



How to be an international lawyer

*The information you need when
working around the world*

By Paul Smith and Geoffrey Morson



EVERSHEDS

How to be an international lawyer

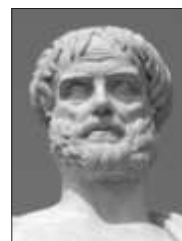
By Paul Smith and Geoffrey Morson



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Aristotle
(384BC-322BC),
Philosopher, provided
scientific evidence
that the world
is round

This publication forms part of Eversheds' pioneering set of publications aimed at helping our clients with international legal issues in areas such as compliance, contracts, litigation and attorney-client privilege. Designs have been inspired by great pioneers from the past.

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Introduction

There can be no doubt that the circumstances under which international business now operates have changed. Indeed, these circumstances may have changed more during the last few years than in the many decades before. And this change is ongoing.

There is only room here to mention a few of these evolving circumstances:

- the complex interdependence of world financial markets
- the vigorous race for scarce natural resources
- the high price of energy
- the unprecedented availability of information via the Internet
- world competition from powerful new players such as Brazil, China, India, and Russia
- the balance between a green environment and steady economic growth
- vast concentrations of investment capital in countries which produce and export natural resources (particularly energy resources)
- huge international companies with financial resources larger than many countries and ownership of most of the world's commercial technology and know-how
- the worldwide mobility of the international corporation (whatever the geographic location of its traditional 'corporate seat').

These changes are very difficult to assess and then turn into correct business decisions because globalisation is by no means uniform. Among other things, the scale of the changes and their often intricate and unpredictable impact upon each other can make globalisation an unreliable guide to future behaviour, that can lead to success, or to disaster, in unknown territory. It is not good enough to be right globally unless you are also right locally: both are essential and even to achieve either one of these goals alone is difficult.

About 70% of the legal issues that cross the desk of in-house counsel can and should be commoditised. There is a basic, practical and simple answer that will fit most circumstances. The 'precise' global answer (assuming there even is one) often takes too long, costs too much money and may not be necessary. It is often wiser to ration out one's time and money for the other 30%, about half of which will also involve standard, fairly commoditised solutions. In other words, at least 85% of all global business issues can be answered and acted upon with an acceptable degree of calculated legal risk.

Reducing the risk of 'getting it wrong' can be relatively easy but over-compliance can come at excessive cost. Therefore, one fundamental and recurring task of the international lawyer is to recognise and evaluate which problems are in the 85% risk management zone and which need the '15% solution', allowing virtually no margin of error, whatever the cost to know the 'right answer'. About 90% of that 'savvy' comes from being well informed about what is happening in the real world: not in the law books.

As if this did not make things complicated enough, laws and legislators and regulators tend to lag well behind changes in business reality, even in the most stable of times. Today, international businesses and the lawyers who advise them cannot afford such patience. It often takes many years before new commercial and technological realities reach the stage of reliable judicial (let alone legislative) analysis. By then, the world has usually moved onwards once again. New situations arise, and therefore new legal solutions need to be found. Business needs to act in the here and now: the philosophy of 'wait and see' is, far too often, not a desirable or even a permissible option. Sometimes, traditional approaches work for these new facts but just as often new approaches need to be fashioned 'on the fly'.

The phenomenon of globalisation thus has a pressing temporal element. The market is always open and in operation and international lawyers need to be on the same timetable. Most lawyers are trained in ways that make this 'brave new world' very uncomfortable for them. The stability and the predictability of 'the law' just do not work globally. Some degree of legal risk management is unavoidable in the practice of modern international business law.

Business today needs approaches that will work in as much of the globe as possible and as many times as possible. Being approximately right most of the time may prove better than to seek a degree of precision which is either not attainable or which comes too late.

What we hope to offer in this booklet are some practical suggestions about 'How to be an international lawyer' in the context of globalisation. Being an international lawyer today is an enormous challenge but it seems to us that it is the most exciting and rewarding legal job there is and that it will be that for many decades to come.

Paul Smith
Geoffrey Morson
London, October 2008

Top ten list for the international lawyer

How to be an international lawyer

Top ten list for the international lawyer

No list can possibly summarise all the points that need to be operating in the mind of the international lawyer. The relevant issues and their multiple combinations and effects upon each other are always changing in form and number.

However, here is our list of the most frequently important top ten:

- 1 The world is global but it also remains very local. Examples at pages 13, 19, 36-38, 62, 65-66.
- 2 Assume sameness and uniformity and then work down to the desired degree of local 'granulation'. Examples at pages 28, 31-32.
- 3 Economies of scale work for information sifting and knowledge management and they often work there the best. Examples at pages 36, 61-64.
- 4 No information system can be completely accurate (as in 'local knowledge') and be completely cost-efficient (as in 'global economies of scale'). Examples at pages 22, 45-48, 68, 89.
- 5 Globalisation favours the 'somewhat inaccurate' (when seeking to meet maximum market needs) over the 'much more accurate' (which is often too late to secure comprehensive competitive advantage) ("the pretty good may be better than the good and much better than the best"). Examples at pages 35, 61-64, 91-101.
- 6 The information you need is almost always 'out there', somewhere in the global ether, and, in global electronic terms, there is more out there in English than in all other languages. But, in global star-sailing terms, that is like steering by too many stars, not like steering by one Pole Star or by one Southern Cross. The electronically available English 'more' (in terms of sheer information volume) may be less than the locally available 'less' (in terms of regional legal effectiveness). Examples at pages 20, 23, 25, 36.

- 7 Navigate first by thought, not by words: dead reckoning for the main voyage, instruments and seamanship for the fine tuning. From the general to the particular. Old maps can mislead all persons on the voyage, particularly the Captain. But the particular may also often be the best statistical guide to the general. Examples at pages 35, 39-40.
- 8 Common sense and a good sense of direction, distance and timing are the best pilots and are the most reliable compass, in the longer run. The world is not flat but maps are. Examples at pages 25, 34.
- 9 Ask, learn, share, record, analyse, simplify and recycle (and then keep that progress going, over and over again). The most effective international lawyer is the one who will make the best use of existing information quickly, who will best visualise the patterns that explain the most situations, who will best demystify what appears to be unfamiliar and 'foreign', who will adapt the minimal overall number of customised local solutions to the most important global questions and, critically, the one who can best read the past and the present in order to predict the future. Examples at pages 39-40.
- 10 With each passing day and with each advance in global business and information technology, local solutions will become more uniform and more easy to commoditise and hence more profitable. Law will catch up but creative commerce will lead the way. By then, when the new ways are (or seem to be) mapped out, the successful international lawyer will already have left safe havens and known maps for seas and shores anew. The only 'safe haven' is to be on a constant odyssey. Examples at pages 30, 33-35.

Overall practice tip: the international lawyer will always be thinking of being on a voyage, where the trip itself has as much worth as the destination. In non-Western terms, it helps to think of the Japanese Ship's Oath (page 25), which focuses on human behaviour, mutual respect and universal good faith. In Western terms, it helps to recall that the classic voyage is that of Odysseus (Ulysses), with its focus on adventure and danger and the idea that only by travelling outwards can one ever 'come home'. Staying at home is not an option. Nowadays, each international lawyer must make such trips every single day, knowing that making the voyage in all directions, and wherever the winds may blow, is the equivalent to the saying that the "medium is the message".

Practical tips for a life on the international road

When travelling abroad, take special care what documents, laptop information, CD-ROMs, stored mobile telephone data and memory stick ("flash memory") data you carry with you. There is not just the risk of loss or theft, but confiscation, the loss of attorney-client privilege and other dangers. In extreme cases, these risks can include being denied permission to leave the foreign country at all or being denied travel permission, except upon undesirable conditions, including posting financial security (which may never be recovered), adverse media attention and being added to a list of suspect persons. In addition, there is the hassle, stress and annoyance, and the risk of being seen by the client as having 'messed up'.

By way of an example: according to a policy announced on 16 July 2008, US Customs agents have authority to conduct searches at the US border, regarding information contained in documents and electronic devices such as laptops and flash drives, even without any suspicion of wrongdoing or unlawful activity. There is no distinction between foreigners and Americans. Officers may detain documents and electronic devices for as long as they deem necessary and reasonable to perform a thorough search, either on or off site. Customs may share the documents or electronic devices with other federal agencies or entities for translation, decryption, or subject matter assistance, without notice.

In certain countries, it may be advisable, when dealing with local government agents and officials, never to do so except in the presence of a third party witness. Among other things, this will help ward off allegations that some improper act (such as an attempt at bribery) has been committed or proposed.

When using live interpreters, take special care that the person not only knows the foreign languages involved but is truly familiar with the technical meaning of the key terms, whether legal, or accountancy or chemical or whatever. In many foreign countries, such qualified people are very rare. Great care must also be taken regarding written translations but the risk of misunderstandings in meetings and other oral interchanges is usually far greater. Always keep detailed notes in your own language of what you intended to say, what you did say and what the

interpreter said was given by way of response. In many cases, it will be wise to follow up such meetings with a written confirmation, at least in your own language, and to have this certified by the interpreter. If there are errors, make sure that they are corrected and that the other parties to the meeting are notified.

Do not assume that an interpreter or translator will not discuss your affairs with the other party or with local government officials. When in doubt, at least secure a written agreement promising confidentiality.

When making telephone calls, always assume that there is a risk that the call may be intercepted and recorded, without your knowledge or consent.

Make certain, before you travel, that your medicines are not considered as 'illegal drugs' in the countries you intend to travel to.

Be ultra careful in some countries when taking photographs or leaving the country with documents that could in any way be considered to contain data of national security importance. In some countries, even economic statistics and proposed building plans and financial data may be subject to strict export controls and heavy penalties for attempting to do so, whether physically or electronically.

In most countries, it is wise to avoid any discussions about religion or politics and in some countries it is dangerous to do so. In some countries, it is wise to avoid all social engagements, except with people you know very well.

Media interviews should be conducted with added caution, in most foreign countries, and often only in close collaboration with independent local media experts, if there are any. When in doubt, refrain from comment.

Be very patient and allow ample time for mutual understanding. Innocent (but serious) misunderstandings can occur very easily, when different languages and cultures interact, coupled with impatience or by assuming that words and phrases have invariable meanings.

What the native English speaker says	What the native English speaker really means	What the non-native English speaker may think is the intended meaning
I hear what you say.	I disagree and do not wish to discuss it further.	He accepts my point of view.
With the greatest respect....	You are wrong (or unwise).	She is listening to me.
That's not bad.	That's good.	That's mediocre.
Quite good.	A bit disappointing.	Quite good.
Perhaps you would like to think about/I would suggest.	This is something that you must do.	Think about the idea but do as you prefer.
Oh, by the way/incidentally....	The primary purpose of our discussion is....	This is not very important.
I was a bit disappointed that....	I am really displeased.	It doesn't much matter.
Very interesting.	I don't agree/I don't believe you.	He is impressed.
Could we consider some other options?	I don't like your idea.	They have not yet decided.
I'll keep it in mind.	I will do nothing about it.	They will probably do it.
Please think about that some more.	It's a bad idea. Don't do it.	It's a good idea. Keep developing it.
I'm sure it's my fault.	It's your fault.	It was her fault.
That is an original point of view.	You must be crazy.	He likes my idea.
You'll get there eventually.	You don't have a reasonable chance of succeeding.	She agrees that I am on the right path and should keep on trying.
I almost agree.	I don't agree at all.	He is not far from agreement.
To tell the truth....	Incidentally....	She is reluctantly accepting my viewpoint.
I don't mind. (<i>in response to the question: "Would you like some...?"</i>)	Yes please.	He doesn't care one way or the other.

Also remember: in some cultures, “yes” and “maybe” really mean “no” but to say “no” may (in the minds of people from those cultures) give great offence or cause ‘loss of face’, and therefore the polite answer given instead is “yes” or “maybe”. Try to evaluate what people do, not just what they say, taking into account the rules of *their* culture: do not assume that they are experts on *yours*. A contradiction in their speech and their behaviour does not necessarily mean a lack of good faith. It may instead mean a lack of mutual cultural symbiosis, a situation which can be improved by time and study and mutual respect. They may also be reacting to *your* speech and behaviour as being contradictory or simply being hard to understand.

A ‘to do’ list for the international lawyer

Look at the website of any government regulatory agency, anywhere in the world, to see what is in their latest newsletter. Compare those developments with, for example, the latest developments noted by the relevant regulators, stock exchanges, labour organisations, consumer organisations, ombudsman entities, and central banks.

Learn five new legal words a week, in any foreign language. For example, take any legal word of your choice and try to determine its true equivalent (if any) in five different languages. This effort may involve dictionaries but it may also include asking other lawyers and doing some testing with some key terms (such as via the Internet).

Take a legal principle, a law or a court case which is considered the leading authority on a subject in your own country and try to find something similar in any other country.

Go to the website of your own law school and see what international law courses are being offered, that were not available when you were a student.

Read any major newspaper and look for a story which seems to create or discuss new legal issues.

Go to any major Internet search engine (such as Google) and search under 'international law' news. Search under various languages (advanced search). Note that some electronic services, such as FindLaw.com, also allow advanced searches by pre-determined subject matter (such as employment, environment, international, product liability and so forth).

Go to any major Internet search engine and search under any issue in the media that seems to create new legal issues.

Search the website of a major law association or bar association, in any country, and note the latest news.

Check the latest corporate governance developments at various websites devoted to such issues, including, for example: the European Corporate Governance Institute

(ECGI), the John M. Olin Center (Harvard), the Rock Center (Stanford), the Moroccan Commission Nationale Gouvernance d'Entreprise, The Polish Corporate Governance Forum, Russian Institute of Directors (Российский институт директоров), the Indonesian National Committee on Governance (Komite Nasional Kebijakan Governance) and many more.

