



Penn State Dickinson Law
Dickinson Law IDEAS

Faculty Scholarly Works

Faculty Scholarship

2007

The Bologna Process and Its Implications for U.S. Legal Education

Laurel S. Terry
lterry@psu.edu

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/fac-works>

 Part of the [European Law Commons](#), [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Laurel S. Terry, *The Bologna Process and Its Implications for U.S. Legal Education*, 57 *J. Legal Educ.* 237 (2007).

This Article is brought to you for free and open access by the Faculty Scholarship at Dickinson Law IDEAS. It has been accepted for inclusion in Faculty Scholarly Works by an authorized administrator of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

The Bologna Process and its Implications for U.S. Legal Education

Laurel S. Terry

The Bologna Process is reshaping higher education in Europe, yet U.S. academics are barely aware of it.¹ Because the Bologna Process has major implications for U.S. legal education, it is time to place the Bologna Process on our “radar screens.”

The Bologna Process

The Bologna Process began in 1998 with a written understanding signed by the ministers of four European Union (EU) countries.² By 2007, the Bologna Process had expanded to forty-six participating countries, including all of the EU countries and nineteen non-EU countries.³ Although there is a great deal of overlap between the Bologna Process and various EU initiatives,⁴ the Bologna Process is a separate, non-EU initiative.

The forty-six Bologna Process countries have agreed to form the European Higher Education Area (“EHEA”) by 2010.⁵ The parameters of the EHEA and

Laurel S. Terry is a professor at Penn State Dickinson School of Law. I would like to thank Neal Conley for his editorial work on this article.

She can be reached at LTerry@psu.edu

1. See Laurel S. Terry, *The Bologna Process and the Dramatically Changing Nature of Legal Education in Europe*, 41 *Vand. J. Transnat'l L.* ____ (Jan. 2008) (forthcoming). See also Laurel S. Terry, *Living with the Bologna Process: Recommendations to the German Legal Education Community from a U.S. Perspective*, 7 *German L. J.* 863 (2006).
2. Four Ministers in Charge for France, Germany, Italy, and the United Kingdom, *Sorbonne Joint Declaration: Joint Declaration on Harmonisation of the Architecture of the European Higher Education System*, May 25 1998, available at <http://www.bologna-bergen2005.no/Docs/00-Main_doc/g80525SORBONNE_DECLARATION.PDF> (last visited July 17, 2007) (hereinafter *Sorbonne Declaration*).
3. *London Communiqué: Towards the European Higher Education Area: Responding to Challenges in a Globalised World*, May 18, 2007 (hereinafter *London Communiqué*), available at <<http://www.dfes.gov.uk/bologna/uploads/documents/LondonCommuniqué-finalwithLondonlogo.pdf>> (last visited July 17, 2007).
4. See, e.g., *infra* note 17; Terry, *The Bologna Process*, *supra* note 1.
5. See *London Communiqué*, *supra* note 3, at 1

the Bologna Process evolved through a series of six meetings and the work leading up to those meetings. The documents that memorialize those six meetings and the Bologna Process goals are: the 1998 *Sorbonne Declaration*,⁶ the 1999 *Bologna Declaration*,⁷ the 2001 *Prague Communiqué*,⁸ the 2003 *Berlin Communiqué*,⁹ the 2005 *Bergen Communiqué*,¹⁰ and the 2007 *London Communiqué*.¹¹ The results of these meetings also are reflected in the ten different “action lines” that define the reach of the Bologna Process.¹² The Bologna Process now has an official “Secretariat” that rotates every two years, hosts the current website, and is based in the country where the upcoming ministerial meeting will be held.¹³ In 2007, the Bologna Process Ministers committed themselves to a global strategy with

6. Sorbonne Declaration, *supra* note 2.
7. Joint Declaration of the European Ministers of Education, The Bologna Declaration of 19 June 1999, available at <http://www.bologna-bergen2005.no/Docs/00-Main_doc/990719BOLOGNA_DECLARATION.pdf> (last visited Sept. 12, 2007).
8. Towards the European Higher Education Area: Communiqué of the Meeting of European Ministers in Charge of Higher Education in Prague on May 19, 2001, available at <http://www.bologna-bergen2005.no/Docs/00-Main_doc/010519PRAGUE_COMMUNIQUE.pdf> (last visited Sept. 12, 2007).
9. Realising the European Higher Education Area, Communiqué of the Conference of Ministers Responsible for Higher Education in Berlin on September 19, 2003, available at <http://www.bologna-bergen2005.no/Docs/00-Main_doc/030919Berlin_Communique.PDF> (last visited Sept. 12, 2007) (hereinafter Berlin Communiqué).
10. Conference of European Ministers Responsible for Higher Education, The European Higher Education Area—Achieving the Goals 6 (Bergen, May 19-20, 2005), available at <http://www.bologna-bergen2005.no/Docs/00-Main_doc/050520_Bergen_Communique.pdf> (last visited July 17, 2007).
11. London Communiqué, *supra* note 3.
12. Bergen Bologna Website, Work Programme Action Lines, available at <http://www.bologna-bergen2005.no/EN/Work_prog/1Prog_Back>Action_lines.HTM> (last visited Aug. 18, 2007). These ten “action lines” are:
 1. Adoption of a system of easily readable and comparable degrees;
 2. Adoption of a system essentially based on two cycles;
 3. Establishment of a system of credits;
 4. Promotion of mobility;
 5. Promotion of European co-operation in quality assurance;
 6. Promotion of the European dimension in higher education;
 7. Lifelong learning;
 8. The partnership of higher education institutions and students;
 9. Promoting the attractiveness of the European Higher Education Area (EHEA); and
 10. Doctoral studies and the synergy between the EHEA and the European Research Area (ERA).
13. Berlin Communiqué, *supra* note 9, at 8 (creating the Secretariat). A Secretariat is an administrative unit or headquarters. Norway held the first secretariat, the UK held the second Secretariat; the Benelux countries hold the current Secretariat. See Benelux Bologna, Welcome to the Bologna Process Website, available at <<http://www.ond.vlaanderen.be/hogeronderwijs/bologna/>> (last visited Sept. 12, 2007)(current Secretariat website; also contains links to older Secretariat websites).

