

PRESERVING THE RULE OF LAW IN THE 21ST
CENTURY: THE IMPORTANCE OF
INFRASTRUCTURE AND THE NEED TO CREATE A
GLOBAL LAWYER REGULATORY UMBRELLA
ORGANIZATION

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INTRODUCTION

This Article was written for a Symposium entitled *Lawyers as Conservators: Will 21st Century Business, Regulatory, and Educational Challenges Destroy the Lawyer's Role as Guardian of Legal Institutions and the Rule of Law?*¹

This is a broad topic, and there are many excellent ideas one could adopt, some of which have been addressed by other conference presenters. I have a number of ideas responsive to this topic, one of which is that the

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1. See *Lawyers as Conservators*, MICH. ST. UNIV. COLL. OF L., <http://www.law.msu.edu/lawyers-conservators/> (last visited Mar. 10, 2012); LAWYERS AS CONSERVATORS: WILL 21ST CENTURY BUSINESS, REGULATORY, AND EDUCATIONAL CHALLENGES DESTROY THE LAWYER'S ROLE AS GUARDIAN OF LEGAL INSTITUTIONS AND THE RULE OF LAW? ABSTRACTS OF PAPERS TO BE PRESENTED, *available at* <http://www.legalethicsforum.com/files/lawyers-as-conservators-abstracts.pdf> (last visited Mar. 28, 2012).

legal profession generally, and the U.S. specifically, should develop “regulatory objectives” for the legal profession, which is something included in the 2007 U.K. Legal Services Act.² In my view, this is a critical step in order to maintain the legal profession’s vital role in maintaining the rule of law.³ This Article, however, proposes a different idea, which is the need for the legal profession to create the infrastructure to allow lawyer regulators from around the world to regularly exchange ideas and information and discuss issues with one another. Part I of this Article begins by noting the absence of a global umbrella organization for legal regulators. Part II explains that there are global umbrella organizations in other regulated fields. Part III posits that lawyer regulators not only need the infrastructure that a global umbrella organization could provide, but that they would welcome such an organization. Part IV explores how such an organization might be structured and the issues that would need to be resolved.

I. WHY THERE IS A NEED: THERE ISN’T A GLOBAL UMBRELLA ORGANIZATION FOR LAWYER REGULATORS

As a starting matter, it is worth noting that in different countries, the legal profession is regulated in different ways.⁴ Thus, in some countries, it will be legislatures that regulate lawyers, whereas in other countries, such as the U.S., it will be the courts, and in still other systems, it may be a bar association.⁵ Some countries will have a single regulator that handles admission (entry) issues and discipline issues and that also adopts the relevant rules of conduct.⁶ In other countries, such as the U.S., there may be separate “front-line” regulators for these differing stages of lawyer regulation.⁷ In

2. See Legal Services Act of 2007, c. 29, § 1 (Eng.), available at http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf.

3. See Laurel S. Terry, Steve Mark & Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 *FORDHAM L. REV.* 2685 (2012) [hereinafter Terry et al., *Regulatory Objectives*].

4. See Laurel S. Terry, Steve Mark & Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 *FORDHAM L. REV.* 2661, 2667-74 (2012) (explaining some of the various different ways in which lawyers are regulated) [hereinafter Terry et al., *Trends in Lawyer Regulation*].

5. *Id.* at 2664-67.

6. *Id.* at 2664.

7. *Id.* at 2664-67. In most U.S. states, for example, the highest court in that state is responsible for adopting the rules of conduct that govern lawyer behavior. See *Center for Professional Responsibility*, A.B.A., http://www.americanbar.org/groups/professional_responsibility.html (last visited Apr. 4, 2012). However, even if a particular Court has adopted the rules of admission that apply to lawyers and the disciplinary rules, that Court may have delegated to a separate agency the responsibility of implementing and administering those admission and discipline rules. See *Bar Associations and Disciplinary Authorities*, NAT’L ORG. OF B. COUNS., http://nobb.org/Bar_Associations_and_Disciplinary_Authorities.aspx (last visited May 15, 2012); *About Us*, NAT’L CONF. B. EXAM’RS, <http://www.ncbex.org/> (last

addition to these differences, it is perhaps misleading to speak of “lawyer regulation” because that assumes that there is a single unified legal profession within a jurisdiction and that one can use the term “lawyer” to refer to this profession.⁸

Despite these terminology difficulties, it is clear that in many, if not most countries, lawyers are a regulated profession, and there are entities responsible for this regulation. The thesis of this paper is that there needs to be a mechanism—which does not currently exist—for these regulators to communicate with one another.

It is true that there already are several different global lawyer organizations, and some of these organizations include lawyer regulators among their members. The International Bar Association (IBA), for example, describes itself as “the world’s leading organisation of international legal practitioners, bar associations and law societies.”⁹ One of the IBA’s entities is the Bar Issues Commission, which provides a forum for discussion of the IBA’s member organizations.¹⁰ Some of these IBA members include lawyer regulators (or their umbrella organizations).¹¹

Although the IBA provides a forum for lawyer regulators to meet and discuss issues, the IBA is not primarily a lawyer regulator organization.¹² Thus, it does not meet this Author’s definition of a global umbrella organization for lawyer regulators.

The Union Internationale des Avocats (UIA) is another global legal profession organization.¹³ Similar to the IBA, the UIA has both institutional members and individual lawyer members.¹⁴ Although its conferences and

visited Apr. 4, 2012). Both of these websites aggregate information about the relevant admissions and disciplinary authority in each U.S. state.

8. See Terry et al., *Trends in Lawyer Regulation*, *supra* note 4, at 2267.

9. *About the IBA*, INT’L B. ASS’N, http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx (last visited Apr. 4, 2012).

10. *Id.*

11. See *IBA Member Organisations in Europe*, INT’L B. ASS’N, http://www.ibanet.org/barassociations/BIC_Europe.aspx (last visited Apr. 4, 2012) (showing Member Bars, including some like the German BRAK, which is an umbrella organization for regulators; some such as the German DAV, which is a representational bar; and some such as the Danish Bar and Law Society, which is primarily a regulator).

12. See *About the IBA*, *supra* note 9 (explaining that the IBA accomplishes its objectives, inter alia, by endeavoring to supply “[s]ervices for individual lawyer members through its divisions, committees and constituents”); *Legal Practice Division Home*, INT’L B. ASS’N, http://www.ibanet.org/Committees/Divisions/Legal_Practice/home.aspx (last visited Apr. 4, 2012).

13. See *generally* UNION INTERNATIONALE DES AVOCATS, <http://www.uianet.org> (last visited Apr. 4, 2012).

14. See *What is the UIA?*, UNION INTERNATIONALE DES AVOCATS, <http://www.uianet.org/jsp/quia/quia.jsp?locale=en> (last visited Apr. 4, 2012) (“[t]oday, the UIA is an association open to all lawyers of the world, made up of both general and specialist practitioners, counting more than 200 bar associations, organisations or federations (repre-

work sometimes address issues that are of interest to lawyer regulators,¹⁵ it is not primarily an organization of lawyer regulators.

A third global lawyer organization is the International Law Association (ILA).¹⁶ The ILA was founded in Brussels in 1873 and has as its objectives “the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law.”¹⁷ ILA membership is open to anyone interested in international law; the majority of ILA members join through the various regional branches, such as the U.S. branch of the ILA.¹⁸ Although the ILA permits institutional and organization membership,¹⁹ lawyer regulators do not appear to be the primary institutional members.²⁰ The ILA has weighed in on some issues of interest to lawyer regulators,²¹ but this is not its primary focus. Accordingly, it should not be viewed as a global umbrella organization for lawyer regulators.

In addition to these three global lawyer organizations, there are several more specialized global lawyer organizations. These organizations include, for example, the International Association of Prosecutors,²² the International Association of Law Schools,²³ and the International Institute of Law Associ-

senting nearly two million lawyers) as well as several thousand individual members from over 110 countries” (emphasis omitted).

15. *See id.*

16. *See generally* INT’L L. ASS’N, <http://www.ila-hq.org/> (last visited Apr. 4, 2012).

17. *About Us*, INT’L L. ASS’N, http://www.ila-hq.org/en/about_us/index.cfm (last visited Apr. 4, 2012).

18. *See Joining the ILA*, INT’L L. ASS’N, http://www.ila-hq.org/en/joining_the_ila/index.cfm (last visited Apr. 4, 2012); *American Branch*, INT’L LAW ASS’N, <http://www.ila-hq.org/en/branches/index.cfm/bid/1> (last visited Apr. 4, 2012).

19. *See* INT’L L. ASS’N, CONSTITUTION OF THE ASSOCIATION § 4 (2010), *available at* <http://www.ila-hq.org/download.cfm/docid/30692D54-747F-4D66-B9F8E5C08F69F3AF>.

20. *See id.* (listing institutional members, which included law schools but no lawyer regulators).

21. *See* Int’l L. Ass’n, *The Hague Principles on Ethical Standards for Counsel Appearing before International Courts and Tribunals* (Sept. 27, 2010), *available at* <http://www.ila-hq.org/download.cfm/docid/90B50C71-23D6-4366-B5E488C89D96559A>.

22. *See* INT’L ASS’N PROSECUTORS, <http://www.iap-association.org/> (last visited May 15, 2012). The International Association of Prosecutors “is the only worldwide organization of prosecutors. It was established in 1995 and now has more than 130 organizational members from over 90 different jurisdictions, representing every continent, as well as many individual members.” James Hamilton, *Welcome from the President*, INT’L ASS’N PROSECUTORS, <http://www.iap-association.org/default.aspx> (last visited Apr. 4, 2012).

23. *See Home*, INT’L ASS’N L. SCHS., <http://www.ialsnet.org/> (last visited May 15, 2012). According to its webpage, the IALS

is a non-profit organization founded in 2005 with a membership of educational institutions, associations, and legal educators from throughout the world. Its members are committed to the proposition that the quality of legal education in any society is improved when students learn about other cultures and legal systems and the diverse approaches to solving legal problems employed in those legal systems.

ation Chief Executives (IILACE).²⁴ Of these, IILACE comes closest to an umbrella organization for lawyer regulators. The goals of IILACE include promoting discussion among bar associations around the world.²⁵ Although IILACE includes the Chief Executives of some lawyer regulatory organizations, it also includes organizations that represent rather than regulate lawyers.²⁶ Thus, it is not truly an organization for lawyer regulators.

In addition to these global organizations related to the legal profession, there are a number of regional legal profession organizations, including some whose primary membership consists of lawyer regulators. One of the leading examples of a regional organization is the National Organization of Bar Counsel (NOBC), which is an organization of those who prosecute lawyer discipline violations.²⁷ Although the NOBC is primarily a U.S.-based organization, it includes members from Australia and Canada.²⁸ Another regional organization of lawyer regulators is the Conference of Regulatory

Id.

24. See INT'L INST. L. ASS'N CHIEF EXECUTIVES, <http://www.iilace.org/Main/> (last visited Apr. 4, 2012).

25. See *About*, INT'L INST. L. ASS'N CHIEF EXECUTIVES, <http://www.iilace.org/about/default.aspx> (last visited Apr. 4, 2012). IILACE explains its goals as follows:

IILACE provides a focused forum for exchange of views and information of common interest of local, national and international executive officers of law societies and bar associations.

