to AML were guided by the Financial Action Taskforce (FATF).

“It’s only been since 2019 that FATF has said the same AML regulatory framework is required for crypto as financial institutions,” said Paige Berges, partner at Ropes & Gray in London.

In the time since, jurisdictions have taken varying approaches, such as on the question of what is a virtual asset service provider (VASP).

“The EU has a more expansive definition, the UK has a slightly smaller one and the US has a different one,” said Berges. “So, the first question is who is regulated under this in the first place.”

Once this has been confirmed, firms have to consider the differing thresholds at which different jurisdictions have decided to set the threshold for these rules to apply.

The EU’s MICA is the first all-in-

one piece of legislation to approach crypto regulation.

Panelists were split on their view of MICA. For Riccardo Lucev, a criminal lawyer at Studio Legale Cagnola & Associati in Milan, the approach is thorough. Again, decentralised finance proposes key challenges here.

“The main point in the MICA project is that everything is based on the exchanges infrastructure,” he said. “Firms have to be enrolled and authorised and as part of that are in charge of carrying out all the AML controls that comes in and out of the blockchain.”

On the other hand, for Redbord the pros of the regulatory advances outshone these concerns, suggesting that the clarity of regulation is often better than the actual requirements.

A main feature of MICA is the passportable licence. “You can’t do that anywhere else in the world today, it starts the process of what could be a global regulatory framework for crypto,” he said.

In the US, a different approach has been taken to crypto regulations following president Biden’s executive

order on ensuring responsible development of digital assets this March. Steps to implement this came into action last month, when every agency in the executive branch filed a report. In response, the White House too reported its view on priorities for regulating crypto, which included enforcement and securities angles.

“The executive framework is developing a little bit ahead of where we are on Capitol Hill,” he continued. “There are all kinds of different bills flying around.”

One example is the Lummis-Gillibrand bill that was proposed earlier this year, which would offer a more comprehensive, MICA-style approach to crypto regulation.

“The one area where there’s some relative clarity in the US is that if you are a crypto business and you are operating in the US or are dealing with US persons, you’d better have compliance controls in place, especially with things like sanctions.”

A recent high-profile example of US crypto regulation in action saw the Securities and Exchange Commission announce that it had charged Kim Kardashian for promoting a crypto asset, EthereumMax, on Instagram without disclosing that she was being paid. Kardashian was fined nearly \$1.3 million and banned from promoting any cryptocurrencies for three years.

However, for Redbord, the emphasis was firmly on the pace of change in the industry: “For me the key takeaway, and why I don’t sleep anymore, is that it’s changing every day.”

“The executive framework is developing a little bit ahead of where we are on Capitol Hill. There are all kinds of different bills flying around”

Culture clash in the aftermath of the pandemic

Legal culture is changing in the wake of the Great Resignation and the rise of ESG, and law firms should adapt or face the consequences

The global landscape has drastically changed since the last in-person IBA conference in 2019. Multiple headwinds, including the growing devastation of climate change, widespread economic turmoil and the Covid-19 pandemic, have shattered a fragile stability.

With all these changes, law firms have been forced to change too. In Wednesday morning's session *Changing law firm work culture – dealing with the aftermath of the pandemic including the Great Resignation, and embracing important trends such as ESG/SDGs*, industry experts discussed how lawyers and firms have adapted to the new office landscape.

Panel co-chair Tahera Mandiwala identified what law firm culture means in a post pandemic world, the challenge firms have faced, and the opportunities the pandemic has given firms and lawyers. American Bar Association (ABA) president Deborah Enix-Ross, kicked off the discussion with an account of the US perspective.

She shared the results of the Practice Forward ABA survey of 2000 lawyers, which asked what the most pressing post-pandemic needs were. The results showed a clear yet equal division between lawyers who want to return to work, those who want to work from home. However, there is further concern for lawyers of colour, and although they may be hyper visible, as Enix-Ross commented, "if you're not there, you're not seen".

When asked by the moderator how to keep ahead of the curve, Enix-Ross said that her mantra was presence with purpose. "It's becoming more evident post pandemic that young lawyers do not want to be in the office for the sake of being in the office", she said. Young lawyers are looking to work in firms that have a healthy work-life balance and provide more flexibility, mobility and freedom to carve their careers.

Travers Smith partner David Patient agreed. "High levels of work, high levels of attrition, spiralling salaries, mental health issues all of that and the fact that people have worked from home for so long with

very strict lockdowns in the UK has challenged the loyalty of people to their law firms," she said.

Adding perspective from Southeast Asia, Tilleke & Gibbins managing partner Tiziana Sucharitul stressed the need for innovative management to provide support for remote work. In the region, pre-Covid natural disasters and political instability drove a cultural shift at work, helping to set up technology.

