

# The Education and Training of a New International Lawyer

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## A. Introduction

Over the last 30 years, the greatly increased international communication, commerce and financial transactions have expanded the demand for legal services, which span national borders and incorporate multiple legal systems and regimes. The international practice of law has become an important and growing branch of the legal profession in the leading commercial states of Europe, the Americas and Asia.

Traditionally, lawyers have been educated and trained largely within the legal system of a single national jurisdiction to practice almost exclusively within that jurisdiction. The growing need for legal practitioners who can function multinationally and multijurisdictionally and solve their clients' problems within a global framework raises the question of how practitioners can best be educated and trained for this new framework of professional endeavour. Are there particular programmes, institutions or courses of study or training best suited to prepare for the international practice of law?

This article attempts to survey the current status of education and training for international practitioners, point out some possible areas for emphasis or improvement, and hazard the course of future developments as we move towards a truly international legal profession.

After considering the currently ongoing growth of international legal practice and the 'globalization' of the bar, this article attempts to identify certain forms of competence likely to be required for successful practice in the international arena. After a brief look at the current state of American and European legal education, some promising new

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developments at particular institutions are described. The article closes with an attempt to sketch some of the likely ingredients in the legal education of the international lawyer of the future. We are in times of experimentation and transition. The effort here is to pose some relevant questions, not to provide definitive answers.

## B. The Growth of International Law Practice

Over the past 30 years, international law practice has grown from an obscure specialty to a robust field of professional endeavour for lawyers in many of the world's developed economies. The number, variety and size of international business transactions carried out by firms all over the world on a daily basis in the late 1990s eclipses what was being done as recently as a decade earlier. Scarcely any firm of any size in Europe or North America can conceive of ongoing business without reference to international markets and international competition.<sup>1</sup>

The internationalization of business and commerce has been fostered by revolutionary advances in almost all forms of communication, culminating in the Internet. Deregulation of national economies has been accompanied by international mergers of businesses as diverse as banking and automobile manufacture. The variety of different forms of international business combinations can boggle the imagination as different legal structures, different regulatory regimens, and different national cultures are accommodated in different fusions of economic interests.<sup>2</sup> In

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<sup>1</sup> See e.g., *Neue Züricher Zeitung Fokus* (May 1999), devoted entirely to 'Globalisierung' in business, economic and cultural affairs; G. Boxberger and H. Klimenta, *Die 10 Globalisierungslügen* (Munich, 1998), with additional references to literature on the merits of globalization/the terror of the economy/the globalization trap/the myth of the world market; Hartmut Berg (ed.), *Globalisierung der Wirtschaft: Ursachen – Formen – Konsequenzen*, *Schriften des Vereins für Socialpolitik* Vol. 263 (Berlin, 1999); C. Christian von Weizsäcker, *Logik der Globalisierung* (Göttingen, 1999); Jürgen Habermas, *Die postnationale Konstellation* (Frankfurt a. Main, 1998) pp. 65 et seq.; Ulrich Beck, (ed.), *Politik der Globalisierung* (Frankfurt a. Main, 1998); Ulrich Beck, (ed.), *Was ist Globalisierung?* (Frankfurt a. Main, 1997); Daniel Thürer, 'Globalisierung der Wirtschaft: Herausforderung zur "Konstitutionalisierung" von Macht und Globalisierung von Verantwortlichkeit Unterwegs zur "Citizen Corporation"?' (2000) 119:1 *Zeitschrift für Schweizerisches Recht*, pp. 107 et seq; in englischer Sprache see e.g., Thomas Friedman, *The Lexus and the Olive Branch* (New York, 1999); David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton, *Global Transformations, Politics, Economics, Culture* (Stanford, 1999); Anthony Giddens, *Runaway World, How Globalization is Reshaping our Lives* (New York, 2000).

<sup>2</sup> E.g., in early 1999 Daimler Benz and Chrysler Corporation, major German and American car manufacturers effected a global merger, Deutsche Bank took over Bankers Trust Company. In 1997 Price Waterhouse and Coopers and Lybrand created a global mega-firm in accounting and management consulting. A vivid account of this type of transactions is contained in Bruce Wasserstein, *Big Deal, The Battle for Control of Americas Leading Corporations* (New York, 1998).

Europe the internationalization of business has been mightily spurred by the course of European unification from the post World War II 'European Coal and Steel Community' to the EU of today and of tomorrow.<sup>3</sup> A recent trend of great importance to the international business scene has been the prevalence of international business alliances of every description, in which business entities contract short- or long-term

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<sup>3</sup> Agenda 2000, 'For a Stronger and Wider Union, Editorial Comments' (1998) 35 *Common Market Law Review*, pp. 317–384; Andersen Consulting, *Europe Beyond the Millennium – Making Sense of Tomorrow* (London, 1998); about the position of the Swiss economy in this process from an economic and political science viewpoint, see e.g., Silvio Borner and Felix Wehrle, *Die Sechste Schweiz: Überleben auf dem Weltmarkt, Zürich and Schwäbisch Hall*, (1984); Silvio Borner, Aymo Brunetti and Thomas Straubhaar, *Schweiz AG, vom Sonderfall zum Sanierungsfall* (Zürich, 1990); Silvio Borner, Michael E. Porter, Rolf Weder and Michael Enright, *Internationale Wettbewerbsvorteile: Ein strategisches Konzept für die Schweiz* (Frankfurt, New York, Zürich, 1991); Silvio Borner, Aymo Brunetti and Thomas Straubhaar, *Die Schweiz im Alleingang* (Zürich, 1994); Cedric Dupont and Pascal Sciarini, *Globalization, Few Certitudes and Many Open Questions* pp. 124–128; Rolf Kappel, *Die Schweiz im Prozess der Globalisierung: Einige Aspekte aus der Sicht der Ökonomie* pp. 96–103; Jean-Christian Lambelet, *L'Economie Suisse, un Essai d'Interprétation et de Synthèse* (Paris/Genf, 1993); from a Swiss political view, compare Klaus Armingeon et al. (eds), (1998) 4:2 *Swiss Political Science Review*, the papers under discussion: 'Globalization' *ibid* pp. 95–128; Rolf Kappel and Oliver Landmann, *Die Schweiz im Globalen Wandel, Aussenwirtschaftliche und entwicklungspolitische Herausforderungen* (Zürich, 1997) pp. 104–111; Klaus Armingeon (ed.), 'Der Nationalstaat am Ende des 20. Jahrhunderts: Beiträge im Rahmen der Berner Vortragsreihe 'Die Schweiz im Prozess der Globalisierung'' (Bern, Stuttgart, 1996) pp. 181–199; Alois Bischofberger, *The Consequences of Economic Globalization for Switzerland* pp. 119–124; Daniel Wüger, 'Globalization – Challenges to Constitutions – the Case of Treaty Making' (1998) 4:2 *Schweizerische Zeitschrift für Politische Wissenschaft*, pp. 111–119; from the Swiss legal viewpoint – for the time being still primarily about the effects of commercial international law on the Swiss legal system – above all Thomas Cottier, 'The Challenge of Regionalization and Preferential Relations in World Trade Law and Policy' (1996) 2 *European Foreign Affairs Review*, pp. 149–167; 'The Impact of New Technologies on Multilateral Trade Regulations and Governance' (1996) 72 *Chicago Kent Law Review*, pp. 415–436; 'Handlungsspielräume und Zwangslagen der Schweiz in den internationalen Handelsbeziehungen und die Globalisierung des Rechts – Herausforderungen für Praxis, Ausbildung und Forschung' (1997) ZBJV, pp. 217–241; André Mach (ed.), *Globalisation, Neoliberalisme et Politiques Publiques dans la Suisse des Années 1990* (Zürich, 1999); Beat Hotz, Horst Carsten Küchler, *Wissen als Chance, Globalisierung als Herausforderung für die Schweiz* (Chur/Zürich, 1999); *Globalisierung eine Standortbestimmung*, Schweizerisches Institut für Auslandforschung, *Vortragsreihe an der Universität Zürich* (Chur/Zürich, 1998); Thomas Beinauer and Dieter Ruloff, *Ets. Globaler Wandel und Schweizerische Aussenpolitik, Informationsbeschaffung und Entscheidungsfindung der Schweizerischen Bundesverwaltung* (Chur/Zürich, 2000); there are at the present time hardly any Swiss publications as to the effects of globalization on the Swiss legal system, this is also true in the area of commercial law; on the changing Swiss scene in education, see note 63 *infra*.

partnerships, joint ventures and other joint relationships to complete a particular project or exploit a particular market.<sup>4</sup>

Along with the growth in international business transactions and relationships has inevitably come an increase in the number of disputes over these transactions and relationships. Manufacturers of products sold world-wide face world-wide products liability exposure.<sup>5</sup> Litigants in many countries are no longer shy about asserting claims against foreign firms for restitution under local law.<sup>6</sup> Transnational litigation and international arbitration are growth industries.

This internationalization of business activity and dispute resolution has been accompanied by internationalization of the lawyers who serve business and resolve business disputes. The burgeoning of transnational business mergers has ushered in a spate of international combinations of law firms. Major law firms seated in London, Frankfurt and New York have gone far beyond the diffident branches and correspondent relationships of two decades ago to become world-wide networked enterprises with partners and major offices in many lands.<sup>7</sup> English, and to a lesser

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<sup>4</sup> For a description of the alliance phenomenon and the importance of 'alliance mediation' to preserve and foster successful business alliances, see Julian Gresser, 'Strategic Alliance Mediation: Creating Value from Difference and Discord' *infra*.

<sup>5</sup> Manufacturers of silicon breast implants sold world-wide are embroiled in world-wide litigation and are seeking world-wide settlements of claims of citizens of many countries. Other well known current examples include international air crash litigation against Swissair and TWA, consumer class action cases against BMW and Roche, the Microsoft antitrust case with international implications; international patent litigation involving the Biogen patents; international fraud claims against BCCI. Overviews of the most prominent ongoing transnational litigations are found in the specialized publications of the International Legal profession cited in note 10 *infra*.

<sup>6</sup> An example of this form of transnational litigation are the 'holocaust claims' being asserted in American and European courts against German and international firms based on alleged misconduct during the Holocaust; see Detlev Vagts, Jens Drolshammer and Peter Murray, 'Mit Prozessieren den Holocaust bewältigen? Die Rolle des Zivilrechts und Zivilprozesses beim Versuch der Wiedergutmachung internationaler Katastrophen, Zeitschrift für Schweizerisches Recht' (1999) 118 *NF*, p. 541–528; Burkhard Hess, 'Entschädigung für Zwangsarbeit vor US-amerikanischen und Deutschen Zivilgerichten', *Die Aktiengesellschaft* (1999) pp. 145–154 and in Newsletter of the Deutsch-Amerikanische Juristenvereinigung (1999) No. 2, pp. 33–39; Michael J. Bazylar, 'Nuremberg in America: Litigating the Holocaust in United States Courts' (2000) 34:1 *University of Richmond Law Review*.

<sup>7</sup> See Jens Drolshammer, 'The Future Legal Structure of International Law Firms – Is the Experience of the Big Five in Structuring, Auditing and Consulting Organizations Relevant?' *infra*; 'Special Issue Global Boom' (1998) *The American Lawyer*, November; 'Lawyers Go Global, The Battle of the Atlantic' (2000) *The Economist*, 26 February; 'Surviving in the New Europe: Strategies for European Firms' (1998) 31 *European Counsel*, March. The new 'global' law firms incorporate such elements as offices in the most important European jurisdictions dispensing both international and national legal services, teams of employees with dual competences (international law and national law specialists) and integrated networks of branches providing the ability to exchange teams relating to individual projects.

extent, American firms have emerged as early leaders in the globalization trend.<sup>8</sup> Multinational business firms have developed their own international 'in house' legal staffs, composed of lawyers from the different areas in which they do business. A recent development on the international scene which is causing concern, if not consternation, on the part of the traditional legal profession, is the incursion of mighty 'Big Five' international accounting and management consulting firms with massive multinational legal staffs, into areas of professional practice formerly considered as the preserve of the legal profession.<sup>9</sup>

The trend towards the internationalization of business and legal practice, which has characterized the last two decades, does not appear likely to reverse or abate in the near future. Improvements in communications, dismantling of financial and currency barriers, and the waning significance of language impediments with the widespread adoption of English as a world language of business will do nothing but hasten the process of internationalization of business, financial and commercial activity. 'International legal practice' will become an ever greater component of lawyers' professional activity in practically every part of the world, but particularly in Europe, North America and East Asia, where both major business enterprises and major legal resources are currently concentrated.<sup>10</sup>

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<sup>8</sup> See James L. Heskett, *Managing in the Service Economy* (Harvard Business School Press, Boston, 1986); James L. Heskett and Leonard A. Schlesinger, *Out in Front, Building High Capability Service Organizations* (Harvard Business School Press, Boston, 1997); James L. Heskett, W. Earl Sasser Jr. and Leonard A. Schlesinger, *The Service Profit Chain* (New York, 1997); David H. Maister, *Managing the Professional Service Firm* (New York, 1993); David H. Maister, *True Professionalism, The Courage to Care About Your People, Your Clients and Your Career* (New York, 1997); Stephen Mayson, *Making Sense of Law firms, Strategy, Structure and Ownership* (London, 1997); Mark C. Scott, *The Intellect Industry, Profiting and Learning from Professional Service Firms* (New York, 1998). Swiss publications in this field are rare and suffer from the fact that due to the predominance of the English language they are not taken note of in their German form; see e.g., Günter Müller-Stewens, Jens Drolshammer and Jochen Kriegmeier, *Professional Service Firms* (Frankfurt, 1999).

