

The International Practice of Law: The Swiss Experience[†]

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† The Article in its present form was written in May 1999. The Article originally appeared in a different form in DER BEITRITT DER SCHWEIZ ZUR EUROPÄISCHEN UNION, L'ADHÉSION DE LA SUISSE A L'UNION EUROPEENNE 887-924 (T. Cottier & A. Kopsch eds., 1998); the volume contains a representative cross-section of about forty articles addressing the challenges of a possible full accession of Switzerland to the European Union. The German title of the article was *Beitritt zur Europäischen Union als Herausforderung für die schweizerische "International Practice of Law"?*—*Lagebeurteilung und Thesen* [*Is the Accession of Switzerland to the European Union a Challenge for the Swiss "International Practice of Law"?*—*Appreciation of Facts and Theses*]. Encouraged by European and Anglo-American readers, the authors decided to extend the text considerably and make it accessible to English-speaking readers. A purpose of the Article is to take into account the most recent pan-European developments in the legal profession and to develop an agenda for enhancement of the international competitiveness and compatibility of the international practice of law in the areas of legal systems, legal professions and legal educations. This agenda will be dealt with elsewhere by the authors. Many of the ideas have been developed in connection with a collection of essays by Jens Drolshammer under the working title "Essays—The International Lawyer and the Changing International Practice of Law—Aspects of International Competitiveness and Compatibility of Legal Systems, Legal Professions and Legal Educations." Drolshammer conducted some of the research during a stay as a Fellow at the European Law Research Center at Harvard Law School in 1999. Limiting the topic to attorneys involved in the 'International Practice of Law' reflects the authors' professional experience and intentionally gives more of a practical than theoretical analysis. For critical readings of the manuscript, they are grateful to their thought-provoking colleagues Jacques H.J. Bourgeois, Brussels; Dr. David Jenny, Basle; John Edwards, London; Dr. Hans Peter Frick, Vevey; Dr. Christian Herbst, Vienna; Dr. Peter Nowak, Frankfurt; Dr. Michael Oppenhoff, Cologne on Rhein; Dr. Nedim Peter Vogt, Zurich; and Dr. Ralph Wollburg, Düsseldorf. Jens Drolshammer is particularly grateful to Detlev Vagts, Peter Murray, Harry S. Martin, David Wilkins and David Kennedy of Harvard Law School for their insights and remarks on the international practice of law during his Fellowship.

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I. OBSERVABLE TRENDS IN THE FRAMEWORK OF THE
INTERNATIONAL PRACTICE OF LAW

A. *Is Switzerland's Experience Relevant for Other European
Jurisdictions?*

This Essay is an account of the current situation of the Swiss international practice of law¹ as illustrative of the development of the European legal profession. In our view, current developments in the Swiss legal profession occur fairly independently of political phenomena such as an accelerating process of European integration. Rather, these developments are predominantly influenced by factors emerging from the American scene. Furthermore, in our opinion, developments in Swiss international law practice do not differ notably from the evolution of international practice elsewhere in Europe. European legal actors are reacting to globalization of the Anglo-American legal profession. This globalization largely follows developments originating in either London or New York. The developments reach beyond the direct and indirect influence of Anglo-American law upon legislation, administration, and adjudication in various national and supranational legal systems. The developments also reach beyond Anglo-American influences on legal education in continental European jurisdictions.

These developments in law practice merit the careful attention of European international law practitioners if they hope to maintain their competitiveness in the face of a challenge from Anglo-American firms. Changes in the profession result partly from the evolution of a transnational legal order that can promote “globalization” of the economy. In this order, the central position of “law” and “lawyers” still requires definition.

In our opinion, international lawyers should have a central role in shaping the transnational legal order as well as legal processes and structures. For the “international lawyer’s” core function includes planning and structuring transactions and managing the legal and the lawyering process. In *Rechtsverwirklichung* (realization of law) an

1. NEDIM P. VOGT ET AL., THE INTERNATIONAL PRACTICE OF LAW, LIBER AMICORUM FÜR THOMAS BÄR UND ROBERT KARRER (1997). Characteristic of the invasion of Anglo-Saxon concepts into the legal field described by Peter Böckli, 67 SWZ 218 (1995), is that German has no corresponding useful expressions. For the terms *International Lawyer* and *The International Practice of Law*, see also Detlev Vagts, *Are There No International Lawyers Anymore?*, 75 AM. J. INT'L L. 134-37 (1981).

international lawyer's work lies at an intersection between "theory" and "practice." Although we should not overemphasize this role, we note that international lawyers may be well suited to dominate a sphere of competence over transnational legal matters.

Our analysis calls for consideration of some statistics and trends prevailing in European international practice of law. First, there are currently no foreign law firms actively engaged in the law practice in Switzerland. Nor is any Swiss law firm substantially practicing law outside of Switzerland. Of Switzerland's organized Bar, consisting of approximately 10,000 members, about 1000 lawyers are involved in the "international practice of law."

The Swiss Bar is known to be relatively sophisticated and above average in terms of its education, outlook, and practice. Switzerland's legal system traditionally has had considerable influence in selected areas of international commerce. Since World War II, Switzerland's relative economic advantages have waned. Economic stagnation has contributed to a decline in Switzerland's image, and this has been tarnished by media accounts about Swiss bank activities during and after the Holocaust. These news accounts have harmed the image of reliability and credibility of Swiss law and Swiss lawyers.

On the positive side, Swiss multinational firms such as Nestlé, Novartis, Roche, ABB, Holderbank, Credit Suisse, UBS, the Zurich Group, and Swissair, including their legal departments, have adapted well to globalization and have become leaders in their respective industries. Swiss legal and financial experience provides instruction about further integration of Switzerland into the European Union.

In another article, the authors addressed the question "Is the Entry into the EU a Challenge for the Swiss International Practice of Law"? This question raised basic issues that are *ceteris paribus* relevant in member states of the European Union: *Why* should Swiss entry into the European Union concern Swiss attorneys active in the international practice of law? Is EU political integration relevant for attorneys active in the international practice of law? One of our conclusions was that current pan-European economic events constituted a prelude to economic integration that will yield a largely independent and structural adjustment in the international practice of law. This adjustment will be completed effectively before 2006, the date anticipated for Swiss entry into the EU. Nevertheless, the authors argued, planning and carrying out Swiss entry—and the

corresponding public perception when it becomes a realistic political option—will influence the implementation of the entry.

In the Swiss collective imagination, Switzerland's eventual full accession to the EU looms as large as did the Swiss vote on European Economic Area (EEA) accession on December 6, 1992. During the EEA voting process, the exercise of informing Swiss opinion prompted change in public consciousness relating to the international position of Switzerland and a speedy compilation of EUROLEX documentation by the authorities. The influence upon the Swiss public opinion of the prospect of full accession to the EU cannot be overestimated. Swiss entry into the EU would work changes in social, political, and cultural phases as well as the economy in all markets.²

Regarding development of positive Swiss law, Swiss business lawyers, the authors argued, must assure harmonization of Swiss law with European Community norms, in accordance with a "Euro-compatibility principle."³ In addition to this pre-implementation step which decreases transaction costs, the Euro-compatibility principle applies properly to the supranationalization of the material parts of the Swiss law implemented upon entry into the EU. Current preparation for Switzerland's later full entry into the EU offers an opportunity to consider whether a de facto pre-implementation of the integration in this area makes the basic significance of the moment and the effects of a full entry or whether the various parts of the attorneys' markets—in particular with regard to the time factor—must even in principle be judged otherwise. There is also the issue of whether this question is a nonissue for business attorneys.⁴ The authors' views depend less upon the form of legal integration than upon the actual *intensity* of the political integration.

2. With regard to the speculative nature of trends, Christian Belz points out:

Many trends in the economy and in society can be quite reliably foreseen. However, we underestimate as a rule how to concretely handle these changes and how we will experience them as participants. Therefore those involved and those who created the changes are always surprised even when the issues are well-known.

CHRISTIAN BELZ, MANAGEMENT-SZENARIEN 2005 (spec. ed. 1998).

3. Message of the Swiss Federal Council regarding the follow-up program after rejection of the EEA-Agreement, BBL (Bundesblatt) 1993 I 805.

4. See Michael Pfeifer & Peter Widmer, *Rechtsberatungsmarkt Schweiz—nimmt der Anwalt teil am Aufbruch oder ist er Auslaufmodell?*, in SCHWEIZERISCHES ANWALTSRECHT 65 (Fellmann et al. eds., 1998).

Everywhere that integration advances, there is increased freedom to establish branches and to provide financial services, but the adoption of laws to achieve these goals usually occurs more slowly than expected. An assessment of the interdependence between actual integration and legal integration must address the EU's legal and political accommodations after Switzerland's entry.⁵

A traditional essay on our subject might concentrate on the identification and description of EU legal instruments (i.e. regulations, directives, decisions) important to international practitioners along with the legal instruments necessary for Switzerland's full entry into the EU. Much standard writing discusses questions important for attorneys such as freedom of establishment and freedom of trade in services.⁶

The authors consciously propose an approach different from those enumerated. More than other kinds of practitioners, international law practitioners are concerned with the economy. They are integral to economic globalization. The authors propose a substantive study⁷ oriented toward reviewing the current and potential material realities in the international attorneys' market. A discussion of the prospects for the international practice of law has primarily economic dimensions. Secondly, such a discussion must explore attitudes of lawyers as they seek a new role and identity.

Though technology and technocracy may be crucial for the economic dimension, they have less apparent influence upon lawyers' attitudes. It seems therefore worthwhile to follow the approach of a special centennial edition of the University of St. Gallen.⁸ Under the title, "Future Workshop HSG," seventy-five management researchers forecast in a two page scenario the state of their field of expertise in the year 2005. Following the St. Gallen approach, we may inquire about the fate of Swiss practice around 2006, the earliest likely date for Swiss entry into the EU.

5. See Editorial Comments, *AGENDA 2000: For a Stronger and Wider Union*, 35 COMMON MKT. L. REV. 317-24 (1998); ANDERSEN CONSULTING, *EUROPE BEYOND THE MILLENNIUM—MAKING SENSE OF TOMORROW* (1998).

