

An Introduction to the Paris Forum on Transnational Practice for the Legal Profession

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During two historic days in Paris in November of 1998, representatives from around the world joined together to discuss the transnational practice of law. The *Paris Forum on Trans-national Practice for the Legal Profession* is historic because it was the first meeting of multiple bar associations devoted entirely to a discussion of the transnational practice of law. Before the *Paris Forum*, some bar organizations had set aside time during their meetings to discuss the transnational practice of law and *transnational legal services* had been included as a topic in general conferences that were not limited to legal services or legal topics. The *Paris Forum*, however, was the first meeting of lawyers from around the world devoted solely to this topic. The *Paris Forum* also provided the first opportunity for three of the world's leading bars to circulate discussion papers outlining their views on various transnational practice issues.

Because the issues addressed at the *Paris Forum* will be central to the next millennium and the regulation of lawyers throughout the world, it is important to describe how and why this meeting occurred, the pre-meeting preparations and the nature and results of the meeting. The *Paris Forum* has the potential to affect the system of justice and rule of law throughout the world; Dickinson's *Journal of International Law* is therefore extra-ordinarily pleased to have the opportunity to memorialize the

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Forum's work. It is a pleasure for me to introduce the *Paris Forum* and set it in context.

By agreement with the *Paris Forum* sponsoring bar associations, this *Introduction* is descriptive, rather than evaluative. Indeed, one might conclude that my *Introduction* is too descriptive, with its inclusion of details about who was invited, who attended, the locale, the hospitality and the agenda items. I deliberately have chosen to err on the side of over-inclusion, rather than under-exclusion because such seemingly trivial details, in hindsight, may be viewed as quite significant to the development and regulation of transnational legal practice. For example, in hindsight, one might conclude that the discussions about the shape of the table at the Vietnam War-Paris Peace Talks were relevant to the outcome of the peace talks.¹ Similarly, a reduction in the size of the negotiating groups has been credited with some of the breakthroughs in the Northern Ireland Peace Talks.² Karen Dillon's reporting about the GATS agreement has shown how seemingly small factors led to the surprise result of legal services being covered by GATS.³ In short, Marshall McLuhan may indeed have been correct when he said "the medium is the message."⁴ Because there was very little contemporaneous reporting about the *Forum* (and no other source for *legislative history* or background information) and because it is premature to know what is important and what is trivial, I have included details that some readers may find boring; therefore, I ask the reader's indulgence if some of these details appear trivial or irrelevant.

Section 1 of this *Introduction* briefly introduces the phenomenon, ever increasing, of the transnational practice of law. Section 2 provides a brief overview of some regulatory responses to transnational legal practice. In particular, this section notes the inclusion of legal services as one of the services covered by the GATS (General Agreement on

1. See, e.g., *War Reviewed at Paris Meeting: 'Why Did You Desert Us?' Vietnamese Ask Kissinger*, L.A. TIMES (Dec. 5, 1987) at A38 (reporting that a detail that delayed Vietnam War-Paris Peace talks for many months was the shape of the table at which the U.S. and North Vietnamese delegation should sit and that finally, it was agreed the table should be rectangular, and the amount of space allocated to each delegate was measured down to the last centimeter.)

2. See, e.g., Kevin Cullen, *Negotiating Table Getting Smaller in Belfast*, B. GLOBE, Dec. 9, 1997 available in 1997 WL 16086364; see also Gregory Gordon, *Protocol Slips Could Threaten Peace Talks*, DET. NEWS, Oct. 20, 1991 available in 1991 WL 4666881 (describing relationship to Mideast peace talks of protocol issues such as who shakes hands, who sits where, who speaks first, what language, what food, and whether flags are displayed).

3. Karen Dillon, *Unfair Trade?* AM. LAW. Apr. 1994, at 54-57. See *infra* note 12 and accompanying text for a discussion of the GATS.

4. MARSHALL MCLUHAN, *THE MEDIUM IS THE MESSAGE: AN INVENTORY OF EFFECTS* (1968).

Trades in Services). Section 3 explains the objectives of the *Paris Forum*, including its relationship to the GATS. Section 4 summarizes the preparations made for the *Paris Forum*. Section 5 introduces the work product of the *Paris Forum*, including the conference agenda and discussion papers prepared by the three major sponsors on certain agreed-upon issues. Section 6 summarizes the events of the *Paris Forum*. Section 7 concludes with some observations about the future of transnational legal practice regulation.

1. The Transnational Practice of Law Phenomenon

Most lawyers still work in relatively small firms and still work within the confines of their own country's borders.⁵ Nevertheless, the "globalization" phenomenon clearly has hit legal services. An increasing number of lawyers work with foreign clients, work with foreign lawyers or a foreign legal system, or work, at least occasionally, in foreign countries.⁶ This growth should not be too surprising; indeed, given clients' ever-expanding global business and personal interests, it probably was inevitable.

Moreover, the growth of transnational legal practice is only

5. See, e.g., Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737, 738 (1994) ("transnational law practice is numerically a trivial component of all national legal professions and will remain so for the foreseeable future. Even in the American legal profession, generally characterized as the most aggressively competitive and internationalist, foreign branches contain fewer than 2000 lawyers—or less than a quarter of a percent of the profession (and many of them are foreign qualified lawyers practicing local law."); Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 402 (1994) (In 1988, less than 20% of U.S. lawyers worked in firms with more than 10 lawyers); see also David M. Trubek, Yves Dezalay, Ruth Buchanan & John R. Davis, *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407 (1994) (describing the impact of U.S. lawyering styles elsewhere in the world and the increase in transnational legal practice and internationalization of substantive law fields).

6. See generally SYDNEY M. CONE, III, INTERNATIONAL TRADE IN LEGAL SERVICES 1:19 (1996) [hereinafter CONE]; Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737, 764 (1994) (reporting statistics about the increase in foreign offices by law firms around the world); Mary C. Daly, *Practicing Across Borders: Ethical Reflections for Small Firm and Solo Practitioners*, PROF. LAW. 123 (1995) (noting the growth of transnational practice issues for small firm and solo lawyers because of, *inter alia*, the growth of the immigrant community with legal ties to homelands); Laurel S. Terry, *A Case Study of the Hybrid Model For Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 FORDHAM INT'L L. J. 1382 (1998) [hereinafter "Terry, Cross Border Legal Practice"] (describing the globalization phenomenon); *The Global 50*, AM. LAW. 45, 48 (Nov. 1998) (providing a table listing the worldwide offices of the AMERICAN LAWYER'S Global 50 law firms).

accelerating. For example, statistics from the U.S. Department of Commerce Bureau of Economic Analysis show a twenty-fold increase - from \$97 million to \$1.9 billion - between 1986 and 1996 with respect to the export of U.S. legal services.⁷ The U.S. import of foreign legal services also grew significantly from 1986 to 1996, increasing from \$40 million to \$516 million.⁸ Moreover, the significant numbers of announcements of lateral hires of foreign lawyers⁹ and the creation of

7. See U.S. Department of Commerce, Bureau of Economic Analysis, Table 1.- Private Services Transactions by Type, 1986-96 (visited Sept. 27, 1999) <<http://www.bea.doc.gov/bea/ai/1097srv/table1.htm>> [hereafter 1999 Bureau of Economic Analysis Table 1].

At least one commentator has suggested that these numbers are misleading because they seem "to combine gross fees and reimbursed expenses and to lump together all such revenues that were received in respect of 'foreign clients' whether generated domestically or abroad. Being a gross-revenue number, it also does not reveal the net effect, either on revenues generally or on revenues generated abroad, operating expenses and capital outflow abroad, including the outpost-launching costs and 'financial burdens' . . ." CONE, *supra* note 6, at 1:19. While these criticisms may be valid, the point remains undisputable that regardless of what these numbers include, they are increasing substantially.