<sup>9</sup> See e.g., Arndt Raupach, 'Globalisierung, Full Service-Concept und Multi-Disciplinary Practices auf dem Beratungsmarkt, Anwaltssozietäten auf dem Weg zur Internationalisierung, internationale Wirtschaftsprüfungsgesellschaften auf dem Weg zum Global Legal-Service' in *Der Fachanwalt für Steuerrecht im Rechtswesen, Festschrift* pp. 13–49. On the legal issues concerning multidisciplinary practices (MDP) see 'Preserving the Core Values of the American Legal Profession, The Place of Multidisciplinary Practice in the Law Governing Lawyers', Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation (Albany, New York, April 2000); on the recommendations of the New York Bar Association on MDP see Sidney M. Cone III, 'The Future Debate on Multidisciplinary Practice in the United States' Article 12 post.

<sup>10</sup> See the following US and British publications specialized on the international practice of law, which usually appear on a monthly basis: *International Journal of the Legal Profession*; *Lawyer International*, *The Legal Business Briefing on International and Emerging Markets*; *Legal Business*; *The American Lawyer*; *European Corporate Lawyer*; *European Counsel*; *Commercial Lawyer*, London; *International Legal Practitioner*, *International Bar Association*, London; *International Business Lawyer*, *International Bar Association*, London; the

The effect of this internationalization of business activity has been the 'internationalization' of law practice, at least for those lawyers who serve these businesses or whose clients participate in international business or financial transactions.

Over the last 30 years in the US and over the last 20 years in Europe, the Bar, as perceived by the public and by its own membership, has evolved from an organ of the public administration of justice to a market-oriented service provider. In the 'good old days' the degree of specialization was low and the lack of business understanding and judgment widespread. Law firms were small units in locally structured markets. The markets were well protected and were only partly competitive. At that time, the national economies were regionally fractured and comprised small and medium-sized markets, usually around dominating centres. The economy was to a considerable extent made up of mid-size and family owned enterprises, the importance of the financial sector was small and legal matters generally were undervalued by the business community.<sup>11</sup>

As a consequence of this situation, the big industrialized firms had large legal departments with a high degree of specialization, who retained outside counsel as specialists, particularly in litigation. The mid-size enterprise went for a personal, long-term and loyal consulting relationship. The international practice of law was heavily focused on incoming investment and on trade relations. This led to a concentration of a few internationally oriented law firms who organized their co-operation nationally and internationally on a best-friends-system.

Since the 1980s, drastic changes have taken place in the economy and in the consulting scene. Industry has undergone far-reaching concentrations and internationalization. The complexity of economic and legal matters has grown. Increasing specialization has been accompanied by increased sensitivity to costs on the part of many clients. Liberalization of freedom of services and of freedom of establishment have brought about more competition. Greater orientation towards finances and the growing influence of the predominantly Anglo-Saxon financial service providers have led to a concentration of the most lucrative segments of legal consulting in the financial centres of London and New York.

These developments in turn have led to more specialization, increased capacity for major transactions, greater understanding for business and economic matters, development of technical infrastructure and changes in work structures, and new co-operation with other service providers. The respective changes in the Bar can be

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New York Times, The Wall Street Journal and *The Financial Times* are at the forefront in reporting on the international practice of law on a daily basis.

<sup>11</sup> The text follows a line of argument reflected in a presentation of Dr. M. Oppenhoff, Co-Chairman of Linklaters & Alliance with the title *Outside Counsels* (European perspective) held at the occasion of Block 8 on Legal Professions of the Masters of European and International Business Law MBL-HSG (see below) on 28 October 1999 at St. Gallen University, Switzerland.

characterized as follows: the development is marked by a forced growth, often by national and international mergers, increased focusing, specialization and teamwork, reorganization of law firm management, specialized working groups and market orientation, a priority on legal-management, the inclusion of tax law and specific and specialized accounting capabilities, a market internationalization, an increased importance of languages, and the clear demand on entrepreneurial thinking and action. The international practice of law has led to new demands, such as legal counseling in the major legal systems, one stop shopping, high specialization and limitation to fields of practice specifically suitable for specialization, high availability of manpower and teams, ability in legal management, high standards of quality and education, the development of new and proprietary legal products and services.

Traditional law firms on both sides of the Atlantic have encountered adaptation problems such as limited financial and professional resources, limitation of legal knowledge outside the local legal community, traditional professional structures, cultural differences between the countries on the European continent, insufficient market orientation, a limited ability for legal management, and a low acceptance of outside counsel as lead-counsel in international practice of law.

These changes have brought about an increased market orientation of the practice of law. On the one hand, new regional markets have come into existence and are served by smaller and mid-sized law firms with comparatively broad service lines. Niche markets have also emerged to be served by smaller law firms with a distinct focus on service lines. In the beginning, the international needs have been mainly served by large law firms with international connections.

This process seems to have the quality of a revolutionary phase of development. A particular lack of adequate conceptualization is to be noted. The developments have led to a need for analysis of these new roles of lawyers, legal services, legal organizations such as legal departments and law firms, as well as the role of legal education.<sup>12</sup>

The 'international law' practiced by these lawyers is hardly the traditional public international law of treaties, boundaries and fishing rights at sea. Traditional public international law was practiced in few locales by a small group of practitioners associated with governments or the relatively few business entities and specialized

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<sup>12</sup> On 9 and 10 November 1998 some 105 lawyers from 25 countries gathered in Paris, France to constitute the first Paris Forum on Transnational Practice for the Legal Profession. At this historic meeting the participants considered from several points of view how the international legal profession should best be regulated. Does the legal profession possess unique attributes, which make regulation by the WTO and similar organizations inapposite? How can impediments to practice in jurisdictions other than that of original licensure be reduced? What common values are shared by lawyers all over the world? Some of the papers presented at the Paris Forum are published in (2000) 18 *Dickinson Journal of International Law*, pp. 1–173.

law firms directly affected by public international law.<sup>13</sup> Far more commonplace in today's burgeoning international commercial and business practice are transactions, business arrangements or disputes arising out of these transactions and relationships which involve the national law of two or more jurisdictions, or international and supranational legislation such as regulations of the European Union (EU) or of such organizations as the World Trade Organization (WTO) or the International Monetary Fund (IMF). It is this kind of 'international law' that is occupying the new international law firms, the law departments of multinational corporations, and the Big Five accounting and management consulting firms.<sup>14</sup>

As the new century begins, the term 'international lawyer' thus applies to a large number of players on the legal scene.<sup>15</sup> First, there are the traditional international lawyers attached to governments and international organizations, who concern themselves with questions of public international law such as treaties, conventions, boundaries, and the like.<sup>16</sup> With the growth in private international legal transactions and relationships, this body of law and its attending lawyers have also

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<sup>13</sup> E.g., for decades the fishing industry has been intimately concerned with international law regulating maritime boundaries and resource management. Rights of navigation on international watercourses or in the air are similarly the subject matter of traditional international law.

<sup>14</sup> For a sampling of the kinds of legal problems faced by these international lawyers see the various articles 'The International Lawyer'; 'Freundesgabe für Wulf Döser' (Baden-Baden, 1999); *Wege zur Globalisierung des Rechts, Festschrift für Rolf A. Schütze* (München, 1999); see also 'Internationalisierung und Recht, St. Galler Festschrift zum Schweizerischen Juristentag' to be published in fall 2000 at the occasion of this year's Annual Conference of the Swiss Lawyers Association. The influence of globalization on the profession of these international lawyers is addressed in Nedim Peter Vogt et al (eds), *The International Practice of Law, Liber Amicorum for Thomas Bär and Robert Karrer* (Basel and Frankfurt a.Main, The Hague/London/Boston, 1997); in the table of contents one finds among others texts like Peter Böckli, 'Osmosis of Anglo-Saxon Concepts' in *Swiss Business Law*, p. 9; Klaus Böhlhoff, *The International Practice of Law: Globalization or Regionalization* p. 31; Willem J.L. Calkoen, *Internationalisation of the Legal Profession* p. 53; Philippe Nouel, *The International Practice of Law* p. 183, Andrew Soundy, *UK Aspects of International Legal Praxis* p. 207, Peter D. Trooboff, *Maintaining Professionalism in International Legal Practice – Challenges for the Future* p. 237; Detlev Vagts, *Bär and Karrer: Connecting Two Legal Systems* p. 247.

<sup>15</sup> See the various texts of Detlev Vagts, 'Are There No International Lawyers Anymore?' (1981) 75 *American Journal of International Law*, pp. 134–137; 'The Impact of Globalization on the Legal Profession' above 'The International Legal Profession, A Need for More Governance' (1996) 90 *American Journal of International Law*, pp. 645 et seq.

<sup>16</sup> See e.g., Outi Korhonen, *International Law Situated: The Lawyer's Stance Towards Culture, History and Community* (Kluwer Law International, 2000); see also Outi Korhonen, 'New International Law: Silence, Defence or Deliverance' (1996) *European Journal of International Law*, pp. 1–28; *Liberalism and International Law: A Centre Projecting a Periphery*, *Nordic Journal of International Law* (1996) pp. 481–532 and 'Current Trends in European International Law Publications' (1998) *European Journal of International Law*, pp. 553–573.



been in a sustained growth cycle. The second major group of 'international lawyers' comprise partners and associates of law firms which have a major stake in international law practice, as described above. The number of mergers and other fusions of law firms in different countries, the number of foreign branches of major law firms domiciled in major commercial centres, and above all, the transformation of business activity of the clients of these firms attest to the rapidly growing size and importance of this branch of the traditional legal profession.<sup>17</sup> This group is augmented by lawyers employed by multinational accounting and management consulting firms which now perform for their clients many services traditionally performed by lawyers in private practice.<sup>18</sup> Another growing group of lawyers in international practice are members of the in-house legal staff of multinational corporations. Over the last 20 years the growth of this group has been compounded by the movement in America and other countries to increased in-house legal competence.

On the dispute resolution side of international practice one finds growing numbers of lawyers in large and small firms occupied with international legal disputes. This is especially true in international centres of dispute resolution such as New York, London, Paris and Zurich.<sup>19</sup> There are other lawyers who focus on cases with human rights orientations, who can be found in London, New York, and Strasbourg, as well as any other city where there are clients with international human rights claims.<sup>20</sup> Almost any lawyer in Europe, East Asia or North America can become involved in an isolated international business dispute or products liability claim. As the internationalization of economic activity proceeds, the number and

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<sup>17</sup> The best sources of information on the internationalization of the legal professions are the specialized publications on the legal profession cited *supra* in note 12, which appear on a bi-weekly or monthly basis. The most recent broad picture is described in 'Lawyers Go Global, The Battle of the Atlantic' (2000) *The Economist*, 26 February.

<sup>18</sup> See Jens Drolshammer, 'The Future Legal Structure of International Law Firms – is the Experience of the Big Five in Structuring, Auditing and Consulting Organizations Relevant?' below; Günter Müller-Stewens, Jens Drolshammer and Jochen Kriegmeier, *Professional Service Firms* (Frankfurt, 1999).

<sup>19</sup> See e.g., Marc Blessing, 'Introduction to Arbitration – Swiss and International Perspectives' in Nedim Peter Vogt (ed.), *Swiss Commercial Law Series* (Basel and Frankfurt a. Main, 1999); Yves Dézalay and Bryant F. Garth, *Dealing in Virtue, International Commercial Arbitration and the Construction of a Transnational Legal Order* (Chicago and London, 1996); International Court of Arbitration, 'Arbitration in the Next Decade, Proceedings of the International Court of Arbitration's 75th Anniversary Conference' Geneva, 25 September 1998, Special Supplement – ICC International Court of Arbitration Bulletin; Robert Briner, (President of the Court of Arbitration of the ICC), 'Globalization and the Future of Courts of Arbitration' above, p. 439; Stephen Goldberg, Frank Sander and Nancy Rogers, *Dispute Resolution, Negotiation, Mediation and other Processes* (2nd edn, Boston, Toronto, London, 1992).

<sup>20</sup> See International Bar Association, Human Rights Institute HRI News e.g., Lord Goldsmith QC and Nicholas R. Cowdery QC, 'The Role of the Lawyer in Human Rights' (1999) 4:2 *HRI News*, December.

proportion of law practitioners who practice 'international law' can only be expected to grow.

### C. Functions and Challenges of the Lawyer in International Practice

The growing importance of international law practice leads one to ask whether there are particular functions and challenges for a lawyer in international law practice which are not faced by other lawyers? What kind of education and training will best equip young lawyers and experienced practitioners to perform these functions and face these challenges?

Without attempting to be definitive, international law practice, unlike domestic law practice,<sup>21</sup> requires the practitioner to advise, opine, draft or litigate, often with reference to more than one body of national law, as well as with reference to laws, treaties and regulations of international bodies such as the EU. The latter can be said to form a specialized body of 'international law'.

Addressing legal problems and issues involving more than one nation's law is likely to require understanding of the world's two great legal systems, the Anglo-American common law, and the Civil Law system in force in those parts of the world not once colonized by Great Britain. While these legal systems share many similarities, their fundamental approaches to many legal problems vary to such an extent that they can be considered different legal cultures.<sup>22</sup> Practitioners in federal

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<sup>21</sup> Domestic law practice is here considered to be practice of law largely in a single national jurisdiction; see Detlev Vagts, 'The Impact of Globalization on the Legal Profession' above, p. 403; Jens Drolshammer and Michael Pfeifer, *Beitritt zur Europäischen Union als Herausforderung für die schweizerische 'International Practice of Law'? – Lagebeurteilung und Thesen* in Thomas Cottier/Alwin R. Koppe (eds), *Der Beitritt der Schweiz zur Europäischen Union* (Zürich 1998) pp. 895 et seq, attempting to quantify the value of the 'international' as opposed to the 'domestic' practice of law.

