

Global warning

We must not allow globalisation to further undermine the core values of our profession, urges DELOS N LUTTON

A few years ago, we couldn't stop talking about globalisation. It became the word of choice to explain everything that was happening to our business clients and society in general. We preached wisely that globalisation was here for good or ill. We lawyers were keen to advise everyone who would listen on its pros and cons. We became experts on cross-border trade issues, international M&A and finance, multi-country inheritance law issues, child kidnapping, cross-border divorces, international litigation and arbitration.

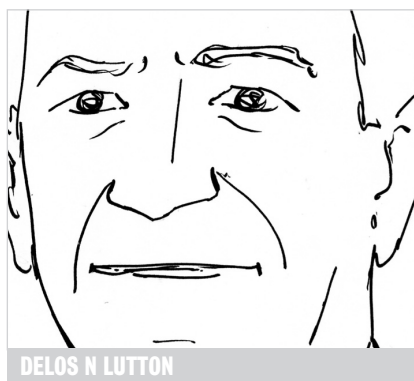
But one thing we didn't talk about much was its impact on our profession. There was talk in trade magazines about multinational mega-firms, and who was merging with whom across which border. But only a few were beginning to focus on the explosive changes and challenges to the legal profession that were being brought on by the tidal wave of globalisation.

Today, we know some of these effects and it is high time we, as a profession, face up to some of the threats we have been ignoring. Many of the problems are coming from our own governments. And what is truly new and fundamentally challenging is this: governments watch television and read newspapers and surf the internet just like everybody else. When the US passes a law restricting individual freedom, lawmakers in every other country know it instantly. Those governments may then adopt their own similar (or worse) laws. The trend spreads instantly – not over decades, but in weeks or months.

Today, simultaneously on every continent, the attorney-client privilege is being challenged and attacked. In the US, the federal government wants to have lawyers report on their clients when suspicions are raised that crimes may have been committed. In Europe and South America, similar measures are proposed. The war on terrorism has

brought ill-advised attempts to turn lawyers into policemen, subject to criminal penalties if they fail to exercise the judgement deemed proper by the government in reporting suspicious conduct.

But it is also the global effects of massive corporate fraud that shake



the foundation of the profession. Governments everywhere are looking for ways to turn lawyers into gatekeepers instead of advisers. Proposals in several countries would subject them to criminal and financial penalties if they do not investigate their clients sufficiently – in the eyes of the government – and report certain conduct in documents filed with government agencies.

As if this were not challenge enough, look at what is happening at the World Trade Organisation as commercial trade negotiators throw about various proposals for regulating the legal profession worldwide as it relates to cross-border services. Instead of asking the legal profession how best to fix any problem that might exist, governments in the global economy have instead turned to trade bureaucrats who threaten to force our independent profession to knuckle under to rules established by them, without full regard to the fundamental issues of social cohesion and justice that we know are inextricably bound-up in many of the naive proposals to 'liberalise' cross-border legal services.

The Clementi Report and its aftermath have also produced attempts to whittle away at the independence of our profession – to the detriment of clients – by replacing self-regulation with government regulation of lawyers and their fees. This is done in the name of 'liberalising', despite little, if any, evidence that the profession needs liberalising, in the thoughtless pursuit of more competition between lawyers (as if there were none already). The effect on the quality of services and of justice in the countries concerned receives little attention.

We at the UIA International Association of Lawyers have recognised that these issues deserve to be addressed by the global legal profession. Early in 2006 we started our Global Challenges Project, the goal of which is to identify and prioritise the most important concerns facing the legal profession worldwide. The bar leaders of our collective members have been exchanging points of view and at our next International Bar Leaders Senate in Salvador, Brazil this November, we will assess the result of our study and develop an action plan.

The legal profession must finally realise that the process of globalisation is fundamentally affecting our profession just as much as it has impacted other sectors of society. If we do not recognise the scope and depth of the challenge to our independence – as a profession and as individual lawyers – we will very quickly lose the opportunity to preserve for our societies some of the most important principles that have served as the pillars of our respective justice systems: attorney-client privilege and the independence of the bar.

If, on the other hand, we do recognise the threat, there is every reason to believe that we can collectively educate the public and lawmakers so that these core values are preserved for the benefit of all. I hope all lawyers everywhere will join us in that cause. ■