The purposes of IILACE are to:

- (a) Facilitate the exchange of views and information between members on key issues affecting law associations, being law societies and bar associations; and develop a network for communication among chief executive officers of law societies and bar associations.
- (b) Promote and defend the status and interests of the legal profession, law associations and the rule of law.
- (c) Hold periodic forums for discussion of matters of mutual interest.

Id.

26. See *Member Organizations*, INT'L INST. L. ASS'N CHIEF EXECUTIVES, <http://www.iilace.org/members/links.aspx> (last visited Apr. 4, 2012). The U.S. members, for example, include the ABA, which is a representational bar, and the Washington State Bar, which is an "integrated" or regulatory bar. *Id.* For additional information on the meaning of U.S. "integrated" bars, see Terry et al., *Regulatory Objectives*, *supra* note 3, at 2719-20. For additional information on the distinction between lawyer regulatory entities and lawyer representational entities, see *id.* at 2719 n.179. See also Laurel S. Terry, *The European Commission Project Regarding Competition in Professional Services*, 29 NW. J. INT'L L. & BUS. L., 68-70 (2009) [hereinafter Terry, *European Commission Project*] (discussing the interest of EU and other antitrust authorities in issues related to representational and regulatory bar associations).

27. See NAT'L ORG. B. COUNS., <http://nobc.org/> (last visited Apr. 4, 2012).

28. *Id.* ("The National Organization of Bar Counsel (NOBC) is a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States, Canada and Australia.").

Officers (CORO), which includes all of the regulatory bodies in Australia and New Zealand.²⁹

After the NOBC and CORO, the Council of Bars and Law Societies of Europe (CCBE) may come closest to a regional organization of lawyer regulators, but its members include representational bars as well as regulatory organizations.³⁰ Other examples of regional legal profession organizations that do not consist of lawyer regulators include the European Law Faculties Association³¹ and the European Higher Education Association (formerly known as the Bologna Process).³² One can also consult the European Union E-Justice Portal for links to lawyer organizations.³³

Although there are no global organizations exclusively for lawyer regulators and there are few regional organizations, there are a number of domestic or national organizations that bring together lawyer regulators from within that particular jurisdiction. For purposes of this Article, it is perhaps noteworthy that some of these national organizations deliberately try to expose their members to international perspectives. For example, in the United States, the National Center for State Courts has an international division that actively engages with judges, courts, lawyers, and legislatures around the world.³⁴ The Conference of Chief Justices, which receives its administrative support from the National Center for State Courts, has several committees that regularly address international developments and that periodically meet with foreign regulators and others.³⁵ The National Conference of Bar Examiners regularly includes in its annual meetings information about policies and practices elsewhere in the world.³⁶

29. See *Members*, CONF. REG. OFFICERS (CORO), http://www.coro.com.au/index.php?option=com_content&view=article&id=47&Itemid=54 (last visited Apr. 4, 2012).

30. See *Introduction*, COUNCIL BS. & L. SOC'YS OF EUR., <http://www.ccbe.eu/index.php?id=12&L=0> (last visited Apr. 4, 2012).

31. See EUR. L. FAC. ASS'N, <http://www.elfa-afde.eu/> (last visited Apr. 4, 2012).

32. See generally BOLOGNA PROCESS-EUROPEAN HIGHER EDUC. AREA, <http://www.ehea.info/> (last visited Apr. 4, 2012). For additional information on the Bologna Process which led to the European Higher Education Area, see Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes*, 41 VAND. J. TRANSNAT'L L. 107 (2008) [hereinafter Terry, *Bologna Process*]; Laurel S. Terry, *The Bologna Process and Its Implications for U.S. Legal Education*, 57 J. LEGAL EDUC. 237 (2007).

33. See generally E-JUSTICE PORTAL, <https://e-justice.europa.eu/home.do?plang=en&action=home> (last visited Apr. 4, 2012).

34. See generally NAT'L CTR. FOR ST. CTS. INT'L, <http://www.ncscinternational.org/> (last visited Apr. 4, 2012).

35. See Laurel S. Terry et al., *Transnational Legal Practice [2006-07]*, 42 INT'L LAW. 833, 848-49 (2008).

36. See Agenda for Plenary Meeting in Seattle, Washington, Nat'l Conf. B. Exam'rs (Apr. 2005) (on file with author) [hereinafter Plenary Meeting in Seattle]; Agenda for Plenary Meeting in Baltimore, Maryland, Nat'l Conf. B. Exam'rs (Apr. 2009) (on file with author) [hereinafter Plenary Meeting in Baltimore] (panelists included speakers from Australia and

Although the NCBE, the CCJ, and the NOBC might be viewed as the primary umbrella organizations in the U.S. for lawyer regulators, they are not the only U.S. domestic organizations that have incorporated an international focus. In the U.S., the federal courts have a regulatory role vis-à-vis the lawyers that appear before them. The Federal Judicial Center, which is one of the umbrella organizations for the federal courts, has an active international section.³⁷ The American Bar Association Rule of Law Initiative, which is now known as ROLI and which previously was known as CEELI, is another entity that seeks to promote global dialogue.³⁸ It has prepared “Reform Indexes” on a number of topics, including legal education, legal profession, prosecutorial, and judicial reform.³⁹ Other countries have similar national organizations that periodically or regularly engage with their counterparts in other countries.⁴⁰

As this brief summary has shown, there are a number of global and regional organizations that bring together members of the legal profession or include lawyer regulators among their members. None of these organizations, however, has as its focus serving as a global umbrella organization for lawyer regulators.

II. PRECEDENTS EXIST FOR CREATING A GLOBAL REGULATOR UMBRELLA ORGANIZATION

Although there is no global umbrella organization for lawyer regulators, other types of regulators have created global umbrella organizations. These global umbrella organizations help promote communication and understanding among regulators who may face similar issues and may sometimes need to cooperate with one another.

One example of this type of global umbrella organization is the International Organization of Securities Commissions (IOSCO).⁴¹ Because secu-

Ireland and the Peking University School of Transnational Law and a session on Trends in International Practice); Agenda for Plenary Meeting in Savannah, Georgia, Nat'l Conference of Bar Exam'rs (Apr. 2012) (on file with author) [hereinafter Plenary Meeting in Savannah].

37. See *International Judicial Relations*, FED. JUD. CTR., <http://www.fjc.gov/ijr/home.nsf/page/overview> (last visited Apr. 4, 2012).

38. See *About the ABA Rule of Law Initiative*, A.B.A. RULE L. INITIATIVE, <http://apps.americanbar.org/rol/about/> (last visited Apr. 4, 2012).

39. See *Publications and Assessments*, A.B.A. RULE L. INITIATIVE, <http://apps.americanbar.org/rol/publications.shtml> (last visited Apr. 4, 2012).

40. See FED'N L. SOC'YS CAN. BEYOND OUR BORDERS: IDENTIFYING OUR ROLE WITH DEVELOPING BARS, SEMI-ANN. CONF. (2010) (including materials from the National Judicial Institute Global Reach, Canadian Bar Association International Development Committee; Department of Justice Canada, International Legal Programs Section, and the IBA) (on file with author).

41. See *General Information*, INT'L ORG. SEC. COMM'NS., <http://www.iosco.org/about/> (last visited Apr. 4, 2012).

rities are regulated in many different ways around the world, there are differences among IOSCO members.⁴² Despite differences with respect to who in a particular jurisdiction regulates securities and differences in the content of that regulation, IOSCO Members have found it useful to join together so that they can benefit from their commonalities. The IOSCO explains its goals as follows:

- 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.⁴³

The IOSCO has its roots in an inter-American regional association that was first created in 1974.⁴⁴ In 1983, eleven securities regulatory agencies from North and South America decided to create a global cooperative body.⁴⁵ In 1984, these eleven regulators were joined by securities regulators from France, Indonesia, Korea, and the United Kingdom.⁴⁶ In 1986, the IOSCO members had their first meeting outside the Americas and decided to establish an IOSCO Secretariat.⁴⁷ Today, the IOSCO is the primary international cooperative forum for securities market regulatory agencies.⁴⁸ Its

42. See *Membership Categories and Criteria*, INT'L ORG. SEC. COMM'NS., <http://www.iosco.org/about/index.cfm?section=membership> (last visited Apr. 4, 2012):

[The ordinary membership] category is open to a securities commission, or a similar government or statutory regulatory body that has primary responsibility for securities regulation in its jurisdiction.

If there is no governmental, or statutory, regulatory body in a jurisdiction then a self-regulatory body, such as a stock exchange, in that jurisdiction is eligible for ordinary membership of IOSCO. However, the ordinary membership of a self-regulatory body admitted to IOSCO will lapse if a governmental regulatory body from the same jurisdiction becomes the ordinary member for that jurisdiction.

Id.; see also *Ordinary Members of IOSCO*, INT'L ORG. SEC. COMM'NS., http://www.iosco.org/lists/display_members.cfm?memID=1&orderBy=none (last visited Apr. 4, 2012).

43. *General Information*, *supra* note 41.

44. *IOSCO Historical Background*, INT'L ORG. SECURITIES COMMISSIONS, <http://www.iosco.org/about/index.cfm?section=background> (last visited Apr. 4, 2012).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

members are drawn from, and regulate, more than 100 jurisdictions.⁴⁹ Indeed, IOSCO members regulate more than ninety-five percent of the world's securities markets.⁵⁰

Over the course of its twenty-five plus years of existence, the IOSCO has expanded its work agenda. In the beginning, its primary focus was encouraging communication and cooperation.⁵¹ Since that time, it has gradually expanded its efforts:

- “In 1998 [it] adopted a comprehensive set of Objectives and Principles of Securities Regulation (IOSCO Principles), which is recognized as the international regulatory benchmarks for all securities markets.”⁵²
- “In 2002 [it] adopted a multilateral memorandum of understanding (IOSCO MMoU) designed to facilitate cross-border enforcement and exchange of information among international securities regulators.”⁵³
- “In 2003 [it] endorsed a comprehensive methodology (IOSCO Principles Assessment Methodology) that enables an objective assessment of the level of implementation of the IOSCO Principles in the jurisdictions of its members and the development of practical action plans to correct identified deficiencies.”⁵⁴
- “Then in 2005 [it] endorsed the IOSCO MMoU as the benchmark for international cooperation among securities regulators and set-out clear strategic objectives to expand the network of IOSCO MMoU signatories.”⁵⁵

The IOSCO Principles and the MMoU are now viewed as the “primary instruments in facilitating cross-border cooperation, reducing global systemic risk, protecting investors and ensuring fair and efficient securities markets.”⁵⁶

Although IOSCO Members have agreed that IOSCO Members should use the organization's Principles and comply with the MMoU, securities regulators are not required to belong to the IOSCO nor are they required to use the MMoU.⁵⁷ Nevertheless, after more than twenty years of cooperation

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. See *Membership Categories and Criteria*, *supra* note 42 (“Applicants for ordinary and associate membership with primary responsibility for securities regulation need to apply to become signatories to the IOSCO MMoU and will need become signatories to it as a condition of being accepted as an IOSCO member.”).

and communication, IOSCO members decided that they wanted to use the MMoU as the benchmark for evaluating international cooperation.⁵⁸ This example thus illustrates that a global umbrella organization can facilitate communication and cooperation among regulators from around the world, even if those regulators look and function quite differently from one another. Moreover, over time, communication and cooperation may lead to convergence in approaches.