6. See the contribution by Dominique Dreyer & Bernard Dubey in *Der Beitritt der Schweiz zur Europäischen Union, Brennpunkte und Auswirkungen*, at 859 (T. Cottier & A. Kopse eds., 1998).

7. In Swiss literature there has been until now no comprehensive view of the circumstances and developments determined by current realities. This is true in particular for questions relating to integration, especially to Switzerland's full membership.

8. See BELZ, *supra* note 2.

On June 16, 1998, several years after the Swiss voted down membership in the EEA, so-called “bilateral negotiations” were initiated by the Swiss Federal Council. At that time, an end of the bilateral negotiations was confidently announced⁹ and seven agreements were produced. On February 26, 1999, the seven agreements were initialed. On March 15, 1999 the Swiss Federal Council decided to initiate a preliminary proceeding for legislation (Vernehmlassungsverfahren), and the council presented the agreements to the Swiss parliament in May 1999. The final vote in the parliament took place in October 1999, a referendum was rejected on May 20/21, 2000 and the seven agreements could become effective in 2001. The participation in the public vote on the bilateral treaties was 47 percent. 1,497,192 votes were favorable and 730,854 votes were unfavorable. The agreements, however, still must go through an elaborate political approval process in the EU and Switzerland.

Notably, the seven agreements¹⁰ are legally interconnected. Each agreement stipulates that the termination, suspension, or expiration of any agreement automatically affects the other agreements.

Within the EU, the EU Commission is responsible for negotiating the agreements; however, the acceptance or rejection of the agreements depends upon a decision of the EU Ministers Council. Ratification of the agreements then proceeds through the EU Parliament and the national parliaments of the EU member countries. Initially, the EU foreign ministers will advise the EU Commission on the negotiation results. If the commission’s reaction is affirmative, the EU transport ministers will then take up the ratification issue. In the most optimistic case, the ratification process will likely last until 2001. In Switzerland, an initial political hurdle to Swiss entry was the favorable vote on September 27, 1998 on the charge for heavy load road transports.

The agreements must be viewed optimistically in view of Switzerland’s narrow maneuvering room after Swiss rejection of

9. *Licht am Ende des Tunnels*, NZZ (Neue Zürcher Zeitung) No. 137, June 17, 1998, at 21.

10. Accord relatif aux échanges de produits agricoles; accord sur la circulation des personnes; accord sur le transport aérien; accord sur le transport de marchandises et de voyageurs par rail et par route; accord sur la reconnaissance mutuelle en matière d’évaluation de la conformité; accord sur certains aspects relatifs aux marchés publics; accord sur la coopération scientifique et technologique. These designations are provisional because the bilateral sectional negotiations are incomplete in the sense that they can be amended at any time. Given the difficult procedure for amendment the designations should last quite a while.

membership in the EEA. In view of the tendency favoring full integration of Europe, including eastern European states, the EU could justifiably anticipate Switzerland's positive decision for free entry into the EU. Thus, it would be inadvisable for Switzerland to retract the EC entry application.¹¹

The process of harmonizing Swiss law with EU law has progressed. Switzerland must fully accept the legal situation in the EU. Ten years ago, the former Swiss EFTA partners, Austria, Sweden and Finland negotiated to join the EU.¹² One imponderable of the schedule arises from Switzerland's puzzling interim behavior which seems inconsistent with Switzerland's declared *entry objective*. One might ask whether the European Union, for political reasons, could admit Switzerland promptly in consideration of the entry negotiations already underway with other nations. It is reasonable to assume that the EU largely sets the schedule for entry negotiations and the moment of the entry itself. Assuming speedy initiation of such negotiations and a successful national ratification process among the EU member countries, Switzerland's full entry, in our opinion, will not occur before 2006. Some bilateral contracts should already have set into motion a partial integration of Switzerland. So let us ask an important question: How can Swiss practitioners prepare themselves creatively to meet the challenge of Swiss entry likely to occur about 2005?

B. *The Focus on the International Practice of Law*

As Remy Zaugg's epigram quoted at the Essay's beginning suggests, even Swiss lawyers have begun to reflect upon the role of lawyers. Swiss lawyers are becoming aware of the need for timely evaluation of their professional situation and timely development of professional plans. The literature abroad and in Switzerland,¹³

11. BBL 1993 I 817.

12. On the history of negotiating the sectional bilateral agreements, see MARTIN ZBINDEN, CHALLENGE OF A SWISS ENTRY INTO THE EU, FOCUS AND CONSEQUENCES 213 (1998).

13. The literature regarding the legal consulting market is extensive; below are some standard works and contributions: RICHARD L. ABEL, AMERICAN LAWYERS (1989); LAWYERS IN SOCIETY (R. Abel & P. Lewis eds., 1995); RICHARD L. ABEL, LAWYERS, A CRITICAL READER (1997); LINCOLN CAPLAN, SKADDEN ARPS: POWER, MONEY AND THE RISE OF A LEGAL EMPIRE (1993); M. Chambers, *Networks and Alliances: Strategies of the International Law Firms*, 1 COMM. LAW. 7, 17 (1996); SIDNEY M. CONE, INTERNATIONAL TRADE IN LEGAL SERVICES—REGULATION OF LAWYERS AND FIRMS IN GLOBAL PRACTICE (1993); D.J. Cooper et al., *Sedimentation and Transformation in Organisational Change: The Case of Canadian Law Firms*,

discloses¹⁴ a remarkable demand for legal services in Switzerland. Foreign publications, such as the *Financial Law Review* and *European Legal Counsel*, offer regular reports about the Swiss lawyers' market; the Swiss legal market is also examined in other publications such as *European Counsel 3000*, *The European Legal 500* and *Euromoney*.

17 ORG. STUD. 4, 623 (1996); W.H. Davidow & B. Uttal, *Service Companies: Focus or Falter*, HARV. BUS. REV., July-Aug. 1989 at 77; YVES DÉZALAY & DAVID SUGARMAN, PROFESSIONAL COMPETITION AND PROFESSIONAL POWER: LAWYERS, ACCOUNTANTS AND THE SOCIAL CONSTRUCTION OF MARKETS (1995); YVES DÉZALAY & BRYANT GARTH, DEALING IN VIRTUE INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER (1996); MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS (1991); MARY ANN GLENDON, A NATION UNDER LAWYERS (1994); JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS, THE SOCIAL STRUCTURE OF THE BAR (rev. ed. 1994); STEVEN J. KUMBLE & KEVIN J. LAHART, CONDUCT UNBECOMING—THE RISE AND RUIN OF FINLEY, KUMBLE (1990); William Kummel, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services*, COLUM. BUS. L. REV. at 379 (1996); V. LEWIS, TRENDS IN THE SOLICITORS' PROFESSION: ANNUAL STATISTICAL REPORT 1996, THE LAW SOCIETY (1996); SOL M. LINOWITZ, THE BETRAYED PROFESSION—LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994); DAVID MAISTER, MANAGING THE PROFESSIONAL SERVICE FIRM (1997); DAVID MAISTER, TRUE PROFESSIONALISM, THE COURAGE TO CARE ABOUT YOUR PEOPLE, YOUR CLIENTS AND YOUR CAREER (1997); G. MALONE & H. MUDRICK, ANATOMY OF A LAW FIRM MERGER, A.B.A. (1992); STEPHEN MAYSON, MAKING SENSE OF LAW FIRMS—STRATEGY, STRUCTURE AND OWNERSHIP (1997) (with extensive literature list); MARK H. MCCORMACK, THE TERRIBLE TRUTH ABOUT LAWYERS—HOW LAWYERS REALLY WORK AND HOW TO DEAL WITH THEM SUCCESSFULLY (1987); RALPH NADER & WESLEY SMITH, NO CONTEST, CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA (1996); WALTER OHLSEN, THE LITIGATION EXPLOSION (1991); A. Parasuraman et al., *A Conceptual Model of Service Quality and Its Implications for Future Research*, J. MKTG., Fall 1985, at 41; A.A. Paterson, *Professionalism and the Legal Service Market*, 3 INT'L J. LEGAL PROFESSION 137 (1996); Ashly Pinnington & Timothy Morris, *Power and Control in Professional Partnerships*, 29 LONG RANGE PLANNING 6, 842 (1996); R. POUND, THE LAWYERS FROM ANTIQUITY TO MODERN TIMES (1953); J.A. Raelin, *An Anatomy of Autonomy: Managing Professionals*, in THE ACADEMY OF MANAGEMENT EXECUTIVE, Vol. III No. 3, 1989, at 216; S.S. Roach, *Services Under Siege—The Restructuring Imperative*, HARV. BUS. REV. Sept.-Oct. 1991, at 82; DIETRICH RUESCHEMEYER, LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES (1973); M. Salter, *On the Idea of a Legal World*, 1 INT'L J. LEGAL PROFESSION, 283 (1994); Debora L. Spar, *Lawyers Abroad: The Internationalization of Legal Practice*, 39 CALIFORNIA MANAGEMENT REV. 3 (1997); MARK H. STEVENS, POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS (1987); JAMES B. STEWART, THE PARTNERS—INSIDE AMERICA'S MOST POWERFUL LAW FIRMS (1983); RICHARD SUSSKIND, THE FUTURE OF LAW (1998); D.M. Trubek et al., *Global Restructuring and the Law: Studies of Internationalization of Legal Fields and the Creation of Transnational Areas*, 44 CASE W. RES. L. REV. 480 (1994); Jean E. Wallace, *Organizational and Professional Commitment in Professional and Nonprofessional Organizations*, 40 ADMIN. SCIENCE Q. 288 (1995).

14. See the following U.S. and British journals: INT'L J. LEGAL PROF.; LAW. INT'L, THE LEGAL BUS. BRIEFING INT'L & EMERGING MARKETS; LEGAL BUS.; THE AM. LAW.; EUR. CORP. LAW.; EUR. COUNS.; COM. LAW., LONDON; INT'L LEGAL PRAC., INT'L BAR ASS'N, LONDON; INT'L BUS. LAW., INT'L BAR ASS'N, LONDON.

