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LAW PRACTICE OF U.S. ATTORNEYS IN MEXICO AND MEXICAN ATTORNEYS IN THE UNITED STATES: A STATUS REPORT

STEVEN C. NELSON*

The relative growth in the services sector as a percentage of gross national product is among the more dramatic economic developments in the United States and other industrialized countries over the last quarter-century. Frequently maligned as a combination of fast-food restaurants and the taking-in of each other's laundry, the services sector has in fact been a powerful generator of high-paying jobs.

Notwithstanding growing importance domestically, the services sector generally did not participate in the dramatic growth of international trade until recently. Trade in services was not the subject of significant trade agreements, unlike trade in goods, which had been increasingly liberalized over the years under the General Agreement on Tariffs and Trade (GATT).¹ The growth of international trade in services did not keep pace with that of trade in goods because services are by their nature, more difficult to export. Additionally, services are often subject to extensive domestic regulations that readily lend themselves to protectionist ends.

Beginning in the mid-1980's, the U.S. government increased attention on trade in services through extensive negotiations in various international trade *fora*. The most noteworthy of these was the Uruguay Round of negotiations under GATT.² These negotiations resulted in, among other things, a new General Agreement on Trade in Services (GATS)³ and the North American Free Trade Agreement (NAFTA),⁴ which also contained extensive provisions relating to trade in services.

Before addressing the provisions of NAFTA relating to legal services, the nature of barriers to cross-border services should be considered in conjunction with methods of overcoming these barriers. There are two principal barriers to the delivery of legal services outside the jurisdiction in which the lawyer is qualified.⁵ Additionally, efforts to deal with those barriers have resulted in the creation of certain ancillary barriers.⁶

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1. General Agreement on Tariffs and Trade, Oct. 10, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194.

2. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, Legal Instruments-Results of the Uruguay Round vol. 1 (1994), 33 I.L.M. 1125 (1994).

3. Annex II of the Final Act Embodying the Results of the Uruguay Round of Multilateral Negotiations, I.E.L. I-B-64 (1994) entitled General Agreement on Trade in Services, 33 I.L.M. 44 (1994).

4. North American Free Trade Agreement, December 17, 1992, U.S.-Can.-Mex. (Effective Jan 1, 1994), 32 I.L.M. 605 (1993).

5. United States. Office of the U.S. Trade Representative, 1994 Nat'l Trade Estimate Rep. on Foreign Trade Barriers, Forward.

6. *Id.*

I. PRINCIPAL BARRIERS TO INTERNATIONAL TRADE IN LEGAL SERVICES

The first principal barrier to the rendition of legal services by lawyers qualified in other countries is found in the prerequisite education and examination requirements extended to those already qualified in another country. In the United States, certain commercially-important states, such as New York, have made it relatively easy for lawyers qualified in other countries to become full members of the host state bar. This is achieved through the completion of a one-year Master of Laws (LL.M.) degree program and passage of the bar examination.⁷ Many foreign lawyers, including substantial numbers from Canada and Mexico, have become members of the New York bar in this way.⁸ Under the Diplomas Directive,⁹ European Union (EU) member states must allow lawyers qualified in other EU member states the opportunity to practice locally. Qualified lawyers must either complete a period of adaptation or a limited examination designed to reconcile the differences between the legal systems of the two member states.¹⁰ Also the countries of the former British Commonwealth mutually recognize the qualifications of members of their respective legal professions.¹¹

With these limited exceptions, the vast majority of countries generally do not permit a foreign lawyer to qualify as a member of the local legal profession without completing the same educational requirements as someone with no prior education or training. The length of the educational requirement renders it impractical for most lawyers to interrupt their careers long enough to qualify in another country. This seriously impairs the mobility of the legal profession, which is vital to its globalization.

