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Transnational Legal Practice

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I. Introduction

This Article provides the year-in-review summary for both the Transnational Legal Practice (TLP) Committee and the Transnational Practice Management (TPM) Committee of the ABA Section of International Law (ABA SIL). The 2016-17 TPM Committee represents a merger of the 2015-16 ABA SIL Transnational Legal Practice (TLP) Committee and the 2015-16 ABA SIL International Law Practice Management Committee; the merger of these committees took effect in August 2016.¹ This article will review developments related to the topic of transnational legal practice.²

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1. Compare A.B.A., *Sec. of Int’l Law: Transnational Practice Management Committee*, 2016-2017 Committee Business Plan, <https://apps.americanbar.org/dch/committee.cfm?com=IC866000> (pdf document link available on main page) (also on file with journal) with A.B.A., *Sec. of Int’l L. Transnational Legal Practice Committee*, 2015-2016 Committee Business Plan (on file with journal). The most recent Year-in-Review article for the International Law Practice Management Committee is Robert C. Bata, Laurel S. Terry, Jordan Furlong, Martin Desautels, David Doran And Kevin Nudd, Robert D. Lewis, Robert Millard, Horacio Bernardes Neto, Sally Hutton, & Christo Els, *International Law Practice Management*, 49 ABA/SIL YIR (n.s.) 397 (2015).

2. This Article will use a structure similar to that found in 2015 Transnational Legal Practice article. See Laurel S. Terry, *Transnational Legal Practice [2015]*, in 50 ABA/SIL YIR (n.s.) 531 (2016) [hereinafter TLP 2015]. Developments related to TLP have also been memorialized in the inaugural newsletters of the 2015-16 Transnational Legal Practice Committee and the 2016-17 Transnational Management Practice Committee. See A.B.A. Sec. of Int’l L., *Transnational Legal Practice Committee Quarterly Newsletter (June 2016)*, [http://apps.americanbar.org/webupload/commupload/IC866000/newsletterpubs/](http://apps.americanbar.org/webupload/commupload/IC866000/newsletterpubs/ABA_TLP_Committee_Newsletter_June2016.pdf) (included items about the sessions held during the Spring 2016 SIL meeting, access to the legal services market in China, and legal services in Latin America); A.B.A. Sec. of Int’l L., *Transnational Management Practice Committee Quarterly Newsletter (Fall 2016)*, http://apps.americanbar.org/webupload/commupload/IC866000/newsletterpubs/ABA_TMP_Committee_Newsletter_Fall2016.pdf. (includes short articles about market access for foreign lawyers in Japan and the impact of Brexit on foreign law firms in London).

II. TLP International Trade-Related Developments

During 2016, the United States was involved in four sets of trade negotiations that included legal services within their coverage. In February 2016, the participants in the Trans-Pacific Partnership (TPP) announced that they had concluded their negotiations and signed the TPP agreement.³ In light of the results of the 2016 U.S. elections and the fact that the TPP requires Congressional approval, the U.S. is unlikely to be a participant in TPP in the future.⁴

In addition to the TPP, during 2016, the United States was involved in three additional sets of trade negotiations that included legal services: (A) the World Trade Organization's GATS negotiations; (B) the Trade in Services Agreement (TISA) negotiations; and (C) the Transatlantic Trade and Investment Partnership (T-TIP) negotiations.⁵

As was true in 2015, from a legal services perspective, most of the 2016 trade activity concerned the T-TIP trade negotiations between the United States and the EU. The T-TIP negotiations were the subject of a panel session at the 2016 Spring Meeting that was co-sponsored by the TLP Committee; this panel session included representatives from the Council of Bars and Law Societies of Europe (CCBE), the Conference of Chief Justices (CCJ), and United States lawyers, among others.⁶

The conversations at the Section's 2016 Spring Meeting were a continuation of conversations that have been ongoing in other venues. The T-TIP negotiations led the CCBE to adopt a recommendation to the European Commission regarding what should be offered to United States

3. See Office of the U.S. Trade Rep., Press Release, Trans-Pacific Partnership Ministers' Statement (Feb. 4, 2016), <https://perma.cc/7Y CZ-WK2G>. The TPP requires Congressional approval, however, in order to take effect. Given the results in the 2016 U.S. elections, it appears unlikely that such approval will be forthcoming.

4. See *Trump Says US to Quit TPP on First Day in Office*, BBC NEWS (Nov. 22, 2016), <http://www.bbc.com/news/world-us-canada-38059623>.

5. See generally WTO Doha Negotiations, Services Negotiations, Office of the U.S. Trade Representative, <https://ustr.gov/trade-agreements/wto-multilateral-affairs/wto-doha-negotiations/services-negotiations> [<https://perma.cc/X8NC-9DKK>] (last visited Nov. 29, 2016); Trade Agreements, Other Initiatives, Office of the U.S. Trade Representative, <https://ustr.gov/trade-agreements/other-initiatives> [<https://perma.cc/D9UL-E3WN>] (last visited Nov. 29, 2016); Free Trade Agreements, Transatlantic Trade and Investment Partnership, Office of the U.S. Trade Representative, <https://ustr.gov/ttip> [<https://perma.cc/JJ8E-ADWZ>] (last visited Nov. 29, 2016).

