Legal Glo

By Frank A. Orban III

The Challenges for

Frank A. Orban III, "Legal Globalization: The Challenges for In-House Counsel," *ACCA Docket* 19, no. 2 (2001): 48-62.

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International legal practice, once a rather exotic specialty, has come of age. Today it is just standard practice. Lawyers and governments did not create legal globalization, of course. Rather, it is merely a reflection of the underlying globalization of the economy. McDonald's, for example, now operates in 115 countries,[1] and Coca-Cola sells about sixteen billion cases of its products in 200 countries.[2] Of the 55 mergers in 1998 that involved companies with market capitalizations of more than $3 billion, at least 25 can be classified as international.[3]

Today, as former U.S. Secretary of Labor Robert Reich has observed, "an American economy centered upon American corporations and comprising major American industries—in other words the American economy at mid-century, which easily dominated what limited world commerce there was . . . bears only the faintest resemblance of the global economy at the end of the century in which money and information move almost effortlessly through the global webs of enterprise. There is coming to be no such thing as an American corporation or an American industry."[4]

Much has happened in the economic and sociopolitical arena over the past 50 years that has influenced the evolution of international legal practice. The number of cross-border transactions and mergers has exploded, and the need to address matters that transcend national boundaries, such as environmental and worker-rights issues, has increased. Globalization of economic activity has led to the enforcement of international legal norms in such forms as unilateral and multilateral trade sanctions.[5] The emergence of transnational competition among global law firms has also introduced changes.

THE TELECOMMUNICATIONS REVOLUTION, IN PARTNERSHIP WITH RAPIDLY CHANGING COMPUTER-BASED TECHNOLOGIES, HAS FACILITATED DRAMATIC EXPANSION OF INTERNATIONAL PRACTICE.

The telecommunications revolution, in partnership with rapidly changing computer-based technologies, has facilitated dramatic expansion of international practice.[6] The technology-driven New Economy is becoming a force itself in fostering major new transnational legal developments. It demands global standards, greater international labor mobility for knowledge workers, and new international approaches to such formerly purely domestic issues as privacy and sales tax. Furthermore, many contemporary legal developments have international political aspects and ramifications.

Today, domestic legal practice can no longer be clearly demarcated from international practice. Although international legal specialists are still needed, economic globalization means that in-house lawyers who have been focusing on only domestic issues must become versed in foreign and transnational aspects of their particular subject-matter expertise—whether they specialize in environmental, intellectual property ("IP"), or antitrust law or some other area.

In the past, many corporate counsel did not think it was important to follow and participate in general international initiatives, in contrast to those related directly to their company's business specialty. They tended to defer the promotion and formulation of many international legal initiatives and treaties to academics and private practitioners active in bar organizations.

Whether in the United States or abroad, corporations will continue to be the prompters, objects, or beneficiaries of changes in international law. In-house counsel must therefore concern themselves more with international matters, not only at the level of technical commentary, but also with a broader political perspective and sensitivity to strategic implications. For some, this concern will mean forging new avenues of communication and mutual education with government affairs departments and U.S.-based, as well as overseas, management. For smaller law departments, it may mean that counsel must assume the entire burden of internal education, as well as participate in internationally oriented associations and lobbying efforts.

The sea change in the structure and substance of international law has led to the need for all corporate lawyers, not just those calling themselves specialists, to improve their international competence. This article will suggest areas of core competency development and propose methods for helping law departments to meet the challenges of the new, and evolving, legal globalization.

HISTORY: FROM "LEX AMERICANA" TO LEGAL GLOBALIZATION

Business should recognize that it has created at least 90 percent of international law through course of dealing, litigation, and legislative lobbying.[7] Business has always taken such a formative role, beginning in classical Roman times, continuing with the medieval development of the transnational Law Merchant (*lex mercatoria*), and carrying on with executives and corporate counsel today. Looking to the future, business's influence on the development of international law will only increase.

Fifty years ago, U.S. post-World War II economic dominance created an international legal environment that was subject to a kind of "Lex Americana." The United States had a leading role in reconstructing the economies of Europe and Asia. As a consequence, even countries with established civil law systems, such as Germany, were influenced by U.S. legal approaches. The Americanization of international law occurred not only in private international law, but also in public law. The creation of various conventions, treaties, and international organizations, such as the United Nations, the International Monetary Fund, and the World Bank, exemplifies the American influence on public international law. The European Coal and Steel Community and the Treaty of Rome, which established the European Union ("EU"), also bear clear traces of U.S. influence.[8]

In the 1970s, U.S. corporate law departments were few and had a decided domestic focus. The international legal movers and shakers were principally in private practice. Although corporate lawyers were not significant players in these early years of internationalization, the companies that would spearhead the development of the in-house bar were already leaders in spearheading the new international legal paradigm.