8. See 1999 Bureau of Economic Analysis Table 1, *supra* note 7.

9. A review of 1999 lawyer announcements reveals significant lateral hires and mergers by law firms of lawyers licensed in a different country than the primary office of the law firm. Moreover, the pace of this transnational lateral transfers appears to be increasing. Compare generally INT'L FIN. L. REV. (Jan.-Dec. 1997) with *Loeff splits to go separate ways*, INT'L FIN. L. REV. 4 (Aug. 1999) (Benelux firm Loeff Claeyts et. al split, some of whom joined U.K. firm Allen & Overy); *Mayer Brown expands London corporate finance practice*, INT'L FIN. L. REV. 4 (Aug. 1999) (U.S. firm Mayer, Brown & Platt's third lateral hire this year in London is a partner from a mid-sized U.K. firm); *SJ Berwin sets up new Spanish office, expands in Brussels*, INT'L FIN. L. REV. 3 (July 1999) (U.K. firm laterally hires Spanish lawyers from B Cremades); *Heard at the Bar*, INT'L FIN. L. REV. 4 (July 1999) (U.S. firm Oppenheimer et. al. hired the French practice of Gassenbah & Roche); *Continental Firms Merge*, INT'L FIN. L. REV. 5 (July 1999) (German, Swiss, Italian and French firms joined to form the partnership BBLP); *Cameron McKenna confirms new European Alliance*, INT'L FIN. L. REV. 3 (June 1999) (U.K. firm has joined with five other European firms in an alliance); *Heard at the Bar*, INT'L FIN. L. REV. 4 (June 1999) (U.K. firm Ashurst Morris Crisp recruited two German lawyers from a German mid-size firm and a Big-5 firm); *id.* (U.S. firm Sherman & Sterling poached an Ashurst Morris Crisp partner for its London office); *Gide exodus prompts management rethink*, INT'L FIN. L. REV. 3 (May 1999) (French firm lost partners to U.S. firm Allen & Overy & Linklaters); *Heard at the Bar*, INT'L FIN. L. REV. 4 (May 1999) (Weil Gotshal loses a partner to U.K. firm Freshfields); *id.* (Sherman & Sterling recruits four lawyers from leading U.K. firms); *id.* (U.K. firm Linklaters & Paines requires lawyers from U.S. firm White & Case); *Freshfields scoops Dutch lawyers for Amsterdam office*, INT'L FIN. L. REV. 6 (May 1999); *Heard at the Bar*, INT'L FIN. L. REV. 4 (Apr. 1999) (U.S. firm Wilmer Cutler & Pickering hired the treasurer of Germany's CDU opposition and former minister); *Denton forges Scandinavian link*, INT'L FIN. L. REV. 5 (Apr. 1999); *Heard at the Bar*, INT'L FIN. L. REV. 4 (Mar. 1999) (U.K. firm Lovell White Durrant made its first move into U.S. law securities work by hiring a lawyer from U.S. firm Milbank, Tweed); *Graham & James expands in Italy*, INT'L FIN. L. REV. 5 (Mar. 1999) (U.S. firm expands by merging with an Italian energy law boutique firm); *Revealed: the US firm offering, 1 million in*

the first transatlantic, trans-English Channel law firm¹⁰ suggests that this growth may be increasing at a faster pace than ever. Since 1991, legal services have been the fourth largest U.S. export in the business, professional and technical services sector.¹¹ In sum, although the transnational practice of law is still relatively small, it is, nonetheless, an important and growing segment of the legal services market.

2. Regulatory Responses to the Transnational Legal Practice Phenomenon

Globalization of legal services will lead, increasingly, to issues of regulation. It is perhaps not surprising, then, to find a vast increase in the regulatory and advisory policies that cover transnational legal practice. The regulatory schemes applicable to transnational legal practice that have emerged in the last ten years include the following:

- the GATS, which was adopted as an annex to the agreement creating the World Trade Organization or WTO;¹²
- NAFTA, the North American Free Trade Agreement;¹³

London, INT'L FIN. L. REV 3 (Feb. 1999) (U.S. firm McDermott Will & Emery is offering \$1.65 million or more for an English lawyer); *Sullivan & Cromwell hires first English lawyer*, INT'L FIN. L. REV 3 (Feb. 1999); *Gide calls on Paris Bar to stem partner poaching*, INT'L FIN. L. REV 3 (Feb. 1999); *Heard at the Bar*, INT'L FIN. L. REV 4 (Jan. 1999) (U.S. firm Morrison & Foerster hired a lawyer from a German firm to staff its Brussels office); *Stephenson Harwood in Brussels joint venture, abandons Fidal link*, INT'L FIN. L. REV 5 (Jan. 1999) (U.K. firm to join Italian and French firms, severing link with KPMG's Paris firm Fidal). See also *Hands across the water*, LEGAL TIMES, Apr. 5, 1999, at 3 (noting merger of legal consulting firm Hildebrandt and a London-based consulting firm).

10. See, e.g., *Clifford Chance Becomes the World's Largest Firm*, INT'L FIN. L. REV. 31 (Aug. 1999) (reporting merger of UK firm Clifford Chance, U.S. firm Rogers & Wells, and German firm Pünder, Volhard, Weber & Axster).

11. See, e.g., 1999 Bureau of Economic Analysis Table 1, *supra* note 7; see also Gary Taylor, *U.S. Firms are Export Machines*, NAT'L L. J. May 30, 1994, at A6-A7.

12. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations: General Agreement on Trade in Services, Dec. 15, 1993, 33 I.L.M. 44 (1994) [hereinafter GATS] also found at WORLD TRADE ORGANIZATION LEGAL TEXTS (visited Sept. 27, 1999) <<http://www.wto.org/wto/legal/finalact.htm>>. See generally Terry, *supra* note 6, 1393-1397 (providing a short overview of GATS' application to lawyers).

13. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 605 (1993) [hereinafter NAFTA]; see generally Terry *Cross Border Legal Practice*, *supra* note 6, at 1397-1400 (providing a short overview of NAFTA's application to lawyers).

In addition to the NAFTA Treaty, the NAFTA Trilateral Lawyers Working Group successfully negotiated a model rule regarding foreign legal consultants. See JOINT RECOMMENDATIONS OF THE RELEVANT CANADIAN, MEXICAN AND AMERICAN PROFESSIONAL BODIES UNDER ANNEX 1210.5, SECTION B, FOREIGN LEGAL CONSULTANTS AND RELATED ASPECTS OF THE CROSS-BORDER DELIVERY OF LEGAL SERVICES (ADOPTED JUNE 19, 1998, MEXICO CITY) (on file with author) [hereafter

- the European Union (EU) directive on the establishment of lawyers from one EU country in another EU country;¹⁴
- the agreements between the ABA and the Brussels Bars,¹⁵ the ABA and the Paris Bar,¹⁶ and the City Bar of New York and the Paris Bar,¹⁷ and
- the OECD (Organisation of Economic Cooperation and Development) Convention on Bribery.¹⁸

In addition to these regulatory schemes, the following organizations have recommended policies relevant to the pro-vision of transnational legal services:

- the United Nation's *Basic Principles on the Role of Lawyers*,¹⁹ the International Bar Association's (IBA) Statement of General Principles for the Establishment and Regulation of Lawyers;²⁰

NAFTA Model FLC Rule]. For a history of the NAFTA Model FLC rule, see Terry, *Cross Border Legal Practice*, *supra* note 6, at 1398-1400; Cone, *supra* note 6, at 6:19 and App. IID:1-16; Orlando Flores, *Prospects for Liberalizing the Regulation of Foreign Lawyers Under GATS and NAFTA*, 5 MINN. J. GLOBAL TRADE 159, 178 (1996).

14. Council Directive No. 98/5, O.J. L 77/36 (1998) [hereinafter EU Establishment Directive].

15. See AGREEMENT BETWEEN THE AMERICAN BAR ASSOCIATION AND THE FRENCH LANGUAGE ORDER OF THE BRUSSELS BAR AND THE DUTCH LANGUAGE ORDER OF THE BRUSSELS BAR, AUG. 6, 1994 reprinted in Terry, *Cross Border Legal Practice*, *supra* note 6, at 1483-1497) (discussing the ABA-Brussels Agreement).

16. See AGREEMENT BETWEEN THE AMERICAN BAR ASSOCIATION AND THE AVOCATS A' LA COUR D' APPEL DE PARIS, NOVEMBER 22, 1996 (on file with author); see also Donald H. Rivkin, *Transnational Legal Practice*, 32 INT'L L. 423, 423 (1998) (discussing implementation of ABA-Paris Bar Agreement); Donald H. Rivkin & Michael D. Sandler, *Transnational Legal Practice*, 31 INT'L L. 559, 559 (1997) (reporting the signing of the ABA-Paris Bar Agreement).

17. See MEMORANDUM OF UNDERSTANDING BETWEEN THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND THE AVOCATS A' LA COUR D' APPEL DE PARIS, OCTOBER 21, 1996 (on file with author); Donald H. Rivkin & Michael D. Sandler, *Transnational Legal Practice*, 31 INT'L L. 559, 559 (1997) (reporting the signing of the Association of the Bar of New York City-Paris Bar Agreement).

18. OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS, 33 I.L.M. 1 (1998) also found at <<http://www.oecd.org/daf/cmisis/bribery/20nov1e.htm>> (visited Feb. 19, 1999); see also Stuart H. Deming, *Foreign Corrupt Practices*, 33 INT'L L. 507 (1999); Peter Eigen, *Update: OECD Bribery Convention into force*, VOL. 45, N. 7 FED. LAW. 22-23 (Aug. 1998) (noting Canadian ratification of the treaty and that the treaty had been ratified by 11 of 34 countries, with ratification by the remaining 23 countries expected soon); O. Thomas Johnson Jr. & Donald J. Ridings, Jr., *The OECD Convention and the Emergence of an International Anti-Bribery Regime* in PRIVATE INVESTMENTS ABROAD 1998 6-1 (Matthew Bender 1999).