Understanding the new generation of associates is crucial, especially those who are looking for additional support outside of money. While there was a natural focus on how to support the future generation of lawyers, a question from the audience highlighted that the older generation of lawyers wants to be able to adapt to the acclimatising conditions law firms are facing globally as a result of the pandemic, climate conditions and the economy.

Al Tamimi & Company managing partner Samer Qudah rounded out the regional perspectives, representing the



"It's becoming more evident post pandemic that young lawyers do not want to be in the office for the sake of being in the office"

Middle East. He shared that as a result of the changing rate of activity of practice areas, he created new opportunities for employees as opposed to

implementing layoffs. He also expressed the need for improving technology in relation to the switch to a hybrid office model.

SLAPP: a rising threat facing journalists

Strategic litigations against public participation have been a source of growing concern for members of the media

Among the many risks that journalists are facing on a daily basis in the exercise of their profession, strategic litigation against public participation (SLAPP) has been a burgeoning trend, panelists at a panel evaluating the safety of the press reported yesterday.

A SLAPP is a legal action intended to censor, intimidate and silence journalists by burdening them with the threat of the cost of a legal defence.

"The courts are beginning to pick up on SLAPPs and some are getting challenged, but unfortunately, that is

not discouraging enough for those who bring these sorts of lawsuits, especially for powerful individuals," said Can Yeginsu, an English barrister at 3 Verulam Buildings and member of the High-Level Panel of Legal Experts on Media Freedom.

Referring to lawsuits faced by the newspaper's reporters as recent example of such actions, The New York Times Company and IBA Media Law Committee co-chair Dana Green described SLAPPs as a process in which an individual – typically very powerful – takes advantage of the legal system and of protections for defamation,

which exist in every jurisdiction, to retaliate against or chill reporting.

"The goals of a SLAPP lawsuit are manifold," said Green. "One, of course, is the attempt to place a burden on the publication. Although a single standalone case often isn't enough, cumulatively, the effects can be quite significant."

In 1964, the *New York Times Co. v. Sullivan* case established a historic precedent for public figure defamation actions. While establishing the "actual malice" standard, per which a public figure plaintiff must prove that the publisher issued the statement with

Future of the legal workspace

Post-pandemic law firms have more empty office space than ever before, this panel discusses what should be done with it

With office rent being the second biggest expense after lawyers' salaries, law firms around the world are grappling with how best to make use of their real estate, particularly following the Covid-19 pandemic. While hybrid working has become the norm in the past few years, there is still no clear pattern on what best practices are – for instance, how many days staff should work in the office and what firms can do to create team spirit and culture.

“One of the problems that law firms are faced with is having an enormous amount of space that is just used half the time,” said Stephen Revell at Freshfields Bruckhaus Deringer and co-vice chair of the Law Firm Management Committee. “It’s a huge amount of real estate cost.”

Panellists – including Jared Spataro, corporate vice president at Microsoft 365, and Kim Sullivan, principal at architectural firm Gensler, where she leads a team that designs more office square footage for lawyers than any-



one else in the world – will pull these strands together to offer technological solutions to improve hybrid working and a rethink of what an office looks like in addition to a space to work.

In trying to attract staff back to the office, law firms should think beyond productivity, but also how they can be resilient to change by spurring social engagement and collaboration, innovation and relationship-building. “Going to the office should not be about an obligation but a destination,” said Sullivan.

Law firms need to create flexibility in their office space planning, such

that it can provide the right tools for individual focus work, but also meeting spaces beyond conference rooms, such as plug and play tech-forward huddle spaces, and spaces with the right ergonomics to allow people to work better.

While technology is a key differentiator in enhancing and improving office spaces, it’s important to not forget about the power of people relationships. “There is a need to bring people together so that we’re even more resilient in preparing for the next big event,” said Sullivan.

Real estate developers will also

SESSION: The shape of the office and the amount of square footage in the future

TIME: Friday, November 4
09.30 – 10.45

VENUE: Level 209, Level 2

play a key role in changing how buildings are designed to meet tenant demands and expectations that buildings be adaptive and sustainable. Those that can adapt and react will be the ones that are more responsive to healthy wellbeing.



knowledge of its falsity or with reckless disregard for its truth, The Supreme Court noted that the New York Times was subject to roughly 200 lawsuits in the American South at the time a clear coordinated attempt to stop North American papers from writing about the Civil Rights Movement, according to Green.

“Although this has gotten a lot harder to do in the US, the concept has certainly not gone away,” said Green.

Over the last 38 years, the New York Times has been the target of a spike in lawsuits largely brought by

plaintiffs categorised as conservative, ranging from different of political orientations.