On the trade and investment law front, the United States became a major exporter of capital goods and technology to help rebuild Europe and Japan, as well as a major importer of goods from these reconstructing regions. American business, therefore, had to take an interest in trade law, which led not only to many bilateral trade and tax agreements, but also to the establishment of the General Agreement on Trade and Tariffs ("GATT"), now the World Trade Organization ("WTO").

THE EMERGENCE OF INCREASINGLY POWERFUL FOREIGN COMPANIES IN EUROPE AND JAPAN LED TO MORE COMPLEX TRANSACTIONS BETWEEN U.S. AND FOREIGN ENTERPRISES, INCLUDING JOINT VENTURES, LICENSING, JOINT PRODUCTION, AND MERGERS AND ACQUISITIONS.

As part of postwar reconstruction and anti-Communist strategies, U.S. government policy and the foreign economic environment encouraged overseas investment by American companies. Many hundreds of traditionally domestic companies made direct foreign investments in Europe, Latin America, and, to a lesser extent, Asia. This wave of U.S. foreign investment became the driver of the new international legal practice.

Before 1980, a few major U.S. law firms, such as Baker & McKenzie and Coudert Brothers, dominated international legal practice. Outside of the United States, no comparable international law firms existed. In academia, serious private international and comparative law scholarship was concentrated at a handful of major law schools, including Columbia, Harvard, Michigan, and Stanford. In the corporate world, oil, mining, and transportation companies and early global companies, such as IBM and American Express, pioneered modern international legal development.

In the same period, U.S. investment and technology transfers abroad demanded American-style forms, contracts, and legal approaches. As a result of their expansion into foreign markets, however, as U.S. investors established themselves abroad, they encountered new foreign legal issues in such areas as labor, taxation, exchange control, and investment law.

In the mid-1970s, corporations established in-house legal departments in larger numbers, with the general counsel or another senior in-house lawyer typically overseeing international matters as a sideline in conjunction with outside counsel, primarily the handful of major American firms with offices abroad and sundry local law firms. Starting in the mid-1980s, however, international lawyering as a sideline began to give way. The burgeoning growth of law in countries in which U.S. corporations had invested or with which they traded placed demands on companies. The emergence of increasingly powerful foreign companies in Europe and Japan led to more complex transactions between U.S. and foreign enterprises, including joint ventures, licensing, joint production, and mergers and acquisitions ("M&A").

With economic globalization in the 1990s, U.S. corporate lawyers entered the international legal arena in large numbers. Concurrently, many U.S. law firms began establishing offices in major cities abroad, thus providing increased competition for the international law firm oligopoly that had existed for about three decades. Subsequently, foreign law firms began opening offices outside of their national territories, establishing alliances, and, recently, undertaking transoceanic mergers.[9] The latter amalgamations have further blurred the distinction between American and foreign firms.

In the latter part of the 20th century, significant new law-producing entities, such as the European Union, emerged. In addition, entirely new fields of law, including environmental, consumer protection, human resources, health and safety, and product liability law, and a host of business regulatory regimes governing M&A, competition, advertising, intellectual property, trade, securities, and financial services also appeared. Finally, a plethora of international conventions and agreements, covering everything from endangered species to contracts for the international sale of goods, have introduced new players into the international legal industry—namely, public interest groups, nongovernmental organizations, and career legal academics.[10] Notably, the development of international private law affecting daily business operations has become a mission for groups outside of the business community and outside government.

All of these events compel corporate counsel to reevaluate the international competencies that are necessary for them to serve clients effectively in the global marketplace. Cultivating a global perspective across the legal department is no longer a matter of

choice; it is a benchmark in evaluating departments in the future.

CORE INTERNATIONAL LEGAL COMPETENCE

The international competencies that today's corporate lawyers must have can be divided into three categories: (1) core international legal knowledge, (2) specialized international legal knowledge, and (3) nonlegal ancillary international capabilities and skills.