6. See A.B.A. SEC. OF INT'L LAW, ONSITE MEETING PROGRAM, Spring 2016, at 10 (New York City) (Apr. 12-16, 2016), <https://shop.americanbar.org/PersonifyImages/ProductFiles/188482042/2016SpringOnsiteBrochure.pdf> (listing includes a session entitled "[t]he Transatlantic Trade and Investment Partnership (TTIP)—Free Mobility of Lawyers, the Issues of Reciprocity of Access to the Legal Profession and the Reciprocity of Foreign Legal Consultant Status Offered to U.S. Attorneys in the European Legal Market").

lawyers “inbound” to the EU.⁷ During 2016, the CCJ continued to sponsor quarterly conference calls whose participants included representatives from the CCBE and from the Office of the U.S. Trade Representative; these conversations typically included discussions about the status of the TTIP negotiations.⁸

The CCJ-led conversations provide the impetus to update the map and charts that are available online and that show the status of United States state adoption of inbound foreign lawyer rules.⁹ As these documents show, compared to the April 2015 version of the map and chart cited in the prior year-in-review, there has been one new rule regarding temporary practice by inbound foreign lawyers, two new rules about foreign pro hac vice practice, and eight new rules allowing foreign in-house counsel.¹⁰ New York is among the jurisdictions that adopted new rules; it has joined the jurisdictions that have explicit rules regarding all five of the “foreign lawyer cluster” of rules.¹¹

One explanation for the various conversations and activity related to international trade negotiations is the fact that international trade in legal services is significant. For example, a 2016 U.S. government document shows that in 2015, as in 2014, the United States exported more than nine billion dollars in legal services.¹² This document also shows that the U.S. imported more than two billion dollars, with a gain of fifty million dollars

7. See *Transatlantic Trade and Investment Partnership*, 49 CCBE 1, 3 (Feb. 2016), http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Newsletter/CCBEINFO49/EN_newsletter_49.pdf.

8. See *id.*; see also e.g., TLP 2015, *supra* note 2, at 535. The Author has personal knowledge of the 2016 conference calls.

9. See Laurel Terry, *Summary of State Foreign Lawyer Practice Rules* (Oct. 14, 2016), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_8_9_status_chart.authcheckdam.pdf [<https://perma.cc/G9Z9-UQ93>]

10. Compare Terry, *infra* note 20, with TLP 2015, *supra* note 2, at 534, nn.21 and 36 (compare the April 29, 2015 version of the map and chart to the October 2016 map and chart, showing that one more state—New York—had adopted a temporary practice rule; two new states—North Dakota and New Jersey—had adopted foreign pro hac vice rules; and eight new states—Illinois, Iowa, Massachusetts, Montana, New Hampshire, New Jersey, New York, and North Dakota—had adopted rules that allow foreign in-house counsel).

11. See, e.g., N.Y. Ct. of Appeals, Notice to the Bar: Temporary Practice of Law in New York (Part 523) and Registration of Foreign Lawyers as In-house Counsel (Part 522) (Dec. 15, 2015), <https://www.nycourts.gov/ctapps/news/nottobar/nottobar121515.pdf>.

12. See Table 2.2. U.S. Trade in Services, by Type of Service and by Country or Affiliation, U.S. Dep’t of Commerce, Bur. Econ. Affairs (Oct. 24, 2016), available at http://www.bea.gov/international/bp_web/tb_download_type_modern.cfm?list=41&RowID=170 (listing in millions the 2015 legal services exports as 9,047 dollars. This was a slight decrease from the 2014 exports but an increase over the 2013 exports). The 2016 *Recent Trends in U.S. Services Trade* report did not contain data about legal services. See U.S. International Trade Commission, *Recent Trends in U.S. Services Trade: 2016 Annual Report*, Inv. No. 332-345, USITC Pub. 4643 (2016). As footnote 1 to that report explains, “[b]eginning with its publication in 2013, *Recent Trends* covers three industries each year, rotating on a four-year basis between professional services . . . ; electronic services . . . ; distribution services . . . ; and financial services . . .” *Id.* at 15, n.4.

over the prior year.¹³ A May 2016 report issued by the District of Columbia Bar Association showed the international nature of that organization and its members.¹⁴

Data such as this suggests that transnational commerce and transnational legal practice are a fundamental part of the global economy and are likely will continue in the future, even though the United States has terminated its involvement in trade negotiations that were underway in 2016¹⁵ and even though the United States may withdraw from trade agreements that it previously signed.¹⁶

III. Additional United States Developments

There were a number of United States developments in 2016 that are related to transnational legal practice or that facilitated the TLP-Nets

13. See Table 2.2, *supra* note 12 (showing imports, in millions, of 2,167 dollars).

14. See DISTRICT OF COLUMBIA BAR GLOBAL LEGAL PRACTICE TASK FORCE, INTERIM REPORT TO THE BOARD OF GOVERNORS OF THE DISTRICT OF COLUMBIA BAR (May 10, 2016), <https://www.dcbbar.org/about-the-bar/reports/upload/GLPTF-Final-Report-with-exhibits-May-2016.pdf>. The findings included the following:

- 54 percent of domestic survey respondents were very or somewhat interested in expanding their international practices within the next five years, with 57 percent of them indicating that they do expect to expand their practices during that time.
- 64 percent of domestic survey respondents age 44 and under younger were very or somewhat interested in expanding their international practices within the next five years. Two-thirds expect to expand their practice during that time. Both groups of survey respondents and focus group members cited the same group of core challenges in international law practice: conflicting rules about attorney/client privilege (a challenge for over 50 percent of the domestic survey respondents and 61 percent of the abroad survey respondents); conflicting rules about legal ethics (a challenge for just under 50 percent of domestic respondents and 50 percent of the abroad respondents); and conflicting rules about discovery (a challenge for over 40 percent of domestic respondents and 44 percent of abroad respondents).
- Nearly 36 percent of the domestic survey respondents wanted more access to education and resources about the overall globalization of legal practice.
- Asked to rate prospective services the Bar could offer to members on a scale of one to five, with one being “least valuable” and five being “most valuable,” 58 percent of the domestic survey respondents rated “educational programs on globalization of legal practice” at a three or higher and 63 percent of the abroad survey respondents rated it as a three or higher.

