



Challenges to Legal Professionals – Siena Bar Association and Federation of European Bars and Law Societies Conference, 28th March 2025

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Good afternoon.

It is an honour for me to join you in Siena today for this extremely important discussion concerning matters that some of us take for granted. I am circulating this paper as I was asked to provide a written speech (which is not my normal mode of delivery). I apologise in advance if the machine translation does not capture the meaning conveyed by the English text. I have no excuses given the deep affection I have for Italy, apart from an inability to sit still and learn the language. Given the invaluable insights provided by the other speakers, I will add some of my own remarks in the light of their presentations at the end.

I am grateful for the invitation to join you all for the discussion of the Council of Europe Convention for the Protection of the Profession of Lawyer. The Bar Council of England & Wales welcomes the Convention, which as has been explained by other speakers, is open for signature on the 13th of May 2025. It is to be hoped that that the eight countries, including six member states of the Council of Europe as required for the Convention to come into effect, will ratify it sooner rather than later. The work of the Group of Experts on the Protection of the Profession of Lawyer to be known as GRAVO that is to monitor compliance with the convention will provide a necessary spotlight, which we must hope will shame those who are failing in their responsibilities to mend their ways.

Some might say that we already have many domestic law and treaty based protections for the legal profession. Some might say legal professional privilege and confidentiality of client relations provides cover for inequity and criminal conduct. They might also say that the creation of this new legal instrument is just an example of Lawyers doing what they believe they do best, generating yet more legal regimes which they can then set to work on.

If that were true, then surely there would be little evidence of threats to legal professionals. Surely, any threats would be isolated, few and far between. Yet, sadly that is not the case. The reality is to the contrary.

THREATS TO LEGAL PROFESSIONALS ARE INCREASING.

Unfortunately, it is the case that many of us believe that threats to lawyers are likely to take place in far-away places. Out of sight – out of mind.

This is a mistake we continue to make as humans, not just as lawyers. Threats, abuse of rights, prejudice, ignorance and oppression feed off complacency. Our

complacency is a sleep from which we might awaken, just in time to see there is a fire in the house, and we can either extinguish it or the flames will spread until they cannot be contained. Far-fetched and too melodramatic?

Just glancing at the website of the NGO Lawyers for Lawyers shows that over the past 12 months alone, there have been allegations of threats and mistreatment as against lawyers seemingly just because they are discharging their professional obligations, in many countries, including Iran, Turkey, Egypt, Tunisia, China, Georgia, Sudan, Palestine, Belarus, and the Philippines. No doubt each and every one of these States would reject any accusation of impropriety against them.

Hosted in these beautiful surroundings steeped in centuries of history, learning and culture, it is all too easy for most of us to believe that our right to be able to practice, our right to be able represent our clients, our right to be able to practice fearlessly, is a matter that we can continue to take for granted.

But it seems that even in the United States of America, this may no longer be the case in certain respects. As someone who has represented the USA before the English Courts, I am dismayed at reading reports of how firms are being targeted to fall into line with the US Administrations social policies and being punished for having been involved in cases against the President, or cases against the US Administration. This is a matter of grave concern. It is to be hoped that Legal professionals and relevant Institutions will defend themselves against what appears to be an unrelenting campaign to undermine the rule of law.

SOME INSIGHTS FROM MY EXPERIENCE.

I intend to share some insights from my personal experience over 35 years of practice, within which period I have had the privilege to be involved in matters concerning more than 60 States, including the United Kingdom, the United States of America, the Russian Federation, India, Italy and Kenya. I have appeared in Court on hundreds of matters including large scale commercial disputes, State Immunity and Diplomatic Immunity Issues as well as criminal and fraud cases. Of course, I will only mention matters that are in the public domain.

I start at home. I can recall quite a few Domestic Court cases that have generated media attention, sometimes very unfriendly when I have acted for the UK Government (and indeed the US Government) on very high-profile matters. I mention this because the freedom to represent clients should always be blind to the identity of the client. The cardinal principle which we as lawyers must believe in is that we make submissions within our ethical boundaries, in accordance with

the facts and law, whilst the Court decides what is right and wrong. Never us, but always the Court.