<sup>22</sup> On the issue of the similarities and dissimilarities of the two legal systems see Bernhard Zimmermann, "'Common Law' und 'Civil Law', Amerika und Europa – zu diesem Band" pp. 1–11, in *Amerikanische Rechtskultur und europäisches Privatrecht, Impressionen aus der neuen Welt* (Tübingen, 1995), with contributions of Joachim Zekoll, Shael Herman, Reinhard Zimmermann and Mathias Reimann; see also John Merryman, 'On the Convergence (and Divergence) of the Civil Law and the Common Law' in *The Loneliness of the Comparative Lawyer* (The Hague, London, Boston, 1998) pp. 13–17; on the transatlantic comparative law based views on the American and European tradition see Reinhard Zimmermann (ed.), *Amerikanische Rechtskultur und europäisches Privatrecht, Impressionen aus der Neuen Welt* (Tübingen, 1995); Reinhard Zimmermann, "'Common Law' und 'Civil Law', Amerika und Europa – zu diesem Band" pp. 1–10; Joachim Zekoll, *Zwischen den Welten – Das Privatrecht von Louisiana als europäisch-amerikanische Mischrechtsordnung* pp. 11–44; Shael Herman, *Schicksal und Zukunft der Kodifikationsidee in Amerika* pp. 45–86; Reinhard Zimmermann, *Law Reviews – Ein Streifzug durch eine fremde Welt* pp. 87–131; Mathias Reimann, *Amerikanisches Privatrecht und europäische Rechtseinheit – Können die USA als Vorbild dienen*

jurisdictions such as the US or Switzerland will have some familiarity with addressing legal problems governed by the laws of more than one subsidiary state or canton. Within a single national jurisdiction, however, there is likely to be a basic consistency of doctrine and approach, which is wholly lacking between the common law of, say, Canada, and the civil law of Japan. Lawyers who seek to complete transactions, cement legal relationships, or adjust disputes involving these two legal systems, must have some real understanding of how each system works.

Today's international lawyer is not only required to deal with multiple legal

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pp. 132–185; Mathias Reimann, 'Towards a European Civil Code: Why Continental Jurists Should Consult Their Transatlantic Colleagues' (1999) 73 *Tulane Law Review*, pp. 1337–1346; on the European influence on American law see Mathias Reimann, 'Comparative Law and Legal History in the US, Report for the XVth International Congress of Comparative Law Bristol 1998' (1998) 46 *American Journal of Comparative Law*, p. 1 (1998) Supplement with Alain Levasseur; Mathias Reimann, 'Rechtsgeschichte und geschichtliches Recht in Common Law' in G. Dilcher and P. Caroni (eds), *Norm und Tradition* (1998); Mathias Reimann, 'Continental Imports: The Influence of European Law and Jurisprudence in the US' (1996) 65 *Tijdschrift voor Rechtsgeschiedenis*, p. 391; Mathias Reimann, 'The End of Comparative Law as an Autonomous Subject' (1996) 11 *Tulane European and Civil Law Forum*, pp. 49–72; on the changing function of comparative law see Mathias Reimann, 'The End of Comparative Law as an Autonomous Subject' (1996) 11 *Tulane European and Civil Law Forum*, pp. 49–72; see in this context also the Symposium 'New Directions in Comparative Law', which took place under the direction of Ugo Mattei and Mathias Reimann at the Law School of the University of Michigan, reported on in (1998) XLVI *The American Journal of Comparative Law*, Fall: Ugo Mattei and Mathias Reimann, 'Introduction' (1998) XLVI *The American Journal of Comparative Law*, pp. 597–606; I. Comparative Law in the United States Today: Distinctiveness, Quality, and Tradition: James Gordley, 'Is Comparative Law a Distinct Discipline?' (1998) XLVI *The American Journal of Comparative Law*, pp. 607–616; John C. Reitz, 'How to Do Comparative Law' (1998) XLVI *The American Journal of Comparative Law*, pp. 617–636, Mathias Reimann, 'Stepping Out of the European Shadow: Why Comparative Law in the United States Must Develop Its Own Agenda' (1998) XLVI *The American Journal of Comparative Law*, pp. 637–646; II. A New Orientation: Towards Recognition of Difference: Nora V. Demleitner, 'Challenge, Opportunity and Risk: An Era of Change in Comparative Law' (1998) XLVI *The American Journal of Comparative Law*, pp. 647–656, Vivian Grosswald Curran, 'Dealing in Difference: Comparative Law's Potential for Broadening Legal Perspectives' (1998) XLVI *The American Journal of Comparative Law*, pp. 657–668, L. Amede Obiora, 'Toward an Auspicious Reconciliation of International and Comparative Analyses' (1998) XLVI *The American Journal of Comparative Law*, pp. 669–682; III. New Methods and Approaches: Jurisprudence, Interdisciplinary Study, and Systems Analysis: George P. Fletcher, 'Comparative Law as a Subversive Discipline' (1998) XLVI *The American Journal of Comparative Law*, pp. 683–700, William Ewald, 'The Jurisprudential Approach to Comparative Law: A Field Guide to "Rats"' (1998) XLVI *The American Journal of Comparative Law*, pp. 701–708, Ugo Mattei, 'An Opportunity Not to Be Missed: The Future of Comparative Law in the United States' (1998) XLVI *The American Journal of Comparative Law*, pp. 709–718, David J. Gerber, 'System Dynamics: Toward a Language of Comparative Law?' (1998) XLVI *The American Journal of Comparative Law*, pp. 719 et seq.

regimes and cultures, but must also relate successfully with persons, be they clients, opposing counsel, or judges from socio-economic cultures other than their own. Understanding other cultures and the ability to relate comfortably to persons and institutions in terms of such cultures can be important to gaining success in international endeavour.<sup>23</sup> A successful international negotiator must have an appreciation of the deep-seated cultural and social values of all parties to the negotiation.<sup>24</sup> The structuring of business entities and the creation of successful business relationships requires sensitivity to the cultural and social values of the participants, and an ability to reflect these values appropriately in the international entity or relationship.<sup>25</sup>

While English may have become the international language for business and even legal discourse,<sup>26</sup> frequently documents important to international transactions are

<sup>23</sup> Amongst the various special competencies required by the activities of an 'international lawyer' certainly the aspect of a specific emotional intelligence will have to be studied in more detail; see Daniel Goldman, *Emotional Intelligence* (London, 1996) and Daniel Goldman, *Working with Emotional Intelligence* (New York, 1998), in particular Chapter 3 *People Skills*, Chapter 1, *Beyond Expertise* and Chapter 5 *The Emotional Intelligent Organization*; see also Craig Lambert on Daniel Goldman, 'The Emotional Path to Success with Pertinent Citations on the Relevance of the Topic to Lawyers of Todd Rokoff and Martin Minow, Professors at Harvard Law School' (1988) 1 *Harvard Magazine*, pp. 60 et seq.

<sup>24</sup> See e.g., Gresser, *Piloting Through Chaos: Wise Leadership, Effective Negotiation For the 21st Century* (Sausalito, 1995) for a discussion of the impact of cultural differences on international negotiation. Some of the leading practice-oriented books on negotiation in general do not specifically address the cultural issues included in international negotiations; see e.g., Roger Fisher and William Ury, *Getting to Yes* (2nd edn, Bruce Patton, 1981 and 1991); Roger Fisher and Scott Brown, *Getting Together: Building Relationships as We Negotiate* (1988); Roger Fisher (with Elizabeth Kopelman and Andrea Kupfer Schneider), *Beyond Machiavelli* (1994); William Ury, *Getting Past No: Negotiating with Difficult People* (1991); Roger Fisher and Alan Sharp, *Getting it Done, How to Lead When You are in Charge* (1998); Douglas Stone, Bruce Patton and Sheila Heen, *Difficult Conversations* (1999); Kenneth Arrow, Robert H. Mnookin (eds), Lee Ross, Amos Treisky and Robert Wilson, *Barriers to Conflict Resolution* (New York, London, 1995); John S. Hammend, Ralph L. Keeney and Howard Raiffa, *Smart Choices, A Practical Guide to Making Better Decisions* (Boston, Mass., 1999).

<sup>25</sup> At least on the continent of Europe there is a lack of conceptualization of the planning and structuring of legal transactions. The international dimension of these legal activities, which are core activities in the 'international practice of law', is thus unconceptualized either. The 'decision'-oriented legal education has not been adequately supplemented by an 'action' or 'creation'-oriented legal education. The original legal discipline of Kautelarjurisprudenz (discipline on the making of contracts) has not developed into a full blown theory of legal creation. See Jens Drolshammer, 'Ein didaktisches Experiment an der Universität St. Gallen und ein Plädoyer für eine transaktionale Lehrmethode im modernen Wirtschaftsrecht' in *Solothurner Festgabe zum Schweizerischen Juristentag 1998* (Solothurn, 1998) pp. 381–411.

<sup>26</sup> The far-reaching consequences of the domination of key areas of the 'international practice of law' by business and legal English are not yet fully grasped and analyzed. See Peter M. Tiersma, *Legal Language* (Chicago, London, 1999), see also the selected Bibliography at

in various national languages. National laws and most books and research resources about national laws are in the national languages of the countries which have promulgated them. Even if translated, the governing version is the version in the national language. Clients and other persons important to a transaction or dispute may be most comfortable talking in their national language. For these reasons the ability to read, and if possible converse and even write in multiple languages is an important ability for an international lawyer.

Even though the globe is continuously shrinking, with improvements in travel and communications, international law practice typically involves logistical challenges greater than those of domestic legal activity. The international lawyer must cope with different time zones, long travel times, and attenuated communications and supply lines to carry on legal campaigns abroad. Ability to make use of the Internet, with its global facilities for communications and information storage, transmittal, and exchange, is already an indispensable skill for the international practitioner.<sup>27</sup>

Finally, the international lawyer needs to have a sense of 'globality', to be able to step outside the boundaries of his/her own jurisdiction and consider international transactions, relationships and disputes from a global rather than national perspective. As professional agents and advocates, lawyers are expected to bring to their clients a kind of perspective and objectivity over and above the client's own perspective. On an international scale, the lawyer must be able to bring to his/her client a kind of legal perspective which transcends the national and cultural perspective of the client and seeks solutions based in part on a real appreciation of the national and cultural perspective of other parties, and ultimately on global values and considerations.<sup>28</sup>

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pp. 293–298, and Gérard-René de Grod and Reiner Schulze (eds), *Recht und Übersetzen* (Baden-Baden, 1999); see also from a broader perspective George Steiner, *After Babel, Aspects of Language and Translation* (3rd edn, Oxford, New York, 1998); Steven Pinker, *Words and Rules, the Ingredients of Language* (New York, 1999); Robert Scholes, *The Rise and Fall of English* (New Haven, London, 1998).

<sup>27</sup> See e.g., Susskind, *The Future of Law; Facing the Challenge of the Information Society* (Oxford, 1996); 'Financial Times Survey' (2000) *Business Education*, 13 April; Rainer Neumann and Johann Volath (eds), *Corporate University, Strategische Unternehmensentwicklung durch massgeschneidertes Lernen* (Zürich, Hamburg, 1999), in particular 'Corporate Universities im Internet', at p. 185.

<sup>28</sup> An appreciation of global economics and the possibilities of comparative advantage in international transactions will assist lawyers in developing 'win-win' deals on the international scene. The lawyer has to be able to understand business visions and strategies, be able to work with business consultants and investment banks, appreciate and understand new technologies such as biotechnology and information technology, and sense clients' needs to understand the entrepreneurial and economic side of lawyering in an international context.

## **D. What Should an International Lawyer in International Practice Know?**

It is always dangerous to try to list the required or recommended components of the educational preparation for any specific career. There are successful practitioners of the law from every educational background. The line between formal legal education and 'on the job' training is not clear. What should be taught 'in school' and what should be learned by doing continues to be actively debated.

Whether in law school, via some postgraduate formal training, or 'on the job', or by modern means of 'distance learning', here is a checklist of the intellectual capital that a lawyer in international practice might want to acquire early on:

1. Substantive law training in the national law of the lawyer's home jurisdiction. The international lawyer should know well the law of his/her own nation state.<sup>29</sup> In many instances the international lawyer will be required not only to assist a client in the application of local law, but to educate an international colleague on the ramifications of local law. One must understand one's own legal system in enough depth to be able to interpret and utilize local law in unusual international contexts, and to be able to compare and evaluate legal solutions available under local law with alternatives under other legal systems.
2. Training in other legal systems. Significant basic knowledge of the civil law system and its principal institutions should be a basic component of the formal education of lawyers in common law jurisdictions, and vice versa. Lawyers involved with particular foreign jurisdictions should obtain greater in-depth knowledge of the legal structures and doctrine of those jurisdictions. Ability to employ basic comparative law techniques to the study of foreign law should be developed. Ignorance of foreign law and of comparative law technique may lead to a parochial preference for local law to the sometime disadvantage of international clients.
3. Foreign and international legal research capability. Legal research training should encompass methods for researching foreign and international legal resources in addition to national legal sources. The Internet has made many legal sources accessible to lawyers and law students all over the globe. The international lawyer must understand where and how to access the relevant legal resources in any jurisdiction involved with an international transaction or dispute. This capability includes not only the capability of accessing the legal resources, but also the ability to read these sources with understanding and in cultural context.

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<sup>29</sup> In federal systems such as the US, Canada, Australia, Germany or Switzerland, this will include both federal and state law.

