Overview of Remarks

I. Setting the scene: client and lawyer mobility

II. Responses:
   – By governments, including trade agreements
   – By regulatory and “representational” bars
   – By others

III. Implications for bars and their executives

IV. Reflections and conclusion
**International Trade is a Fact of Life**

**Merchandise Trade 1950-2013**

- **Top Blue line:** Least developed economies
- **Green line:** Rest of the world

Average exports growth: 6%

**Commercial Services Trade 2000-2013**

Source: WTO Statistics Webpage & Charts

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**2013 Growth Figures (From the WTO)**

- **World merchandise exports in 2013**
  - 44% originated from developing economies
  - 52% originated from developed economies

- **Growth in exports of commercial services in 2013**
  - 4.0% merchandise exports from developing economies grew by 5% in volume terms in 2013
  - 5.0% merchandise imports into developing economies grew by 9% in volume terms in 2013
  - 13% Least-developed countries (LDCs)
  - 6% Rest of the world

Over half of merchandise exports from developing economies are sent to other developing economies.

Lawyers Follow Clients… and so...

…Global Legal Trade Has Grown

Chart 2: Global Legal Services Market Segmentation: 2008
Percentage share by value

WTO 1998 Report: 1 law firm had >1000 lawyers; 3 had >500 lawyers
WTO 2010 Report: 30+ law firms had >1000 lawyers

and is Likely to Grow Even More Global

Consider: of the 10 largest law firms by headcount…
-3 are Chinese law firms
-1 is a German law firm
-5 are “vereins”
-Several are a result of multinational mergers

ALSO: AMLAW 200 law firms have lawyers in more than 70 countries

Source: Global 100, AM. LAWYER 107-108 (Oct. 2014)

Global Firms aren’t Limited to London & NY

Number of Law Offices per State That Also Have Foreign Offices:

*Data for this map provided in April 2015 by General Counsel Metrics, LLC based on the websites of law firms with approximately 37 lawyers or more. This map shows the number of law offices in each state that also have at least one foreign office.

**For 21 of the 48 US jurisdictions that have firms in their jurisdiction that also have foreign offices, that US jurisdiction has the firm’s largest US office.
Individuals (as well as Entities) Are Clients

- Travel injuries
- Inheritance
- Family law
- Real estate
- SME businesses

↑US Passports. Similar trends elsewhere?

II. Responses to Int’l Client & Lawyer Mobility

- By governments
- By regulators
- By voluntary bar associations
- By others
Governmental Trade Agreements

- 160+ Countries are WTO Member States
- All WTO Members must abide by the General Agreement on Trade in Legal Services (GATS)
- **The GATS covers legal services**
- **Even if** a country has **not** made any legal services **Specific Commitments**, parts of the GATS apply

Regional & Bilateral Agreements

The WTO has received notice of 449 regional trade agreements; 262 are currently in force ↓

Additional Negotiations:

Represents 70% ↓ of services trade

Source: WTO Regional Trade Agreements Webpage: [https://www.wto.org/english/tratop_e/region_e/region_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm)
How Have Regulators Responded?

- Greater internal dialogue
- Greater involvement with governments
- Studies and data collection
- Some have “inbound” foreign lawyer policies
- Some have policies for “outbound” lawyers
- Greater communication with each other

But also…

Representational Bar Responses

- Dialogue, engagement, studies, [model] policies, and increased cross-border cooperation.
  
Some examples include:

ABA Commission on Ethics 20/20

IBA Global Regulation and Trade in Legal Services Report 2014

↑Sent to gov’t negotiators; used in T-TIP trade talks

But also…
Add’l Responses to Mobility: Networks

The IBA is working on a similar project ↓

ABA Policy


Law Firm Networks

10 Largest Networks: 126,740 attorneys 10 Largest Law Firms: 34,232 attorneys

100 Largest Law Firms: 126,000 attorneys

Networks Headquarters by Region and Country

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<th>Region</th>
<th>Number</th>
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<tbody>
<tr>
<td>Europe</td>
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<td>Africa</td>
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<td>Total</td>
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<table>
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<tr>
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<td>Other</td>
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<td>Total</td>
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</tbody>
</table>

Meanwhile…Lawyer Regulation is in Flux

See Terry, Mark & Gordon, Trends and Challenges in Lawyer Regulation, 80 Fordham Law Review 2661 (2012)

III. Implications for IILACE Members

• International lawyer mobility is everywhere
• Because your stakeholders are talking to those outside your country, ideas will travel
• If you don’t address mobility [& other issues], someone else (e.g., your government) might…..
• You may want to consider how well your organizational structure works in a global world
• You have to think carefully about how to address & staff these issues
What Should Bars Do Re Mobility?

