THE ROLE OF THE ABA'S "SUMMITS" IN FACILITATING GLOBAL NETWORKS AND INTERNATIONAL CROSS-BORDER LEGAL PRACTICE

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Abstract

This Article is written for a Symposium honoring recently-retired Professor Bob Lutz. It describes fourteen gatherings that were organized by either the ABA Section of International Law's Transnational Legal Practice Committee or by the predecessor entities to the ABA Standing Committee on International Trade in Legal Services. Professor Lutz was a driving force behind these gatherings, which were held between 2004 and 2014, and were referred to by the organizers as "Summits." This Article examines the impact of these Summits and explains why they played a critical role in helping establish global legal profession networks and why they have left a lasting legacy.

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I. INTRODUCTION

I am pleased to contribute this Article honoring my friend and colleague, Professor Bob Lutz, upon his retirement from Southwestern University School of Law after more than forty years. Although one might choose to write about topics related to Professor's Lutz's wide-ranging teaching[1] or scholarship,[2] this Article honors Professor Lutz's external service by examining the role of the American Bar Association (ABA) transnational legal practice (TLP) *"Summits"* in facilitating global legal profession networks and international cross-border legal practice.

This Article proceeds as follows. Section II sets the stage by reviewing the importance of networks, including global legal profession networks. Section III provides information about the ABA's *Summits*, including Professor Lutz's role in organizing these *Summits.* Section IV examines the lasting impact of these *Summits* and explains how they helped build the global legal profession networks that contribute to international cross-border legal practice developments.

1. *See, e.g.,* Southwestern Law School, Robert E. Lutz, https://perma.cc/UW97-EVNU (In addition to teaching J.D. students at Southwestern Law School for more than forty years, Professor Lutz "taught regularly in the Summer Law Consortium program in Guanajuato, Mexico, and in Southwestern's Buenos Aires program. He organized and directed the first ABA-accredited law study program in China, and was instrumental in establishing Southwestern's General LL.M. program.").

2. Professor Lutz's scholarship has focused on a broad range of issues, including international trade in legal services (ITILS) issues. *See generally* Lutz, *supra* note 1 (citing numerous books, book chapters, articles, and book reviews). Professor Lutz's ITILS scholarship over the past twenty-five years has documented important issues and developments and the invitation to author book chapters and book reviews, as well as articles, reflects Professor Lutz's leadership in the field and the 10,000-foot perspective he can bring to the issues. *See, e.g.*, Robert E. Lutz, *The Regulation of the Transnational Legal Profession in the United States*, 50 INT'L LAW. 445 (2017); Robert E. Lutz, *Reforming Approaches to Educating Transnational Lawyers: Observations from America*, 61 J. LEGAL EDUC. 449 (2012); Robert E. Lutz, *An Essay Concerning the Changing International Legal Profession*, 18 SW. J. INT'L L. 215 (2011); Robert E. Lutz, *Law, Procedure and Culture in Mexico Under the NAFTA: The Perspective of a NAFTA Panelist*, 3 SW. J. L. & TRADE AM. 391 (1996). Robert E. Lutz, *Ethics and International Practice: A Guide to the Professional Responsibilities of Practitioners*, 16 FORDHAM INT'L L.J. 53 (1992).

II. THE IMPORTANCE OF NETWORKS

Networks are powerful. [3] Even if an individual does not fully understand network science,[4] "most individuals will intuitively understand the power of networks. They understand that the value of certain physical objects they own may depend on the size of the network to which those objects are attached."[5] For example, in the early days of the telephone, individuals who used one telephone provider, such as AT&T, were not able to contact individuals who used a phone owned by a different provider. [6] Although individuals in 2022 who use one type of telephone, such as an iPhone, can contact individuals who use a different kind of telephone, such as an Android phone, providers continue to rely on the power of their networks to sell their product, as a recent article about green versus blue "text bubbles" illustrates.[7]

The power of networks is not limited to physical objects. One can examine social networks, information networks, biological networks, and technology and computer networks to see other contexts in which networks play a critically important role.[8] The COVID-19 pandemic, which was still occurring at the time this article was written, is an example of a biological network; it forcefully illustrates the power of networks and connections.

The study of social networks has included legal profession networks.[9] Scholars have examined legal profession networks that occur within specific geographic areas (most notably Chicago), as well as network connections and interactions among lawyers in elite law firms, political lawyers, public interest lawyers, conservative lawyers, corporate lawyers, and criminal justice lawyers, among others.[10] This Symposium provides an opportunity to highlight the important role of the ABA's TLP *Summits* in

3. *See generally* Laurel S. Terry, *Global Networks and the Legal Profession*, 53 AKRON L. REV. 137, 175 (2019) [hereinafter Terry, *Global Legal Profession Networks*] (discussing legal profession networks in general).

4. *See* Terry, *Global Legal Profession Networks*, *supra* note 3, at 154 n.92 and accompanying text (noting the topics included in the table of contents of a leading 2018 textbook, Networks ix by Mark Newman).

5. *Id.* at 155 (footnotes omitted).

6. *Id.*

7. *See, e.g.*, Tim Higgins, *Why Apple's iMessage Is Winning: Teens Dread the Green Text Bubble*, (Jan. 8, 2022, 12:00 AM), https://perma.cc/A826-KMPJ (noting the impact on teenagers of seeing a blue iPhone text bubble versus a green Android phone text bubble).

8. *See* Terry, *Global Legal Profession Networks, supra* note 3, at 154 (footnotes omitted).

9. *Id.* at 153.

10. *Id.* at 158-159 (footnotes omitted); John P. Heinz, *Lawyers' Professional and political Networks Compared: Core and Periphery*, 53 ARIZ. L. REV. 455, 482 (2011) (Table 1 summarized the networks analyzed by Professor Heinz, who was a co-author of the famous "Chicago Lawyers" studies).

facilitating global legal profession networks.[11] In the author's view, these TLP *Summits* played a critical role in helping develop the global networks that facilitate international cross-border legal practice and have had a lasting impact.

III. HOW THE ABA'S *SUMMITS* FACILITATED GLOBAL LEGAL PROFESSION NETWORKS AND INTERNATIONAL CROSS-BORDER LEGAL PRACTICE

This Article examines fourteen gatherings that were held between 2004 and 2014 that were organized in whole or in part by the ABA Section of International Law's Transnational Legal Practice (TLP) Committee or by the ABA Standing Committee on International Trade in Legal Services (ITILS) or ITILS' predecessor entities.[12] This Article refers to these fourteen gatherings as "*Summits"* or "*TLP or ABA Summits*," even though the gathering might have had a different formal name, such as a *Roundtable*, and even though the gathering was organized by a subgroup within the ABA.[13] For the sake of simplicity, unless the context requires otherwise, both the ABA ITILS Standing Committee and its predecessor entities will be referred to as "ITILS," and all individuals who were listed on an ITILS roster will be referred to as "ITILS members," regardless of whether they served as a member, liaison, advisor, or former member during a particular year.[14]

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11. One of my prior articles examined the networks that exist among lawyer regulation stakeholders, but did not single out the way in which the ABA's *Summits* have contributed to the development of these networks. *See generally* Laurel S. Terry, *Lawyer Regulation Stakeholder Networks and the Global Diffusion of Ideas*, 33 GEO. J. LEGAL ETHICS 1069 (2020) [hereinafter Terry, *Lawyer Regulation Stakeholder Networks*].

12. Unless the context requires otherwise, this Article will refer to the ABA Section of International Law. However, during some of the time period covered by this Article, the Section's name was the Section of International Law and Practice.

Documents in the author's files show that Professor Lutz held numerous positions in the ABA Section of International Law. He was Editor-in-Chief of *The International Lawyer* from 1984-1987. He served as Chair of the ABA Section of International Law and Practice in 2001-02. During 2002-04, he served as Co-Chair of the ABA Section of International Law and Practice's Transnational Legal Practice Committee. In 2004-05 and 2005-06, Professor Lutz joined the ITILS Committee as a liaison from the ABA Section of International Law. Professor Lutz served as Chair of ITILS during 2006-07, 2007-08, and 2008-09, and thereafter served as either a member of ITILS or as a former member or liaison. Professor Lutz also served as a member of, or liaison to, ABA groups whose mandate included TLP-related issues, such as the ABA Commission on Ethics 20/20 and the Special International Committee of the ABA Section of Legal Education and Admissions to the Bar.

13. *Compare infra* note 58 (citing the 2005 US-EU *Summit* Invitation Letter), *with* note 153 (citing the 2013 EU-US Legal Services Roundtable agenda).