The second principal barrier is the prohibition found in many countries against the formation of partnerships between lawyers and anyone other than another lawyer of that country.¹² This barrier results from a very strict application of the rule, common to most lawyers' codes of ethics, that a lawyer must not share fee income with non-lawyers.¹³ This barrier does not exist in the United States because foreign lawyers are recognized as lawyers for purposes of partnerships. Thus, in all states, members of their respective bars are permitted to practice in partnership with foreign lawyers, with no limitations on foreign ownership of law firms.¹⁴ Accordingly, it is possible

7. N.Y. Ct. RULES, § 520.5(b)(2) (Rules for the Admission of Attorney and Counselors at Law).

8. In New York, there are lawyers from at least 45 different countries. See, Hope B. Engel, *New York's Rules on Licensing of Foreign Legal Consultants*, 66 N.Y. St. B.J. 36 (Mar./Apr. 1994).

9. Directive on the Mutual Recognition of Diplomas, Council Directive No. 89/48, O. J. L19/16 (1989).

10. See Treaty ESTABLISHING THE EUROPEAN COMMUNITY, art. 52 (concerning commercial establishment and the provision of services), Feb. 7, 1992, O.J. (C 224) 1 (1992), [1992] 1 C.M.L.R. 573 (1992)[hereinafter EEC TREATY], amended by the Maastricht Treaty, Id. 15, art. 8a(1) (concerning freedom of movement).

11. See Robert Lever, *Bars to Practice; Will Only European Community Nationals be Able to Perform Legal Work in EC Countries?* July 20, 1992, (unpublished manuscript on file with the Texas Law Journal).

12. See Frances SILVERMAN, HANDBOOK OF PROFESSIONAL CONDUCT FOR SOLICITORS, 111-12 (2ed. 1992) (describing Law Society of England and Wales). The Law Society of England and Wales "Law Society", formed by Royal Charter in 1825, is the governing body of the solicitors' profession and has the power to promulgate rules and regulations governing the training and admission of solicitors, regulating practicing certificates, and controlling the conduct of professional practice and discipline.

13. N.Y. C.P.R. § 3-103(A); Pa. R.P.C. §5.4(b).

14. Despite the Supreme Court's ruling in *Application of Fre Le Poole Griffiths for Admission to the Bar*, 413 U.S. 717 (1973), that requiring U.S. citizenship for admission to practice law violates the equal Protection Clause

for a foreign law firm to establish and operate under its own name by associating with lawyers admitted to practice. However, the widespread existence of this kind of prohibition in countries other than the United States is a major obstacle to the formation of multinational partnerships. This is unfortunate because multinational partnerships offer the best overall solution to the problems posed by the education/examination barrier.

II. DIRECT MEANS OF ELIMINATING THE EDUCATION/ EXAMINATION BARRIER

There are at least three different ways of dealing more directly with the education/examination barrier, each of which raises certain problems. The first is the approach followed in the United Kingdom and Belgium, where giving professional legal advice is not regulated under domestic law. This makes it relatively easy for lawyers qualified in other countries to practice in London and Brussels, which they have done in substantial numbers.¹⁵ There are two disadvantages to this approach. First, members of the public dealing with an established foreign lawyer or law firm may be misled into thinking that they are dealing with locally-qualified lawyers. Second, it does not permit effective host-country regulation of foreign lawyers.

These shortcomings have been substantially alleviated through requirements, imposed by means of immigration procedures. More recently, reciprocal agreements between professional bodies have provided that foreign lawyers practicing in one of those countries must abide by the rules applicable to host country lawyers. Further, foreign lawyers cannot hold themselves out as members of the host country legal profession.¹⁶ In a related step, professional bodies in both the United Kingdom and Belgium have relaxed their earlier prohibitions on the establishment of multinational partnerships.¹⁷ While the approach taken in these two countries has largely eliminated both of the principal barriers, most countries would find the deregulation of providing legal advice unacceptable for purely domestic reasons.

The second approach to eliminate the education/examination barrier is to accord a degree of recognition to the education, training and experience of the foreign lawyer. This would require reduction of the education and examination requirements to specific areas. These areas would be limited to those necessary to adapt the lawyer's experience to the host country's legal system.¹⁸ Upon satisfaction of the abbreviated requirements, the lawyer would be admitted to full membership in the

of the Fourteenth Amendment, twelve states (Arkansas, Iowa, Maryland, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, South Dakota, Utah, and West Virginia) still had this qualification in 1992 according to the Office of the U.S. Trade Representative. Connecticut, the state whose rule was held unconstitutional in *Griffith*, requires bar applicants to show either U.S. citizenship or reciprocal access in the applicant's country of citizenship.