4. Understanding of the international legal professions. All international lawyers need to have an appreciation of the international legal profession, of the roles lawyers play in legal transactions and dispute resolution under many national and international regimens, and the principles and regulations governing the activities of lawyers in foreign and international practice.
5. Proficiency in relevant foreign languages. For Europeans and Asians the ability to speak, read and write English would be essential. For English and Americans, the ability to read a major European or East Asian language (to facilitate study of Civil Law system), and the ability to speak, read and write the language of any area with frequent or important foreign legal contacts would be highly desirable. An international lawyer managing a complex multinational transaction should have linguistic capability in the national languages of the chief participants. The excessive reliance on translation or the other participants' second language capabilities can place the lawyer at a serious disadvantage. All foreign language capabilities should include thorough knowledge of technical and legal terminology.
6. Interdisciplinary background knowledge. Most lawyers today have a degree of interdisciplinary knowledge in economics, business, political science, etc. Such knowledge would be particularly important to the lawyer in international practice, who may be required to address problems in these areas outside the conventional structures of any single national legal regime. This kind of business and economic background knowledge can be acquired in a university or professional school education and then honed and maintained afterwards by broad study and reading.
7. General educational background. A sound and comprehensive general education in international history, politics, economics, social, cultural and governmental institutions helps the international lawyer gain the global perspective essential to successful representation of parties in international transactions and disputes.
8. Experience in global transactions. The final, and sometimes most difficult to acquire component of the training and education of the international lawyer, is some meaningful exposure to the unique kinds of international transactions, institutions and disputes which characterize this branch of legal endeavour. This kind of exposure, in addition to grounding in substantive law, is what is needed to develop the problem-solving ability of the international practitioner. This kind of experience is often difficult to acquire. 'Hands on' experiential learning in the international as well as the domestic legal arena is generally not a part of the curriculum at institutions of higher learning or professional training. Traditionally, it has been absorbed during 'on the job training' in early years of practice or during certain more formal programmes of continuing professional education.

## E. Education and Training for International Law Practice Today

These new challenges and perspectives raise the question of whether there might be a particular kind of education and training best suited to fit a person for the international practice of law. In the past, lawyers in all jurisdictions have been trained as lawyers in national law, with very little reference to the kind of international law practice here discussed. The process of 'internationalization' of such lawyers has been an *ad hoc* one, occurring 'on the job' with very little conscious training or pedagogy.

Certainly legal education in the US has placed very little emphasis on training law students to perform the functions and meet the challenges of international law practice as discussed above. Doctrine discussed is almost exclusively the common and statute law of the US and the various states thereof. There is no requirement of basic familiarity with the Civil Law system or any of its national embodiments.<sup>30</sup> 'Comparative Law' is a relatively neglected law school specialty.<sup>31</sup> Some students study public international law or international human rights as upper-level electives. There is no foreign language requirement and little official impetus to encourage American law students<sup>32</sup> to study law in foreign languages at home or abroad.<sup>33</sup> In particular, business, corporation and tax law courses have practically no reference to these issues under any jurisdiction other than the US, or in international transactions.<sup>34</sup>

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<sup>30</sup> The curricular requirements for law schools accredited by the American Bar Association do not include any courses in foreign, international or comparative law. See ABA and AALS, *Standards on Accreditation* (ABA, 1999); nor do the requirements of bar exams include any topics particularly relevant to the international practice of law.

<sup>31</sup> Ernst Stiefel and James R. Maxernes, 'Why are US-lawyers not Learning from Comparative Law?' in Nedim Peter Vogt (ed.), *The International Practice of Law, Liber Amicorum für Thomas Bär und Robert Karrer* (Basel, Frankfurt a. Main, The Hague/London/Boston, 1997) pp. 213–236; see also John Henry Merryman, 'The Loneliness of the Comparative Lawyer and other Essays' in *Foreign and Comparative Law* (The Hague/London/Boston, 1999), in particular the four essays in Part IV, 'What Do Comparative Lawyers Do?'.

<sup>32</sup> Students associations are active in promoting the study abroad; see e.g., 'Ad Rem' (1999) 7:3 *Study Abroad*, Issue of the Quarterly Magazine of the International Law Students Association, distributed at the Annual Conference of the American Association of International Law 1999 in Washington. The 1999 *Study Abroad* issue contains over 50 listings of study abroad programmes located across the globe.

<sup>33</sup> In fact, the degree requirements for American law schools accredited by the ABA make it very difficult for American law students to obtain any sort of law school credit for a semester of study of law abroad. The ABA requires that any programmes for which an American law school recognizes academic credit must be inspected and evaluated by the ABA. Geographic and language constraints make the kind of inspection and evaluation insisted on by the ABA prohibitively expensive in many instances.

<sup>34</sup> An exception is Steiner and Vagts, *Transnational Legal Problems* (Foundation 1968), 4th Ed. (1994).



Some American law schools sponsor programmes of 'Summer Study Abroad', in which American students can travel to exotic foreign cities such as Vienna, Budapest, Nice, Shanghai, Hong Kong, London, Cambridge, Nottingham, Strasbourg, Luxembourg, Brussels, Siena, Montreal, Jerusalem, Amsterdam, Tallin, Geneva, Arachon, Munich, Athens, Tel-Aviv, Rome, or Kyoto<sup>35</sup> for 3–4 week programmes of

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<sup>35</sup> Citations are found in Quarterly Magazine of the International Law Students Association, 'Ad Rem' e.g., in (1999) 7:3 under the heading 'Study Abroad' Issue. Further information on the programmes listed can be found in the section 'Contact Listing' on p. 25. The ILSA Executive Office is at 22/23 Massachusetts Ave., NW, Washington, DC 2008–2864. Tel. (202) 939 6030, Fax (202) 265–0386; email <ilsa@access-digex.net>. The following list is on a country-basis. It does not contain a programme description. All information pertain to the year 1999. Austria: Vienna, sponsored by Loyola University – New Orleans, 5–31 July; Vienna/Budapest, sponsored by Loyola University – New Orleans, 19 June–31 July; Belgium: Brussels/The Hague/Rotterdam, sponsored by Erasmus University, Rotterdam and The Institute for International Mediation and Conflicts Resolution, 19 July–13 August; Brazil: Sao Paulo, sponsored by Loyola University – New Orleans, 4–18 July; Canada: Montreal, sponsored by Albany and Tulane Law Schools, 5–21 July and 22 July–7 August; China: Shanghai, sponsored by Williamette University College of Law, 14 June–11 July; Hong Kong/Beijing, sponsored by Santa Clara University, 8 June–30 July; England: London, sponsored by Syracuse University, 24 May–16 July; Cambridge, sponsored by Tulane Law School, 12–24 July and 26 July–7 August 7; Cambridge/London, sponsored by Valparaiso University School of Law, 2 June–3 August; London, sponsored by Notre Dame law School, September – June 1999; Nottingham, Strasbourg, Luxembourg, Brussels, sponsored by Loyola University – Chicago, 28 June–24 July; Central London, sponsored by King's College London, 5–16 July; Oxford, sponsored by Santa Clara University, 27 June–6 August; Estonia: Tallin, sponsored by Stetson University College of Law and Concordia International University Estonia, 19 July–13 August; France: Paris, sponsored by Tulane Law School, 1–16 July and 19–31 July; Paris, sponsored by Cornell Law School and Université Paris I Pantheon-Sorbonne, 29 June–31 July; Paris, Geneva, sponsored by American University, 9 June–10 July; Arachon, sponsored by University of Iowa, 17 May–19 June; Germany: Munich, sponsored by Santa Clara University, 14–30 July; Greece: Athens, sponsored by Temple University School of Law in co-operation with Athens University, 6 June–9 July; Rhodes, Spetses, Crete, sponsored by Tulane Law School, 30 May–18 June, 20 June–9 July 9, 11–30 July; Hungary: Budapest, sponsored by Loyola University – New Orleans, 19 June–4 July; Budapest, Strasbourg, sponsored by Santa Clara University, 14 June–30 July; Israel: Jerusalem, sponsored by Tulane and Cardozo Law Schools, 18–29 July, 1–12 August; Tel Aviv, sponsored by Temple University School of Law in Co-operation with Tel Aviv University Buchmann Faculty of Law, 17 June–10 July; Italy: Siena, sponsored by Tulane and Siena Law Schools, 7–24 June, 28 June–10 July; Rome, sponsored by Temple University School of Law, 3 June–16 July; Rome, sponsored by Loyola University – Chicago, 29 May–26 June; Japan: Kyoto, sponsored by Loyola University – New Orleans, 26 May–28 June; Tokyo, sponsored by Santa Clara University, 7 June–23 July; Korea: Seoul, sponsored by Santa Clara University, 6 June–13 July; Mexico: Cuernavaca, sponsored by Loyola University – New Orleans, 29 May–4 July; Switzerland: Geneva, sponsored by Santa Clara University, 5 June–21 July; The Netherlands: Amsterdam, sponsored by Tulane Law School, 4–24 July, 26 July–7 August; Thailand: Bangkok, sponsored by Golden Gate University School of Law, 30 May–14 July.

summer study, some of which may involve exposure to local or international legal topics. While these programmes offer their participants a brief exposure to living abroad, they are often taught in English by Americans, the subjects are often American legal courses,<sup>36</sup> and the curricula are not integrated in any overall programme of study of foreign or international law.<sup>37</sup>

There are signs that traditional American isolationism at the law school level may be giving way to a growing interest in the internationalization of American legal education. Harvard Law School is prioritizing 'internationalization' within a long-range planning process underway within its faculty and student body.<sup>38</sup> New York University Law Schools advertises a 'Global Law School Programme' with visiting faculty and students from abroad involved in a variety of educational activities.<sup>39</sup> The American Bar Association and the International Bar Association, as well as other professional and academic associations and institutions, have started to put greater emphasis on the international dimensions of their activities.<sup>40</sup>

European law faculties may be doing slightly better. Methods of instruction emphasizing abstract principles underlying civil law rules in effect throughout much of the world, may facilitate understanding of legal doctrine of other civil law countries. Comparative law courses on Anglo-American law are common. Educated Europeans and East Asians typically learn at least one foreign language, most often English, well enough to read, write and speak with fluency. However, legal training in international transactional or dispute resolution doctrine or technique is still the exception rather than the rule.<sup>41</sup>

Going through the checklist of competences that a lawyer in international practice might want to acquire during formal academic training or early in a practical career (see Section D *ante*), a look at the state of affairs on the European continent shows the following.

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<sup>36</sup> So that the participants can get credit toward the requirements of their American legal education.

<sup>37</sup> The short duration of most of these episodic courses as well as their focus on more or less traditional approaches means that they do not play a significant role in providing meaningful training for the international practitioner as described at the outset of this article.

<sup>38</sup> See Dean Clark's remarks at the First International Harvard Alumni Congress in June 1998 in Rome, as reprinted in (1998) *Harvard Law Bulletin*, Fall.

<sup>39</sup> The NYU Global Law School Programme is described in detail in Toni Fine, 'The Globalization of Legal Education in the US' Article 11 below, p. 567.

<sup>40</sup> See e.g., International Bar Association (IBA), Section International Business Law; American Bar Association, International Law Section; Union International des Avocats (UIA); Association International des Jeunes Avocats (AIJA); International Fiscal Association (IFA); Association International de Protection de la Propriété Intellectuelle (AIPPI).

<sup>41</sup> This may be partly because European and East Asian legal education tends to be highly theoretical and academic. International transactional or dispute resolution training partakes more of the practical than is usually found in such curriculums.

1. Training in other legal systems is not as frequent as one would expect, although the shared civil law tradition might make it easier to extend national law education to include education in other neighbouring legal systems.
2. Training in foreign and international legal research in continental Europe is in general underdeveloped, in particular the research techniques involving use of modern information technologies.
3. An understanding of the international legal profession is not a part of the usual academic curricula and would first have to be integrated in such curricula, and thereafter internationalized.
4. Although in most continental European countries students receive training in more than one foreign language during high school, continental European law faculties generally do not offer training in foreign legal terminology. The importance of English as lingua franca in the international legal practice of law is in general underestimated and not particularly taught at the level of continental European universities.
5. Although at the end of high school and on the undergraduate level a more robust and more diversified general background is being taught to students, this generally does not extend to modern developments in economics, management and law, nor does it always include international politics or specific knowledge of modern technologies, such as information technology, biotechnology and material sciences.
6. Experiential training in international transactions is not provided at the university level in European law schools, despite the fact that right after leaving law school young professionals will be faced with those realities be it in an international law firm or in a legal department.

In many European countries undergraduate legal education is provided exclusively in public universities. Such institutions are often slow to change or adopt new perspectives and methodologies. An interesting development which may bring great dividends is the recent founding in Hamburg of a new 'private' law school with a decidedly international orientation. The Gerd Bucerius Law School has received its first class of entering students in October 2000. The three and a half year programme will qualify graduates for the first German State Examination, and includes a mandatory 'semester abroad' at another European or American law faculty. Visiting faculty members from other European and American law schools will offer courses in English.<sup>42</sup> A satisfactory score on the TOEFL test is a prerequisite for

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<sup>42</sup> Although English will be an alternate language of instruction, the official language of the Bucerius Law School is German, which limits its 'market' to students from German-speaking countries or those relatively few foreigners who speak German as a second language. The school is hoping to offer enough courses in English to provide exchange students from foreign law schools a full semester of legal instruction in Hamburg.

admission.<sup>43</sup> The academic programme emphasizes comparative<sup>44</sup> and international law and will feature methods of teaching based in part on American models. As a private institution, it has the ability to develop and revise its curriculum in accordance with the developing vision of its founders and to meet the needs of the profession for which it is educating its students.<sup>45</sup>

Undergraduate legal education in both Europe and the US is supplemented by LLM programmes designed to give foreign lawyers some appreciation of the local national law either in general or in specific areas. Some programmes offer LLM students exposure to legal problems from a more international perspective. By definition these programmes are after-the-fact 'add-ons' to pre-existing basic legal educations focusing on national law. American LLM programmes sometimes have little focus other than to give foreign lawyers a more or less ad hoc introduction to American legal education and the law taught there.<sup>46</sup> European LLM programmes are sometimes limited in appeal to persons who are fluent in the national language in which they are offered.<sup>47</sup> Both American and European LLM programmes have a basically academic orientation with no opportunity for exposure to real-life international lawyering and its problems.