It seems that other countries take the Swiss seriously long before we take ourselves seriously. This sentiment is captured loosely in: Zaugg's DIE WELT—ABER ICH—ICH SEHE DICH (“THE WORLD—BUT I—I SEE YOU”). The present Essay supports the thesis of Jens Drolshammer that lawyers not only must talk about themselves but that their reflections must be carried out in timely fashion and also must be objectively communicated to an appropriate audience. The lawyers' reflection must cross both geographic borders and departmental ones.¹⁵ For a long time Swiss lawyers, and particularly international practitioners, have been in a preimplementation phase in anticipation of Swiss entry into the United States. For Swiss international lawyers, change marked by Swiss integration is already a reality, and the lawyers have anticipated such integration in a general way.

C. *Quantification*

As the title of this Article suggests, the anticipated legal integration has put pressure on Swiss international law practitioners. The following statements acquire significance for the reader when he can judge them in regard to *quantitative* results. Switzerland's entry into the EU entails expansion of the EU market by means of the Swiss market, and creation of a uniform domestic market. Investigations of a market remain unclear when the approximate volume of business is scarcely known. Michael Pfeifer and Peter Widmer¹⁶ recently suggested that the Swiss legal advisory market could produce at least two billion Swiss francs annually. Lacking concrete figures, Pfeifer and Widmer relied upon familiar estimates. The same reservations must be made (in majore minus) regarding the volume of the legal advisory market for Swiss lawyers engaged in international practice.¹⁷ As law firms have not generally published their turnover figures, only the published numbers of a few of the Big Five can be used.¹⁸

15. See Jens Drolshammer, *Ein didaktisches Experiment an der Universität St. Gallen und ein Plädoyer für eine Transaktionale Lehrmethode im Modernen Wirtschaftsrecht*, in Festschrift SCHWEIZER JURISTENTAG 1998; Jens Drolshammer, *Der Rechtsanwalt als Hochschullehrer*, in SCHWEIZERISCHES ANWALTSRECHT 531 (Fellman et al. eds., 1998).

16. See Pfeifer & Widmer, *supra* note 4, at 57.

17. See *id.* at 62.

18. The Big Five also offer 'Legal Services' like those traditionally offered by attorneys. Together with the legal services of company lawyers in internationally active businesses which avoid external costs, all these legal services figure in the Swiss legal consulting market.

Without the benefit of published numbers from Swiss law firms, KPMG allocated twenty-two percent (or forty-five million Swiss francs) of the total revenue from legal services to the area of legal and tax consulting.¹⁹ In “Our Business 1997,” STG-Coopers & Lybrand allocated 11.4% of the service revenue (or thirty-six million Swiss francs) to tax and legal consulting. These results were achieved with 180 employees. Considering the volume of the legal and tax consulting departments of the other members of the Big Five (Arthur Andersen, Deloitte Touche, Ernst & Young, KPMG and Pricewaterhouse Coopers), one may assume their total turnover to be at least 150 million Swiss francs. Let us assume the accuracy of Pfeifer and Widmer’s assumptions; their assumptions are based on the number of employees,²⁰ the turnover estimate carried out by Guggenbühl,²¹ and the information about Homburger Attorneys-at-Law in the “Bilanz” of August 1998²² as well as the thesis that the legal and tax consulting activities of the large auditing firms have been less profitable because of the low revenues of the traditional auditing business.²³ We would be justified in concluding that the twenty largest Swiss law practices could have earned somewhat more than double the turnover of the Big Five in the international legal consulting market. It seems proper to conclude that Swiss international practitioners account for more than a quarter of the legal consulting market in Switzerland²⁴ and have a total turnover of at least a half billion francs.

For the market segment including the largest law firms,²⁵ there is a burgeoning and profitable business practice. While there are still no reliable numbers for Switzerland, comparison with American experience might be instructive: an annual poll of the American

19. See KPMG, *Wirtschaftsprüfung und-beratung* 14 (1997).

20. Pfeifer & Widmer, *supra* note 4, at 60.

21. Hanspeter Guggenbühl, *Die Elefantenhochzeit über den Röstigraben* (1991) (Plädoyer).

22. BILANZ, *DAS SCHWEIZER WIRTSCHAFTSMAGAZIN*, August 1998, at 64.

23. See Pfeifer & Widmer, *supra* note 4, at 70.

24. According to THE EUROPEAN LEGAL 500, *LAW FIRMS IN EUROPE, THE GUIDE TO EUROPE’S COMMERCIAL LAW FIRMS* 919 (1998), the number of lawyers active in Switzerland in the *largest law firms* is 739. Our estimate suggests that about 10% of the Swiss attorneys would occupy 25% of the legal consulting market.

25. Equating firm size based on head count with size based on turnover must be put into perspective. Over sixty percent of all Swiss attorneys work in organizations with fewer than five attorneys and individual ‘Sole Practitioners’ such as attorney professors. See Drolshammer, *Der Rechtsanwalt als Hochschullehrer*, *supra* note 15.

Lawyers Magazine confirmed that the top one hundred US law firms in 1997²⁶ had increased their income by almost fourteen percent to \$20.2 billion.²⁷

D. Conditions and Trends Significant for the Topic

Below we analyze important trends that will exert a growing influence upon the activities of Swiss international practitioners.

1. Reorganization of the Social Environment

Hierarchy of Values: Despite the distance separating regions of the globe, one may witness a tendency to subordinate loyalty and morality to short term economic results such as shareholder value. Furthermore, a change in the social value system with opposing tendencies can be discerned: one notices extensive money laundering, tax fraud and slush funds in Switzerland,²⁸ other parts of Europe, and the United States.²⁹ On the global level³⁰ one also notes simultaneous development of new “colonial areas” in which predominantly the law of the strongest applies, and in Switzerland and other states of Europe,³¹ value systems characterized by economic ethics are judged as signs of degeneration. One sees also new social distinctions such as “new poverty versus deprivation poverty.” Thanks to technology (fax, e-mail, Internet, etc.) the accelerating pace of events contributes to a sense of increasing insecurity and pressure upon the stability of established systems. These are important challenges for a law firm engaged in the international practice of law.

26. Still one must be careful regarding comparisons. American attorneys ‘produce’ rather more than their Swiss colleagues.

27. See report in Wall Street Journal Interactive Edition, June 30, 1998. 1997 would be the first year in which the ten top law firms could pay their partners an average of \$1 million. However, the opinion of a partner in ROBINS KAPLAN observed that these amounts were ‘ludicrous’. Also the Swiss legal consulting market for the Big Five in Europe has a double digit rather than single digit annual percentage growth in turnover (see, e.g., STG COOPERS & LYBRAND, UNSER UNTERNEHMEN 14 (1998)).

28. These phenomena are attested to by recommendation and draft No. 8825 for a total revision of the law regarding direct taxes Basel-City dated May 12, 1998, 6.

29. See Lucia A. Low & John E. Davis, *New Antibribery Rules Create New Compliance Responsibilities*, 26 INT’L BUS. LAW. 6 at 272 (June 1998) (showing the U.S. development).

30. For example, the OECD Ministers Council approved on April 11, 1996, a report urging Member countries to review their position on the implications of bribes to foreign officials.

31. Russia, former communist satellites, Greece, Turkey.

Gender: There seems to be a growing awareness of differences between female-oriented and male-oriented professional roles. These roles may be easily reshuffled, and the legal profession faces a challenge of harmonizing organizations traditionally dominated by women with male-dominated organizations.

Mobility/Migration: Increasing mobility³² is associated with the current migration trends from east to west and south to north.

Intensities: Dense regulatory regimes and increasingly complex factual contexts require more intensive training and legal analysis, discussion, and compromise.

Traditions: Swiss banking and fiduciary companies, as well as manufacturers of Swiss textiles, machinery and watches, will have to make room for a growing service sector including Swiss legal services.

2. Mobility, Communication and Efficiency Affect the Economic Environment

Globalization: When economic environment and economic development are mentioned together, the phenomenon of “globalization”³³ comes into focus for international lawyers. This Article adopts the formulation of “globalization” found in the 1997 Annual Report of the Industry Holding (Association of Swiss Industry Holding Companies):

A fashionable term of the 90’s, the opalescent term ‘globalization’ preoccupies people. What does it involve? The term primarily describes the process of an advanced networking (interdependence) of the world economy. In addition, it [globalization] is used to describe the internationalization of all branches of life, including economic, political, social and cultural relationships. Not only economic but also political, technological and socio-cultural factors lie behind globalization.

Globalization seems propelled by a number of revolutionary technical achievements in transport, telecommunication, and data

32. A precise short description of the history of present mobility appears in Franz Blankart, *The Future of Mobility and Transport in a Moving World*, Speech delivered at the Ministerial Day of the Forum Engelberg, (March 26, 1998). Blankart names as important events contributing to mobility the rise of cities in the 13th century, the invention of the printing press, the reformation, the invention of the steam engine, the electric and internal combustion motor, the jet machine and microchips allowing for programming and automatic control of machines.

33. JÜRGEN HABERMAS, *DIE POSTNATIONALE KONSTELLATION* (1998) questions the enduring limitations imposed by national borders.

processing. These achievements have led to advances in electronic commerce and global trading. From a legal perspective, there has been a weakening of political blocs and a growth of new institutions such as WTO, EU, NAFTA, and MERCOSUR.