Core Knowledge

Core international knowledge or competency for all in-house counsel should include the basics of the civil law system, international contract law, customs and trade law, competition and trade practices law, intellectual property law, international dispute resolution, and international taxation. The bodies of law that specifically relate to a corporation's business, such as telecommunications, banking, or transportation, should also be added to this list.

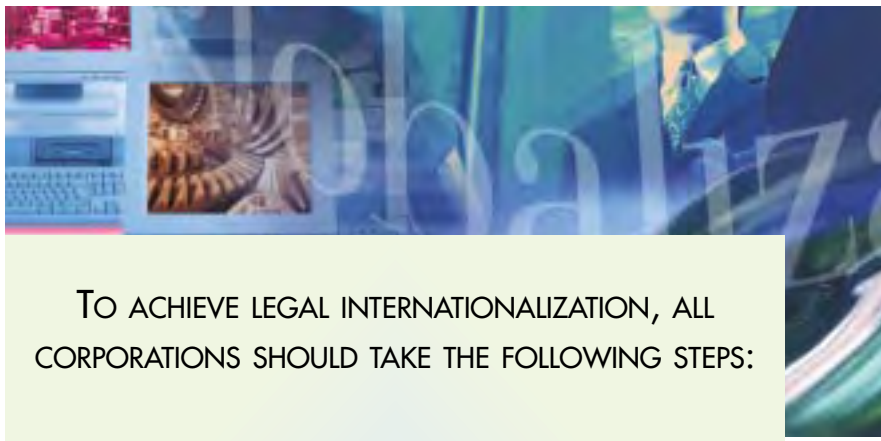
The Civil Law System

Ever increasing legal engagement abroad demands that in-house counsel have some familiarity with civil law, the world's predominant legal system. Although U.S. approaches have heavily influenced international legal developments since World War II, economically powerful countries with civil law systems have also experienced much sophisticated growth.

With moves toward international harmonization of various laws and the related cross-fertilization between legal systems, the distinction today may be less between American and foreign law than between American and international norms. A greater non-American influence exists in various contemporary international legal initiatives. Whether it is in the European Union, China, or Russia, purely American approaches to legal transactions, analysis, and counseling no longer completely suffice. In addition, because the U.S. legal system has become inordinately complex as a result of its preoccupation with dealing preemptively with potential litigation, procedural nuances, tax stratagems, and unique issues arising from the federal structure, foreign approaches to legal transactions can sometimes prove superior to those common in the United States.

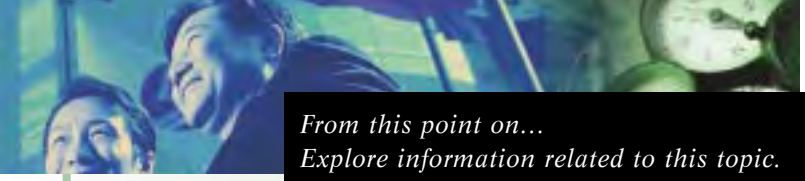
For these reasons, every corporate lawyer should know how the civil law system operates and what its key conceptual underpinnings are. An American lawyer need not become a civil law lawyer, but he or she must be sufficiently sensitized to systemic similarities and differences that can affect the structuring or implementation of specific international transactions. At a minimum, a general familiarity with the civil law system can significantly improve an American lawyer's conceptual communication with local counsel abroad.

No one can be expected to master civil law. It is a complete system that would require years of study to command. It is important to know, however, that civil law is based on Roman law and that it is conceptually and semantically symmetrical so that words and



TO ACHIEVE LEGAL INTERNATIONALIZATION, ALL CORPORATIONS SHOULD TAKE THE FOLLOWING STEPS:

- Increase the interaction between their international specialists and "domestic" colleagues, so that the specialists share their expertise and, in return, draw on colleagues' subject-matter expertise, especially in technical fields.
- Arrange presentations on international legal subjects that have domestic counterparts, such as environmental, labor, antitrust, and intellectual property law.
- Invite foreign-based managers or outside counsel during their U.S. visits to discuss with in-house counsel developments in their region that have legal or political implications.
- Encourage all law department members to participate in an organization that is involved with international aspects of a field of interest to the lawyer, such as ACCA.
- Encourage follow-up discussions between experienced international counsel and law department members after the latter have attended seminars in new international core knowledge areas.
- Advocate for advanced and more practical programs to train international specialists in smaller interactive groups.