A second example of a global umbrella organization for regulators is the International Competition Network (ICN). The ICN describes itself as an “informal network of established and newer” competition (antitrust) agencies that have the common aim of addressing practical antitrust enforcement and policy issues.⁵⁹ The ICN was established in October 2001 by antitrust officials from sixteen different antitrust agencies.⁶⁰ By 2008, it had grown to 104 competition (antitrust) agencies and included representatives from 92 jurisdictions.⁶¹ The ICN holds itself out as “unique as it is the only international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities.”⁶² The ICN serves a valuable function because globalization has meant that an increasing number of antitrust investigations and merger reviews transcend jurisdictional boundaries.⁶³

The ICN helps facilitate cooperation and, where it is appropriate, convergence.⁶⁴ Similar to the IOSCO, the ICN operates by consensus.⁶⁵ The ICN’s work takes place in working groups that meet in person and virtually. These groups may consist of both ICN members and nongovernmental advisors (NGAs). Members and experts convene at an annual conference and at periodic workshops devoted to specific enforcement and policy topics.⁶⁶ The ICN addresses policy and technical issues, but it does not serve as a forum for cooperation with respect to specific cases.⁶⁷ It sees itself as providing value to antitrust agencies, governments, businesses, and consumers.⁶⁸

58. Compare *id.* with notes 52-55, *supra*, which describe the IOSCO’s work since it was founded in 1983.

59. INT’L COMPETITION NETWORK, ICN FACTSHEET AND KEY MESSAGES 2 (April 2009), available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc608.pdf>.

60. *Id.* at 5.

61. *Id.* at 1.

62. See *About*, INT’L COMPETITION NETWORK, <http://www.internationalcompetitionnetwork.org/about.aspx> (last visited Apr. 4, 2012).

63. INT’L COMPETITION NETWORK, *supra* note 59, at 2.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 2-3.

The ICN has produced a number of different products, including recommended practices in merger and cartel cases, case-handling and enforcement manuals, reports, templates on legislation and rules in different jurisdictions, databases and toolkits, and workshops.⁶⁹ Individual ICN Members have used these ICN products when developing their domestic policies and practices.⁷⁰ The ICN also has a partnership program that pairs agencies with more experience with agencies that have less experience.⁷¹ The ICN has established forums in which agencies with less experience have a forum to discuss the ICN's work products, have access to the expertise of other ICN members, share expertise, and discuss the operational mechanisms that various agencies use.⁷²

The ICN's work appears to have been quite useful. An ICN survey indicates that ninety-six percent of competition agencies surveyed had made use of ICN work products and materials, and ninety-four percent had distributed them within their agency.⁷³ In the future, the ICN plans to promote exchanges of practical experience using teleconferences, web-based tools, and workshops.⁷⁴ It also hopes to foster "progress towards consensus building, cooperation and convergence toward sound competition policy and practice, as well as better understanding of each other's laws and policies."⁷⁵

Interestingly for purposes of the thesis of this paper, the ICN is a virtual network and has no formal Secretariat (administrative headquarters) or premises.⁷⁶ Its annual meetings are hosted by Members who volunteer.⁷⁷

While the ICN does not require conformance to its policies, since this global umbrella organization was established, there appears to be greater convergence in antitrust authorities' policies and practices. The ICN reports that since 2002, nearly half of the ICN member jurisdictions with merger laws have made changes to their merger review framework to bring their systems into greater conformity with the ICN's Recommended Practices.⁷⁸

69. *Id.* at 3, 9-13 (referencing, inter alia, the ICN Guiding Principles and Recommended Practices for Merger Notification and Review Procedures, the ICN Recommended Practices for Merger Analysis, the ICN Handbook on Investigative Techniques for Merger Review, and the Merger Remedies Review Report, the ICN Anti-Cartel Enforcement Techniques Manual, Recommended Practices on the Assessment of Dominance/Substantial Market Power and Recommended Practices on the Application of Unilateral Conduct Rules to State-Created Monopolies).

70. *Id.* at 8-9 (indicating that members have used ICN products when crafting their agency guidelines and have used the ICN Merger Workbook for staff training purposes).

71. *Id.* at 14.

72. *Id.*

73. *Id.* at 4.

74. *Id.*

75. *Id.* at 5.

76. *Id.* at 6.

77. *Id.* at 7.

78. *Id.* at 11.

These changes have not been required but presumably have been adopted because the individual members have concluded that these changes would improve their domestic systems.⁷⁹ In sum, ICN members believe that it is important to have a global umbrella organization created by regulators, for regulators, rather than an intergovernmental organization because its “member-driven approach avoids top-down, lowest-common denominator harmonisation of competition law and policies across the world.”⁸⁰ They also believe that the ICN’s “informal nature and virtual approach avoids the administrative trappings and obligations associated with a formal intergovernmental setting.”⁸¹

The International Labour Organization (ILO) provides a third example of a global umbrella organization for regulators. It is the international organization responsible for drawing up and overseeing international labor standards; it is a “tripartite” United Nations agency in that it brings together representatives of governments, employers, and workers to jointly shape policies and programs.⁸² It was founded in 1919 in the wake of World War I, and in 1946, it became the first specialized agency of the United Nations.⁸³ The vision underlying its founding was the premise that universal, lasting peace can be established only if it is based on social justice, including labor issues.⁸⁴ It also was premised on the idea that many of its ideas could not be accomplished without collective action because a single country would be unwilling to be put at a competitive disadvantage and make changes that other countries had not made.⁸⁵ The ILO received the Nobel Peace Prize in 1969.⁸⁶

The ILO has four objectives: (1) “[t]o promote and realize standards, and fundamental principles and rights at work”; (2) “[t]o create greater opportunities for women and men to secure decent employment”; (3) “[t]o enhance the coverage and effectiveness of social protection for all”; and (4) “[t]o strengthen tripartism and social dialogue.”⁸⁷ The ILO seeks to accomplish these goals in various ways, including through the formulation of policies and programs to promote the ILO’s goals; the development of standards

79. The ICN appears proud of the fact that its work products are not legally binding instruments. *See id.* at 4.

80. *Id.* at 16.

81. *Id.* at 17.

82. *About the ILO*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited Apr. 4, 2012).

83. *Id.*

84. *Id.*

85. *See* INT’L LABOUR ORG., INTERNATIONAL LABOR ORGANIZATION, *available at* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082361.pdf (last visited Apr. 4, 2012).

86. *Id.*

87. *Id.* at 5.

that are accompanied by a unique system to supervise their application that will serve as guidelines for national authorities in putting these policies into action; an extensive program of international technical cooperation; and training, education, research, and publishing activities to help advance these other efforts.⁸⁸ Its primary goal “is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”⁸⁹ The ILO supports the ILO International Institute for Labour Studies in Geneva, which performs research on the issues of concern to the ILO.⁹⁰ It also sponsors a number of publications.⁹¹ The ILO describes itself as one of the most successful multilateral agencies in fulfilling its mandate, and it observes that renewal, change, and adaptation have been vital to its success.⁹² This umbrella organization is somewhat different than the prior organizations because its membership is broader and because it seems to focus more on enacting labor legislation and regulations than on enforcement.⁹³

The ILO conducts its work in several different ways. The International Labour Conference meets annually; it is responsible for setting minimum labor standards and establishing broad policies.⁹⁴ The ILO adopts its biennial work program and budget every two years.⁹⁵ In addition to this policy work, the ILO Conferences provide an international forum for discussion of world labor and social problems.⁹⁶ In contrast to the ICN, the ILO has a Secretariat and offices in more than forty countries.⁹⁷

As this brief summary shows, the ILO is different in many respects than the ICN and ISOCO. It thus provides an alternative model that might be consulted when considering whether and how to create a global umbrella organization for legal profession regulators.

There are a number of other global umbrella organizations for regulators in addition to the IOSCO, ICN, and ILO. There is, for example, an or-

88. *Id.*

89. *Mission and Objectives*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (last visited Apr. 4, 2012).

90. INT’L LABOUR ORG., *supra* note 85, at 17.

91. *Id.* at 16.

92. INT’L LABOUR ORG., *THE ILO: WHAT IT IS. WHAT IT DOES 3*, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082364.pdf (last visited Apr. 4, 2012).

93. *See id.* at 7.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* The Secretariat is known as the International Labour Office and is based in Geneva, Switzerland. *Id.*; see also *How the ILO Works*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm> (last visited Apr. 4, 2012).

ganization for accounting regulators⁹⁸ and an organization devoted to international civil aviation regulators.⁹⁹ It is beyond the scope of this Article to identify all of the global umbrella organizations or explain how all of these umbrella organizations operate. What is important to realize is that the concept of a global umbrella organization for regulators is not new. There are many different regulated fields for which this type of global umbrella organization exists.¹⁰⁰ These organizations can exist even if the members of the organization have very different roles, structures, and functions in their home countries. Moreover, these types of organizations can be effective even if they do nothing more than facilitate communication so that regulators can share their experiences and expertise. It is true that the anecdotal evidence presented in this Article seems to suggest that the longer a global umbrella organization exists, the more likely it is that the policies and regulations of the underlying member entities will converge.¹⁰¹ This, however, does not seem to be a sufficient reason to be wary of these types of organizations, particularly if harmonization is not required. This same type of harmonization has occurred in many areas in the U.S.¹⁰² This convergence may simply mean that the more information and experiences are shared, the more the domestic regulators come to believe that a particular approach is

98. See *Our Mission*, INT'L FED'N ACCOUNTANTS, <http://www.ifac.org/About/> (last visited Apr. 4, 2012) ("IFAC's mission is to serve the public interest by: contributing to the development, adoption and implementation of high-quality international standards and guidance; contributing to the development of strong professional accountancy organizations and accounting firms, and to high-quality practices by professional accountants; promoting the value of professional accountants worldwide; speaking out on public interest issues where the accountancy profession's expertise is most relevant."). Unlike some of the other organizations cited in this Article, this organization does not consist primarily of regulators although regulators are among its members. See *Membership*, INT'L FED'N ACCOUNTANTS, <http://www.ifac.org/about-ifac/membership> (last updated Nov. 16, 2011) ("IFAC is comprised of 167 members and associates in 127 countries and jurisdictions, representing approximately 2.5 million accountants in public practice, education, government service, industry, and commerce. IFAC members are professional accountancy organizations recognized by law or general consensus within their countries as substantial national organizations." (footnotes omitted)).

99. See *ICAO in Brief*, INT'L CIV. AVIATION ORG., <http://www.icao.int/Pages/icao-in-brief.aspx> (last visited Apr. 4, 2012) ("A specialized agency of the United Nations, the International Civil Aviation Organization (ICAO) was created in 1944 to promote the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection. The Organization serves as the forum for cooperation in all fields of civil aviation among its 191 Member States.").