14. This footnote sets forth the names of the predecessor entities to the ABA Standing Committee on International Trade in Legal Services [ITILS]. This footnote also explains the different ways in which individuals were listed on the ITILS Rosters since the changes in

categories reflects ITILS' expanding scope and network. The author has personal knowledge of the contents of the ITILS Rosters from 2003-04 through 2021-22 and the information contained in this paragraph. This brief history of ITILS is set forth on its webpage:

> The Task Force on GATT Negotiations Regarding Trade and Services Applicable to the Legal Profession (later referred to as the Task Force on GATS Legal Services Negotiations) was created by the [ABA] Board of Governors in 2003, to be composed of six presidentially-appointed members, four of whom were to be designated representatives from the following ABA entities: Section of Administrative Law and Regulatory Practice; Section of Business Law; Section of International Law; and Section of Litigation. The other two positions were for at-large members. In August 2003, the Board increased the size of the Task Force from six members to eight members, in order to "to ensure that appropriate diversity is created and maintained among the current entity membership." In February 2007, the Board approved changing the name to the Task Force on International Trade in Legal Services (ITILS), to more accurately reflect the range of issues and initiatives that the Task Force was being asked to address in relation to multilateral and bilateral trade negotiations that impact the U.S. legal profession. In June 2009, the Board approved then President-Elect Carolyn Lamm's request to revise the jurisdictional statement of the Task Force to increase its membership from eight members to twelve members. The additional seats were designated for the president of the National Conference of Bar Presidents, a liaison to the Commission on Ethics 20/20, and two state bar association presidents. This constitutes the current structure of the Task Force. In addition, because of the global professional ethics and regulatory issues inherent in the matters under study by the Task Force, the Center for Professional Responsibility has been and continues to be an invaluable partner in the work of the Task Force. In 2016, the Task Force became a Standing Committee.

ABA Standing Comm. on Int'l Trade in Legal Services, *About the Standing Committee: History*, (last visited Oct. 10, 2022), https://perma.cc/AX3H-W2YN.

The 2003-04 ITILS Roster was entitled "Task Force on GATT Trade & Services Agreement Negotiations"; this Roster contained three columns and listed, for each individual on the Roster, their name, contact information, and section representation. Some individuals, such as the author, were listed as liaisons. (In my case, I was one of two liaisons from the ABA Center for Professional Responsibility.)

Consistent with the history noted above, the 2004-05 Roster was entitled "American Bar Association Task Force on GATS Negotiations involving Legal Services"; it had separate sections that listed the Task Force "Members," the Task Force "Liaisons," and Staff. The 2005-06 and 2006-07 ITILS Rosters simplified the name of the group to American Bar Association Task Force on GATS Legal Services Negotiations. These Rosters had one section that listed "Members," but the title of the next section had expanded from "Liaisons" to "Liaisons and Advisors."

Starting in 2007-08 through 2015-16, the name that appeared at the top each of these Rosters was the American Bar Association Task Force on International Trade in Legal Services and the Rosters listed the ITILS Task Force members, followed by the ITILS Liaisons and Advisors.

Starting with 2016-17 through the current year, the group name at the top of the roster is the American Bar Association Standing Committee on Trade in Legal Services. For additional information about the group's conversion to a Standing Committee, see Terry, Vol. 51, *infra* note 16, at 545, n.27 and accompanying text; ABA 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://perma.cc/DSM8-YLW7 and https://www.americanbar.org/content/dam/aba/directories/policy/annual-2016/2016_hod_annual_11-7.docx [hereinafter Resolution Converting ITILS to a Standing Comm.].

During 2016-17, which was its first year as a Standing Committee, the ITILS Roster listed members on the one hand, and Liaisons & Advisors on the other hand. Starting in 2017-18, however, the ITILS Roster began listing Members on the one hand, and Former Members, Liaisons & Advisors, on the other hand. This information has been included because it conveys the "Hotel California-like" nature of ITILS where you can check-in, but you can never leave. The group is an inclusive one and so long as an individual is interested in continued participation, their

Section III(A) explains where published information about these *Summits* can be found. Section III(B) provides a brief chronologic and thematic overview of the *Summits*. Section III(C) is a lengthy section that contains detailed information about each of the *Summits*, many of which Professor Lutz helped organize and all of which he participated in.

A. Prior Publications about the ABA's TLP Summits

Notwithstanding this Article's thesis about the importance of the ABA's *Summits*, there is relatively little discussion about these *Summits* in the existing literature.[15] The documentation that *does* exist is primarily found in the *Transnational Legal Practice* articles found in the *International Lawyer's* annual "Year-in-Review" issue.[16] (These will be

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name is retained on the roster. As a result, the list of Liaisons, Advisors, & Former Members has grown significantly over the years of ITILS' existence. Moreover, unless the context requires otherwise, when this Article refers to "ITILS Members," it is referring to anyone who is listed on the ITILS Roster, regardless of whether that person is a member, liaison, advisor, or former member.

As noted above, all of the ITILS Rosters have listed the ABA lawyers who staff the committee. From its inception to the present, Kristi Gaines, Esq. from the ABA Office of Legislative Affairs, has served as ITILS Staff. *See generally* ITILS Rosters, *supra* note 14. Starting in 2005-06 and continuing through the present, the ITILS Rosters have also listed as ITILS staff Ellyn Rosen, Esq., from the ABA Center for Professional Responsibility. *Id.* Starting in 2005-06 and continuing through 2011-12, Becky Stretch, Esq., was also listed as ITILS Staff. During her first two years as ITILS Staff, Ms. Stretch was Associate Director of the ABA Center for Professional Responsibility. Thereafter, she was identified as Assistant Consultant for the ABA Section of Legal Education and Admissions to the Bar.

15. The ABA Summits usually were mentioned in the *Transnational Legal Practice* [TLP] articles found in the *International Lawyer's* annual *"Year-in-Review"* issue. *See generally infra* note 16, which cites multiple TLP *Year-in-Review* articles, and nn.25-196 and accompanying text of this Article, which cite these TLP *Year-in-Review* articles where appropriate. Other than the *TLP Year-in-Review* articles, the only articles I could find that discuss the ABA Summits are. Laurel S. Terry, *The Impact of Global Developments on U.S. Legal Ethics During the Past Thirty Years*, 30 GEO. J. LEGAL ETHICS 365, 379 (2017); Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOBAL STUDIES L. REV. 463, 509-10 (2005) and the two short Bar Examiner articles cited *infra* in notes 35 and 73. In 2018, Professors Leslie Levin, Lynn Mather, and Leny de Groot-van Leeuwen wrote an interesting article comparing the ABA, the International Bar Association, and the Council of Bars and Law Societies of Europe [CCBE] in which they noted the overlapping relationships of individuals but did not cite the *Summits* specifically. Leslie Levin et al., *The Impact of International Lawyer Organizations on Lawyer Regulation*, 42 FORDHAM INT'L L.J. 407, 466 (2018) (footnotes omitted) ("Third, overlapping memberships and networks, including at the very top of the organizations, further convergence. The organizations' leaders have a long history of working together and some occupy key roles in two or more organizations.").

16. Listed in chronological order of publication, the *TLP Year-in-Review* articles that appeared between 1997 and 2017 are the following: Donald H. Rivkin & Michael D. Sandler, *Transnational Legal Practice,* 31 INT'L LAW. 519 (1997) (regarding events in 1996) [hereinafter Rivkin & Sandler, *Vol*. 31]; Donald H. Rivkin, *Transnational Legal Practice,* 32 INT'L LAW. 423

referred to as the *TLP Year-in-Review* articles]. At the time they were published, these *TLP Year-in-Review* articles provided useful transparency about the activities of the ABA's TLP and ITILS Committees, as well as other TLP-related developments.