19. *Basic Principles on the Role of Lawyers*, U.N. General Assembly on the Prevention of Crime and the Treatment of Offenders (1990), A/conf.144/18-topicV & 72-7.

20. STATEMENT OF GENERAL PRINCIPLES FOR THE ESTABLISHMENT AND

- the Council of the Bars and Law Societies of the Bars of the European Community (CCBE) policy statement on professional secrecy and legislation on money laundering;²¹ and
- the Council of Europe's draft recommendation concerning the freedom to exercise the profession of lawyer.²²

The worldwide interest in multidisciplinary partnerships between lawyers and nonlawyers also is related to the efforts of the *Big 5* firms to provide services, including legal services, on a transnational basis.²³ Thus, within a very short period, a number of regulations and recommendations have emerged concerning the transnational practice of law.

3. The Objectives of the Paris Forum, including its Relationship to GATS

To understand the objectives of the *Paris Forum*, it is useful to have some background knowledge about the GATS' application to

REGULATION OF FOREIGN LAWYERS (ADOPTED JUNE 8, 1998) (on file with author).

21. See, e.g., *CCBE Policy Statement Concerning Professional Secrecy of Lawyers and Legislation of Money Laundering*, Nov. 14-15, 1997 (on file with author).

22. The Council of Europe, European Committee on Legal Co-operation (CDCJ) and Committee of Experts on Efficiency of Justice (CJ-EJ) Consolidated Version Draft Recommendation on the freedom of exercise of the profession of lawyer (May 28, 1999), Official Gazette of the Council of Europe: Committee of Ministers (1999) (on file with author).

23. Although many countries prohibit lawyers from being partners with nonlawyers, many lawyers in fact work in firms owned by nonlawyers, such as the *Big 5* accounting firms. See, e.g., *The Global 50*, AM. LAW. 45, 47 (Nov. 1998) (over 5500 lawyers work for the "Big 5" accounting firms doing something other than tax work); see also Phillippa Cannon, *The Big Six Move In*, INT'L FIN. L. REV. 25 (Nov. 1997) (comparing these figures with the figures in the 1998 *Global 50* article, *supra*, it appears that at least 5100 lawyers work for the Big 5 doing tax work.); see generally Laurel S. Terry, *What If? The Consequences of Court Invalidation of Lawyer-Accountant Multidisciplinary Partnership (MDP) Bans*, 1998 PRIVATE INVESTMENTS ABROAD, CH. 7 (1999) (describing MDPs and ethics issues); Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS ____ (1999) (forthcoming).

The American Bar Association Commission on Multidisciplinary Practice webpage provides a snapshot of some of the many countries and bar associations interested in the MDP topic. Among the interested entities are the Canadian National Bar, the Law Society of Upper Canada, New South Wales Bar, the Law Council of Australia, the CCBE, the Danish Bar, the German Lawyers Association (Deutsche Anwaltsverein). See generally <<http://www.abanet.org/cpr/multicom.html>> (visited Sept. 27, 1999) (see links to entities listed in hearing schedules and providing comments). See also Appendices B1-B7 to the Testimony of Laurel S. Terry, Mar. 11, 1999 found as links from <<http://www.abanet.org/cpr/multicomsched399.html>> (visited Sept. 27, 1999) (summarizing the testimony of the witnesses at the Commission's November, February and March hearings.)

lawyers. While a thorough explanation of GATS is beyond the scope of this article, a brief outline of GATS' application to lawyers is set forth below.

The GATS was signed in December 1993 and is one of several agreements signed in conjunction with the agreement creating the World Trade Organization [WTO]. To date, 134 countries have signed the GATS, including the U.S.²⁴ The GATS applies to legal services. This means that once a country signs the GATS, its regulation of legal services is automatically subject to certain provisions of GATS. For example, all GATS signatories are subject to a *transparency* requirement, which specifies that all relevant measures be published or otherwise publicly available.²⁵

In addition to these general requirements, most countries have included legal services on their *Schedule of Specific Commitments*, which means that legal services are subject to many additional provisions of GATS.²⁶ For example, if a country lists legal services on its *Schedule*, then its regulation of legal services not only must be *transparent*, but must also be administered in a *reasonable, objective and impartial manner*.²⁷ Although most countries included legal services on their *Schedules*, thus making them subject to many GATS provisions, most countries specifically omitted from coverage their *current* set of regulations.²⁸ This has the effect of requiring a country's *future regulation* of legal services to comply with GATS, but permits the existing set of regulations. Thus, commentators often describe GATS as creating *standstill* provisions.²⁹

One important aspect of GATS is its implementation mechanism.

24. There were 134 members of the WTO as of February 10, 1999. See *The [WTO] Organization Members* (visited Sept. 27, 1999) <<http://www.wto.org/wto/about/organsn6.htm>>.

25. See GATS, *supra* note 12, at Article III; see also Terry, *Cross Border Legal Practice*, *supra* note 6 at 1395.

26. See GATS, *supra* note 12, at Articles II, XVI-XVIII (Most-favoured-Nation Treatment, Domestic Regulation, Recognition, and National Treatment articles, respectively); see also Terry, *Cross Border Legal Practice*, *supra* note 6 at 1395.

27. See GATS, *supra* note 12, at Article VI (1).

28. See CONE, *supra* note 6, at 2:20-24 (listing in tables I-IV GATS members that submitted schedules of specific commitments for legal services; Table I also summarizes the nature of the commitments.); WTO-World Trade Organization, <<http://www.tradecompass.com/library/wto/schedulesandexemptions>> (last visit-ed Sept. 27, 1999) (contains Schedules of Specific Commitments for WTO members).

29. See, e.g., CONE, *supra* note 6, at 2:31-32; Michael J. Chapman & Paul J. Tauber, *Liberalizing International Trade in Legal Services: A Proposal for an Annex on Legal Services Under the General Agreement on Trade in Services*, 16 MICH. J. INT'L L. 941, 964, 967-968 (1995) (describing *standstill* provisions without using that term); Flores, *supra* note 13, at 178.

GATS is an example of a *legislative delegation model* of regulating cross border legal practice.³⁰ This is because of Article VI, which provides:

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, *the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:*

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.³¹ (Emphasis added).

In 1995, pursuant to the authority provided in GATS Article VI, the WTO Council on Trade in Services created the Working Party on Professional Services (WPPS); the Council directed the WPPS to begin its work on the accountancy sector.³² The WPPS originally had intended to turn to legal services as soon as it finished its work with the accountancy sector.³³ Thus, observers expected the WPPS would promptly address legal services; with that expectation in mind, the *Paris Forum* planning began.

With this background, one can now understand the impetus for the *Paris Forum*. The minutes of the second organizational (planning) session identify the following two objectives of the *Paris Forum*:

The participants affirmed that a primary purpose of the Forum was to serve as a vehicle for presentation of the views of an important segment of the legal profession to the Working Party on Professional Services of the World Trade Organization. Among other things, the Forum will emphasize to the WPPS that the legal profession has unique character and responsibilities and hence the WTO positions with respect to other professions (e.g., accountancy) should not serve as a precedent or a guide in the formulation of

30. See Terry, *Cross Border Legal Practice*, *supra* note 6, at 1392.

31. GATS, *supra* note 12, at Art. VI (4).

32. Decision on Professional Services, 33 I.L.M. 1259 (1994) (adopted by the Council on 1 March 1995 - S/L/3).

33. See Terry, *Cross Border Legal Practice*, *supra* note 6, at 1396, n. 43 (citing Ward Bower's report of a WTO briefing).

principles to govern the international regulation of the legal profession. Among other objectives, the Forum will provide opportunity for a plenary exchange of views among members of the profession on a range of subjects which are of common interest and concern.³⁴

The press release announcing the *Paris Forum* provides additional insight into the motivations for this conference:

On the occasion of the third Workshop of the OECD³⁵ on professional services, held in Paris on 20 and 21 February 1997, the subject of which was "favoring the liberalisation (of professional services) through regulatory reforms," it transpired that the profession of the lawyer raises specific problems not found in other professions.

Aware of the importance of Bars themselves taking the initiative in reflecting on professional practice in all its aspects at a time of global liberalisation, the American Bar Association, the Council of the Bars and Law Societies of the European Community, and the Japanese Federation of Bar Associations propose to call a *Forum on Transnational Practice for the Legal Profession* to be held in Paris on 9 and 10 November 1998.

The first objective of the *Forum* would be to create a platform for meetings and dialogue between Bar representatives and to emphasise the specific characteristics of the legal profession. The *Forum* will in this respect supplement the admirable efforts that international associations are now pursuing.