Check the latest defective and dangerous product alerts of the EU at SANCO and Rapex, via the Internet.

Look at recently decided and pending cases before the European Court of Justice (ECJ), the European Court of First Instance (CFI), the World Trade Organization (WTO).

Examine law bookseller catalogues and their e-newsletters.

Recognise patterns of legal developments from country to country and internationally. See, for example, pages 79-86, on Trends in European Union Law.

Take continuing legal education courses on topics related to local and to international law.

Translate a page of any EU Treaty, Regulation or Directive into 'plain English'.

Join and participate in the international section of your local bar association.

Write and speak on international legal subjects. See some practical suggestions at pages 95-101.

Look at blogs and blawgs in legal areas that interest you (as well as some that do not).

Telephone a friend and ask: "what's new?".

Watch a film or TV program (or read a novel or short story) about a legal subject and ask yourself: "How would this work in an international setting or in countries with various different legal systems and traditions?". How much is fiction and how much is fact? How much might become fact and under what set of circumstances?

Keep in touch with law school classmates and friends: they can be helpful regarding information, personal introductions and client referrals.

Keep in touch with former clients and their lawyers: they can be helpful regarding information, personal introductions and client referrals. And of course, keep in touch with current clients and their lawyers.

Collect 'How To Do Business In [name of country]' books and brochures.

Keep a personal dictionary of foreign legal terms you use or encounter that are useful or seem badly translated elsewhere.

Subscribe to one or more law journals in foreign countries: read at least the titles (or abstracts) of the various articles and book reviews they offer. These can be useful signposts as to which legal issues, locally, are considered important or evolving or controversial. Get in touch with the authors of articles you find useful or as to which you have questions or suggestions.

Examples of some national law journals, worldwide, less well known outside their own country:

Country	Name of Journal
Argentina	Revista Jurídica de Buenos Aires
Brazil	Revista Brasileira de Direito Comparado
Burkina Faso	Revue Burkinabè de droit
China	北京政法职业学院学报
Croatia	Zbornik Pravnog fakulteta Sveučilišta u Rijeci
Czech Republic	Acta Universitatis Carolinae, Juridica
Greece	Επιθεώρηση του εμπορικού δικαίου
Hungary	Állam- és Jogtudomány
Israel	דין ודברים
Korea	법학연구
Madagascar	Revue juridique et politique malgache
Malaysia	Jurnal Undang-undang
Mexico	Boletín Mexicano de Derecho Comparado
Panama	Anuario de Derecho
Peru	Revista Jurídica del Perú
Philippines	Ateneo Law Journal
Poland	Państwo i Prawo
Puerto Rico	Revista de Derecho Puertorriqueño
Romania	Revista română de drept privat
Russia	Российская юстиция
San Marino	Giurisprudenza Sammarinese
Serbia	Arhiv za pravne i društvene nauke
South Africa	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
Tasmania	University of Tasmania Law Review
Turkey	Banka ve Ticaret Hukuku Dergisi
Ukraine	Право України
Vietnam	Pháp Luật
Zambia	Zambia Law Journal

Statistic: the Index to Foreign Legal Periodicals (IFLP), co-published by the University of California, lists online almost 500 periodicals and journals, worldwide (from Argentina to Zimbabwe), devoted to issues of private and public international law, in all the major and many 'minor' languages. Here is a breakdown by country and language (top 10 positions only, which comprise 57% of the world total):

Country (number of journals)	Language	Percentage of Total
Germany: 70	German (some in English and French)	14%
UK: 44	English (some in French)	8.8%
France: 42	French	8.4%
Netherlands: 40	Dutch, English, French	8.0%
Italy: 34	Italian	6.8%
USA: 26	English	5.2%
Switzerland: 11	French, German	2.2%
Spain: 10	Spanish	2.0%
Canada: 10	English, French	2.0%
Russia: 9	Russian	1.8%

Of the thousands of law journals in regular publication worldwide, more than 50% are written in English.

Business strategy for the international lawyer: how to win without leaving home

Sun Tzu was the author of *The Art of War*, a very influential ancient Chinese book on military strategy. He lived from about 544-496 BCE (hence, about 2,500 ago).

Some of Sun Tzu's ideas have been reinterpreted in the context of modern business management skills. They also have practical applications for the international lawyer.

Here are some examples.

Calculate. Explore the key elements that define competitive positions and the ways to evaluate your (and your client's) competitive strengths against your competition. Sun Tzu identifies five key elements: mission, climate, ground, leadership, and methods.

Plan. Understand the economic nature of competition in your client's international business. Sustained success depends upon repeatedly making the winning play which, in turn, requires limiting the costs of conflict and the wise and efficient use of information, including Internet information.

Information. Market intelligence, properly used, is the main key to success. Keep your own plans secret from your opponents. In modern terms, market information is usually 'asymmetrical', but mainly in the sense that, even if it is available symmetrically, the advantage will go to the international lawyer who is best able to find and apply that information.

Action vs Risk. All action involves risk: risk of distance, risk of terrain, risk of barriers. These risks can be lessened by planning, by information and by recognising the right opportunities for success.

Unity. The source of strength is unity of thought and action, not the size of the force brought to bear upon any question or problem.

Defend. While global growth is important, it is equally vital to defend your client's existing market positions until they can be efficiently advanced elsewhere. Efficiency often entails recognising opportunities, rather than trying to create them.

Energy. Creativity, natural advantage, selectivity and precise timing are essential for building competitive momentum. Since it is basic human nature to spend more effort to defend what one already has than to fight for what someone else already has, energy is better spent defending and developing than seeking unknown adventures on someone else's territory, which they are likely to defend with more energy than you can wisely attack with.

Weak and Strong. Study your own and your opponents' strengths and weaknesses. Spend even more thought trying to predict the intentions of others than your own. Some competition must be met head on, some must be avoided and some must be timed for maximum use of existing resources.

Competition. Sun Tzu identifies nine different competitive situations (or stages). For example, he advises:

When the competitive position is:	Strategy to adopt:
On marginal ground	Keep going or abandon
On difficult ground	Keep going, with great care
On contentious ground	Do not attack
On dangerous ground	Avoid conflict
On open ground	Do not become separated
On surrounded ground	Plan, wait and prepare
On intersecting ground	Form alliances

Variation. There is always a need to be flexible in your planning, your thinking and your responsiveness. The background for the conduct of successful international business is always changing. The law is often more a guide to the past than to the future. Business changes more quickly than the law but information about business change is usually available in 'real time', long before the law catches up.

Marching. The past is no guarantee of the future. The international lawyer will always be on the march, looking for new ideas, new allies and new opponents, new strategies, new methods and new goals. Always seek victory but also avoid danger. The best victory is the one gained without conflict.

Long after Sun Tzu, a book was written in Japan which also has useful ideas for the international lawyer of today. This book, called the Hagakure (葉隠) meaning In the Shadow of Leaves, contains the precepts of Yamamoto Tsunemoto (山本常朝) (1659-1719). Among his guidelines for personal success are the following:

- be loyal and selfless toward the client
- know the limits of your own knowledge
- be careful when criticising others
- be prepared for any situation
- approach important matters with complete calmness
- learn through the examples of others (both good and bad)
- consider carefully but always be able to decide quickly ("in seven breaths")
- avoid (seeking) promotion when you are young
- discard logic when it leads to petty or unfair results
- settle disputes from the top down
- when in doubt choose the path of what is morally upright.

Along more specific and personal lines, the Hagakure recommends: a one-line letter requires more thought and attention than a longer one. If you can deeply understand one type of business, you can understand them all. Respect foreign customs but always remain true to your own. Always address people eye-to-eye, even if speaking informally. True wisdom is found among people, not just in books. Learning requires the making of mistakes. If you make a mistake, admit it and correct it quickly. Avoid pride and extravagance, even in prosperous times: someone who is not prudent when business is good will not survive the bad times. Difficult matters always lead to different opinions: gather information widely but decide based upon your own values and conclusions.

The international lawyer will also wish to consider the specific remarks of Fujiwara Seika (藤原 惺窩) (1561-1619) a Japanese neo-Confucian philosopher. He authored a 'Ship's Oath' for foreign traders and business people:

"Commerce is the business of selling and buying in order to bring profit to both parties: it is not to gain profit at the expense of others. Foreign lands may differ from our own in manners and speech but there cannot be any difference in human nature: do not ever forget our common human identity or ever try to exploit surface differences. Beware of even minor deceptions or falsehoods. Good faith must be universal. Inquire about the restrictions and prohibitions in the foreign country you are dealing with and respect its rules. For those who travel together, wherever it may be, they should act as a team for restraining and correcting each other."

Presenting yourself as an international lawyer

How to be an international lawyer

Presenting yourself as an international lawyer

Stay in touch with home while on the road. Use tools like Skype and webcams, as well as e-mails, Smartphones and BlackBerrys.

Use technology (such as videoconferencing technology) when face to face meetings are either uneconomical or are just not feasible in the time available.

Be a mobile lawyer: take your tools with you.

Interesting statistics about today's mobile lawyer.

In 2008, the American Bar Association did a survey of its members and found that:

- 94% of the respondents reported using a computer for law-related tasks while away from the office
- 76% reported most often using laptop computers for this purpose
- 46% reported most often using Smartphones or BlackBerrys for this purpose (up from 32% in the ABA 2007 survey)
- 87% reported regularly using the devices at home, 77% while in transit, 72% in hotels, 70% in airports, 56% in client offices, 51% in opposing or co-counsels' offices, and 33% in the courtroom
- 85% reported that they use their laptops to conduct legal research while away from the office and 42% reported doing so with their Smartphones or BlackBerrys.

Whether or not continuing legal education is mandatory in your jurisdiction, use the classes to learn more about international legal topics. Many such courses will be available online for full credit. Consider attending teleclasses and learning from web streamed or podcasted lectures which can be viewed at your convenience.

English is the world international language. If English is your native language, spend time every day trying better to understand how it contains ambiguities and terminology that, no matter how clear and familiar to you, may create misunderstandings for non-native speakers. If English is not your native language, spend time every day trying better to understand its limitations and strengths.

Be international in thought and deed, at all times. For example, if you are waiting for your plane in an airport in some foreign country, buy a local newspaper and make an effort to understand the main articles and the main subjects. Talk to other people also waiting.

When staying away from home, get out and about. Don't just stay in your hotel room. Find out some popular places to visit or to dine and go there. If you happen to know someone in the town, call them up and invite them to join you. Even if they are unavailable they will often appreciate the contact you made and what you can discuss even in a short telephone call can be useful and may lead to useful contacts later.

Be aware of customs in foreign countries which relate to lawyer billing. What frequency is customary? What level of detail is expected or culturally acceptable? What items are considered proper for the client to pay and which are considered part of your own cost of doing business? See additional suggestions on page 42.

Consider carefully which currency in which to express your invoice. With more clients located abroad, international lawyers are increasingly being requested to be paid in foreign country funds. In some countries, it may be considered culturally insensitive to ask to be paid in dollars, or Euros, or pounds, where those are not the local currency. Think the issue through carefully and ask for local advice.

Customise your communications and marketing materials to meet local values. This includes care about the use of language, the use of colours, the use of gender-related examples and spokespersons, and the use of images and finding the right the level and volume for the sales pitch.

A sales campaign that works well in New York may have the opposite effect in Tokyo or Cape Town. Remember also that in many countries 'lawyer advertising' is contrary to local customs and traditions and must be approached with great sensitivity and advance planning.

Develop specific, customised action steps, marketing plans, and public relations strategies that target your ideal client model in the global and the local economy.

Develop and constantly re-examine contacts and relationships with lawyers in foreign jurisdictions, including both generalists and specialists. Keep a file in your law firm or legal department, summarising the experience with these lawyers.

Writing law articles and appearing as a speaker at law conferences are both good things to do but they can also be very time consuming and yield no measurable results. Check with clients and peers as to which subjects they would welcome and find useful.

Having a newsworthy story to tell and having it reported by a third party (such as a journalist, conducting an interview, to 'discover' your story) may have far more readership and credibility than a detailed article in a law journal. In general, journalists will have more interest in a story that is novel or which illustrates some current or important topic in some eye-catching way than in something that has been said or written about, countless times before. Avoid legalese: seek easy-to-understand headlines and colourful, innovative phrases that will stay in the readers' attention. Avoid esoteric topics and terminology.

Even when writing for other lawyers, express yourself as if speaking to non-professionals. Demystify rather than try to overwhelm with technical detail: show the essence of the issues and some practical solutions. Bring in international analogies, anecdotes, stories, examples and statistics, as often as you can. Take national (local) examples and re-fashion them in an international context. Use international examples and re-fashion them in a national context. Don't leave the meaning to chance: state for each main idea "this means that". Connect the dots for the reader

and listener, in plain language. Don't leave the meaning to 'reading between the lines'. All too often, the point will be missed or misunderstood.

The subject of 'international law' is so vast and so varied that there is almost nothing you can write or say, of which the opposite is not also true, under some circumstances. Creating unexpected comparisons, finding sameness in the apparently diverse, suggesting creative single solutions to seemingly unrelated problems . . . all these help to create and retain reader and listener interest. Use slides, pictures, graphs, charts, statistics. Include a good photograph of yourself.

State your main ideas at the beginning and at the end. Include an easy to understand abstract. For many readers, if you do not capture their interest by the end of your first paragraph, they are gone. Many readers also first read the title of the piece and then jump to read the conclusion: if there is no clear 'punch-line' waiting for them at the end, they are also gone.

It is advisable that the headline for your piece be eye-catching. Even better, it can be unusual, radical, controversial, thought-provoking.