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phrases wherever used in the civil code have precisely the same meaning and conceptual thrust. A U.S. corporate counsel should also know that the civil code is "the Law," because judicial opinions have only persuasive authority no greater usually than that of academic commentary when it comes to interpreting the code. Civil law terms and phrases typically carry an interpretive gloss that avoids the need to be overly express in drafting legal texts; because civil law legal documents operate against the fixed background of the civil code, they can be more concise. Furthermore, other laws that are not part of the civil code, such as corporate law, may key off code principles and terminology.

Comparative legal study will inevitably cause the U.S. lawyer to reflect on certain congenital American legal biases and assumptions that are historically based and not globally shared. Any lawyer who confronts foreign transactions and parties should be aware of internationally differing views on the role that law should play in a society's affairs.[11]

International Contract Law

The most common international transaction is a contract for the sale of goods because most companies engage in some import/export. Consequently, in-house counsel must be versed in the rules applicable to such contracts.

For example, the United Nations ("UN") Convention on Contracts for the International Sale of Goods ("CISG") internationalized contract law worldwide for those countries that ratified it. The United States was among them.[12] CISG affects not only simple buy-sell contracts, but also distribution contracts, which, in essence, are framework agreements for subsequent discrete transactions. Unless parties from ratifying countries expressly exclude CISG, its principles will govern most international sales contracts. U.S. counsel must be thoroughly familiar with CISG and cannot rely on a command of what the Uniform Commercial Code would provide. Various civil law concepts surface in the CISG text. For example, CISG introduces the civil law principle of good faith, which has more bite than the similar phrase in U.S. legal parlance,[13] and provides for preemption of U.S. law by civil law principles that arise in new international legal instruments.

Similarly, corporate legal practitioners should know that an increasing number of countries, includ-

ing those in the European Union, have statutes or jurisprudence that severely limit termination rights in distribution and commercial agency arrangements, even in contracts that appear on their face to be governed by U.S. law or that are created by course of dealing, rather than by writing. Protective laws of this sort are typically considered "laws of public order" that cannot be overridden by private agreement. U.S. corporate counsel should be generally aware of trends applicable to the most common contracts and also know where to find country-specific law.

EVERY LAW DEPARTMENT LIBRARY SHOULD HAVE THE FOLLOWING ITEMS:

- Up-to-date service in international (country-by-country) distribution law; European Union law; international litigation/alternative dispute resolution;[1] trade law, such as NAFTA and WTO; and environmental law.
- Comparative civil law primer.
- International works dealing with any specialized areas relevant to a corporation's business.
- International law journals, including general ones, such as the American Bar Association's *The International Lawyer* and the IBA's *The International Business Lawyer*, and those that target company-specific fields or focus on regions with which the company has extensive involvement.
- Kluwer's bimonthly, *International Lawyers' Newsletter*.
- Catalog of internet sites that provide international resources.
- Collection of arbitration rules from the major international arbitration organizations.[2]

1. *See generally* Epstein, Snyder and Baldwin, INTERNATIONAL LITIGATION (3d ed. 1998).
2. The major international arbitration organizations include the American Arbitration Association, the International Chamber of Commerce, the London Court of International Arbitration, the Singapore International Arbitration Center, the Stockholm Chamber of Commerce, China International Arbitration Center, and the United Nations Center for International Trade Law.

Today, structuring contractual and other business arrangements is also increasingly linked with customs, international regulatory, and trade law, as well as dispute resolution considerations. Thus, these considerations become areas of core competency, too.

Basic Customs and Trade Law

What can be called an American car today? What percentage of U.S. companies are importing or exporting goods or services? The answers to these questions should make it clear that trade and customs law is now everybody's business. Corporate counsel should be conversant with the basic legislation and rules in these fields, including the U.S. Customs Modernization Act and North American Free Trade Agreement ("NAFTA"), as well as the WTO's operation. More particularly, any lawyer who deals with purchase or sales contracts—even those that are domestic on their face—should understand the law applicable to classification, origin, valuation, marking, and drawback. What marketing manager would not like to learn, for example, that another percent of sales could drop to the bottom line if a duty drawback refund on an expensive non-U.S. component material could be obtained even though that material was bought in the United States from another vendor? Or that slightly altering the density of a component in an imported finished product could lower its duty rate from 5 percent to zero?