1. Create a committee: the “Toolkit” can help
2. Help correct-update the IBA info & maps
3. Consider international mobility issues:
   - Full admission &/or 4 methods of limited admission
   - “Association” involves relationships not active practice
   - Make informal policies FORMAL
4. Adopt regulatory objectives (& remember to include client needs as well as client protection)

A “How To” Guide re Mobility Policy

Based on advice from a former regulator
Much of this advice is process-based and should work outside the U.S.
The IBA Global Regulation and Trade in Legal Services Report 2014

http://tinyurl.com/2014IBAReport
http://tinyurl.com/IBAdatabase

“The report … compile[s] data on regulation of domestic and cross-border legal practice in over 90 countries, or over 160 jurisdictions.”
- 700+ pages
- answers >35 questions per jurisdiction

Some of the IBA Data May be Wrong

It’s GREAT to have this report but there may be errors in the individual country reports or in the summary data:
- 105 of surveyed jurisdictions have “foreign lawyer or law firm licensing regimes in place”
- In 152 of surveyed jurisdictions, “foreign lawyers are able to provide services on a temporary basis”
- In 130 of surveyed jurisdictions, “foreign law firms able to establish offices”
Use Visual Aids in Discussions

2014 US Merchandise Import & Export Data

Consider Your Regulatory Objectives

Client & public protection are important objectives but there is increasing recognition that regulatory objectives should also include **client needs** (relevant for mobility policies)

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Terry Regulatory Objectives article discusses LSA §1, Legal Services (Scotland) Act 2010, Draft Irish bill, Draft Indian bill, & various Canadian provisions


ABA Center for Professional Responsibility The Professional Lawyer Volume 22, Number 1 2013

Why Your Jurisdiction Should Consider Jumping on the Regulatory Objectives Bandwagon
Final Observations

• **International lawyer mobility is part of a larger question:**
  
  – How should regulatory and representational bars operate in light of globalization?
  
  – For my advice, see Laurel S. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43 Hofstra L. Rev. 95 (2014), SSRN #
  
  – Feel free to email me anytime: LTerry@psu.edu

To Read More About It…

• WTO Legal Services Webpage, [https://www.wto.org/english/tratop_e/serv_e/legal_e/legal_e.htm](https://www.wto.org/english/tratop_e/serv_e/legal_e/legal_e.htm)

• WTO Statistics Portal, [https://www.wto.org/english/res_e/statis_e/statis_e.htm](https://www.wto.org/english/res_e/statis_e/statis_e.htm)

• WTO Regional Trade Agreements Portal, [http://rtais.wto.org/Ui/PublicMaintainRTAHome.aspx](http://rtais.wto.org/Ui/PublicMaintainRTAHome.aspx)


• My Webpage (with articles, maps, etc.) [http://tinyurl.com/laurelterry](http://tinyurl.com/laurelterry)

• ABA ITILS Webpage & Toolkit, [http://tinyurl.com/ABAITILS](http://tinyurl.com/ABAITILS) and [http://tinyurl.com/statetoolkit](http://tinyurl.com/statetoolkit)

• ABA GATS-Legal Services Miscellaneous Page (link to WTO legal services studies, etc.), [http://tinyurl.com/GATSmisc](http://tinyurl.com/GATSmisc)
These and other slides are posted here:

http://tinyurl.com/laurel-terry-slides

Appendix 1: Int’l Mobility Policies

4 Types of Limited Admission Policies:

• Foreign Legal Consultants [e.g., Home Country law, int’l law]
• Foreign Temporary Transactional Work (FIFO)
  – Also includes international ADR, but ADR can be a separate policy
• Foreign Pro Hac Vice [temporary practice before a tribunal]
• Foreign in-house counsel

Full Admission:

• Some jurisdictions also grant foreign lawyers the ability to become fully admitted.

“Association” addresses relationships not the active practice rights of foreign lawyers in a jurisdiction
Appendix 2: Global Regulation Issues

- **Who regulates:**
  - Self-regulation, co-regulation, other models? See, e.g., UK Legal Services Board

- **What is regulated:**
  - Should regulators regulate services or providers? i.e. law firms? ABS? paralegals? See, e.g., Law Society of Upper Canada, UK LSB

- **When should regulation take place:**
  - Should regulation be ex-ante or post-hac? See, e.g., New South Wales, Australia, Canada

Issues Regulators Face (con’t.)

- **Where:**
  - In a virtual world, where may lawyers practice and who should regulators have jurisdiction over?

- **How:**
  - Should regulators use an outcomes-based approach or a rules-based approach? See New South Wales & UK LSB

- **Why:**
  - What should regulation be trying to achieve? Should there be “regulatory objectives”? (UK, US)