(1998) (regarding events in 1997) [hereinafter Rivkin, *Vol*. 32]; Donald H. Rivkin, *Transnational Legal Practice,* 33 INT'L LAW. 825 (1999) (regarding events in 1998) [hereinafter Rivkin, *Vol*. 33]; Ellen H. Clark, *Transnational Legal Practice*, 36 INT'L LAW. 955 (2002) (regarding 2001 developments; developments in 1999 and 2000 were not addressed) [hereinafter Clark, *Vol*. 36]; Robert E. Lutz et al., *Transnational Legal Practice: Cross-Border Legal Services: 2002 Year-in-Review*, 37 INT'L LAW. 987 (2003) (regarding 2002 developments) [hereinafter Lutz et al., *Vol*. 37]; Robert E. Lutz et al., *Transnational Legal Practice Developments*, 39 INT'L LAW. 619 (2005) (discussing selected developments in 2003 and 2004) [hereinafter Lutz et al. *Vol*. 39]; Laurel S. Terry et al., *Transnational Legal Practice* 42 INT'L LAW. 833 (2008) (discussing selected developments between 2005 and 2007) [hereinafter Terry et al., *Vol*. 42]; Laurel S. Terry et al., *Transnational Legal Practice*, 43 INT'L LAW. 943 (2009) (discussing 2008 developments) [hereinafter Terry et al., *Vol*. 43]; Laurel S. Terry et al., *Transnational Legal Practice 2009*, 44 INT'L LAW. 563 (2010) (discussing 2009 developments) [hereinafter Terry et al., *Vol*. 44]. The *TLP Year-in-Review* articles that were published between 2012 and 2017 were included in the ABA's new *Year-in-Review* annual publication, rather than in the *International Lawyer.* However, as notes 20-21, *infra*, and accompanying text explain, some sources, such as HeinOnline, refer to the *International Lawyer* when citing these *TLP Year-in-Review* articles. For this reason, this footnote provides both the *International Lawyer* Bluebook citation and the *Year-in-Review new series* (n.s.) citation when citing the *TLP Year-in-Review* articles that appeared between 2013 and 2017. These six *TLP Year-in-Review* articles are: Laurel S. Terry, *Transnational Legal Practice (International)*, 47 INT'L LAW. 485 (2013) also cited as 47 ABA/SIL YIR 485 (n.s.) (2013) (discussing internationally-focused developments that primarily occurred during 2010-2012) [hereinafter Terry, *Vol*. 47 (International)]; Laurel S. Terry, *Transnational Legal Practice (United States)*, 47 INT'L LAW. 499 (2013) also cited as 47 ABA/SIL YIR 499 (n.s.) (2013) (discussing U.S.-focused developments that primarily occurred during 2009-2012) [hereinafter Terry, *Vol*. 47 (*U.S.*)]; Mark E. Wojcik, *Transnational Legal Practice*, 48 INT'L LAW. 513 (2014), also cited as 48 ABA/SIL YIR 513 (n.s.) (2014) (focused exclusively on whether undocumented aliens could practice law and discussed recent 2013 cases and legislation on this topic) [hereinafter Wojcik, *Vol*. 48]; Laurel S. Terry & Carole Silver, *Transnational Legal Practice*, 49 INT'L LAW. 413 (2015) also cited as 49 ABA/SIL YIR (n.s.) 413 (2015) (focusing on developments in 2013 and 2014) [hereinafter Terry & Silver, *Vol*. 49]; Laurel S. Terry, *Transnational Legal Practice*, 50 INT'L LAW. 531 (2016) also cited as 50 ABA/SIL YIR (n.s.) 531 (2016) (discussing 2015 developments) [hereinafter Terry, *Vol*. 50]; Laurel S. Terry, *Transnational Legal Practice*, 51 INT'L LAW. 539 (2017) also cited as 51 ABA/SIL YIR (n.s.) 539 (2017) (discussing 2016 developments) [hereinafter Terry, *Vol*. 51]. To see which of these *TLP Year-in-Review* articles discussed the ABA *Summits* and what they said*, See infra* notes 31-196 and accompanying text. As this string cite list shows, the first TLP *Year-in-Review* article was published in 1997 in Volume 31. The last *TLP Year-in-Review* article was published twenty years later, in Volume 51, which was published in 2017. In 2016, the ABA Section of International Law disbanded its *Transnational Legal Practice Committee. See* Terry, *Vol*. 51, at 539 (explaining that at the end of the ABA's 2015-16 year, the TLP Committee and another Section of International Law Committee merged to form a new ABA Section of International Law Transnational Practice Management Committee). The author has personal knowledge that although the *TLP Year-in-Review* articles were not published every year between 1997 and 2017, the authors tried to ensure that if they skipped a publication year, the events from that year would be included in the following year's article.

Professor Lutz is one of reasons why this transparency exists. In 1997, Professor Lutz initiated the *International Lawyer's* tradition of having an annual *Year-in-Review* issue that summarized international developments in multiple areas of law.[17] In the author's experience, the *TLP Year-in-Review* articles not only provided useful transparency, but they encouraged participation in TLP-issues and helped promote the development of a global network of TLP stakeholders.[18]

Although the *TLP Year-in-Review* articles are useful, they can be extremely confusing to work with, and I therefore decided to elevate the information in this paragraph from a footnote to the text. The first reason why the *TLP Year-in-Review* articles are confusing is because many of them have the identical title and start on similar page number in the same publication—the *International Lawyer*.[19] In addition to the confusion that arises from having identical journal titles, confusion exists because of disagreements about how to cite the publications in which these *Transnational Legal Practice* articles appear. This journal name confusion exists because the ABA decided to launch a new annual publication in 2012—i.*e*., a new series or "n.s."—in which it would publish its *Year-in-Review* articles, rather than including the *Year-in-Review* articles in an issue of the *International Lawyer* as it previously had done.[20] Although the ABA recommends a Bluebook citation form of ABA/YIR (n.s.) for its 2012 and

17. *See, e.g.*, Robert E. Lutz, *Introduction, International Legal Developments in Review,* 31 INT'L LAW. 233 (1997) (explaining the reasoning behind the *Year-in-Review* initiative). *See also* [Robert E. Lutz], *Editor's Preface, International Legal Developments in Review: 1996,* 31 INT'L LAW. 231 (1997) ("The history of the ABA Section of International Law and Practice records many 'noble experiments.' Some, such as The International Lawyer, have withstood the test of time. It is hoped that the "International Legal Developments in Review: 1996" will follow in that tradition.").

18. *Compare TLP Year-in-Review* volumes cited *supra* note 16, *with* the unpublished report entitled Memorandum: Report on the Activities of the Committee to Members of the Council, Section of International Law and Practice from Steven C. Nelson, Chair, Committee on Transnational Legal Practice (April 11, 1992) (unpublished summary of the TLP Committee's work; on file with author). Although the author had been interested in TLP issues since 1987, it was Rivkin and Sandler, *Vol*. 31, *supra* note 16, that prompted her involvement in the TLP Committee.

19. *Compare* Terry et al., *Vol*. 42*, supra* note 16 (article entitled "Transnational Legal Practice" was published in 2008 and started on page 842), *with* Terry et al., *Vol*. 43, *supra* note 16 (article entitled "Transnational Legal Practice" covered activities in 2008 and started on page 961). The author has personal knowledge that the *TLP Year-in-Review* authors sometimes attempted to distinguish the article titles by including a date after the *Transnational Legal Practice* title, but these additions often were removed during the editorial process.

20. *See, e.g.*, ABA Section Int'l L., *The Year in Review*, https://perma.cc/4X38-USAT ("The Year in Review, previously included as an issue of The International Lawyer, is now its own annual publication of the American Bar Association's International Law Section. It has had a place as a prestigious ABA publication since 1966 and has called SMU Dedman School of Law its home since 1986. … Preferred Citation: Vol. No. ABA/ILS YIR (n.s.) page no. (year).").

later *Year-in-Review* articles, authorities such as HeinOnline continue to use the *International Lawyer* journal name when recommending the proper Bluebook citation form.[21] The third source of confusion comes from the shorthand footnote references that appear within the *TLP Year-in-Review* articles. For example, some *TLP Year-in-Review* article footnotes have used a shorthand reference that includes the title of the article *Transnational Legal Practice* and the activity year(s) discussed in the article, even though the activity year did not appear in the cited article's official title and even though someone reading the footnote without checking the original "*supra"* citation might think the cited article was the identically titled article that was ***published*** in the year listed.[22] To avoid this type of confusion, this Article lists in a single footnote all twenty years of the *TLP Year-in-Review* articles and thereafter cites these articles by volume number.[23]

B. An Overview of the ABA's TLP Summits

This Article focuses on fourteen *Summits* that were held between 2004 and 2014. Although one might argue that the ABA held TLP *Summits* before 2004,[24] this Article used 2004 as the starting date because that was the first time the ABA TLP or ITILS organized a meeting that it referred to formally or informally as a *Summit.* The fourteen *Summits* that are

21. *Compare id., with* copies of the *TLP Year-in-Review* articles published in Volumes 47-51 and downloaded from HeinOnline; these PDFs list as the recommended Bluebook Citation the volume number followed by Int'l. Law., rather than the volume number followed by ABA/SIL YIR (n.s.) (on file with author).

22. *See, e.g.,* Terry et al., *Vol*. 42, *supra* note 16, at 835 n.10, 858 n.152 (using a shorthand reference of "Lutz et al., 2004 Developments" to refer to the International Lawyer Year-in-Review volume published in 2005); Terry et al., *Vol*. 44, *supra* note 16, at 565 n.10 (using a shorthand reference of "2008 Year-in-Review" to refer to the *Transnational Legal Practice* article published in 2009 in Terry et al., *Vol*. 43, rather than the *Transnational Legal Practice* article that was published in 2008 in Terry et al., *Vol*. 42).

23. *See supra* note 16 (listing all *TLP Year-in-Review* articles).