Id. at 13–14. This Report noted that “substantial portions of the domestic survey respondents were doing business in a handful of countries: the United Kingdom (35 percent); China (23 percent); France (23 percent), and Germany (17 percent). *Id.* at 15.

15. See Trump, *supra*, note 4; see also Jonathan Goldsmith, *TTIP, Globalisation and Lawyers*, LAW SOC. GAZETTE (Sept. 13, 2016), https://www.lawgazette.co.uk/analysis/comment-and-opinion/ttip-globalisation-and-lawyers/5057593.article?utm_source=dispatch&utm_medium=email&utm_campaign=GAZ13092016.

16. The U.S. has signed approximately fifteen trade agreements that apply to legal services. See generally Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875 (2010) (agreements include the WTO GATS agreement, NAFTA, and a number of bilateral trade agreements).

discussed in the 2014 Year-in-Review.¹⁷ This section briefly highlights in chronological order a number of the United States-related 2016 TLP developments.

In February 2016, the ABA House of Delegates adopted a resolution that amended the foreign in-house counsel provisions of ABA Model Rule of Professional Conduct 5.5.¹⁸ The new language in Rule 5.5 gives each state's highest court the discretion to admit a foreign in-house lawyer who is lawfully practicing as in-house counsel under the laws of his or her jurisdiction.¹⁹ The House also adopted, in February 2016, a resolution that endorsed ABA Model Regulatory Objectives for the Provision of Legal Services and encouraged states to develop their own regulatory objectives.²⁰ This resolution was inspired, at least in part, by developments outside the

17. Laurel S. Terry & Carole Silver, *Transnational Legal Practice*, in 49 ABA/SIL YIR (n.s.) 413 (2015) [hereinafter TLP 2014], available at http://www.americanbar.org/content/dam/aba/uncategorized/international_law/inl_yir_2015_cpy.authcheckdam.pdf (as corrected). The online version of this article was the authorized version of the article that replaced the print version of the article and all electronic versions that did not contain a single asterisk footnote noting the substitution. The 2014 TLP Year-in-Review provided a departure from the Year-in-Review's typical method of presentation by identifying two categories of what that article called "TLP-Nets." One group of TLP-Nets is nationally based and the other is inherently transnational. The 2014 article identified examples of TLP-Nets and highlighted the meeting points and relationships that facilitate border-crossing for the variety of actors involved in TLP policy-making and practice.

18. MODEL CODE OF PROF'L CONDUCT R. 5.5, RES. 103 (Feb. 8, 2016), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2016_hod_midyear_rr_103_adopied.authcheckdam.pdf.

19. *Id.* at R. 5.5(E). The Report that accompanied Resolution 103 and this model rule change explained the rationale for this change. See A.B.A., THE REGULATION OF FOREIGN LAWYERS, AND IN PARTICULAR FOREIGN IN-HOUSE COUNSEL, IN THE U.S.: PROPOSALS FOR A BETTER AND MORE COMPREHENSIVE FRAMEWORK, Draft Report, at p. 6, available at http://www.americanbar.org/content/dam/aba/uncategorized/international_law/report_with_recommendation.authcheckdam.pdf ("[t]he foreign lawyer or foreign in-house counsel must be subject to effective regulation and discipline by a duly constituted professional body or a public authority, or, in its discretion, be otherwise authorized by [this highest court of appellate jurisdiction] to practice in this jurisdiction as an in-house counsel?");

The ABA policies dealing with foreign in-house counsel de facto exclude over 70 percent of foreign lawyers, particularly lawyers from civil law jurisdictions, who are either not required or not even legally allowed to be members of the bar when practicing as in-house counsel. For example, a lawyer admitted to the practice of law in France, upon going in-house, has to surrender her bar admission status, and consequently, does not fall under the current ABA definition of foreign lawyer.

Id. at, p. 1.

20. A.B.A. MODEL REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES, RES. 105 (Feb. 8, 2016) (adopted as revised and amended), available at http://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_midyear_105.docx [hereinafter ABA Res. 105]. For additional information about regulatory objectives, see Laurel S. Terry, *Why Your Jurisdiction Should Consider Jumping on the Regulatory Objectives Bandwagon*, 22(1) PROF. L. 28 (Dec. 2013).

United States.²¹ In April 2016, Colorado became one of the first states to adopt regulatory objectives when it added them as a preamble to the Colorado Supreme Court's rules regarding lawyer regulation.²²

During the summer of 2016, there were several different developments related to proactive lawyer regulation and entity regulation. In June 2016 in Philadelphia and in September 2016 in Washington, D.C., a number of United States regulators and other stakeholders met for the second and third time with their Canadian counterparts in order to discuss these topics.²³ Canadian and U.S. regulators also met for a networking breakfast that was held in June 2016 in conjunction with the ABA's annual ethics conference.²⁴ There were additional opportunities for discussions in July 2016 when regulators and academics from around the world met at Fordham Law School for the seventh International Legal Ethics Conference (ILEC 2016).²⁵ The attendees included academics from approximately seventy

21. See A.B.A. Res. 105, *supra* note 20, at 8 (“[n]early two dozen jurisdictions outside the U.S. have adopted them in the past decade or have proposals pending. Australia, Denmark, England, India, Ireland, New Zealand, Scotland, Wales, and several Canadian provinces are examples”). For more information about the work that led to the adoption of this resolution, see generally A.B.A., *Comm’n on the Future of Legal Services*, <https://perma.cc/4UMA-3F73> (last visited Apr. 5, 2017).