“We’ve been under pressure to call out extremism and misinformation, in our reporting and rightly so,” said Green. “As a result, we’ve since been sued for calling people white nationalists, for referring to information as antisemitic, and for calling disinformation, disinformation.”

While those lawsuits are generally unlikely to succeed as the reports are regarded as protected speech, they are designed to deter the newspapers from

using such characterisations, and send a message to other publications with fewer resources that they may receive the same treatment if they attempt to do the same.

“One of the most insidious aspects of it is to change the relationship between the paper and its subject-matter so that our impartiality can be called into question,” Green added. “If we’ve written about an extremist and that person then sues, us every time we write about them, ethically, we have to acknowledge the fact that they’ve sued us, which can make our reporting look like it’s not impartial.”

Another fast-growing phenomenon has been relatively unknown, or so-called ‘D-list’ individuals, using a lawsuit to leverage themselves into fame.

“There’s no faster way to get on TV than to sue a news organisation

affiliated with the opposite side of your political spectrum, whichever side you sit on,” said Green. “We’ve also seen people explicitly engage in litigation fundraising or crowdfunding. It’s an evergreen threat, but there certainly seems to be a particular dynamic around this at the moment in the US – but it isn’t unique to it.”

Although efforts to stop the spread of misinformation in an age characterised by over-mediatization, those efforts in themselves can be dangerous too, Green explained.

“The lesson of the last eight years in the US is how quickly political parties would like to control what’s true and what’s not, and what can or cannot be said,” she added. “We’re grappling with these on a daily basis, and it’s a big challenge to journalists and to the freedom of expression we all rely on to do our jobs.”

Twenty years of IBA Legalbrief Africa: “from the bullet to the ballot”

As the ever-popular newsletter strides into its third decade, a closer at how it initially found its way

Twenty years ago, the IBA held its Annual Conference in Durban, South Africa. The conference was a much smaller affair two decades ago, and it was the first time the event had been held in Africa.

Executive director and the deputy executive director, Mark Ellis and Tim Hughes respectively, wanted there to be a tangible legacy after the IBA left town. Together with the well-respected journalist, William Saunderson-Meyer, the idea emerged to have a weekly round-up of legal news from across Africa distributed by email to people interested in what was happening across the continent.

The newsletter was to be free to all subscribers and remains so today. If you are not already subscribed to receive *IBA Legalbrief Africa*, you can sign up to have it delivered to your inbox every Monday at: legalbrief.co.za/register.

Roots in Africa

Rarely for an electronic newsletter, IBA Legalbrief Africa has a readership that just keeps on growing, year in year out. Ellis, Hughes and Saunderson-Meyer knew from the outset that it would have an African readership, but what also developed early – and surprised them with its enthusiasm – was significant readership from across the world that was strongly supportive of, and interested in, Africa.

The original hope of the three was that briefing could summarise key legal news developments effectively for African lawyers, and by doing so help to connect more of them together – showing those in one country that the issues they faced had parallels and connections across the border, in a neighbour or near-neighbour. The IBA's work in Africa over preceding years had highlighted the fact that many communities of African lawyers had insufficient access to this kind of information. This was – and still is – perhaps particularly true for lawyers working to protect people's rights and freedoms.



“A large part of this growth was due to the honorary life president, who at that time was Nelson Mandela, and to a newly developed and inspiring partnership with the Open Society Initiative for Southern Africa”

In 2001 and 2002 the IBA's African focus was in the process of being significantly expanded, largely thanks to the the Human Rights Institute. A large part of this growth was due to the honorary life president, who at that time was Nelson Mandela, and to a newly developed and inspiring partnership with the Open Society Initiative for Southern Africa.

At this convergence, the IBA's Annual Conference took place in Durban. There followed an aim to provide a worthwhile service to the wider community of African lawyers and to help address the information gaps that

seemed partially responsible for holding back the fuller development of law and justice across much of the continent.

Into this environment came Ellis, Hughes and Saunderson-Meyer. With aligned ideas on how they sought to serve, it was agreed to launch a publication quickly, and to test reaction among delegates in Durban, which happily was met with a positive reaction.

Shortly afterwards, Ellis and Saunderson-Meyer embarked on a week-end road-trip across the red mountains of Kwa-Zulu Natal and as

far as the Tugela river, on which they discussed a wish-list of readerships, types of content, style, and above all their hopes for the publication.

Things very nearly took a sinister turn, and their aspiration might have been among the world's most short-lived. Somewhere on the road a rootless teenager pulled out his gun and shot at the duo.

The life of IBA Legalbrief Africa, as well as that of two fortunate individuals, owes something to the jamming of the gun after the first bullet. Too many African countries can be described as living ‘from the bullet to the ballot’, but it was not expected that a legal newsletter should start from the same place. Happily, both were unharmed, and the newsletter lived on.