15. See e.g., MARTINDALE-HUBBELL LAW DIRECTORY 2771B-2826B, 2340B-2414B (1990) (International Corporation Section). Ninety-two entries for non-European Union based law firms with offices in England. MARTINDALE-HUBBELL LAW DIRECTORY 21552B-2170B (1990) lists forty-seven non-Belgian based law firms with offices in Brussels.

16. See e.g., American Bar Association, *Section of International Law and Practice, Report to the House of Delegates: Model Rule for Licensing of Legal Consultants*, 28 INT'L LAW 207, 216 (1994) [hereinafter MODEL RULE].

17. See Solicitors' PRACTICE RULES, Rule 7(6)(a) (1990).

18. France, for example, has this requirement. Joanne Naiman, *Bill to Curb U.S. Lawyers Passes 1st Test in France*, 11/21/90 N.Y.L.J.1 (col. 1).

host country's legal profession.¹⁹ This is the approach adopted in the European Community under the Diplomas Directive and, in principle, in France since the merger of the professions of *avocat* and *conseiller juridique*.²⁰ The difficulty with this approach from the standpoint of liberalization is that it lacks transparency. The degree of liberalization is a function of the extent to which the educational and examination requirements are reduced to those that are objectively required to ensure effective adaptation of the lawyer's pre-existing skill and knowledge to a different legal system.

The third approach is the basis for the American Bar Association's (ABA) policy in this area. It involves the adoption of rules permitting foreign lawyers to be licensed as foreign legal consultants without examination. This is predicated upon lawyers being members in good standing of recognized foreign legal professions that have effective systems of professional regulation and discipline.²¹ While such rules effectively avoid the education/examination barrier, they often replace certain ancillary barriers.

III. ANCILLARY BARRIERS UNDER FOREIGN LEGAL CONSULTANT RULES

The first ancillary barrier results from rules that include experience requirements beyond qualifications in the applicant's home country. Most foreign legal consultant rules in the United States require that the applicant have practiced for at least five of the previous seven years.²² The Model Rule on the Licensing of Legal Consultants, adopted by the ABA in August 1993 (ABA Model Rule)²³ makes such a requirement optional. This exemplifies the ABA view that length of practice requirements are not essential elements where foreign lawyers are concerned. Certain states and countries have adopted this kind of rule requiring that the applicant have practiced in his or her home country for a requisite period.²⁴ This substantially limits lawyer mobility, and the ABA Model Rule accordingly only requires that the lawyer's experience involve substantial practice of the law of his or her home country.²⁵

The second ancillary barrier is one that is inherent in a foreign legal consultant regime. It is the limitation of the scope of the practice in which a foreign legal consultant is permitted to engage.²⁶ This is perhaps the most difficult and controversial aspect of the foreign legal consultant concept. Some jurisdictions in the

19. *Id.*

20. The *conseil juridique* title was abolished in 1991. All *conseil juridiques* and trial lawyers [*avouets*] became attorneys [*avocats*] on January 1, 1992, regardless of their nationality. Law No. 90-1259 art. 1(1).

21. Model Rule *supra* note 16, § 1(a).

22. *E.g.*, D.C. R. A.Ct. 46(b)(4)(d); N.Y.R. §521.3; CAL. CT., 988(o). Several states restrict to a larger extent the foreign consultant's practice, limiting the consultant to advising on the law of the country where he or she is licensed, with the same exclusion on preparing documents dealing with the transfer of real estate, inheritances, and marital relations of U.S. residents.

23. Model Rule, *supra* note 16.

24. *See e.g. id.* at 221 (discussing experience requirements in American, noting that Alaska, Connecticut, Washington D.C., Hawaii, Texas, Michigan, New Jersey, Oregon and Washington all have this requirement).