Whenever possible, have your articles and interviews archived at your website, in a format that is clearly indexed and easy to download or to read on-screen. Include a format which the reader can easily forward to a colleague or friend.

Always include an e-mail address in your publications, asking readers to contact you with comments, suggestions and follow-up questions.

Consider the use of a communications firm (public relations agent) to help get your international message across. Use local experts for local coverage.

Combine and coordinate your marketing efforts: website, newsletters, training sessions, publications, speaking engagements, and update your CV (resume) accordingly, etc.

Publish (or re-issue) your key publications (include website pages) in appropriate foreign languages. Even people who

are generally fluent in English usually prefer to read things in their native languages and they will welcome the fact that you have offered both versions. Many companies and law firms offer their website in several languages.

Work closely with your IT staff to ensure that the 'key words' (metatagging structure) of your website are designed so as to enhance hits on (visits to) your website. Revise these structures as new legal issues (and new Internet technologies) arise.

As locally appropriate, use business cards that are printed in more than one language. Be mindful that in some languages (such as Chinese) your name will be given a local language equivalent: be sure you understand what this means, before you use the cards locally. Thus, for example, "Linda" in Chinese may be translated as "the beautiful", just as in Spanish "Linda". "Dorothy" (and "Theodora") may both be translated as "gift of heaven", just as in the Greek original of both names. Those Chinese translations are fairly 'neutral' in cross-cultural terms. Translations into Chinese of names like "Catherine" (victorious virtue), "Natasha" (lover of justice) and "Sally" (saintly, noble and upright) may carry some cultural baggage that is (or is not) locally desirable for the non-Chinese international lawyer. However, awareness of such things is a big part of what it is all about, to 'act and think globally'. There is no single correct global answer.

Make everything you do and say and publish set you apart from other international lawyers. Be distinctive but also be mindful that gloss and glib, as such, will often create undesirable impressions.

Market test what you do: ask the clients and colleagues for their frank impressions and suggestions.

Be mindful of the use and interpretation of body language and salutations from country to country, as well as the acceptable levels of formality and informality. Thus, in some countries, a hand gesture which is innocent for you may be offensive and local people, although offended, may be too polite to tell you. In many countries, the use of first names in a business context never is acceptable. In others, it may take years, and then only upon the suggestion of the local person.

In some cultures, it is impolite to say “no”, outright. Hence, you may be hearing “yes” and “maybe” but the real answer is “no”. The successful international lawyer is the one who is aware of these cultural subtleties, in advance, and knows how to read and react to them. Thus, even a message meaning “no” may in fact mean “You are going too fast, we may say ‘yes’ later, but not so quickly as you seem to expect. Be patient, do things at our pace”.

Be particularly mindful of jokes and humour. What is funny in one culture may be very rude in others and erode local respect for you as a professional.

Also be aware of local customs about punctuality, business attire, whether it is appropriate to discuss business over meals, whether it is acceptable to expect people to work on weekends and on local holidays, whether it is appropriate to use slang as opposed to formal language, whether it is appropriate to attend business meetings in informal dress (or inappropriate to do so in more formal dress).

See, pages 50-59, regarding Religious Diversity.

Keep your feet on the ground. Use common sense and focus on ideas, not labels or preconceptions.

Stay closely informed about your clients’ businesses, including the industry sectors and geographic areas in which they operate, as well as their management philosophy and risk management strategies.

Learn to ask the right questions in the right ways. This will often mean having an approximate idea of what the answers will probably be, under the laws of legal systems different from your own. Do your own research into those matters, at least enough research to help formulate the most productive questions. Go to the original legal sources, try to find translations (and compare them with the originals), try to look up key terms in the local languages (using legal and general dictionaries, Internet search engines, indexes in published books and data available at local government websites and by asking local government ministries and agencies). Often some local law firm (or local office of an international law firm) or accounting firm or industry association may have materials that will help in

this understanding. Then, as needed, select and work efficiently with local legal counsel. Do not just turn the matter over to them: keep managing the project. You may risk getting the right answer to the wrong question or, even worse, getting what appears to be the right answer to the right question (when, in fact, the two do not match).

Adjust your international legal practice to meet market demands: this may mean learning entirely new legal subjects, or applying what you know to new geographic areas. It may also involve learning some new non-legal subject (such as chemistry or manufacturing processes or computer functionalities and terminology). In most cases, it will involve a combination of new and old skills. Variety is not only the spice of life, it is the essence of being an international lawyer and of continuing to grow as one.

Learn to be a lawyer in fields that have no general recognition or familiarity as being special fields of law. Be an international carpet lawyer (learn about manufacturing issues, labeling issues, safety at work issues, customs and tariffs issues, etc regarding carpets). Be an international ‘Olympics lawyer’ (learn about the legal issues involved with setting up and participating in Olympic games, including employment issues, drug testing issues, trade mark issues, etc). Be an international ‘Sarbanes-Oxley lawyer’ (give advice to companies worldwide regarding the impact on them of foreign laws which have no mandatory legal effect locally but whose compliance is a matter of home-office-mandated corporate global policy).

Market yourself for what you do *and* for what you want to do.

Consider joining and being active in various high-tech social networking sites: MySpace, Facebook, LinkedIn, and special legal Blog (Blawg) sites and chat rooms. If, for example, there is not a blog that suits your interests or your needs, create one.

When negotiating abroad (and at home), remember that the best techniques are based upon local knowledge and the most careful preparations. Predicting the future accurately is the single most important job of any lawyer and nowhere is this more complex than in the case of the

international lawyer, mainly because there are so many different and interesting futures to predict. This involves a combination of courage, a great deal of hard work and a good sense of using the past as prologue. This critical task was itself predicted more than 100 years ago!

"When we study law we are not studying a mystery but a well-known profession. The primary rights and duties with which jurisprudence busies itself are nothing but prophecies. For the rational study of the law, the blackletter man may be the man of the present, but the man of the future is the man of statistics and the master of economics."
Oliver Wendell Holmes, Jr. (US Supreme Court Justice, 1902-1932), *The Path of the Law*, 10 Harvard Law Review 457 (1897)

If he were writing today about the rational study of the law, Holmes surely would have had a very enthusiastic comment about computers, about databases, about globalisation, about the Internet and about search engines and would have noted by way of confident prediction that the future is now, for those who can see and act upon it.

In many instances, however, Western negotiators may focus too much on current issues and fail to look forward. In other cultures, ten or even 25 or 50 years is the normal span for planning. An international lawyer who is thinking in terms of 'right now' or the next financial statement will not be, and simply cannot be, on the same wavelength as an international lawyer who is thinking in terms of decades. With the enormous expansion of sovereign wealth funds and the global influence of state-owned or state-dominated business enterprises (who may be legally accountable to regulators and shareholders in ways that no commercial business company is), the disconnect between the present and the future is greater than at any time in history.

Even getting tomorrow right is not easy and it may make little difference in the longer run, if all the little tomorrows do not add up to one correct longer term prediction. The problem for the international lawyer is multiplied geometrically by the fact that, today, despite the planet

being a 'global village' there are still vast and often overriding cross-cultural differences, different ways of analysing the future, different ways of designing what business is expected to achieve in a given society. Generalisations, however seemingly 'correct' to describe the past, are often a poor guide to the future and may simply lead back to the past. Stereotypes and locally ethnocentric mindsets are even more perilous for the international lawyer. To think of 'the law' existing in some kind of vacuum or museum, or as some kind of GPS navigation system, is probably the biggest mistake the international lawyer can possibly make.

As Holmes knew in 1897, the best we can do is have a constantly evolving method for systematic prediction (with respectable margins for error) and never to forget, that contrary to all our training, the law is not about logic: it is about experience and the way people and markets actually behave. These will always fluctuate and be inconsistent.

For example, too little time may be spent by the international lawyer in understanding structural problems that can and will arise in a foreign country such as (1) how easy is it to run a business in that country, (2) how strong and reliable are the legal institutions in that country, (3) how much of a favourable or negative role does the government play in business negotiations (eg, by allowing or delaying or denying key permits), (4) how reliable is the infrastructure (eg, workforce, roads, communications, electrical supplies, access to raw materials) in that country. These elements, when they are not anticipated or properly addressed, can break a deal before it is made or, worse, can lead to disaster. Not a single one of these elements is a 'legal' issue in the traditional sense.

The international lawyer must of course have some knowledge of the history, geography and culture (including languages) of the countries where the client does business. Modern electronics makes this far more easy to achieve than it used to be. For example, there is an enormous amount of such general information available on Wikipedia. Wikipedia (or parts thereof) is also available in many different world languages (about 200), even including Latin ('Vicipaedia').

Language	Name (Wikipedia)	No. of Articles
English	The Free Encyclopedia	2 532 000 +
German	Die freie Enzyklopädie	795 000 +
French	L'encyclopédie libre	697 000 +
Polish	Wolna encyklopedia	530 000 +
Japanese	フリー百科事典	514 000 +
Italian	L'enciclopedia libera	486 000 +
Portuguese	A enciclopédia livre	423 000 +
Spanish	La enciclopedia libre	392 000 +
Russian	Свободная энциклопедия	310 000 +
Chinese	自由的百科全書	204,000 +

A basic knowledge of geography is also important for the international lawyer. There are many stories (true, unfortunately) of lawyers who thought that Luxembourg was the French term for Liechtenstein or that Luzern is the German term for Lausanne. Some places also change their names (and have changed them more than once), such as in the case of St. Petersburg, Ho Chi Minh City and Harare). So have the names of many countries. In other cases, such as 'Beijing' (formerly known in the West as Peiping and Peking), the local name has not changed at all, but Western understanding of Chinese geography and language has improved. In these days of modern communications and around-the-clock global Internet access, basic errors of this kind can be easily avoided, especially in the case of anyone acting as an international lawyer.

Local national or international historical 'heroes' also can be changeable points of reference, sometimes safe havens and sometimes jagged rocks just below the surface of the water. Thus, in many parts of South America it is reasonably safe to assume that Simón Bolívar will be thought of favourably, especially in countries which he helped to attain sovereign independence (Bolivia, Colombia, Ecuador, Panamá, Perú and Venezuela). This is often not the case for Christopher Columbus and virtually never the case for Francisco Pizarro (depicted favourably,

however, on Spanish money until introduction of the Euro). You can often get a quick snapshot about a foreign country by looking at its recent postage stamps and paper money: these usually reflect the current national consensus of what is 'in', what is 'politically correct' and what deserves to be honoured from the past, from the local perspective. Also watch for the 'missing': it may be controversial (but not forgotten).

Credibility (even as to apparently irrelevant general but specifically LOCAL knowledge), once lost, can be very, very difficult to regain.

Knowledge of local culture should by no means be limited to formal literature or so-called 'high culture' of the Nobel Prize variety. The international lawyer will also be very interested to know about local sports, local Olympic medalists, foods, festivals, film stars, pop singers (and even how well local singers fared at the Eurovision song contest or at similar regional events), etc. Be cultured but keep it 'lite'. If available, buy a book on local trivia. Learn some local proverbs. Go into a local bookstore and ask for a copy of Harry Potter or a John Grisham novel, in the local language. Buy a local newspaper and go to the film section. Try to see how the names of the Hollywood and European films are marketed and translated. Ask about the local significance of local films about local subjects of interest. Watch the local news on the TV in your hotel room and try to follow the developments in the local language and frame of mind. Note the percentage of space given in the local media to international events and stories, as opposed to local ones. Get on a local city bus and just go somewhere and get back under your own steam.

Assess how few words you need to make your basic wishes known (in any language it is about ten words, such as please, thank you, where, how, when, go, eat, pay, yes, no....). About 20% of all basic human thoughts can be expressed in just 25 words. About 35% of all basic human thoughts can be expressed in just 100 words. With 500 words the percentage jumps to more than 80%. Always remember, anywhere in the world, people want to communicate with and understand other people. They are not like computers: you do not have to press the 'Start' button to turn them off.

When it comes to corporate social responsibility (CSR), the international lawyer must also be aware of cultural differences and linguistic subtleties. In some countries and cultures, CSR may be seen as a social good with which no reasonable person could disagree. In other countries it may be seen as a disguised term (code word) for implying that people in those countries are corrupt or exploitative (of workers, women, children, natural resources) or, worse, be seen as describing indirect Western ways of keeping developing countries from achieving rapid economic growth. Similar double meanings may attach to Western terms like 'free trade', 'fair trade', 'environmental', 'green', 'carbon footprint'.

The international lawyer will be aware that valuable trade names, logos and slogans which work well in certain countries will need to be adapted for effective use in other countries and may even be counterproductive unless adapted to local language and cultural realities. For example, in China, the name "McDonalds" needs to be transposed into appropriate Chinese characters. Those chosen for this purpose, when pronounced in Chinese, sound a bit like "McDonald" (麦当劳 = mài dāng láo) but the meaning of the Chinese characters can be read as "wheat that gives comfort". Other Chinese words that sound like "mai" can connote filthy or duststorm. Other characters that sound like "dang" can mean "seat of the trousers". Other characters that sound like "lao" can connote "tuberculosis". Great care must be taken in such cross-cultural linguistic matters. Thus, Microsoft has adopted a different naming strategy for China. It has adopted the Chinese characters for "tiny" (微) and "soft" (软) to give "micro-soft" (微软), but in return has accepted that in Chinese its name will be pronounced as "wéi ruǎn", which in no way approximates the word Microsoft in its original English pronunciation.

Compare the phonetic approach, in Japanese:

McDonalds = マクドナルド (ma-ku-do-na-ru-do).

Microsoft = マイクロソフト (ma-i-ku-ro-so-fu-to).