In addition it seems important to co-ordinate the self-scrutiny which is already taking place in the Bars themselves with a view to obtaining a consensus on the principles of liberalisation of services rendered by lawyers. This consensus could later on and, if

34. See Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (Paris, Nov. 22, 1997) at 2 (on file with author).

35. OECD is an acronym for the Organisation for Economic Co-operation and Development. The OECD was created by a Convention signed in December 1960. In 1996, twenty six countries were members of the OECD. The purposes of the OECD include fostering sustainable economic growth and expansion for member and nonmember countries and contributing to the expansion of world trade on a multilateral, nondiscriminatory basis in accordance with inter-national obligations. See, e.g., ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, INTERNATIONAL TRADE IN PROFESSIONAL SERVICES: ASSESSING BARRIERS AND ENCOURAGING REFORM 2 (OECD Documents 1996).

necessary also serve as a guide to the Working Party for the Professional Services of the World Trade Organisation.³⁶

The first and second OECD conferences on *Liberalisation of Trade in Professional Services*, like the third conference referred to in the *Paris Forum* press release quoted above, addressed topics much broader than the regulation of lawyers.³⁷ In short, to understand the full objectives of the *Paris Forum*, one must understand that it took place in the context of then-anticipated WPPS negotiations regarding barriers to trade in the provision of legal services.

4. Planning for the *Paris Forum*

As noted in the *Paris Forum* press release, the three entities that decided to organize and sponsor the *Paris Forum* were the American Bar Association Section of International Law and Practice (hereafter ABA),³⁸ the Council of Bars and Law Societies of the European Community or CCBE,³⁹ and the Japanese Federation of Bar

36. *Press Release of the Forum on the Transnational Practice for the Legal Profession*, Brussels, 22 April 1998 (on file with author); see also *November 22, 1997 Minutes of the Paris Forum Organizational Meeting*, *supra* note 34, at 2 (“It was also affirmed that, although the inspiration for the Forum was the conference on the architecture, engineering, accounting and legal professions held under the auspices of the Organization of Economic Co-operation and Development in February 1997, neither the OECD nor any other governmental organization would be requested to sponsor or participate in the Forum.”).

37. See, e.g., ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *LIBERALISATION OF TRADE IN PROFESSIONAL SERVICES* (OECD Documents 1995); Organisation for Economic Co-operation and Development, *INTERNATIONAL TRADE IN PROFESSIONAL SERVICES: ASSESSING BARRIERS AND ENCOURAGING REFORM* (OECD Documents 1996); OECD Conference Proceedings, *International Trade in Professional Services: Advancing Liberalisation Through Regulatory Reform* (OECD Documents 1997).

38. Although various *Paris Forum* documents refer to the “ABA” or “American Bar Association,” the *Paris Forum* Discussion Paper and stationery identify the sponsoring organization as the ABA Section of International Law and Practice, rather than the ABA generally. (The difference undoubtedly has to do with the layers of approval represented by the designation.) The term “ABA” is used throughout this article, but should generally be viewed as a reference to the ABA Section on International Law and Practice.

The ABA has over 400,000 members, which represents approximately 40-50% of U.S. lawyers. The ABA Section on International Law and Practice has approximately 15,000 members, including 1,100 foreign lawyers and 1,700 law students. See ABA Section of International Law and Practice, *1999-2000 Leadership Directory & Member Services Guide 5* (1999); see also *E-mail Message from ABA Service Center to Laurel S. Terry* (Oct. 12, 1999) (stating that according to State Bar information, there are 1,000,440 registered attorneys within the United States and 404,698 that are member of the American Bar Association) (on file with author).

39. Unlike the American Bar Association, individual lawyers may not join the CCBE. The CCBE consists of three representatives from the CCBE’s designated

Associations or JFBA.⁴⁰

Representatives from these three bar organizations met on six occasions to plan the *Paris Forum*.⁴¹ These organizational meetings never had more than nine people in attendance, although the identities of those present varied.⁴² Topics discussed at the six organizational meetings included: objectives and feasibility of the forum; sponsorship; participants, timing and organization of the conference; subject matters to cover; languages and translation services; the program schedule; funding, letterhead, invitations, and press releases; chairmanship of discussion topics; timing for submission of discussion papers; post-*Forum* meetings; and participation by the French government.⁴³

After considering the issue of sponsorship, the planners agreed that

Member and Observer States. The Member States include all of the EU countries and certain additional countries, such as Switzerland. The Observer States include, among others, several Eastern and Central European countries. See Laurel S. Terry, *An Introduction to the European Community's Legal Ethics Code: An Analysis of the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 1, 5-6 (1993); CCBE Homepage, (visited Oct. 6, 1999) <<http://www.ccbe.org>>.

40. See generally June 13, 1997 Minutes of the Paris Forum Organizational Meeting, *infra* note 41, at 1.

41. See Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (New York City, June 13, 1997); Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (Paris, Nov. 22, 1997); Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (Paris, Feb. 3, 1998); Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (New York City, Apr. 6, 1998); Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (Toronto, Aug. 3, 1998); Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, American Bar Association, Organization Meeting of Proposed Forum on Transnational Practice of Law, Procès Verbal (Vancouver, British Columbia, Sept. 14, 1998) (on file with author) [hereafter (date) Minutes of Paris Forum Organization Meeting].

42. See generally all of the Minutes of the Paris Forum Organization Meetings, *supra* note 41. For example, the JFBA had between two and four representatives at each meeting; Mr. Nozomu Ohara, Chair of the Foreign Lawyers and International Law Practice Committee, was present at every meeting. The CCBE had between one and three representatives at each meeting; Mr. Michel Gout, president of the CCBE, was present at every meeting. The ABA had between one and four representatives at each meeting; Mr. Donald Rivkin, Chair of the Transnational Law Practice Committee of the ABA Section of International Law and Practice, was present at each. *Id.*

43. See generally all of the Minutes of Paris Forum Organizational Meetings, *supra* note 41.

they would not request the OECD to organize the program because it would “convert the collaboration from a professional one to a diplomatic one.”⁴⁴ The CCBE secretariat in Brussels was selected to provide necessary coordination, organization and logistics.⁴⁵

After several discussions, the planners agreed to invite as participants, all bars from each of the twenty-nine OECD countries; the organizers also invited bars from three countries each in Asia, South American and Africa, whose countries were not members of the OECD. The non-OECD countries were China, India, the Philippines, Argentina, Brazil, Chile, Egypt, the Ivory Coast and South Africa.⁴⁶ In addition, each of the three sponsoring bars could designate three additional countries to invite.⁴⁷ The planners agreed that it might be necessary to “enlarge the presence of such bars” and to substitute one country for another, but concluded that they could decide on an *ad hoc* basis during the summer of 1998.⁴⁸ The planners also invited several regional and international bar associations, namely the International Bar Association, the Union Internationale des Avocats, Law Asia, the International Pacific Bar Association and the International Association of Young Lawyers and Inter-American Bar Association.⁴⁹ Initially, the planners determined that each delegation was entitled to have three persons speak, but could include an unlimited number of observers.⁵⁰ They later decided that for countries with more than one bar, each delegation should consist of no more than two authorized speakers and three observers.⁵¹ They also decided at a later point that the three sponsoring bars could send four delegates who were entitled to speak and an unlimited number of observers.⁵² The regional and international bar associations were asked to send one observer.⁵³ The planners

44. See *June 13, 1997 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 1.

45. *Id.*

46. See *February 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2. The *Minutes* do not explain how or why these countries were chosen.

47. *Id.*

48. See *April 6, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 3.

49. See *February 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2 and *August 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

50. See *February 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

51. See *February 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

52. See *August 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

53. *Id.*

ultimately decided that the bars of non-OECD countries and the regional and international bar associations should have the status of *observers*, which meant that they could attend all sessions and submit papers on subjects of their choice, but could not make oral presentations.⁵⁴ As noted below, however, this rule was not strictly adhered to; representatives of various regional bars did speak during the *Paris Forum*.⁵⁵

The three planning bars agreed to contribute up to \$9,000 towards expenses. Delegations from OECD countries were asked to contribute \$1,000 while delegations from non-OECD countries were asked to contribute \$500; delegations from less developed countries that considered the fee a hardship were to be given special consideration.⁵⁶

With respect to languages, the planners agreed to provide English, French and Spanish simultaneous translation services.⁵⁷ A delegation wishing to use a language other than English, French or Spanish was required to provide translation facilities at its expense.⁵⁸ The planners later agreed that Japanese would be one of the official languages of the Forum and that the Japanese would reimburse the CCBE for the cost of translation services.⁵⁹

The planning sessions addressed other logistical issues, including selecting a name for the conference, designing a joint letterhead, setting the conference date and location, designing the invitations and drafting a press release announcing the Forum.⁶⁰ With respect to the latter two items, representatives of the three sponsoring bars engaged in joint editing of the proposed invitation and press release during one of their organizational meetings.⁶¹

54. See *April 6, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 3.

55. See, e.g., *infra* notes 96, 98 and 100.

56. Compare *November 22, 1997 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 4 (proposing a flat \$1,000 charge) with *April 6, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 3 (setting the fee for non-OECD country delegations at \$500).