22. In April 2016, the Colorado Supreme Court added a Preamble to Chapters 18 to 20, which is the location of the rules governing the practice of law. State of Colo. Judicial Dep’t, *Rule Change: Rules Governing the Practice of Law* (Apr. 6, 2016), [https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2016/2016\(06\)%20clean.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2016/2016(06)%20clean.pdf) [<https://perma.cc/E6QB-ZMU4>] (Colorado Supreme Court approves regulatory objectives) [hereinafter Colorado Regulatory Objectives Preamble]. Among other things, this Preamble explains that “in regulating the practice of law in Colorado in the public interest, the Court’s objectives include [nine objectives].” *Id.* at 1. Colorado’s regulatory objectives differ from the objectives found in A.B.A. Resolution 105, *supra* note 20. See *id.*

23. The minutes from the June 2016 and July 2016 meetings are available on the Colorado PMBR webpage. See Office of Att’y Regul. Counsel, Proactive Management-Based Regulation Materials, Colo. Sup. Ct., (Nov. 6, 2016) <https://perma.cc/EK25-7KZ2>. For additional information on proactive regulation, see Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717 (2016); see also Entity Regulation Frequently Asked Questions, Nat’l Org. Bar Counsel, [http://www.nobc.org/docs/Global%20Resources/Entity%20Regulation/Entity.Regulation.Committee.FAQs.FINAL.07142015.\(00000003\).pdf](http://www.nobc.org/docs/Global%20Resources/Entity%20Regulation/Entity.Regulation.Committee.FAQs.FINAL.07142015.(00000003).pdf) [<https://perma.cc/D4Q6-N25N>]. This FAQ document (and updated versions) can be accessed from the NOBC’s “Global Resources” webpages. See Nat’l Org. Bar Counsel, Global Resources, <https://perma.cc/M23V-XKNT>.

24. See A.B.A., 42nd Nat’l Conf. Professional Responsibility, Program (Philadelphia) (June 1-3, 2016), http://www.americanbar.org/content/dam/aba/events/professional_responsibility/2016%20Meetings/Conference/2016_conf_schedule.authcheckdam.pdf (listing the U.S./Canadian Regulators’ Roundtable). The author has personal knowledge that this was the second networking breakfast and that the NOBC used the Can-Am regulator listserv to invite regulators to attend this networking breakfast.

25. See generally ILEC 2016, *Int’l Legal Ethics Conference VII*, FORDHAM LAW SCHOOL (2016), https://www.fordham.edu/info/23510/ilec_2016. The author, for example, participated in meetings regarding proactive regulation and FATF, as well as attending a number of ILEC sessions.

United States law schools, along with individuals from more than sixty countries.²⁶

There were a number of TLP-related events that occurred during the ABA's 2016 Annual Meeting in San Francisco. For example, during this meeting, the ABA changed its Bylaws so that the Task Force on International Trade in Legal Services became a Standing Committee.²⁷ During the ABA Annual Meeting, the Standing Committee sponsored a roundtable session on the topic of "association," which involves the relationships between foreign and domestic lawyers, rather than the practice rights of foreign lawyers.²⁸

During the 2016 ABA Annual Meeting, the ABA Commission on the Future of Legal Services unveiled its final report and announced the creation of a new ABA Center for Innovation, which was a key recommendation contained in the report.²⁹ The ABA Journal noted that, among other things, "the center will track the innovation efforts of the domestic and international legal services community."³⁰ There has been interest outside the United States in this Commission's work regarding innovation, access to justice, and regulation of legal services.³¹

The topics of access to justice, innovation, and regulation were among the topics discussed one month later, in September 2016, when the DC Office of Disciplinary Counsel sponsored the 5th International Conference of Legal Regulators.³² There were a number of United States regulators in

26. See ILEC 2016, *Participants by Country*, FORDHAM LAW SCHOOL (2016), https://www.fordham.edu/info/23510/ilec_2016/8329/participants_by_country.

27. See Resolution and Report 11-7, Amends § 31.7 of the Bylaws to create a Standing Committee on International Trade in Legal Services (Aug. 7-8, 2016), https://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_annual_11-7.docx.

28. See A.B.A. Task Force on Int'l Trade in Legal Servs., *Roundtable Announcement: Going Global: Association between Local and Foreign Lawyers and Law Firms* (San Francisco) (Aug. 6, 2016), http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/internationaltradetf.html (program announcement and materials available as links).

29. See A.B.A. COMM'N FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES (Aug. 2016), <http://abafuturesreport.com/2016-fls-report-web.pdf> [<https://perma.cc/ZWP3-HLZK>]; see also Victor Li, *Go for Launch: The ABA's new Center for Innovation will drive efforts to develop new methods of delivering legal services*, A.B.A. J. 66 (Nov. 2016) (reporting on the unveiling of the report and the announcement about the new Center); see also LAW SOC. ENGL. & WALES, THE FUTURE OF LEGAL SERVICES (Jan. 2016), <http://www.lawsociety.org.uk/news/documents/Future-of-legal-services-pdf/>.