That moment serves as a reminder as to what the publication remains passionate to be part of – the drive towards stronger rule of justice and law, served by a thriving, connected, thoroughly well-informed community of African – and pro-African – lawyers.



IBA Legalbrief Africa celebrates 20 years of bringing news from Africa's legal landscape to a global audience.



Fighting for peace, justice and strong institutions

The week's final sustainability showcase focuses on how SDG 16 is at the core of the IBA's mission

As part of the second of the IBA's sustainability focus showcase days, speakers will convene on Thursday morning to discuss the role of the legal profession in working towards the United Nations Sustainable Development Goals (SDGs).

At the 2021 IBA Global Showcase, Sanda Ojiambo – CEO and executive director of the UN Global Compact – sent a clear message to the international legal community.

“We cannot deliver on the UN Sustainable Development Goals without peace, justice and strong institutions,” she said.

The IBA took has taken this message to heart. It believes the legal profession has a role to play in the effective implementation of most, if not all, of the 17 SDGs and their translation into ESG activity. This has been made particularly clear across this week's sessions, from climate change showcases to human rights-focused panel discussions. Indeed, SDG 16 covering peace, justice and strong institutions, lies at the heart of the IBA's mission.

The business of law is not possible



without the rule of law, which in turn requires peace, justice and strong institutions.

This showcase session, presented by the IBA Section on Public and Professional Interest, will focus on how SDG 16 provides a golden thread that runs through much of the IBA's activity.

The session is set to be interactive and innovative, aiming to pool the ideas relating to the SDGs and ESG discussed at other conference sessions held earlier in the week, and connect them to “peace, justice and strong institutions”, as well as to crowd-source the core content to ensure the IBA is actively collating key work on SDGs

and ESG and sharing knowledge with members and others.

By drawing directly and immediately on the activities of IBA committees, sections and regional fora, the session hosts hope to build up a portrait of how the legal profession is contributing to SDG 16.

The session will be chaired by Alison Hook, co-founder of Hook Tangaza. The keynote speaker is SDG 16+ Pathfinders project lead at NYU-CIC, Margaret Williams. Other speakers include Zulon Begum, partner at CM Murray, Justice Mark Livesey of South Australia's Court of Appeal, Sebastián Ramos of Ferrere, Dominika Stepinska-Duch from

SESSION: Sustainability focus SPPI showcase: connecting the business of law and the rule of law – the IBA and the UN Sustainable Development Goals
TIME: Today, 09.30 – 12.30
VENUE: Rooms 203-205, Level 2

Warner Bros Discovery Poland, and Law Council of Australia's Mark Woods.

The session marks the end of the series of sustainability showcases at the IBA this week, which have covered AI, atrocity prevention, climate change and human rights issues.

M&A goes high-tech

The conference has some excellent sessions running until the very end, don't miss the chance to hear about how the digital age is changing corporate law

The debate over whether technological innovations will impact M&A transactions is over. The question now is to what extent and how quickly this change will occur, and when it will be embraced by forward-thinking lawyers and clients.

Run by the Corporate and M&A Law committee, this session will explore the rapidly developing technologies and novel products that are

changing the way lawyers are supporting M&A activity in the digital age, the benefits to both law firms and clients of embracing new ways of doing deals, the opportunities technology presents, as well as the challenges created by such innovation.

Adina Shapiro of Herzog Fox & Neeman, Tel Aviv, Israel and Stephen Solursh, OPTrust Pension Plan, Toronto, Canada will be co-chairs for the session, which will explore how

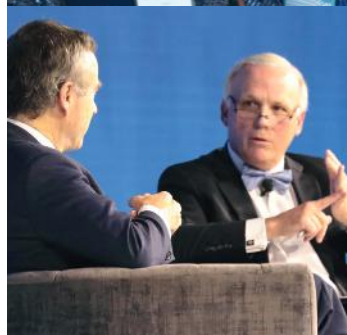
technological innovations are impacting transactional efficiency; how the M&A lawyer's role has evolved and will evolve in shaping successful deal making by leveraging technology; the potential impacts of the digital age on shareholder engagement, empowerment and transaction approval; and regulatory implications and ethical considerations of utilising new technologies to support M&A transactions.

SESSION: State of the art execution of M&A transactions in the digital age
TIME: Friday, 4 November 09.30 – 10.45
VENUE: Room 206, Level 2

Other panelists include Kosturi Ghosh of Trilegal, Pere Kirchner of Cuatrecasas, Ilkka Perheentupa of Avance Attorneys and Melanie Sanchez of the Ontario Teachers' Pension Plan.

We're going to Miami...

Some of the best moments from the conference so far...





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