The legal profession has also been relatively remiss in providing programmes of continuing legal education designed for international legal practice. No American continuing legal education programme offers courses designed to acquaint American lawyers with another nation's law. Programmes addressing certain international regulations exist, but are few and far between.<sup>48</sup>

<sup>43</sup> Admission to the Gerd Bucerius Law School is competitive and substantial tuition is charged, with scholarship assistance available based on merit and financial need.

<sup>44</sup> The President of the Bucerius Law School is Hein Koetz, a leading German comparative law scholar and a Co-director of the Max Planck Institute on Comparative Law in Hamburg.

<sup>45</sup> The Gerd Bucerius Law School is funded and guided to a great extent by the Zeit Foundation. Professor Dr Karsten Schmidt, Executive Director of the Zeit Foundation, is one of the Founding Directors of the Law School.

<sup>46</sup> An exception may be the SPIL programme at Stanford Law School. See Radermacher, 'The Stanford Programme in International Legal Studies (SPILS) – An Alternative to the 'Classical' LLM Programme' (1999) 1 *European Journal of Law Reform* p. 167.

<sup>47</sup> Compare the Pallas LLM programme sponsored by a consortium of European Law Faculties and headquartered in Nijmegen, Holland, where the official programme language is English, and the Master's in Business Law programme of the Universities of Geneva and Lausanne, where instruction is carried on in French. The pioneering Master's in European Business Law programme of the University of St. Gallen uses both English and German as instructional languages, which permits teachers to use either English or German, but requires all participating students to be fluent in both English and German. The new Master of International Law and Economics at the World Trade Institute in Berne, described below, will use English as a predominant instruction language.

<sup>48</sup> E.g., the Programme of Instruction for Lawyers offered each June at Harvard Law School generally includes two or three offerings in the area loosely known as 'international law', of which only one, 'Transnational Legal Problems' by Detlev Vagts, could be considered

Of course exceptions exist, and there is hope that the legal educational establishment is awakening to the need for educational preparation for international law practice. One promising example is the new Master of European and International Business Law programme offered by the University of St. Gallen, Switzerland,<sup>49</sup> and the Master of International Law and Economics of the World Trade Institute, a joint centre of the Universities of Berne, Neuchâtel and Fribourg, at Berne, Switzerland. As indicated above, American law schools such as Harvard, NYU and Columbia are beginning to see how their programmes can be 'internationalized'.<sup>50</sup>

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relevant to international law practice as described above. See <[www.law.harvard.edu/programs/pil/index.html](http://www.law.harvard.edu/programs/pil/index.html)>. New York's Practising Law Institute offers hundreds of continuing legal education courses each year, of which only a handful relate to international legal practice. See [www.pli.com](http://www.pli.com).

<sup>49</sup> This programme, with which both authors are affiliated, is discussed in somewhat greater detail below.

<sup>50</sup> See e.g., Leebron, 'The Internationalization of Legal Education; The Comparative Advantages (and Disadvantages) of American Law Schools' (1997) 2 *Newsletter of the Deutsche-Amerikanische Juristenvereinigung*, p. 29; Joachim Zekoll, 'Die Juristenausbildung in den USA – ein Modell für deutsche Reformen?' (1998) 4 *Newsletter of the Deutsch-Amerikanische Juristenvereinigung*, p. 87; Thomas Cottier, 'Die Globalisierung des Rechts – Herausforderungen für Praxis, Ausbildung und Forschung', *Zeitschrift des Bernischen Juristenvereins* (1997), pp. 217–241; John Henry Merriman, 'Legal Education There and Here: A Comparison', in *The Loneliness of the Comparative Lawyer* (The Hague/London/Boston, 1999), pp. 53–75; see various publications of Detlev Vagts: 'Are there no International Lawyers Anymore?' (1981) 75 *American Journal of International Law*, January, pp. 134–137; 'The International Legal Profession, A Need for More Governance' (1996) 90 *American Journal of International Law*, pp. 645 et seq; 'The Impact of Globalization on the Legal Profession' above, p. 403; 'The International Law of Professional Responsibility' to appear in Georgetown J., 'Of Legal Ethics', Sept. 2000; Mary C. Daly, 'The Ethical Implications of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century' (1988) 21 *Fordham International Law Journal*, pp. 1241–1251; Jens Drolshammer, "'Amerika gibt es nicht" – Tendenzen einer Amerikanisierung der Rechtsordnung, Rechtsberufe und Rechtsausbildungen in der Schweiz – eine Agenda für einen neuen Umgang mit amerikanischer Rechtskultur' in *Festschrift zum Schweizerischen Juristentag 2000* (Zürich 2000), pp. 367–396; Jens Drolshammer, *Beiheft Zeitschrift für Schweizerisches Recht* (2000); the discussion of the American perspective of the internationalization of the legal education is described in Toni M. Fine, 'The Globalization of Legal Education in the US' below, p. 567; the respective American literature from Toni Fine's article are: Elizabeth Amon, 'Law Schools in the Future Will Become Global and Professional' (1996) *Nat'l LJ* A16, col. 2; Benjamin R. Barber, 'Global Democracy or Global Law: Which Comes First?' (1993) 1 *Ind J Global Legal Stud* 119, p. 119; John A. Barrett, Jr, 'International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society' (1997) 12 *Am U J Int'l L & Pol'y* 975, pp. 976, 991–93; Alberto Bernabe-Riefkohl, 'Tomorrow's Law Schools: Globalization and Legal Education' (1995) 32 *San Diego L Rev* 137, p. 148; Adelle

Currently, most lawyers in international practice must rely on their formal education preparation as national lawyers, supplemented by experiential training obtained 'on the job'. Learning by doing has the advantage of realism and practicality. To the extent that law firms take advantage of international assignments to train young lawyers, they can and do learn a lot by experience.

On the other hand, on the job experiential training is not systematic and sometimes limited to the specific law and sometimes the united firm's or legal department's perspective. It is no way to acquire basic comprehensive knowledge of

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Blackett, 'Globalization and its Ambiguities: Implications for Law School Curricular Reform' (1998) 37 *Colum J Transnational Law* 57, p. 58; David S. Clark, 'Transnational Legal Practice: The Need for Global Law Schools' (1998) 46 *Am J Comp L* 261, p. 273; Mary C. Daly, 'Thinking Globally: Will National Borders Matter to Lawyers A Century from Now?' (1996) *J Inst for Study of Legal Ethics* 297, p. 307; Jose Delbruck, 'Globalization of Law, Politics, and Markets - Implications for Domestic Law - A European Perspective' (1993) 1 *Ind J Global Legal Studies* 9, p. 11; Jacques deLisle, 'Lex Americana?: United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond' (1990) 20 *U Pa J Int'l Econ L* 179, p. 308 note 74; Toni M. Fine, 'The Globalization of Legal Education in the US' below, p. 567; Ali Khan, 'Internationalizing the Law School Curriculum' (1991) 22 *Syllabus* 8, p. 8; Ken Myers, 'NYU's International Approach is Education on a Global Scale' (1994) *Nat'l L J* A18, col. 2; Gloria M. Sanchez, 'A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major US American Trading Partners' (1997) 34 *San Diego L Rev* 635, p. 635; John Edward Sexton, 'The Global Law School Programme at New York University' (1996) 46 *J Legal Ed* 329; Paul B. Stephan, 'The New International Law - Legitimacy, Accountability, Authority, and Freedom in the New Global Order' (1999) 70 *U Colo L Rev* 1555, p. 1564; on the trends towards a European Lawyer in the context of the EU see Michael Joachim Bonell, 'Legal Studies in Today's Europe: Towards a European Lawyer' (1993) 41 *American Journal of Comparative Law*, pp. 488 et seq; Helmut Coing, 'Europäisierung der Rechtswissenschaft' (1991) *NJW*, pp. 939 et seq; Bruno De Witte and Carolin Ferder (eds), *The Common Law of Europe and the Future of Legal Education* (1992); Roy Co-ode, 'The European Law School' (1994) 13 *Legal Studies*, pp. 1 et seq; Hein Kötz, 'Europäische Juristenausbildung', *Zeitschrift für Europäisches Privatrecht* (1993) pp. 268 et seq; Bernhard Grossfeld, 'Europäisches Recht und Rechtsstudium', *Juristische Schulung* (1993) p. 710; see also 'Internationalization of Higher Education' OECD Document (1996), among others Marijk van der Wende, 'Internationalising the Curriculum in Higher Education' and pp. 35-90; David Throsty, 'Progress Report on Financing and Effects of Internationalised Teaching and Learning' (1996) pp. 91-112; John Mallea, 'The Internationalisation of Higher Education - Stakeholder Views in North America' (1996) pp. 113-128; 'Bibliography' and pp. 130-135; *Bildungspolitische Analyse 1999* (OECD, 1999); *Knowledge Management in the Learning Society, Education and Skills* (OECD, 2000); see on traditional American perspective Harry T. Edwards, 'The Role of Legal Education in Shaping the Profession' in *Law Quadrangle Notes* (1988) Fall; The University of Michigan Law School, a lecture held at the 1988 Annual Conference of the Association of American Law Schools with the theme 'The Law School's Opportunity to Shape the Legal Profession: Money, Morals & Social Obligation; Francis Allen, *Law, Intellect and Education* (Ann Arbor, 1979).

another legal depth of involvement with foreign doctrine or documentation. Modern practices of time-keeping and billing may limit the amount of time that can be invested in having young lawyers 'shadow' transactions which they are too inexperienced to handle themselves. Law firms, as opposed to Big Five accounting and management consulting firms, have been slow to make serious commitments to formal in-house training programmes in the international law practice area.

## **F. How Can We Better Educate and Train Lawyers for the International Practice of Law?**

In order to best to prepare young lawyers for practice on an international scale, present institutions of legal education will have to change their focus and perspective from national to global. Law practice increasingly does not take place within a single national legal system, it mediates among and transcends national legal systems creating international transactions and institutions and resolving international disputes. Legal education would do well to focus on those fundamental norms and characteristics of the lawyer and the lawyer's functions, which transcend the norms and tenets of particular national legal cultures, but are common to all legal systems. The educational assignment should be to equip the young lawyer to perform in an international, as well as a national, arena. Therefore the educational efforts themselves have to be internationalized.

The undergraduate legal education of tomorrow's international lawyers should include systematic direct exposure to law as embodied in the two world legal systems as a part of the core doctrinal curriculum.<sup>51</sup> The study of contracts in the first year of an American law school should include concepts of contractual responsibility and remedy as embodied in the civil law as well as in the common law.<sup>52</sup> In Europe and East Asia, study of Anglo-American legal doctrine should not be relegated to a single course on 'Introduction to Anglo-American Law', but should be included in the systematic study of civil law doctrine on the same subject matter. The notion that there are different ways different nations use law to solve a particular social or economic problem should be significantly embodied in the early stages of a student's exposure to the law.

Other legal concepts important to international law practice should also form parts of the core curriculum. These would include jurisdiction to legislate and

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<sup>51</sup> See 'Distinctively American, The Residential Liberal Arts Colleges Daedalus' (1999) *Journal of the American Academy of Arts and Sciences*, Winter.

<sup>52</sup> See Scharf and Bennett, *Internationalizing the Domestic Curriculum* (Carolina Academic Press, 2000) for a number of suggestions of how American law school teachers can introduce foreign and international law in the teaching of topics traditionally taught with reference only to American law.

adjudicate, choice of laws, dispute resolution, and contract and statutory interpretation. Law students should receive meaningful exposure to the legal role of supranational agencies and agreements and international legal, economic and governmental values and concepts of human rights. Legal profession courses should be expanded to encompass the international scene. Lawyers, their roles, responsibilities and regulation should be studied in international contexts.

The basic law school course in legal research should also include at least some instruction on how to perform research for foreign law. This would include of necessity some understanding of the form and structure of major European and East Asian legal regimes, and the relevance and role of legislation, regulations, codes and case law in these jurisdictions. The increasingly widespread availability of legal materials on-line world-wide makes it easy for all law students to obtain meaningful exposure to foreign law.<sup>53</sup>

While European and East Asian law students typically have mastered English and at least one other European or East Asian language by the time they commence their law studies, American law students' foreign language capability is often relatively rudimentary. Although English has become a kind of *lingua franca* in international commerce, science and even law, there are many legal transactions involving laws of more than one nation, some or all of which may not be enacted in, or even translated into, English. A lawyer who has some familiarity with the language of both sides of a transaction or dispute has a definite advantage in representing either side. Access to basic and advanced training in the principal languages of Europe and East Asia and incentives to undergo such training would be a significant component of the legal education of an American law student intending to enter international legal practice.

Education for the international practice of law should also include direct in-person exposure to the legal systems and cultures of other countries and to the international practice of law. The familiarity with a foreign legal system or culture gained by actual work and study in the foreign country can scarcely be replicated any other way. Ideally, law students from European or East Asian civil law jurisdictions should participate in exchange semesters or years in Anglo-American common law countries, and vice versa. Such exchange programmes would require some accommodations with various academic calendars and credit requirements, but would be well-worth the trouble involved in setting them up.<sup>54</sup> For European and East Asian law students, some time in an Anglo-American institution of legal education would provide wonderful exposure to the world of the common law and

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<sup>53</sup> See e.g., 'Die Zukunft der Bibliothek; Haben Bücher als Datenträger ausgespielt?', *Neue Zürcher Zeitung*, 19 June 1999.