25. *See e.g., id.* at 227 (indicating that Alaska, California, Connecticut, Florida, Georgia, Texas, Michigan and Illinois all have restrictions providing that a "legal consultant may render legal advice only on the law of the foreign country in which he or she is admitted to practice").

26. *See Robert Lever, supra* note 11.

United States and elsewhere have adopted rules limiting the practice of the foreign legal consultant to providing advice on the law of his or her home country.²⁷ This is a faulty approach for several reasons. First, and perhaps most importantly, it does not correspond to the way in which lawyers actually work. Lawyers advise, not on pure questions of law, but on transactions, disputes and relationships. All of these may be affected in one way or another by the interaction of two, three, or even more legal systems. One principal issue is the question of which law or laws apply. There may be conflicting answers depending on the forum in which the matter arises.

The approach taken in the ABA Model Rule is the only one that is believed to be workable or likely to be respected in practice. It permits a foreign legal consultant to advise on any matter which he or she has been consulted. This is subject only to the requirement that any advice concerning matters of U.S. state or federal law be based on the advice of a lawyer fully licensed to give such advice in the relevant jurisdiction.²⁸ This, together with requirements that the foreign legal consultant not hold himself or herself out as a member of the host country legal profession,²⁹ affords ample protection to the public against being misled without creating rigid rules that lawyers cannot comply with.

There is no objective justification for a rule that restricts the ability of a foreign legal consultant to advise on the law of third countries. There is no apparent risk of the public being misled as to the qualifications of the foreign legal consultant compared to members of the host country's legal profession.

A further ancillary barrier may result from a failure to regard the foreign legal consultant as a lawyer for purposes of protecting privileged communications between lawyer and client.³⁰ This would include the lawyer's work product created in the process of advising the client against compelled disclosure in the context of official investigations and judicial or administrative proceedings. The denial of that privilege, which is a fundamental right of the client rather than the lawyer, can have a substantial deterrent effect on the retention of foreign legal consultants as legal advisers in certain circumstances.

The only known example of an apparent limitation of privileged communications with host state lawyers (though not specifically in the context of foreign legal consultant practice) is found in the practice of the European Commission and the jurisprudence of the European Court of Justice.³¹ The ABA Model Rule makes it clear that the foreign legal consultant is subject to the rules of professional conduct and responsible to the host state in the same manner as a member of the host state bar. Correspondingly, a foreign legal consultant is to be treated in the same manner for purposes of attorney-client and related privileges.³²

27. See e.g., Model Rule, *supra* note 16, at 212.

28. *Id.* at 209, § 4(e).

29. *Id.* at § 4(f).

30. *Id.* at 214, § 20.

31. Case 155/79, *AM&S Europe Ltd. v. Commission*, [1982] ECR 1575.2 C.M.L.R. 264 (1982).

32. Model Rule, *supra* note 16, at 210, § 5.

IV. ABA POLICY ON ELIMINATION OF THE PRINCIPAL BARRIERS

The ABA considers the only effective solution to the education/examination barrier is the widespread adoption of foreign legal consultant rules. These rules would be based upon the principles set forth in the ABA Model Rule. They would be adapted to the technical structure of the professional regulatory system of the host country. The ABA believes that the remaining ancillary barriers in that Model Rule are the only restrictions objectively justified in terms of the legitimate objectives of professional regulation. The ABA further takes the position that the adoption of foreign legal consultant rules should be coupled with the complete elimination of the partnership barrier. Such a partnership barrier serves no purpose whatsoever other than that of protectionism.³³

In light of the foregoing policy considerations, this article will now turn to NAFTA, and the status of discussions thereunder in relation to cross-border legal services.