greater outreach so one can expect to see even more information about the Bologna Process in the future.¹⁴

Although it is less than one decade old, the Bologna Process already has had a dramatic effect on European higher education. According to a 2005 Stocktaking Report that used color-coded “scorecards,”¹⁵ the Bologna Process countries made “very good progress” on ten benchmark items used to measure countries’ progress in achieving their three 2005 priority goals: (1) conversion to a two-degree system, such as a bachelor-master degree system; (2) adoption of quality assurance systems; and (3) furthering “degree recognition” as measured by: (a) ratification of the Lisbon Convention,¹⁶ (b) use of the European Credit Transfer and Accumulation System (ECTS),¹⁷ and (c) adoption of the Diploma Supplement.¹⁸ A 2007 Bologna Process Stocktaking Report also drew positive conclusions, noting that: (1) that there had been good progress since 2005; (2) that the outlook for achieving their aims by 2010 was good, although there were still some challenges to be faced; and (3) that stocktaking worked well as an integral part of the Bologna Process strategy.¹⁹

The 2005 and 2007 Stocktaking Reports did not address legal education specifically, but another report shows the significant impact of the Bologna Process on European legal education. According to a September 2005 report

14. London Communiqué, *supra* note 3, at 5 (“We adopt the strategy ‘The European Higher Education Area in a Global Setting’ and will take forward work in the core policy areas: improving information on, and promoting the attractiveness and competitiveness of the EHEA; strengthening cooperation based on partnership; intensifying policy dialogue; and improving recognition. This work ought to be seen in relation to the OECD/UNESCO Guidelines for Quality Provision in Cross-border Higher Education.”). See also *infra* note 37.
15. Bologna Process Stocktaking Report from a Working Group Appointed by the Bologna Follow-up Group to the Conference of European Ministers Responsible for Higher Education 25, 27, 33, 36 Bergen, May 19-20, 2005, available at <http://www.bologna-bergen2005.no/Bergen/050509_Stocktaking.pdf> (last visited Sept. 12, 2007) (hereinafter 2005 Stocktaking).
16. Council of Europe/UNESCO, Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (Lisbon, 1997), available at <<http://conventions.coe.int/Treaty/en/Treaties/Html/165.htm>> (last visited Sept. 12, 2007) (hereinafter Lisbon Convention).
17. See European Commission, ECTS—European Credit Transfer and Accumulation System, available at <http://ec.europa.eu/education/programmes/socrates/ects/index_en.html> (last visited Sept. 12, 2007).
18. The Diploma Supplement is a standardized form that higher education institutions attach to each diploma to explain its meaning to those from other countries. See UNESCO, Diploma Supplement, available at <http://portal.unesco.org/education/en/file_download.php/1bf758ecb6612b53c359b30e62749419Diploma+Supplement.pdf> (last visited Sept. 12, 2007).
19. Bologna Process Stocktaking London 2007, at 1, 6-10, available at <<http://www.dfes.gov.uk/londonbologna/uploads/documents/6909-BolognaProcessST.pdf>> (last visited Sept. 12, 2007). The 2007 Stocktaking Report modified some of the 2005 benchmarking items and added two new benchmarking items—recognition of prior learning and establishment and recognition of joint degrees (hereinafter 2007 Stocktaking).

by the Council of Bars and Law Societies of Europe ("CCBE"),²⁰ the Bologna Process has led to changes in the law degree structure in seventeen of the thirty-seven jurisdictions it surveyed.²¹ The CCBE report also identified thirteen countries in which ECTS is used for crediting purposes and seven countries in which it is used for grading purposes.²²

All signs indicate that the Bologna Process will lead to additional changes in European higher education. The 2005-07 Bologna Process Work Programme was very ambitious and the 2007-09 Work Programme is likely to be as well.²³ Participants have agreed to conduct another Stocktaking Exercise before their 2009 Leuven meeting, which will create pressure to implement additional changes by 2009.²⁴

Implications of the Bologna Process for U.S. Legal Education

The Bologna Process has significant implications for U.S. higher education. The Council of Graduate Schools, the National Academy of Sciences, the National Science Foundation, and the National Education Association, among others, have published articles about the possible impact of the Bologna Process.²⁵ The Bologna Process has been discussed at the meetings

