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The Legal Profession in a Globalized World

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I want to take this opportunity to speak with you on the subject of "The Legal Profession in a Globalized World." The topic could hardly be more timely in the field of law. Its importance will continue to increase in coming years, especially in the new millennium after the turn of the century.

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International economic, financial, technological and political events have created a pressing need to look for new legal solutions at regional and worldwide levels. The Summit of the Americas, attended by thirty-four Western Hemisphere heads of state in Miami, Florida, in December 1994, established as a goal in its Declaration of Principles and Action Plan the creation of a free trade zone by the year 2005. Through the Business Network for Hemispheric Integration, governments and private enterprise have been holding meetings with this goal in mind. Obviously, once a Hemisphere-wide free trade area is established, uniform laws become imperative both in the field of commerce itself and in related fields transcending the economic, financial and technological spheres. This could create a great opportunity for attorneys in Western Hemisphere nations to develop a transnational or multinational practice, as I will go on to explain in further detail.

I. SUBREGIONAL MARKETS

In the Western Hemisphere, subregional markets have been forming to create free trade areas within groups of nations and, at the same time, creating economic pressure groups aimed toward entering into negotiations with other regional and subregional groups. Some of these subregional markets have been in existence for more than thirty years, as in the case of the Central American Common Market (CACOM), the Caribbean Common Market (CARICOM) and the Latin American Free Trade Association (LAFTA). Others are more recent, such as the Andean Pact (1969), Mercosur and NAFTA. The most significant progress towards economic integration has been made in recent years as a result of freer thinking, economic deregulation and the process of democratization in the nations of the Western Hemisphere.

NAFTA (Canada, the United States and Mexico) and Mercosur (Argentina, Brazil, Paraguay and Uruguay) are the most significant examples of the trend toward integration in the Americas. Chile has become a part member of Mercosur, and very possibly may also join NAFTA in the

not-too-distant future. The Andean Pact, CACOM and CARICOM nations continue to strive to achieve an ever-increasing degree of integration. The G-3 (Venezuela, Colombia and Mexico) have smoothed over their economic differences to commit to a free trade area.

The subregional groups have in turn signed agreements providing for economic cooperation, to a greater or lesser degree, with the European Community, particularly in matters relating to tariffs and quotas for products entering the European market duty-free.

II. HARMONIZATION OF LAWS

As a result of the process of integration, attempts are being made to produce compatible statutes or treaties to be ratified by all nations. For example, the Inter-American Agreement Against Corruption has already been ratified by eight Western Hemisphere nations, the Inter-American Convention on International Commercial Arbitration by seventeen. Other agreements have come about as a result of meetings of the Organization of American States (OAS) Inter-American Conferences specializing in private international law related to trade and private-law issues, both substantive and procedural, and have been ratified by a number of Western Hemisphere nations.

Western Hemisphere nations have been signing international treaties on related subjects, such as the treaty establishing the World Trade Organization, which was signed in Marrakech on April 15, 1994, as a result of the Uruguay Round of free trade negotiations, with all of its accompanying documents, such as exhibit 1C, which regulates some matters relating to intellectual property rights.

Among the projects which have been addressed or are under consideration in the name of integration are uniform legislation in the fields of environmental protection, labor law, international arbitration and mediation, loan guarantee instruments, protection for foreign investment and corporate law.

III. TRANSNATIONAL PRACTICE OF LAW

If there are to be uniform laws applicable in more than one country, it is logical to contemplate the possibility of the transnational practice of law–that is, the possibility that a lawyer from one country might practice his profession in another country sharing the same laws. Clearly, it is much easier to reach agreements on multinational practice in areas where the various countries concerned have laws in common. These might be referred to as "common" laws, in that they are common to a certain group of nations. If laws on industrial property were to become uniform, for example, between Venezuela and Argentina, there would be no reason for restrictions on an Argentine attorney seeking to practice in this area in Venezuela or vice-versa.

It is evident that there are laws that do not lend themselves to the common approach, and thus differ from one group member country to another. Here there would have to be limitations on the practice of law in more than one country. But the important thing is to recognize that, in principle, the harmonization of laws throughout the Western Hemisphere and the resulting uniformity of laws in the region will create the possibility of transnational practice for the attorney. Of course, this must be duly regulated if it is to be recognized and accepted by the public.