100. See *supra* notes 98-99 and accompanying text.

101. See, e.g., *supra* notes 52-55, 70, 73.

102. See AM. L. INST., <http://www.ali.org/> (last visited Apr. 4, 2012); UNIFORM L. COMMISSION, <http://www.nccusl.org/> (last visited Apr. 4, 2012); *The Center for Professional Responsibility*, A.B.A., http://www.americanbar.org/groups/professional_responsibility.html (last visited Apr. 4, 2012).

preferable. Thus, it is important to realize that the mere fact that a global umbrella organization is created does not mean that domestic lawyer regulators would lose any of their authority or sovereignty.

III. ARTICLE THESIS: LAWYER REGULATORS NOT ONLY NEED GLOBAL INFORMATION EXCHANGE AND COOPERATION, BUT THEY WOULD WELCOME IT

One might ask whether there is a need for, and whether lawyer regulators might be interested in, a new global lawyer regulatory umbrella organization. After all, it is a truism that all politics (and all problems) are local. Moreover, lawyer regulators have shown a reluctance to cede regulatory authority and sovereignty to international or global entities.¹⁰³ Some commentators have asserted that lawyer regulators are isolated and parochial;¹⁰⁴ if this were true, they might not be particularly interested in forming a global umbrella organization of lawyer regulators.

Despite the factors that may militate against a global lawyer regulatory umbrella organization, I believe that not only is there a need for such an organization, but that lawyer regulators would be very interested in creating such an organization.

Turning first to the issue of whether there is a need for such an organization, in my view the answer to that question is a resounding “yes.” There are a number of different reasons why this is true. First, although the details and contexts of lawyer regulation vary from jurisdiction to jurisdiction—even within a relatively homogenous country such as the United States—many jurisdictions face similar lawyer regulatory issues.¹⁰⁵ The rise of globalization and technology, among other things, has led to similar issues aris-

103. One area in which one can see this concerns the issue of potential World Trade Organization GATS “disciplines on domestic regulation,” which arguably would make national and subnational lawyer regulatory provisions reviewable for compliance with WTO-level disciplines or regulations. See Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875, 952-53, 957 (2010) [hereinafter Terry, *From GATS to APEC*]. Lawyer regulators and lawyer organizations have—generally speaking—expressed some reservations regarding GATS disciplines. *Id.* at 955, 959-61; Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO’s Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 PENN ST. INT’L L. REV. 695, 728-34 (2004) [hereinafter Terry, *Lawyers, GATS, and the WTO*] (describing the IBA and other organizations’ responses to the Domestic Regulation Disciplines issue). In my view, the regulators’ concerns about loss of control are understandable.

104. See Anthony E. Davis, *Regulation of the Legal Profession in the United States and the Future of Global Law Practice*, 19 PROF’L LAW. 1 (2009).

105. See Terry et al., *Trends in Lawyer Regulation*, *supra* note 4; Laurel S. Terry, *An Introduction to the Financial Action Task Force and Its 2008 Lawyer Guidance*, 2010 J. PROF. LAW. 3.

ing in many counties. One has only to review the webpage of the ABA Commission on Ethics 20/20,¹⁰⁶ or the project lists for the LawWithoutWalls initiative,¹⁰⁷ to see the challenging issues that confront lawyer regulators and to appreciate that regulators around the world face similar issues.¹⁰⁸ Indeed, even though the ABA 20/20 Commission and LawWithoutWalls are initiatives created in the U.S., the topics they have addressed are clearly of interest to lawyers and regulators around the world.¹⁰⁹

The second reason why lawyer regulators have a need for a global umbrella organization is the rise of the “service providers” paradigm.¹¹⁰ The

106. See *Priorities and Initiatives*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/priorities_policy.html (last visited Apr. 4, 2012). As this webpage reveals, the issues the Commission has considered include outsourcing, alternative business structures, multijurisdictional practice, choice of law in cross-border practice, client confidentiality and lawyers’ use of technology, lawyers’ use of internet based client development tools, admission by motion, alternative litigation financing, inbound foreign lawyer issues, and rankings. *Id.*

107. See generally *2011 Topic and Team Pairings*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/2011-topics-pairings/> (last visited Apr. 4, 2012). The 2011 projects included the following: Outsourcing; Publicly Held Law Firms & the 2007 UK Legal Services Act; Globalization and Technological Advances in the Courtroom; Professional and Emotional Intelligence Training; Alternatives to the Billable Hour; Technology Boom or Bust; Conflicting Global Cultures & Legal Education; Third Party Litigation Arbitration; Lawyers’ Work Space in the Digital Age; Teaching Law Students Real Business Skills; Finding Common Ground: Regulatory Issues Across International Borders. *Id.* The 2012 LawWithoutWalls Team Pairings and Topics include the following: The Disaggregation of Legal Services: A Service or Disservice to Clients?; The Global Legal Service Firms: Is It Possible to Marry Cultures and Legal Systems?; Trickle Down Justice? Evolution in Access to Justice for Low-Income and Vulnerable Client Populations; Publicly Held Law Firms in the UK and Australia: The Big Bang or the Big Bust?; Transparency in International Arbitration: What’s Under the Invisibility Cloak?; Ever-Increasing Law School Debt: Students Beware or Law Schools Take Action; Lawyers Acting as Non-Lawyers and Non-Lawyers Acting as Lawyers: What is and What Should be Considered the Unauthorized Practice of Law?; Virtual Legal Education: Can Law Schools Span the Distance? Law School Career Services: The Next Generation; Women in the Law: Is the Glass Ceiling Cracked, Smashed, or Unbreakable?; Marketing Law Schools and Law Firms: Truth in Advertising or Bait and Switch?; Alternative Courts on the Brain: Psychologically Based, But Are They Sound?; Lawyers and Law Students: Managing Time and Stress in a 24/7/365 World. See *Current Topics and Team Pairings*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/topics-pairings/> (last visited Apr. 4, 2012).

108. See Terry et al., *Trends in Lawyer Regulation*, *supra* note 4.

109. See Interview with Jonathan Goldsmith, Secretary General, Council of Bars and Law Societies of Europe (Toronto, Aug. 9, 2011) (expressing the view that some of the ABA 20/20 hearings and materials were very much of interest in Europe); *Current Participating Schools*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/schools-and-students/> (last visited Apr. 4, 2012) (showing that students and mentors from the U.S., Europe, Asia, and Australia had common interests).

110. See generally Laurel S. Terry, *The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as “Service Providers,”* 2008 J. PROF. LAW. 189.

“service providers” paradigm posits that lawyers increasingly are viewed as simply one of many different kinds of service providers.¹¹¹ As a result, the traditional lawyer regulators around the world have had to respond to the new layer of regulation and have had to determine how to make their existing regulatory structure function within the broader set of regulations (or “soft law”), which may not take into account the ways in which lawyers operate differently than other service providers.¹¹² This new paradigm also means that lawyer regulators now share a common need to respond to initiatives of international entities.¹¹³ One example of this phenomenon is the extensive set of regulations adopted by the Financial Action Task Force (FATF) to combat money laundering and terrorism.¹¹⁴ These recommendations are directed to “gatekeepers,” including lawyers, and would require, inter alia, that lawyers and others report suspicious client activity, reveal client information, and so forth.¹¹⁵ Despite their different histories, rules, and contexts, lawyer regulators around the world have to respond to the FATF recommendations and determine how the FATF recommendations (and their implementation) fit in with the traditional lawyer regulatory structure.¹¹⁶ This is a shared concern, as evidenced by the fact that the International Bar Association maintains an extensive webpage devoted to the issue.¹¹⁷ The fact that lawyer regulators share issues in common is further illustrated by the cooperative and collaborative work of the IBA, ABA, CCBE, and FLSC in working together to respond to the FATF recommendations.¹¹⁸

Even if lawyer regulators around the world face similar issues and thus arguably have a need for an umbrella organization similar to that used by securities’ regulators and antitrust regulators, one must still ask whether lawyer regulators themselves *recognize* this need and the value that might

111. *Id.* at 189.

112. *See id.* at 209.

113. *See id.* at 192.

114. *See* FINANCIAL ACTION TASK FORCE, <http://www.fatf-gafi.org> (last visited Apr. 4, 2012).

115. Terry, *supra* note 105, at 9-10; *see* 2010 FATF Symposium, INT’L B. ASS’N, http://www.anti-moneylaundering.org/2010_FATF_Symposium.aspx.

116. Terry, *supra* note 105, at 39.

117. *See* IBA Anti-Money Laundering Forum, INT’L B. ASS’N, <http://www.anti-moneylaundering.org/> (last visited Apr. 4, 2012).

118. *See* Terry, *supra* note 105, at 40-42; Colin Tyre, *Anti-Money Laundering Legislation: Implementation of the FATF Forty Recommendations in the European Union*, 2010 J. PROF. LAW. 69; Kevin L. Shepherd, *The Gatekeeper Initiative and the Risk-Based Approach to Client Due Diligence: The Imperative for Voluntary Good Practices Guidance For U.S. Lawyers*, 2010 J. PROF. LAW. 83; Ronald J. MacDonald, *Money Laundering Regulation—What Can Be Learned from the Canadian Experience*, 2010 J. PROF. LAW. 143. All of these articles are available on the IBA’s Anti-Money Laundering Forum Webpage. 2010 FATF Symposium, *supra* note 115.

come from increased cooperation and from a global umbrella organization of lawyer regulators. My answer to this second question is “yes.” As support, I point first to the positive reaction I received from several regulators when I mentioned this idea to them.¹¹⁹ They recognize that they operate in a global world. They realize that a global umbrella organization could help lawyer regulators discuss the issues they have in common and brainstorm about differing solutions they have considered or have adopted. The lawyer regulators with whom I spoke also recognized that this type of an organization could also be helpful to them as they deal with specific cases. For example, it would help them determine the best ways to cooperate with respect to lawyer licensing and discipline.

A second development that suggests there would be regulator interest in creating a new global umbrella organization includes the efforts that regulators have already made to promote international cross-border cooperation and communication. As noted previously, a number of lawyer regulators have gathered together in regional umbrella organizations such as the NOBC and CORO.¹²⁰ In the U.S., some lawyer regulatory organizations that do not officially have members from other countries have nevertheless regularly invited foreign representatives to attend their meetings, meet the U.S. members, and exchange experiences and views. The Conference of Chief Justices, for example, has on several occasions invited European and Australian representatives to attend their meetings.¹²¹ The National Conference of Bar Examiners regularly invites to its meeting representatives from foreign countries.¹²²

U.S. regulator interest has gone beyond simply meeting their foreign counterparts and exchanging information. The Conference of Chief Justices, for example, has negotiated understandings with the Law Council of Australia and with the Council of Bars and Law Societies of Europe (CCBE) to cooperate and communicate with each other with respect to lawyer discipline issues (in the case of the CCBE) and with respect to discipline and

119. See Telephone Interview with Richard Van Duizend, National Center for State Courts (Aug. 18, 2011); Telephone Interview with Lawrence Bloom and Gene Shipp, D.C. Bar (Aug. 25, 2011); Telephone Interview with William Smith, General Counsel Emeritus, Georgia State Bar (Mar. 19, 2012). The Author has also heard supportive comments from Australian and U.K. lawyer regulators.