A coincidence of various factors has highlighted a dynamic involving practically all countries, industrial as well as developing. From a business perspective globalization has produced new and larger markets that fuse the national domestic markets into a world market: Worldwide demand is met by worldwide supply. Furthermore, globalization has increased mobility of businesses and accentuated the role of larger multinational businesses. For lawyers, globalization requires a revision of many established ways of thinking and behaving. Globalization³⁴ and an increasing emphasis upon

34. On globalization, see the 1997 Annual Report of Industrie-Holding, to be obtained at their office, Louisenstrasse 38, 3000 Bern; see DANIEL YERGIN & JOSEPH STANISLAW, *THE COMMANDING HEIGHTS, THE BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE THAT IS REMAKING THE MODERN WORLD* (1998); INTERNATIONALE POLITIK, May 1998, at 59, with various contributions to the topic "globalization," in particular a collection of documents relating to globalization. About the position of the Swiss economy in this process from an economic viewpoint; see SILVIO BORNER & FELIX WEHRLE, *DIE SECHSTE SCHWEIZ: ÜBERLEBEN AUF DEM WELTMARKT* (1984); SILVIO BORNER ET AL., *SCHWEIZ AG, VOM SONDERFALL ZUM SANIERUNGSFALL* (1990); SILVIO BORNER ET AL., *INTERNATIONALE WETTBEWERBSVORTEILE: EIN STRATEGISCHES KONZEPT FÜR DIE SCHWEIZ* (1991); SILVIO BORNER ET AL., *DIE SCHWEIZ IM ALLEINGANG* (1994); CEDRIC DUPONT & PASCAL SCIARINI, *GLOBALIZATION, FEW CERTITUDES AND MANY OPEN QUESTIONS* 124-28; ROLF KAPPEL, *DIE SCHWEIZ IM PROZESS DER GLOBALISIERUNG: EINIGE ASPEKTE AUS DER SICHT DER ÖKONOMIE* 96-103; JEAN-CHRISTIAN LAMBELET, *L'ÉCONOMIE SUISSE, UN ESSAI D'INTERPRÉTATION ET DE SYNTHÈSE* (1993); from a Swiss political view, see Klaus Armingeon et al., 4 SWISS POL. SCI. REV. 2, Summer 1998, 95-128; ROLF KAPPEL & OLIVER LANDMANN, *DIE SCHWEIZ IM GLOBALEN WANDEL, AUSSENWIRTSCHAFTLICHE UND ENTWICKLUNGSPOLITISCHE HERAUSFORDERUNGEN* 104-11 (1997); *Der Nationalstaat am Ende des 20. Jahrhunderts: Beiträge im Rahmen der Berner Vortragsreihe 'Die Schweiz im Prozess der Globalisierung'* 181-99 (Klaus Armingeon ed., 1996); ALOIS BISCHOFBERGER, *THE CONSEQUENCES OF ECONOMIC GLOBALIZATION FOR SWITZERLAND* 119-24; Daniel Wüger, *Globalization—Challenges to Constitutions—the Case of Treaty Making*, 4 SCHWEIZERISCHE ZEITSCHRIFT FÜR POLITISCHE WISSENSCHAFT 2, at 111, 119 (1998); from the Swiss legal viewpoint—for the time being still primarily about the effects of commercial international law on the Swiss legal system, see Thomas Cottier, *The Challenge of Regionalization and Preferential Relations in World Trade Law and Policy*, EUR. FOREIGN AFFAIRS REV. 149 (1996); Thomas Cottier, *The Impact of New Technologies on Multilateral Trade Regulations and Governance*, 72 CHI.-KENT L. REV. 415 (1996); THOMAS COTTIER, *HANDLUNGSSPIELRÄUME UND ZWANGSLAGEN DER SCHWEIZ IN DEN INTERNATIONALEN HANDELSBEZIEHUNGEN*; Thomas Cottier, *Dispute Settlement in the World Trade Organization: Characteristics and Structural Implications for the European Union*, 35 COMMON MKT. L. REV. 325 (1998); Thomas Cottier, *Die Globalisierung des Rechts—Herausforderungen für Praxis, Ausbildung und Forschung*, ZBJV (Zeitschrift des Bernischen Juristenvereins) 1997 at 217. There are currently no Swiss publications on the effects of globalization on the Swiss legal system, and this is also true in the area of commercial law.

regionalization³⁵ lead to revitalization of Switzerland as an economic entity. Though we would like to welcome globalization, we may fear it is a “lie”;³⁶ in any case, globalization is a “powerful unchecked forward marching fact.”³⁷

Nobody in legal services can ignore the effects of globalization. For Swiss international attorneys, globalization accentuates economic relationships. Attorneys who recognize the increased significance of the economy must be interested in the consequences for them as providers of services for their clients. The consequences for attorneys themselves will be comparable to the consequences for other actors in the economy.

Worldwide growth: A significant global development in the area of international business law was the establishment of the new World Trade Organization (WTO = OMC) which includes services in GATS and replaced the GATT Agreement. Predictably, Switzerland foresees participation in WTO as an essential pillar for its foreign economic policy,³⁸ and international practice of law. Switzerland is now undergoing additional liberalization in the sectors of trade, services and agriculture, all of which fall within the jurisdiction of the WTO.³⁹ For middle Europe, the end of a fifty-year period of economic growth and an associated increase in prosperity are foreseeable. Redistribution of resources is now under discussion and trends toward a two class society and to AAA countries⁴⁰ are increasing. There are

35. Regionalization is to be understood first as the development of organizations such as EU, NAFTA, and MERCOSUR. See the report of the Swiss Federal Council regarding Swiss foreign policy in the 1990s, dated November 29, 1993. Second, regionalization could include smaller cooperations in border areas, see A. THIERSTEIN & U.K. EGGER, *INTEGRALE REGIONALPOLITIK* (1994).

36. GERALD BOXBERGER & HARALD KLIMENTA, *DIE 10 GLOBALISIERUNGSLÜGEN* (1998); see also Bruno Fritsch, *Das grosse Unbehagen—Licht und Schatten der Globalisierung*, NZZ No. 164, July 18, 1998.

37. Peter Böckli, *Auseinanderdriften von Wirtschaftsführern und Politikern*, Speech at the 116th Ordinary General Assembly of the Swiss Association for the Chemical Industry (SGCI) (June 19, 1998), in Zürich, *Basler Zeitung* 169, July 23, 1998, at 15.

38. Franz Blankart, *L'OMC: État et Perspective*, Speech at the Swiss Chamber of Commerce Abroad, May 23, 1998; THOMAS COTTIER & KRISTA NADAKAVUKAREN SCHEFER, *Switzerland: The Challenge of Direct Democracy*, in *IMPLEMENTING THE URUGUAY ROUND* (Jackson & Sykes eds., 1997); THOMAS COTTIER in *GATT-URUGUAY ROUND*, NEUN BEITRÄGE; *NEW CONTRIBUTIONS*, NINE PAPERS 87 (Thomas Cottier ed., 1994).

39. See Message of the Swiss Federal Council dated May 27, 1998 to the WTO/GATS-Agreements in the area of financial services, 1998 BBI 3460.

40. In the German language the expression “AAA countries” designates countries with a heavy percentage of Arme (poor), Alte (old) and Arbeitslose (unemployed).

new developments in high technology and high value-added research and production⁴¹.

New mutual interdependencies: In the European economy the following four interdependent trends may be noted: Globalization and pluralism influence one another and in turn influence subcultures aimed at primarily economic results (e.g. car pools, neighborhood assistance organizations, alternative energy cooperative systems, etc.). Globalization and pluralism also influence subcultures and their noneconomic objectives (e.g. European youth choir festival, Zurich theater spectacle).

New work structures in service areas: In response to globalization, working conditions and practices will be dramatically modified in the service industry. For instance, Digital and IBM have successfully initiated Tele-Working and Hot-Desking.⁴² In an information society, the geographic origin of a service will become practically irrelevant.

New profitability: International lawyers should ask which economic fields will require legal services and which are the most profitable targets for the international practice of law. The M & A business is a likely prospect. Although financial business has migrated to London and New York,⁴³ merger and acquisition services within Switzerland will exist as long as the Swiss economy is undergoing restructuring. After such restructuring, merger and acquisition activity will diminish in our view. Meanwhile, international business lawyers must remain vigilant in their search for new areas of business.

New competitive environment: In competition with law firms, auditing firms are gaining a considerable clientele. Auditing firms now offer legal consulting services along with auditing, business consulting, fiduciary transactions, and tax advice. In 1992, Michael Pfeifer noted a trend among large auditing companies to provide legal consultation, although attorneys themselves have been reproached for

41. See Franz Blankart, High Tech Switzerland in an International Context, Speech presented to the Board of Directors of Medtronic, Lausanne, May 14, 1998.

42. Franz Blankart, The Future of Mobility and Transport in a Moving World, Speech at the Ministerial Day of the Forum Engelberg, March 26, 1998.

43. For this reason, e.g., Bär & Karrer, Zurich, opened in the beginning of 1999 a London office which concentrates on capital market law.

trying to achieve a monopoly over legal services.⁴⁴ From an attorney's viewpoint, emphasis upon cooperation seems to be economically justified by the knowledge that law firms are usually more profitable than the large accounting firms. This is so because the profitability of legal and tax advisors in the large accounting firms is diluted by lower revenues from the basic auditing business.⁴⁵ Prospects of coordination and mutually fruitful work for independent law firms and the Big Five are increasingly difficult as the legal consulting departments of the large auditing firms are spun off and are then merged with independent law firms based on a stated growth strategy.⁴⁶

Aided by the economic considerations mentioned above, this recent trend toward mergers of law and accounting firms may be judged by other standards. Here new large international law firms with excellent international networks are being established. Two examples are Baker & McKenzie and Linklaters & Alliance.⁴⁷ These emerging international law firms enjoy a special relationship with separate auditing firms. We must examine whether the large international law firms are better than a) traditional national law firms or b) law firms that operate internationally solely due to good personal contacts or c) law firms who have networks affecting financial aspects, in securing a portion of services in the market segment which is increasingly becoming "anational" and the so-called commoditized legal services.⁴⁸

44. Michael Pfeifer, *Marktgerechte Entwicklung der Rechtsberatung*, NZZ No. 129, June 5, 1992, at 35; cf. Max Meyer, *Kartellistische Zunfionrdnung der Anwälte und Notare*, NZZ No. 98, April 28, 1992, at 39.

45. Pfeifer & Widmer, *supra* note 4, at 70; see also Europe YVES DEZALAY, BATAILLES TERRITORIALES ET QUERELLES DE COUSINAGE, JURISTES ET COMPTABLES EUROPEENS SUR LE MARCHE DU DROIT DES AFFAIRES (1993).

46. The standard example of this type of merger between an outsourced legal department of one of the Big Five and a traditional national law office is the merger between Arthur Anderson and J&A Garrigues (see The Wall Street Journal interactive Edition July 21, 1998, Business and Finance- Europe). Not all planned mergers take place: the merger of the London law firm Wilde Sapte with Arthur Andersen fell apart in 1998.