57. *Id.* at 3-4.

58. *Id.*

59. See *April 6, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 3.

60. See generally all minutes of *Paris Forum Organization Meetings*, *supra* note 41. The minutes of the first meeting show that the planners originally thought the Forum might be held in February 1998 in Brussels, but by the second planning session, the date had been moved back to November 1998 and the location changed to Paris. Compare *June 13, 1997 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2 with *November 27, 1997 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

61. See *April 6, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note

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INTRODUCTION TO PARIS FORUM

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The planning sessions also contemplated what would happen after the *Paris Forum*. For example, approximately halfway through the planning, the three sponsoring bars decided that “after the conclusion of the Forum, the CCBE, JFBA and ABA will formulate a set of joint conclusions and recommendation for submission to the World Trade Organization Working Party on

Professional Services.”⁶² Several months later, however, the bars’ formulated their post-Forum expectations as follows:

Shortly after the conclusion of the Forum, representatives of the CCBE, JFBA and ABA will meet to formulate conclusions and recommendations as to which a consensus has emerged, to identify principal areas of disagreement and to formulate a program for further consultation. While no decision was reached as to whether further sessions of the Forum would be convened, it was agreed that the three founding organizations should confer in 1999 and perhaps thereafter on a continuing basis.⁶³

By August 1998, the planners were considering the possibility of a press conference and a post-Forum meeting:

Consideration will be given to the conduct of a press conference at the conclusion of the Forum. It was tentatively agreed to meet in Tokyo in December 1998 for the purpose of evaluating the Forum and preparing a statement setting forth the matters as to which consensus was reached and perhaps also a statement of contested positions and a proposal for dealing with them at a further Forum or comparable gathering.⁶⁴

One of the most important set of activities the *Paris Forum* planners undertook was to set an agenda of topics to be discussed, to insist on circulation of discussion papers before the conference, and then to follow through on that agreement by producing discussion papers on the agreed-upon topics.

5. The Agenda for the *Paris Forum* and accompanying Discussion Papers

The *Paris Forum* was structured around three distinct topics:

- Uniqueness and responsibilities of the legal profession;
- Measures that might be taken for the reduction of impediments to the ability of lawyers to practice in jurisdictions other than that of their original licensure; and
- Forms of licensure.⁶⁵

The first two of these issue should be self-explanatory even to those

62. See February 3, 1998 Minutes of Paris Forum Organizational Meeting, *supra* note 41, at 4.

63. See April 6, 1998 Minutes of the Paris Forum Organizational Meeting, *supra* note 41, at 4.

64. See August 3, 1998 Minutes of the Paris Forum Organizational Meeting, *supra* note 41, at 3.

65. See, e.g., Forum on Transnational Practice for the Legal Profession November 1998 Programme, *infra* 34-35 [hereafter Programme.]

who are unfamiliar with transnational legal practice issues.

The third issue likely requires some brief explanation. One debate among the world's lawyers is whether to create a second type of law license for foreign lawyers. A person holding this second type of license often is referred to as a foreign legal consultant or FLC. Many countries restrict the type of law that may be practiced by a person holding this alternative law license (e.g. perhaps the lawyer may only practice the lawyer's "home state" law and not the law of the "host state" the foreign lawyer is visiting).⁶⁶ Some countries also limit the foreign lawyer's ability to form a law practice with local lawyers.⁶⁷ This third topic - forms of licensure - thus encompasses these types of issues.⁶⁸

Each sponsoring bars each agreed to prepare by July 20, 1998 its own paper that discussed these three topics.⁶⁹ These three discussion papers, which are reproduced in this Symposium, are part of what makes the *Paris Forum* so unusual and special. To my knowledge, never before had significant segments of the world's bars agreed on a set of topics to discuss - many of which have been historically contentious - and then drafted position papers on those topics.

The *Paris Forum* planners established its agenda over two meetings.⁷⁰ During their first meeting, the planners identified six issues for discussion, two of which had subtopics.⁷¹ During their second meeting, the *Forum* planners revised Original Agenda and set the Final

66. See, e.g., American Bar Association Section of International Law and Practice, *American Bar Association Section of International Law and Practice Report to the House of Delegates, Model Rule for the Licensing of Legal Consultants*, 28 INT'L L. 207, 226-229 (1994) [hereafter *ABA FLC Report*] (provides examples of such "scope of practice" provisions in various FLC rules); see also, Terry, *Cross Border Legal Practice*, *supra* note 6, at 1386-87, 1432-35 (comparing the "scope of practice" provisions in the ABA-Brussels FLC rule to the "scope of practice" provisions in the EU, NAFTA, ABA and IBA rules.)

67. See *ABA FLC Report*, *supra*, at 231-232; Terry, *supra* note 6, at 1458-1460 (comparing the "forms of association" rules in the ABA-Brussels Agreement with the "forms of association" rules in the EU, IBA, ABA and NAFTA rules, the latter of which limits partnerships between local and foreign lawyers.)

68. For a general discussion of issues that arise in a cross border legal practice context, see generally Terry, *Cross Border Legal Practice*, *supra* note 6.

69. See, e.g., *April 6, 1998 Minutes of the Paris Forum Organizational Meeting*, *supra* note 41, at 4. The date had previously been set at June 30, 1998, but was extended until July 20th. See *Nov. 27, 1997 Minutes of the Paris Forum Organizational Meeting*, *supra* note 41, at 2-3 and *February 3, 1998 Minutes of the Paris Forum Organizational Meeting*, *supra* note 41, at 2.

70. See generally all of the *Minutes of Paris Forum Organizational Meeting*, *supra* note 37.

71. See *June 13, 1997 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

Agenda, which grouped the issues under the three headings previously identified.⁷² The original and final agendas were as follows:

ORIGINAL AGENDA

- A. Social responsibility and independence of the legal profession
- B. Impact of multidisciplinary practice on the legal profession
- C. Measures to be taken for the elimination/reduction of impediments to the ability of lawyers to practice in jurisdictions other than their initial licensure, such as:
 - Ownership restrictions
 - Restrictions on partnerships between foreign and locally qualified lawyers
 - Restrictions on scope of practice
 - Local presence and nationality requirements
 - Educational requirements
- D. Desirability/undesirability of forms of licensure
 - Membership in host bar
 - Foreign legal consultants
 - Others
- E. Ethical issues presented by transnational practice
- F. Consumer protection issues presented by transnational practice.

⁷² See November 22, 1997 Minutes of the Paris Forum Organizational Meeting, *supra* note 41, at 2 [hereafter *Final Agenda*].

FINAL AGENDA

A. Uniqueness and responsibility of the legal profession

Ethical issues presented by transnational legal practice
 Consumer protection issues presented by transnational legal practice
 Social responsibility and independence of the legal profession
 Particular problems by multidisciplinary practice

B. Measures that might be taken for the reduction of impediments to the ability of lawyers to practice in jurisdictions other than their original licensure, such as

Ownership restrictions
 Restrictions on partnerships between foreign and locally qualified lawyers, including restrictions on partnership names
 Restrictions on scope of practice
 Educational requirements
 Local presence and nationality requirements

C. Forms of licensure

Membership in host bar
 Foreign legal consultant (or practitioner)
 Other forms of licensure
 Use of home or host title

Despite differences in the structure of the First and Final Agendas, the same themes dominated both lists. For example the Final Agenda topic entitled *Uniqueness and responsibility of the legal profession* included as its four subtopics, the first two and the last two topics that had been identified in the first planning session.⁷³ Similarly, the final agenda topic entitled *Measures that might be taken for the reduction of impediments* looked almost identical to the provisions set forth in the first planning session.⁷⁴

73. *Id.*

74. The title of the topics differ slightly from one another. During the first planning session the title was “Measures to be taken for the elimination/reduction of impediments to the ability of lawyers to practice in jurisdictions other than that of their initial licensure,” whereas the final title was “Measures that might be taken for the reduction of impediments to the ability of lawyers to practice in jurisdictions other than

The Final Agenda's third topic - *Forms of Licensure* - also drew heavily from the original agenda. For example, the final title of the third topic was a shortened version of the title from the original agenda: "desirability/undesirability of forms of licensure." Both the original and final agendas included as subtopics "membership in host bar" and "foreign legal consultant." The final agenda's third subtopic - other forms of licensure - appears to be an expanded version of the original agenda's subtopic entitled "other." The only significant difference is that the final agenda added a new subtopic entitled "use of home or host title."⁷⁵ In sum, although the structure and emphasis of issues may have changed slightly during the planning, the concerns of the planners appear to have remained relatively constant throughout the planning sessions.