24. *Cf.* Lutz et al., *Vol*. 37, *supra* note 16, at 992-95 (discussing, *inter alia*, gatherings hosted by the ABA Commission on Multijurisdictional Practice [MJP], whose mandate included examining transnational MJP issues; Professor Lutz served as the primary editor of this *TLP Year-in-Review* volume and was a liaison to the ABA MJP Commission); Rivkin, *Vol*. 33, *supra* note 16, at 825 (describing the 1998 [Paris] Forum on Transnational Practice for the Legal Profession); Laurel S. Terry, *An Introduction to the Paris Forum on Transnational Practice for the Legal Profession*, 18 DICKINSON J. INT'L L. 1 (1999). Both the ABA MJP Commission and the earlier ABA Commission on Multidisciplinary Practice [MDP] heard written and oral testimony from foreign lawyers and lawyer organizations. *See, e.g.,* Lutz et al., *Vol*. 37, *supra* note 16 (describing the work of the MJP Commission); Terry, *Coming of* Age, *supra* note 15, at 489-91 (describing global participation in the work of the ABA MDP Commission). Although ITILS arranged a meeting in November 2003 between USTR officials and ITILS members, in the author's view, the limited scale of this meeting did not rise to the level of the *Summits* described in this article.

discussed in this Article are listed below, along with the name of the gathering as it appeared on the agenda:

- Aug. 2004: CCBE-U.S. State Bar Leaders Roundtable
- Nov. 2004: Domestic Roundtable with USTR and State Regulators (Washington, D.C.)
- Aug 2005: CCBE-ABA Summit II (Chicago)
- Aug. 2006: European-US Bar Leader Summit (Honolulu)
- Aug. 2006: Asian Summit on Legal Services (Honolulu)
- Aug. 2007: 2nd Asian Summit of Bar Leaders on Legal Services (San Francisco)
- Aug. 2007: 4th Annual US-EU Summit of Bar Leaders on Legal Services
- Aug. 2008: Korea-US Summit
- Aug. 2008: India-US Summit (New York)
- Aug. 2008: Large Law Firm Summit
- March 2009: Cancelled Domestic Summit but see the [substitute] May 2009 CCJ Conference
- May 2009: ABA CPR Conference for the Conference of Chief Justices (Chicago)
- Aug. 2013: CCBE-US Roundtable (San Francisco)
- Aug. 2013: Trans-Pacific Bar Leaders' Summit (San Francisco)
- Aug. 2014: EU-US Legal Services Roundtable (Boston)

As this list shows, the ABA's TLP-related *Summits* can be divided into five categories. The ABA held multiple *Summits* that focused on the U.S.-European relationship. [25] It also held several *Summits* that focused on the relationships among the legal professions in Asia and the United States. [26] A third set of *Summits* focused on a single country, such as India or Korea.[27] Fourth, there were *TLP Summits* designed for U.S. policymakers.[28] Fifth, there were *Summits* designed to facilitate communication with U.S. law firms engaged in the export of legal

25. *See generally infra* notes 32-43 and 167-186 and accompanying text for a discussion of the 2004-2007 and 2012-2013 EU-US *Summits*).

26. *See, e.g.*, *infra* notes 86-93 (2006 Asian Summit), 102-103 and 114-24 (2007 Asian Summit), and 156-167 (2013 Trans-Pacific Bar Leaders' Summit) and accompanying text. *See also infra* note 27 (citing the 2008 Korea and India *Summits*).

27. *See infra* notes 128-134 and accompanying text (describing the 2008 Korea-US *Summit* and the India-US *Summit*).

28. *See infra* notes 45-55 and 141-146 and accompanying text (describing the 2004 Domestic Roundtable and the May 2009 CPR conference for the CCJ).

services.[29] Information about each of the *Summits* can be found in the next Section.

C. Details about the ABA's TLP Summits

Some details about the fourteen *ABA Summits* can be found in the published *TLP Year-in-Review* reports, but many other details reside in the files of the ITILS participants, such as Professor Lutz and the author.[30] Where possible, this Section identifies the topics in the *Summit* agendas, the materials circulated in advance of, or during, the *Summits*, the scope of the *Summit* conversations, and how the *Summits* created follow-up activity. These items help demonstrate why the *Summits* created momentum for increased global conversations that facilitated cross-border legal practice.

One aspect of the *Summits* that is not apparent from the published reports is the fact that all but three of the ABA's TLP *Summits* occurred when Professor Lutz served as a Co-Chair of the ABA TLP Committee or when he served as Chair of the ABA Task Force on International Trade in Legal Services, which was one of the predecessor entities of the current ITILS.[31] Professor Lutz's leadership was a critical component of the initial *Summits* and his continued involvement in ITILS was part of the reason why later *Summits* happened.

The ABA held its first TLP-related *Summit* in August 2004 during the ABA Annual Meeting.[32] The primary U.S. sponsor for this *Summit* was the ABA Section of International Law's Transnational Legal Practice committee which Professor Lutz co-chaired with Philip von Mehren.[33]

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29. *See infra* notes 138-140 and accompanying text (describing the 2008 large law firm *Summit*).

30. Since its creation in 2003, I have been a member or liaison of ITILS, or a former member who was listed on the ITILS Rosters and therefore received the Committee's materials. *See supra* note 14.

As explained *supra* in note 12, in 2003-04, 2004-05, and 2005-06, Professor Lutz served as Chair of the ABA Section of International Law and Practice's Transnational Legal Practice Committee. During 2004-05 and 2005-06, Professor Lutz was a TLP Committee liaison to ITILS. *See ITILS Rosters, supra* note 14. During 2006-07, 2007-08, 2008-09, and 2009-2010, Professor Lutz served as Chair of ITILS. *Id.*

31. *See id.* (Professor Lutz's leadership positions and a note about the TLP and ITILS abbreviations used in this Article).

32. *See infra* notes 34-40 for a discussion of the 2004 *Summit. See also supra* notes 12 and 14 (explaining that Professor Lutz served as Co-Chair of the ABA SIL's Transnational Legal Practice Committee during 2003-04 and 2004-05 and that August 2004 was the conclusion of the ABA ITILS Committee's first year of existence).

33. The author has personal knowledge of this fact. *See also infra* note 36 (citing Lutz & Mehren, *2004 Summit Invitation Letter*).

Professor Lutz was the lead editor for Volume 39 of the *International Lawyer*, which contains this report about the August 2004 *Summit:*

> Since the last Year-in-Review report about the GATS, three developments should facilitate communication between the U.S. legal profession and the USTR regarding MJP of legal services. First, the ABA reconstituted the ABA Task Force on GATS Legal Services Negotiations [by renaming it and increasing its members]; second, a "Summit Meeting" was convened at the 2004 Annual Meeting of the ABA in Atlanta to bring together U.S. representatives from fourteen states, various U.S. legal organizations, the Law Society of England and Wales, and the Council of Bars and Law Societies of Europe (CCBE), which is the umbrella organization of the European Union's (EU) bar associations and represents over 700,000 lawyers; [the third item was the November 2004 *Summit* described below].[34]

The National Conference of Bar Examiners' *Bar Examiner* magazine published an article that provides this additional detail about the August 2004 *Summit*:

> The [August 2004] Atlanta Summit brought together representatives from 14 U.S. states, various U.S. legal organizations, the Law Society of England and Wales, and the CCBE, which is the European Union's bar association that represents over 700,000 lawyers. More than fifty people attended the Atlanta Summit, including state bar presidents, state international law section chairs, state bar executive directors, state disciplinary counsel, and representatives from the ABA, the ABA Center for Professional Responsibility, the National Organization of Bar Counsel, and the Conference of Chief Justices. The agenda topics included: the present status of the GATS, the EU offer on legal services for the current GATS round, the "request" and "offer" of the New York State Bar Association, and a discussion of ways in which the jurisdictions present could further liberalize transnational legal services.[35]

Documents on file with the author provide additional detail about the August 2004 *Summit.* The invitation letter was sent by Professor Lutz and his fellow co-chair of the ABA's Transnational Legal Practice Committee.[36] The invitation letter included the agenda for the meeting, showing that one of the primary goals of the meeting was for the U.S. and European representatives to introduce themselves and their systems to one

34. Lutz et al., *Vol*. 39, *supra* note 16, at 622 (footnotes omitted).

35. Laurel S. Terry, *The GATS and Legal Services: The Resumed GATS Negotiations Trigger Additional U.S. and Other Activity*, 75 THE BAR EXAMINER 43, 44 (2005) (footnotes omitted) [hereinafter Terry, *Bar Examiner* 2005].

36. Letter from Robert E. Lutz & Philip T. von Mehren, Co-Chairs, Transnational Legal Practice Committee, to Distribution List (June 15, 2004) (on file with author) [hereinafter Lutz & Mehren, *2004 Summit Invitation Letter*].

another, and to review TLP issues.[37] The *Summit* was scheduled to last two hours.[38] Before the meeting, the participants were sent a list of the attendees, as well as the agenda and background material.[39] The CCBE attendees included individuals with whom ABA members continue to interact.[40]

In addition to helping establish relationships among the U.S. and EU representatives, the 2004 *Summit* led to follow-up action. For example, after the August 2004 *Summit*, State Bar of Georgia General Counsel and NOBC member Bill Smith, who had attended the *Summit* as an observer from Georgia, renewed a request to NOBC members to submit contact information for their state that could be shared with the Office of the U.S. Trade Representative. He obtained contact information for all but three states and in late August 2004, an ABA Center for Professional Responsibility staff member forwarded to the USTR three contact lists: one from the Conference of Chief Justices, one from the National Organization or Bar Counsel, and another from the ABA Division of Bar Services that

37. *Id.* at 1-2 (stating that although some US and EU *Summit* attendees were familiar with each other and with each other's systems, the TLP issues were new for some of the attendees, especially those who were invited because of their position as a State Bar President). *See generally* Lutz & Mehren, *2004 Summit Invitation Letter*, *supra* note 36, (stating that the agenda for the *Summit* would include six bulleted topics; 1) an introduction of the various parties and the organizations they represent; 2) an overview of the present rules governing the free movement of European lawyers within the European Union ("EU"); 3) present status of World Trade Organization's General Agreement on Trade in Services ("GATS") as it relates to transnational legal practice; 4) the EU offer on legal services for the current GATS round; 5) the "request" and "offer" of the New York State Bar Association; and 6) a discussion of ways in which the jurisdictions present could further liberalize the regulation of transnational legal services to benefit lawyers from those jurisdictions).