30. Li, *supra* note 29, at 66.

31. See, e.g., Jonathan Goldsmith, *A UK Center for legal innovation?*, LAW GAZETTE (Aug. 8, 2016), available at <https://www.lawgazette.co.uk/comment-and-opinion/a-uk-centre-for-legal-innovation/5057036.article>.

32. See, e.g., International Conference of Legal Regulators 2016 (Sept. 2016), <https://perma.cc/SZ9C-L3YU>. The International Conference of Legal Regulators (ICLR) is an organization that was launched in 2012. For more information about the ICLR, see Laurel S. Terry, *Transnational Legal Practice* (International) [2010-2012], 47 INT'L LAW 485, 493-94 (2013); see also Laurel S. Terry, *Creating an International Network of Lawyer Regulators: The 2012 International Conference of Legal Regulators*, 82(2) BAR EXAM'R 18 (June 2013).

attendance; an ICLR webpage hosted by the UK Solicitors Regulation Authority was launched in conjunction with this conference.³³

At the Section's Fall Meeting in October 2016, which was held in Tokyo, the TPM Committee sponsored several sessions that addressed topics related to innovation and regulation.³⁴ Another important event that took place in October 2016 was the plenary session of the Financial Action Task Force which received the FATF's 4th Mutual Evaluation Report of the United States.³⁵ On December 1, 2016, following the required quality and consistency review,³⁶ the FATF issued the final version its 4th Mutual Evaluation Report of the United States.³⁷ Given the timing of the release of this report, a full analysis is beyond the scope of this article, but this report is likely to lead to additional conversations between the U.S. government and the legal profession.³⁸

33. See International Conference of Legal Regulators, <https://iclr.net/>.

34. See N.Y. Ct. of Appeals, *supra* note 11.

35. See Fin. Action Task Force (FATF), *Outcomes of the Plenary meeting of the FATF*, Paris (Oct. 19-21, 2016), <http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-october-2016.html#mer> [<https://perma.cc/UN2V-A5RN>]. The FATF webpage reported the following regarding the October 2016 Plenary Session:

Discussion of the mutual evaluation reports of Switzerland and the United States

The Plenary discussed the mutual evaluation reports of Switzerland and the United States which set out the level of effectiveness of their AML/CFT systems and their level of compliance with the FATF Recommendations. The reports were prepared on the basis of the FATF Methodology for assessments, which requires countries to take into account the effectiveness with which AML/CFT measures are implemented, as well as technical compliance for each of the FATF Recommendations. The mutual evaluation of the United States was conducted jointly with the Asia/Pacific Group on Money Laundering, of which the country is also a member. The Plenary discussed the assessment team's key findings, priority actions, and recommendations regarding each country's AML/CFT regime. The FATF will finalise the mutual evaluation reports for publication after the quality and consistency review, in accordance with its procedures.

36. See generally FATF, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations* (Oct. 2013), <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>.

37. See FATF, *Anti-money laundering and counter-terrorist financing measures – United States, Mutual Evaluation Report* (Paris) (Dec. 1, 2016), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html>.

38. The "Priority Actions" listed in the report include the following: "[a]pply appropriate AML/CFT obligations as follows: . . . (b) On the basis of a specific vulnerability analysis, to lawyers, accountants, trust and company service providers (other than trust companies which are already covered)." *Id.* at 11. In the technical compliance section, the U.S. was rated partially compliant or non-compliant with respect to some of the FATF Recommendations that applied to lawyers. *Id.* at 218-22. For additional information about the FATF mutual evaluation process and potential impact on the United States, see Laurel S. Terry, *U.S. Legal Profession Efforts to Combat Money Laundering & Terrorist Financing*, 59 N.Y.L. SCH. L. REV. 487 (2014-15).

IV. Developments Outside of the United States

During 2016, there were a number of developments outside the U.S. that have transnational legal practice implications. The most noteworthy event was the June 2016 United Kingdom “Brexit” vote in favor of a referendum to have the UK leave the European Union.³⁹ The Brexit vote has caused great uncertainty and there is likely to be significant changes ahead for lawyers and clients who work in the UK. In a column in the TPM Committee’s newsletter, Stephen Denyer, who is the Director of Strategic Relationships for the Law Society of England and Wales, wrote the following:

The Law Society has put together a list of priorities for the UK government when it starts negotiations to leave the EU. This includes maintaining practice and establishment rights for our members in the EU, as well as ongoing cooperation in civil and criminal matters. We also want arrangements to remain in place that allow EU, and non-EU, lawyers and law firms continuing access to the English and Welsh legal services market and the solicitor qualification.

England and Wales is, and will remain, a leading global centre for legal services. The strength and stability of English and Welsh law, our independent courts and the excellence of our legal services providers have resulted in us being the global governing law for contracts and the jurisdiction of choice for dispute resolution.⁴⁰

One result of the “Brexit” vote is that there has been an influx of lawyers applying to become licensed in Ireland.⁴¹

Although there were discussions in 2016 about whether and how to amend the 2007 UK Legal Services Act,⁴² it seems unlikely that action will be taken on this in the near future given the activity required by Brexit. In other developments, during 2016, the UK competition authority released its interim report on the legal profession (deciding not to open an

39. See generally UK Dep’t for Exiting the European Union, <https://www.gov.uk/government/organisations/departments-for-exiting-the-european-union> [<https://perma.cc/3DCM-AVMS>].

