

International Bar Association Conference

Challenges of corporate litigation in a global economy

Dinner speech – Pascal Lamy

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Many thanks for your invitation to deliver a few remarks tonight on the topic of your conference this year.

I will start with a case which had to be adjudicated by the WTO dispute settlement before I left the DG position late 2013. The famous EU/Canada/Norway dispute about EU measures prohibiting the importation and marketing of seal products. A trade measure based on welfare standards for an animal that Inuits hunt for their livelihoods and according to their traditions, did not respect the views of Europeans.

Well, this was not precisely a corporate litigation as disputes at the WTO are state-to-state. But I noticed, just yesterday, that the environment committee in the European Parliament adopted a resolution according to which animal welfare standards should be taken out of the parameters of the Transatlantic Partnership negotiations. This is clearly getting closer to the world of corporations.

What this example tells us is that we are witnessing a ship race between globalisation, i.e. the increasing connectedness and interdependence of our economic systems, and the capacity of our political and legal systems to level the playing field in terms of what I call "collective preferences". A discrepancy between the benefits of globalisation on the one side and the legitimate remanence of values shared by diverse communities on the other.

The benefits of globalisation go with magnitude, with size. The larger, the better. Economies of scale. Big is beautiful.

Identity, legitimacy and policy go with proximity, with small. Diseconomies of scale. Small is beautiful.

This fundamental, I could say anthropological tension in today's world triggers a cycle which lawyers have known for a long time: you need regulation to accommodate or reduce differences that otherwise would lead to conflicts and to overburdening of litigation systems; but these regulations have then to be interpreted in specific litigations, leading to jurisprudence which adds a new layer of regulatory constraints and so on.

Not a bad business for most of you, of course, but let's be frank, at the expense of the consumer or/and the taxpayer.

Having spent 25 of the last 30 years of my professional life in the international system, mostly on trade and economics, where do I see the main areas where corporations will have to factor in more global rules, norms or standards in the times to come?

Let me mention 4 of them:

- Global taxation - as global supply chains have multiplied, so have opportunities for what is diplomatically called "excessive tax optimisation", hence triggering a reaction by sovereign states;
- Investment protection - as financial flows to and from emerging countries will keep increasing;
- Precaution - as sustainability concerns will grow with the size of the middle class;
- Ethics - as globalisation, to the difference of the old Westphalian order, cannot be harnessed without a moral base, obvious in the case of corruption, for instance.

Those are the main areas where I think you should look ahead. A growing market for corporate counsels, law firms, attorneys not to speak about policy makers.

Whereas some may have doubts about the impact of globalisation, or technology on jobs and qualifications, my guess is that these mines will be rich ones for you for many decades to come.

To sum up, globalisation is not always about good news everywhere and for everybody, but you should be among the lucky winners!