

THE PROFILE OF THE NEW INTERNATIONAL LAWYER¹

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The practice of international business law is complex, as we have seen in the earlier part of this presentation, and requires knowledge of and sensitivity to sociological, economical, historical and cultural aspects, in addition to the more specific legal fields. These comprehend, of course, the basic fundamentals of international public law, without which navigation in the treacherous waters of conflict of laws and different national laws will become a very hazardous venture. And then, it is essential that the player has a national law degree and accreditation to a Bar, to be supplemented by elements of different national legal systems. The international lawyer will undoubtedly become complete after some practical experience in the resolution of international disputes, either through resource to a domestic court or by international arbitration. Beware, however, that this learning process is continuous and depends very much on the social-economic and political transformations States undergo over time.

However, traditionally the formation of an international lawyer has taken an ethnocentric ethos, deriving from a cultural hubris that leaves the profession in question without elements to deal with the world's new realities. For example, a recent study³ conducted by a consulting firm, Leaders in Excellence Partners, concluded by the predominance of the Anglo-Saxon model. The portrait drawn by the study idealised *inter-alia* a dual legal training (home country plus LLM), experience in the judicial system and in an international law firm and familiarity with the Anglo-Saxon (*sic*) business environment.

From an economic perspective, this view could have been partly justified up to 1985, when the United States of America's (USA) economy represented some 37.5% of the global Gross Domestic Product (GDP). However, from a strict legal perspective, most countries in the world, including the then existing communist States, like the Union of

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³ <http://www.legalteam-solutions.com/legal-departments-and-law-firms> (May 11 2012).

Soviet Socialist Republics (USSR), adopted models of codified law, rather than variations of English law. In addition, public international law was developed only in a codified manner, by means of treaties.

The situation today presents itself under a totally different light. The US will account at the end of 2012 to less than 20% of the global GDP, virtually the same as the BRIC group of countries.⁴ According to the International Monetary Fund (IMF), China's economy will overtake that of the US by 2016. Brazil's economy overtook the British economy in 2011 and will surpass the Germany's in the course of the next few years.

China has now become the most important trade partner of most countries in the world and will remain so for many years to come. China has been Brazil's main trade partner for 4 consecutive years now and the top investor in this country for the last two years. In 2011, Brazil received approximately US\$ 70 billion in foreign direct investments and China, US\$ 110 billion.

Accordingly, following our own internal projections, twelve years ago, the partners of Noronha Advogados decided to shift the strategic focus of the firm from developed countries to developing ones. At that time, the firm had international offices in the USA (two), in the United Kingdom (UK) (one), in Portugal (one) and in Argentina (one). We decided to close down one of the US offices (Los Angeles) and to open up two operations in China (the first one 11 years ago), one in South Africa and one in India. The remaining structures were maintained.

Likewise, it is my considered view that international lawyers should adopt individual strategic career positions for the medium and long term based on market realities. Is the field of action going to be public or private international law? If the former, does the lawyer desire to act as a government agent or as a private professional assisting States or entities of public international law?

If the area is going to be private international law, what will be the geographical focus of action? What will be the fields? Is the professional deployment to be as in-house counsel or as an independent lawyer? Will the professional activities involve litigation or consultative law? If the latter, what will be the specialization?

⁴ China's GDP is estimated for 2012 at US\$ 7 trillion, Brazil's at US\$ 2.5 trillion, Russia's at US\$ 2 trillion, India's at US\$ 2 trillion, approximately.

Returning to the point of institutional legal models, Brazil always adopted codified law, firstly from 1500 as a Portuguese colony and after independence in 1822, as a sovereign country. This situation is similar throughout Latin America. On the other hand, China has adopted codified legislation since the proclamation of the republic, in 1911, which system substituted Confucianism, which had been the general law of the country for over 2 thousand years.

Thus, why would countries like Argentina, Brazil and China need to resort to the variations of English law, sometimes referred to as Anglo-Saxon law, to relate to each other in international commercial relations? This situation, however, appears to be different with respect to the English language, a more available instrument of communication and today the undisputed means of intercourse in international law.

The same reasoning seems very well to apply for relations between developing countries in general and even between European countries with emerging states. Both the European Union (EU) and individual continental European countries adopt codified law. The same goes for the remaining BRIC countries, including India, which has a very extensive written Constitution. More liberation from cultural colonialism is good and welcome, but efficient and direct business practices are even better for law firms.

I referred in the beginning of this presentation to knowledge of public international law as a prerequisite of the formation of today's international lawyer because it also gives the basic ethical component of the rule of law necessary for international business relations, without which very often transactions with developing countries will founder. It is never too much to remember that ethics and the law always go well together.

The cultural component also mentioned at the inception is important. Knowledge of languages will give elements for a better understanding of a society, a business environment and a legal system. Many errors can be avoided in this manner and, I need not remind you, lawyers do not have much of a margin for professional mistakes. Information of the history of a given country will explain many laws and idiosyncrasies of the respective legal system.

Experience in dispute resolution will allow the international lawyer to act in this expanding field, which grows in proportion to the development of international economic relations. It will also inform the

lawyer to advise the client on conflict of laws issues and forum shopping, an issue that arises very often in international business relations.

Knowledge of accounting practices and ability on how to read a balance sheet can prove to be essential in international corporate matters, taxation and mergers and acquisitions work, in addition to commercial banking, of course. How does a Mexican balance sheet look like? What about an Indian one? What are the accounting rules in China?

For those involved in the nightmarish world of investment banking, understanding of the current market practices and products is essential. Thus, the legal professional in the area must strive to learn about the ethereal world of derivatives, for instance. There are today more than 10 times the world's GDP expressed in derivatives, a casino where anything goes, which has severe legal and economic implications.

At last, I have to say based on my experience of almost 40 years as an international lawyer that our learning process is continuous. Laws change as societies, political regimes and States do. New fields of law, like those on the Internet, appear. Constitutions change. Governments are always seeking more tax revenue. New laws are enacted, others revoked, some for the better, some for the worse.

In my time, I have accompanied the dramatic modifications in Chinese law, from those of the Cultural Revolution between 1966 and 1976, to those of the Springtime of Deng Xiaoping, to the modernization of some 9,000 new laws and regulations by the time of accession of China to the World Trade Organization (WTO) in December of 2001. I saw the limited juridical worker of the State be transformed into a modern lawyer in the early 90s.

In the eighties, democratization processes were consolidated in Brazil and Argentina, where hundreds of lawyers perished resisting the military dictatorships. I have also seen the fall of communist in Eastern Europe and the end of the USSR in 1991 with the Alma Ata treaty and the transformations that ensued.

In 1994, democracy was installed in South Africa in a process led by that formidable statesman, who trained as a lawyer, Nelson Mandela. In October of last year, I saw the English law profession debased, downgraded and prostituted into some sort of travesty of investment banking, hardly in itself any model of decency.

I must now confess that almost all the laws that were in force when I originally graduated from Law School in 1974 have now been changed. Even the Vatican's Code of Canon Law is a new one for me. Only the unwritten English constitution remains somewhat unchanged in a dense legal fog...

Thank you.