There are many countries in the world and there is not nearly enough space here to suggest specific behavioural and negotiating tips for each. Fortunately, there are many

helpful guidebooks for the major commercial industrial countries. Here is a summary of fourteen points that ought to be of fairly wide global application:

- 1 Establish whether, under local custom, negotiations are carried on by the business people and whether for lawyers to be in the forefront of those activities is seen as intrusive.
- 2 Determine the appropriateness of you yourself, as a lawyer, negotiating directly with the local foreign government as opposed to doing so together with your foreign legal counterpart, or whether to leave such matters to the local business people.
- 3 Make sure you understand the actual extent of the authority of the persons who are negotiating for the various sides and that this is made explicit to all concerned.
- 4 Try to establish personal rapport but be respectful and patient.
- 5 Get to know the educational and professional backgrounds of the people you are dealing with.
- 6 Use plain language and do not hesitate to repeat your position and be ready to explain the same idea in different ways and with spoken and written examples, so that it will be clearly understood.
- 7 Develop a sense of distinguishing between genuine attention by the other side to details, which may in fact be important to them, versus deliberate delaying strategies or tactics to use up time to your disadvantage.
- 8 Be aware that in certain cultures it is impolite to refer to someone in the second person (you): it may be customary always to refer to them by their formal surname even though, in English, this sounds tedious and overly formal.
- 9 Use numbers slowly and clearly and write them down and show them to the other side as needed (remember that many languages count differently from ways that will be familiar to the English speaker). Thus, French includes counting by 20s (therefore 93 = four

times twenty plus thirteen, whereas the same number in German is three-plus-ninety). In Japanese, ten million is one-thousand-ten-thousands.

- 10 Avoid misinterpreting the lack of a clear "no" from the other side as meaning something favourable and at the same time be mindful that a direct "no" from you may be seen as impolite.
- 11 Keep written notes and do not hesitate to say that you do not understand something and would please like it clarified or repeated.
- 12 No matter how strong you feel your commercial and legal advantage to be, always seek harmony and politeness over engaging in confrontation or in making demands that may cause the opposite side to sense that it is losing face, even by discussing your points 'on their merits'.
- 13 Never assume that non-native speakers of English understand it as fully as they believe they do but also be patient with them and, while being appreciative of what they have learned, never make them feel that your respect for them is diminished or that you would ever exploit a language misunderstanding to their disadvantage (and that you expect the same openness and fairness from them, regarding use of their native language with you).
- 14 Remember that, in many countries, very detailed contracts are not the norm and that, if you wish to achieve a contract which covers every conceivable eventuality, you may need to be patient and to adapt to local expectations and contracting habits (and you may also find that many boilerplate terms that you are used to may not have any local language or legal equivalents). See, pages 68-69 (for some tips about 'standard' contract clauses).

Avoid meaningless pedantry and cultural bossiness, especially when the issues involved are minor and when to insist upon them may cause needless offence and be a waste of time. For example, if a legal document is not as neatly typed as you would normally expect, has handwritten changes that you would normally expect

to be incorporated in a revised typewritten draft, or adopts punctuation and typographical styles that seem wrong to you or seem inconsistent, weigh the practicalities of asking for these things to be changed. If they do not affect the substance of the business transaction or the legal meaning, it may give offence to insist that they be 'corrected'.

Although ways of telling the time, the world over, tend to be similar, the international lawyer will usually refer to the 24 hour clock (so-called 'military time') but the international lawyer will also be familiar with local time telling customs which may cause misunderstandings. Thus, for example, in the UK, the term "half eight", when referring to the time of the day [or evening], usually means "8:30" [20:30]. If your native language is German, then "half eight" will usually mean "7:30" [19:30]. In Australia and the USA, this usage of "half" is very uncommon when telling the time. Americans and Australians would say "eight thirty" or "seven thirty", adding AM, PM, morning or evening, as appropriate to make the sense clear.

Similar misunderstandings can occur regarding large numbers and regarding measures of weight, lengths, areas, volumes and temperatures.

The next time that you are speaking to potential clients from other cultures, include analogies and other references to their culture. Acknowledging and appreciating their culture will help to bridge the gap and build attorney-client rapport.

Rainmaking, cross-selling, client partnering and pro bono work can be effective ways to make client contacts and learn new areas of law.

Too many lawyers merely read their speeches and make too little effort to engage their audience. In many cases, it may be desirable to try to take questions from the audience within the first 10 or 15 minutes of any speech as a way of engaging the audience. Be available to meet with audience members later. Get their business cards and give them yours. Follow up. Have copies of your speech ready to hand out, on paper or electronically.

Become familiar with the laws of foreign countries with which you will be dealing regularly. Useful overviews and synopses of many foreign countries' laws exist and many foreign law firms and accountancy firms distribute complimentary newsletters highlighting their country's local laws. There are also many other sources of such information, including many online.

Use your bills to clients as a marketing tool. For example:

- 1 Describe the legal work done with enough detail so that the client understands the value you provided. Highlight the issues which were resolved and with what favourable result. Identify any unresolved issues that need ongoing attention.
- 2 Describe any complimentary services, followed by a note that there was 'No charge'.
- 3 Do not charge for work that did not convey real value or which the client may find controversial or unfair (small charges for photocopies and the like can annoy some clients, if they are accompanied by a large legal fee).
- 4 Ask which billing format (paper, electronic, both) and billing frequency the client prefers. If there are any unpredicted charges, alert the client beforehand and explain the circumstances. Be aware of local habits and customs about the time cycle within which bills are usually paid. Such acceptable and 'normal' time periods can vary considerably from country to country.

Asian and Islamic law

Since only a small part of the world's population is subject to Western law and legal concepts, it is essential for the international lawyer trained in any one system to become familiar with the main other ones.

Practice Suggestion: take any legal idea or rule under your own legal system and think it through under one of the other legal systems. You will often find that answers under any of the systems work well in the other systems.

Western legal traditions

Western legal traditions of law and justice can be traced back to the ancient Egyptians, with complex (and often contradictory) additions of Greek, Roman and Judaeo-Christian philosophy, religion and imagery which have evolved and interacted over many centuries. The Egyptian personification of justice was a female figure called Ma'at.

Ma'at carries no scale and is not blindfolded. Most Western images of Justitia show her as a person holding a scale in one hand and a sword in another (sometimes it is a cornucopia) and as being blindfolded. The blindfold is intended to portray impartiality but it is still a strange image. What is more important for the international lawyer to appreciate is that in Western cultures 'Justice' is almost always depicted or personified as female. Thus, in the Italian Renaissance, Giotto painted Justitia as a beautiful Madonna, but he painted Injustitia as a male secular ruler.

Greek and Roman personifications of justice are almost always women: that is strange in that we have very scant records suggesting that any ancient Greek or Roman judges (let alone lawyers) were women.

The key feature in all Western tradition is that law is something 'from above' (from the Gods or a king). This approach only started to change in the French Revolution:

the power of law comes from The People. They merely delegate it, in trust, to their elected representatives. As the will of People changes, so must the laws. This People-oriented notion, in fact, revives the ancient Greek distinction between Themis (Θέμις) and Dike (Δίκη). Dike was the Goddess of the 'right', the 'morally correct', 'the law'. Themis was the Goddess of custom, of what people actually did, personifying the law of nature more than the ordinances of human lawgivers. She usually has no sword, since she acts by consent rather than by force. Since she has great skill at foreseeing the future, she needs no blindfold.

It is a central feature of the modern Western approach that the law is changeable and that it is the right of the People, the legislature, judges and of lawyers to challenge it and to change it, to fit the will and the actual lifestyles of the population; a population in which corporations are also citizens. If that results in, or results from, a change in 'society', so be it.

Some key features of traditional Asian and Islamic law

Asian Law

East Asians have no specific tradition of personifying 'Justice' in the way that is familiar in the West. East Asians use the word 法 to mean "law" (pronounced "fǎ" in Chinese and "hō" in Japanese). This character (法) abbreviates an ancient Chinese character which represents a mystical animal called the hsieh-chai, depicted as a one-horned goat, that would butt the guilty with its head but leave the innocent alone. The written character for "hsieh-chai" combines three characters, one for water, one for the mystical animal itself and one for a motion of going. Water symbolised the washing away of guilt and the mystical animal was invoked as early as the 23rd century BCE as a way of solving legal disputes that humans alone could not determine.

Chinese legal thinkers of the past took the view that the foundation of a society is in its national rites, ethics and mores. Law was viewed as a supplement to those values. Most human government took place under the rule of rites, not under the mandate of laws. Morality and social values are relied upon to avoid disputes and to settle them, when they do arise, not by resort to detailed laws or courts.

In his Analects, Confucius summarised this point of view, as follows: *"If people are governed by laws . . . they will seek to avoid punishment [if they disobey them] and will have no sense of shame. If they are governed by morality, and uniformity of conduct is imposed upon them by rules of propriety, they will have a sense of shame and will behave properly."* Book II, Chapter 3.

This view that morality is more potent than law in its impact upon human behaviour is a fundamentally different one from the Western notion of detailed laws being needed as the chief social component of human behaviour; laws which are set down by the ruler and punished if not obeyed. The traditional Chinese view was very democratic in spirit (disputes were decided not by national courts but by local community self-appointed councils) but it was also static. The Western notion that detailed laws are a principal means of protecting the rights of the people (let alone of dissenting minorities) and that "government should be a government by law and not by men" is at odds with the traditional Chinese view.

Islamic View of Law

In Islam, the representation of persons and images (and therefore the personification of concepts such as law and justice) is impermissible. A principal source of this prohibition is the Hadīth (الحدِيث) (literally "narrative"), which are oral traditions relating to the words and deeds of the Islamic prophet Muhammad. Hadīth collections are important in connection with all traditional schools of Islamic jurisprudence.

In Islam, it would be impermissible to represent justice as the image of a woman or a goat.

In Islam, the supreme holy book is the Koran القرآن (or, Qur'an), which dates from the 8th century AD. This book contains detailed texts which are of great religious significance but also embody Islamic laws and rules of ethics. Based upon the Koran and the Hadīth, there is also the important expression of Islamic law known as the Sharia (شريعة). The term means "way" or "path to the water source" and is a legal framework within which the public and private aspects of life are regulated, including many aspects of day-to-day life such as politics, economics, banking, business, contracts, family, sexuality, hygiene, and social issues.

Islamic law is, of course, a vast subject for which there is no space here for detail. What is key for the international lawyer (anyone who is not an Islamic scholar) to appreciate is that the texts are the focus of legal analysis and thus there are numerous and detailed rules relating to interpretation and the meaning of words:

alluded meaning (isharat al nass)	اشارات النص
explicit meaning (ibarat al nass)	عبارات النص
inferred meaning (dalalat al nass)	دلالات النص
required meaning (iqtida al nass)	اقتداء النص
the hidden (al khafi)	الخافت
the problematic (al mushkil)	المشكل
clarity and ambiguity in words (al wuduh wa l ibham fi lalfaz)	الوضوح و الابهام في الالفاظ

Many modern legal concepts which, in the West, are assumed to be purely Western have (or may have) Islamic forerunners, which pre-date by hundreds of years the founding of any European nation-state or national legislature. Indeed, many of these Islamic legal concepts are thought to be the basis for the European ones and/or to have had great influence on them. Some suggested by recent scholarship include: agency, holding property in trust, limited partnership as a business form, assignments of debt, legal reasoning by analogy,

presumption of innocence, privilege against self-incrimination, equity and good faith, promoting mediation and arbitration, trial by jury, force majeure, as well as sophisticated concepts of legal causation.

The concept of 'assignment', 'mandate' or 'guaranty', preserved in modern legal French as 'aval' and Italian 'avallo', is probably based upon the Arabic concept and practice of 'hawala'.

Similarly, modern scholarship suggests that the European concept of a public 'ombudsman' was actually derived from a long-standing Islamic practice, established by Caliph Umar, of Saudi Arabia (634-644 AD), and as having been officially introduced to Europe in 1713 by the Swedish King Charles XII, who had learned of this during a stay in Turkey. The Spanish 'Las Siete Partidas' (Seven-Part Code) was a Spanish statutory code of laws compiled during the reign of Alfonso X (Alfonso el Sabio, the Learned), King of Castile and León (1252-1284), and is believed to incorporate Islamic legal influences. The Siete Partidas, in turn, had considerable influence upon the development of law in the Americas.

Religious diversity

Practice Tip: perhaps the most important thing that the international lawyer has to understand and to 'live and breathe' is the fact that, for all the publicity about the global village and the shrinking planet, it is still a big, diverse and multi-cultural world we live and work in, with many faiths, languages, social customs and political systems. Hence, an appreciation of international diversity is essential in order for the international lawyer to attain understanding, respect and success. Here is some background and some suggestions regarding 'diversity', for just some of the world's many religions and cultures.

Buddhism

Fundamental sources of belief

The Buddhist canons of scripture are known in Sanskrit as the Tripitaka and in Pāli as the Tipitaka. These terms literally mean "three baskets" and refer to the three main divisions of the scriptures, which are:

The **Sūtra Pitaka** (in Pāli = Sutta Pitaka), contains discourses ascribed to the Buddha.

The **Abhidharma Pitaka** (in Pāli = Abhidhamma Pitaka) contains material often described as systematic expositions of the Buddha's teachings.

The **Vinaya Pitaka**, containing disciplinary rules for the Sanghas (communities) of Buddhist monks and nuns, as well as a range of other texts which include explanations of the rules.

Main holy days (some dates may vary)

Wesak is the most important of the Buddhist festivals and is celebrated on the full moon in May. It celebrates the Buddha's birthday, and, for some Buddhists, also marks his birth and death. Many Buddhist festival days are linked to the lunar cycle.