V. PRINCIPAL NAFTA PROVISIONS AFFECTING THE PRACTICE OF LAW

In contrast to its predecessor, the Canada-United States Free Trade Agreement³⁴ which provided for liberalization of trade only in a limited number of specified services, NAFTA includes provisions designed to bring about a liberalization of trade in services generally, subject only to specified exceptions.³⁵ Chapter 11 of NAFTA relates to services (as well as goods) provided through an investment established in the host country.³⁶ Chapter 12 deals with measures maintained or adopted by a party relating to cross-border services by service providers of another party.³⁷ Both chapter 11 and 12 contain provisions requiring each NAFTA party accord most-favored-nation treatment to nationals of the other parties with respect to measures governed by that chapter.³⁸

Chapter 12 of NAFTA addresses problems inherent in the liberalization of services requiring licensing.³⁹ Article 1210(1) requires that any measure adopted or maintained by a NAFTA party relating to the licensing or certification of nationals of another party be based on objective and transparent criteria. This criteria includes: competence, the ability to provide a service, and no unnecessary burden to ensure the quality of the service. Further, licensing or certification should not constitute a disguised restriction on the cross-border provision of a service.⁴⁰

Significant reservations taken by the parties substantially diluted the salutary effects of these provisions, insofar as the legal profession is concerned.⁴¹ Mexico took a reservation as to Canada, stating that Canadian lawyers would only be

33. *Id.*

34. Canada-United States Free Trade Agreement, Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281 (1988).

35. NAFTA, *supra* note 4, 32 I.L.M. at 605.

36. *Id.* at ch. 11, 32 I.L.M. 639.

37. *Id.* at ch. 12, 32 I.L.M. 649.

38. *Id.* at arts. 1104, 1202-1204, 32 I.L.M. 639, 649.

39. *Id.* at ch. 12, 32 I.L.M. 649.

40. *Id.* at ch. 12, art. 1210(1), 32 I.L.M. 650.

41. *Id.* at Annex II, 32 I.L.M. 752-759.

permitted to form partnerships with Mexican lawyers if the number of Canadian partners, and their ownership interest in the partnership, did not exceed the number of Mexican partners, and their ownership interest in the partnership. Canada took the reciprocal reservation as to Mexico.⁴²

The Mexican negotiators proposed similar mutual reservations with the United States. The U.S. negotiators declined that proposal after consulting with representatives of the U.S. legal profession who advised that the proposed partnership restrictions would effectively preclude the formation of meaningful cross-border partnerships with Mexican lawyers. The result was that Mexico took a complete reservation *vis-a-vis* the United States as to legal services, which was then reciprocated by the United States. This means that both Mexico and the United States are technically free under NAFTA to impose whatever restrictions they wish on lawyers of the other party practicing in their respective territories.

VI. CONSULTATIONS AMONG THE PROFESSIONAL BODIES

Annex 1210.5 of NAFTA sets forth provisions to address particular problems associated with the licensing of foreign professionals.⁴³ Section A of the Annex requires that the parties encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers. Additionally, the relevant bodies are to provide recommendations on mutual recognition of one another's requirements with regard to education, examination, experience, conduct and ethics.⁴⁴

Section B of Annex 1210.5 deals specifically with the legal profession under the rubric of "Foreign Legal Consultants."⁴⁵ It requires each party to consult with its relevant professional bodies and obtain recommendations on the form of association or partnership between host country lawyers and foreign legal consultants. Further, the relevant professional bodies should develop standards and criteria for the authorization of foreign legal consultants in conformity with Article 1210, and other matters relating to foreign legal consultant services. It also requires each party to encourage its relevant professional bodies to consult with one another regarding the development of joint recommendations on those matters.⁴⁶

Representatives of the legal professions of the three NAFTA countries first met in Mexico City in November, 1994 to begin discussions on the scope and tenor of joint recommendations.⁴⁷ Additional meetings were held in Chicago in March, 1995 and in Vancouver in September, 1995.⁴⁸ A further drafting session held in Chicago in March, 1996 led to the finalization of the draft text of a joint recommendation, to which was annexed a draft model rule respecting foreign legal consultants.

The draft reflected some important compromises on the main issues standing in the way of an agreement for the previous eighteen months. The Mexican

42. *Id.* at Annex VI, 32 I.L.M. 766-767.

43. *Id.* at Annex 1210.5, 32 I.L.M. 651.

