Infrastructure, the Rule of Law, and the Need for a Global Lawyer
Regulatory Umbrella Organization

Michigan State University College of Law Symposium
Lawyers as Conservators of the Rule of Law

Laurel S. Terry (LTerry@psu.edu)
Penn State Dickinson School of Law
September 9, 2011

An Excerpt from the US Television Show “West Wing”
[The woman is the US President's Chief-of-Staff shortly before the President leaves office]
http://www.youtube.com/watch?v=Ixgp9c_sGv4
Infrastructure

- It’s not sexy
- It makes for a lousy telethon
- It may be hard to find individuals willing to invest time and money to create it...
- But it is critical

Issues Facing 21st Century Lawyers

**Some Overarching Issues**

- **Who** regulates?
- Who (or what) is regulated?
- **When** does regulation occur?
- **Where** regulate?
- **How** does regulation occur?
- **Why** regulate?

**Some Specific Issues**

- Access to, and affordability of, legal services
- Lawyers’ obligations, if any, as “gatekeepers”?
- Alternative business structure issues
- Technology (cloud computing/outsourcing/etc.)
The Relationship of Lawyers to the Rule of Law

- Numerous documents recognize the importance of lawyers to the rule of law
  - UN Basic Principles on the Role of Lawyers
  - IBA General Principles for the Legal Profession (with 2011 commentary)
- The “Services Providers” paradigm (Terry 2008) means that lawyers increasingly are treated as comparable to other providers
- “Gatekeeper” obligations, in particular, put pressure on the rule of law
- Global bar associations have organized to assert rule of law concerns. See FATF 40+9

My Thesis...

- It would be helpful to have some sort of global organization in which national and subnational lawyer regulators could get together (virtually if not in person):
  - to discuss these and other issues
  - to brainstorm about the differing solutions they are considering or have adopted
  - to cooperate with respect to lawyer licensing and discipline
Consider:

- Legal profession entities other than lawyer regulators have developed international umbrella organizations.
- This has happened on a national, regional, and international basis.
- Other fields have international umbrella organizations that promote discussions among national & subnational regulators.

Umbrella Organizations Related to the Legal Profession

- International Association of Prosecutors
- International Institute of Law Association Chief Executives (Includes many "representational" rather than "regulatory" bar associations)
- Conference of Chief Justices
- European Law Faculties Association
- Représentant les avocats d’Europe Representing Europe’s lawyers
- US, Canadian, & Australian prosecutors in lawyer discipline cases
Global Regulator Organizations in Other Fields

The International Organization of Securities Commissions

General Information

The member agencies currently assembled together in the International Organization of Securities Commissions have resolved, through its permanent structure:

- to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks;
- to enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries; and
- to exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

Contacts

Mr. Greg Tasbar, Secretary General
Mr. Taimur Sajid, Deputy Secretary General
Ms. Isabel Fuster, Senior Advisor
Mr. David Cliffe, Communications Manager
Mr. Mohamed Ben Salem, Senior Policy Advisor

http://www.iosco.org/about/

International Competition Network

About

The ICN provides competition authorities with a specialized and informal venue for maintaining regular contacts and addressing practical competition concerns. This allows for a dynamic dialogue that serves to build consensus and convergence towards sound competition policy principles across the global antitrust community.

The ICN is unique as it is the only international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities. Members produce work products through their involvement in flexible, project-oriented and results-based working groups. Working group members work together largely by internet, telephone, teleconferencing and email.

Annual conferences and workshops provide opportunities to discuss working group projects and their implications for enforcement. The ICN does not exercise any rule-making function. Where the ICN reaches consensus on recommendations, or “best practices,” arising from the projects, individual competition authorities decide whether and how to implement the recommendations, through unilateral, bilateral or multilateral arrangements, as appropriate.

For more information about the ICN, including answers to frequently asked questions, see The ICN Fact sheet and Key Messages.

“The ICN is unique as it is the only international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities.”

http://www.internationalcompetitionnetwork.org/about.aspx
Developing the infrastructure for a global world may require many contributions and parts…

CROSS-BORDER INSOLVENCY PROTOCOL FOR THE LEHMAN BROTHERS GROUP OF COMPANIES

THE AMERICAN LAW INSTITUTE

and

INTERNATIONAL INSOLVENCY INSTITUTE

GLOBAL PRINCIPLES FOR COOPERATION

IN INTERNATIONAL INSOLVENCY CASES

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment
How Might One Create a Global Lawyer Regulator Umbrella Entity?

- Identify the lawyer regulators to include
  - For each country (WTO Members?), determine the professionals to include (Cf. EU Directive 98/5)
  - Identify the regulator for that group of professionals
  - Collect contact information for these regulators
    - Would a “Wiki” format work?
    - Existing sources: ABA, NOBC, CCBE, APEC, IBA, UK SRA?

- Determine a host or platform to use
  - Create a new organization or use a preexisting one?
  - Exclusively regulators or not?
  - Scope? (e.g. admissions, rule-making &/or disciplinary?)
  - Useful formats in a financial resource-challenged world?