Dharma Day marks the beginning of the Buddha's teaching.

Mahayana: Buddhist festival that marks the death of the Buddha (also known as Nirvana Day).

Kathina festival, which celebrates the largest alms-giving ceremony of the Buddhist year.

Sangha Day, a celebration in honour of the Sangha, the Community (of Buddhists).

Bodhi Day (Enlightenment Day).

Losar, which celebrates the Tibetan New Year.

Places of worship

Buddhists can worship both at home or at a temple.

Rites and customs

Buddhism is based on the teachings of Gautama Buddha (The Buddha).

A Buddhist is one who takes refuge in the Three Jewels: (1) the Buddha, one who is Awakened or Enlightened; (2) Dharma, the Teaching (of Buddha); and (3) Sangha, the Community (of Buddhists).

Among Buddhist customs and practices are: Venerating the Buddha, pilgrimage and ordination; meditation; Buddhist worship.

Dress and other matters

These are generally left to the conscience and sense of ethics of each individual, as in accordance with the Noble Eightfold Path, involving right beliefs, aspirations, speech, conduct, livelihood, effort, mindfulness and meditational attainment.

Christianity

Fundamental sources of belief

The Bible, which comprises the Old Testament (the Hebrew scriptures) plus the New Testament (teaching about the life of Jesus Christ, written in New Testament Greek).

Main holy days (some dates may vary)

Lent: begins 6 February (2008) (Ash Wednesday), observed by many Christians as a time of self-denial and reflection in preparation for Easter.

Easter: 21 March to 23 March (2008) – on Good Friday, Christians remember the death of Jesus Christ and on Easter Sunday they celebrate his resurrection.

Pentecost: 11 May (2008), celebrating the coming of the Holy Spirit to the first Christians.

Christmas: 25 December (2008), celebrating the birth of Jesus Christ.

Sunday is regarded as a day of worship and rest. Some Christians will be uncomfortable about being asked to work on Sundays (or on holy days which occur during the week).

Places of worship

Christians may worship in any area, traditionally this is in a church or chapel or 'meeting house', but also at peoples' homes or any other location.

Rites and customs

Christians celebrate baptism as a sign of becoming a Christian and Holy Communion when bread and wine are shared in remembrance of, and in thanksgiving for, Jesus' death on the cross.

Dress and other matters

There are no prescribed dress requirements. Some Christians wear a cross or a fish symbol as a sign of their faith. There are no specific food or drink restrictions but some Christians will not drink alcohol.

Hinduism

Fundamental sources of belief

Hinduism is not a single doctrine, and there is no single founder or teacher. Hindus believe that existence is a cycle of birth, death, and rebirth, governed by Karma.

Karma: the law of cause and effect, where every action has an effect, even upon a future life. Hindus recognise one God, Brahman, the eternal origin who is the cause and foundation of all existence. **AUM** symbolises the trimurti (trinity) which represents God's relationship with the universe. God is creator Brahma (A), preserver Vishnu (U) and destroyer Shiva (M).

Dharma: a Hindu's duty to behave rightly and to fulfil their obligations to their family, society and God. Many Hindus use 'Dharma' to describe their faith.

Main holy days (some dates may vary)

Holi: 22 March (2008), spring festival of colours when bonfires are lit in the evening.

Vaisakhi: 14 April (2008), the Solar New Year.

Rakashabandhan: 16 August (2008), the festival when a sacred thread is tied around the wrist of a brother.

Navrati/Dussehra-Navrati: 9 October (2008), the celebration of Mother Goddesses.

Diwali: 28 October (2008), a five-day harvest festival marking the New Year, known as the festival of light.

Places of worship

In the temple (mandir) or at home. It is up to each individual to decide when and how to pray.

Rites and customs

There are three possible paths (margas) to religious liberation and all are recognised as equally valid. These are:

Karmamarga: the path of work and action

Jnanamarga: the path of knowledge

Bhaktimarga: the path of devotion

All the stages in the life of a traditional Hindu involve religious rituals and practices.

Dress and other matters

Many Hindu women wear saris or, if they are from the Punjab, shulwar and chemise (trousers and tunic), while men usually wear western clothes. Many women wear western clothes and only wear traditional dress when they visit the temple or attend special occasions.

Forehead markings: Hindu women have a red dot (bindi) marking and orthodox Hindu men usually have a religious marking (tilak) on their foreheads.

Mangalsutra: Married Hindu women usually wear a mangalsutra or a specially consecrated gold chain round their necks and will not remove this.

Hindus regard the cow as sacred and therefore do not eat beef. Vegetarianism, plus the omission of eggs, fish and alcohol from the diet, is also very common in Hindu society.

Calendar: The year 2008 = the year 5108 in the Hindu calendar.

Islam

Fundamental sources of belief

Qur'an and Sunnah: The Qur'an is the word of God as revealed to the Prophet Mohammed, and the Sunnah is the collected and preserved statements and practices of the Prophet, which the Qur'an commands Muslims to observe. These collectively form the basis of Islamic law and religious practice, together with the Hadith.

The Five Pillars of Faith:

1. belief in pure monotheism and the finality of the Prophet's message
2. prayer five times a day
3. alms for the poor
4. fasting during Ramadan (see below)
5. pilgrimage to Mecca in Saudi Arabia at least once, if possible.

Main holy days (some dates may vary)

Eid ul Fitr: 1 October (2008), at the end of Ramadan thanking God for the strength he provided to practice self-control and for the opportunity to seek his forgiveness at a blessed time.

Eid ul Adha: 11 December (2008), the festival of sacrifice, which takes place after the Hajj pilgrimage and commemorates Abraham's willingness to sacrifice his son, Ishmael, as a test from God.

Places of worship

Muslims generally pray in a Mosque, but they can pray in any place which is clean. The Friday midday prayer is conducted in congregation in the Mosque.

Rites and customs

The times of prayer are generally: dawn, midday, mid-afternoon, sunset and late evening. Depending on the time of year, between one and three prayers fall within the working day. Muslims ritually purify themselves before prayer.

Muslims are obliged to fast for 30 days during the month of Ramadan, the timing of which is based on the lunar calendar and therefore as a rule of thumb it is approximately ten days earlier than the previous year. In 2008, Ramadan commenced on approximately 3 September.

Dress and other matters

Modesty: Men and woman must dress modestly. Some women cover their bodies and heads, with some also covering their faces. Muslim men often maintain a beard.

Halal: Muslims only eat meat which is prepared in a special way, known as Halal. Eating pork and drinking alcohol are forbidden.

Because Islam prohibits alcohol, Muslims are generally uncomfortable attending events where alcohol is being served or consumed.

Socialising between opposite genders is not permissible unless necessary or culturally appropriate.

Calendar: Islam uses a calendar which commences with the date of the Hijra, the date upon which Mohammed migrated to the Holy City of Medina (622 AD). Thus the year 2008 = the year 1429 in the Islamic calendar.

Judaism

Fundamental sources of belief

The Hebrew Bible (Old Testament) and the Talmud.

Main holy days (some dates may vary)

Passover (Pesach): 20 to 27 April (2008), commemorates the exodus from Egypt in the time of the Pharaohs.

Pentecost (Shavuot): 9/10 June (2008), commemorates the receiving of the Old Testament by Moses on Mount Sinai.

Jewish New Year (Rosh Hashanah): 30 September (2008) to 1 October (2008).

Day of Atonement (Yom Kippur): 9 October (2008).

Tabernacles (Sukkot): 14 to 22 October (2008), commemorates the period during which the Jewish people were in the desert following the exodus from Egypt and were protected from harm.

Hannukah: 22 to 29 December (2008), commemorates the salvation of the Jewish people after a military invasion in ancient times.

Places of worship

The Synagogue and at home. Prayers are observed at morning, the afternoon and in the evening. Working on Friday after an hour prior to sundown and on Saturday (the Sabbath) until sunset is prohibited and this is strictly adhered to by observant Jews. The prohibition on work extends to writing, the use of electrical equipment and carrying money.

Rites and customs

Many Jewish customs revolve around the home. On the Sabbath (Friday nightfall until Saturday nightfall) families come together to celebrate that special day.

Dress and other matters

Dress tends to be modest. Men may wear a skull cap known as a kippah or a yarmulke.

There are five fast days a year. In 2008, these are on 20 March, 20 July, 10 August, 2 October and 9 October.

Certain foods such as pork and seafood (shellfish) are prohibited and meat products must be derived from animals which are ritually slaughtered (kosher). Alcoholic beverages are generally permissible but some wines may need to be prepared under Jewish supervision.

Calendar: The year 2008 = the year 5768 in the Jewish calendar.

Sikhism

Fundamental sources of belief

The Guru Granth Sahib, the sacred Sikh scripture.

Main holy days (some dates may vary)

Birth of Guru Gobind Singh: 5 January (2008)

Sikh New Year: 14 March (2008)

Hola Mahalla: 22 March (2008)

Vaisakhi: 14 April (2008)

Martyrdom of Guru Arjan: 16 June (2008)

Martyrdom of Guru Tegh Bahadur: 24 November (2008)

Birth of Guru Nanak: 13 November (2008)

Bandi Chhorh Divas: 28 October (2008) (celebrated by Sikhs at the same time as Diwali (Hindus)).

Places of worship

Sikhs will usually recite Banis (prayers) in the early morning, in the evening and before going to sleep at night. No exact time is stipulated for the reciting of Banis, which is left to the individual.

Sikh festivals are usually celebrated at the Gurdwara (Sikh Temple). Other key events may be celebrated at the Gurdwara, along with a langar (free kitchen) and Akhand Paath (a continuous 48 hour recitation of the Guru Granth Sahib, the sacred Sikh scripture).

Rites and customs

Sikhism rejects all forms of rituals such as idol worship, pilgrimages and fasting.

The five Ks identifying all Sikhs are:

Kesh: uncut hair (Sikhs will often wear a turban to cover their hair)

Kirpan: a ceremonial sword

Kara: a steel bracelet

Kanga: a wooden comb

Kachera: cotton boxer shorts type underwear

Dress and other matters

Drinking alcohol and smoking are forbidden. Some Sikhs may feel uncomfortable in an environment where these activities take place.

Calendar: The Nanakshahi Sikh calendar starts with the birth of Guru Nanak in 1469 AD. Thus, the year 2008 = Nanakshahi year 540.

Compliance and regulation

Practice Tip: one of the key issues that will face most international lawyers is the challenge of global compliance: how to assist the client in complying with a mass of rules and regulations, in numerous countries. The skills needed for meeting this challenge go well beyond blackletter law. Here are some suggested guidelines and measures.

Review and assess the client's existing organisation model, in light of specific areas of compliance and regulation, such as compliance with health and safety regulations, export controls, product quality assurance, financial reporting criteria, registration and licencing rules, etc.

Prioritise areas of risk and compliance, locally and globally.

Try to identify and evaluate common denominators (such as issues and priority patterns that apply to all countries or to most countries). Highlight exceptions and explore whether they can be standardised at a cost which is commensurate with appropriate risk reduction.

Inform key personnel of your findings and enlist their comments and ongoing involvement not just with compliance but with improving and adapting the compliance system, in the light of new business procedures, new products, new geographic markets, new legal regulations or interpretations.

Also involve your vendors and third party contractors.

Map out a clear delineation of who is responsible for what and who reports what to whom (how and when).

Involve key managers and the board of directors at all key stages.

Map out benchmarks for performance evaluation and follow through with tests and adjustments of the system in the light of actual experience.

Create a culture of compliance. Help all those concerned to understand that compliance and regulation are not burdens to be deferred or evaded but are matters of positive good to the organisation. Recognise and reward employees who make significant contributions to improving the system and who help ward off problems before they occur.

Be careful about terminology: in some cultures, words like 'whistleblowing' sound bad and imply the betrayal of colleagues. Consider terms that fit in with local linguistic and cultural values and customs. Results are what count, not the labels.

Create a culture of ethics. Ethics must come from the top down.

Establish a compliance risks committee and an ethics compliance committee, as well as a Compliance Officer/Director overall and for specific risk areas.

Post the company's policy on compliance and ethics in prominent places, including the company websites. Emphasise the company's core values. Publicise success stories.

Foster a culture of discussion for the common good, rather than a fear of Big Brother.

Make it clear that there may be preferred methods of reporting compliance and ethics concerns (for example, to the Legal Department) but that multiple alternatives are available. Create a comfort zone, which corresponds to local sensitivities and practicalities.

Create a culture of enhanced visibility for consistent information management and 'up-the-ladder' reporting, both formal and informal.

Do not assume that a compliance program written in the company's main business languages (for instance, English) can stand alone or achieve the desired effectiveness. Local translations and interpretations may be necessary or desirable. They may also provide good evidence of compliance effort, in case a problem does happen.

This may also call for translation of related policy and training materials.

Keep things as simple as possible. The message should be clear and the procedures should be straightforward. One approach is to work up a list of FAQs, rather than just setting forth narrative principles. Most people find examples easier to understand than general principles. Avoid legalese and use plain language.

Almost all policies should include guidance about bribery, data protection (privacy and IT security), conflicts of interest, discrimination, document retention, environmental compliance and concerns, accounting irregularities and competition irregularities.

All policies should contain guidance about the care needed in written and oral communications.

Have specific guidelines and strategies about preserving attorney-client privilege, for instance during the investigation of possible non-compliance issues.

Other areas that merit specific attention:

- a specific business code of conduct
- a specific corporate governance policy and code
- a specific set of health and safety standards and rules
- a specific policy about insider trading
- a specific policy about fair employment practices
- a specific policy about product testing and safety
- a specific set of guidelines about export controls, plus adopting voluntary industry standards as appropriate.