40. See TMPC Fall 2016 Newsletter, *supra* note 2, at 9.

41. See Max Walters, *Brexit: Applications to Practise Law in Ireland Keep Rising*, LAW SOCIETY GAZETTE (Sept. 13, 2016), <https://www.lawgazette.co.uk/law/brexit-applications-to-practise-law-in-ireland-keep-rising/>
5057570.article?utm_source=dispatch&utm_medium=email&utm_campaign=GAZ13092016.

42. See, e.g., Legal Services Board, News and Publications, *Delivering Better Outcomes for Consumers and Citizens: LSB Outlines Options for Legislative Reform* (Sept. 12, 2016), http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2016/20160909_Delivering_Better_Outcomes_For_Consumers_And_Citizens.html.

investigation)⁴³, and the Bar Standards Board of England and Wales received approval to regulate alternative business structures or ABS firms.⁴⁴

Another noteworthy event of 2016 was the April release of the so-called “Panama Papers.” This EU Parliament document provides a brief summary of what occurred:

On April 3rd 2016, the International Consortium for Investigative Journalism (ICIJ) uncovered 11.5 million documents from Mossack Fonseca, a global law firm based in Panama, also known as the “Panama Papers” scandal. Although thorough analysis of the documents is still needed, these records apparently show that Mossack Fonseca created more than 214,000 offshore entities in 21 jurisdictions considered as tax havens connected to people in more than 200 countries and territories.⁴⁵

United States law firms were among the law firms whose names were revealed in the Panama Papers leak.⁴⁶ This event, along with the Global Witness undercover operation, portions of which were publicized on the United States television show “60 Minutes,” have focused attention on the issue of the degree to which the legal profession is or is not involved in activities related to money laundering.⁴⁷

One of the positive developments of 2016 was the IBA’s issuance of its Directory of Regulators.⁴⁸ This Directory, which was an initiative of the

43. See UK COMPETITION & MARKETS AUTHORITY (CMA), LEGAL SERVICES MARKET STUDY, Interim Report (July 8, 2016), <https://assets.publishing.service.gov.uk/media/577f76daed915d622c0000ef/legal-services-market-study-interim-report.pdf>.

44. See, e.g., Bar Standards Board, *Press Release: Alternative Business Structures And Opportunities For The Bar And The Wider Legal Profession* (Nov. 29, 2016), <https://www.barstandardsboard.org.uk/regulatory-requirements/regulatory-update-2016/bsb-regulatory-update-august-2016/alternative-business-structures-and-opportunities-for-the-bar-and-the-wider-legal-profession/>; see also Bar Standards Board, *Entities, including Alternative Business Structures*, <https://www.barstandardsboard.org.uk/regulatory-requirements/entities,-including-alternative-business-structures/>.

45. See Law Society of England and Wales, Brussels Agenda, European Parliament Inquiry into Panama Papers (Aug.-Sept. 2016); *Request for the setting up of a Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering and tax avoidance and tax evasion*, EUR. PARLI. DOC. PE 583.232/CPG (May 24, 2016), <http://www.europarl.europa.eu/resources/library/media/20160602RES30047/20160602RES30047.pdf>.

46. Brian Baxter, *Dozens of Big Firms to Appear in New ‘Panama Papers’ Database*, AM LAW DAILY (May 8, 2016), <http://www.americanlawyer.com/printerfriendly/id=1202757101004>.

47. See, e.g., Louise Story, *Report Describes Lawyers’ Advice on Moving Suspect Funds into U.S.*, N.Y. TIMES, A12 (Feb. 1, 2016), available at https://www.nytimes.com/2016/02/01/us/report-describes-lawyers-advice-on-moving-suspect-funds-into-us.html?_r=0 [<https://perma.cc/8EGC-VRQZ>]; see also Michael D. Goldhaber, *When a Kleptocrat Comes Calling*, AM. LAW. 18 (Mar. 2016).

48. See Int’l Bar Ass’n, *Directory of Regulators of the Legal Profession* (2016). The report is available in a pdf format or webpage format as links from the Int’l B. Ass’n, Bar Issues Commission, http://www.ibanet.org/barassociations/bar_associations_home.aspx [<https://perma.cc/MRN4-PQ3G>]. The 2014 IBA Global Legal Services Report has been shared with

Regulation Committee of the IBA Bar Issues Commissions, was prepared by Alison Hook and was issued in June 2016.⁴⁹ It included a directory that listed the admissions regulators, conduct regulators, and discipline regulators for legal professionals located in WTO Member States.⁵⁰ It is available online in both webpage and pdf formats and also includes a section that analyzes the data.⁵¹ This IBA Directory supplements the useful 2014 IBA Global Legal Services Report (which continued to be cited in 2016 in trade discussions and elsewhere.)⁵² Another IBA initiative during 2016 was a two-day capacity-building workshop conducted in Zimbabwe for approximately seventy lawyers and regulators.⁵³ Finally, during 2016, the IBA released its somewhat controversial report on the independence of the profession⁵⁴ and a “Practical Guide” on business and human rights for business lawyers that supplements its practice guide for bar associations.⁵⁵

There were a number of important transnational legal practice developments in Canada during 2016. For example, a number of Canadian jurisdictions launched or continued initiatives related to entity regulation and proactive regulation.⁵⁶ Nova Scotia, which is the furthest along in this process, launched a pilot self-assessment project that has been influenced by

international trade negotiators and used in trade discussions. *See* TLP 2015, *supra* note 2, at 538; *see also* TLP 2014, *supra* note 17, at 428.