47. According to the FINANCIAL TIMES, July 24, 1998, the world's largest law firms were Baker & McKenzie (U.S.) 2325 attorneys; Linklaters & Alliance (EU) 1900 attorneys; Clifford Chance (U.K.) 1180 attorneys; Skadden Arps State Meagher (U.S.) 1200 attorneys; Jones Day Reavis & Pogue (U.S.) 1100 attorneys; and Freshfields (U.K.) 1100 attorneys.

48. See Richard Susskind, *There Is No Perfume in the Future of Legal Practice*, 1 MANAGING PARTNER, 1, May/June 1998, at 10.

In addition to the auditing firms and banks⁴⁹ the recently reinforced company legal departments of larger businesses are also relevant in the new competitive environment. In our view, business lawyers (in-house counsels, *Syndici*) form part of the legal consulting market here considered. In-house lawyers' activities help their companies to avoid external costs of outside attorneys and consultants.⁵⁰ In a period concerned with added value, all legal costs reduce the value⁵¹ of a defined transaction whether these costs are created by in-house legal departments or external attorneys. Hence, the return on investment for an in-house legal department is defined as the ratio of the expense for external *and* internal legal services and measurable success in recovery and limiting risks. This means that in-house lawyers and consultants directly compete with each other.⁵² Presumably, the winner will be the one who can present a measurably better ratio between expense (his costs for the company)⁵³ and success (reduction of other transaction costs or improvement of transaction revenues).

The attorney's new role as "transaction cost engineer" confirms the significance of price for legal services. Occasionally, a cost advantage is attributed to an in-house counsel vis-à-vis consultants.⁵⁴ This argument, however, cannot be correct for a full calculation of costs. The starting point is more realistically an equilibrium point in the costs of in-house counsels and consultants. In case of equivalent costs, other factors must figure in a decision to use an in-house counsel or a consultant for specific consulting needs.

The following criteria may be decisive in the case of equivalent cost structures:⁵⁵ special knowledge, particular experience, efficiency and the ability to act promptly. Perhaps lowest costs for services need not be achieved, but costs should be relatively low in relationship to the greatest possible success. An undisputed advantage of an external attorney, in contrast with in-house counsel, is his often broader

49. See Pfeifer, *supra* note 44, at 35.

50. See Pfeifer & Widmer, *supra* note 4, at 62.

51. Peter Turner, *In-House Lawyers versus Consultants*, 26 INT'L BUS. LAW. 6, at 247 (June 1998).

52. *Id.* at 248.

53. It goes without saying that a comparison is possible provided all costs are calculated.

54. Turner, *supra* note 51, at 247.

55. See Jim Armstrong, *Finding the Right Lawyer in a Merging Market Place*, 26 INT'L BUS. LAW. 6, at 249 (June 1998).

experience and his ability to adjust to special situations thanks to a rich variety of cases he has handled.

Technical skills are also increasing in significance. In this connection, the following issues should be emphasized for a business facing the choice between in-house counsel and consultants: Are external attorneys capable of meeting their clients' changing needs and will they be able to meet these needs on time? Or can the company achieve a desired objective faster when it tries to achieve this adjustment of its needs by using its own internally controlled legal department?⁵⁶ Will attorneys active in the international practice of law timely adapt their products to the needs of businesses? In particular, can these lawyers compete with existing legal departments developed in international business groups and those with the basic thinking corresponding to one-stop-shopping providers? The more companies limit their core business, the more they will probably restrict their own legal departments to essential services.

Age structure: The population over fifty years of age will increase thanks to purely demographic changes.⁵⁷ Early retirement of this age group, together with their relatively secure living conditions, means that their energy, know-how, experience and contact network will be available for new noneconomic activities but will be lost to law firms. Significant for the flatness of the development and the shortening of active professional careers of international practitioners⁵⁸ is the change in the age structure in law firms, particularly in Anglo-Saxon areas. For example, in Switzerland partners less than thirty and even forty years old are still considered junior partners; and the zenith of a Swiss lawyer's influence in a partnership and his success may occur after he reaches fifty. By contrast, in American and English law firms partners seem to be getting younger, and the retirement age for a lawyer in these law firms is fifty-five, though after this age the lawyer may continue as a consultant to the firm. Evidently, many businesses, including those

56. Apparently, the international auditing firms exploit these business possibilities more actively than law firms.

57. For the drama of the development, see Ralf Dahrendorf, *Das Zeitalter des Alters*, 57 FINANZ UND WIRTSCHAFT, July 25, 1998, at 1.

58. On average, a lawyer's active career in Switzerland was traditionally thirty years. Nowadays, thirty years may be well above average.

offering legal services, die young, while others are more resistant to decay and risk.⁵⁹

3. Efforts and Obstacles in the International Perception

Cooperative efforts on national and regional levels are increasing in Switzerland. These efforts long predated efforts to forge closer links with the EG/EU.⁶⁰ To compensate for Switzerland's rejection of the EEA, many Swiss professionals have redoubled efforts at international integration.⁶¹ Switzerland's isolation is no longer appropriate. It becomes ever clearer that "nothing is solved alone anymore; also not by itself with an international magic wand. Nothing concerns just us and nothing concerns just the other."⁶² Switzerland's membership in the UN and the EU would be indispensable to Swiss activity in international deliberations and in designing modern business law.⁶³

The role of English as a legal language in international practice is underestimated in Switzerland. If Swiss law is to maintain and even expand its strategically successful position,⁶⁴ the most important Swiss legal directives ought to be published in English as well as German, French and Italian. How this multilingual project can best be achieved is beyond the scope of discussion here. In Swiss legal texts, comments on "Relationship to European Law" could be supplemented with a paragraph entitled "Relationship to Anglo-Saxon Law" along with an English text of the legal document. This additional paragraph could be justified based upon the Commercial Law Art. 43 par. 3 lit. c and lit. d, which provides that the impact of a petition on the economy as well as its possible relationship to costs and use must be presented in reports of the Swiss Federal Council. When a petition lies within the scope of a strategically successful position of Swiss law, an English translation of its impact on the

59. See ARIE DE GEUS, *The Living Company*, 3 HARV. BUS. MANAGER (1997); see also Information No. 103 der Internationalen Treuhand AG, Basel, April 1998, at 24.

60. A. THIERSTEIN & U.K. EGGER, *INTEGRALE REGIONALPOLITIK* (1994), at 3.

61. Message of the Swiss Federal Council regarding the program after rejection of the EEA-Agreement, BBL 1993 I 805, 815.

62. Daniel Eckmann, *Eine Willensnation muss Wollen*, NZZ No. 115, May 20, 1998, at 15.

63. Böckli, *supra* note 37.

64. See Hans Caspar von der Crone, *Ein Aktienrecht für das 21. Jahrhundert*, NZZ 140, June 20-21, 1998, at 29.

economy and its costs should be prepared. Upon submission of a petition, hearings in economic agencies could consider whether the petition falls within the scope of a strategically successful position of Swiss law and could produce for Switzerland a competitive advantage in the global arena.⁶⁵

4. Professional Environment—The Way to the Champions' League

New structures in the European market for legal services?: The European market for legal services is undergoing rapid restructuring.⁶⁶ The reasons for this restructuring are valid for Switzerland as well, except that Swiss restructuring may lag slightly behind the rest of Europe.⁶⁷ In Europe today there is a “first league” of European and international law firms sometimes described in the catch-phrase “one-stop-shopping.”⁶⁸ According to a study by the magazine *European Counsel* about in-house lawyers of large companies,⁶⁹ a one-stop-shopping concept seems to best fulfill client needs both in terms of efficiency and confidentiality.

In a global economy, one-stop-shopping implies a substantial presence in the most important jurisdictions. This presence is the starting point for the Big Five and for law firms organized in strategic alliances and connected internationally by mergers. It remains to be seen during the next ten years whether the market covering predominantly international cross-border transactions will be controlled by approximately ten very large and expensively priced law firms.⁷⁰ Perhaps competition among these large law firms and

65. On preliminary proceedings leading to legislation, see ULRICH HÄFELIN & WALTER HALLER, *Schweizerisches Bundesstaatsrecht* (1998).

66. *Surviving in the New Europe: Strategies for European Firms*, in EUROPEAN COUNSEL, March 1998, at 31. As elements are specified: European network, meaning offices in the most important European jurisdictions (D, F, UK, B, I, NL, E) / international and national legal services / control of Anglo-Saxon law / dual competence of employees (international law and national law specialists) / integrated network of branches with ability to exchange teams relating to the project / institutionalized access to a global network.

67. Pfeifer & Widmer, *supra* note 4, at 65.

68. *Surviving in the New Europe: Strategies for European Firms*, in EUROPEAN COUNSEL, March 1998, at 17. See the recent merger of Linklaters with four other large law firms from Holland, Belgium, Germany and Sweden into the second largest European commercial law firm Linklaters & Alliance (FIN. TIMES, July 24, 1998, 1, 16).

69. See Adam Frederickson, INT'L BUS. LAW., at 253 (1998).

70. Somewhat cynical and shortsighted, the answer (according to European Counsel, March 1998, 28) of one of the senior partners of Allen & Overy: ‘We are only interested in clients that can afford us.’

independent nonaligned lawyers⁷¹ could cut the costs of legal consulting. This last prospect would presumably put pressure upon the restructured “giants.” Considering that legal systems, in the next ten years, will remain anchored in specific territories, there is little evidence to support the argument for an alliance of unassociated persons. To a degree the one-stop-shopping concept is subject to challenges.

According to the image of “a hand in every pot,”⁷² a challenge for “one-stop-shopping” is to provide the highest quality of legal services in all areas. This challenge is difficult to meet consistently. Legal services providers organized under a one-stop-shopping concept should define the targets of their services and correspondingly focus their activities. If they achieve this focus, they will enjoy the above-mentioned advantages in terms of consistency of quality and savings of time.⁷³

New client needs and legal services?: For an understanding of the needs of international attorneys in Switzerland, one must be familiar with the social history of Swiss lawyers,⁷⁴ a topic not detailed in this Article. The traditional Swiss lawyer, operating according to traditions at least one hundred years old today, confronts new clients with new needs, new products, and new practices. The increasing volatility of client needs is linked to an increasing volatility in the

71. The term “alliance of the unaligned” is taken from the European Counsel, March 1998, at 28.

72. According to GEORG BÜCHMANN, *GEFLÜGELTE WORTE* (1986), the expression in his German version “Hansdampf in allen Gassen” can be traced back to the title of a book by Heinrich Zschokke (1771-1848).

