



## *Legal Counsel, Disputes, and Respect for Rights*

*Parallel session*

*27 November*

*13:30-14:45*

*Organized by Debevoise & Plimpton LLP, the American Bar Association and the British Institute of International and Comparative Law.*

**Brief description:** The session will draw on a case study of a human rights-related dispute to examine how lawyers should navigate the perceived tension between their ethical duties as independent advisers to companies and the expectation that they respect human rights in the advice that they provide. The touchstones for the discussion will be the Guiding Principles and the International Bar Association’s Practical Guide on Business and Human Rights for Business Lawyers.

**Background:** Lawyers are at the frontlines of pursuing, and resisting, remedy for adverse human rights impacts. For Pillar III of the Guiding Principles to be meaningful, corporate counsel will need to reflect on the human rights responsibilities inherent in their unique role. The disputes context is arguably, where the tension between conventional legal ethics and the expectations advanced in the IBA Practical Guide is likely to raise the most challenging dilemmas. This session will focus on practical ways that corporate counsel can navigate these challenges in way that aligns with the Guiding Principles and with lawyers’ “legally binding professional responsibilities and obligations.

**Session objectives:** The purpose of the session is to identify practical considerations corporate counsel—both in-house and external—should bear in mind, and specific steps they should take, to ensure that they and their clients respect human rights in the context of disputes. While the session will be of particular relevance to lawyers, it is expected to appeal to all stakeholders, from victims’ rights advocates to government policy makers as well as to professional standard-setting bodies.

### Key discussion questions:

- What were the pre-Guiding Principles ethical expectations of lawyers when it comes to advising clients on resolving disputes?
- How have the Guiding Principles affected these obligations, if at all, in light of the IBA's Practical Guide?
- How should lawyers ensure that the advice they are giving to clients in the context of a particular dispute respects human rights?
- How are these expectations affected in the context of potential class-action disputes with a public relations component?
- What are the ethical expectations of lawyers when a client, contrary to the lawyer's advice, decides on a course of action that may adversely impact human rights?

### Speakers:<sup>1</sup>

- **Moderator: Yousuf AFTAB.** Founder, Enodo Rights.
- **David W. RIVKIN.** Partner, Debevoise & Plimpton LLP.
- **Archana KOTECHA.** Head of Legal, Liberty Asia.
- **Claudia MARADAN.** Senior Legal Counsel, Corporate Affairs and Communications, Nestle.
- **Susy Bullock.** Head of litigation, Europe, Middle East and Africa, UBS.

**Format:** Roundtable discussion revolving around one case study with three distinct stages, each raising distinct challenges:

- The first will raise the question of pre-engagement due diligence to inform whether a lawyer should take on a particular client.
- The second will examine appropriate considerations when offering the client advice on how to resolve the particular dispute.
- The third will consider how the lawyer should respond should the client reject advice tailored to respecting human rights.

The moderator will guide the speakers through questions that bring to life the practical challenges that might arise. Participation from the audience encouraged.

### Background material:

- <https://www.ibanet.org/LPRU/Business-and-Human-Rights-Documents.aspx>
- <file:///Users/yousuf/Downloads/Reference-Annex.pdf>

---

<sup>1</sup> Further information on speakers provided in Annex

## **ANNEX. SPEAKERS SHORT BIOS.**

### **Archana Kotecha.**

#### ***Head of Legal, Liberty Asia.***

Archana Kotecha is a UK-qualified barrister and London School of Economics graduate. After practicing corporate law for seven years, Ms. Kotecha joined the UN Refugee Agency's Legal Protection Team, then the Immigration Advisory Service and Stop Trafficking UK in London.

Since joining Liberty Asia, Ms. Kotecha has produced multiple best practices reports, engaged in policy advocacy, and educated human rights practitioners, financial institutions, and governments on trafficking in persons, including in legal and anti-money laundering frameworks. She also works with the private sector to highlight human rights risks and improve due diligence processes.

Recently named one of the top ten innovative lawyers in Asia-Pacific by the Financial Times, Ms. Kotecha is also an alumna of the US Department of State's prestigious International Visitor Leadership Program.

### **Claudia Maradan.**

#### ***Senior Legal Counsel, Corporate Affairs and Communications, Nestlé.***

Claudia Maradan advises the Corporate Communications function at Nestlé Global Headquarters. As a member of the Legal in Sustainability and Creating Shared Value team, she is in charge of business and human rights legislative frameworks. Before joining Nestlé, Ms Maradan worked at the Swiss Confederation (Intellectual Property Office) and in a law firm in Lausanne. Ms. Maradan holds a doctorate from Lausanne University Law School and is admitted to the bar in Switzerland.

### **David W. Rivkin**

#### ***Partner, Debevoise & Plimpton LLP***

David W. Rivkin is Co-Chair of Debevoise's International Dispute Resolution Group and The Immediate Past President of the International Bar Association (IBA). Mr. Rivkin is consistently ranked as one of the top international dispute resolution practitioners in the world. Chambers Global (2015, 2016) identified Mr. Rivkin as one of the top fourteen international arbitration practitioners worldwide and recognized his demonstrated "aptitude for complex, high-stakes disputes." As IBA President, Mr. Rivkin was instrumental in developing the IBA Practical Guide on Business and Human Rights for Business Lawyers. He is also one of the leaders of Debevoise's Business Integrity Group, which helps clients navigate global human rights, climate change, and corruption risks.

**Susy Bullock.**

***Head of Litigation—Europe, Middle East, and Africa, UBS.***

Susy Bullock is Head of EMEA Litigation at UBS and is a legal adviser to the UBS & Society team. Since 2016, Ms Bullock has also been part of the UBS delegation at the Thun Group. Before joining UBS, Ms Bullock was an associate at the Gibson Dunn & Crutcher law firm. Ms Bullock has a First Class Law Degree from Cambridge University.

**Yousuf Aftab (Moderator)**

***Founder and Principal, Enodo Rights.***

Yousuf Aftab is the founder and principal of Enodo Rights, a New York-based consulting firm specializing in business and human rights. Prior to launching Enodo, Mr. Aftab specialized in international disputes at leading law firms in Toronto and New York. He has advised leading responsible businesses across sectors on how to operationalize the Guiding Principles on Business and Human Rights. Mr. Aftab has published and presented widely on business and human rights and is the author of Pillar III on the Ground: An Independent Assessment of the Porgera Remedy Framework.