20. See, e.g., CCBE Training Committee, CCBE Comparative Table on Training of Lawyers in Europe (Sept. 2005), available at <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/comparative_table_enr_1183977451.pdf> (last visited Sept. 12, 2007) (hereinafter CCBE Survey). The CCBE is the officially recognized representative organization for the legal profession in the European Union, representing over 700,000 lawyers. CCBE, Introduction, available at <<http://www.ccbe.eu/index.php?id=12&L=0>> (last visited July 19, 2007).
21. CCBE Survey, *supra* note 20, at 26-29. The CCBE data is not entirely clear and requires interpretation. For information about the countries that I have interpreted as having provided an unequivocal affirmative to the question about degree change, see Terry, The Bologna Process, *supra* note 1, at Appendix 3. Because there were a large number of ambiguous answers, the change may be even more pronounced than these numbers indicate.
22. CCBE Survey, *supra* note 20, at 74-77. See also Terry, The Bologna Process, *supra* note 1, at Appendix 3 (listing countries).
23. UK Bologna Process Secretariat, BFUG WORK PROGRAMME 2005-2007 (May 2007), available at <<http://www.dfes.gov.uk/londonbologna/uploads/documents/WorkProgrammeat2May2007.doc>> (last visited Sept. 12, 2007); Benelux Secretariat, Bologna Process, Work Programme 2007-2009, available at <<http://www.ond.vlaanderen.be/hogeronderwijs/bologna/workprogramme/>> (last visited Sept. 12, 2007).
24. See London Communiqué, *supra* note 3, at 7.
25. See, e.g., National Science Foundation, Science and Engineering Indicators 2006, Global Higher Education, Higher Education in Science and Engineering 2-36, available at <<http://www.nsf.gov/statistics/seindo6/c2/c2h.htm>> (last visited Aug. 18, 2007); NAFSA: Association of International Educators, Restoring U.S. Competitiveness for International Students and Scholars (2006), available at <http://www.nafsa.org/_/Document/_/restoring_u.s.pdf> (last visited May 8, 2007); The National Academies, Policy Implications of International Graduate Students and Postdoctoral Scholars in the United States (2005), available at <<http://www.nap.edu/books/0309096138/html/R1.html>> (last visited May 8, 2007); National Education Association, A Unified European Higher Education Area in 2010: What

of a number of higher education organizations.²⁶ The Council of Graduate Schools (CGS), which represents U.S. institutions that award 95 percent of U.S. doctorate degrees and 85 percent of U.S. master's degrees,²⁷ has reported that the Bologna Process is a concern for graduate school deans.²⁸

One can understand why the Bologna Process has been a topic of discussion and concern in the world of U.S. higher education. In summarizing a March 2005 conference on "Graduate Education and American Competitiveness," CGS reported that "virtually every speaker at the conference, in one way or another, stated that international competition in graduate education threatens American world-wide leadership in research and innovation and therefore threatens American prosperity."²⁹ Dr. Sybille Reichert, one of the speakers at this conference, offered a European perspective on the Bologna Process and international competition.³⁰ She explained that European higher education was undergoing a massive transformation, providing more competition for the United States. Reichert noted several ways in which European graduate education already had surpassed U.S. graduate education, including the number of Ph.D. graduates, the number of peer-reviewed publications, and its ranking in a list of the top 200 research institutions.³¹

Does it Mean for Europe and for U.S. Higher Education?, 11 NEA Higher Education Research Center Update 1 (Nov. 2005); Daniel Denecke, The Three-Year Degree, The Bologna Process, and U.S. Graduate Admissions, in Council of Graduate Schools, Findings from 2005 CGS International Graduate Admissions, Survey III: Admissions and Enrollment 6 (Nov. 17, 2005), available at <http://www.cgsnet.org/portals/o/pdf/CGS2005IntlAdmitIII_Rep.pdf> (last visited May 8, 2007) (hereinafter 2005 CGS Enrollment Findings); Paul Tate, Graduate Education and American Competitiveness, 38 CGS Communicator 1 (June 2005), available at <http://www.cgsnet.org/portals/o/pdf/comm_2005_06.pdf> (last visited Sept. 12, 2007).

26. See, e.g., Center for Innovation and Research in Graduate Education (CIRGE), Forces and Forms of Change: Doctoral Education Internationally (Sept. 6-10, 2005), available at <<http://depts.washington.edu/cirgecon/papers/index.html>> (last visited Sept. 12, 2007).
27. Council of Graduate Schools, About CGS, available at <<http://www.cgsnet.org/Default.aspx?tabid=104>> (last visited May 8, 2007).
28. See, e.g., Heath Brown, Data Sources: Pressing Issues Survey and Carnegie Classification, 39 CGS Communicator 3 (May 2006), available at <http://www.cgsnet.org/portals/o/pdf/comm_2006_05.pdf> (last visited Aug. 18, 2007) ("Forty percent of respondents indicated some concern about international applications, enrollment, or visa processes. . . . Unlike previous years, however, the issue of international admissions and the Bologna Process, rather than visa delays and the SEVIS program, seemed to dominate concerns.")
29. Tate, Graduate Education and American Competitiveness, *supra* note 25, at 3.
30. Sybille Reichert, The Bologna Process: European Universities on their Toes (March 2005), available at <<http://www.cgsnet.org/portals/o/pdf/SReichertCgsOrau.pdf>> (last visited Aug. 18, 2007).
31. *Id.*; Tate, Graduate Education and American Competitiveness, *supra* note 25, at 2 (quoting Reichert). Reichert observed that the list included more European than U.S. institutions, although twenty-five U.S. institutions were in the top third, compared to nineteen European universities.

Despite the attention it has received elsewhere in the United States, the Bologna Process has not been a high profile issue within the U.S. legal education community. Is the Bologna Process important for U.S. legal academics and law schools? Yes. United States law schools, like other U.S. institutions of higher education, exist in a global context in which changes that occur elsewhere can, and will, ultimately affect them. I recommend that the AALS and U.S. law schools monitor the Bologna Process because its initiatives have the potential to affect U.S. legal education significantly.