120. See *supra* notes 28-29 and accompanying text.

121. See Terry et al., *Transnational Legal Practice [2006-07]*, 42 INT'L LAW. 833, 849 (2008) (European representatives); *Agenda for Midyear Meeting*, CONF. CHIEF JUSTS. (2011) (on file with author) (Australian representatives).

122. See Plenary Meeting in Seattle, *supra* note 36; Plenary Meeting in Baltimore, *supra* note 36 (panelists included speakers from Australia and Ireland and the Peking University School of Transnational Law and a session on Trends in International Practice); Plenary Meeting in Savannah, *supra* note 36.

admission issues (in the case of the Law Council of Australia).¹²³ These agreements state, for example, that upon request by one jurisdiction, the other jurisdiction should provide certain specified information related to the (foreign) lawyer's admission and disciplinary status.¹²⁴ The CCJ has also agreed to establish a template for requesting information, to nominate specific individuals to serve as information officers, and to have those individuals handle all information requests.¹²⁵

Another reason why I predict that lawyer regulators will be interested in a global umbrella organization is because the content of lawyer regulation has changed, with more global initiatives and more questions about the extraterritorial effect of domestic initiatives.¹²⁶ In the future, lawyer regulators

123. See *Resolution 13: In Support of Cooperation Among United States and Australian Bar Admission and Lawyer Disciplinary Bodies*, CONF. CHIEF JUSTS. (August 2009), <http://ccj.ncsc.dni.us/InternationalResolutions/reso113.html>; *Protocol for the Exchange of Information Between [State Admitting Authority] and the Law Council Of Australia*, CONF. CHIEF JUSTS. (Aug. 2009), <http://ccj.ncsc.dni.us/InternationalResolutions/ProtocolAustralia.pdf> [hereinafter *Exchange of Information*]; *Resolution 2: In Support of Cooperation Among United States and European Disciplinary Bodies*, CONF. CHIEF JUSTS. (Jan. 2009), available at <http://ccj.ncsc.dni.us/2-ProposedCCBERResolution1-6-09.pdf>; *CCBE in Resolution in Support of Cooperation Among American and European Disciplinary Bodies*, CCBE (2009), http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Resolution_in_Suppor1_1241602552.pdf; Letter from Anne Birgitte Gammeljord, President of the CCBE, to the Hon. Margaret H. Marshall, the President of the Conference of Chief Justices (May 6, 2009), available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/090506_letter_CCJpd1_1241602466.pdf (creating an exception for Spain because of data protection rules). All of these resolutions are available on the ABA GATS Miscellaneous webpage. ABA, *Miscellaneous—Other Items Relevant to the GATS*, http://www.americanbar.org/groups/professional_responsibility/policy/gats_international_agreements/misc.html (last visited May 15, 2012); see also Terry et al., *Transnational Legal Practice: 2009*, 44 INT'L LAW. 563, 570 (2010); Terry et al., *Transnational Legal Practice: 2008*, 43 INT'L LAW. 943, 955-56 (2009).

124. See *Exchange of Information*, *supra* note 123.

125. See *id.*

126. See Laurel S. Terry, *A "How To" Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course*, 51 ST. LOUIS U. L.J. 1135, 1140 (2007) [hereinafter Terry, *A "How To" Guide*]. This article states:

Not only has the approach of U.S. regulators changed, but the content and source of lawyer regulation is changing. Examples of these types of changes include the following:

1. There are an increasing number of global initiatives that directly or indirectly impact the U.S. law of lawyering.
2. It is increasingly common for U.S. legal ethics policies that we think of as "domestic" to have international implications that affect non-U.S. lawyers. U.S. regulators are increasingly likely to hear about these implications from foreign bars associations and foreign lawyers, which in turn affects U.S. policy.
3. It is increasingly likely that policies from other countries will affect U.S. lawyers. Sometimes these policies will directly affect (i.e., regulate) U.S. lawyers and law firms, and sometimes these policies may indirectly affect U.S. lawyers, by making a particular trend or result more likely.

The paragraphs that follow provide examples of each of these types of changes.

everywhere are likely to have to consider the impact of hard or soft law international initiatives and will have to consider issues related to inbound foreign lawyers and outbound domestic lawyers. While the answers may differ from jurisdiction to jurisdiction, regulators may find it helpful to pool their knowledge and share possible approaches.

The “Inventory” of the Legal Services Initiative of the Asia Pacific Economic Cooperation (APEC) provides another example that further illustrates the likelihood that lawyer regulators would be interested in the type of cooperation that a global umbrella organization might provide. APEC is a governmental organization that consists of twenty-one countries that, roughly speaking, surround the Pacific Ocean.¹²⁷ APEC operates on a consensus basis.¹²⁸ In 2008, the relevant APEC committee approved an ambitious Legal Services Initiative and APEC Members later agreed to fund it.¹²⁹ The Legal Services Initiative originally was drafted by Australia; since that time, the government of Australia has been coordinating the initiative’s implementation.¹³⁰

The APEC Legal Services Inventory was one aspect of the APEC Legal Services Initiative;¹³¹ the Inventory included contact information for the lawyer regulators in APEC countries, along with APEC Members’ responses to a standard set of questions about their regulatory policies.¹³² After the U.S. missed the first deadline for submitting responses, it was the U.S. regulatory community that got organized and ensured that there were responses for almost all U.S. jurisdictions.¹³³ This mobilization by U.S. regulators demonstrated that the U.S. regulatory community has a strong interest in

Id. (emphasis omitted).

127. See *Member Economies*, APEC, <http://www.apec.org/About-Us/About-APEC/Member-Economies.aspx> (last visited Apr. 4, 2012).

128. See *About APEC*, APEC, <http://www.apec.org/About-Us/About-APEC.aspx> (last visited Apr. 4, 2012). For additional information about APEC, see Terry, *From GATS to APEC*, *supra* note 103, at 891-94.

129. Terry, *From GATS to APEC*, *supra* note 103, at 894.

130. *Id.* It has been doing so in conjunction with a Steering Committee that consists of governmental representatives from Australia, Canada, Chinese Taipei, New Zealand, Peru, Singapore, and the United States. *Id.*

131. *Id.*

132. See *APEC Legal Services Initiative*, APEC, <http://www.legalservices.apec.org/index.html> (last visited Apr. 4, 2012).

133. The Author has personal knowledge of this fact because she participated in several telephone conferences of the ABA Task Force on International Trade in Legal Services (ITILS) in which the APEC Inventory was discussed. She also assisted the NCBE and NOBC representatives who took the laboring oar in ensuring that the U.S. sent in responses for almost all U.S. jurisdictions. Unfortunately, those responses did not make it onto the final product that is now posted on the APEC Legal Services Initiative Inventory webpage. See *APEC Legal Services Initiative, High-Level Overview*, APEC, <http://www.legalservices.apec.org/overview.html> (last visited Apr. 4, 2012) [hereinafter *APEC High-Level Overview*].

sharing information and establishing cooperative relationships with regulators elsewhere in the world.

The issue of foreign lawyer recognition provides the final illustration in this Part of the Article. Because of globalization, lawyer regulators in many countries, including the U.S., Canada, the U.K., Australia, and elsewhere, are now faced with the issue of whether and how they should “recognize” the qualifications of those who became lawyers in another (foreign) country. These “recognition” issues exist because clients now have global needs and lawyers want to serve their clients in jurisdictions other than the lawyer’s home jurisdiction¹³⁴ and because various international legal instruments have soft law or hard law “recognition” requirements.¹³⁵

Many jurisdictions have formalized their responses to this “recognition” issue. For example, Canada has created an entity called the National Committee on Accreditation that administers the rules for foreign lawyers who seek permission to practice in Canada.¹³⁶ Australia has an entity called the Law Admissions Consultative Committee (LACC) that serves a similar function.¹³⁷ (Australia is contemplating changes to this system, but the LACC system was still in place at the time this Article was written.)¹³⁸ In the U.K., the Solicitors Regulation Authority has revised its approach to recognizing the qualifications of foreign lawyers.¹³⁹ Recognition issues can arise in contexts other than admission. For example, for a time, the Solicitors Regulation Authority maintained a list of those foreign lawyers with whom a solicitor might be a partner in the newly-permitted Legal Disciplinary Partnerships (LDPs);¹⁴⁰ a jurisdiction had to apply the SRA in order to

134. See Terry, *A “How To” Guide*, *supra* note 126, at 1136-38 (including information on globalization and legal services).

135. See AM. BAR ASS’N, SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B., REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES (July 15, 2009), available at [http://apps.americanbar.org/legaled/committees/International%20Issues%20Report%20\(final\).DOC](http://apps.americanbar.org/legaled/committees/International%20Issues%20Report%20(final).DOC) [hereinafter AM. BAR ASS’N INTERNATIONAL REPORT].

136. See *About the NCA*, FED’N L. SOC’YS CAN., <http://www.flsc.ca/en/nca/about-the-nca/> (last visited Apr. 4, 2012).

137. See AM. BAR ASS’N INTERNATIONAL REPORT, *supra* note 135, at 22; see also *Homepage*, L. ADMISSIONS CONSULTATIVE COMMITTEE, http://www.lawcouncil.asn.au/lacc/lacc_home.cfm (last visited Apr. 4, 2012); *Documents About Present Admission Policies*, L. ADMISSIONS CONSULTATIVE COMMITTEE, http://www.lawcouncil.asn.au/lacc/documents/admission_policies.cfm (last visited Apr. 4, 2012).

138. See *Proposals and Submissions*, L. ADMISSIONS CONSULTATIVE COMMITTEE, http://www.lawcouncil.asn.au/lacc/documents/proposals_submissions.cfm (last visited Apr. 4, 2012).

139. *Qualified Lawyers Transfer Scheme*, SOLICITORS REG. AUTHORITY, <http://www.sra.org.uk/qlts/> (last updated Oct. 20, 2011).

140. See *Professions Approved by the SRA for RFL*, SOLICITORS REG. AUTHORITY (July 21, 2011), <http://www.sra.org.uk/sra/regulatory-framework/professions-approved-by-SRA-for-RFL-status.page>.

have its lawyers “recognized” by the SRA.¹⁴¹ In the U.S., the “recognition” issue was one of the reasons why the ABA Section of Legal Education and Admissions to the Bar issued the 2009 Report of the Special Committee on International Issues.¹⁴² “Recognition issues” were the reason why the Conference of Chief Justices issued a resolution seeking ABA assistance with respect to recognition of lawyers from common law jurisdictions.¹⁴³ This CCJ resolution was a major reason why the ABA Section of Legal Education and Admissions to the Bar proposed a new Model Rule on Admission of Foreign Educated Lawyers and criteria for ABA certification of an LLM degree for the practice of law in the United States.¹⁴⁴ Although the ABA’s efforts have, so far, been unsuccessful,¹⁴⁵ and although the U.K. and Australia are in the process of revising their current “recognition” systems, these examples illustrate the fact that lawyer regulators increasingly are being asked about “recognition” and the conditions under which they will permit a foreign-trained lawyer to practice in their jurisdiction. As a result, there is a greater need than ever for information sharing and assistance.