Use training methods which use real life examples in which managers and employees have 'done the right thing', despite the stress of having to act quickly with facts that seemed unclear, as they were unfolding in real time.

Keep detailed records of all compliance and regulatory incidents (customer complaints, employee expressions of concern, media reports). Learn to spot patterns and trends, even if they do not seem directly to affect your company. Watch what is happening to other similar companies: yours may be next.

Compile and analyse statistics about how the policies are being implemented in practice. Compare with available statistics from similar companies in the same industry and geographic markets.

Remember that if the client is a public company (or is owned by one), the scrutiny and accountability vis-à-vis compliance and regulation are substantially heightened. The company will be watched by its auditors, employees, shareholders, shareholder activist groups, courts and regulators, industry bodies and self-regulating organisations, customers, consumers, vendors, insurers and reinsurers, the media, the press, rating agencies and by the plaintiff's bar.

Having set up a compliance program, monitor results and enforce the policies. Be practical, effective, realistic and as uniform and consistent as possible.

Have a pre-established model for the conduct of internal investigations. Problems, when they do occur, often move at fast pace. There should be a clear investigatory model and reporting model to follow, as well as a media response team and strategy.

Develop a working rapport with the relevant regulators and industry associations.

Work as needed with local outside counsel, on specific issues.

Work closely with auditors, quality control specialists and outside standardisation organisations and, very importantly, with the company's insurers.

Important compliance statistic.

In a comprehensive survey conducted in 2008, almost 87% of the responses indicated that the prime and sole responsibility for legal risk management of all kinds resides with the General Counsel, as compared to 5% allocating such responsibility to the Compliance Director/Officer and barely 1.5% to the Board of Directors.

Additional practice tip regarding regulatory compliance.

For various reasons (sometimes these are merely historical and sometimes are due to administrative factors involving governmental hierarchies), business activities which are regulated by specific government agencies in one country are regulated by different agencies in other countries. For example, in the USA, 'cosmetics' may be subject to regulations administered by the FDA (Food & Drug Administration), whereas in Japan the responsible agency is the 'Ministry of Health, Labour and Welfare' (厚生労働省 Kōsei-rōdōshō) and, in Russia, it is the 'Federal Service for Consumer Rights Protection and Human Well-Being' [Федеральная служба по надзору в сфере защиты прав потребителей и благополучия человека]. In all three countries, regulations administered by other government agencies may also apply to cosmetics and each of the above agencies regulates some activities of kinds which are not regulated by the other two.

Moreover, what may be classified in one country as a cosmetic may not be a cosmetic in some other country, which may, for example, classify the same item as a 'drug' or as both a cosmetic and a drug. In some countries, the same product may be classified as a 'soap' and not be regulated like a cosmetic or a drug at all. Also, some countries use the concept of 'cosmeceutical' products and regulate them like a 'cosmetic and pharmaceutical', whereas other countries do not give any legal significance to this concept.

Some countries take a socially adverse view regarding cosmetics and both regulate them and warn against them, in a similar way that tobacco and alcohol are regulated in the West. Thus, in Myanmar (formerly Burma) consumers are strongly urged to use natural cosmetic products only and have been warned by government ministers that even legally available commercial cosmetics cause serious illness.

It should also be kept in mind that, as to any given subject matter (in this example, regulation of cosmetics), the key word (cosmetics) may or may not appear in the title of the relevant national legislation. Thus, in the USA, the FDA administers the Food, Drug & Cosmetic Act, whereas the Japanese Ministry of Health, Labour and Welfare administers the Pharmaceutical Affairs Law and the above-mentioned Russian agency administers the Federal Medicinal Law (or Federal Law on Pharmaceuticals).

It is almost always safe to assume, in general, that the same core subject matters are regulated in some way by some government agency (or group of agencies) no matter which country is involved. The international lawyer must be mindful, in all cases, not to assume that global trade means globally uniform regulations, let alone globally uniform use of words and compliance standards. No matter what the subject matter, close attention to local detail does matter and it matters very much. Regulation is seldom a one-stop-shop, even within one country.

What is stated here, by way of example, regarding cosmetics, can be said of virtually all other products, services and business activities. "*Plus c'est la même chose, plus ça change*".

Contracts

Practice Tip: one of the most frequent tasks expected of the international lawyer is to adapt an existing form of contract that 'works well' for the client in one local jurisdiction for use by the same client (or other clients) in many other jurisdictions or even globally. Such contracts can be in the form of purchase orders, or contracts incorporating terms of sale and product warranties, as well as general form contracts adapted for specific transactions, such as employment contracts, insurance contracts and M&A agreements. There is no simple solution to the challenge of international contracts but the checklist offered on page 69 attempts to outline some particular clauses that need to be considered. It should never be assumed that because a clause is valid and legally enforceable in one country that this will be true in other countries. By the same token, a 'play it safe' strategy of reducing contracts to some minimal level deemed favourable to a given contracting party may not be safe. The watered down clauses may still not comply with local law and, even if they do, valuable legal positions may have been surrendered, placing the contracting party at a competitive disadvantage. Conversely, verifying (and monitoring) the legal validity of every clause in a 'standard contract', for hundreds of countries may be prohibitively expensive and time consuming.

Here are just some of the most important issues to verify and monitor, in connection with contracts to be used in more than one country: accounting methods, amendments, assignment of rights, bank accounts, brokers and agents, certificates of incumbency, choice of governing law and choice of forum, compliance with laws and regulations, confidentiality (and protection of trade secrets), conflicts of interest, consequences of insolvency and bankruptcy, control (effect of change of ownership or control), currency (monetary denomination) of the agreement (including exchange risks and exchange controls), customs and tariffs, data protection, defaults (definitions, remedies, cure), delegation of obligations, dispute resolution, document retention, due diligence, earnouts, effective date(s), employee vs independent contractor, ethics, exclusivity and non-exclusivity, fees and costs (including deviations from local rules, such as regarding litigation costs), force majeure and frustration of performance, four corner rule (parole evidence), good faith, governing languages(s), indexation, interest and penalties, insurance obligations (including political risk insurance, such as OPIC), mergers and acquisitions, non-competition, notification periods and methods, outsourcing, parent-subsidiary-shareholder guarantees, prices (and price adders), profits and losses, protecting attorney-client privilege, ratios (such as insolvency and liquidity ratios), renewals and extensions of term, representations (and warranties, conditions and covenants, the legal effect of which may vary substantially from jurisdiction to jurisdiction), rights of first refusal, severability, signatures and powers of attorney, subordinations (and attornments and estoppels), taxation, termination, waivers.

Intellectual property

Patent filings worldwide

There were about 1.76 million patent applications *filed* in the world in 2006, about a 5% increase from 2005, and most came from a very small number of countries of origin: applicants from Japan, the United States of America, the Republic of Korea, Germany and China accounted for 76% of total patent filings in 2006. In 2006, approximately 727,000 patents were *granted* across the world.

There has been a significant increase in the level of internationalisation of patent activity as reflected by non-resident patent filings and international filings through the PCT [Patent Cooperation Treaty] System. The non-resident filings share of total patent filings increased from 35.7% in 1995 to 43.6% in 2006, and the majority of those filings originated from a very small number of countries, led by the United States of America (21.9% of non-resident filings worldwide), Japan (21.7%) and Germany (10.8%).

Approximately 6.1 million patents were in force in 2006, the largest number which were in the United States of America (1.8 million in 2006), but the majority of patents in force worldwide were owned by applicants from Japan. Although Japan had the largest share of resident filings in 2006, its share decreased by 11.8 percentage points during the 2000-2006 period. China, on the other hand, had increased its share by 9.2 percentage points.

Source: World Patent Report: A Statistical Review (2008), published by the World Intellectual Property Organization ('WIPO'), pages 8-9 and 28.

Main national patent law legislation in the five countries filing the most patent applications in 2006:

China (PRC)	中华人民共和国专利法 = Patent Law
Germany	Patentgesetz ('PatG') = Patent Law
Japan	特許法 (Tokkyohō) = Patent Act
Korea (Republic)	특허권의 수용-실시에 관한 규정 = Patent Act
United States of America	U. S. Code, Title 35 = Patent Code

Note: intellectual property is a legal area on the move, internationally. Thus, for example, on 28 July 2008, in accordance with a Trilateral Pre-Conference in November 2007 among the United States Patent and Trademark Office (USPTO), the European Patent Office (EPO) and the Japan Patent Office (JPO), a one-year pilot 'Triway' program was launched to assess the potential benefits to applicants and the three Patent Offices of sharing the burden of the initial searches undertaken against patent applications.

There are millions of items worldwide which are covered by legal protections relating to copyrights, designs, trade marks and trade names. In some countries, there is also some legal protection for trade dress and for 'business method patents' and even some novel 'life forms'. The international lawyer will also be mindful of the local relevance of so-called 'Swiss claims' and of 'Bolar exemptions', in the bioscience and pharmaceutical fields.

Practice Tip: increasingly, the international lawyer has to deal with a wide range of legal issues relating to intellectual property, including its global ownership, use and protection. Here follows a listing of some of the more important international conventions and legal instruments in various IP fields. There are also numerous national enactments and regulations. The international lawyer needs to be aware of how any of these may affect specific rights and transactions.

Some International Conventions, Agreements and Treaties (Industrial Property)

Paris Convention for the Protection of Industrial Property (1883), and related conference revisions (Rome 1886, Madrid 1890-91, Brussels 1897, Washington 1911, The Hague 1925, London 1934, Lisbon 1958, Stockholm 1967).

Patent Cooperation Treaty (PCT) (1970) and related Regulations.

Strasbourg Agreement Concerning the International Patent Classification (1971). See, also, Strasbourg Convention on the Unification of Certain Points of Substantive Law on Patents for Invention (1963).

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) and related Regulations.

Patent Law Treaty (PLT) (2000).

Hague Agreement Concerning the International Registration of Industrial Designs (1925). See, also, related London Act (1934), Hague Act (1960), Complementary Act of Stockholm (1967), Geneva Act (1999), and Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement.

Locarno Agreement Establishing an International Classification for Industrial Designs (1968).

Andean Sub-Regional Integration Agreement (Cartegena Agreement) (1969) and related Decisions of the Cartegena Agreement Commission.

Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO) (Lusaka Agreement) (1976) and related Regulations and Banjul Protocols (on trade marks).

Agreement Revising the Bangui Agreement of 2 March 1977 on the Creation of an African Intellectual Property Organization (OAPI) (1999).

North American Free Trade Agreement (NAFTA) (1992).

Eurasian Patent Convention (1994) and related Regulations.

ASEAN Framework Agreement on Intellectual Property Cooperation (1995).

Convention Establishing the World Intellectual Property Organization (WIPO) (1967)

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994).

Trade Marks

Madrid Agreement Concerning the International Registration of Marks (1891) and related Protocols and Regulations.

Nice Agreement Concerning the International Classification of Goods + Services for the Purposes of the Registration of Marks (1957).

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973).

Nairobi Treaty on the Protection of the Olympic Symbol (1981).

Trademark Law Treaty (TLT) (1994) and related Regulations.

Madrid Agreement for the Repression of False or Deceptive Indications of Sources on Goods (1891) and related Additional Act of Stockholm (1967).

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958) and related Regulations.

Benelux Convention Concerning Trade Marks (1962) and related Benelux Designs Convention (1966).

Agreement on Measures for the Prevention and Repression of the Use of False Trade Marks + Geographic Indications (Minsk Agreement) (1999).

Copyright (and related rights)

Bern [Berne] Convention for the Protection of Literary + Artistic Works (1886).

Universal Copyright Convention (UCC) (1952).

World Intellectual Property Organization Copyright Treaty (WCT) (1996).

International Convention for the Protection of New Varieties of Plants (UPOV Convention) (1961).

International Convention for the Protection of Performers, Producers of Phonograms + Broadcasting Organizations (Rome Convention) (1961).

Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971).

Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974).

World Intellectual Property Organization Performances + Phonograms Treaty (WPPT) (1996).

European Agreement concerning Programme Exchanges by Means of Television Films (1958).

European Agreement on the Protection of Television Broadcasts (1960).

European Agreement for the Prevention of Broadcasts Transmitted from Stations outside National Territories (1965).

European Convention relating to Questions on Copyright Law + Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite (1994).

Note: the European Union has also enacted numerous laws which relate to intellectual property rights: each of these laws needs to be examined depending upon the matter at issue.

See, for example:

Some key EU Regulations relating to Intellectual Property

Name/Subject Matter	Regulation Number
Customs actions (infringing goods)	1383/2003, 1891/2004
Design Regulation	6/2002. Also, 2245/2002 + 2246/2002
OHIM Procedural Rules	216/96
Plant Variety Rights Regulation	2100/94. Also, 1238/95, 1239/95 + 1768/95
Protection of geographical indications and designations of origin (foodstuffs)	2081/92, 2037/93, 1107/96, 2400/96, 383/2004 + 510/2006
Supplementary protection certificate for medicinal products	1768/92
Supplementary protection certificate for plant protection products	1610/96
Technology Transfer Regulation	772/2004
Trade Marks	40/94. Also, 1992/2003, 2868/95 + 422/2004

Some key EU Directives relating to Intellectual Property

Name/Subject Matter	Directive Number
Biotechnology Directive	98/44
Conditional Access Directive	98/84
Copyright Protection Term Directive	93/98
Database Directive	96/9
Design Directive	98/71
Information Society Copyright Directive	2001/29
IP Enforcement Directive	2004/48
Rental Right (Copyright) Directive	92/100
Resale Right Directive	2001/84
Satellite + Cable Copyright Directive	93/83
Semiconductor Directive	87/54
Software Copyright Directive	91/250
Trade Mark Directive	89/104

Interesting fact: as of 1 January 2008, there had been more cases decided by the European Court of Justice (ECJ) in Luxembourg, concerning the EU Trade Mark Regulation (Regulation 40/94), than concerning any other EU Regulation or Directive.