Admissions Decisions

One of the most immediate effects of the Bologna Process is that U.S. law schools, like other graduate schools, must decide whether to admit to their own J.D., LL.M., or S.J.D. programs students who have graduated with a three-year bachelor's degree. In a 2005 report, CGS found that a large number of U.S. graduate programs receive applications from graduates of a three-year degree program.³² There seemed to be no uniform response to these degrees: some U.S. institutions measured the "equivalency" of the European and American educational experience or made decisions on a "country-by-country" basis, while other institutions evaluated the "competency" of the applicant to succeed and still others granted "provisional" acceptance to students with three-year bachelor's degrees, but required completion of additional coursework.³³ CGS concluded that transatlantic dialogue was "imperative" and that more work needed to be done to determine how U.S. institutions should treat the three-year Bologna degrees.³⁴

Although CGS did not ask law-specific questions, I suspect that many U.S. law schools have not yet developed a consistent approach to treating applications from European students who have received a three-year bachelor's degree. Like graduate schools in general, U.S. law schools should develop consistent, fair, and transparent policies on this matter. The AALS could play an important role in helping law schools develop these policies and in facilitating the transatlantic discussions that CGS said were "imperative."

Recognition Issues

A second effect of the Bologna Process is that U.S. law schools are increasingly likely to be confronted with recognition issues either as part of an admissions decision or later, in connection with decisions about a student's course of study or graduation. At a minimum, the Bologna Process means that applications from European students are likely to refer to

32. See also 2005 CGS Enrollment Findings, *supra* note 25, at 7.

33. *Id.*

34. *Id.* at 6. See also Council of Graduate Schools, A Policy Statement: An Essential Guide to Graduate Admissions (2005), available at <http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/13/87/d7.pdf> (last visited Sept. 14, 2007).

ECTS or contain a diploma supplement. Institutions in the United States will need to know how to interpret this information.³⁵

Beyond ECTS and the Diploma Supplement, however, U.S. law schools will face increasing pressure to develop recognition policies for students from other countries. CGS has observed that U.S. graduate schools are likely to be asked to apply recognition principles when evaluating applicants from other countries and that if the United States is to remain attractive to the world's most promising scholars, it must exercise greater deliberation, uniformity, and flexibility.³⁶ Law schools, like other graduate schools, are likely to face an increasing need to perform both qualitative and quantitative assessments in order to decide whether and how to recognize the qualifications of foreign students.³⁷

U.S. law schools may be asked whether their procedures are consistent with the Lisbon Convention, a key benchmark in the Bologna Process, which requires signatories to establish a procedure for assessing the qualifications of students from other countries.³⁸ Suppose that a student with an undergraduate legal education in Europe applies to a U.S. J.D. program and seeks credit for prior work. Under the Lisbon Convention, those who hold qualifications in one country are entitled to have adequate access to an assessment of their qualifications. The Lisbon Convention also requires countries to recognize qualifications that are similar to the qualifications in its own system unless it can show substantial differences between its qualifications and those for which recognition is sought. Do all U.S. law schools have a procedure to address these types of recognition questions and would a school be prepared to articulate the differences between its qualifications and those for which recognition is sought? Perhaps, but I am skeptical.

The Lisbon Convention also requires countries to appoint a national information center to offer advice and information on recognition issues. Although the United States has not ratified the Lisbon Convention, it might be asked to provide a national information center. Some of this information currently is maintained by the National Conference of Bar

35. See *supra* notes 17 and 18.

36. Tate, Graduate Education and American Competitiveness, *supra* note 25, at 8.

37. See *supra* note 14 (citing five core areas for the global strategy). A U.S. Department of Education representative addressed the implications of the Bologna Process for U.S. institutions during a 2007 Bologna Process conference. See Dr. E. Stephen Hunt, Bologna and the World, or Bologna vs. the World? Transatlantic Progress and Challenges Transatlantic Progress and Challenges in a Global Context (Riga, Jan. 25-26, 2007), available at <http://www.aic.lv/bologna2007/presentations/S_Hunt_Riga%202007%20Presentation_Final.pdf> (last visited Aug. 18, 2007).

38. See Lisbon Convention—What is It?, available at <http://www.bologna-bergen2005.no/Docs/03-PNY/Lisbon_for_pedestrians.pdf> (last visited Sept. 12, 2007). The United States has signed but not ratified the Lisbon Convention. See Lisbon Convention Signatories, available at <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=&DF=&CL=ENG>> (last visited Sept. 12, 2007).

Examiners and the ABA, but the AALS might consider serving as a central information clearinghouse because of its experience in working with foreign law schools and the International Association of Law Schools.³⁹

Although one might question whether the Bologna Process will lead to “recognition” discussions in U.S. law schools, other developments show a high level of interest in legal education recognition issues. For example, the United States has responded to increased mobility by adopting free trade agreements that include mutual recognition provisions.⁴⁰ The U.S.-Australia Free Trade Agreement requires both countries to “encourage the relevant bodies to develop recommendations on mutual recognition standards for licensing professional services and to encourage the competent authorities, to implement these recommendations within a mutually agreed time.”⁴¹ This free trade agreement was part of the impetus for recognition discussions among representatives from the Australian and U.S. governments and their legal professions.⁴² Australians also have met with the Conference of Chief Justices; thereafter the Conference of Chief Justices adopted a resolution urging state supreme courts to recognize the legal education of Australian lawyers and to allow them to sit for bar examinations.⁴³

The U.S.-Singapore Free Trade Agreement also illustrates how mutual recognition issues, such as those found in the Bologna Process, can affect U.S. law schools. A side agreement to the U.S.-Singapore Free Trade Agreement specifies that degrees from four U.S. law schools will be recognized