Once the agenda topics were set, the three sponsoring bars divided among themselves the responsibility of introducing and moderating the discussion of these three topics during the Forum. In April 1998, the sponsors agreed that the JFBA representative would chair the discussion of the first topic; the ABA Section of International Law and Practice representative would chair the discussion of the second topic; and the CCBE representative would chair the discussion of the third topic.⁷⁶ After the introduction of each topic by the designated bar representative, the designated representatives from the other two sponsoring bars were to provide comments. After a break, discussion of the designated topic was open to the floor.⁷⁷ The planners recognized that the subject matter of the three sections overlapped and that certain sub-sections might be considered in more than one discussion group; the planners considered this a virtue, however, rather than a shortcoming.⁷⁸

that of their original licensure." Compare June 13, 1997 Minutes of Paris Forum Organizational Meeting, *supra* note 41, at 2 with November 22, 1997 Minutes of Paris Forum Organizational Meeting, *supra* note 41, at 2 (differences underlines). In addition, the final version of the second subtopic added a clause so that it said "restrictions on partnerships between foreign and locally qualified lawyers, including restrictions on partnership names (differences underlined) and the order of the fourth and fifth subtopics (educational requirements; local presence and national requirements) were switched in the two versions." *Id.*

75. *Id.*

76. See April 6, 1998 Minutes of the Paris Forum Organizational Meeting, *supra* note 41, at 4. At an earlier meeting, both the CCBE and JFBA had expressed a preference to act as a leader for the first topic and the ABA had expressed a preference to serve as leader for the second topic. See February 3, 1998 Minutes of the Paris Forum Organizational Meeting, *supra* note 41, at 4.

77. *Id.*

78. See April 6, 1998 Minutes of the Paris Forum Organizational Meeting, *supra* note 41, at 4.

As agreed, all three of the sponsoring bars prepared a discussion paper for advance circulation. The CCBE, JFBA and ABA Section of International Law and Practice papers were translated into French and converted to a uniform format by the CCBE secretariat and sent to the participating organizations approximately two months before the *Forum*.⁷⁹ The sponsors also invited each delegation to supply a “written contribution on the subject of its choice.”⁸⁰ Three bars - the Korean, Australian and New York bars - accepted this invitation and distributed a paper.⁸¹

The subject matter headings in the sponsoring bars’ discussion papers followed, in some measure, the final agenda, but also departed significantly from it.⁸² With respect to the first topic, the JFBA followed the final agenda headings with two exceptions. First, the JFBA expanded the final agenda subtopics by including subtopics under the final agenda’s subtopics (*i.e.*, sub-subtopics). Second, the JFBA Discussion Paper subsumed the “ethical issues presented by transnational legal practice” subtopic within the “social responsibility and independence of the legal profession” subtopic, as opposed to having them as separate subtopics as in the final agenda.

The JFBA Discussion Paper followed the final agenda’s second topic relatively closely, again with two exceptions. The JFBA again expanded the final agenda subtopics so that they included sub-subtopics. Second, the JFBA added an additional subtopic of “mutual recognition agreement.” With respect to the

79. See *August 3, 1998 Minutes of the Paris Forum Organizational Meeting*, *supra* note 41, at 2 (standard format prepared by CCBE) and *September 14, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2 (materials mailed during the week of Sept. 14, 1998).

80. See *Paris Forum Press Release*, *supra* note 36. The copying and distribution costs, however, would be borne by the delegate bar preparing the paper. See *February 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

81. See *infra* at 137.

82. By agreement with the sponsoring bars, this *Introduction to the Paris Forum* article is intended to be descriptive, rather than evaluative. This comment is thus intended as an observation about the structure of the *headings* or organization of the various discussion papers and not as a comment on the *substance* or *content* of the Discussion Papers themselves.

third topic of *Forms of Licensure*, the JFBA Discussion Paper followed identically the structure set forth in the final agenda.⁸³

Similar to the JFBA Discussion Paper, the headings in the CCBE Discussion Paper followed the final agenda structure in many respects, but also deviated from the final agenda in significant respects. The CCBE's Discussion Paper was identical to the final agenda with respect to the first topic of *Uniqueness and responsibilities of the legal profession*. The CCBE Discussion Paper followed less closely the final agenda's second topic *about Measures that Might Reduce Impediments to Practice*. Although the CCBE Discussion Paper uses this as its second heading, the subsections are completely different from those in the final agenda; on the other hand, the CCBE places under a different heading, four of the five subtopics that had appeared under this heading in the final agenda. The new heading for these subtopics states:

In addition to the aforesaid facts, general principles and reflections, a number of specific issues or questions may need some further comments or clarification.⁸⁴

(The CCBE added two other subheadings under the subtopic on restrictions of partnership; the CCBE omitted the educational requirements subtopic heading from this section; and shortened the agenda topic of "local presence and nationality requirements" to a heading on "nationality requirements.") The CCBE Discussion Paper also changed the titled of the final agenda's third topic on *Forms of Licensure*. The CCBE's last heading is entitled "Practice conditions" and its headings are quite different from those in the final agenda.⁸⁵

The headings in the ABA Section of International Law and Practice Discussion Paper were identical to the final agenda with respect to the first and third topics. With respect to the second topic, however, there was no overlap between the subtopic headings set forth in the ABA Discussion Paper and those found in the final agenda.⁸⁶

In sum, although the ABA, JFBA and CCBE discussion papers do not follow an absolutely identical format, as one might perhaps have expected after they agreed on the final agenda, they nonetheless are

83. See *JFBA Discussion Paper*, *infra* at 109.

84. See *CCBE Discussion Paper*, *infra* at 89.

85. Compare *Final Agenda*, *supra* note 72 and accompanying text with *CCBE Discussion Paper*, *infra* at 89.

86. Compare *Final Agenda*, *supra* note 72 and accompanying text with *ABA Discussion Paper*, *infra* at 55. The topics in the ABA Discussion Paper were: "1. Role of the American Bar Association; 2. Institutional and commercial structure of the legal profession; 3. Barriers to practice in host countries; and 4. Governmental and non-governmental efforts to reduce formal and informal barriers." See *ABA Discussion Paper*, *infra* at 55.

exceedingly useful. These papers contributed to the *Paris Forum*'s stated objective of providing a plenary exchange of views among members of the profession on a range of subjects of common interest and concern. These papers also should provide the basis for more in-depth discussions in the future about the agreements and disagreements among various of the world's bars. These departures may reflect the different emphases and concerns of the sponsors

6. What Transpired at the *Paris Forum*

Approximately one hundred five individuals, from twenty-five countries, attended the *Paris Forum*.⁸⁷ Over two-thirds of the countries invited had representatives at the *Paris Forum*.⁸⁸ Most of those attending came from OECD countries, but the *Paris Forum* also had representatives from the Czech Republic, Hungary, Poland, South Korea and Turkey.⁸⁹ The three sponsors publicly expressed their disappointment that the invited bars from developing countries had not attended,⁹⁰ but cost may have been a factor. Although November is not the high season in Paris, it is an expensive city.⁹¹ Moreover, transportation costs were significantly cheaper for the European lawyers attending than they would have been for the invited delegates from Argentina, Brazil, Chile, Egypt, India, Ivory Coast, Mexico, the Philippines and South Africa. Many bars may not have had sufficient

87. See *Paris Forum Joint Closing Communique*, which is reproduced *infra* at 173 and *Paris Forum Participants' List*, which is reproduced *infra* at 36. The latter item may not be completely accurate since it was prepared ahead of time and distributed during the *Paris Forum* to the attendees. The *Participants' List* but not the *Closing Communique* lists representatives from Greece and the Inter-Pacific Bar Association.

88. Compare *Paris Forum Joint Closing Communique*, *supra* note 87 (in addition to the three sponsors, representatives from 25 countries and three international or regional bar associations attended the *Forum*) with *List of Invitees to Forum (980618)* (on file with author) (showing invitees from 51 different bar organizations, representing 38 countries) and *August 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2 (identifying six international and regional bar associations that were invited, for a total of 57 invitees). The two-thirds figure was derived by dividing the 25 countries that had bar representatives at the Forum by the thirty-eight countries identified on the Invitee List. (Although 25 countries had representatives, not all invited bars from those countries may have attended.)

89. See *Paris Forum Participants List*, *supra* note 87. Bar representatives from the following twelve countries were invited but did not attend: Argentina, Brazil, Chile, China, Iceland, India, the Ivory Coast, Luxembourg, Mexico, the Philippines and South Africa. Compare *Participants List*, *supra*, with *Invitee List*, *supra* note 88.

90. The events of the *Paris Forum* were not recorded or otherwise transcribed. This recitation is based on rather detailed notes I took during the conference [hereafter Terry notes of *Paris Forum*] (on file with author).