In-house counsel have the added responsibility of ensuring that marketing and sales personnel, among others, understand the potential customs implications of their activities. Because the Customs Modernization Act places many responsibilities on importers that used to be borne by the U.S. Customs Service itself, counsel must assume a key role in supporting their companies in customs compliance efforts. Furthermore, the in-house compliance training required by the act has a substantial legal component that, as a practical matter, can best be performed by a lawyer.

Similarly, an appreciation of trade law rules and remedies should be tucked into every corporate lawyer's international knowledge kit. Counsel must help their clients to understand any trade law or agreements that may affect their business operations and plans, whether NAFTA, WTO, or regional rules. As the law in these areas becomes increasingly arcane, such as determining whether a product is "of U.S. origin," lawyers must be able to assist clients with identifying

issues that are not so self-evident as they may have been in the good old days.

Competition and Trade Practices Law

U.S. international antitrust guidelines, including those related to joint ventures and intellectual property licenses, come increasingly into play as cross-border alliances and other commercial arrangements develop. Corporate counsel should know the European Union's main antitrust rules of the road. Even the simple appointment of a European distributor for U.S.-made products requires counsel's attention to the EU regulations.

Although many competition law principles are similar around the globe, some jurisdictions, including the EU and Canada, have special competition and trade practice concerns that the United States, because of its large and highly integrated market, does not share. For this reason, in-house counsel need at least an overview of EU and Canadian competition law. Because antitrust law tends to evolve quickly, background in this area requires periodic updating.

Intellectual Property

The general corporate practitioner now encounters intellectual property law ("IP") in more international transactions, while, earlier, IP was a specialty area. Consequently, in-house counsel should possess an overview of the principal international intellectual property conventions and how they interact with domestic U.S. law. With the growth of the knowledge-based economy and e-commerce, the law on patents, trademarks, copyrights, and trade secrets is becoming more prominent. Whether in the context of M&A, technology transfer, joint development, or use/misuse of intellectual property on the internet, counsel must anticipate international IP issues. For purposes of this core competency list, IP should encompass emerging, closely related e-commerce topics, such as privacy, control of domain names, and electronic signatures.

Because national IP law cannot keep up with fast-developing global technology, pressure exists to "internationalize" certain IP areas through treaties and conventions. All in-house counsel must be on the lookout for foreign and multilateral IP developments that could potentially affect their companies' vital domestic interests.

International Dispute Resolution

Commercial globalization means that disputes are becoming proportionally more international in character. Consequently, every corporate lawyer should know a little about international litigation and more than a little about international arbitration. Because foreign litigation has many forms and faces, it is too much to expect every corporate lawyer to delve into this area. International arbitration, however, requires general attention: any lawyer may become involved in a global transaction in which arbitration is the preferable means of dispute resolution. All counsel should know, for example, that appropriately drafted arbitration clauses can limit discovery, compress the time and costs of dispute adjudication, set qualifications for arbitrators, and provide for declaratory judgments that can be used as res judicata, collateral estoppel, or a complete defense in other actions, even absent confirmation of the arbitral award.

The typical in-house lawyer cannot and need not become an arbitration specialist. But he or she should understand how a prototypical international arbitration is conducted, how to craft a customized arbitration clause appropriate for the transaction at hand, and the advantages and disadvantages of both the main international arbitration rules and the organizations that administer them, including the American Arbitration Association, the International Chamber of Commerce, the London Court of International Arbitration, and the Stockholm Chamber of Commerce, among others. Most lawyers in corporate practice will deal sometime within any given year with matters that would benefit from international arbitration.

International Taxation

As business has become global, international and foreign tax issues have emerged more frequently in ostensibly routine domestic transactions. Although international taxation has traditionally been perceived as a specialty area, every in-house lawyer needs to understand something about how a value-added tax system works, what double taxation treaties do, and how the United States taxes foreign-source income, Sub-Part F income, and technology transfers. For example, every practitioner should know that the Internal Revenue Service will impute a royalty to a U.S. transferor if it transfers or licenses technology abroad, either royalty-free or for inadequate consider-

ation, even to a subsidiary or as a contribution of capital to a joint venture. Every lawyer should know enough to recognize when international tax considerations may significantly affect the project at hand and make sure that their ramifications are adequately taken into account.