39. Starting in 2000, the AALS organized several conferences to discuss cooperation among global legal education institutions. See, e.g., Association of American Law Schools, International Conferences, available at <<http://www.aals.org/international/>> (last visited Sept. 12, 2007). These conferences contributed to the formation of the International Association of Law Schools or IALS, whose webpage is housed on the AALS webpage and whose first president is Carl Monk, Executive Director of the AALS. See International Association of Law Schools (IALS), available at <<http://www.ialsnet.org/>> (last visited Sept. 12, 2007).
40. See, e.g., Final Text of U.S.-Australia Free Trade Agreement, available at <http://www.ustr.gov/Trade_Agreements/Bilateral/Australia_FTA/Final_Text/Section_Index.html> (last visited May 8, 2007).
41. *Id.* at Annex 10A, ¶ 1.
42. See Agenda, U.S.-Australia Legal Services Meeting, Australian Embassy, Washington, D.C., May 17, 2006 (on file with author).
43. See e-mail from Richard Van Duizend, Consultant, International Agreements Committee of the Conference of Chief Justices, to author (June 11, 2006) (on file with author); Conference of Chief Justices, Feb. 2007 Resolution 7 Regarding Authorization for Australian Lawyers to Sit for State Bar Examinations, available at <<http://ccj.ncsc.dni.us/Legal-EducationResolutions/resol7AustralianLawyersStateBarExams.html>> (last visited Sept. 12, 2007). See also Conference of Chief Justices, Feb. 2007 Resolution 8 Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar, available at <<http://ccj.ncsc.dni.us/LegalEducation-Resolutions/resol8AccredLegalEducCommonLawCountries.html>> (last visited Aug. 18, 2007).

for purposes of admission into the Singapore Bar.⁴⁴ A Federal Register notice proposed that Harvard, Yale, Columbia, and New York University be designated as the four U.S. law schools whose degrees would be recognized in Singapore.⁴⁵ At least one law school sent a letter protesting its omission from this list.⁴⁶

The “recognition” principles embodied in these trade agreements (and in the Bologna Process) are important for U.S. legal educators because they could contribute to a rethinking of the entire structure of lawyer qualification rules. This in turn has implications for legal education. If there is increased recognition of the education or qualifications of foreign lawyers, will it be long before there are complaints from U.S. lawyers who are not eligible to become licensed in another state because they did not attend an ABA-accredited law school?⁴⁷ In short, the Bologna Process’ emphasis on recognition issues could add to the existing pressures on our legal education and lawyer qualification systems.

Accreditation and Quality Assurance

The Bologna Process countries are now engaged in discussions about quality assurance standards and methodology. In light of the new emphasis on dialogue with the world academic community, it is certainly possible that the Bologna Process could lead to discussions about international law school accreditation standards.⁴⁸ If such standards are proposed, it seems likely that Bologna Process members would want the international standards to be consistent with any Bologna Process standards. Thus, it would be prudent for U.S. law schools to monitor these developments and to participate if invited. For example, during their July 2005 meeting in Bergen, the Bologna Process countries adopted the European Quality Assurance Standards; in 2007, they

44. U.S.-Singapore Free Trade Agreement, Side Letter on Legal Services, available at <http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/Final_Texts/asset_upload_file702_4051.pdf> (last visited Aug. 18, 2007). For additional information on this free trade agreement, see the webpage of the Office of the U.S. Trade Representative, available at <http://www.ustr.gov/Trade_Agreements/Bilateral/Singapore_FTA/Section_Index.html> (last visited Aug. 18, 2007).

45. 69 Fed. Reg. 71095-01 (2004).

46. Letter from David E. Van Zandt, Dean, Northwestern University School of Law, to Janice Shields, Office of the U.S. Trade Representative (Dec. 27, 2004) (on file with author).

47. For information about the states in which a lawyer must have attended an ABA-accredited law school, see National Conference of Bar Examiners and ABA Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2007*, Chart III.

48. There already have been calls for such standards. See, e.g., Tom Latrup-Pedersen, *International Accreditation of Law Schools—An Inevitable Corollary of Globalization?* 43 *S. Tex. L. Rev.* 435 (2002). At the time the article was written, the author was the dean of the law school of Aarhus University, Denmark.

endorsed the proposed Register of Quality Assurance Agencies.⁴⁹ U.S. legal educators should study the quality assurance standards to determine whether there are any differences in approach and should monitor the proposed Register of European Higher Education Quality Assurance Agencies.

The Bologna Process quality assurance initiatives go beyond accreditation. The Bologna Process has generated a tremendous amount of thought and work regarding the purpose, methodology, and assessment of higher education. It is possible that the European introspection fostered by the Bologna Process has led to insights that would be useful to U.S. legal educators. The U.S. legal education community should monitor these quality assurance initiatives; for example, by following the developments in the annual meetings of the European Quality Assurance Forum and the work of the European Law Faculties Association (ELFA).⁵⁰

Curricular Implications

The Bologna Process also has curricular implications for the U.S. legal education community. In 2000, two years after the establishment of the Bologna Process, several European universities created a pilot project called the Tuning Project to address several different Bologna Process "action lines," including the need for easily readable and comparable degrees, the adoption of the two-degree cycle, and the establishment of a system of credits.⁵¹ During its first and second phases, which ran between 2000 and 2004, the Tuning Project focused on the educational structures and content of nine specific areas of study.⁵² The Tuning Project participants prepared documents that list the anticipated student "outcomes" for each of the subject matter areas. They also developed documents that specify the subject-specific competencies that students should have acquired after receiving a bachelor degree and a master's degree,⁵³ and prepared documents that address teaching, learning, and assessment for some of these nine areas.⁵⁴

49. European Quality Assurance Standards, available at <http://www.bologna-bergen2005.no/EN/BASIC/Quality_Assurance_Standards.htm> (last visited May 8, 2007); London Communiqué, *supra* note 3, at 4 (endorsing proposed Register).