<sup>54</sup> E.g., the new Gerd Bucerius Law School Hamburg, Germany's first private law school, will require at least one semester residential study in a foreign country; it has opened in the fall of 2000. The school is in the process of making arrangements with a number of universities throughout the world to accommodate its students. The Bucerius Law School programme is described in greater detail above.



common law legal education, as well as the opportunity to use the English language in a legal context.<sup>55</sup> And for English and American law students, a term of residence in a European or East Asian University would provide access to the civil law as it is taught to civil law practitioners, as well as an opportunity to practice an important European or East Asian language in situ. Specialized courses and seminars would have to be offered to the visiting students.

An important issue for the training and development of expertise in international legal practice is admission to practice in multiple jurisdictions. The proliferation of international law firms and management consulting companies employing attorneys admitted to practice in each of the countries in which they operate has vitiated any notion of restricting control of legal services to individual nations. The EU has recognized this reality by boldly moving toward Union-wide reciprocity in recognition of university degrees and in admissions to practice. Law schools should offer programmes to foreign lawyers which will, upon successful completion, fully qualify the foreign lawyer for admission and practice in the host country.<sup>56</sup> In a first stage it certainly would be advisable to develop special joint degree programmes, which are international and transcontinental.

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<sup>55</sup> For some time Georgetown Law Centre has provided summer courses for incoming foreign law students on 'Orientation in the US Legal System' and 'Introduction to Legal English'. See < [www.law.georgetown.edu/foundations/index.html](http://www.law.georgetown.edu/foundations/index.html) >. This programme is the indirect successor of the Orientation Programme in American Law which until 1971 provided incoming foreign graduate students an extensive introduction into the Anglo-American system of law. Supported by a Ford Foundation grant, the OPAL had fostered long lasting international friendships among foreign lawyers studying at American law schools. Other introductory programmes are presently offered by the Academy of American and International Law of the South Western Legal Foundation, Richardson Texas, the 'Asia-America Institute in Transnational Law' of the Duke University School of Law and the University of Hong Kong Faculty of Law; the Holland Law Centre of the University of Florida; the Leyden-Amsterdam-Columbia Summer Programme in American Law; the International Law Institute (ILI) in co-operation with George Washington University. There are also ALICS, American Law Introductory Courses of the DAJV in co-operation with the Akademie Saarbrücken of the Friedrich-Ebert-Stiftung and members of the faculty of the Law School of the University of Michigan. See *USA – Studienführer für Juristen* (5th edn, Bonn, 1998). The Deutsch-Amerikanische Juristenvereinigung which was founded 25 years ago, has become a co-ordinator and informant on possibilities to study law in the US. It has for many years organized introductory legal courses on the US legal system in Germany and has published helpful guides such as *USA – Bewerbungsführer für Juristen* (Bonn, 1991); *Rechtsstudium in den USA, Informationen zu Vorbereitung und Organisation* (Bonn, 1991) and *USA – Studienführer für Juristen* (5th edn, Bonn, 1998).

<sup>56</sup> Currently the states of New York and California permit foreign holders of qualifying American LLM degrees to take their bar examinations and be admitted to their bars. However there is real question of whether such admittees are really qualified to practice in American jurisdictions. Possibilities such as 2-year programmes for foreign law graduates leading to an American JD degree are being discussed. Currently it is practically impossible for an American-trained lawyer to qualify to practice in a European or East Asian jurisdiction without completing the entire course of university study required of local students.

Other practical measures to 'internationalize' the educational experience of law students include international legal competitions,<sup>57</sup> international clinical exchanges,<sup>58</sup> and greater encouragement of informal exchanges, lectures, symposia for law school academics and students across national boundaries.

Distance learning via the Internet can play a role in the internationalization of training of lawyers. The World-Wide Web offers a convenient way to disseminate information and even conduct discussions among lawyers and law students worldwide. More ambitious programmes in distance learning can enable, for example, Chinese lawyers to learn in real-time about international banking regulation from a professor in Cambridge, Massachusetts.<sup>59</sup>

Law schools in all countries could spur internationalization of their undergraduate and core curriculums by including academics from other legal systems on their core faculties. While international visitorships are common, permanent law faculties in most universities are composed almost entirely of nationals of the host

<sup>57</sup> Such as the Jessup International Law Moot Court Competition American Association of International Law, the Willem Wis Moot Court Competition on International Arbitration sponsored by Pace University and the University of Vienna, the annual European Law Moot Court, and the Niagara Competition sponsored by the Detroit Law School at Michigan State University. Law students and law schools from all over the world participate in these international competitions.

<sup>58</sup> The Harvard Legal Aid Bureau and the Legal Aid Society of the University of Capetown, South Africa, have established an annual clinical exchange programme under which two to four students from each institution visit and work in the legal clinics of the other institution every other year. The Harvard Law School Office of Career Services collects and disseminates information on law student summer job opportunities abroad. This activity parallels that of placement offices of other major American law schools.

<sup>59</sup> The Berkman Centre for Internet and Society, Harvard Law School, Cambridge, MA sponsors this and other Internet-based courses via its Web Site at [www.berkmancentre.org](http://www.berkmancentre.org). See also, Harvard Business School, *Distance Learning at Harvard Business School* (1999) N2-898-238, 1 March; College Online and the New School, *Newsweek* 24 April 2000; John S. Daniel, *Mega-Universities and Knowledge Media, Technology Strategies for Higher Education* (London, 1996); *Informaton Technology and the Future of Post-Secondary Education* (OECD Publication, 1996), *ibid.* Part I: Stephen C. Ehrmann, 'Responding to the Triple Challenge Facing Post-Secondary Education: Accessibility, Quality, Costs' at pp. 9-41; Villiam L. Renwick, 'The Future of Face-To-Face and Distance Teaching in Post-Secondary Education' at pp. 45-81; Gordon Boll, 'Student Owned Company, The Issues for Higher Education Management' at pp. 85-137; see from a more general perspective Richard Susskind, *The Future of Law, Facing the Challenges of Information Society* (Oxford, 1996); James Boyle, *Shamans, Software and Spleens, Law and the Construction of the Information Society* (Harvard University Press, 1996); Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York, 1999); Paul Jacobson, *Net Law: How Lawyers use the Internet* (Sebastopol, 1997); see also James Stevin, *The Internet and Society* (Oxford, 2000); David Berlinski, *The Advent of the Algorithm, the Idea that Rules the World* (New York, San Diego, London, 2000); Andrew Shapiro, *The Control Revolution* (New York, 2000); Charles Petzold, *Code, The Hidden Language of Computer Hardware and Software* (Redmond, Washington, 1999); John Seely Brown and Paul Duguid, 'Fast Forward, The University's Digital Future' in *Change* (July/August 1996); John Seely Brown and Paul Duguid, *The Social Life of Information* (Harvard Business School Press, 2000).

country. A leavening of full-time academics trained in foreign legal disciplines would lend continuity to an international focus which is not obtained by a succession of foreign visitors.<sup>60</sup>

Institutional internationalization can also be accomplished by co-operative arrangements between institutions in different countries, joint appointments of professors or lecturers, reciprocal recognition of credits for specific courses and programmes, regular exchanges of students, more formalized programmes for summer and short term employment for visiting foreign students, and more summer introductory programmes in local law or in specified topics relevant to the international practice of law.

## **G. Post Graduate Education and Training for International Law Practice**

While reconfiguring and realigning undergraduate legal education programmes to provide better international legal training is a vital long term goal,<sup>61</sup> in the short run the brunt of any formal educational training for the international practice of law will be borne by programmes for graduate law students. As indicated above, most present-day LLM programmes on both sides of the Atlantic provide relatively little training that is of direct relevance to international law practice. How can these programmes be improved to give lawyers who have been trained as national lawyers the additional perspective to work in international law practice?

In this area, at least, there is experimentation going on. A particularly promising

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<sup>60</sup> Certain American law schools such as Berkeley, Chicago, and Michigan have benefitted from an influx of foreign legal scholars fleeing from Nazi persecution during the 1930s and 1940s. This generation of legal scholars made immense contributions to the institutions which they served and to American comparative and international legal scholarship in general. See, e.g., Professor Richard M. Buxbaum zum 70. Geburtstag am 16. April 2000 by Hans-Peter Ackermann, in DAJV-Newsletter, Zeitschrift der Deutsch-Amerikanischen Juristenvereinigung e.V., 30 March 2000, making reference to Professors Daube, Ehrenzweig, Kessler, Kultner and Riesenfeld as regards to Berkeley; Ernst Rabel, Hessel Yntema, Vera Bolgar and Eric Stein were prominent teachers and scholars at Michigan Law School; Max Rheinstein at Chicago Law School; see Marcus Lutter, Ernst C. Stiefel and Michael H. Hoeflich (ed), *Der Einfluss deutscher Emigranten auf die Rechtsentwicklung in den USA und Deutschland* (1993); Mathias Reimann, 'Continental Imports: The Influence of European Law and Jurisprudence in the US' (1996) 65 *Tijdschrift voor Rechtsgeschiedenis* 391.

<sup>61</sup> Indeed, proper training for lawyers who will practice in the international arena begins with grade school, where students should be exposed to more foreign language training, education in the history and culture of other parts of the world, and inculcated with a truly international perspective. Educational reforms necessary to create this vital early foundation for later professional training as international practitioners are outside the scope of this article.

example is the Masters in European and International Business Law programme being offered by the University of St. Gallen, Switzerland.<sup>62</sup>

The M.B.L.-HSG is characterized by nine distinguishing features:

1. the course does not require the students to give up their regular work;
2. the course consists of an intramural and an extramural part;
3. the curriculum, and also the teachers, the participants and the organs, are international;
4. partnerships are entered into with other educational institutions and foreign governments and there is co-operation with other institutes of the University of St. Gallen;
5. there is a window towards the US;
6. in keeping with the St. Gallen tradition, there is a close connection with international management;
7. like all post-graduate activities at the University of St. Gallen, the programme is fully based on the principle of self-financing;
8. the programme, for the first time on the Continent, is making ample use of the Internet in the extramural part;
9. the course is oriented towards an attitudinal and cultural formation of an 'international lawyer', linking the participants in a lifelong active alumni-network.

The M.B.L.-HSG primarily focuses on the question as to what legal problems are faced by companies which operate in international markets and in the European markets in particular. The institutional issues of the European Union (EU)/ European Economic Area (EEA), Europe Agreements, Free Trade Agreements and the World Trade Organization (WTO) are primarily considered from the perspective of law enforcement. In keeping with the transaction-specific and practice-oriented approach, the programme also covers the subject of international management. The programme is chiefly designed for people working as attorneys in industry, the service sector, the judiciary, associations and public administrations.

Intramurally, participants attend an introduction and eight block sessions. The blocks have the following headings: Institutions and Decisionmaking Processes, Movement of Goods and Services in European Integration (1), Intellectual Property Law; Product Liability and Product Safety, Government Procurement (2), Competition and Industrial Policies, Technology Transfer (3), WTO and European Foreign Trade Law (4), Business Law (5), Financial Services Law (6), Negotiation (7) and Legal Professions (8). Three block sessions take place in St. Gallen, five block sessions

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<sup>62</sup> M.B.L.-HSG. Both of the authors are affiliated with that programme (see *supra* notes 1, 2); on general concepts of continuing education see Continuing Professional Education of highly qualified Personnel, OECD 1995, a synthesis of contributions of 17 OECD countries; *Bildungspolitische Analyse 1999* (OECD, 1999); *Knowledge Management in the Learning Society, Education and Skills* (OECD, 2000).

elsewhere, namely in Bruges, Vienna, Geneva, Vaduz and Cambridge, Mass. The block sessions in Bruges, Vienna and Geneva are combined with visits to the organs of the EU in Brussels and to the WTO. Extramurally, the students participate in a computer assisted, guided, monitored and interactive programme at their place of residence or at any place of their choice. The intramural attendance time therefore is considerably shorter than in other courses. In this manner the overall workload, which tends to exceed that of other master programmes, is compensated to a certain extent. An extensive master thesis – the best ones are published in a book on an annual basis – and demanding examinations ensure the academic quality of the programme.

The international nature of the course manifests itself not only in the curriculum, but also in the international make-up of the teaching staff (a so-called ‘flying faculty’),<sup>63</sup> participants, and the organs responsible for the course. The international make-up of participants does not only extend the horizon of experience, but also opens up interesting perspectives for future professional co-operation. The University of St. Gallen has entered into partnerships with the Collège d’Europe in Bruges, the World Trade Institute, a joint centre of the Universities of Berne, Neuchâtel and Fribourg at the University of Berne, the Ministry of Economics of Liechtenstein and the Conflict Management Group in Cambridge, Mass. Moreover, the M.B.L.-HSG has concluded co-operation agreements with the Institute of Business Pedagogics and the Institute of Business Computer Science at St. Gallen. International management has always been one of the core competencies of the University of St. Gallen.

The M.B.L.-HSG programme, also features a ‘window towards the United States’ afforded by the participation of leading American law professors who deal with the issues of each block session from an American point of view. The American perspective is further highlighted in the negotiating programme conducted in Cambridge, Mass., and a tailor-made programme on litigation and mediation taught by faculty members of Harvard Law School.

The M.B.L.-HSG attempts to deal with the special limits and potentials of post-university education. Among the special aspects dealt with are the role of the university as such in that field; the use of new teaching methods and the Internet; the new function of national and international co-operations; the shift of emphasis from a dogmatic to a practice-oriented transactional teaching method; the function of English as a *lingua franca* for international commerce; the importance of attitudinal and cultural aspects of professional education; and the creation of a lasting personal and professional network among the participants.