91. See, e.g., <<http://www.state.gov/www/perdiems/9811perdiems.html>> (visited Oct. 6, 1999) (U.S. government per diem rate for Paris in November 1998 was \$270 per day).

money to devote to this type of project, nor members who would be able to shoulder, either personally or through their employer, the substantial expenses associated with the conference.

The *Paris Forum* took place at the Maison du Barreau, which is the home of the Paris Bar Association. The facilities were superb. The sessions were held in a large movie-theater-type amphitheater. The panelists sat on a raised dais. The delegates were provided with comfortable chairs and simultaneous translation earphones.

The logistics appeared to run quite smoothly. As noted above, the *Paris Forum* sponsors circulated their papers to the participating bar associations before the conference; bound copies of these papers were available (and in sufficient number) at the conference for all individual conference attendees. The New York, South Korean and Australian bars also had prepared papers for the *Paris Forum*.⁹² Copies of these papers, printed on *Paris Forum* letterhead, were freely available during the conference. When demand arose during the conference for a paper referred to by one of the speakers, this paper was copied and then made available.

For the most part, the *Paris Forum* progressed as planned by the sponsors. It began with several introductory speeches⁹³ and then focused on the first topic, *Uniqueness and Responsibilities of the Legal Profession*, moderated by the JFBA representative. Following the observations by the CCBE and ABA designated representatives, over fifteen delegates offered comments, often extensive.⁹⁴ The discussion concluded when lunch was served lunch in the Maison du Barreau. A similar format occurred on Monday afternoon with respect to the second topic:

Measures that might be taken for the reduction of impediments to the ability of lawyers to practice in jurisdictions other than that of their original licensure.

An ABA representative introduced the topic, with remarks from JFBA and CCBE representatives, followed by over ten lengthy sets of

92. See *infra* at 137, 167, and 171, for the text of the Discussion Papers submitted by the Australian, New York and South Korean bars, respectively.

93. As noted on the Programme, the *Paris Forum* began with several introductory speeches. Madame Dominique de La Garanderie, Bâtonnier (president) of the Paris Bar, provided the first greeting. See *Programme, supra* note 65; accord Terry Notes of *Paris Forum, supra* note 90. Her remarks were followed by the remarks of the French Minister of Justice, Madame Elisabeth Guigou, whose remarks were read in her absence by another Justice Department representative. *Id.* Following these comments, the JFBA, CCBE and ABA presidents each offered a set of remarks. *Id.* The Presidents' remarks are included in this Symposium issue.

94. *Id.*

comments from the delegates, often followed by a colloquy with the designated speakers from the sponsoring associations. The discussion lasted until approximately 6:00 p.m. At that point, most delegates adjourned to a cocktail reception in the function room (salon) of the Interministerial Delegation for the Liberal Professions in the *de Broglie Mansion House*, for a reception in the company of the Inter-ministerial Delegate Mr. Edouard de Lamaze.⁹⁵

Tuesday morning, November 12th, began with a discussion of the third topic, *Forms of Licensure*. A CCBE representative introduced the topic, which was followed by comments from the ABA and JFBA representatives and many other delegates.⁹⁶ The discussion continued until lunch, which was again served at the Maison du Barreau.

The Tuesday afternoon session was designated as a *General Discussion* of the three subjects, with representatives from each of the three sponsoring bars to serve as co-sponsors. At this point, however, the *Paris Forum* seemed to deviate from its agenda. An Australian representative stood up and announced that the Australian delegation had prepared a *Statement of Understanding* that it hoped the *Paris Forum* participants might adopt. The speaker indicated, however, that he was sensitive to the politics and therefore wanted to seek input from the participants before making a motion.⁹⁷ This comment triggered a lengthy and vigorous discussion among the representatives of the sponsoring associations and numerous other delegates; various representatives talked about their expectations for the *Forum*, whether they had reached a consensus on certain points, whether to continue the *Forum* in future years and how to improve the *Forum*.⁹⁸ Ultimately, following the discussion, the Australian representative did not introduce any motion to have the *Statement of Understanding* adopted.

Because this *Introduction* is descriptive, rather than evaluative, I offer no comment on whether they reached any consensus during this final discussion period with respect to the substantive issues. I will comment briefly, however, about *my perceptions* of this discussion about procedural issues.⁹⁹ My perception is that those participants who commented believed that: 1) the *Paris Forum* had been a worthwhile endeavor; 2) the *Paris Forum* was worth repeating, perhaps every two years; 3) given the cost to attend, it would be helpful to have this type of event held in connection with another meeting that many

95. See *Paris Forum Social Programme*, which is reprinted *infra* on 42.

96. See Terry Notes of *Paris Forum*, *supra* note 90.

97. *Id.*

98. *Id.*

99. My perceptions obviously are subjective and could be completely inaccurate.

representatives would be attending, such as an International Bar Association meeting; 4) for the next *Forum*, more representatives from additional bars, especially those in developing countries, should be invited and attend; and 5) the *Paris Forum* should strive to produce a concrete product, such as a set of principles on which there might be agreement.

As noted above, despite some suggestions to the contrary, there ultimately was no resolution introduced or voted upon during the *Paris Forum*. Nevertheless, the *Paris Forum* concluded with a document that arguably contains several points of substantive agreement. Before the *Paris Forum* adjourned, the sponsoring bars circulated the *Joint Closing Communique* they planned to issue. Several members of the audience raised questions about some language in this *Communique*. The session moderators accepted several suggestions and edited the *Communique* on the spot. The moderators then read the edited version of the *Communique* aloud without hearing further objections. Many provisions of this *Communique* address the substantive issues addressed during the *Paris Forum*:

The Presidents of each organisation - Philip S. Anderson of the ABA, Michel Gout of the CCBE and Shigeru Kobori of the JFBA - called attention to the basic principles of the profession recognised in the entire world: a profession well educated and competent, a profession which exercises its expertise independently, a profession governed by ethical principles and a profession which recognises its responsibility towards the clients and the Public interest.

The bar leaders considered ways to facilitate the ability of lawyers to practice in foreign jurisdictions, an issue that will be on the agenda of the World Trade Organisation's Working Party on Professional Services in coming years and they decided to coordinate their efforts in order to answer in a concerted way. The Forum discussion also focused on the ability of accountants to form partnerships with lawyers. Also on the Forum agenda were ethical issues presented by transnational practice, social responsibility and independence of the legal profession and forms of licensure of foreign lawyers.

Representatives of the three organising associations as well as other participants affirmed that the legal profession performs a unique and valuable service in each of their societies. They affirmed as well that, despite their undoubted differences as to some issues, lawyers from all over the world share common values to a remarkable extent. The ABA, CCBE and the JFBA accordingly resolved to explore additional fora and procedures by which their

joint interests - and, more importantly, the interests of the communities they serve - can be advanced.¹⁰⁰

In sum, the *Paris Forum* planners may or may not have achieved all of their stated goals. But they undoubtedly achieved at least some of their goals by facilitating a serious discussion and exchange of views on important issues of cross border legal practice.

7. The Future: Some Observations about What May Lie Ahead

The *Paris Forum* planners originally had planned to meet in December 1998 in Tokyo to evaluate the *Paris Forum* and determine whether any consensus had been reached.¹⁰¹ This post-Forum meeting did not occur until September 13th and 14th, 1999.¹⁰² During this September meeting, the three Bars emphasized that the Forum is a consultative, rather than a policy-making body.¹⁰³ Perhaps not surprisingly in view of this perspective, the September 1999 meeting focused more on planning the second *Forum* than it did on analyzing what had or had not been achieved during the first Forum.¹⁰⁴ During the September Tokyo meeting, the planners tentatively scheduled the second Forum for November 22-23, 2000 in Brussels, following the meeting of the Rentrée of the Paris Bar.¹⁰⁵ They indicated that “[i]n invitees to the Forum [2000] will follow the 1998 pattern” and will include bars of OECD Member States, regional bar associations and other bar associations nominated by the ABA, CCBE & JFBA; the JFBA, for example, identified the bars from China, India, Singapore, Thailand and Malaysia.¹⁰⁶ Subsequent to the September 1999 meeting,

100. See *infra* at 173 for a copy of the entire *Paris Forum Closing Communique*.

101. See *August 3, 1998 Minutes of Paris Forum Organizational Meeting*, *supra* note 41, at 2.

102. See *American Bar Association Section of International Law and Practice, Council of the Bars and Law Societies of the European Community, Japan Federation of Bar Associations, Minutes of Organizational Meeting of Forum on Transnational Practice for the Legal Profession to be held in the year 2000, (Tokyo, Sept. 13-14, 1999)* [hereafter *Sept. 13-14, 1999 Minutes of Forum 2000 Organization Meeting*].