Practice Tip: some of the international agreements, conventions, treaties, regulations and protocols referred to above relate to more than one category of intellectual property rights. Thus, for example, the TRIPS Agreement (1994) covers issues relating to copyright, patents, trade marks, industrial designs and numerous other matters. Moreover, certain portions of such instruments may be superseded and/or be incorporated into later instruments. For example, the Treaty on Intellectual Property in respect of Integrated Circuits (also called the 'Washington Treaty' or the 'IPIC Treaty' (signed at Washington on 26 May 1989) is currently not in force, but was partially integrated into the TRIPS agreement (see Article 35 thereof).

Going global with intellectual property is by no means as easy as one could desire or as one may be led to believe, upon hearing such phrases as "act globally, think locally".

Note on certain IP terminology.

A utility model is a special form of IP rights for inventions granted by a state to an inventor or his assignee for a fixed time-period. The terms and conditions of the granting of utility models are different from those for normal patents (eg, shorter term and less stringent examination requirements). Utility models are an important alternative to patents in countries in which they are available. The terminology used to describe an invention protected by utility models varies between countries. For example, 'innovation patent' (Australia), 'short-term patent' (Ireland), 'utility innovations' (Malaysia), and 'utility certificate' (Uganda).

Source: World Patent Report: A Statistical Review (2008), published by the World Intellectual Property Organization (WIPO), page 61.

Trends in European Union law

Trends in the scope and evolution of EU Regulations and Directives: from 1957 to 2008

Since the Treaty of Rome (signed 25 March 1957, entered into force on 1 January 1958), there have been thousands of EU Regulations and Directives, covering every conceivable aspect of society, citizens and business. It may be assumed that about 85% of all regulatory laws affecting most businesses in the EU today are derived from one or more EU Regulations or Directives and there is ample evidence that a substantial number of business laws in other European countries are strongly influenced by such EU laws.

On the surface, the story looks rather complex and has been affected by several additional European community treaties and amending treaties since 1957. For example, the Treaty on European Union (Maastricht, 1992), the Single European Act (1986), the Treaty of Amsterdam (1997) and the Treaty of Nice (2001).

In the background, one always needs to take into account a bewildering, overlapping, interlocking array of other available EU documents.

Not only is the realm of EU Regulations and Directives complex, it is also voluminous. Although at any one time, there are about 10,000 EU Regulations and Directives in effect, the ones that have affected the majority of business enterprises, from about 1962 onwards, can be boiled down to about 400 (the '400 Club' of key EU Regulations and Directives), but even those, including their numerous amendments, take up about 15,000 printed pages in the EU's Official Journal. Many EU Regulations and Directives are fairly short (5 to 30 pages). Many others are very long. It would be quite logical to assume that a given Regulation or Directive, which is derived from a specific Treaty provision, would have the same DCC (Directory Classification Code) number, regarding the same subject matter, as another Regulation or Directive, on the same subject matter. This is only sometimes the case. Matters involving EU Regulations and Directives are often not what they are expected to be or initially seem to be.

Legislative Strategies and Techniques

Whether the goal is further integration of the EU internal market or enhancement of the EU four freedoms, in particular, or of EU social policy, in general, or involves matters relating to EU justice and home affairs, the EU has a variety of legislative strategies and techniques at its disposal.

Accretion vs. Big Leaps. The EU can be very patient. For example, the current group of Regulations and Directives in the field of bank and insurance company insolvency, and those regarding the regulation of stock markets and the public offering of securities, each took about 25 years to build up to their current state and the process is not completed. The current state of EU Regulations and Directives in the area of public procurement has taken about 35 years to build up.

However, the EU can also move in big leaps, such as in the case of REACH (regarding chemicals) and the various recent Regulations mandating the use of International Accounting Standards.

Unitary Approach. Some matters are approached, at least initially, by Regulation, only, or by Directive, only. By contrast, matters relating to the various working relationships between employers and employees are almost exclusively covered by Directives, for example, Directive 2006/123 (dated 12 December 2006) relating to employment services in the internal market.

Binary Approach. There are many situations in which the EU has approached the same or a very similar subject matter by adopting both a Regulation and a Directive, thereby combining the pan-EU direct applicability of the one with the national flexibility of the other.

Consolidations, Adjustments, Coordinations and Experiments. Quite a few EU Regulations and Directives are, in the main, restated or consolidated or versions of pre-existing ones. Some Regulations and Directives are legislative adjustments in the light of experience with prior Regulations and Directives, that are no longer in effect or have needed specific amendment.

Mutual Recognition, New Approach, Harmonisation, Frameworks. Certain European Court of Justice (ECJ) cases in the 1970s evolved alongside an early example of a mutual recognition Directive. The concepts of mutual recognition and freedom of movement converged with and evolved further, alongside an intergovernmental consensus-based re-launch of internal market integration.

The processes were complex but, for the sake of simplicity here, the results were approximately as follows. There were additional mutual recognition Directives. There was to be less reliance upon law harmonisation, *per se*, and more on 'new approaches' and 'frameworks', for example, setting critical minimum health, safety and technical requirements and a great number of Directives relating to the CE marking, for products. These new legislative concepts were soon expanded and adapted to include framework Directives.

In addition, an EU White Paper proposed that a number of designated business sectors (including financial services, therein described financial 'products' [goods]) be addressed not through Regulations or even through detailed regulatory-style 'top down' Directives but through 'sectoral' or 'harmonising' or 'coordinating' Directives which promoted the mutual recognition of certain matters in all EU member countries, if certain specified standards are met, or Directives which ensured the removal and prevention of barriers, with the 'unified internal market' being the 'essential and logical' consideration, rather than the specific legislative approach adopted or vocabulary employed. For example, the words 'harmonisation', 'approximation', 'equivalence', 'equalisation' and 'liberalisation' are often used in ways that make any actual legal distinctions among them less than clear.

There have been many such Directives, including many in the areas of mutual recognition of academic diplomas and professional qualifications, lawyers included. This 'European passport' approach to services is also important in the areas of banking and financial conglomerates (Directive 2000/12) and sectoral progress is still underway in the areas of insurance and re-insurance.

In the area of criminal law, the EU is also moving towards mutual recognition rather than direct law harmonisation, let alone equivalence. This may lead to 'soft law' harmonisation (approximation) across the various EU member countries but this would need to evolve from a greater national impetus towards broadening legal equivalence rather than towards the politically far less likely imposition of regulatory power to effectuate top-down legal equalisation. As at 1 January 2007, for example, there was a general lack of such national enthusiasm, hence the less than equal introduction of the European Arrest Warrant = 2002/584/JHA (an EU Framework Decision, not a Directive, let alone a Regulation).

A Graphical Summing Up

The chart on the following pages gives a representative overview of selected EU legislative activities, of whatever pattern and technique, affecting business from 1957-1967 and at the outset of 2007, with the ancestral legislative activities (Regulations, Directives, etc) in column Two and their more familiar modern legislative descendants in column Four. The reference 'Treaty only' in column Two means that only a provision of the Treaty then in effect was operable with respect to that subject matter (as opposed to a specific Regulation or Directive).

All the descendants and all the collateral descendants are within the '400 Club' of the most important EU Regulations and Directives, since 1957.

Even a selective and condensed Chart like this would need to be about fifty times larger, to cover each subsequent 10-year period, after 1967, in detail.

**Chart of EU Regulations and Directives (1957-2007):
Few Ancestors, Many Descendants**

Subject matter	EU Legislative Activity (1957-1967)	Date(s)	Number of direct descendants/collateral descendants, from 1968 through 1 January 2007 (including repealed and replaced items)
Company law	Commission Memorandum dated 22 April 1966, on the creation of the European Company	1966	Regulation: 1 Directive: 1 <i>Regulations: 12</i> <i>Directives: 31</i>
Competition	Regulations 17/62, 59/62, 99/63, 19/65 and others	1962 1963 1965	Regulations: 2 <i>Regulations: 26</i> <i>Directives: 4</i>
Credit institutions and insurance	Decisions dated 27 September 1960, 15 May 1962, 26 January 1965	1960 1962 1965	<i>Directives: 23</i>
Discrimination	Decision dated 30 December 1961 (equal pay for men and women), Directive dated 25 February 1964	1961 1964	Directives: 2 <i>Directives: 7</i>
Employment and social policy	Social Security Administrative Committee (5 June 1959), its Decisions 24, 38 and 42 (1960 and 1963), 5 July 1965, Regulations 3/58, 4/58, 36/63, 3/64 and 7/64 (frontier workers), Commission Recommendation dated 23 July 1962 (migrant workers), Directive 64/221	1958 1959 1960 1962 1963 1964 1965	Regulations: 2 <i>Regulations: 4</i> <i>Directives: 34</i>
Energy	Protocol dated 8 October 1957, and others, Decision 3/65	1957 1965	Regulations: 3 Directive: 2 <i>Directives: 10</i>

Subject matter	EU Legislative Activity (1957-1967)	Date(s)	Number of direct descendants/collateral descendants, from 1968 through 1 January 2007 (including repealed and replaced items)
Environment	Recommendation dated 16 November 1960, Directive 67/548	1960 1967	Directives: 2 <i>Regulations: 10</i> <i>Directives: 49</i>
Freedom of establishment and to provide services	Directives dated 2 April and 15 October 1963, 25 February, 7 July and 14 December 1964 (and many others, by industry sector, such as Directive 64/225 (reinsurance))	1963 1964	Directive: 1 <i>Directives: 24</i>
Freedom of movement: capital	Directive of 11 May 1960 and Directive 63/21	1960 1963	<i>Directives: 20</i>
Freedom of movement: goods	Directive dated 7 November 1966	1966	Directive: 1 <i>Regulations: 8</i> <i>Directives: 10</i>
Freedom of movement: workers	Decisions dated 12 August 1957, 16 May 1961, 2 April 1963, Regulations 15/61 and 38/64, Directives (by industry sector) dated 23 October 1963, 5 November 1963, 25 March 1964, and others, Recommendation dated 18 July 1966	1957 1960 1963 1964 1966	Regulations: 3 Directives: 2 <i>Regulations: 3</i> <i>Directives: 5</i>
Patents (and other intellectual property)	Communication from the European Commission dated 28 January 1960	1960	<i>Regulations: 12</i> <i>Directives: 13</i>
Pharmaceuticals	Directive 65/65	1965	<i>Regulations: 5</i> <i>Directives: 2</i>

Subject matter	EU Legislative Activity (1957-1967)	Date(s)	Number of direct descendants/collateral descendants , from 1968 through 1 January 2007 (including repealed and replaced items)
Product Liability	Treaty only	1957	<i>Directives: 5</i>
Public Procurement	Treaty only (but compare Directive 66/683)	1957	<i>Directives: 14</i>
Taxation	Directive 67/227	1967	Directive: 1 <i>Directives: 14</i>
Tele-communications	Treaty only	1957	Regulation: 1 Directives: 24
Trade and customs duties	Regulation 8 (11 March 1960) and many others, General Programme dated 18 December 1961, Recommendations dated 13 March 1961, 29 November 1961, 25 May 1962, 15 January 1964, and many others, Decisions dated 22 May and 14 October 1963, Resolution dated 11 May 1966	1960 1961 1962 1963 1966	Regulations: 4 <i>Regulations: 18</i> <i>Directive: 1</i>
Transport	Transport Committee (27 November 1958), Recommendations dated 26 July 1961, Decisions dated 22 June 1964, 5 July 1965, 28 February 1966, Regulations 11/60, 141/62, 165/65, 117/66, 212/66, Directives dated 6 August 1962, 13 May 1965	1958 1960 1961 1962 1964 1965 1966	Regulation: 1 <i>Regulations: 15</i> <i>Directives: 6</i>

Common law vs civil law

Common law vs civil law vs. jus communis (lex communis).

Many books and articles published in both English-speaking and non-English-speaking countries assert that the law of Anglo-Saxon countries such as England, Ireland, Australia, New Zealand, Canada and the USA is based mainly upon unwritten common law; that most law in those countries is created by Judges based upon prior court decisions and that very little of the law is contained in statutes or codes. Such assertions are very difficult to reconcile with reality. For example, the current edition of the 'Statutes of England' (published by Halsbury's) comprises 50 very large volumes of written laws in force. The federal laws of the United States are contained in more than 100 volumes of the US Code, plus more than 100 volumes of the Code of Federal Regulations. The laws of California are contained in 29 Codes and in 28 volumes of the Code of Regulations. Much of Australian law is in codes and the rest is in statutes. The laws of Canada are in hundreds of statutes and numerous Codes. Any valid modern distinctions between common law and civil law need to be evaluated situation by situation and with some healthy cross-border scepticism. The notion, for example, that Judges in common law countries are not bound by statutes and codes (and only consider prior case law), but that civil law judges are so bound (and do not consider prior case law), is both puzzling and can be very misleading.

Practical Tip: only a very small number of countries in Europe can be described as common law countries (Cyprus, Ireland, Malta and the UK). Moreover, at least 85% of the laws affecting businesses in Europe, including those four common law countries, is based upon supreme EU law (Treaties, Regulations, Directives, and, very importantly, upon case law precedents created by the European Court of Justice, declaring what it has decided is the common law for the EU, as well as what has been decided by national courts in EU countries, applying EU law). Therefore, at least in most parts of Europe, academic distinctions between common law and civil law need to be approached with caution.