73. The change in structure leads to the fact that at universities new educational and research fields about international service businesses are included. For example, at the University of St. Gallen, there have emerged the interdisciplinary teaching conference “Professional Service Firms—Strategic Organization of International Service Companies” with special consideration of the law (Winter semester 1997/98) and the interdisciplinary doctoral seminar “Organizational and Legal Organization of a Professional Service Firm” (Summer semester 1998) by Günther Müller-Stewens and Jens Drolshammer; *see also* Block 8 of the professional program of Masters of European and International Business Law—M.B.L.-HSG at the University of St. Gallen under the leadership of Jens Drolshammer with the topic Legal Profession and International Business Law, in which with participation of authoritative professional exponents who use changing roles of various legal professions, international commercial law in international management, in legal departments of international companies, in law firms and courts is discussed.

74. For an excellent and detailed discussion of the history of attorneys from the eighteenth century until about 1940, *see* HANNES SIEGRIST, *ADVOKAT, BÜRGER, STAAT—SOZIALGESCHICHTE DER RECHTSANWÄLTE IN DEUTSCHLAND, ITALIEN UND DER SCHWEIZ* (1996); *see also* R. PAHUD DE MORTANGES & A. PRÉTRE, *Anwalts-geschichte der Schweiz* (1998).

client's governing bodies. Clients and their governing bodies today bring their own knowledge and experience to fewer areas of activities. However, the clients and their governing bodies bring more knowledge and experience to certain activities than their consultants. Among clients and consultants, a fund of shared experience and knowledge seems to be decreasing. The regulation of the duty of care and the due diligence to be provided by the consultant are increasing, and a product liability for consulting products grows apace.

With increasing due diligence, liability risks increase. Monitoring liability risk is associated with a growing quality control in law firms. Corresponding to the segmentation of clients in the market, a refinement of attorney activities may allow a new allocation of lawyers into international firms with a standardized high level of reasonably similar consulting services.⁷⁵ This market would also have niche players with high prestige as well as low priced attorneys.

In the European market, leadership in the establishment of international law firms and international mergers today belongs to law firms which are at least predominantly⁷⁶ English.⁷⁷ This is so, first, because English firms have strong clients in their domestic markets (in contrast with, for example, France, where for some time important French clients were served by American—or English—dominated law firms). The English firms' working arrangements are influenced by flexible Anglo-Saxon habits of mind⁷⁸ and their lawyers are schooled in an increasingly important English law. For the large Swiss law firms, the declining significance of Swiss law⁷⁹ in international legal

75. Armstrong, *supra* note 55, at 250 (speaking of 'large transactions vs. routine commercial matters').

76. With the exception of Stibbe Simont Monahan Duhot (NL/B/F) which will, according to press reports, merge with the German partnership Gleiss Lutz Hootz Hirsch.

77. Contributing to the leadership of British law firms is with no doubt the fact that in English the economic and legal reporting about service companies is intensively published; *see also* JAMES L. HESKETT, *MANAGING IN THE SERVICE ECONOMY* (1986); JAMES L. HESKETT & LEONARD A. SCHLESINGER, *OUT IN FRONT, BUILDING HIGH CAPABILITY SERVICE ORGANIZATIONS* (1997); JAMES L. HESKETT ET AL., *THE SERVICE PROFIT CHAIN* (1997); DAVID H. MAISTER, *MANAGING THE PROFESSIONAL SERVICE FIRM* (1993); DAVID H. MAISTER, *TRUE PROFESSIONALISM, THE COURAGE TO CARE ABOUT YOUR PEOPLE, YOUR CLIENTS AND YOUR CAREER* (1997); STEPHEN MAYSON, *MAKING SENSE OF LAW FIRMS, STRATEGY, STRUCTURE AND OWNERSHIP* (1997). Swiss publications in this field are rare. They suffer from inattention because of the predominance of the English language in this field. It is only a question of time until Swiss law firms will be analyzed in more detail from a commercial and legal viewpoint.

78. For details, see *Towards a European Super-League*, 22 *COM. LAW.* 22 (March 1998).

79. MICHAEL PFEIFER, *Der Rechtsanwalt in der Heutigen Gesellschaft*, ZSR 115, 1996, II, 253 ff.; DOMINIQUE DREYER, *L'avocat dans la Société Actuelle*, ZSR 115, 1996, II 395 ff.

consulting and the indirect harmonization of law (with Anglo-Saxon law) in connection with a denationalization of law⁸⁰ plays a much greater role than for law firms strongly concentrated in a specific locality.⁸¹

The larger law firms, by virtue of their increased financial strength, are better equipped to adopt new technologies that are increasingly important and are today a key factor for their success.⁸² A change in emphasis from substance to procedure gives business attorneys something to reflect upon.⁸³ In particular, Richard Susskind stresses the growing importance of legal process and forecasts a future for attorneys as legal risk managers rather than information engineers.⁸⁴

New positioning of internationally active Swiss law firms?: As stated by Pfeifer & Widmer in their investigation of the Swiss legal consulting market⁸⁵ for the commemorative publication of the centenary of the Swiss Bar Association, large Swiss business law firms still participate from time to time in so-called large transactions;⁸⁶ but they seldom have the leading role in such transactions. The world class of attorneys active in cross-border transactions consists of fewer than twenty law firms based in the City of London, Manhattan, and perhaps Chicago. Competition with these market leaders who maintain the closest relationships with the leading investment banks does not exist vis-à-vis other law firms. If a Swiss law firm wants to manage the next large merger in Switzerland as global lead counsel, it can follow the practice of its continental European colleagues, that is, by being embedded in a large international law firm or attorneys alliance.

On the international level, the trend toward larger firms corresponds on the national and regional level with the tendency of

80. By “anationality” the authors mean the emergence of international markets and services in which ‘big business’ is no longer nationally bound and only implementation provisions (the ‘small business’) still vary nationally. Subsequently the need for truly international advice emerges, and this precipitates a need for the use of non-German offices.

81. The anationality of technical provisions and regulations, as in financial and environmental law, is increasing.

82. SUSSKIND, *supra* note 13, impressively describes the significance of the Web, Intranet and Extranet: “The web is the natural home for what I call the second pillar of the justice system—public access to the law.” *See also* 1998 LEGAL BUS. 83.

83. The French scientific philosopher DÉZALAY refers to this.

84. SUSSKIND, *supra* note 13, at 25.

85. Pfeifer & Widmer, *supra* note 4, at 65.

86. For further background, see THE EUROPEAN LEGAL 500, *supra* note 24, at 924.

providing legal services to every location. A law firm that until now has specialized in private banking and legal services for Zurich must after the merger of SBG and SBV into UBS provide the same legal services on the same conditions and with the same quality for Basle. The same observation should be valid for Basle law firms that want to use their know-how in going public on the Zurich stock exchange. Large international Swiss law firms are aware that many professional developments are today driven by the United States. All these firms have lawyers who were educated in the United States and soon the firms will accept attorneys as employees and partners who were originally educated in another country of the Anglo-Saxon legal tradition.

The law firms are also aware that many professional development tendencies are technologically driven. They have a broad IT-network linking both firm members and clients. Within the network, these law firms have also assumed their role in cooperating with auditing companies and banks. Providers of legal services compete with each other, but they experience the competition positively and try to complement each other. In this regard reference is made to Pfeifer's statement "that for all larger business transactions today there is a combination of activities between at least two, but most of the time three of the market participants, [that is] banks, auditing firms and law firms."⁸⁷ Cooperation among lawyers, banks and auditing companies will likely extend to economists and communication specialists. Pressure for new forms of interdisciplinary cooperation is growing. These interdisciplinary specialists would manage entry onto the stock exchange, a merger, a liquidation and perhaps an economic criminal proceeding⁸⁸; with this the demand for dialogue and cooperation capabilities also increases. "Pure" legal services are transformed into integrated legal services and then, in the words of the president of the Swiss Bar Association, into "project management."⁸⁹

The issue of law firm size requires particular attention. In particular, the statement of Kaspar Schiller, president of the Swiss Bar Association, in his "Thoughts on the Centenary of the Swiss Bar

87. Pfeifer, *supra* note 44, at 35.

88. For example, the criminal investigation in the matter re Biber Holding was widely reported in the press. See *Die Biber-Banken im Zwielficht*, NZZ No. 55, March 7, 1998, at 21.

89. Kaspar Schiller, *Vorwort des Präsidenten zur Festschrift 100 Jahre SAV*, in *SCHWEIZERISCHES ANWALTSRECHT VIII* (Fellmann et al., eds 1998).

Association” must be heeded.⁹⁰ According to Schiller “one who offers legal representation and legal pursuit, (...)” can “not at the same time operate a mass business. One who offers legal representation and legal pursuit must therefore also *limit its size*.” Schiller evidently wishes to limit the number of clients and employees, for he fears that in “large groups” independence and confidentiality can no longer be guaranteed. In our opinion, this conclusion is shortsighted: the independence of all employees is not required, it is enough that the attorney with a specific representation is independent.

This limited independence is also possible in larger organizations, according to Nobel⁹¹ and Pfeifer.⁹² As concerns confidentiality, the key issue is the circle of initiated employees, not the total number of employees in the service organization. In large organizations, matters can be kept confidential as shown recently by the mergers of Novartis and UBS. Among the limitations suggested by Nobel⁹³ and Pfeifer,⁹⁴ detailing the effect on independence of capital participation, the personal engagement of the acting attorney, speaks for organizational freedom of attorneys and for the use of the legal form of the legal entity⁹⁵ for law firms. The demand described by Nobel in a vivid phrase “organizational freedom for attorneys” is linked to the demand for a liberal form of the legal regulations framework for professional legal activities and a prompt establishment of the legal domestic market within Switzerland.⁹⁶ With legal entities as organizational forms for lawyers and with the removal of liability by means of general business terms and

90. Unpublished text of a slightly expanded version of his speech at the 100 year anniversary of the founding of the Swiss Bar Association of June 5, 1998 in Casino Bern, 11.