Company Specific Core Knowledge

All in-house counsel should have a feel for international developments in legal fields that relate to the vital interests of their employer, such as telecommunications, transportation, food and drug, or banking. Consequently, each law department will need to add to its core competency list the international perspective on any legal fields of special relevance to its company.

Specialized International Legal Knowledge

An international specialist may be someone who focuses primarily on international legal affairs or someone who works intensively on a substantial foreign transaction or sustains contact with a particular foreign country or region. To be effective, such in-house international specialists must develop and maintain both specific-country and in-depth subject-matter expertise that builds on core legal knowledge areas.

Specific-Country Expertise

Specialists should supplement a general background in comparative law with a sound understanding of the legal regime in the particular country or countries in which they are engaged, especially if they are dealing with developing or transitional economies. Counsel need country-specific expertise to conduct proper oversight of legal affairs of foreign operations and to educate U.S. managers who have responsibilities related to the foreign country. Because the number of countries that can be tracked is finite, counsel should choose countries based on the degree of involvement that their company has with them. It is imperative, however, that Americans keep abreast of key EU and Canadian developments.

In-depth Subject-Matter Expertise

The specialist must command not only the various core knowledge areas but also in greater depth than the generalist with a focus on the application and enforcement of legal principles, as well as the principles themselves. For the specialist, the question is often not whether one can sue, but whether one can collect. This concern pertains particularly to the legal fields that have special relevance to international counsel's employer. Keeping up with bilateral and multilateral legal initiatives in these fields is equally essential. Depending on the company, counsel may have to become expert in immigration, financial instruments, and shipping, among other specialized fields.

Whether the specialized international knowledge is country-specific or subject-matter-related, the sheer quantity of it can be daunting. An experienced international specialist, however, should be able to focus primarily on knowledge maintenance, rather than on initial knowledge acquisition. Of necessity, international specialists will have to shed responsibility for some matters they traditionally have handled and transfer them to domestic colleagues. This necessity means developing good training and support skills, as well as the persuasiveness to entice colleagues to take on more work.

Ancillary Nonlegal Capabilities and Skills

International specialists must possess foreign language capability and political-cultural sensitivity. Even lawyers whose work is not primarily international should acquire such nonlegal skills and knowledge to some degree.

Language Proficiency

Good communication skills are a prerequisite for the contemporary international lawyer. To be truly effective in a country, counsel should command the local language or at least a *lingua franca*, such as being able to speak German in Hungary or Spanish in Brazil. Of course, knowing the local language is not always practical, such as in many Asian and former Soviet Republics. Yet, being monolingual in English is not satisfactory, either.

Each lawyer will have to determine the most appropriate language to learn, given the nature of his or her company's business. Although Chinese, Japanese, and Arabic are in a class of difficulty all their own, counsel can learn most other major languages to a level that permits counsel to function in the foreign environment. Legal proficiency in a language is not the objective because it requires a very high-level command of the language. At a minimum, however, counsel should be able to follow texts and the drift of discussions, if not understand every word, and read the local newspaper. Even a moderate com-

mand of a foreign language will enable a lawyer to work more closely and effectively with translators and local counsel. Ancillary to learning a foreign language itself, counsel should master the standard techniques for controlling bilingual legal documentation and for supervising interpreters and translators.

Realistically, companies that are or aspire to be global players must recognize the need to support intensive language training for at least selected law department members. Such language capability may have domestic utility, as well, as Spanish, French, and other languages become more commonly used in North American business contexts.

NOT ONLY MUST COUNSEL APPRECIATE MAJOR DIFFERENCES IN LEGAL SYSTEMS, BUT ALSO THEY MUST UNDERSTAND FOREIGN CULTURAL ATTITUDES AND POLITICS.

Political-Cultural Sensitivity

Not only must counsel appreciate major differences in legal systems, but also they must understand foreign cultural attitudes and politics. Only with such sensitivity can attorneys practice effectively in the international arena. Both China and Russia, for example, now have extensive bodies of modern business law. But their laws often still rest on Communist-era or statist conceptual underpinnings. This reality manifests itself in regulatory areas, such as foreign investment, in which legislation sets forth general principles that permit the government substantial leeway in changing the rules if the state perceives unacceptable trends. No lawyer can fashion transactions or give good counsel for doing business in China or Russia without a grasp of both local legal rules and local political-cultural attitudes.