38. *See* E-mail from Brenda McLaughlin, Assistant to Philip von Mehren, to *Summit* Attendees (July 22, 2004) (on file with author) (transmitting a list of *Summit* attendees and noting that the meeting had rescheduled to 4:00-6:00pm on Aug. 6, 2004).

39. *See, e.g.,* E-mail from Brenda McLaughlin, Assistant to Philip von Mehren, to *Summit* Attendees, *supra* note 38 (stating that "[n]ext week, we will be distributing an agenda and background materials") (author was not able to locate follow-up e-mail) (on file with author). *See also* E-mail from Brenda McLaughlin, Assistant to Philip von Mehren, to author, Professor Lutz, and others (July 22, 2004) (noting that the ABA was awaiting the CCBE's materials, but the materials the ABA proposed to send included excerpts of Recommendations 8 & 9 from the Report of the [ABA MJP] Commission; Table 2, which compared different sections of the ABA's Model [FLC] Rule; a Summary of the U.S.'s Proposed Reference Paper on Legal Services which the ABA had received from the USTR and was posted on its ABA GATS webpage; and information about the ABA Center for Professional Responsibility Joint Committee on Lawyer Regulation).

40. *See* Summit Meeting Attendees (July 25, 2004) (on file with author). This document lists as the CCBE attendees Dr. Hans-Jürgen Hellwig, CCBE President; Alison Hook, The Law Society [of England & Wales]; Louis-Bernard Buchman; and Jonathan Goldsmith, CCBE Secretary General. *Id.*

included state bar contacts.[41] By October 28, 2004, the ABA Center for Professional Responsibility had created a listserv that included ITILS members and included the individuals on the three separate contact lists that the ABA Center had previously forwarded to the USTR.[42]

The second *Summit* the ABA sponsored during 2004 was held in November 2004 at the Washington, D.C. office of the U.S. Trade Representative [USTR].[43] (The USTR is a cabinet-level official whose department is primarily responsible for handling U.S. trade negotiations.)[44] Volume 39 of the *International Lawyer* described this *Summit* in a single sentence that said, "a meeting of USTR representatives and state representatives and others was held at the Office of the USTR in November 2004 in order to engage in a dialogue with the USTR about market access for the legal profession."[45] The *Bar Examiner* article cited previously provides this additional detail about the November 2004 USTR *Summit:*

> The third recent event of importance was the November 16, 2004, meeting held at the Office of the U.S. Trade Representative (USTR). This meeting was intended as a follow-up to the August 2004 Atlanta Summit. The purpose of the November 2004 USTR Meeting was to give state representatives and others the opportunity to engage in a dialogue with the USTR and vice versa. This meeting was the first time that representatives

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41. *See, e.g.,* E-mail from Bill Smith, to NOBC Listserv (Aug. 18, 2004) (requesting contact information for the proposed USTR listserv) (on file with author); three E-mails from Sue Campbell, ABA Staff, to Chris Melly, Office of the USTR (Aug. 27, 2004) (on file with author) (transmitting contact information for CCJ members, NOBC members, and state bar and ITILS members).

42. *See, e.g.*, E-mail from Susan Campbell, ABA Staff, to CPR-GATSONTACTSUSTR Listserv (Oct. 28, 2004) [hereinafter "Welcome to GATS Listserv Message"]. The "Welcome to GATS Listserv Message" stated:

> Welcome to this listserve on GATS, the General Agreement on Trade in Services. The listserve was created by the ABA Center for Professional Responsibility in conjunction with the ABA Taskforce on GATS and the ABA Section of International Law and Practice. The listserve includes state representatives from bar associations, disciplinary organizations and the judiciary. It permits those interested in the GATS negotiations related to legal services to discuss the effect and direction of the negotiations. The listserve also provides a mechanism for the United States Trade Representative's office to communicate information about the GATS negotiations and to request feedback. Representatives of the USTR are not currently members of the listserve but can request that information be posted on their behalf at any time.

Id. See also E-mail from Charlotte "Becky" Stretch, ABA Staff, to CPR-GATSCONTACTSUSTR Listserv (June 10, 2005) (on file with author) (attaching a consolidated roster of listserv members) [hereinafter GATSCONTACTSUSTR Listserv]. At the time this message was sent, Professor Lutz was a Co-Chair of the ABA TLP Committee and a liaison to the ABA ITILS Committee from the ABA Section of International Law. *See supra* note 12.

43. Lutz et al., *Vol*. 39, *supra* note 16, at 622.

44. *See generally* Off. of the U.S. Trade Representative, *History of the United States Trade Representative*, OFF. OF THE U.S. TRADE REPRESENTATIVE, https://perma.cc/GV2M-ESW6.

45. Lutz et al., *Vol*. 39, *supra* note 16, at 622 (footnotes omitted).

> of the USTR had met, simultaneously, with a large number of representatives of the legal profession. The USTR officials attending the meeting included Christine Bliss, Deputy Assistant Trade Representative for Services, and Christopher Melly, Director, Services Trade Negotiations. Unlike the Atlanta Summit, conference call facilities were available for the November USTR meeting. Almost thirty people attended the USTR meeting in person, with approximately a dozen individuals participating by conference call. Those attending included representatives from California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Maryland, Michigan, New Jersey, New York, Texas, and Virginia, together with representatives from the American Bar Association, the Conference of Chief Justices, the National Organization of Bar Counsel, and the Coalition of Service Industries. The 2½ hour meeting included eight agenda items: (1) welcoming remarks and the goals of the meeting; (2) the status of the GATS negotiations; (3) the U.S. legal services' GATS request; (4) state liberalization efforts; (5) the Conference of Chief Justices and GATS; (6) the regulation of foreign lawyers by states; (7) ITAC and CSI and the campaign to expand U.S. services trade; and (8) a general discussion of how to coordinate efforts and whether the U.S. can get its house in order.[46]

As the description above illustrates, the November 2004 *Summit* had as its focus an ***intra-U.S.*** conversation among the USTR and U.S. stakeholders, as opposed to the U.S.-foreign conversation was a key part of the August 2004 *Summit.* The November 2004 *Summit* was an opportunity to bring to the USTR stakeholders interested in both "***inbound***" and "***outbound***" legal services issues. "Outbound" legal services from the United States are those in which U.S. lawyers (or firms) provide legal services to clients in other countries. ***Outbound*** legal services are also referred to as U.S. legal services "exports." ***Inbound*** legal services is an expression that is used to refer to the situation in which a foreign lawyer (or firm) comes into the United States to provide legal services. Inbound legal services are also referred to as U.S. legal services "imports."

In the author's experience, U.S. legal services regulators tend to care more about foreign legal services inbound to the United States, as opposed to U.S. lawyers who provide outbound U.S. legal services to clients in other countries. Private practice lawyers in the ABA Section of International Law, on the other hand, tend to care more about opportunities for outbound U.S. legal services compared to inbound (foreign) legal services.

The November 2004 *Summit* was noteworthy because it gave the USTR the opportunity to hear from the ABA with respect to both inbound and outbound perspectives. (During the negotiations that led to the signing

46. Terry, *Bar Examiner* 2005, *supra* note 35, at 44-45 (footnotes omitted).

of the NAFTA and the WTO GATS agreements, the USTR's primary interactions regarding legal services were with representatives from the ABA Section of International law or organizations that were primarily interested in "***outbound***" issues.[47]) The 2003 creation of the ABA GATS Task Force was an effort to reach out to *all* interested stakeholders and promote better communication and coordination ***within*** the ABA and with external stakeholders.[48] (The 2000-2002 work of the ABA Commission on Multijurisdictional Practice had heightened awareness within the ABA of ***inbound*** TLP issues.)[49]

There were several different ways in which the November 2004 *Summit* advanced the ABA's goal of promoting better communication among the USTR and ***inbound*** and ***outbound*** U.S. legal services stakeholders. The materials distributed at the *November 2004 Summit*

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47. *See, e.g.,* Karen Dillon, *Unfair Trade?,* AM. L., at 54-57 (Apr. 1994) (discussing the WTO GATS legal services negotiations); Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 34 VANDERBILT J. TRANSNAT'L L. 989, 1089 (2001) as revised 35 VANDERBILT J. TRANSNAT'L L. 1387 (2002):

> To date, virtually all U.S. experts in the law of lawyering have been unfamiliar with the GATS and have not participated in the development of GATS policy. … [I believe that all U.S. regulators and lawyers] should recognize that the GATS has the potential to directly affect regulations of foreign lawyers in the United States and the potential to indirectly affect U.S. regulation of U.S. lawyers. Accordingly, even lawyers and regulators without a global practice should be aware of the GATS and should monitor the ongoing developments in GATS 2000.