As it goes forward, the M.B.L.-HSG will be considering possible developments in the programme, including a possible fully fledged ‘Introduction to American Law’ course to be held at Harvard Law School in conjunction with the Programme

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<sup>63</sup> The faculty consists of 80 to 100 international specialists from academics, public administration, the judiciary, industry, and law practice, of which more than 80 per cent are non-Swiss.

of Instruction of Lawyers; the inclusion of a small window towards Asia, the extension of the use of multimedia and new elements of distance learning in the extramural part; the development of online relationships with legal departments of multinational firms, allowing for a permanent contact with practice throughout the programme; a programme for alumni, including the implementation of a geographically diversified chapter organization; the gradual change to the use of the English language as a second teaching language;<sup>64</sup> and the possible opening of the block sessions held at St. Gallen University to the undergraduate law students who are participating in a special education and training programme for future international lawyers.

The St. Gallen programme has been functioning for just 5 years. Although it is early to assess the long term value of the programme, results to date are encouraging. Alumni are successfully engaged in many aspects of international law practice, and applications have shown a steady growth.<sup>65</sup>

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<sup>64</sup> At the present time instruction is offered both in German and in English. This effectively limits participation to persons who are fluent in both languages, principally lawyers from the German-speaking countries of Europe, Switzerland, Germany and Austria. Alternatives to changing the language of instruction to English include possible language training and introduction to the civil law systems to make it possible for Anglo-American lawyers to participate in the programme.

<sup>65</sup> The Swiss Scene – in paraphrasing the saying that Swiss get up early but wake up late – is an interesting one to watch in connection with the internationalization of education in law and in business. The Graduate Schools of Business Administration on Lake Geneva has been offering a fully internationalized programme in Geneva by IMI and in Lausanne by IMD. The Institute des Hautes Etudes Internationales (HEI) of the University of Geneva, a Graduate School of International Affairs including law, history, political science and economics of long-standing tradition still acts as interdisciplinary flagship on the graduate and post-graduate level. Besides the Master of European and International Business Law at the University of St. Gallen, the Master of International Law and Economics at the World Trade Institute of the Universities of Berne, Neuchâtel and Fribourg, the Rochester-Bern Executive MBA has been operated as a joint-venture of the William E. Simon Graduate School of Business Administration of the University of Rochester and the Institut für Finanzmanagement of the University of Berne for the last 30 years. The Lausanne based IMD will soon offer a joint programme with the specialized TV-Channel CNBC Europe under the name of Business Challenge; the Universities of Lausanne and Geneva offer a Master in Business Law, the newly founded University of Lucerne will commence an entirely new law school as of 2002, and the University of Zürich has been offering a Master in Internationales Wirtschaftsrecht for practitioners for the last three years; last but not least, the Europainstitut of the University of Basle has been conducting its Master programme in Advanced European studies since 1993. Major changes in the educational landscape can be expected by a fundamental study and reform at the University of St. Gallen introducing Anglo-Saxon type of Bachelor and Master degrees. The University of St. Gallen as a specialized University in management sciences, economics and law is the frontrunner in internationalizing its educational programmes. Besides the mentioned master of European and International Business Law, it offers a Master of International Management MIM, the first programme in Switzerland fully taught in English. The MCM Institute of Media and Communication Management sponsored by the Bertelsmann

There are a number of other graduate and summer programmes offering various forms of training potentially relevant to international law practice. Some of these include, for instance, the Pallas programme in Nijmegen, Holland, which is offered in English, and the Masters in Business Law programme of the Universities of Geneva and Lausanne, Switzerland.<sup>66</sup>

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Foundation is about to introduce an MBA Programme on Media- and Communications management. The ISP International Study Programme is an additional intensive educational programme for international MBA students and European CEMS students selected for their academic excellence. The CEMS Community of European Management Schools is a strategic alliance of leading European universities and corporate partners offering a joint European Masters degree held at St. Gallen university in management. The ISC Management Symposium held at St. Gallen University, a student organized annual event has become the second largest event world-wide besides the World Economic Forum held at Davos. The Federal Institute of Technology (ETH) operates in the business and law context a post-graduate programme on Intellectual Property (NDS) with an international faculty. The Federal Institute of Technology is presently engaged in project 'ETH World', a concept of a virtual university to be realized by 2005, which seems to go beyond the projects 'virtual campus Switzerland' by other Swiss universities. Internationalization (beyond internationalization caused by the developments of the EU) has accelerated and been put into sharper focus only recently. See *Etudes Européennes Guide 2/1999, informations sur les possibilités d'effectuer des études européennes*. Of particular interest for Anglo-American lawyers are the special seminars organized under the sponsorship of the Swiss National Bank which have brought over many American law professors to teach on specialized subjects at the Educational Centre of Gernzensee; see also recent publications like Peter Rusterholz and Anna Liechti (eds), *Akademische Universität am Scheideweg, Herausforderungen, Probleme, Strategien, Kommission der Universität Bern* (Zürich, 1998); Vereinigung Schweizerischer Hochschuldozenten; Schweizer Monatsheft, 'Dossier Zukunftswerkstatt Universität, Schweizer Monatshefte' (1998) *Hefi 5*, pp. 17–37; Was bringt unsere Bildung? Zum Abschluss des nationalen Forschungsprogramms 'Wirksamkeit unserer Bildungssysteme' NFP 33, Ed. U. Peter Trier, *Programmleitung NFP 33* (Chur, Zürich, 1999). These educational efforts are being backed up by a far-reaching governmental effort to promote education, research and technology as described in the Message of the Federal Council, *Botschaft über die Förderung von Bildung, Forschung und Technologie in den Jahren 2000–2003*, of 25 November 1998; Jens Drolshammer and Michael Pfeifer, 'The International Practice of Law: The Swiss Experience (2000) 15 *Tulane European and Civil Law Forum*; Jens Drolshammer, 'Amerika gibt es nicht' – Tendenzen einer Amerikanisierung der Rechtsordnung, Rechtsberufe und Rechtsausbildungen in der Schweiz – eine Agenda für eine Strategie für einen neuen Umgang mit amerikanischer Rechtskultur, in *Festschrift zum Schweizerischen Juristentag 2000* (Zürich).

<sup>66</sup> The following institutions offer a specialized master programme in taxation: Boston University Graduate Tax Programme, School of Law; Harvard Law School, International Tax programme; University of Florida Law School, Master of Law in Taxation; Leiden University Law School, International Taxation LLM Programme; K. University Leuven (Belgium) and Tilburg University (Netherlands) founded a European Tax College offering a Master of Laws in European and International Taxation; the London School of Economics and Political Science; New York School of Law, The Graduate Tax programme (LLM in Taxation), The International Taxation Programme for Foreign Students (LLM) in International Taxation and the Joint Degree Programme (JD/LLM in Taxation); the

A promising new addition to internationally oriented post-graduate legal education programmes is the new Master of International Law and Economics programme being developed at the newly formed World Trade Institute, a Joint Centre of the Universities of Berne, Neuchâtel and Fribourg, Switzerland.<sup>67</sup> The M.I.L.E programme, starting in 2000/01, combines international law, trade regulation and economics in its class rooms close to the headquarters of the WTO in Geneva. The programme advertises a special teaching method. Rather than treating international law, trade regulation and economics separately, the programme will look at them through the same lens – ‘to attack the issues that remain unresolved in today’s integrated markets for trade, finance and intellectual property’. The programme expects to bring in as faculty the world’s leading experts from private practice, international organizations and top universities.<sup>68</sup> The programme will

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University of San Diego School of Law (LLM in Taxation), Georgetown University Law Centre, Master of Laws in Taxation; Wirtschaftsuniversität Wien, Universitätslehrgang für Internationales Steuerrecht (‘Master of Advanced Studies International Tax Law’).

<sup>67</sup> This remarkable programme was originally conceived and articulated by Professor Dr Thomas Cottier of the University of Berne.

<sup>68</sup> WTI faculty as of 19 November 1999, for the academic year of 2000-2001: Frederick M. Abott, Chicago Kent College of Law, Chicago, Visiting Professor University of California, Berkeley; Richard Baldwin, Institut des Hautes Etudes Internationales, Geneva; Jacques Bourgeois, Collège d’Europe, Brugge, and partner, Akin Gump, Strauss Hauer & Feld, Brussels; Carlos Primo Braga, World Bank, Washington DC; Marco Bronckers, Leiden University and partner, Stibbe Simont, Brussels; Olivier Cadot, University of Lausanne; Thomas Cottier, University of Berne; William J. Davey, University of Illinois College of Law; Paul Demaret, University of Liege; Claus-Dieter Ehlermann, European University Institute, Florence; Daniel Esty, Yale Law School, New Haven, Connecticut; Michael Finger, World Bank, Washington DC; Mary Footer, University of Rotterdam; Eleanor Fox, New York University; Joseph François, University of Rotterdam; Jean-Marie Grether, University of Geneva; Jacques Michel Grossen, professor emeritus, University of Neuchâtel; Jordi Gual, University of Barcelona; Francis Gurry, World Intellectual Property Organisation, Geneva; Bernard Hoekman, World Bank, Washington, DC; Henrik Horn, University of Stockholm; Gary Horlick, partner, O’Melveny and Myers, Washington DC; Robert L. Howse, University of Michigan; John H. Jackson, Georgetown University, Washington DC; Merrit Janow, Columbia University; Jena-Louis Juvet, University of Neuchâtel; Francois Knoepfler, University of Neuchâtel; Patrick Low, WTO, Geneva; Mitsuo Matsuhita, Seikei University; Aaditya Mattoo, World Bank; Petros Mavroidis, University of Neuchâtel; Jaime de Melo, University of Geneva; Patrick Messerlin, Institut d’Etudes Politiques, Paris; Nicolas Michel, University of Fribourg; Damien Neven, University of Lausanne; Kalypso Nicolaidis, Oxford University; Adrian Otten, WTO, Geneva; David Palmeter, partner, Powell, Goldstein, Frazer & Murphy, Washington DC; Ernst-Ulrich Petersmann, University of Geneva; Frieder Roessler, Geneva; Giorgio Sacerdoti, Bocconi University, Milan; Raymond Saner, Centre for Socio-economic Development, Geneva; André Sapir, Université Libre de Bruxelles, Institut d’Etudes Européennes ULB IEE, Brussels; Paul Seabright, Cambridge University, UK; Jacques Silber, Bar-Ilan University, Israel; Edwin Vermulst, partner, Vermulst, Waer & Verhaeghe, Brussels; Michel Waelbroeck, Université Libre de Bruxelles, Institut d’Etudes



work on the basis of case studies, individual reading, research assignments, and classroom and group discussion. Close links with the WTO in Geneva will put students near the centre of policy debates and developments in global integration, and the body of law and economics affecting the daily operations of trading companies, governments and courts.

The programme is divided in four time phases. It starts with a 'crash introduction'<sup>69</sup> to prepare students for interdisciplinary work. Lawyers take a 'crash course' in economics; economists and others take an intensive course in the principles of law.<sup>70</sup> In Phase 2,<sup>71</sup> the emphasis is on understanding basic problems and concepts and on mastering the current body of international regulation. The courses are: history of trade relations, international economics, industrial organization, modern public choice, public international law, international trade regulation, nondiscrimination and decision-making in governments and international organizations, with special sessions on trade policy in the US and EC included.

The third phase<sup>72</sup> focuses on important aspects of international economic law, from both legal and economic perspectives.<sup>73</sup> Phase 4<sup>74</sup> on integrating law and economics, is mostly devoted to preparing the Masters thesis. Seminars will integrate different aspects of international economic law in a few core areas.<sup>75</sup> The seminars and special courses will be on investment, telecommunications and financial services, labor standards, developing countries, multilateral governance and national constitutions, monetary issues and international negotiation.

The masters programme will be held at specially designed premises close to the main campus of the University of Berne. The World Trade Institute will also sponsor international workshops and conferences such as the World Trade Forum, on current issues in world trade regulations. The Institute faculty will serve on editorial and advisory boards of such journals as the *Journal of World Trade*, the *Journal of International Economic Law*, and the *International Journal of Industrial Organization*.

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Européennes ULB, IEE, Brussels; Franz Werro, University of Fribourg; Alan Winters, Sussex University; Diane Wood, Judge, Appellate Court for the 7th Circuit, Chicago; Charles Wyplosz, Institut des Hautes Etudes Internationales, Geneva.

<sup>69</sup> Phase 1 (2–13 October 2000).

<sup>70</sup> That is for lawyers microeconomics (20 hours) and macroeconomics (20 hours) and for economists legal method and thinking (20 hours) and case studies (20 hours).

<sup>71</sup> Mastering International Trade Regulation (16 October–15 December 2000).

<sup>72</sup> Understanding International Economic Law (15 January–16 March 2001).

<sup>73</sup> The courses are; tariffs, voluntary export restraints and quotas, subsidies and state aid, technical and food standards, competition policy: cartels, mergers and dominance, competition policy: international aspects, antidumping, intellectual property protection and public procurement.

<sup>74</sup> 16 April–15 June 2001.

<sup>75</sup> The courses taught are liberalization of services, trade and environment, dispute settlement, arbitration and the courts.

These various academic LLM programmes on the European continent<sup>76</sup> can offer valuable exposure to foreign legal systems and to issues and problems of international law practice in an academic setting. To date, however, only the St. Gallen programme combines the academic perspective with exposure to the practical side of international legal transactions and practice.<sup>77</sup>

For a lawyer intending to pursue a career in international law practice, there is no substitute for practical experience working in another legal culture, especially on problems of international dimension. German legal education has traditionally required a 2-year Referendarzeit for law students who have passed their first state examination. The Referendare spend four to six month stints as interns with judges, state's attorneys and in private law offices. A handful are able to obtain internships with firms or legal agencies in other countries.