50. See London Communiqué, *supra* note 3, at ¶12.12-13 (calling for annual meetings of the Quality Assurance Forum); *infra* notes 56-58 regarding ELFA's activities.

51. See, e.g., Tuning: Educational Structure in Europe, What is Tuning? Background, available at <<http://tuning.unideusto.org/tuningeu/index.php?option=content&task=view&id=2&Itemid=25>> (last visited May 8, 2007).

52. Tuning, Subject Area Groups, available at <<http://tuning.unideusto.org/tuningeu/index.php?option=content&task=view&id=7&Itemid=30>> (last visited July 16, 2006) (hereinafter Tuning Project Subject Areas).

53. Tuning Project, Competences, available at <http://www.tuning.unideusto.org/tuningeu/index.php?option=com_docman&Itemid=59&task=view_category&catid=37&order=dmdat_e_published&ascdesc=DESC> (last visited July 16, 2006).

54. Tuning Project, Teaching, Learning and Assessment, available at <http://www.tuning.unideusto.org/tuningeu/index.php?option=com_docman&Itemid=59&task=view_categor

The Tuning Project, now in Phase 3, has expanded the subject matter areas it covers and has added “law” to its list.⁵⁵ The ELFA Quality Assurance, Accreditation, and Assessment Committee (QUAACAS) is coordinating this initiative and exploring the issue of curricular commonalities within European legal education.⁵⁶ ELFA has sought funding to develop a “law” thematic network that would address three topics: (1) quality assurance and benchmarks and learning outcomes in legal studies in Europe; (2) accreditation of legal studies in Europe; and (3) teaching methodology and assessment in legal studies in Europe.⁵⁷ This Tuning Legal Studies Project was one of the topics featured at a September 2007 CCBE Conference.⁵⁸

The Tuning Project and other Bologna Process initiatives are important developments because these initiatives are likely to lead to more harmonization in the law curriculum within Europe. This in turn has implications for the United States. As then-AALS president Mary Kay Kane noted in a speech to the ELFA, the U.S. legal market demands students who can operate in a multijurisdictional context—both nationally and internationally.⁵⁹ Legal educators in the United States need to be aware of legal training outside the United States, particularly if legal educators in European countries are able to identify common elements and curricula. For example, if representatives from forty-six European countries were to decide that students studying “X” area of law needed to master certain substantive law concepts, it would be important for U.S. lawyers and students to be familiar with those substantive concepts. The U.S. legal education community should model the lesson that many legal educators teach: in an interconnected world, what happens outside the United States may be relevant inside it.

Possible Financial Impact on U.S. Law Schools

Finally, the Bologna Process and related EU initiatives have the potential to affect the financial situation of U.S. law schools in both positive and negative ways. International students play an important role in the economic health of U.S. higher education institutions and in the U.S. economy generally. One

y&catid=38&order=dmdate_published&ascdesc=DESC> (last visited July 19, 2007).

55. See Tuning Project Subject Areas, *supra* note 52.

56. See ELFA, Activities, Projects, Tuning Project, available at <http://www.elfa-afde.org/html/activities_projects.htm#QUAACAS> (last visited May 19, 2007).

57. See QUAACAS-Tuning, Newsletter 2 (September 2005), available at <http://www.legalscholars.ac.uk/pubdocs/05/NEWSLETTER2----September2005_ELFA.pdf> (last visited Aug. 18, 2007).

58. CCBE, Improving Legal Education and Training in a Converging Europe, Warsaw 25-27 Sept. 2007, available at <<http://www.ccbe.eu/index.php?id=163&L=0>> (last visited Aug. 18, 2007).

59. See Mary Kay Kane, An American Perspective on the Bologna Declaration, ELFA Newsletter 2001/1, at 63, available at <<http://www.elfa-afde.org/PDF/Newsletter/2001-1.pdf>> (last visited Sept. 12, 2007).

organization that promotes international higher education estimated that during the 2005-2006 academic year, international students and their dependents contributed approximately \$13.49 billion to the U.S. economy.⁶⁰ The World Trade Organization has reported that in 1996, the United States was the largest exporter of educational services in the world, followed by France, Germany, and the United Kingdom, and that education was the fifth largest U.S. export in the services sector.⁶¹ Between 1989 and 1993, foreign student enrollment in U.S. higher education institutions grew at rates ranging between 3 and 6 percent per annum.⁶² On the other hand, in 2001, even before the perceived 9/11-visa difficulties peaked, the money attributable to U.S. students studying abroad grew by a larger percentage than the receipts attributable to foreign students studying in the United States.⁶³ One explanation for this loss of U.S. "market share" was the fact that the United States faced increased higher education competition from other countries, such as Australia and the United Kingdom.⁶⁴ Moreover, after the 9-11 attack on the World Trade Center, foreign student enrollment in the U.S. dropped dramatically because of real and perceived visa problems, rising U.S. tuition rates, less expensive educational opportunities abroad, and recruitment activities by colleges and universities in other English-speaking nations.⁶⁵ European students were among those for whom there was declining enrollment.⁶⁶ Thus, recent experience demonstrates that the U.S. higher education market share can ebb and flow depending on the domestic and international situation.⁶⁷