48. *See, e.g.,* Minutes of the Task Force on GATS Legal Services Negotiations (Sept. 4, 2003) (in a section on Task Force mission and Goals, the minutes note that the group agreed that there was work to be done "internally within the ABA and also related organizations such as the National Conference of Bar Presidents and the Conference of Chief Justices, among others. One mission of the task force is to promote information sharing, cooperation and coordination within the ABA, and between the ABA and outside entities.") (on file with author).

It is worth noting that the mission of the ABA Commission on Multijurisdictional Practice (MJP), which was active from 2001-2003, included issues related to transnational practice. *See* Clark, Vol. 36, *supra* note 16, at 955 ("As a threshold matter, [TLP] committee members were instrumental in successfully asking the ABA Board of Governors to revise the mission of the ABA MJP Commission so that it explicitly included consideration of MJP issues with respect to international law practitioners.") The MJP Commission's TLP recommendations focused on foreign lawyers who were *inbound* to the United States, rather than model rules focused on U.S. lawyers who were outbound to foreign countries. *See generally* ABA*, Commission on Multijurisdictional Practice,* https://perma.cc/9JDB-WDL8 (contains all of the MJP Commission's adopted reports, including 201G and 201H, which involve inbound foreign lawyers).

49. Lutz et al., *Vol*. 37, *supra* note 16, at 993 ("Although the main focus of the MJP Report was on the states' regulation of inter-state practice of law, the MJP Report explicitly addressed two issues related to international cross- border legal services."); Clark, *Vol*. 36, *supra* note 16, at 956 (citing the TLP Committee's June 1, 2001 Supplemental Written Testimony, and its June 30, 2001 responses to the MJP Commission's questions, which Professor Lutz presented to the Commission), at 955 ("[TLP] committee members were instrumental in successfully asking the ABA Board of Governors to revise the mission of the ABA MJP Commission so that it explicitly included consideration of MJP issues with respect to international law practitioners.").

included items related to foreign legal services *inbound* to the United States, as well as items related to U.S. legal services *outbound* to other countries.[50]

The *Summit* speakers included individuals who were knowledgeable about legal services trade negotiations, individuals knowledgeable about ***inbound*** perspectives, and individuals who were knowledgeable about ***outbound*** perspectives, all of whom were able to communicate effectively with their respective groups. For example, Chris Melly, who was Director of Services Trade Negotiations at the USTR, spoke about agenda item #2 in the *Bar Examiner* excerpt quoted above, which was the status of legal services in the ongoing GATS negotiations.[51] Edward O'Connell, who was Senior Counsel with the National Center for State Courts, addressed Agenda item #5 regarding "the Conference of Chief Justices and GATS."[52] Bill Smith, who was General Counsel of the State Bar of Georgia and chair of the NOBC's recently-formed "International Cooperation Committee," handled Agenda Item #6 on "the regulation of foreign lawyers by states."[53] The two speakers who addressed the ***outbound*** legal services perspective were: 1) Peter Ehrenhaft, a lawyer in private practice, a member of the ABA Commission on Multijurisdictional Practice, and the ABA's representative to the "services" ITAC, which is a statutorily-required Industry Trade Advisory Committee that advises the government regarding trade negotiations; and 2) Bob Vastine, the President of CSI and Chair of the Industry Trade Advisory committee in Services. [54]

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50. *See Index of Documents for Meeting at USTR, Among USTR, ABA, U.S. Bar Leaders, Conference of Chief Justices, National Organization of Bar Counsel, ITAC and CSI* (Nov. 16, 2004) (on file with author) (listing the ABA GATS Webpage; Legal Services, Draft Reference Paper of the United States (submitted to GATS Members as a Guide to Market Access Commitments for Legal Services); Implementation of ABA Multijurisdictional Practice (MJP) Recommendation #8 [regarding state foreign legal consultant rules] (Draft 10-22-04); Implementation of ABA Multijurisdictional Practice (MJP) Recommendation #9 [regarding temporary practice by foreign lawyers] (Draft 10-22-04); Excerpts of Recommendations 8 & 9 from the Report of the Commission on Multijurisdictional Practice; ABA Table summarizing status on implementation of Recommendation 8 (legal consultants) and 9 (temporary practice); Table on Comparison of Sections 4(a)-(f), 5 and 6 of the ABA Model Rule for the Licensing of Legal Consultants with State FLC Rules; Cross-Border Legal Practice in International Legal Centers as viewed from New York; US offer on Legal Services; EU offer on Legal Services; Japanese offer on Legal Services; Canadian offer on Legal Services; Australian offer of Legal Services; and the text of the GATS).

51. *See* Agenda for Meeting at USTR, Nov. 16, 2004 (on file with author) [hereinafter Nov. 2004 *Summit* Agenda].

52. *Id.*

53. *Id.*

54. *Id. See generally* Laurel S. Terry, *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875, 884 (2010) [hereinafter From GATS to APEC].

As the *Bar Examiner's* published account of the November 2004 *Summit* noted, one of the questions posed for general discussion was "how can we better coordinate our efforts?"[55] The November 2004 *Summit* was an important step in facilitating better communication and coordination. In addition to the state contact listservs that the ABA shared with the USTR in October 2004, after the 2004 Summits, it became much more common for the ABA, the CCJ, the NOBC, and inbound and outbound U.S. legal services stakeholders to interact with one another.[56]

The next summit was held in August 2005 and was a follow-up to the August 2004 US-EU *Summit.* Although there is no published report about the 2005 EU-US *Summit II,*[57] documents in the author's files show that the 2005 *Summit* was similar in many respects to the 2004 EU-US *Summit*. In June 2005, Professor Lutz and his TLP Committee Co-Chair sent a letter of invitation to individuals from California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and the District of Columbia.[58] The letter offered the following explanation of the EU-US 2005 *Summit*:

> The purpose of this meeting is to continue the dialogue among bar and law society leaders initiated last year at the meeting we organized, nicknamed "Summit I," during the ABA Annual Meeting in Atlanta. More specifically, we want to update you about global developments regarding

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55. *See* Nov. 2004 *Summit* Agenda, *supra* note 51.

56. *See, e.g.,* GATSCONTACTSUSTR Listserv, *supra* note 42.

57. *See also* Terry et al., *Vol*. 42, *supra* note 16, at 842 (the *Transnational Legal Practice* report published in 2008 documented selected activities that happened in 2005-07, including four Summits that took place during 2006 and 2007, but it did not refer to the August 2005 *Summit*). *See generally* 40 INT'L LAW. 143 (2006) (International Legal Developments issue did not include a *Transnational Legal Practice Year-in-Review* report); 41 INT'L LAW. 135 (2007) (same).

58. *See* E-mail from Robert Lutz, to author and others (June 29, 2005) (transmitting embedded invitation and referring to the attached invitation); Letter from Robert E. Lutz and Philip von Mehren, Co-Chairs of the ABA Section of Int'l L. Transnat'l Legal Prac. Comm., to The Individuals Listed on the Attached Distribution List (June 27, 2005) (on file with author) [hereinafter Lutz and Mehren, *2005 Summit Invitation Letter*].

With respect to the Letter of Invitation's reference to CCJ attendees, the informal minutes from the 2005 *Summit* show that one of the attendees was Dick Van Duizend, who worked for the National Center for State Courts as Principal Court Management Consultant and was the main staff contact for the Conference of Chief Justices on TLP-related issues. *See* ABA Section of International Law, Transnational l Legal Practice committee "Summit II" (Aug. 5, 2005) (on file with author) [hereinafter Informal Minutes, 2005 *Summit*].