91. Peter Nobel, *Organisationsfreiheit für Anwälte: Rechtsformen der Zusammenarbeit von Anwälten: Organisationsfreiheit für Anwälte*, in SCHWEIZERISCHES ANWALTSRECHT 339 (Fellmann et al. eds., 1998).

92. Pfeifer, *supra* note 44, at 325.

93. Nobel, *supra* note 91, at 339.

94. Pfeifer, *supra* note 44, at 325.

95. In this manner, liability is limited by means of a standard power of attorney with release from liability clause. According to the supervisory commission over attorneys of the Canton Zurich a clause in a standard power of attorney is invalid if it excludes liability for slight negligence. According to the commission, such a clause violates the ‘standing’ of attorneys. Hans Nater (Commentary), SJZ (Schweizerische Jüristenzeritung) 1998 94, 301.

96. See for a description of this inner-Swiss attorneys domestic market, DOMINIQUE DREYER & BERNARD DUBEY in DER BEITRITT DER SCHWEIZ ZUR EUROPÄISCHEN UNION, see Fn †, p. 1, at 859.

conditions,⁹⁷ there are for lawyers increased risks of damage claims. In the United States, these risks are highlighted by several spectacular damage compensation proceedings.⁹⁸

New requirements for admission to practice law?: In Switzerland as in the EU and the WTO, globalization of legal services implies breaching borders. In the relatively “small” Swiss federation, the internationalization of law practice will likely be achieved step by step.⁹⁹ There are reasons for this gradual achievement, including Switzerland’s obligations and rights under GATS and its foreseeable duties and rights once it joins the EU. The gradual development may be traced back in particular to legislation identified under the rubric “autonomous enforcement” of EU law. As a result of the most favored clause of GATS, opportunities granted EU lawyers would likely also be granted lawyers from other GATS member countries.¹⁰⁰

New structures of Swiss professional associations?: Like doctors, pharmacists, architects, and engineers, Swiss lawyers are organized in a national association. The Swiss Bar Association, an umbrella organization of the cantonal Bar Associations, is now celebrating its centennial. Geographically organized, the Swiss Bar has recently subdivided itself according to specialties.¹⁰¹ Groups of Swiss international lawyers (e.g., the Union Internationale des Avocats and the International Bar Association) were already organized into sections based upon subject specialty when the Swiss Bar undertook its reorganization.

New structures for training and education of internationally active Swiss business attorneys?: Training of attorneys, whether at a

97. See as to the problems of general business conditions for attorneys a decision of the supervisory commission over attorneys of the Canton Zurich from July 3, 1997, confirmed by the Swiss federal court on May 8, 1998 and commented on by Hans Nater, *supra* note 95, at 301.

98. The Hartford Courant, on May 5, 1998, reported the payment of a sum of \$7.75 million by a Hartford law firm to the city as a result of a settlement of a dispute regarding compensation for a legal opinion.

99. For the development, see FRITZ ROTHENBÜHLER, FREIZÜGIGKEIT FÜR ANWÄLTE (1995); DOMINIQUE DREYER & BERNARD DUBEY in DER BEITRITT DER SCHWEIZ ZUR EUROPÄISCHEN UNION, see Fn †, p. 1, 859.

100. For the relationship between independent development and external influences see Michael Pfeifer, The Swiss Legal Profession Between Independent Development and External Influences (Sept. 1997) (unpublished Diplomarbeit M.B.L.-HSG).

101. E.g., formation in 1998 of the SAV-Commissions for tax law, criminal law, commercial law.

university, outside the university, or by continuing education¹⁰² is growing in importance thanks to an increasing internationalization, on the one hand, and “anationalization,” on the other hand. In these processes, large international enterprises have an advantage if they can manage their information. Thanks to an increase in standardized and anational services and of services influenced by an understanding of Anglo-Saxon law, the significance of university education is declining and the value of practical training is growing. Education and training in large law firms today enjoy a similar survival function as an integrated IT system. This function is coupled with coordination and control over fees and the consistency of documentation. For these areas, lawyers have generally received no basic university education and they receive the training today in the form of continuing education. Success in business is not just dependent on the quality of the attorney’s education. It is also directly affected by the translucence of the legal profession (attorney and high school teacher, attorney and judge, attorney and in-house counsel, attorney and administrative attorney, attorney and fully employed/part-time employed occupant of a political mandate).

II. THESES AND AGENDA ITEMS FOR FURTHER ANALYSIS OF THE “INTERNATIONAL PRACTICE OF LAW”

The trends examined above lead the authors to express several theses about the Swiss international practice of law. The authors believe that these theses are relevant in a broader continental European context. The same holds true for future analysis of the international practice of law under the rubric “legal systems,” “legal professions” and “legal educations.” The authors propose to address the construction of a transnational legal order by means of a methodology that attributes to the international lawyer a pivotal function. For we believe that the transformation of law and the legal profession by the phenomenon of globalization can be understood in terms of the lawyers’ pivotal role in structuring and planning transactions, their monitoring of process activities, and their litigation

102. See Thomas Cottier, *Globalisierung des Rechts—Herausforderungen für Praxis, Ausbildung und Forschung*, 28 *Jr* 1997, at 217. In our opinion Cottier’s assessments are to be quickly carried on in all areas of Swiss law affected materially by globalization; a new assessment in the training and possibly also in continuing education is described by Drolshammer, *supra* note 15.

activities as regards commercial arbitration. This methodology requires a conceptual framework to explain the role of the international lawyer, his positionality, topicality, and activity. This methodology then must set forth a conceptual framework for informal networks among the relevant actors engaged in the construction of a transnational legal order. This methodology should include actors from the general clusters designated “legal systems,” “legal professions” and “legal educations.” Here our assumption is that certain factors pertain to those three clusters, which nowadays and in the near future will be intimately linked to each other. Without these links, the construction of the legal order could not be adequately described. This methodology should start from an underlying philosophical premise of a genuine freedom of will and action of the actors concerned. The authors suggest exploring the feasibility of finding strategies of international competitiveness and international compatibility for the various actors of the international practice of law. The goal of the endeavor would be to render the actors more adaptable and to dislodge certain traditional concepts rather than to construct a presumably complete and coherent legal order and to reinvent theoretical concepts in any fundamental way.

A. The Cluster of “Legal Systems”

1. Theses on the Trends Observed

Specific areas of Swiss law currently may be designated as strategically successful, and these areas should continue to expand. We must understand the effect of Swiss economic legal regulations upon strategically successful areas. Everyone, including attorneys active in the international practice of law in Switzerland, should assume that economic legal regulations are optimally designed. A Swiss economic and legal system must be capable of communication and must be recognized as applicable in transnational legal relationships. An international lawyer would miss important opportunities if he failed to account for the new realities of Swiss law. For international lawyers in Switzerland, it is taken for granted that certain governmental functions and most economically relevant activities can be managed most effectively if the lawyers collaborate with others. Effective association forms require functioning organizational structures and procedures. Moreover, organization and professional ethics rules must ensure a maximum freedom of

organization and activity in the international legal practice. Recent changes in the international practice of law are to be studied in a legal “contemporary history” up to the present. New phenomena in the international practice of law must be researched if we want to be on secure ground in speculating upon the near future. The specialty of comparative law in the area of business law should be revitalized if the lawyers are to appreciate the effects of globalization on the Swiss legal system.

2. Agenda Items for Future Analysis

In a subsequent analysis, the authors propose to study legal systems also from an instrumental point of view and to subject them to strategies aimed at maintaining the international competitiveness of the network of actors involved in the international practice of law. Such strategies would also achieve and maintain a certain “interoperability” between the actors from the three clusters, in particular among the legal systems involved. A subsequent analysis should bring policy and politics back to this political and scientific process and discourse by raising the awareness that something must be done with respect to the adaptation of legal systems.

Future analysis could look more closely at the relevance of foreign policy, foreign trade policy, legal policy, educational policy, and research policy to the maintenance of international competitiveness and interactivity of legal systems. Such an analysis would consider elements of legislation, administration and adjudication that hinder or enhance competitiveness and compatibility of the legal systems. An analysis would consider the appropriate structures of regulatory schemes relevant for the international practice of law.

A future analysis should address the creation of an informal network with government participation. It should also formulate a legal policy with respect to maintaining the international competitiveness of a legal system, a systematic effort of a legal system to increase its ability to communicate as well as a systematic effort to communicate the legal system effectively in an international context. Finally, the analysis should address the implementation of information technology systems in a legal system adequate to cope with the opportunities of the Internet, the formulation of research programs on the issue of international competitiveness of legal

systems, the redirection of existing institutes dealing with international and comparative law and the founding of a legal think tank dealing with the transformation of law and legal professions by the phenomenon of globalization.

B. The Cluster of “Legal Professions”

1. Theses on the Trends Observed

In Switzerland, as elsewhere in Europe, the international practice of law is both a profession and a business. When we speak of lawyering activities, we are speaking of business activities and business organizations.

Legal services follow business activities and other services. Actors in the marketplace of the international practice of law must be linked with the world. Acquaintance with technology is unavoidable in the international practice of law, and technology obliges us to consider the role of technicians, scientists, and economists in the organization of law firms. Current and extensive information is indispensable to a capacity to act in a timely manner. A Swiss Bar Association should take into account the need of obtaining, preparing, and transmitting information worldwide and nationally to enhance the economic integration process. The Swiss Bar Association can also maintain its relevance for attorneys when it addresses the needs of more specialized law firms and attends to these needs. Through his or her law firm, each attorney would find a place in a section of the Bar Association. Swiss law firms would move abroad and domestic law firms would locate in Switzerland. Swiss business lawyers could better protect and further expand their initial links with the EU.