Existing Information Exchanges Among Lawyer Regulators

- **Intra-Europe**: The CCBE has discipline information online, [http://www.ccbe.eu/index.php?id=94&id_comite=24&L=0](http://www.ccbe.eu/index.php?id=94&id_comite=24&L=0)
- **US-Europe**: the Conference of Chief Justices (CCJ) & CCBE agreed to information exchange
- **US-Australia**: CCJ and the Law Council of Australia adopted resolutions and a protocol
- **US-Canada-Australia**: See NOBC members (National Organization of Bar Counsel- discipline prosecutors)
Sources of U.S. Information

Other Sources of Information and Templates One Could Build On

(a) ‘lawyer’ means any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the following professional titles:

<table>
<thead>
<tr>
<th>Country</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Avocat/Advocat/Rechtsanwalt</td>
</tr>
<tr>
<td>Denmark</td>
<td>Advokat</td>
</tr>
<tr>
<td>Germany</td>
<td>Rechtsanwalt</td>
</tr>
<tr>
<td>Greece</td>
<td>Αξιωματικός</td>
</tr>
<tr>
<td>Spain</td>
<td>Abogado/Advocat/Avogado/Abokatu</td>
</tr>
<tr>
<td>France</td>
<td>Avocat</td>
</tr>
<tr>
<td>Ireland</td>
<td>Barrister/Solicitor</td>
</tr>
</tbody>
</table>

Professions approved by the SRA for RFL status

The Solicitors Regulation Authority (SRA) is satisfied that the professions listed below are so regulated as to make it appropriate for members of those professions to be managers of recognised bodies, in accordance with Schedule 14 paragraph 2(2) of the Courts and Legal Services Act 1990.

The SRA will consider whether other professions should be added to this list as and when requested to do so.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Profession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>avocat</td>
</tr>
<tr>
<td>Slovakia</td>
<td>advokat/advokatka</td>
</tr>
<tr>
<td>Spain</td>
<td>abogado/advocat/abogado notario</td>
</tr>
<tr>
<td>Sweden</td>
<td>advocat</td>
</tr>
<tr>
<td>3. European Economic Area</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>advocat</td>
</tr>
<tr>
<td>4. United States of America</td>
<td></td>
</tr>
<tr>
<td>All states</td>
<td>attorney-at-law</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>attorney-at-law</td>
</tr>
<tr>
<td>5. Commonwealth</td>
<td></td>
</tr>
<tr>
<td>Anguilla</td>
<td>solicitor barrister</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>solicitor barrister attorney-at-law</td>
</tr>
</tbody>
</table>

• The UK SRA’s list of “lawyers” that may be managers of registered entities

http://www.sra.org.uk/sra/regulatory-framework/professions-approved-by-SRA-for-RFL-status.page

The APEC Legal Services Initiative, Draft Inventory of Requirements Affecting Practice of Foreign Law in APEC Jurisdictions (Group on Services, Sept. 2010)

4. APEC Economy: Chile

Full licensing

A foreign lawyer can obtain a full licence to practice law in this jurisdiction.

The relevant legislation is the Tribunal’s Organic Code Title XIV, Decree 110 of the Ministry of Justice Official Gazzette March 20, 1979. This is available online at www.17i.cl (in Spanish).

In order to obtain a full licence to practice law in this jurisdiction, foreign lawyers must be a permanent resident and must complete the totality of their legal studies in a university in Chile. These requirements are the same as the rules applicable to a local applicant.

<table>
<thead>
<tr>
<th>Organisation(s) that control licensing of lawyers</th>
<th>Name</th>
<th>Website or other contact details</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Corte Suprema de Justicia (Supreme Court of Justice)</td>
<td><a href="http://www.cortejusticia.cl">www.cortejusticia.cl</a></td>
</tr>
<tr>
<td>Peak professional association representing the legal profession</td>
<td>Colegio de Abogados de Chile (Chilean Bar Association)</td>
<td></td>
</tr>
<tr>
<td>Other associations playing a significant role in developing policy for the legal profession</td>
<td>Ministerio de Justicia (Ministry of Justice)</td>
<td></td>
</tr>
</tbody>
</table>
Who Else Has Worked on this Idea?

- See the “Project of Worth” by the Spring 2011 Law Without Walls™ students Wu Dan (Peking School of Transnational Law) and Elizabeth Reiser-Murphy (U. of Miami)

- Liz and Wu Dan did conceptual work and research one could build on

Screen shots from the *Project of Worth* presentation by Wu Dan and Liz Reiser-Murphy:

The International Association of Legal Services Regulators (IALSR) is an organization of legal services regulators from around the world who communicate continually and convene in a conference every two years.
Conclusion

- There currently is no global lawyer regulator umbrella organization
- Cross-border communication might help lawyers and their regulators to serve as conservators of the rule of law
- It is worth considering the best way to facilitate such communication
- Infrastructure isn’t sexy, but it is a worthwhile investment