There may have been additional CCJ representatives because the Hon. Elizabeth Lacy of the Supreme Court of Virginia was an ITILS member or liaison from its inception in 2003-04 through 2013-14. *See* ITILS Rosters, *supra* note 14. In 2008-09, which was the fourth year in which Professor Lutz chaired the ABA ITILS committee, Chief Justices Jerry VandeWalle and Shirley Abrahamson joined the committee as a member and as the CCJ liaison, respectively. *Id.*

> the GATS and related lawyer regulatory issues. We will also highlight recent U.S.-European requests and offers and explore areas of possible future initiative and cooperation.[59]

The 2005 Letter of Invitation expressed Professor Lutz's hope that the attendees would include "representatives from the CCBE, various foreign country lawyer organizations, and U.S. national and state bar leaders. We are also hopeful that members of the Conference of State Chief Justices will attend."[60]

During the 2005 *Summit*'s introductory session, Professor Lutz explained the *Summit's* structure to the attendees, noting that:

> [F]our issues had been identified as preeminent for this group to discuss and make up the agenda. There will be two speakers to address each issue and they will have five minutes each for their presentation, with ten minutes of open discussion to follow.[61]

The first of the four issues Professor Lutz had referred to was "discussion of data regarding the traffic in legal services (inbound and outbound) between the U.S. and the EU" and the speakers were Professor Carole Silver and Alison Hook.[62] The second issue was "[d]iscussion of major U.S., European and GATS developments (in the past year) and future multi-jurisdictional practice ("MJP") prospects" and the speakers were Peter Ehrenhaft and Hans-Jurgen Hellwig.[63] The third issue was "[d]iscussion of issues raised regarding U.S.-state and EU-European country relationships in the GATS process" and the speakers were Mark Sandstrom and Jonathan Goldsmith. The fourth issue was "[d]iscussion regarding U.S.-European efforts to develop international reciprocal discipline protocols" and the speakers were Bill Smith and Jonathan Goldsmith. As they had for the first US-EU *Summit*, the organizers of the

59. Lutz & Mehren, *2005 Summit Invitation Letter*, *supra* note 58.

60. *Id.* The Distribution List attached to the Lutz & Mehren, *2005 Summit Invitation Letter*, *supra* note 58, was nine pages long and included many of the individuals who had been included on the CPR-GATS Contact list prepared for the USTR and discussed *supra* notes 41-42. The author does not have a list of attendees, as opposed to invitees, but informal minutes of the *Summit* list a number of attendees by name and cite the affiliation information for individuals affiliated with the CCJ and NOBC. Informal Minutes, ABA Sec. Int'l Law, Transnational Legal Practice Committee "Summit II," Chicago, IL (Aug. 5, 2004) (on file with author).

61. Informal Minutes, 2005 *Summit*, *supra* note 60, at 1. *See also* E-mail from Robert E. Lutz, to author (July 6, 2005) (on file with author), for a draft agenda listing these same four issues as the issues to be discussed at the August 2005 *Summit*.

62. Informal Minutes, 2005 *Summit*, *supra* note 60, at 1-2.

63. *Id.* at 3.

2005 *Summit* circulated materials to the attendees in advance of the *2005 Summit*.[64]

After the 2005 *Summit* concluded, ITILS representatives made a concerted effort to involve more formally in ITILS the kinds of stakeholders that had attended the *Summit*. ITILS members agreed to add an official National Organization of Bar Counsel liaison to ITILS, to invite Erica Moeser, who was the President of the National Conference of Bar Examiners, to join the group, and to invite Dick Van Duizend, who was one of the National Center for State Court officials who worked most closely with the Conference of Chief Justices.[65]

Another outcome of the 2005 *Summit* was a renewed effort by ITILS members to better understand the *Schedule of Specific Commitments* document the United States filed with the World Trade Organization and the options for revising that document in the required ongoing "market access" WTO negotiations.[66] To that end, in February 2006, the ABA convened the so-called "Experts Meeting" where it invited leading trade experts to speak about WTO negotiations and legal services commitments with the types of U.S. stakeholders who had been invited to the 2005 *Summit*.[67]

The expanded connections that happened during the 2005 *Summit* proved useful when ITILS was asked by the USTR to help organize a May 2006 meeting between U.S. and Australian representatives pursuant to the Professional Services Annex found in the 2004 U.S.-Australia Free Trade Agreement.[68] ITILS helped coordinate the attendance of representatives from the CCJ, NOBC, and NCBE, as well as various ABA entities and state

64. *Cf.* E-mail from Robert Lutz, to author (July 6, 2005) (on file with author) ("I would like your input on what materials we should make available to the *Summit* invitees in advance of the meeting on Aug. 5. It was my intention to follow up the RSVPs with some background information about 7 to 10 days in advance of the Summit.").

65. *See* Task Force on GATS Legal Services Negotiations Meeting Minutes (Dec. 15, 2005) (on file with author).

66. Laurel S. Terry, *The Revised Handbook about the GATS for International Bar Association Member Bars* 1, 29-33 (rev. ed. 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2339553. *See From GATS to APEC*, *supra* note 54, at 940-52, for information about the required market access negotiations.

67. *See* Agenda for the Experts Meeting of the ABA Task Force on GATS Legal Services Negotiations (Feb. 7, 2006) (on file with author).

68. *See* From GATS to APEC, *supra* note 54, at 888-89 (describing the structure and goals of the US-Australia FTA's Annex on Professional Services, as well as the May 2006 meeting). *See also id.* at 928-30 (noting that Professional Services Annexes are used in all but one of the U.S. free trade agreements the U.S. had entered into, and noting the similarities and differences among them).

bar members.[69] Australian and U.S. attendees prepared briefing papers regarding their lawyer qualification rules and their rules governing foreign lawyers; productive conversations ensued.[70]

Several months after the May 2006 U.S.-Australian FTA meeting, ITILS sponsored two additional *Summits*. Volume 42 of the *International Lawyer* contains a brief description of the 2006 *US-EU Summi*t and the 2006 *US-Asia Summit*:

> Since the last Year-in-Review, the [ABA International Trade in Legal Services or] ITILS Task Force, in cooperation with the ABA Section of International Law's Transnational Legal Practice Committee, convened several Summit Meetings with foreign bar leaders from various regions to discuss differences in legal services regulation and to identify areas of agreement and disagreement about goals and approaches. At the 2006 and 2007 ABA Annual Meetings, the E.U.-U.S. Legal Services Summits were co-hosted by the Council of the Bars and Law Societies of Europe (CCBE), and the Asia-U.S. Legal Services Summits included lawyers and bar leaders from Australia, China, India, Indonesia, Japan, Korea, Singapore, and Vietnam.[71]

The paragraph quoted above constitutes the entire description of the 2006 US-EU *Summit*, but Volume 42 contains additional information about the 2006 Asia *Summit*:

> At the Asian *Summit* meetings, Korean bar representatives claimed that Korea would follow the path taken by Japan in liberalizing access to the local market (including full rights of partnership with and employment of or by local lawyers) within a fraction of the nearly twenty-five years these reforms took in Japan.[72]

A *Bar Examiner* article published in February 2007 included this short summary of issues addressed at the August 2006 *Summits:*

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69. *Id.* at 888; Terry et al., *Vol*. 42, *supra* note 16, at 848 n.88 ("Each side prepared briefing papers for the other regarding lawyer qualification rules and rules governing foreign lawyers. This event was the first and only FTA-related legal services meeting involving representatives of the relevant legal profession bodies from each country.").

70. Terry et al., *Vol*. 42, *supra* note 16, at 848 n.88 (noting that each side prepared briefing papers regarding their lawyer qualification rules and rules governing foreign lawyers and that it was the first FTA-related legal services meeting involving representatives of the relevant legal profession bodies).

71. *Id.* at 824.

72. *Id.* at 848. Approximately ten years after the *Summit* that this quote describes, Korea's laws regulating the relationships among foreign and domestic lawyers remained an issue of concern to U.S. lawyers and law firms. *See, e.g.,* Letter from Thomas Susman, Director, ABA Governmental Affairs Office, to Ministry of Justice of the Republic of Korea (Apr. 11, 2016), https://perma.cc/65D2-DJSF.

> During its August 2006 Annual Meeting, the ABA coordinated an Asian Summit and a third summit with the CCBE. These summits addressed a wide range of topics, including lawyer discipline cooperation, possible mutual recognition initiatives, and other issues related to global multijurisdictional practice. Those attending the summits included representatives from the ABA, state bars, the CCJ, the NOBC, NCBE, and other law-related organizations.[73]

The Letter of Invitation for the 2006 US-EU *Summit* contained additional information beyond that contained in the published reports quoted above. The 2006 US-EU *Summit* was scheduled for two-hours and was held on August 5, 2006, during the ABA's Annual Meeting in Honolulu. Professor Lutz's invitation letter explained that the *Summit* would "build on the prior two very successful *Summit*s with the Europeans" and that the "purpose of this meeting will be to continue the dialogue," but noted that "at this *Summit* we also intend to press beyond information exchange to identify common ground from which we might explore possible future prospects for agreement."[74] The Agenda items mentioned in the 2006 US-EU *Summit* invitation letter were:

- Introductions of the various parties and organizations represented (brief);
- The EU and US Offers: clarifications and common ground;
- Reciprocal Discipline Protocol: progress and prospects;
- The IBA Resolution on Home Law and Skills Transfer; and
- Other Areas of Mutual Recognition: consideration of FLC, Admissions, In-house Counsel MRAs.[75]

The distribution list for the 2006 US-EU *Summit* was five pages long and much broader than the invitee list for the 2005 US-EU *Summit*.[76] The invitation letter explained that "we are also extending invitations to U.S. national and state bar leaders, as well as to leaders of relevant organizations (see attached list)."[77] The invitees included representatives from twelve U.S. jurisdictions, three Chief Justices and Dick Van Duizend from the

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73. Laurel S. Terry, *Current Developments Regarding the GATS and Legal Services: The Suspension of the Doha Round, "Disciplines" Developments, and Other Issues,* 76 THE BAR EXAMINER 27, 29 (2007) [hereinafter Terry, *Bar Examiner 2007*].