60. See NAFSA: Association of International Educators, *The Economic Benefits of International Education to the United States of America for the 2005-2006 Academic Year: A Statistical Analysis*, available at http://www.nafsa.org/_/File/_/eis2006/usa.pdf (last visited Aug. 25, 2007).
61. See World Trade Organization Council for Trade in Services, *Background Note by the Secretariat: Education Services, S/C/W/49 at 6-7* (Sept. 23, 1998).
62. *Id.*
63. Maria Borga and Michael Mann, *U.S. International Services Cross-Border Trade in 2001 and Sales Through Affiliates in 2000*, *Survey of Current Business* 77 (October 2002), available at <http://www.bea.gov/bea/ARTICLES/2002/10October/1002InServ.pdf> (last visited September 12, 2007) (noting an 11 percent increase in 2001 and an 8 percent increase in 2000 for U.S. receipts for education, which represents foreign students coming into the United States, compared to an increase in education payments of 16 percent in 2001 and 14 percent in 2000, which represents U.S. students outbound to other countries).
64. *Id.*
65. See, e.g., Daniel Obst and Joanne Forster, *Perceptions of European Higher Education in Third Countries Outcomes of a Study by the Academic Cooperation Association (ACA)*, *Country Report: USA*, available at http://www.iienetwork.org/file_depot/0-10000000/0-10000/1710/folder/53925/Final+US+Country+Report.doc (last visited Sept. 12, 2007). Although there recently has been increased enrollment by foreign graduate students in the United States, by 2005, enrollment had not yet reached pre-2002 levels. See 2005 CGS Findings, *supra* note 25, at 5.
66. *Id.*
67. See, e.g., Tate, *Graduate Education and American Competitiveness*, *supra* note 25 (describing

Law schools, like U.S. higher education institutions generally, are vulnerable to this ebb and flow and these kinds of changing economic realities. In recent years, U.S. law schools have dramatically increased the number of programs available to foreign students. For example, in 1999, foreign students earned 52 percent of the total number of LL.M. degrees awarded and constituted 41 percent of all students enrolled in post-graduate programs at U.S. law schools; between 1998-2003, there was a 62 percent increase in LL.M. programs available to foreign students.⁶⁸ In 2004, one expert reported that the number of foreign LL.M. students had fallen, although recently the numbers appear to have risen again.⁶⁹

Anecdotal evidence suggests that for a number of U.S. law schools, the tuition paid by LL.M. students is an important source of income (and one that does not affect the law school's J.D. statistics and rankings.)⁷⁰ Thus, if the Bologna Process affects—either positively or negatively—the number of European LL.M. students attending U.S. law schools, that change could have a significant financial impact on U.S. law schools.

A number of factors could contribute to a decline in foreign law students in the United States. As a result of the Bologna Process reforms, which are still being implemented, the number of competing European master's degrees is likely to grow and some of these newly approved programs will be based in English-speaking jurisdictions such as England, Scotland, Ireland, and Wales.⁷¹ This might result in a decline in the number of foreign LL.M. students in the United States. The Bologna Process also could change the attitude of European students regarding the attractiveness of a European master's degree compared to a U.S. master's degree. LL.M. degrees from the most elite U.S. law schools will probably always be sought after. But if the Bologna Process achieves many of its goals, European students might decide that instead of attending an expensive non-elite U.S. law school, it

March 2005 competitiveness conference); 2005 CGS Enrollment Findings, *supra* note 25.

68. See Laurel S. Terry, U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives, 4 Wash. U. Global Stud. L. Rev. 463, 517-18 (2005).
69. Remarks of Meredith M. McQuaid, Associate Dean of Administration and Director of International and Graduate Programs, University of Minnesota Law School at the 2005 AALS Annual Meeting, Jan. 6, 2005, Program entitled Changes in Attitudes, Changes in Latitudes: The Future of Graduate Programs for Foreign Lawyers in a Changing Environment 27 (comments on file with author). The perceived increase is based on anecdotal evidence from law school webpages indicating an increase in LL.M. statistics.
70. This comment is based on my impressions listening to those involved in foreign LL.M. programs. Although the ABA will not approve an LL.M. program if it detracts from the J.D. program, nothing prohibits an LL.M. program from enhancing the J.D. program, both financially and otherwise. See ABA, Section of Legal Educ., Standards for Approval of Law Schools and Interpretations, Standard 308 (Chicago, 2007).
71. In July 2007, the ELFA database listed 243 law masters' programs in 32 ELFA countries. See ELFA, Legal Education in Europe, Master Programmes, available at <<http://www.elfa-afde.org/html/searcher.asp>> (last visited Aug. 18, 2007).

would be better for them to obtain a master's degree from a much cheaper, English-language master's program at a European university.

It is also possible that U.S. law schools could face competition from European universities for domestic U.S. students. Because the existing U.S. state bar admission rules either favor or require attendance at an ABA-accredited law school and because most U.S. law students want to practice law in the United States, U.S. law schools have not yet had to compete with foreign law schools with respect to U.S. students. This situation could change. The ELFA, for example, has expressed interest in having European law schools open up branches in the United States and elsewhere, in order to better compete in the global education market:

European higher education needs to learn to compete better in the world market for higher education; the real problem is not that there are so many US campuses in Europe or in Asia, but rather that there are so few European campuses in the US, Latin America or other regions in the world. This is an area of paramount importance, and it seems essential that European universities should mobilise their energies and resources to compete in the world market: through the setting up of the type of courses which may suit the needs of overseas students, through increased information and marketing efforts to attract students (including paying students, not only exchange students) from other continents. In order to be able to fully enter this competition, European universities need to become much more present on site and to get organised.⁷²

If European universities were to open law programs in the United States, this could affect U.S. law schools. A number of large U.S. law firms employ more lawyers outside the United States than they employ within the United States, and European law firms have increased in size and prestige.⁷³ For these reasons, it is possible that some U.S. law students might be interested in attending a European law program based in the United States for some (if not all) of their legal education. If U.S. students were able to sit for a U.S. state bar examination after attending a European law program based in the United States, this would make such programs even more attractive and could dramatically change the face of U.S. legal education.⁷⁴

72. ELFA, Information Note For ELFA Members Regarding the Development of European Higher Education and its Possible Impact on Law Studies in Europe, available at <http://www.elfa-afde.org/html/legal_sorbonne_information%20note.htm> (last visited July 19, 2007).