The development of political-cultural sensitivity involves training that cannot come from comparative legal study alone. A lawyer may need to be aware, for example, of a nation's desire for a strong central authority or of a collective tendency toward xenophobia in order to structure legal arrangements that will be approved by local regulatory authorities and be accepted over the long term by foreign parties. No formal programs currently exist to assist lawyers with acquiring these skills in an efficient and tailored manner. Reading, traveling, and on-the-job exposure still seem to be the only recourse.

SERVING UNMET NEEDS

This article has considered various needs of law departments in meeting the challenges of legal globalization and has covered some actions that companies and their law departments can take internally to advance. But more is required to support rapid internationalization and on-going training in this broad, ever-changing field. Some of the key additional needs include the following.

In-Depth Training

There is unquestionably a need for in-depth and up-to-date international education and training for both generalists and specialists. Depending on the subject matter, such training might last days or, exceptionally, weeks. Attorneys might even benefit from travel and study outside the United States. Courses need to be designed with input from experienced international counsel and be presented by instructors having recognized expertise and teaching ability.

Depending on the subject matter, course size should permit a high level of interaction with instructors and participation in case studies, detailed study of laws and model documents, drafting practice, and other skill-development exercises (far more than the traditional continuing legal education seminar). An example of a practical, in-depth course would be a multiday program on establishing and negotiating joint ventures in China, presented by instructors with extensive first-hand experience. This course would include not only the usual description of general investment law and procedures, but also the use of actual documentation that could be discussed line-by-line with explanations of the significance of various provisions. Such instruction would highlight pitfalls, as well as cultural and political issues.

Such a program would cover all related legal and business areas, including letters of intent, feasibility studies, land, utility, management, and labor contracts, employee rules, and so on. It would address negotiating techniques and cross-cultural considerations and deal with postestablishment issues, such as human resources management, expansions, financings, and exchange control. Model bilingual documentation, which has significant intrinsic value, might be provided to the attendees. Lawyers and executives who have established operations in China could hold sessions to share their experience and provide a contact network. In short, by the completion of the course, the attendee would have mastered what otherwise could have been learned only by actually conducting a transaction. Such a course would go far beyond anything offered in "Doing Business in China" seminars and would ultimately translate into significantly lower outside legal bills.

Forums for Policy Development

Senior corporate counsel need a forum in which to meet and exchange views on important or strategic international legal issues. Such a policy forum would seem to be almost a prerequisite to enabling the in-house bar to take a more proactive and reflective role in influencing future international legal developments. It would provide a voice for corporate counsel that is now frequently lacking in the early stages of policy development by governments and other organizations. The holding of high-level roundtable discussions would help in-house counsel to determine what their strategic international legal priorities should be. Corporate counsel also need more opportunities to meet informally and exchange views with U.S. and foreign government officials and with representatives and legal-department members of key international organizations.

Today, there is no focal point for corporate counsel participation in international initiatives, committees, and other groups or for channeling formal submissions or input on specific international projects, such as the development of positions for submission to the U.S. State Department's Private International Law Advisory Committee, of which the American Corporate Counsel Association should again become a member. This lack of a forum can inhibit the filing of amicus briefs or making analogous interventions in U.S. or foreign forums, where important international issues are being decided. It can also impede collaboration with other legal organizations, such as the American Bar Association's International Law Section.

Structured Liaison with Foreign Corporate Counsel

Greater liaison and integration with foreign corporate counsel organizations would help counsel to share international perspectives and to have a global voice. In appropriate cases, sister organizations might be enlisted to develop and participate in training courses.

Language and Other Nonlegal Skills Support

In-house counsel would further benefit from collaborative relationships with educational institutions, such as universities, colleges, and language institutes. Educators could work with corporations to develop intensive foreign language courses that would serve the specific needs of counsel, as well as foster other relevant nonlegal skills.

International Legal Archives

Counsel also need a better tracking system for major international legal initiatives that affect them and their employers. There currently is no accessible archive for summary explanations, texts, and supporting materials related to relevant global initiatives being undertaken by international organizations, regional groups, and the U.S. government. Such an archive could also prove useful to allied nonlegal business organizations at the national, state, and local level, including chambers of commerce.

CONCLUSION

The speed at which the global economy continues to accelerate ensures that international legal matters facing in-house counsel will likewise continue to grow in number and complexity. Increasing interaction with foreign law and foreign administrative systems will be a part of corporate counsel's professional life.