44. *Id.* at Annex 1210.5, § A, 32 I.L.M. 652.

45. *Id.* at Annex 1210.5, § B, 32 I.L.M. 652.

46. *Id.*

47. White House News Release. *Key Points in NAFTA Negotiations to Date* (Aug. 1992), 1992 WL 239303 (N.A.F.T.A.).

48. *Id.*

delegation's insistence upon rules restricting the ability of Canadian and U.S. lawyers practicing as legal consultants in Mexico to form partnerships with Mexican lawyers was specifically addressed. The rules restrict providing advice on matters of Mexican, Canadian or U.S. law, third country and international law. The restrictions, which closely paralleled the Mexican NAFTA reservation regarding partnerships between Mexican and Canadian lawyers, were ultimately embodied in Rule 15 of the Model Rule.⁴⁹

The U.S. delegation was unhappy with the Rule 15 restrictions on association or partnership between Mexican and U.S. lawyers. The delegation reserved the right to seek their removal in subsequent negotiations toward further liberalization. However, a majority of the delegation was prepared to recommend the draft Model Rule as an interim compromise. The recommendation was based on representations by the Mexican delegation that Mexican law and policy required the restrictions. The recommendation was also made with the understanding that provisions of Rule 14 permit all forms of economic partnerships except those between U.S. and Mexican lawyers and law firms.

VII. REACTION OF UNITED STATES AND MEXICAN LAWYERS

The U.S. delegation circulated the draft joint recommendation and Model Rule to interested members of the U.S. legal profession, including members of the firms currently having offices in Mexico, requesting their comments. The draft was, to say the least, extremely unpopular. Many of the objections came from Mexican lawyers practicing with law firms based in the United States. They saw the restrictive provisions of Rule 15 as an infringement upon their own freedom of professional association and their rights under the Mexican Constitution.⁵⁰ This surprised the U.S. delegation because the Mexican government had selected the members of the Mexican delegation and was therefore representing governmental policy. Moreover, it had been expressly represented on a number of occasions that the restrictions contained in Rule 15 were required under Mexican law.

Thus, the U.S. delegation responded to the protests with the explanation that it had attempted to accommodate what it had been led to believe were existing constraints of Mexican law and policy. However, both U.S. and Mexican lawyers who responded to the draft insisted that those representations were not correct. A study prepared under the auspices of the Institute for Juridical Studies of the National University of Mexico appeared to confirm this view. Moreover, contacts between lawyers in Mexico City and Mexican government authorities strongly suggested that there was not, in fact, an established governmental policy favoring restrictions on U.S.-Mexican partnerships. Such restrictions would be in direct conflict with the objectives of NAFTA.

The U.S. delegation insisted upon the opportunity to solicit the comments of interested U.S. lawyers and law firms before reaching final agreement on the proposed joint recommendation and Model Rule. This was done for the purpose of

49. Model Rule, *supra* note 16.

50. Constitución Política De Los Estados Unidos Mexicanos, [MEX. CONST.] 5 de febrero de 1917, as amended.

confirming its assumptions and understandings regarding the existing situation in Mexico. The results of that inquiry left the U.S. delegation in an untenable position, in that the basic premises upon which it had reluctantly acquiesced to the proposed restrictions appear to have been inaccurate. Given the purposes and objectives of Chapter 12 of NAFTA, it made no sense to create by mutual agreement restrictions on professional association that were not required by the laws of the host country.

The anomaly was made particularly acute by the fact that the lawyers most likely to be adversely affected by the Rule 15 restrictions were Mexican lawyers already practicing in association with U.S. or Canadian law firms and younger Mexican lawyers who anticipated having the opportunity in the future. The apparent conflict of views was an internal matter of Mexican law and policy, albeit one in which the U.S. legal profession and the U.S. government have a considerable interest.