49. *See* Int'l Bar Ass'n Directory, *supra* note 48.

50. *Id.*

51. *Id.*

52. INT'L BAR ASS'N, IBA GLOBAL REGULATION AND TRADE IN LEGAL SERVICES REPORT 2014 (Oct. 2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2530064. For additional information, *see* TLP 2014, *supra* note 17, at 428-29.

53. The trip consisted of a workshop for approximately seventy lawyers which took place in Nyanga, Zimbabwe on November 3-4, 2016. The IBA volunteers, who joined Zimbabwe lawyers and regulators, included lawyers from Africa, Europe, and North and South America. *See* Email from Alison Hook to IBA ITILS Members (Nov. 8, 2016) (on file with author).

54. *See, e.g.*, INT'L B. ASS'N, THE INDEPENDENCE OF THE LEGAL PROFESSION: THREATS TO THE BASTION OF A FREE AND DEMOCRATIC SOCIETY (Sept. 23, 2016), <http://www.ibanet.org/Document/Default.aspx?DocumentUid=6E688709-2CC3-4F2B-8C8B-3F341705E438>; *see also* Letter from Legal Services Board Chief Executive Neil Buckley to IBA President David Rivkin (Sept. 23, 2016), <https://perma.cc/LP38-KG56> (identifying perceived errors about the LSB in the IBA's draft report on the Independence of the Legal Profession); *see also* Jonathan Goldsmith, *Separation of powers, US-style*, LAW GAZETTE (Sept. 26, 2016), https://www.lawgazette.co.uk/analysis/comment-and-opinion/separation-of-powers-us-style/5057912.article?utm_source=dispatch&utm_medium=email&utm_campaign=GAZ26092016 (citing the IBA draft report when commenting on the U.S. Supreme Court's N. Carolina Dental Board case).

55. *See* INT'L B. ASS'N, IBA PRACTICAL GUIDE ON BUSINESS AND HUMAN RIGHTS FOR BUSINESS LAWYERS (Adopted May 28, 2016), <https://perma.cc/DN2J-GQXH>; *see also* INT'L B. ASS'N, IBA PRACTICAL GUIDE ON BUSINESS AND HUMAN RIGHTS FOR BAR ASSOCIATIONS (Adopted Oct. 8, 2015), <https://perma.cc/U5RV-NUUD>.

56. *See* Terry, *supra* note 23, at 729-50 (discussing developments in Nova Scotia, Ontario, British Columbia and the “Prairie” Provinces of Alberta, Manitoba, and Saskatchewan).

prior developments in Australia.⁵⁷ Other 2016 developments included several important lawyer-regulation cases,⁵⁸ including cases on solicitor-client privilege,⁵⁹ which may be increasingly important in light of the FATF's 4th Mutual Evaluation Report for Canada which was issued in 2016 and called for changes in aspects of its lawyer regulation.⁶⁰

Transnational legal practice developments were not limited to the English-speaking common-law world. For example, in February 2016, Korea revised its Foreign Legal Consultant Act.⁶¹ In April 2016, in

57. See *MSELP Self-Assessment Pilot Project*, N.S. BARRISTERS' SOC'Y (Nov. 30, 2016), <https://perma.cc/S74D-TBYB>; see also *Framework For Legal Services Regulation*, N.S. BARRISTERS' SOC'Y, <http://nsbs.org/framework-legal-services-regulation> (last visited April 4, 2017); see also Terry, *supra* note 23, at 749-51.

58. *Compare Trinity Western University v. The Law Society of British Columbia*, [2016] CCA 423 (Can.) (finding unreasonable the Law Society of British Columbia's denial of accreditation to a religiously-affiliated law school) *with* *Trinity Western University v. The Law Society of Upper Canada*, [2016] ONCA 518 (Can.) (upholding the Law Society's denial of accreditation to a religiously-affiliated law school, finding reasonable the Law Society's conclusion that public interest in ensuring equal access to the profession justified a degree of interference with the appellants' religious freedoms).

59. *Alberta (Information and Privacy Commissioner) v. University of Calgary*, [2016] SCC 53 (Can.); *Canada (National Revenue) v. Thompson*, [2016] SCC 21 (Can.); *Canada (Attorney General) v. Chambre des notaires du Québec*, [2016] SCC 20 (Can.); see also *Canada (Attorney General) v. Fed'n of Law Soc'ys of Can.*, [2015] 1 S.C.R. 401 (Can.) (striking portions of Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act).

60. See FATF, *Canada's Measures To Combat Money Laundering And Terrorist Financing*, Mutual Evaluation Report (Sept. 15, 2016), <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html> (includes links to the full report and to the Executive Summary). The report states,

Canada faces important money laundering and, to a lesser extent, terrorist financing risks. The authorities have a good understanding of these risks and have put a number of mitigating measures in place. The AML/CFT regime covers all high-risk areas, except legal counsels, legal firms and Quebec notaries; the Supreme Court declared AML/CFT measures inoperative in their respect. The lack of coverage of these professions is a significant loophole in Canada's AML/CFT framework and raises serious concerns. Legal persons and arrangements are at high risk of misuse for money laundering or terrorist financing purposes, and that risk is not satisfactorily mitigated.

Id. at 1.