This article suggests some of the essential knowledge and professional capabilities counsel should acquire. The very positive side to the plunge into international learning is that it is not boring. Counsel will find exposure to international and comparative legal perspectives stimulating and topical. Attending a major international legal conference with broad repre-

sentation from lawyers around the world can provide the personal professional interaction that should encourage further exploration in the field.

If American corporate counsel are serious about meeting the challenges of globalization and being leaders, not followers, in the international arena, they must give it their concerted attention. Just as early sideline international legal practice gave way to full-time dedicated practice, corporate counsel must now develop and promote their international capabilities and interests in a full-time, committed, and professionally directed manner. It is no longer a question of whether such efforts should be made, but rather how and when. ACCA may be able to play a role in filling some of counsel's unmet needs.

NOTES

1. McDonald's Corp., *1998 Annual Report* (1999).
2. Coca-Cola Corp., *1998 Annual Report* (1999).
3. *See* N. Butler, *Companies in International Relations*, 42 SURVIVAL, No. 1 (Spring 2000) 149 at 156.
4. Robert Reich, THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST CENTURY CAPITALISM 243 (1991).
5. Examples include unilateral U.S. sanctions against Cuba and Iran and multilateral United Nations sanctions against South Africa and Iraq.
6. Until about 1980, the only generally available way of quickly communicating text internationally was by telex, which limited the amount that could be transmitted, as well as the manner in which it could be processed by the receiver. When faxes replaced telex machines, the amount of text that could be transmitted increased, but processing did not become easier. With the advent of the internet and computer-based word processing, however, the amount of text, data, and graphics that can be transmitted instantaneously has become limitless; further, this information can be manipulated and returned within minutes.
7. At most, 10 percent of "international law" is public international law or noncommercial private law, such as family law, trusts and estates, and so on. Traditionally, law schools' undue preoccupation with public international law was a function of law professors being monolingual and public international law sources being available in English. Private international law was more elusive because it involved comparative law study and, therefore, required a command of multiple languages.
8. *See* Articles 85 and 86 of the Treaty of Rome, which established core EU antitrust law principles similar to those in the Sherman Act.
9. *See* merger of Clifford Chance (United Kingdom), Rogers & Wells (United States), and the Pünder firm (Germany).
10. The effect of these new players in the international legal industry, especially career academics, is illustrated in the example of the United Nations ("UN") Convention on Contracts for the International Sale of Goods ("CISG"). A committee of academics from various countries drafted CISG under the auspices of the UN Center for International Trade Law. At the time of its submission to the U.S. Senate in the mid-1980s, the author was chair of ACCA's International Legal Affairs Committee and, in this capacity, surveyed more than 100 international practitioners in private and corporate practice to discover that none had read CISG and that fewer than 10 had even heard of it. Although little noticed at the time, CISG internationalized contract law in connection with the cross-border sale of goods. The Senate's ratification of the Convention led to CISG's preemption of all of the states' uniform commercial codes. In fact, it was a milestone in U.S. constitutional law; for the first time, the U.S. treaty power preempted purely domestic state commercial law.
11. A short digression into the history of legal theory illustrates why this idea is important. The United States has a unique approach to the rule of law, exemplified by the Latin inscription over the entrance to Harvard Law School: *Non Sub Homine Sed Sub Deo et Lege* (Not Under Man but Under God and the Law). The historical roots of U.S. society were understandably antistatist. Americans avoided vesting control or discretion in men, such as kings, governors, and bureaucrats, as had been common in the Old World, with its monarchial traditions. Instead, Americans looked to God and the law, placing enormous burdens and expectations on the latter. Because of this historical-political-philosophical bias, the American legal mind focuses on precision of legislation and regulations. Courts can strike down laws or regulations that are vague—almost a uniquely American idea. This opposition to vagueness arises from the fact that Americans wanted to limit the discretion of rulers. After all, Americans send their fellow citizens to federal and state legislative bodies to make laws, not to engage in the delegation of this prerogative. Other nations do not generally subscribe to this idea. Most other societies do not mind giving "men" considerable administrative latitude in devising and changing the law. This significant point of departure is one that U.S. lawyers must understand when navigating in foreign legal waters.
12. *See* note 10 *supra*.
13. In civil law, *good faith* means that the parties undertake to conclude the transaction and fully implement it, barring significant obstacles. The implication is that enforceable legal obligations can be created even in the negotiation phase.