VIII. THE CURRENT POSITION

In light of these developments, the U.S. delegation has made it clear to its Mexican and Canadian counterparts that it is not prepared to agree to the joint recommendation and Model Rule as presently drafted. The Mexican government must first issue a definitive, reasoned statement to the effect that the restrictions contained in Rule 15 are required by current Mexican law and policy. This statement would be included in any foreign legal consultant rules in Mexico. It has also made it clear that it is prepared to proceed at once to sign and submit the joint recommendation and Model Rule if (i) Rule 15 is either removed or conformed to Rule 16,⁵¹ and (ii) the correlative phrase "other than a partnership" is deleted from Rule 14.

Although much in the joint recommendation and Model Rule is very good, it is not perfect in all respects. The U.S. delegation considers the provisions restricting the formation of partnerships between Mexican, U.S. and Canadian lawyers to be contrary to both the public and long-term interests of the legal profession in any NAFTA country. No regulatory restriction upon lawyers or the practice of law can be justified unless it is reasonably related either to the protection of the public or to the preservation of the integrity of the profession itself. Restrictions on partnership simply cannot be justified on either of these grounds.

IX. A POSSIBLE WAY FORWARD

For several years the ABA has been engaged in efforts to find common ground with professional bodies in other countries. This would enable their respective members to form partnerships and other cooperative relationships without adverse effect on the organization and structure of their respective professions. A little over three years ago, the ABA entered into an agreement with the Dutch and French-speaking councils of the Brussels Bar. This agreement permitted, for the first time, the formation of partnerships and cooperative arrangements between U.S. lawyers and Belgian lawyers.

51. Model Rule, *supra* note 16, at 212, § 16.

The Brussels Bar considered trends in Belgium when reaching their decision to accept the agreement that may have some relevance to the current situation in Mexico. Many young Belgian law graduates were deciding not to join the Bar because doing so would preclude them from practicing with international law firms. Like their counterparts in Mexico today, the young lawyers in Brussels saw the future as an international one, of which they wanted to be a part. Belgian Bar Councils had the wisdom to permit Belgian law graduates not to join the Bar, and in the process, obtained some useful undertakings from the U.S. lawyers. U.S. lawyers who wished to form associations with Belgian lawyers agreed to register with the Bar as associate members, and become subject to the professional rules and discipline of the Bar. Although this was purely voluntary on the part of the U.S. lawyers, large numbers have in fact registered.

Similar arrangements may work in the Mexican context. Although membership in Mexican bar organizations is voluntary, they alone provide professional regulation and discipline of Mexican lawyers. Mexican bar organizations may find it in their interest to permit partnerships with U.S. and Canadian lawyers on terms similar to those contained in the 1994 ABA-Brussels Bar Agreement.

X. THE NEED FOR RENEWED DIALOGUE

Governments today are looking closely, and with a somewhat jaundiced eye, at the restrictions imposed by the professions. Most notably scrutinized are the legal profession and its membership, ostensibly in the public interest but quite arguably in the interests of protectionism. The Organization for Economic Cooperation and Development is currently engaged in an extensive economic analysis of regulatory restrictions as they affect international trade in professional services, focusing on the accounting, legal, architecture and engineering professions. In the World Trade Organization, a working group on professional services is currently working on harmonizing rules for the accounting profession and will soon turn to the legal profession. Also, a NAFTA commission is monitoring the progress of all of the professions in arriving at workable arrangements consistent with the liberal spirit of NAFTA.

The point of all of this is that the legal profession does not have an indefinite period of time to get its international house in order. Governments are increasingly skeptical of restrictions. If the profession does not organize itself at the international level, governments will take the matter out of our hands, and we are very unlikely to be happy with the result. Moreover, the legal profession will continue to put itself at risk of encroachment from other professions if it does not provide an effective system for supplying international legal services. For example, the European legal professions, which have been at odds with one another on these issues for years, have found themselves confronted with decisions and regulations at the European Community level that dramatically altered the regulatory structure of the profession. Additionally, they have met with intensive and direct competition from the accounting firms, which operate freely on a transnational basis.

For all of the foregoing reasons, we on the U.S. side believe it is essential that we arrive promptly at a workable solution among the legal professions of NAFTA countries and hope that the Mexican profession would share our commitment to that end.