Foreign LLM students at US law schools also frequently seek to work for six months or a year at an American law firm or law department before returning to their own countries in order to obtain practical experience with the American legal system and law practice. A much smaller handful of American law students are able to find summer jobs or internships with law firms<sup>78</sup> and governmental agencies abroad. Currently, these kinds of exchanges are largely *ad hoc*. There is no real institutional organization or co-ordination of these opportunities.

This kind of invaluable training for international law practice should be greatly expanded and organized. Any person interested in international law practice as a major component of their legal activity should be able to obtain some hands-on experience in a foreign law firm early on during or following their academic legal education. Once more the Internet offers functionality for programme co-ordination and matching, which has not existed up until now.

## H. Creating a Culture of International Law Practice

Improved academic training and opportunities to learn by practical experience will go a long way to prepare young lawyers for the international practice of law. However that is only part of the picture. Training and education need to be

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<sup>76</sup> As regards general trends to modernize and reform law school curricula, see an extensive overview on the situation in Austria, Bernd-Christian Funk, Bernd Schilcher (eds), 'Studienreform und die Zukunft der Juristenausbildung' (1998) 6:2 *Journal für Rechtspolitik*.

<sup>77</sup> It will be interesting to observe if the Berne programme will attract private practitioners from the 'international practice of law' to any considerable extent.

<sup>78</sup> Here there should be a differentiation between law students who spend a short time in a foreign office of a US law firm, and students who work in foreign law firms engaged in local law practice.

supplemented and enhanced by a legal culture of international law practice. There is much the legal profession can do to make international law practice a recognized field of legal endeavour and assist those who practice in it.

Some institutions of legal culture which should be mentioned in the name of promoting the international practice of law include:

1. Law reviews focused on questions of the international practice of law. Current international and comparative law reviews are mainly academic in focus. Legal publications focusing on the particular legal problems of international law practice would fill an important void.
2. Sections of bar associations devoted to the international practice of law. The American Bar Association has a section on International Law, but none on International Law Practice.<sup>79</sup> In other countries there are cross cultural legal associations such as the German-American Lawyers Association (*Deutsch-Amerikanische Juristenvereinigung*), but no associations of lawyers who focus on international practice. Sections of bar associations for international law practice could bring together practitioners active in such practice to communicate, exchange ideas and the like.
3. Certification of skills in international practice of law. Currently there are ABA approved certification programmes in a variety of legal skills and specialties ranging from criminal law to estate planning. There is no programme for certification or recognition of speciality in international law practice. Without seeking prematurely to freeze standards for international law practitioners, some form of international certification would be of assistance to lawyers and clients in all countries, to help them find practitioners with the background and experience to serve them in international legal matters.<sup>80</sup>
4. CLE programmes for continuing education of lawyers for international law practice. Although not a substitute for programmes of undergraduate and post-graduate academic preparation, CLE seminars and other short programmes of professional continuing legal education can play a role in deepening understanding of specialized issues relevant to the international practice of law, bringing practitioners up to date on recent developments and imparting practical advice from experienced practitioners. To the extent practicable, programmes focusing on study and analysis of actual transactions and case studies could provide maximum benefit here.
5. International associations of law schools and legal academics which can

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<sup>79</sup> The ABA is now offering organizational support to various kinds of lawyer-to-lawyer exchanges on an international basis through its International Legal Exchange (ILEX) programme. See ABA ILEX Programme, 6120 L St. NW, Washington, DC 20036.

<sup>80</sup> See e.g., Jim Yardley, 'The Test Makers, where do all these questions come from anyway? How a standardized test is created' in *Education Life*, Section 4A, (2000) *The New York Times*, 9 April.

- address such issues of internationalization of legal education as reciprocal recognition of credits, co-ordination of academic schedules, exchanges of professors and students, prerequisites for bar admission and the like.
6. Research centres, both at individual institutions and as joint ventures of leading law schools, leading law firms, the Big Five and international professional associations, for legal learning in international matters.
  7. Comparative studies and publications sponsored by international organizations such as the WTO and the Organization for Economic Co-operation and Development (OECD) on the internationalization of the legal education.

## I. Conceptualizing the ‘New International Lawyer’?

The present state of constantly changing ‘internationality’ does not yet lend itself to coherent theory-building. For the time being, this text uses the terms ‘new international lawyer’ and ‘international practice of law’ without attributing to them definitive meanings. For now may it suffice to reserve those terms to permit a more gradual definition and specification.

The concept is of a transnational legal order which attributes a pivotal function to the ‘international lawyer’ and ‘international law firms’. This conceptualization is likely to lead to an evolution of the international lawyer of the present to the international lawyer of the future, with competencies as information engineer, as facilitator, as interpreter and in particular as enabler of alliances and transactions. Conceptualization of the role and function of the new international lawyer can be analyzed in three steps or stages.

As a first step one can argue why it may make sense to give the ‘international lawyer’ a pivotal role in the construction of the transnational legal order. The argument would be that the ‘international lawyer’, in his/her functions of planning and structuring transactions, of steering complex processes on the time axis, of adjudicating complex international matters in commercial arbitration, and of advising top management in legal matters of strategic importance, is in the forefront as regards timing, as well as the substance of the ‘international legal process’.

A second step of the analysis could deal with the issue, ‘Why should there be a special theoretical framework for international law practice?’ The analysis could argue that the novelty of the perspective chosen, the novelty of the role of the ‘international lawyer’, the key role of this function in the internationalization of business, and in particular the inadequacy of presently existing concepts to describe the international practice of law, merit revisiting this question.

A third step could treat the issue, ‘What would be the purpose of such a new theoretical framework?’ The analysis could argue that this framework could reinstate the ‘lawyer’ as actor in the ‘international legal process’ and start from his specific role as ‘creator’ in the ‘legal process’ of the ‘*Rechtsverwirklichung*’ (realization of

law).<sup>81</sup> Presently neither the traditional 'legal profession' nor traditional 'legal education' is adequately focused on that reality. This repositioning of the role of the lawyer could provide for the potential inclusion of various dimensions of that activity, encompassing the 'art of law' as well as the 'science of law'. Moreover, it could provide for the potential inclusion of cultural, racial, religious, psychological, sociological, economical and other elements necessary to adequately describe the role and approach of the 'new international lawyer'.<sup>82</sup>

Careful attention should be given to the fact that the 'international practice of law' nowadays is almost exclusively performed by 'international lawyers' organized in 'international law firms'.<sup>83</sup> This fact could well require an extension of the theoretical framework from the 'person' of the 'international lawyer' performing the legal services to the concept of the 'organization' of an 'international law firm' acting as an enterprise of and for those persons performing the 'legal services'. The analysis could also address how the 'international lawyer' as pivotal actor relates to the actors of the clusters of 'legal systems' and 'legal educations', leading to a conceptual framework for a multi-actor-network necessary for the 'international legal practice'. Adding an international dimension to the ongoing discussions of the transformation of the American academic culture would assist in this process, and extending this discussion to law as social science could be an encouraging development.<sup>84</sup>

## J. Conclusion

Effective education and training for international law practice can bring significant public and professional benefits. However the education of the new international lawyer cannot really be changed without making fundamental adjustments to the

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<sup>81</sup> This reconceptualization is contrary to presently prevailing concepts, which are largely decision-oriented and not creation-oriented. The new concept should be centred around the planning and structuring orientation of the activity. It should recognize the creativity of the 'international lawyer' as architect of legal constructs.

<sup>82</sup> In the representation of increasingly common international 'alliances', the role of the international lawyer can even include that of 'alliance mediation' among the members of the alliance. See, e.g., Julian Gresser, 'Strategic Alliance Mediation: Creating Value from Difference and Discord' below, p. 651. It could be interesting to draw in that respect on the method of 'situationality analysis' developed by Outi Korhonen, *International Law Situated: The Lawyer Stance towards Culture, History and Community* (SJD Thesis Harvard Law School) (Kluwer Law International, 2000).

<sup>83</sup> These are generally organized as commercial enterprises in corporation-like form.

<sup>84</sup> Thomas Bender and Carl E. Schorske, *American Academic Culture in Transformation, Fifty Years, Four Disciplines* (Princeton, 1998), originally published as the (1997) 126:1 *Daedalus: Journal of the American Academy of Arts and Sciences*, Winter; David Damrosch, *We Scholars, Changing the Culture of the University* (Cambridge, Mass., London, 1995); Louis Menand (ed.), *The Future of Academic Freedom* (Chicago, 1996).

presently existing perception of the role of the international lawyer. And one product of increased educational efforts will likely be a clarification of the definition and a reevaluation of the function of law as such in globalization as such.

Any study and conceptualization of the role and education of the 'international lawyer' should take careful note of the growing tendency of 'Americanization' of the international legal culture. This phenomenon seems to be a major driver for the globalization of the economy. The internationalization of the actors in the practice of law appears to be running parallel to the hegemony of the US in matters of economics, foreign policy, defense, information technology and higher education.<sup>85</sup> The leading role of the US has a significant influence on the activities of the 'new international lawyer' and in the 'international practice of law'. In economic and commercial matters, foreign legal education and in particular foreign legal professions, the influence of American management methods and the importance of the English language as a '*lingua franca*' are not to be forgotten. A moderate European point of view may help to balance the dominant 'American perspective', and help to bring about a synthesized global orientation.<sup>86</sup>

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<sup>85</sup> Richard N. Haass, *The Reluctant Sheriff, The United States After the Cold War, A Council of Foreign Relations Book* (1997); Stanley Hoffmann, *World Disorders, Troubled Peace in the Post-Cold War Era* (Landham Boulder, New York, Oxford, 1998); C. Fred Bergsten, 'America and Europe; Clash of the Titans?' (1999) *Foreign Affairs*, March/April 1999, pp. 20–34; Samuel P. Huntington, 'The Lonely Superpower' (1999) *Foreign Affairs*, March/April, pp. 35–49; *The Clash of Civilizations* (New York, 1996); Garry Wills, 'Bully of the Free World', *Foreign Affairs*, March/April 1999, pp. 50–59; 'American Power and Global Security, Survival' (1999–2000) *The IISS Quarterly*, Winter; François Heisbourg, *American Hegemony? Perception of the US Abroad 1999–2000* pp. 5–19; W. Michael Reisman, *The United States and International Institutions 1999–2000* pp. 62–80; Ashton B. Carter, *Adapting US Defence to Future Needs 1999–2000* pp. 101–123; Chalman Johnson, *Blowback: The Costs and Consequences of American Empire* (Little Brown, 2000); Joseph S. Nye, Jr, *Bound to Lead, The Changing Nature of American Power* (New York, 1990), and Joseph S. Nye and William A. Owens, 'America's Information Edge' (1996) *Foreign Affairs*, March/April, pp. 20–36; see also Paul Kennedy, *The Rise and Fall of the Great Powers, Economic Change and Military Conflict from 1500 to 2000* (1987), and *Preparing for Twenty-First-Century* (London, 1993); Samuel Schlosstein, *The End of the American Century* (1987); Zbigniew Brzezinski, *Out of Control, Global Turmoil on the Eve of the 21st Century* (New York, 1993); *The Grand Chessboard, American Primary and its Geostrategical Imperatives* (New York, 1997); Arthur M. Schlesinger Jr, *The Cycles of American History* (Boston, 1986).

<sup>86</sup> See some of the great texts of transatlantic legal discourse: Konrad Zweigert and Heinz Kötz, *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts* (2nd edn, Tübingen, 1984); *An Introduction to Comparative Law* (2nd edn, translated by Tony Weir, Oxford 1997); R. David and G. Grossmann, *Einführung in die grossen Rechtssysteme der Gegenwart* (Munich and Berne, 1966); Wolfgang Fikentscher, *Methoden des Rechts in Vergleichender Darstellung, Vol. II, Anglo-amerikanischer Rechtskreis* (Tübingen, 1975); Wolfgang Friedmann, *Legal Theory* (5th edn, 1967); Josef Esser, *Grundsatz und Norm in der richterlichen Fortbildung des Privatrechters* (3rd edn, Tübingen, 1974); Ernst Rabel, 'Deutsches und amerikanisches Recht' (1951) 2:16 *RabelsZ* p. 340; B. Grossfeld, *Macht und Ohnmacht der Rechtsvergleichung* (Tübingen, 1984); Max Rheinstein, *Gesammelte*

As the world becomes smaller, the need for individuals with the professional skills and international orientation to nurture transactions and mediate disputes among different national, economic, ethnic and cultural groups, will be ever greater. In particular, the ability to take an informed global perspective to problems and issues will help overcome myopia, misunderstanding and localism from purely local or national perspectives. To the extent that an international approach is incorporated into programmes of basic legal education for all lawyers, the bar in general will have the potential to serve its mediating and facilitating role based on the widest possible perspective.

An informed and trained body of international legal practitioners will foster improved quality and reduced costs in international legal transactions. In short, we will be able to do these transactions better if we are trained better to do them. This does not mean that all lawyers and legal systems will become alike. It does however mean that lawyers with an understanding of different legal systems, and an international perspective, will be able to deal with the differences in legal systems and create arrangements and resolutions of international transactions and disputes of high quality.

The process of law harmonization and reform will be furthered by a more widespread knowledge of other legal systems and international legal orders. Comparative law, currently almost a legal backwater, can become an everyday tool in legal analysis, law development, and law reform. Lawyers considering changes in their own legal systems can work with reference to the experience of the nations of the world in solving similar problems.

As lawyers look to the new millennium, we look at a very small world which will have to be governed by law or will relapse into chaos. Our ability to transcend national boundaries, languages, cultures and prejudices to provide a legal framework which can govern relations among the world's citizens, will be vital to our very survival. The growth of a legal establishment educated and trained to work internationally as 'new international lawyers', will foster commercial convenience and advantage now, but will be indispensable to life itself tomorrow.

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