Large international law firms and those resulting from the international auditing firms will in the future represent serious challenges for Swiss business lawyers. The complementary function of lawyers in relation to company or in-house attorneys (whether due to outsourcing of noncore responsibilities or in cooperation in transactions in special areas and requiring special work capacities) will likely be accentuated. If Swiss business lawyers perform their work well, they will help postpone arrival of foreign law firms in Switzerland. In the EU, Swiss business lawyers can become global players in association with colleagues active in the large business centers. Swiss business lawyers must increase their experience in dealing with European legal operations. Swiss international

practitioners of law must guarantee the prestige of the practice and the public's interest in the professional standards of attorneys. Swiss business lawyers would be making a fatal mistake if they waited until the end of the integration process. It would be better if the lawyers sought to exercise influence while there is still maneuvering room. In these areas, Swiss international lawyers must be active in the education of public opinion and legislative process.

Turning to the issue of business organizations in the "international practice of law," there will be transcontinental, transnational, transregional mergers of law firms and internationally active Swiss law firms will participate in these mergers. But Swiss firms will also continue to be national law firms.

The main reasons in Europe for restructuring law firms are also valid in Switzerland. But Swiss lawyers may risk losing any influence they might exercise because of the special situation of Switzerland (i.e., small, federal structure, particular economic structure). Upon succumbing to pressure to adjust, a pressing question in the future for international practitioners will be whether merger or alliance is the more appropriate organizational form. To an increasing extent the choice of merger or alliance will depend less on individual managerial styles and more on the decisional processes resulting from increasing investment in the areas of IT and training. Access to know-how and IT infrastructure will have a strong selective effect. Swiss law firms could work on a project-by-project basis with other service providers in ad hoc networked integrated units. Also in Switzerland, law firms must be able to be organized as legal entities. The young generation of lawyers expects to develop its own international perspective, which will include a corresponding continuing education within their own organization.

Constant continuing education is the best solution for maintaining a high level of expertise in the legal field. This need will also quickly influence university training of lawyers, and universities do not want to lose their competitive edge in legal education. Moreover, in Switzerland, as elsewhere, a lawyers' popular press will likely report the activities of business lawyers. For Swiss international lawyers, rigorous inventory of professional conceptions and approaches that are "state of the art" in key European jurisdictions would be a far-sighted precautionary measure. Also here

introspection and reflection are called for. THE WORLD—BUT I—I SEE YOU)

2. Agenda Items for Future Analysis

Within the cluster of legal professions, the authors propose a more instrumental view in which international practitioners need to maintain or enhance international competitiveness, and compatibility among lawyers and law firms.

The authors would assign a high priority to certain aspects of the international law firm in the changing international practice of law. New dimensions of legal services and legal consulting will have to be explored and explained, since there have occurred significant changes in the content, the style and the techniques in which certain legal services in the “international practice of law” are performed. Among the elements may be noted an emphasis shifting away from a litigation practice and toward a practice concentrated on structuring transactions. There would also be a shift away from a structure-oriented to a process-oriented perspective, away from giving legal advice to solving legal problems, from solving legal problems to managing issues in a wider context, from legal consulting to legal management. Legal management could evolve into legal business consulting, with an emphasis upon communication in the international practice of law. Along with these changes, there would be an increasing need to work in an integrated and interdisciplinary manner with other service providers such as economists and communication specialists. The profession would witness the widespread use of information technology, the development of problem-solving skills for the international practice of law and broadening developments including, alongside the practice of law, the art and the science of law in legal services and legal consulting. Depending on further trends and developments these elements of change could influence the organization of the international law firm, its position vis-à-vis other service providers, and the perception of the legal profession as a whole.

New aspects of information technology in international law firms will have to be included in future analysis of the international practice of law. According to the authors, international law firms must think of their position in a competitive environment in which information technology is likely to become strategic for success. Human

resources and intellectual capital are the principal assets of professional firms, and they will need everything that information technology has to offer, if they want fully to exploit their intellectual assets.

Today cyberspace and its tools are seen within international law firms as means to greater efficiency and effectiveness. Tomorrow, according to the predictions of McKinsey and Co., cyberspace is likely to become a marketplace for international legal services as well. Future analysis must give high priority to the issue of ever more professionalized international law firms, bringing them into the realm of the “state-of-the-art knowledge” applied by other groups of professional service firms such as auditing companies and business consultants.

In future analysis new aspects of the organization of the international law firm of a certain size will figure prominently. Future analysis will address the relevance of generally accepted characteristics of other international professional service firms for international law firms such as “leveraging,” “ownership” and “one firm culture,” and concepts such as “service process,” the “services,” the “professionals,” the “systems” such as research and development, knowledge management, technology and project management. In a future analysis management and legal concepts will have to be applied in an integrated and interdisciplinary manner.

In the analysis, one will likely find also issues of the legal structure of an international law firm. The anticipated spill-over effect of planning and structuring activities of the Big Five will bring to the forefront speculation about the legal structure of at least large international law firms. In this discussion, one is likely to find issues of liability, governance, shared economic interest and name and trademark planning. The effect of regulatory schemes on internationalization and multidisciplinary practice will have to be studied. It remains to be seen if the traditional legal concepts for structuring international firms, which basically have been modeled on multinational industrial firms, will be relevant for multinational service firms as well. Finally, it remains to be seen whether the controlling principle of territoriality of legal systems will offer legal forms functional under any national system of law.

C. *The Cluster of “Legal Educations”*

1. Theses on the Trends Observed

Although Switzerland still has an above average international community of lawyers, training and educating the international lawyer for a globalized practice seem increasingly neglected. A change of attitude should take place in the near future. The last decades have been characterized by professional introversion, a certain passive self-satisfaction, lack of awareness and an absence of scientific knowledge that the legal system and legal education are strategic for international competitiveness. Also noteworthy have been a lack of imagination in confronting the growing influence of American and EU law, and a hesitation in structuring educational institutions to meet new challenges. It is likely that competitive pressures will increase along with professional specialization, causing pressure for specialized training. This training will be performed by institutions outside the universities. Swiss federal peculiarities will make less likely solutions on a grand scale. Retarded internationalization of Swiss universities will not increase their attractiveness for international cooperation. The absence of international elements in parochially controlled bar examinations is unlikely to help establish minimum standards of internationality within the Swiss Bar. A certain lack of international training of members of law faculties and a conservative policy excluding international lawyers from practice and from non-Swiss universities will not help the cause of education of the “international lawyer” in the universities.¹⁰³ Perhaps, the traditional muddling through might cease in the near future. For that moment, creative and internationally benchmarked concepts have to be ready as a subject for an agenda for the future.

2. Agenda Items for Future Analysis

Legal education has become an indispensable part of the informal network of legal actors in recent years, and it is likely to become still more important as the international lawyer cannot function properly without basic university and post-university training. Globalization has multiplied the educational dimensions and

103. See also THOMAS COTTIER, *Die Globalisierung des Rechts—Herausforderungen für Praxis, Ausbildung und Forschung*, ZBJV 1997, 217-41.

has added requirements of professionalism for which adequate methods of teaching and training remain to be developed.

Future analysis must take into account the requirement of a marked improvement in legal education. A new allocation of responsibilities, and a fresh conceptualization of contents and methods of training should be found. These new forms would have to be conceived in a global perspective. This education and formation would also have to adapt to the pivotal role of the international lawyer in the construction of the transnational legal order. These steps, according to the authors, should counterbalance the dominant American influence upon the international practice of law with a moderate continental European view. To maintain the counterbalance, it would also be wise to maintain a comparative law methodology. This methodology would allow retention of civil law concepts as competitive contenders in the formation of the legal order, in particular for commercial matters.

Future analysis will have to address whether the curriculum of Swiss faculties should include compulsory training in the common law and in the civil law system. Other issues for the faculty could be the provision of legal language training in important foreign legal languages, apprenticeships in foreign jurisdictions, introduction of programs in international clinical or practical education, and development of tools for distance learning. Such an agenda would likely have to address the critical issue as to who should control the post-university permanent training and education of international lawyers, inasmuch as law schools on both sides of the Atlantic so far have not been active in that field. Finally, the agenda should address special educational vehicles, which would enhance the international competitiveness and compatibility of international lawyers by collecting in specific academic domains curricular subjects important for international practitioners.

III. CONCLUSIONS

Swiss attorneys active in the international practice of law, like their counterparts in EU member states will have to take a path to integration parallel with the business integration paths of their main clients. A quickening economic integration process, even within the EU, will play a greater role than the political process. One's own plans should in the short and middle-term be determined by the actual

integration design. Those who timely recognize the described economical political trends are not indifferent to integration. Among Swiss practitioners, an indifference to the EU could have more important long-term consequences than the full entry of Switzerland into the EU. Anglo-Saxon developments now dominant in the European market, including the Swiss market, are more important than developments originating in the European or Swiss area. These Anglo-Saxon influences exist independent of whether Switzerland joins the EU, remains isolated from the EU, or achieves a mixed form of integration. Swiss international attorneys will therefore have to take into account globalization “à tout azimuth.” Accordingly, the more isolated Switzerland or other Continental European countries become, the more likely that global trends for the international practice of law will be missed. The decreasing significance of Switzerland and Swiss law—or of other continental European jurisdictions—should spur participants in the legal business to steer the other way and to strengthen their relatively successful positions.

The authors suggest that the factors attributed to the specific Swiss situation are *ceteribus paribus* valid for the situation of attorneys in continental European countries, which are all affected by the hurricane called “globalization.” It is demanding for squadrons of European lawyers in their own intellectual and culturally sovereign jurisdictions to stand up against a superior Anglo-Saxon juggernaut consisting largely of American and English representatives of the legal profession.

Time waits for no one, as the artist REMY ZAUGG suggests¹⁰⁴ in his art work “Titanic” displayed in the Swiss Federal Administrative Building, in Berne. The insular Swiss must engage with the outside world:

THE WORLD—BUT I—I SEE YOU.

104. In the art work in an administration building of the Swiss Federal Administration into which the Federal Department of the Exterior was to have moved, this part was intentionally not realized. See HANS RUDOLF RAST, *LE MONDE DIT / DIE WELT SPRICHT / IL MONDO DICE / IL MUNDO DI*—Regarding the art work of Remy Zaugg in Administrative Building, Monbijoustrasse 72/74 in Bern, issued by the Swiss Federal Office for Culture, Bern 1998.