Some steps have been taken in this direction, and although few in number, these nonetheless represent a good beginning. Further development will take place as uniform laws become more numerous and widespread throughout the Americas. At present, Mercosur has only a draft framework protocol on legal services. NAFTA has approved a model set of rules for foreign legal counsel. The agreement among the G-3 nations contains references to professional practice in Venezuela, Colombia and Mexico. In the CACOM, there are outdated treaty provisions ill-suited to modern times. In short, there is in our judgment nothing truly substantive that could be pointed to as major progress in this field, although the NAFTA concept of foreign legal counsel at least represents a step in the right direction.

IV. THE MULTINATIONAL LAWYER

While, as we have seen, there is still a lack of uniformity in many areas of law, making the transnational practice of the profession more difficult, we often encounter nowadays the lawyer with clients who wish to expand their business activities beyond their country of origin, making it necessary for the lawyer, whom we shall refer to as "multinational," to have a general knowledge of the laws of the other countries concerned. We cannot expect the multinational lawyer to be an expert in all areas of the law in the country in which his client seeks to do business, but he does have a duty, in my opinion, to have a general knowledge of those laws of the foreign country which might affect his client's business activities.

One may assume that clients will want to benefit from subregional markets if they are located within such markets, or even if this is not the case, from the process of integration throughout the Hemisphere as a whole, from the prevailing spirit of deregulation, and from the trend toward a world without borders. Exports from one country to another are growing more and more, multinational business ventures are expanding, and in some cases exporters wish to establish their own distribution centers or agencies in several countries, often to create subsidiaries or branches to sell directly to their customers in the countries concerned.

The multinational lawyer must answer crucial questions from his client relating not only to the local laws of the home country, but also to international treaties or agreements that may apply to the sale of products between one country and another, the possibility of writing international arbitration clauses into contracts, the manner in which liability and title pass from one party to another in the course of the sale of products and numerous other issues that must be resolved in international sales contracts. The situation is further complicated if the multinational lawyer's client has contracts creating agents, distributors or representatives in other Western Hemisphere nations, because in several of these countries there are protectionist

laws affecting the agents, distributors or representatives of foreign companies. The multinational lawyer will at least need to be able to make his client aware of the existence of such laws and the risks and liability the client might incur. When a subsidiary or branch is to be created in a foreign country, the multinational lawyer must have the general knowledge necessary to apprise his client of the advantages and disadvantages of establishing such entities.

The multinational lawyer must also have a general knowledge of various areas of the law in the foreign country where his client wishes to do business. The lawyer likely must know about import duties on products and various bodies of law, including intellectual property, environment, labor, consumer protection, antitrust, and the laws governing exchange controls, agreements or laws adopted by the country concerned to combat corruption and other areas relevant to his client's business activities.

For a multinational lawyer to study such questions of law in greater depth, he will need to consult an attorney in the country concerned, with whom he must have a relationship based on mutual trust and professional respect, always taking care to ensure that there are no conflicts of interest with other clients of the attorney consulted in the country concerned. It must be quite clear that the ultimate responsibility for an opinion on the local laws of a foreign country must rest with the attorney in that country who has a duly granted license to practice there, and of course the client must be made aware of this.

But as has been shown, the multinational attorney is the guide who leads his client and effectively helps him, through competent professional advice, to do business outside his home country. In this connection it is appropriate to speak of the solid relationship that must exist between the multinational client and his multinational attorney, because the world of integration has necessarily created multinational clients and lawyers, whose relationship becomes more intense with every passing day, and is destined to evolve during the approaching new millennium far beyond anything we can imagine today.

V. CONCLUSION: THE CHALLENGE OF THE TWENTY-FIRST CENTURY

Given all that we have mentioned, there is no doubt that the remainder of the present century and the dawning twenty-first century will present major challenges to the legal profession in the Americas. Lawyers must prepare themselves by assimilating new knowledge that will have to be studied and discussed in special academic training courses and seminars and in the venue of international institutions such as the Inter-American Bar Association. Universities must include these subjects in the academic and professional programs offered at their law schools. The concept of legal ethics must be increasingly reinforced as lawyers move beyond the limits of their national boundaries to apply their knowledge to dealings in a wide variety of different countries and territories, in what may ultimately become a Western Hemisphere without borders, where the figure of the lawyer in a globalized world is an everyday reality.