When U.S. lawyer regulators consider whether a global umbrella organization could be helpful, they may also look at their experiences with domestic umbrella organizations. As noted in the prior Part, there are a number of primarily domestic legal profession umbrella organizations including the CCBE (in Europe), the Law Council of Australia, the Federation of Law Societies of Canada, CORO, the CCJ, the NOBC, and the NCBE. These organizations appear to have been very useful to their members in

141. See *Ethics Guidance*, SOLICITORS REG. AUTHORITY, http://www.sra.org.uk/solicitors/code-of-conduct/guidance/RFLs-and-practice-with-solicitors-in-England-and-Wales.page.page#heading_toc_j_6 (last updated Aug. 16, 2010).

142. See AM. BAR ASS’N INTERNATIONAL REPORT, *supra* note 135, at 3-4.

143. See *Resolution 8 Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar*, CONF. CHIEF JUSTS. (Feb. 2007), <http://ccj.ncsc.dni.us/LegalEducationResolutions/resol8AccredLegalEduCommonLawCountries.html>; see also Terry et al., *Transnational Legal Practice [2006-07]*, *supra* note 35, at 847-50 (discussing these resolutions).

144. See *Proposed Model Rule and Criteria for Comment*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (last visited Apr. 4, 2012) (including links to the “Cover Memo on Proposed Model Rule and Proposed Criteria,” “Proposed Model Rule on Admission of Foreign Educated Lawyers and Proposed Criteria for ABA Certification of an LLM Degree for the Practice of Law in the United States,” and “Comments Received as of September 27, 2011”).

145. The ABA’s proposals were criticized by a number of individuals. See *Comments Received as of September 27, 2011*, A.B.A., http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/20110927_comments_proposed_rule_criteria_foreign_educated_lawyers.authcheckdam.pdf. Moreover, after the ABA issued its proposal, the CCJ rescinded its resolution calling on the ABA for assistance. *Resolution 5 Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar*, CONF. CHIEF JUSTS. (Aug. 2011), <http://ccj.ncsc.dni.us/InternationalResolutions/resol5AccreditationofLegalEdu.html>.

allowing them to pool their experiences, post questions to colleagues, and otherwise benefit from shared communication and collaboration.¹⁴⁶ Thus, lawyer regulators' domestic experiences may make them amenable to the concept of a global umbrella organization for lawyer regulators. For these reasons, the Author concludes that not only is there a *need* for a global umbrella organization, but lawyer regulators would *support* the creation of such an organization.

IV. LOGISTICAL STEPS THAT WOULD BE REQUIRED IN ORDER TO CREATE A GLOBAL UMBRELLA ORGANIZATION FOR LAWYER REGULATORS

If one agrees that it would be useful to have a new umbrella organization, one must turn to the next set of questions, which are the more difficult questions of how one might actually go about building a global umbrella organization for lawyer regulators. The modest goal of this Article is to stimulate discussion and suggestions on this point rather than provide a detailed (and potentially rigid) plan. I recommend that one look to the existing models for the legal profession and also to the umbrella organizations for other regulated fields to see how these organizations have been structured. From these examples, one can generate a list of the variables or issues that should be considered when establishing a new organization.

If one follows this approach, then the models one might consider include the global umbrella organizations discussed earlier, such as the IOSCO, ICN, and ILO, and the regional and national legal profession umbrella organizations such as the CCBE, FLSC, NCBE, NOBC, Law Council of Australia, CORO, and the CCJ.

A review of these organizations indicates that, before establishing the new organization, it would be worthwhile to consider each of the issues listed below.

1. Who should be invited to be a member of the new global umbrella organization?
2. What are the goals of the organization?
3. Should the organization have a Secretariat?
4. The organization's members (and any affiliates) presumably will want to establish virtual communications links, but should they also have face-to-face meetings?
5. How will virtual communications operate?

146. Although this Author is an outsider with respect to all of these organizations, their websites, the occasional listserv messages forwarded to listservs on which the Author participates, and anecdotal evidence all suggest that these organizations have been very useful to their members.

6. How will the organization try to accomplish its goals (at least at the outset)? In other words, what work product would it like to achieve?
7. How will the organization's policies, if any, be adopted? By consensus or by some other mechanism?
8. What funds will the organization require and who will provide those funds?
9. Should the organization have a legal identity? If so, what would be the best jurisdiction in which to base such an organization?¹⁴⁷
10. Shall the organization be created as an adjunct to an existing, already successfully organization or should it be grown from scratch?¹⁴⁸
11. What can be done to help ensure that the organization is self-sustaining?

The eleven items that appear above are a first attempt to develop a list of issues for discussion. There undoubtedly are a number of additional issues that would be worthwhile to consider before creating a new organization. Moreover, even for those issues that have been identified, there is much that one could say. One might, for example, identify the varying approaches that might be used with respect to each of the issues identified above and then elaborate upon the pros and cons of each approach.

While that type of extended analysis certainly would be useful, it is beyond the scope of this Article. This Article has a much more modest aim. It seeks to encourage discussion about the concept of creating a global um-

147. Based on listserv messages, the Author knows that before the International Association of Legal Ethics could be established as non-profit organization based in California, a number of policies had to be adopted and paperwork had to be created. In addition to By-laws, the IALE needed a conflict of interest policy, a mission statement, and a list of officers and directors. *See* Email from Deborah L. Rhode, Dir., Stanford Ctr. on the Legal Prof., to Author (Feb. 16, 2011) (on file with author).

148. When the International Association of Law Schools (IALS) was created, for example, the Association of American Law Schools (AALS) provided financial and logistical support and served as the physical "contact" location for the organization. *Compare Contact Us*, ASS'N OF AM. L. SCHS., <http://www.aals.org/contact.php> (last visited May 15, 2012), with INT'L ASS'N OF L. SCHS., IALS: INTERNATIONAL ASSOCIATION OF LAW SCHOOLS 6, available at <http://www.ialsnet.org/files/IALS-Ebrochure.pdf>. (listing the same Washington, D.C. address). Approximately six years later, the IALS took over these financial and logistical responsibilities. *See 2012 AALS Conference on Clinical Legal Education—Takeaways for Clinical Teaching and Assessment in a Changing Environment*, AALS News, Feb. 2012, at 9, available at <http://www.aals.org/documents/newsletter/february2012.pdf> ("The IALS Board announced to the IALS General Assembly on April 14th [2011] that the AALS would transition out of staff support capacity for IALS, with a transition of all functions to be completed prior to mid-January 2012. . . . AALS ceased the financial administration for IALS on November 30th; IALS assumed control of the assets of the organization the following day.")

rella organization for lawyer regulators so that interested parties may gauge whether the idea is worth exploring further. Second, this Article hopes to stimulate a very practical and detailed discussion about how one might go about creating such an organization. The Article does not seek to identify all of the possible issues nor does it seek to provide definitive answers to the issues it has identified. Indeed, the information cited here demonstrates that global umbrella organizations have taken differing approaches to some of these issues and yet these organizations appear to have been successful in fostering cooperation, information exchange, and ultimately policy agreements. If lawyer regulators decide that the issue is worth pursuing further, it may be useful to have further discussions with some of the existing global umbrella organizations in order to discover which options might be best suited for lawyer regulators.¹⁴⁹

Although it is beyond the scope of this Article to comment on all of the issues identified earlier in this Part, the Author considers it important to offer a few reflections on the very first issue, which is the question of who should be invited to join the new organization. This issue is likely to be one of the most difficult issues to resolve, as well as requiring the most time to resolve.

In order to answer the seemingly simple question of who should be invited to join the new organization, one must resolve both policy questions and technical questions that require research-based answers (for which the research does not currently exist). The first policy issue embedded in question #1 is whether the global umbrella organization should include different *types* of regulators, such as lawyer entry regulators, lawyer conduct regulators, and lawyer discipline regulators. In some, but not all, jurisdictions, the same regulator may be responsible for all three regulatory periods of time. In other jurisdictions, however, lawyers may be regulated by different entities at different points in time.¹⁵⁰ In the U.S., for example, the umbrella organization for the entry point of time is the National Conference of Bar Examiners and the Council of the ABA Section of Legal Education and Ad-

149. Although the Author believes that additional due diligence and investigation would be useful, she also thinks it worth remembering that insistence on too much investigation and certainty can lead to inaction. A useful model may be the LawWithoutWalls project. See LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/> (last visited Apr. 4, 2012). The Author found this project groundbreaking and exciting. Some of the most noteworthy aspects of that project include the LawWithoutWalls creators' enthusiasm, their willingness to proceed despite occasional imperfect technology, and their willingness to let the program develop organically.

150. The entry point of time is often referred to in the U.S. as the admissions stage. The ending point can be the disciplinary stage if lawyers engage in misconduct (or some other entity with authority to respond to misconduct or malfeasance). In between the entry point and the exit point in the profession, there are many different regulations and conduct rules that affect lawyers. Those who adopt these conduct rules might also be considered to be lawyer regulators.

missions to the Bar. The U.S. umbrella organization for disciplinary authorities—the exit point in time—is the National Organization of Bar Counsel (NOBC). The Conference of Chief Justices serves many functions, but it brings together those entities that are most likely to adopt lawyer conduct rules.

If the new global umbrella organization permits different types of regulators, one might ask whether formal or informal divisions should be created to allow each type of regulator to more easily find its counterparts in other countries. One of the Author's complaints about the APEC Legal Services Initiative Inventory cited earlier is that it includes regulator contact information, but the survey on which the Inventory was based did not adequately inquire about the potentially different regulators nor identify the function (admissions, conduct rules, or discipline) of those regulators who were identified.¹⁵¹

The second policy issue embedded in the first question is whether non-regulators should be permitted to join the organization or participate in any fashion. My initial reaction to this policy question was that this should be an organization by and for regulators—and regulators only. I thought that regulators need a forum where they could comfortably and informally raise issues with one another.¹⁵² For this reason, I was surprised when 2011 LawWithoutWalls students Liz Rieser-Murphy and Wu-Dan presented their "Project of Worth" at the 2011 LawWithoutWalls Miami ConPosium: They proposed an organization that allowed individual lawyers, representation bar associations, clients, and other stakeholders to join the new umbrella organization as affiliate members.¹⁵³

151. The Author participated in drafting the APEC Inventory questionnaire and thus shares responsibility for the weaknesses in the Inventory data.

152. See *Consultation: The Regulation of International Practice*, SOLICITORS REG. AUTHORITY, <http://www.sra.org.uk/documents/SRA/consultations/internation-practice-consultation-paper.pdf> (last visited Apr. 4, 2012). This seventeen page consultation sought responses by February 15, 2012 to a series of questions related to U.K. solicitors practicing overseas and foreign lawyers practicing in the U.K. *Id.* Although there are dramatic regulatory changes taking place in the U.K., which are likely to have an impact outside the U.K., it currently appears that there are not well-established mechanisms for the U.K. regulators to speak with other regulators. In the absence of a global umbrella organization, the Author has helped to put U.K. lawyer regulators in touch with U.S. lawyer regulators.