73. See The Global 100, *Am. Lawyer*, Oct. 2006 ("Most Lawyers" Chart); see also Terry, U.S. Legal Ethics, *supra* note 68, at 495, Table 4; but see Partha Bose, The Tragic Circle? *Am. Lawyer*, Nov. 2005, at 102.

74. The Conference of Chief Justices recently called upon the ABA to accredit common law programs outside the U.S. See Resolution 8, *supra* note 43. See also information on the GATS and its application to legal services and legal education, available at <<http://discussions.abanet.org/cpr/gats/articles.html>> (last visited May 10, 2007).

Although the Bologna Process and related initiatives could have a negative financial impact on U.S. law schools, these initiatives also present financial opportunities for U.S. law schools and faculty. First, U.S. law schools that are aware of the Bologna Process initiatives might find it easier to compete for European students when compared to U.S. schools that are not aware of the those policies.

Second, being a “Bologna Process-friendly” law school might make a school much more attractive to students and might open doors for a school to participate in a significant new source of grant money. In January 2004, the EU expanded its existing Erasmus exchange program by implementing a new program called Erasmus Mundus.⁷⁵ The Erasmus Mundus program is designed to enhance the quality of European higher education by strengthening its international links. To accomplish this goal, the program offers significant grant money to non-European institutions, students, and scholars who have links with European institutions. The Erasmus Mundus program supports this internationalization through four different “Action Lines,” two of which require participation by non-EU individuals or institutions.⁷⁶

Law schools in the United States could benefit if selected to participate in an Erasmus Mundus partnership. The EU has selected several partnerships that award joint law degrees, but these partnerships have not yet included U.S. law schools, even though these programs have addressed topics that have legal implications.⁷⁷ The institutions that have been selected to participate in such partnerships include the University of California at Santa Barbara, which participates in a master’s degree in global studies, and the University of Miami, which participates in a partnership that awards a European Joint Master in Water and Coastal Management.⁷⁸ Law schools might consider participating in an Erasmus Mundus partnership because the grant money involved can be significant. In 2006, for example, the European Commission allocated almost one million Euros in grant money to one law partnership and over €600,000 to another law partnership.⁷⁹

75. See European Commission, What Is Erasmus Mundus?, available at <http://europa.eu.int/comm/education/programmes/mundus/index_en.html#2> (last visited May 10, 2007).

76. *Id.*

77. See, e.g., Erasmus Mundus, Masters Course, European Master in Law and Economics, available at <<http://europa.eu.int/comm/education/programmes/mundus/projects/2004/16.pdf>> and <<http://europa.eu.int/comm/education/programmes/mundus/projects/2004/111.pdf>> and <http://europa.eu.int/comm/education/programmes/mundus/projects/index_en.html> (last visited July 19, 2007).

78. See Erasmus-Mundus, Partnerships, Global Studies, European Masters in Global Studies, available at <<http://europa.eu.int/comm/education/programmes/mundus/projects/action3/global.pdf>> (last visited July 19, 2007); Erasmus Mundus Joint Master in Water and Coastal Management, <<http://europa.eu.int/comm/education/programmes/mundus/projects/action3/water.pdf>> (last visited Sept. 12, 2007).

79. Some of this money was allocated directly to the consortium institutions and some of it was allocated to scholarship funds for students and scholars. See *supra* notes 77-78.

It is likely that U.S. law schools that have Bologna Process-compatible procedures will be more attractive Erasmus Mundus candidates; such global schools might also be much more attractive to U.S. students. Thus, each U.S. law school might want to examine its policies and procedures, including its diploma, how its course work and credit system could be translated into the European Credit Transfer and Accumulation System, and whether its existing quality assurance system is compatible with the European quality assurance requirements.

Conclusion

The Bologna Process is an important development that has dramatically changed legal education in Europe with more changes expected. In an increasingly interconnected world, these changes will likely have an impact in the United States. Although law schools and individuals could monitor these developments themselves, I recommend that the AALS appoint a committee to follow these developments.

The Bologna Process presents opportunities and risks for U.S. law schools. One risk is that there may be pressure to extend these European developments internationally, regardless of whether they are a “good fit” in the United States. As a result, U.S. law schools ultimately could be pressured to adopt quality assurance or recognition policies that they have not helped shape, regardless of whether U.S. domestic experts believe the programs are suitable for U.S. legal education. The Bologna Process also creates financial risk for U.S. law schools as they face greater intra and inter-country competition.

Despite these risks, the Bologna Process presents significant opportunities for U.S. law schools. The international quality assurance initiatives and curricular discussions triggered by the Bologna Process have the potential to create a much richer and relevant educational experience for U.S. law students and faculty. The Bologna Process may create—in both Europe and the United States—an environment that is more international and that better prepares students for life and law practice in the twenty-first century. The potential impact of these harmonization efforts cannot be underestimated—it is huge. Finally, if there are “winners” and “losers” from the Bologna Process, U.S. law schools that are “Bologna-friendly” may benefit more than other U.S. law schools. Moreover, because the grant pie is now bigger, U.S. law schools, faculty, and students might benefit financially from the Erasmus Mundus program and new European partnerships; the chance of such partnerships may be increased if U.S. law schools use diplomas and credit systems that are consistent with the Bologna Process initiatives.

Whichever way the Bologna Process works out for the U.S. legal education community, it is an extremely significant development of which U.S. legal educators should be aware. It is time to put it on our radar screens.