Since most countries in the world are not common law countries (and make no claim to be), the international lawyer should be much more mindful of legal substance than in relying upon definitive sounding labels and overly simplified classifications.

The matter is further complicated by the fact that certain very important legal systems which have legal traditions which were not directly derived from the Roman civil law tradition (such as traditional legal systems in China, Japan and South Korea) have in modern times adopted many Western legal approaches as part of globalisation, notably legal approaches from the civil law countries (but some have also adopted many 'common law' approaches, too). Islamic countries have differing interpretations of Shari'ia law but considerable portions of their modern civil and commercial law may derive from (or be influenced by) European civil code models. Even the word for 'law' in Arabic (and in Persian, Turkish and in Urdu) derives from the Greek word for law (κανών = 'canon'), which was introduced during the times of the 'global' Roman Empire and stuck, locally, in North Africa, the Middle East and parts of Asia (such as Pakistan).

Thus, 'global' and 'local', as well as 'common' and 'civil', are truly words that may be both interchangeable and be misleading at the same time.

Trends, ideas and concepts to watch

Here are some ideas, concepts, issues and questions which will apply to many international law situations:

Choosing the right law for a transaction. The general assumption is that business parties ought to have freedom to choose the law governing their contracts. This is complex enough in a purely (or mainly) domestic setting but far more complex in a global scenario. For example, the parties may make subconscious (and even institutionally biased) assumptions about causation, rules of evidence, the availability of competent Judges and local lawyers, the range and cost of legal remedies and the time needed to obtain them, not to mention effectiveness of enforcement issues.

Thus, substantive law is only part of the picture but it is too often the only one the parties consciously factor into their choices. A multitude of cross-border events, factors and transactions can greatly multiply the complexity and decrease the likelihood of consistent results. The international lawyer needs to evaluate all these issues and find practical, innovative, valid solutions.

Paradoxes of globalisation. Economic theory teaches that diversification of risk is generally good. This assumption backfired seriously in the subprime credit crunch disasters, with severe legal, economic and political side-effects, locally and globally. Thus, some large banks and institutional lenders and investors which had had seemingly unassailable positions in their home markets have 'self destructed' by venturing into international marketplaces, without correctly assessing the risks involved, either ex ante or as danger signs were unfolding in real time.

The risks of globalisation may outweigh the benefits, when entering a market that is too new, is too big and may be too volatile, as compared to one's home-grown experiences and when the company's risk management mechanisms (which worked fine at home) are just not well adapted to global risk taking.

Stated another way, it is essential to understand one's own core competencies and expertise and to understand the specific context in which they have been successful, as well as to understand their limitations, and to evaluate the impact and risk of applying the same tactics and modes of execution in a foreign market where they may be inappropriate or even counterproductive.

The ultimate international lawyer is The Market. This creates worldwide policy implementation problems, such as regarding document retention policies, employee ethics, management ethics, environmental responsibilities, health and safety (for employees, suppliers, customers), whistleblowing procedures, data protection, having a standard company manual and so forth. How do you 'level up', without appearing to preach or to be critical of local ways and customs?

Even where the objectives of these kinds of internal rules and regulations turn out to be pretty similar, legally, from one jurisdiction to another, the main organisational challenge may be to articulate a policy that furthers the common objective, which will generally be possible and practical, while also providing flexibility for adaptation to local legal traditions and cultural sensitivities. The process of adaptation to these local requirements can be greatly improved by working closely with competent local experts who have also been familiarised with the organisation's relevant global policies and the reasons behind them. Also, since compliance with these kinds of requirements will usually depend on the organisation's IT systems and HR departments, it is advisable to develop the compliance procedures in conjunction with representatives from IT and HR.

How much accuracy is right? Learn how to judge when complete legal accuracy is just too expensive or when you are trying to deal with risks that are better accepted (or insured against, if possible): if they happen, they happen and you build that risk into your overall cost structure. Despite the Black Swan type theorists, almost all risks are predictable. What is difficult is to decide which ones you want or need to diminish and to decide what you are willing to pay in order to 'know'.

Learn to assess whether the legal rules for the global economy depend upon the type of industry. Are there different rules and legal analytical methods for service industries, for network industries, for manufacturing industries, for industries which are highly regulated, for industries which have a government as a major equity partner? Does the Internet (easy access to information) heighten those differences or level them out or give some industries a 'natural competitive advantage', not equally available to the other types? How are these industry-specific factors impacting upon: labour, access to raw materials, access to markets, economies of scale, compliance with antitrust laws?

A general rule. The most effective international lawyer is likely to be the person with a broad appreciation of history, economics, human nature, diverse cultures, politics... rather than just expertise in some particular field of law. The international lawyer is mainly someone who is always eager to learn, even if what they learn goes against what they 'know'. This rule is not limited to international law practice, but perhaps it is more likely to be tested and illustrated, and useful, in that context.

Paradigm shifts. In the Introduction, we gave examples of some of the big shifts in the world economy in recent years. One striking example is the growth and likely ongoing impact of SWFs (Sovereign Wealth Funds), mainly from Asia and the Gulf, including their impact on the role, everywhere, of the international lawyer. Will a main role of the international lawyer be as a 'mechanic' (a legal technician in a global economy mainly ruled by foreign capital)? Will the national legislatures (even in the major countries) retain their traditional role and significance in this new global context? He who pays for the supper usually calls the tune. SWFs may act as a functional counterpoise to the fact that Europe, the USA and Japan control much of the world's technology and IP (and account for a great deal of the world's consumption of goods and services), whereas the Third World controls much of the natural resources and energy.

Recent transfers of wealth (away from the traditional, high-tech 'innovative' West) have been staggering. Concerns about these funds have led the EU to reconsider whether

Country	Fund	Assets \$Billion (estimated)	Origin
United Arab Emirates (Abu Dhabi Emirate)	Abu Dhabi Investment Authority	875	Oil
Norway	Government Pension Fund of Norway	391	Oil
Singapore	Government of Singapore Investment Corporation	330	Non-commodity
Kuwait	Kuwait Investment Authority	265	Oil
China (PRC)	China Investment Corporation	200	Non-commodity
Singapore	Temasek Holdings	160	Non-commodity
Australia	Australian Government Future Fund	82	Non-commodity
Qatar	Qatar Investment Authority	60	Oil
Libya	Libyan Investment Authority	50	Oil
United States (Alaska)	Alaska Permanent Fund	40	Oil
Russia	Russian National Wealth Fund	32	Oil
Brunei	Brunei Investment Agency	30	Oil
South Korea	Korea Investment Corporation	30	Non-commodity
Kazakhstan	Kazakhstan National Fund	23	Oil
Malaysia	Khazanah Nasional	18	Non-commodity

to allow its members to use 'golden shares' to block certain foreign acquisitions. This strategy has been limited as a viable option by the EU, for fear it would give rise to a resurgence in international protectionism. In the US, these concerns are addressed (in part) by the Exon-Florio Amendment to the Omnibus Trade and Competitiveness Act of 1988 (codified as amended at 50 USC § 2170 (2000)), as administered by the Committee on Foreign Investment in the United States (CFIUS). These matters are of profound significance to the overall issues of international "law" in the traditional context.

Know your customer and your customer's world.

Whatever happens on the global scale, it will always remain of key importance for the international lawyer to know the client's business and the market (including the regulatory) environment in which it operates. The international lawyer must have both local and international knowledge and understand the complex ways in which they interact. Most issues tend to recur and thus patterns can be identified, as a guide to future action. In general, is it better to seek to fit local conditions into those general patterns or is it better the other way around? The answer probably depends upon the type of business. The most effective international lawyer will be a great generalist and a great specialist, always watching the world as a whole for trends and ideas but always ready to seize the specific opportunity.

Here are some legal trends which appear to be generally on the increase:

Certain countries are already in a race, to provide cheaper, better, easier legal 'commodities', such as in the area of merger approval; patent approval; company formation (including many jurisdictions offering virtually zero-capital requirements for the local version of the 'private limited company'); greater ease of moving the corporate seat ('redomiciliation'); rocket dockets and other speeded up, less expensive ways of achieving dispute resolution.

Multi-national clients today want and need a global one-stop-shop: for purchase orders, terms of sale, compliance and regulatory issues, corporate governance, risk management, product warranties, standards and recalls, export policies, employment, outsourcing (including business processes outsourcing) and a trained and ready response team and strategy if something goes wrong.

Mandatory (and permissive) electronic filings: tax returns, litigation papers, regulatory compliance items.

Admissibility of digital evidence in court and arbitration proceedings.

Increased consumerism and consumer remedies, including some forms of class action litigation remedies (to be called 'collective redress' in the EU).

More regulation of corporate lobbying and political campaign contributions.

More legislation about the criteria under which credit rating agencies operate.

More employment diversity but also more claims of discrimination. Note jurisdictions which shift the burden of proof from the claimant, onto the employer to disprove wrongdoing.

More international diversity in the ownership, finance and management of businesses that, traditionally, were locally managed and owned.

More contracts written in English, for use in jurisdictions whose national language is not English.

More contracts adopting a governing law which is not the home jurisdiction of either contracting party or of the principal place of intended performance (for example, in seeking to provide greater mutual legal certainty).

Here are some legal trends which bear watching (they may be increasing and/or decreasing, depending upon the relevant jurisdictions):

Advance rulings and 'no action' letters.

Antitrust and tax leniency programs.

Environmental damage leniency programs.

Local versions of Western-style 'legal opinion' letters.

No tax, low tax mergers and acquisitions.

Cross-border mergers among companies incorporated in different countries.

International comity (or denial of comity) regarding attorney-client privilege and more erosion of in-house counsel attorney-client privilege.

Note: in US law (and in some other legal systems) the client 'holds' the attorney-client privilege. In most legal systems, the privilege is not deemed a right 'held' by the client but as being something about lawyers not being allowed (or forced) to testify. Documents often have weaker protection (are discoverable). In-house privilege protection is weak in most countries.

National government waiver policies regarding attorney-client privilege in the context of criminal investigations and regulatory enforcement actions (mainly relevant where privilege protection is robust).

Less reliance upon 'soft' corporate governance, as such, and more on organisation ownership analysis, management structures, and hard law approaches to director duties, active vs passive boards, independent directors, minority shareholder rights and active involvement, transparency and reporting, rules against conflicts of interest, against insider trading, against counter-productive management compensation incentives.

More scope for the international lawyer in helping to draft local legislation, especially in emerging market countries and especially in fields such as energy, antitrust, bioscience, telecoms, finance and banking, corporations, employment, consumer protection.

More informal or indirect extension of national laws, extra-territorially.

Example: as happened with Sarbanes-Oxley, US companies operating abroad may seek to introduce some kind of US-style whistleblower procedures to their non-US workers, under the new US Consumer Product Safety Improvement Act of 2008. No matter that US law does not formally require extra-territorial application, the companies may desire this effect as part of management policy. The new law contains whistleblower provisions. Such a law will indirectly affect many exporters worldwide, in any event.

Interesting statistic: NAFTA, the North American Free Trade Agreement (Spanish: Tratado de Libre Comercio de América del Norte [TLCAN], French: Accord de libre-échange nord-américain [ALENA]) is the largest trade bloc in the world, in terms of the combined purchasing power parity GDP of its members (Canada, Mexico and the USA).

Also to watch for changes and developments:

Regulation of complex and hybrid financial markets and instruments.

New insurance offerings to meet new international business risks.

International brand protection.

Protection of shareholder minority interests.

Internet IPOs and e-voting by corporate shareholders and more shareholder activism.

Cross-border (multi-jurisdictional) insolvency, asset sequestration and attachment.

Cross-border recognition and enforcement of money judgments and other decisions on the merits.

Court orders in one country allowing local use of evidence acquired elsewhere (that would not otherwise have been available, pre-trial, in the local forum).

International use of JDAs (joint defence agreements) in litigation.

Extradition for corporate crime, including for: market manipulation, insider trading, false financial statements, product liability, employee safety, corruption and bribery, serious environmental violations, tax evasion and tax evasion assistance.

Mutual recognition among the world's stock exchanges, regarding listings and broker-dealers.

Disclosure of climate (and other environmental) risks in annual reports of publicly traded companies.

Rules on legal services international outsourcing.

Use in criminal and tax investigations in the forum, of personal data and details illegally obtained elsewhere.

New business and marketing models and re-uses of existing ones.

Impact of the diminishment, collapse or geographic transfer of traditional manufacturing and services, including open source software.

Impact of collapse (absorption, restructuring) of certain traditional business and financial leaders.

Rules affecting immigration, visas, migration and other movements of people, workers and refugees (including economic refugees).

National and trading bloc protectionism (quotas, tariffs, red tape).

Extra-territorial expectations for national views of corrupt practices, bribery, lobbying and other forms of influence, including related disclosure obligations.

Public-private partnerships and more state and governmental agency takeovers and bailouts of failed major local businesses.

Expansion of the European Union, implementation of the Mediterranean Union and emergence of new countries (as well as political-commercial realignments among existing countries, such as between Africa and China, South America and Russia).

Codified uniform laws, law unification projects and US-style 'Restatements'.

Legal services, forms and solutions (including anonymous whistleblowing) provided via the Web and other online media.

Business method patents and similar IP protection for novel commercial applications, products, services.

Growth and diversification of world law firms and law boutiques.

Concentration of audit and accounting in a small number of international firms.

Use of (and trading in) emission certificates and other indirect regulatory compliance strategies.

Electronic 'pretty good' translation of legal documents.

Civilian applications of new military technology.

Risks of data theft and loss and more specific reporting criteria and measures for data breaches and notifications.

Risks of international industrial espionage.

Changes in the location and nature of certain 'offshore' tax havens.

Moves towards international accounting standards (IFRS).

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