153. See *2011 Topic and Team Pairings*, *supra* note 107. As the documents and websites cited in that footnote explain, the inaugural offering of LawWithoutWalls took place during Spring Semester 2011. Law students from the U.S., the U.K., and China were part of a synchronous mostly virtual course that was held weekly using Adobe Connect software. The course began, however, with an in-person Kickoff session in London and concluded with an in-person "ConPosium" held in Miami. Rather than writing seminar papers or taking exams, students were required to produce a "Project of Worth." During the Miami ConPosium, the Projects of Worth were evaluated by teams of academics and members of venture capital firms. See *2011 ConPosium Details and Schedule*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/2011-ConPosium/> (last visited Apr. 4, 2012). For a descrip-

Upon reflection, however, I believe that this approach has great merit and is worth seriously considering. If the members of an organization are not exposed to the views of those beyond the organization, those inside the organization may not receive the contextual information or perspectives that would be useful to them in their decision-making. For example, some have argued that the members of the U.S. Conference of Chief Justices (CCJ) are isolated from the realities of contemporary law practice, to their detriment, and this negatively affects the decisions they make.¹⁵⁴ Regardless of whether one subscribes to this view regarding the CCJ, it seems undeniable that a healthy exchange of views can be productive and illuminating. One of the reasons why the author and others helped organize the 2009 Conference on Globalization for the Conference of Chief Justices was because the March 2008 Georgetown Symposium on *The Future of the Global Law Firm* discussed recent global and domestic legal profession developments and included a number of critiques directed towards the U.S. lawyer regulatory structure, yet had no U.S. domestic lawyer regulators in attendance.¹⁵⁵ I believe that the more exchange of ideas, the better.¹⁵⁶ Thus, there would be a benefit to allowing non-regulators to participate in some fashion in the proposed new umbrella organization in order to ensure that the regulators are aware of contemporary developments and are exposed to multiple ideas.

Although there may be benefits to allowing non-regulators to participate, one of the primary benefits of this umbrella organization is to allow regulators to communicate with one another. Thus, it seems important to have a channel of communication in which lawyer regulators can communicate exclusively with each other. This could easily be accomplished by having a public part of the organization's webpage (and perhaps a discussions list) and having a "Members Only" section. Having both a public side and a

tion of the 2011 Projects of Worth, see *Projects of Worth*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/projects-of-worth/> (last visited Apr. 4, 2012). The POW by Wu-Dan and Liz-Riser-Murphy was described as follows: "Topic: *Finding Common Ground: Regulatory Issues Across International Borders* Project of Worth: Conceptualized a global association for legal services regulators and developed an online forum through which national and subnational lawyer regulators could connect, share learnings, and cooperate with respect to lawyer licensing and discipline." *Id.*

154. See Davis, *supra* note 104.

155. See *Global Resources*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/resources/global_legal_practice.html (last visited Apr. 4, 2012); see also Elizabeth J. Cohen, *Chief Justices, Others, Consider Ideas on Regulating Lawyers in Global Setting*, 25 LAW. MAN. PROF. CONDUCT 300 (2009), available at http://www.americanbar.org/content/dam/aba/migrated/cpr/nosearch/centerpiece/globalization_conference_may_2009.doc.

156. STEVEN JOHNSON, *WHERE GOOD IDEAS COME FROM: THE NATIONAL HISTORY OF INNOVATION* (2010); Michele DeStefano, *Nonlawyers Influencing Lawyers: Too Many Cooks in the Kitchen or Stone Soup*, 80 FORDHAM L. REV. (forthcoming 2012).

members-only avenue seems to be an approach commonly used and presumably should not present any great difficulties.¹⁵⁷

Even after these policy questions are resolved, one must face the difficult technical issue of identifying exactly who it is that meets the policy criteria and thus is eligible to join. This turns out to be no small task and requires resolution of three different types of questions. *First*, one must determine the geographic scope of the organization. In other words, which jurisdictions will be contacted and invited to join? *Second*, one must determine, for purposes of this umbrella organization, exactly who should be considered a “lawyer” within the identified jurisdictions. *Third*, for each of the identified “lawyers,” one must determine who regulates that group of lawyers, thus entitling that regulatory entity to join the global umbrella organization for lawyer regulators. None of these questions have easy answers.

One response to the “jurisdictions” question would be to use the World Trade Organization (WTO) membership list. The WTO currently includes 153 members.¹⁵⁸ There would be advantages and disadvantages to using the WTO Member list to identify the countries from which the lawyer regulators must hale.¹⁵⁹

The issue of identifying who “counts” as a lawyer within a particular country will be an even more difficult issue to resolve. On the one hand, it is perhaps not surprising that this should be a difficult issue since there are so

157. See NAT'L ORG. B. COUNS., <http://nobe.org/> (last visited Apr. 4, 2012); COUNCIL BS. & L. SOC'YS OF EUR., <http://www.ccbe.eu/index.php?id=12&L=0> (last visited Apr. 4, 2012); NAT'L CONF. B. EXAM'RS, <http://www.ncbex.org/> (last visited Apr. 4, 2012). All of these websites have a members-only section.

158. See *Members and Observers*, WORLD TRADE ORG. http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Apr. 4, 2012). This number does not include Russia, Samoa, or Montenegro, all of whom were approved for accession in December 2011. They do not officially become members, however, until thirty days after all of their proposals have been adopted and ratified. See *How to Become a Member of the WTO*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/acc_e/acces_e.htm (last visited Apr. 4, 2012).

159. One advantage of using the WTO Member Country list is the certainty it provides—it is simple to determine whether a country is included. Second, the membership list is broad—it includes, for example, approximately fifty countries whose bars do not belong to the International Bar Association. One disadvantage of using the WTO list is that there may be countries that are excluded because they have not yet qualified for WTO membership or are not interested in it. For example, approximately seventeen jurisdictions have bar associations or law societies that belong to the IBA, but the country would not “count” under the proposed approach because it is not a WTO Member State. Examples of these jurisdictions include: Afghanistan, Algeria, Bahamas, Bermuda, Cayman Islands, Channel Islands, Gibraltar, Iran, Iraq, Isle of Man, Liberia, Libya, Norfolk Island, Northern Island, Puerto Rico, Scotland, and Syria. (This list also included Russia, even though Russia and the WTO have now approved Russia's accession to the WTO.) Compare *Members and Observers*, *supra* note 158 with INT'L B. ASS'N, IBA MEMBER ORGANISATIONS (Jan. 2009), available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=25834764-545A-44BA-9B82-6D326AE46997>.

many variations in lawyers: some countries have bifurcated professions, whereas others have unitary professions; some use the term lawyers to refer to those who only do courtroom work, whereas other jurisdictions, such as the U.S., have a much broader definition.¹⁶⁰

Although there are many differences in how lawyers are defined, when I first considered this issue, it seemed that there should be a list somewhere that would set out for each country what constitutes a “lawyer.” To my knowledge, no such global list currently exists, even though it would be very useful to have one. Moreover, it seems that until one generates this type of list, it will be impossible to determine who should be invited to join the new organization. One cannot invite lawyer regulators without knowing, for each specified country, what constitutes a “lawyer” and who regulates that group. To those who come from the U.S., where there is a unified legal profession, this seems like a simple and obvious question. In many countries, however, the answer will not be clear. For example, for Russia, one must decide whether to include only licensed “advocates,” who have the monopoly with respect to courtroom work, or “jurists” who perform much of the work that a U.S. lawyer would consider to be transactional legal services.¹⁶¹ Thus, it seems necessary (although difficult) to generate a list that identifies for each country which “lawyers,” and thus which regulators, are eligible to join the new organization.

Fortunately, there are places that one can look for assistance in putting together a list of lawyers whose regulators should be invited to join the new organization. One might begin, for example, by consulting the European Union’s lawyer directives. Directive 98/5, for example, provides that a lawyer from one EU Member State has a right to permanently establish himself or herself in another EU Member State.¹⁶² Directive 77/249 gives an EU lawyer the right to temporarily practice in another EU Member State.¹⁶³ In order to know to whom these critically-important EU directives apply, one must know who constitutes a “lawyer” in each EU Member State. Without that knowledge, one would not know who is entitled to take advantage of

160. See Terry et al., *Trends in Lawyer Regulation*, *supra* note 4.

161. See WILLIAM ELLIOTT BUTLER, *THE RUSSIAN LEGAL PRACTITIONER* (2011).

162. See Council Directive 98/5/EC, To Facilitate Practice of the Profession of Lawyer on a Permanent Basis in a Member State Other than That in Which the Qualification Was Obtained, art. 1, 1998 O.J. (L 77) 36 [hereinafter Directive 98/5] (“For the purposes of this Directive: (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.”).

163. Council Directive 77/249/EEC, To Facilitate the Effective Exercise by Lawyers of Freedom to Provide Services, art. 1, 1977 O.J. (L 78) 17 [hereinafter Directive 77/249] (“Each Member State shall recognize as a lawyer for the purpose of pursuing the activities specified in Article 1 (1) any person listed in paragraph 2 of that Article.”). For additional information on these directives, see Terry, *Bologna Process*, *supra* note 32, at 146-52.

the directive. The EU directives handle this issue by including a separate section in the directive that specifies the applicable titles (in the local languages) of the lawyers covered by these EU directives.¹⁶⁴ As new member countries have joined the EU—such as Bulgaria—these directives have been amended to specify (in the local language) the identity (title) of the legal professional in the new EU Member State who is covered by the directives.¹⁶⁵ Thus, the EU Directives could be very useful when assembling for the new umbrella organization the list of “lawyers” who are regulated in each eligible jurisdiction.

A second group of resources that one might consult when putting together this list are the various tables prepared by the UK Solicitors Regulation Authority (SRA). The SRA has adopted regulations that show who may be a registered foreign lawyer in England and Wales.¹⁶⁶ The SRA also prepared a table that listed the regulatory authorities that would allow English solicitors to partner with the non-UK jurisdiction’s own lawyers.¹⁶⁷ While some of the regulations on which these SRA tables were based have been superseded by the October 2011 SRA regulatory changes, these SRA tables contain useful information and should prove helpful when assembling the list of those to invite into the new global umbrella organization.

A third source that might prove useful is the APEC Legal Services Inventory discussed earlier.¹⁶⁸ The APEC Inventory includes information on the organization(s) that controls licensing of lawyers, the peak professional association representing the legal profession and other associations playing a significant role in developing policy for the legal profession.¹⁶⁹ Although this information is not always as definitive as one would like, it will be a useful resource as the “who to invite” list is assembled.

A fourth source that might prove useful is the member bar lists of the IBA and the CCBE.¹⁷⁰ Although neither of these organizations indicates

164. See Directive 98/5, *supra* note 162, art. 2; Directive 77/249, *supra* note 163, art. 1.

165. See Directive 98/5, *supra* note 162.

166. See *Professions Approved by the SRA for RFL Status*, SOLICITORS REG. AUTHORITY, <http://www.sra.org.uk/sra/regulatory-framework/professions-approved-by-SRA-for-RFL-status.page> (last visited Apr. 4, 2012).