103. *Id.* at 1. These minutes state: “All agreed that the Forum is a consultative, not a policy-making body. Its purposes are to provide perspectives on problems and opportunities confronting the legal profession throughout the world and to encourage consultation and cooperation among bar leaders respecting such matters. To the extent that a clear consensus emerges as to a particular issue - *e.g.*, the desirability that the World Trade Organization (WTO) not commingle the legal profession with other professions in its projected studies—could be appropriate to express that consensus in a closing communique, but the primary purpose of the Forum is not to formulate or to promulgate joint ABA/CCBE/JFBA positions on any particular issue.”

104. *Id.*

105. *Id.* at 2.

106. *Id.*

however, the CCBE decided not to be a sponsor for a Forum 2000 meeting, given the costs and the current status of the WTO.¹⁰⁷

Part of the context that led to the *Paris Forum* has changed. In April 1999, without the WPPS having addressed legal services, the WTO Council on Trade in Services disbanded the WPPS and replaced it with a Working Party on Domestic Regulation.¹⁰⁸ Before it disbanded, however, the WTO Working Party on Professional Services issued two documents regarding the accountancy sector;¹⁰⁹ WTO *Guidelines*, in contrast to WTO *Disciplines*, are made pursuant to Article VII, para. 5 of GATS. This paragraph states that "Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services, trades and professions." Some have wondered whether the WPPS or WPDR may try to use these documents as the basis for discussion of the regulation of lawyers under GATS.¹¹⁰

The newly-formed Working Party on Domestic Regulation has assumed the responsibility for professional services, including legal services, but has not yet determined its agenda.¹¹¹ In addition to these

107. Telephone Interview with Donald C. Rivkin, ABA Representative to Paris Forum, (Nov. 29, 1999).

108. See WTO Council for Trade in Services, *Decision on Domestic Regulation* (Apr. 26, 1999) (visited Aug. 23, 1999) <<http://www.wto.org/wto/-services/sl70.htm>>. ("In accordance with paragraph 4 of Article VI of the GATS, the Working Party shall develop any necessary disciplines to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not constitute unnecessary barriers to trade in services. This shall also encompass the tasks assigned to the Working Party on Professional Services, including the development of general disciplines for professional services as required by paragraph 2 of the Decision on Disciplines Relating to the Accountancy Sector (S/L/63).").

109. See WTO COUNCIL FOR TRADE IN SERVICES GUIDELINES FOR MUTUAL RECOGNITION AGREEMENTS OR ARRANGEMENTS IN THE ACCOUNTANCY SECTOR (MAY 29, 1997) (visited Oct. 6, 1997) <<http://www.wto.org/wto/new/press73.htm>> and WTO COUNCIL FOR TRADE IN SERVICES DISCIPLINES ON DOMESTIC REGULATION IN THE ACCOUNTANCY SECTOR (DEC. 14, 1998) (visited Feb. 17, 1999) <<http://www.wto.org/wto/news/press118.htm>>. Article VI, para. 4 of GATS, *supra* note 12, required the Council for Trade in Services, through any appropriate bodies it may establish, to develop necessary disciplines to ensure that a Member State's domestic regulation meets certain specified criteria including transparency and not being more burdensome than necessary. As mentioned previously, the Council originally delegated this power to the Working Party on Professional Services, *supra* note 32.

110. This comment has been made to me by several lawyers familiar with transnational legal practice issues.

111. *Id.* The WPDR is unlikely to reach any conclusions soon. The Decision on Professional Services that created the WPDR directed it to report back by the end of the

activities, the WTO Third Ministerial Conference will begin in Seattle, Washington in November 1999.¹¹² This coincide with the beginning of a new round of trade talks which will address professional services and which easily could last three years.¹¹³ Consequently, the WTO context in which the *Paris Forum* occurred has changed substantially.

Despite (or perhaps because of) this change in the WTO Working Party structure, the *Forum* planners initially remained very interested in the WTO's activities with respect to the legal profession. The September, 1999 *Forum* organization meeting, for example, included an agenda of proposed topics for the *Forum 2000*. The second of three topics was *Formulation of Proposed WTO Disciplines on Domestic Regulation in the Legal Sector*.¹¹⁴ The planners further agreed that the ABA, CCBE and JFBA would each draft recommended WTO Disciplines for the legal profession following the pattern of the WTO Disciplines on Domestic Regulation in the Accountancy Sector adopted by the WTO Council for Trade in Services on December 14, 1998.¹¹⁵ Currently, however, it appears that the *Forum 2000* will not proceed as originally contemplated.¹¹⁶ Regardless of what happens with the *Forum 2000*, however, the *Paris Forum* may be the beginning of development of concrete proposals that ultimately could be presented to

new round of trade negotiations: "The Working Party shall report to the Council with recommendations no later than the conclusion of the forthcoming round of services negotiations." *Id.* The WTO has discouraged expectations that the negotiations will be completed within three years. See *The Seattle Ministerial* (visited Sept. 27, 1999) <<http://www.wto.org/wto/minist-/backgr.htm>>. ("The WTO's current agreements were the result of the 1986-94 Uruguay Round of negotiations. Although the outcome meant a major reform of world trade rules and a substantial reduction in trade barriers, many participants wanted to see further improvements in the trading system. In particular, the agreements on services (the General Agreement on Trade in Services, GATS) and on agriculture state that new negotiations will resume by the beginning of 2000. These two subjects are definitely going to be in the new negotiations. In addition, many WTO members have proposed including other issues in the negotiations. . . It's important to be clear that the Seattle Ministerial Conference will only be the beginning of the negotiations, just as the seven-year Uruguay Round was launched at a ministerial meeting in Punta del Este in 1986 and the six-year Tokyo Round was launched in Tokyo in 1973. After the launch in Seattle, the actual negotiations and work programmes will take place in Geneva, where the WTO is located. Many countries have suggested a deadline of three years for these new talks. The decision will be made by ministers in Seattle. Ministers will be aware that past experience has shown it is not always easy to complete large, complicated negotiations within the specified time.")

112. See *The World Trade Organization's Third Ministerial Conference, Seattle, Washington, United States of America, 30 November - 3 December 1999 found at* <<http://www.wto.org/wto/minist/seatmin.htm>> (visited Sept. 27, 1999).

113. *Id.*

114. *September 13-14, 1999 Minutes of Forum 2000 Organization Meeting, supra* note 102, at 9.

115. *Id.* at 2.

116. See *supra* note 107.

the WTO or the basis of WTO disciplines regarding the legal profession.

Whatever happens at the WTO, however, the phenomenon of transnational legal practice is clearly on the rise. Cross-cultural communication about transnational legal practice can only be helpful as the world's lawyers learn to better understand one another's interests and concerns. The fact that lawyers from around the world are struggling with similar issues merely increases the value of talking to one another, sharing ideas, and learning how we differ from one another.¹¹⁷ Accordingly, it is with very great pleasure and honor that I introduce this Symposium issue dedicated to the *Paris Forum*. As set forth in the table of contents, the items that follow include:

- The *Paris Forum* Programme¹¹⁸
- The *Paris Forum* Participant List¹¹⁹
- The *Paris Forum* Social Programme¹²⁰
- The Press Release Announcing the *Paris Forum*¹²¹
- The introductory speeches¹²²
- The discussion papers submitted by the ABA, CCBE & JFBA¹²³
- The additional discussion papers distributed by the Australian, New York and South Korean bars¹²⁴

117. As just one example, many of the bars around the world currently are grappling with the issue of how to handle proposed multidisciplinary partnerships between lawyers and nonlawyers, especially accountants. There has been significant sharing of ideas and information among the bars of the world. For example, the ABA heard testimony and received a report from Allison Crawley on behalf of the Law Society of England and Wales. See, e.g., *Written Remarks of Allison Crawley before the ABA Commission on Multidisciplinary Practice* (Nov. 1998) found at <<http://www.abanet.org/cpr/crawley.html>> (visited Sept. 27, 1999). Ms. Crawley later spoke before the 25th National Conference on Professional Responsibility, sponsored by the ABA Center for Professional Responsibility; Ms. Crawley stated in her remarks that the Law Society hoped to learn from the U.S.

Representatives from the CCBE, Canada and Australian Bar representatives also testified. See generally links from the ABA Commission on Multidisciplinary Practice website found at <<http://www.abanet.org/cpr/multicom.html>> (visited Sept. 27, 1999). For a summary of the testimony of all the witnesses the ABA Commission heard before preparing its report, see *Testimony of Laurel S. Terry and accompanying appendices* found as the last links from <<http://www.abanet.org/cpr/multicomshed399.html>> (visited Sept. 27, 1999).

118. See *infra* at 34-35.

119. See *infra* at 36.

120. See *infra* at 42.

121. See *infra* at 32-33.

122. See *infra* at 43.

123. See *infra* at 55.

124. See *infra* at 137.

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- The *Paris Forum* Joint Closing Communique¹²⁵

125. See *infra* at 173