61. See Office of U.S. Trade Rep., *The 2016 National Trade Estimate Report*, at 279-80 (2016), <https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf> [<https://perma.cc/3XWU-WQQT>] (this annual government report is statutorily required). See also Office of U.S. Trade Rep., *2016 National Trade Estimate Report*, <https://perma.cc/VV6W-5F96> (webpage cites the statutory requirement of §181 of the Trade Act of 1974, as amended several times). This report explains the United States position as follows regarding the February 2016 Korean amendments:

On August 4, 2015, the Ministry of Justice submitted a bill to amend the Foreign Legal Consultants Act that would allow joint ventures in Korea with law firms from the United States and other countries with similar provisions in their free trade agreements with Korea. However, the United States expressed concern that the bill contains many requirements, unique to Korea that would discourage U.S.

connection with the rulemaking process implementing this Act, the ABA and others submitted comments objecting to certain aspects of the law.⁶² The ABA's letter expressed its concern that under Korea's new law, "the nearly two dozen U.S. law firms that have already established offices in Seoul would find it difficult or even impossible to exercise their choice to be engaged in the practice of local law as negotiated and embodied in KORUS."⁶³ The letter identified three provisions that the ABA believed would "create serious impediments to the successful implementation of the final stage of the legal services provisions of KORUS."⁶⁴ To date, however, Korea has not adopted any further amendments to its Foreign Legal Consultant Act.⁶⁵

In addition to Korea, United States lawyers and law firms have been interested in market access in a number of other countries, including India.⁶⁶ Although there were several 2016 initiatives to provide greater market access for foreign lawyers or law firms in India, no definitive action had been taken.⁶⁷

In addition to the TLP activities in Asia, there were a number of TLP developments in Europe. For example, the Council of Bars and Law Societies of Europe (CCBE) was active with respect to issues related to the surveillance of lawyers⁶⁸ and the EU's efforts to develop its 4th money

companies from starting joint ventures. The bill would limit a foreign law firm's ownership of the joint venture to 49 percent, require the firms comprising the joint venture to have been in operation for three years, and exclude joint ventures from working on litigation, notarization, labor affairs, intellectual property rights, business involving the Korean government, and cases on family relations or inheritance. While the bill would allow foreign law firms to operate joint ventures in Korea for the first time, these provisions would undermine the legislation's purpose of facilitating trade in legal services between the two countries. On February 4, 2016, the bill was passed by the National Assembly. The U.S. Government will continue to urge Korea to review its overall approach to opening the legal services market and to ensure Korea complies with its international obligations.

Id.

62. See, e.g., Letter from Thomas Susman, Director, A.B.A. Governmental Affairs Office, to the Ministry of Justice of the Republic of Korea (Apr. 11, 2016), http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2016apr11_korea_l.authcheckdam.pdf.

63. *Id.*

64. *Id.*

65. See Email from Kristi Gaines, A.B.A. Staff Counsel to the Standing Committee on International Trade in Legal Services, to author (Dec. 1, 2016) (on file with author).

66. See, e.g., Transnational Legal Practice (International) [2010-12], *supra* note 32, at 491-92.

67. See, e.g., *Standing Committee on International Trade in Legal Services*, A.B.A. (Oct. 2016), http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/internationaltradedf.html (contains numerous stories about developments in India including an October 3, 2016 Hindustan Times story entitled "Plan for liberal legal sector hits Bar Council hurdle").

68. See Council Bars Law Soc. Europe, *CCBE Press Release: CCBE Publishes Recommendations on the Protection of Client Confidentiality within the Context of Surveillance Activities* (May 23, 2016),

laundrying directive.⁶⁹ The CCBE was also among the bar associations that denounced the mass dismissals of judges in Turkey.⁷⁰

During 2016, a number of law firms opened offices in other countries, a few closed offices, and there were some cross-border law firm mergers.⁷¹ Another noteworthy set of developments included the increasing pace of announcements related to the use of artificial intelligence in the provision of legal services.⁷²

V. Conclusion

The developments highlighted in this article have shown that transnational legal practice is an important phenomenon, and that it continued to grow in 2016.

<https://perma.cc/22ER-6YNV> http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Pressreleases/2016/EN_SVL_PR_0516.pdf

69. See, e.g., CCBE, *supra* note 7, at 4.

70. See, e.g., CCBE, *CCBE PRESS RELEASE: The CCBE Denounces Recent Mass Dismissals Of Judges In Turkey* (July 20, 2016), http://www.ccbe.eu/NTCdocument/EN_pr_0816pdf1_1469027614.pdf; see also Int'l Bar Ass'n, *News Release: IBAHRI Condemns Mass Removal Of Judges Following Attempted Coup In Turkey* (July 20, 2016), <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4c12eee3-bf1d-47cc-9080-9e4464d4bb85>; see also Statement of Paulette Brown, President, American Bar Association Re: Recent incidents in Turkey (July 19, 2016), https://www.americanbar.org/news/abanews/aba-news-archives/2016/07/statement_of_paulett.html.

71. See generally IBA Global Legal Services, Discussion Forum, <http://www.ibanet.org/Forum/Detail.aspx?ForumUid=03E2F023-6378-42AE-B3D6-051B6DDB2AEA> [<https://perma.cc/H53P-WDXZ>].

72. See, e.g., Susan Beck, *Inside ROSS: What Artificial Intelligence Means for Your Firm*, LAW.COM (Sept. 28, 2016), <http://www.law.com/sites/almstaff/2016/09/28/inside-ross-what-artificial-intelligence-means-for-your-firm/>.