167. See *Regulatory Bodies Which Allow Practice with Solicitors in England and Wales*, SOLICITORS REG. AUTHORITY, <http://www.sra.org.uk/sra/regulatory-framework/Regulatory-bodies-which-allow-practice-with-solicitors-in-England-and-Wales.page> (last updated July 21, 2011).

168. See *supra* notes 127-133 and accompanying text.

169. See *APEC High-Level Overview*, *supra* note 133.

170. See *Members by Countries*, COUNCIL BS. & L. SOC’YS EUR., <http://www.ccbe.org/index.php?id=19&L=0> (last visited Apr. 4, 2012) (listing member bars); *Members by Countries: Full Members – Germany*, COUNCIL BS. & L. SOC’YS EUR., http://www.ccbe.org/index.php?id=93&id_delegation=80&L=0 (last visited Apr. 4, 2012) (the Germany entry, for example, lists two organizations but does not explain which organi-

whether a particular bar association member is a regulatory bar, a representational bar,¹⁷¹ or both, the IBA and CCBE directories have contact information that is worth consulting.

Fifth, one might find it useful to contact those entities that have actively reviewed admission applications from foreign applicants. Thus, when putting together the list of “lawyers” and those who regulate lawyers in each country, one might find it useful to seek input from the Australian Law Admissions Consultative Committee, the New York Bar Examiner’s Office, and the Federation of Law Societies of Canada to see what information they might share.¹⁷²

Finally, one might find it useful to consult the “Project of Worth” and underlying research prepared by two students who participated in the inaugural year of the innovative LawWithoutWalls program.¹⁷³ University of Miami law student Liz Rieser-Murphy and Peking University School of Transnational Law student Wu-Dan prepared a Project of Worth in which they tackled the issue of how a global umbrella organization for lawyer regulators might be structured and operated. They conducted a tremendous amount of research in preparation for the course’s final “ConPosium” which

zation is the regulatory organization and which is the representational organization); *IBA Member Organisations in the Americas*, INT’L B. ASS’N, http://www.ibanet.org/barassociations/BIC_Americas.aspx (last visited Apr. 4, 2012) (listing the Bar Associations members, but does not indicate whether they are regulatory bars or representational bars or both; page includes links to bar associations elsewhere in the world).

171. See generally Terry, *European Commission Project*, *supra* note 26 (explaining the differences between regulatory and representational bars and noting that the failure to differentiate the two had been one of the key issues raised by antitrust authorities); see also *Application for IBA Membership*, INT’L B. ASS’N, http://www.ibanet.org/Join_the_IBA_.aspx (last visited Apr. 4, 2012) (form does not ask the bar to indicate whether it is a regulatory bar, a representational bar, or both); INT’L B. ASS’N, INFORMATION ON ADMISSION OF MEMBER ORGANISATIONS TO THE INTERNATIONAL BAR ASSOCIATION, available at <http://www.ibanet.org/Document/Default.aspx?DocumentUid=C68BEC8A-C82D-451C-9F37-F9BB531F7666> (last visited Apr. 4, 2012); *Become a Bar Association Member*, INT’L B. ASS’N, http://www.ibanet.org/barassociations/Organisational_membership.aspx (last visited Apr. 4, 2012); *Bar Issues Commission Annual Membership Form 2011*, INT’L B. ASS’N, <http://www.ibanet.org/Document/Default.aspx?DocumentUid=DAEF73AD-8D20-4DE4-8D79-98E3D78BD646> (last visited Apr. 4, 2012).

172. See *supra* notes 136-138 for a discussion of the FLSC and LACC; see also AM. BAR ASS’N INTERNATIONAL REPORT, *supra* note 135, App. B (including foreign lawyer admission statistics for New York).

173. For additional information, see MICHELE DE STEFANO BEARDSLEE, LAW WITHOUT WALLS: EVOLVING LEGAL EDUCATION AND PRACTICE (Oct. 2010), available at http://www.nyls.edu/user_files/1/3/4/30/58/1053/Beardslee.pdf (last visited Apr. 4, 2012); *About*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/about/> (last visited Apr. 4, 2012); For information about the Projects of Worth, see *Projects of Worth*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/projects-of-worth/> (last visited Apr. 4, 2012).

was held in Miami in April 2011.¹⁷⁴ They designed a webpage for the proposed organization; the tabs on the left of their proposed webpage included the following items:

About Us
Our Mission
Future Goals
News
Membership Information
Events
Content
Bar Admission and Practice Admission
Certification Information
Regional Legal Services Initiatives
Legal Academic Publishing
Discussion Forum
FAQs
Contact Us

Wu Dan and Liz Rieser-Murphy have offered to share the results of their research and analysis. The certification page, for example, listed the country name, the type of law in that country (e.g. Civil Law, Common Law, Islamic Law, or mixed law), the title used by lawyers in that country, the name of the lawyer regulators, the mechanism that one would use in order to confirm that a particular individual was a lawyer in good standing in that country, and the webpage of the organization.¹⁷⁵ The Bar Admission and Practice Admission page included information about the legal education system and how one could qualify as a lawyer.¹⁷⁶

The organization they envisioned would start modestly. Its mission was “[t]o create an internet-based network to promote the global free flow of legal services.”¹⁷⁷ The goals of the group were to: (1) “Create an information exchange as a starting point for dialogue between international legal services regulatory bodies”; (2) “Monitor the requirements for bar admission in international jurisdictions, particularly the members of the World Trade Organization”; (3) “Provide an information source for legal practi-

174. See *Events*, INT’L ASS’N LEGAL SERVICES REGS., <https://sites.google.com/site/lwowlizivy/events> (last visited Apr. 4, 2012).

175. See *Certification Information*, INT’L ASS’N LEGAL SERVICES REGS., <https://sites.google.com/site/lwowlizivy/content/information> (last visited Apr. 4, 2012).

176. See *Belgium, Bar Admission and Practice Admission*, INT’L ASS’N LEGAL SERVICES REGS., <https://sites.google.com/site/lwowlizivy/content/bar-admission-and-practice-admission/belgium> (last visited Apr. 4, 2012).

177. See *Our Mission*, INT’L ASS’N LEGAL SERVICES REGS., <https://sites.google.com/site/lwowlizivy/who-we-are/our-mission> (last visited Apr. 4, 2012).

tioners, academics, and business people regarding the regulation of the practice of law in WTO member countries.¹⁷⁸ Its “Future Goals” webpage provided additional information, distinguishing between its immediate goals and its five-year goal.¹⁷⁹ Its immediate goal was to: “[s]timulate the active engagement of international legal services regulatory bodies, including but not limited to participation in electronic updates and an online discussion forum.”¹⁸⁰ The five year goal was to “[e]stablish a virtual conference for legal regulators to come together, share ideas, and build working relationships.”¹⁸¹ As this brief description shows, the 2011 Project of Worth prepared by Liz Rieser-Murphy and Wu-Dan could provide useful information as regulators consider how they want to structure their new global umbrella organization.

The history of the global and regional umbrella organizations described earlier demonstrates that it is common for organizations such as these to start with relatively few members and then grow.¹⁸² Many of these organizations have started quite modestly with respect to the communication they facilitate, but they have gotten progressively more sophisticated.¹⁸³ It is also common for these organizations to become more ambitious over time with respect to their work products.¹⁸⁴ Finally, the history of a number of the national and regional legal profession organization shows that over time, there is convergence with respect to at least some of their substantive domestic regulatory policies.¹⁸⁵ Thus, when creating the organization, it will be important to remember that the organization can evolve over time and that it need not be perfectly designed from the outset.

178. *Id.*

179. *See Future Goals*, INT’L ASS’N LEGAL SERVICES REGS., <https://sites.google.com/site/lwowlizivy/who-we-are/futural-goal> (last visited Apr. 4, 2012).

180. *Id.*

181. *Id.*

182. *See, e.g., supra* notes 44-50.

183. *See, e.g., supra* notes 73-75 and accompanying text.

184. *See supra* notes 52-55 and accompanying text.

185. *See, e.g., supra* note 58 and accompanying text. In the legal context, a similar pattern appears to have emerged within the CCBE with respect to a number of policies, including the GATS. *See, e.g.,* COUNCIL BS. & L. SOC’YS EUR., GATS COMMITTEE, *available at* http://www.ccbe.org/index.php?id=94&id_comite=9&L=0 (showing the evolution of CCBE Members’ positions on the GATS); COUNCIL BS. & L. SOC’YS EUR., INBOUND POSITION OF THE CCBE VIS-À-VIS REQUESTS FOR LIBERALISATION FROM THIRD COUNTRIES (OUTSIDE THE EU) (March 2001), *available at* http://www.ccbe.org/fileadmin/user_upload/NTCdocument/lamy_010301_enpdf1_1183718564.pdf; *see also* Terry, *Lawyers, GATS, and the WTO*, *supra* note 103, at 713-14 (stating that some CCBE members had previously been opposed to the limited license approach set forth in the 2001 CCBE Inbound Position).

CONCLUSION

The time has come to create a global umbrella organization for those who regulate lawyers. It has become increasingly rare that lawyer regulators in one jurisdiction face issues that are unique and that are not shared—in some fashion—by lawyer regulators in other jurisdictions. Accordingly, a global umbrella organization would allow lawyer regulators to more easily communicate with one another about the issues they have in common, as well as communicate about issues related to specific lawyers. At some point, as has occurred in the U.S. with respect to the legal profession and globally with respect to other fields, such an organization might provide a springboard for discussions about whether it would be useful to have policies in common and what those policies would look like. In addition to these worthwhile achievements, the new global umbrella organization could play an important role in supporting lawyers if there are societal challenges to the rule of law and lawyers' role in that system. For this reason, the creation of such an organization is an appropriate topic to include in a Symposium that focuses on lawyers as conservators of the rule of law.

This Article posits that not only is there a need for such a global umbrella organization but that lawyer regulators would welcome this development. Accordingly, this Article encourages future discussions that focus not on the issue of *whether* such an organization should be created but instead on the issue of *how*. As this Article explains, there are a number of issues that should be considered when setting up this type of organization. One of the first and most difficult issues will be deciding who to invite to join this organization. This is a surprisingly difficult issue, but for which academic research, crowd-sourcing,¹⁸⁶ and collaborative work might help. Infrastructure isn't sexy.¹⁸⁷ It is often built through very small incremental steps. Writing about it may not immediately seem to be directly tied to the topic of *Lawyers as Conservators of the Rule of Law*. But infrastructure matters and it can make a large difference in outcomes. For these reasons, the time has come for lawyer regulators, the legal profession, and their stakeholders to begin to think seriously about how they should go about building a global umbrella organization for lawyer regulators.

186. For examples of crowd-sourcing in the legal context, see Laurel S. Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 Nw. J. INT'L L. & BUS. 527 (2008).

187. I would like to recognize Episode 153 of the West Wing which was my inspiration for the phrase "infrastructure isn't sexy." *The West Wing: Institutional Memory* (NBC television broadcast May 7, 2006).