This is even more important in cases between States which can generate frenzies of completely fabricated stories. I experienced this myself where the mass media in a very large State provided blanket coverage to malicious lies, designed to create pressure on me. I have no doubt this led to threats to my life made at the same time. Damage to my property was unlikely to have been coincidental.

However, I am one of the fortunate ones. I live in the United Kingdom where we have a strong independent Judiciary, we cherish the Rule of Law and treasure personal freedoms. Of course, there was a fit of hysteria induced by Brexit, which led to Senior Judges and lawyers being vilified in the media. For my part, I can only hope that recent events have cured the advocates of Brexit of any delusions they may have carried about special relationships, and how we in the UK are apart from Europe.

Another example was my role as Counsel For the Government of Kenya. Having acted against them successfully for an international investor, I was appointed soon after to appear in a case against the Deputy Chief Justice, no less, for fraud and corruption – broadcast live on national TV with hordes of journalists in Court, and more than a dozen local lawyers on the opposite side. Travelling in an armoured car to and from Court, with armed escort, unable to move from my hotel except for Court hearings was an experience, made all the more memorable by the kindness and hospitality shown to me by most people – even though I was a foreigner in their Courts.

There are other examples I can give, but I will end with a recent case. Before I refer to that, there is of course an important distinction which as an English Barrister King's Counsel I should mention. It is not the fact that I wear a wig made of horse hair when in Court, and a silk gown. It is the fact that in accordance with my professional obligations for any matter before the English courts, I am bound by what is known as the "cab rank" rule.

That means that where there is litigation before the English courts, which is within an area of my expertise, I am otherwise available, and the client is offering to pay for my services at my commercial rate - I cannot, I repeat, I cannot refuse to represent the client.

Indeed, if I do refuse to represent the client for purely personal reasons, namely, I dislike their political views, or, God forbid, I harbour a mindset which is discriminatory as against them, that constitutes professional misconduct.

The “cab rank” rule is extremely precious for me, not least because it provides some safeguard for access to justice. It also provides me with protection. It is vital for members of my profession to stay true to its objective.

It means that in when, in September 2022 the Russian Federation came to me, having had all its legal counsel, solicitors and barristers withdraw from an ongoing arbitration claim against it to the value of \$50 billion, totally unrelated to the horrors of the Ukraine conflict, I felt professionally obliged to represent them and did so until the end of last year.

This was despite the fact that there was a vast team on the other side. The political climate was very hostile, and there was, at the very least, tension in court.

None of that was of concern to me, because ultimately, I truly believe that my responsibility as a lawyer is to represent my client, fearlessly, without favour.

It seems that, unfortunately, many of our colleagues all over the world are unable to do so, or are seeking to do so, but are paying a very high price to try to fulfil their professional obligations.

WHAT WE CAN DO AS LAWYERS.

I commend this Convention and the excellent work of the European Federation of Bars and Law Societies. Each of us as practitioners can add to this work in at least three ways;

1. Understand the value of Professional Solidarity – within our own jurisdiction and internationally. Beleaguered colleagues derive much support from knowing that there are others around who can provide moral support and encouragement if nothing else.
2. Remember we are Servants of Justice and Ambassadors for the Rule of Law. Our words and deeds matter. We must try to set the best example wherever we can, whatever the provocation. I know only too well how the legal profession has become increasingly commercialised, with the consequence that some lawyers will resort to the dirtiest of tricks to please their clients or achieve an outcome that is fundamentally unjust. Resist the temptation to stoop to their level. See them for what they are.

3. In this era of attention deficit and an ever-widening gap between truth and what is presented as such, use our professional bodies to raise awareness of matters which engage issues of justice and the rule of law.

If we do not stand firm in defence of Justice and the Rule of Law we cannot expect anyone else to do so.

Thank you