74. E-mail from ABA International and Bob Lutz to Distribution List (July 19, 2006) (on file with author) [hereinafter Lutz, *2006 EU-US Summit Invitation Letter*].

75. *Id.*

76. *See* Distribution List, Invited Participants for European – U.S. Bar Leader Summit (Aug. 5, 2006) (on file with author) [hereinafter *2006 EU-US Summit Invited Participants*].

77. Lutz, *2006 EU-US Summit Invitation Letter*, *supra* note 74, at 2-3.

National Center for State Courts, USTR and Department of Commerce employees, representatives from the NCBE, NOBC, National Association of Bar Executives, and the Coalition of Service Industries, as well as numerous ABA groups.[78] On the European side, the invited participants included three individuals from the CCBE and representatives from fifteen European countries, as well as representatives from the International Bar Association and Union Internationale des Avocats.[79] The invitation letter noted that "[s]ome of the invitees will take the lead on addressing and commenting on these topics, but we anticipate a discussion of these focused topics by all invited participants." The distribution list included email addresses for the invitees, which undoubtedly raised consciousness of TLP issues and facilitated later communication, even for invitees who were not able to attend.

In a post-*Summit* report to the ITILS Committee, Professor Lutz, who became Chair of ITILS in August 2006, noted that one goal of the 2006 EU *Summit* was "to focus on more specific discussions and initiatives."[80] Professor Lutz observed that there were still "significant differences" regarding the EU and US offers in the ongoing WTO market access negotiations.[81] On a more positive note, Bill Smith reported that by the next summit, he expected to have a rough draft of an international reciprocal discipline protocol that all could agree on and that the ball was currently in the CCBE's court.[82] Bill Smith also reported that the NOBC had had discussions on this issue with Australian bar representatives and that the Australians were also interested as in discipline cooperation.[83] (After many months of back and forth CCBE-ABA conversations on this topic, the CCBE began communicating directly with the CCJ; in 2009, the CCJ adopted two resolutions regarding regulatory cooperation with the CCBE and with the Law Council of Australia.[84] In 2013, the ABA adopted a

78. *See 2006 EU-US Summit Invited Participants*, *supra* note 76, at 3-4 (the twelve states listed were California, New York Illinois, Texas, Florida, D.C., Michigan, Georgia, Pennsylvania, Virginia, Maryland, and Connecticut—listed in that order). The author speculates that this included those states in which the CCBE was particularly interested, as well as states that had attended prior *Summits*).

79. *Id.* at 1-3, 5.

80. *See* Minutes, ABA Task Force on GATS Legal Services Negotiations 3 (Aug. 22, 2006) (on file with author).

81. *Id.*

82. *Id.*

83. *Id.*

84. Conference of Chief Justices, RESOL. 2*, In Support of Cooperation Among United States and European Disciplinary Bodies* (Jan. 2009), https://perma.cc/8HPF-7392; Conference of Chief Justices, RESOL. *13, In Support of Cooperation Among United States and Australian Bar Admission and Lawyer Disciplinary Bodies* (Aug. 2009), https://perma.cc/CG93-84TA.

resolution endorsing *Guidelines for an International Lawyer Regulatory Information Exchange*.[85])

On August 4, 2006, which was the day before the US-EU *Summit,* ITILS held its first *Asian Summit on Legal Services*.[86] Similar to the US-EU Summit, this meeting was scheduled for two hours. The letter of invitation, which Professor Lutz co-authored, described the purpose of the 2006 Asian *Summit* as follows:

> The purpose of this Summit is to provide a roundtable discussion about MJP issues between U.S. and Asian bar leaders and practitioners. Past "MJP Summits" have been conducted successfully with bar leaders from Europe and Latin America, increasing the knowledge and understanding among leaders of our legal profession about what can be achieved through an open discussion of the issues. At this Summit, we expect to exchange views on the status of the GATS negotiations and ongoing bilateral negotiations concerning legal services and reciprocal disciplinary agreements. We also will discuss other U.S.-Asian lawyer regulatory issues, and try to identify areas for possible future cooperation.[87]

One or more individuals in the following foreign jurisdictions received an invitation to attend the 2006 Asian *Summit*: Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, as well as representatives of the

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For additional information about these CCJ Resolutions, see Terry et al., *Vol.* 42, *supra* note 16, at 850 (discussing the ABA's early efforts to promote conversations with the CCBE and Australian representatives regarding lawyer discipline cooperation); Terry et al., *Vol.* 43, *supra* note 16, at 955-56 (discussing CCBE-CCJ discipline cooperation developments, including the CCJ's 2009 resolution); Terry et al., *Vol.* 44, *supra* note 16, at 570 n.42 and accompanying text (discussing both the Jan 2009 CCJ-CCBE resolution and the August 2009 CCJ-Australia resolution, as well as additional related documents). *See also* ABA ITILS Minutes (Oct. 24, 2006) (noting that ITILS staff counsel Ellyn Rosen had received a draft back from the CCBE on a reciprocal discipline protocol based on Rule 22, was currently analyzing the draft, and would continue the dialogue with the CCBE); ABA ITILS Minutes (June 17, 2008) (stating that the CCJ liaison had reported that they were waiting to hear back from the CCBE on a new draft of a reciprocal discipline protocol).

85. *See* American Bar Association, RESOL. 104*, Regarding Guidelines for International Lawyer Regulatory Information Exchange* 2 (Aug. 12, 2013), https://perma.cc/4MT2-5H8H; *see also* Conference of Chief Justices, RESOL. 9, *In support of the proposed ABA Guidelines for an International Regulatory Information Exchange* (July 2013), https://perma.cc/S8GB-L55N; *see* Int'l Bar Ass'n, IBA Guidelines for an International Regulatory Information Exchange Regarding Disciplinary Sanctions against Lawyers (May 2017) (illustrates the global interactions) https://perma.cc/BGY4-WKRX.

86. *See* Letter from Kenneth B. Reisenfeld, Chair, ABA Task Force on GATS Legal Services Negotiations, and Robert E. Lutz, Co-Chair, Transnational Legal Practice Committee, to Individuals Listed on the Attached Distribution List (July 14, 2006) (on file with author) [hereinafter Reisenfeld & Lutz, *2006 Asian Summit Invitation Letter*].

87. *Id.*

Inter-Pacific Bar Association and International Bar Association.[88] (Interestingly, there were a few differences in the U.S. recipients who received the 2006 Asian Summit invitation compared to the 2006 US-EU *Summit* invitation.)[89] The proposed (and actual) agenda items for the 2006 Asian *Summit* were similar, but not identical, to the agenda items listed in the 2006 US-EU Letter of Invitation.[90]

At an ITILS meeting held the month after the 2006 *Summits*, former ITILS Chair Ken Reisenfeld reported that the Asian Legal Services *Summit* had been a success and that it "was useful to recognize that there are models of success and gave Japan as an example of what might be expected in other Asian markets."[91] He noted that the *Summit* was "well-attended by members of the Japanese bar and that they spoke of the benefits that liberalization has provided to Japan."[92] He also explained that the *Summit* was also useful for identifying, from a practical perspective, countries that

88. *See* Invited Participants for Asian Summit on Legal Services 1 (Aug. 4, 2006) (on file with author) [hereinafter 2006 Asian *Summit* Invited Participants].

89. *Compare id.* at 2-3 with *2006 EU-US Summit Invited Participants, supra* note 76.

90. Compare Lutz, *2006 EU-US Summit Invitation Letter*, *supra* note 74 *with* Reisenfeld & Lutz, *2006 Asian Summit Invitation Letter*, *supra* note 86, at 2. (the five agenda items listed in the 2006 Asian Summit Invitation Letter included the following: 1) Introductions of the various parties and organizations represented; 2) an exchange of Asian and U.S. perspectives on: a) Significant U.S., Asian, MJP and GATS developments and future prospects (including GATS requests, offers, plurilateral and bilateral negotiations, disciplines), b) market access barriers faced by U.S. lawyers practicing in Asian countries, c) market access barriers faced by Asian lawyers practicing in the U.S; 3) discussion of bilateral mutual recognition agreements for the legal profession; 4) discussion of reciprocal disciplinary agreements; and 5) future areas of cooperation). *Id.* The letter of invitation invited the recipients to "identify any additional agenda items that you believe should be addressed" and said that additional information about the agenda topics would be provided in advance of the meeting. *Id.* at 1.

The topics listed in the 2006 Asian Summit Invitation Letter were consistent with the 2006 Asian *Summit* Agenda itself. *Compare id. with Agenda, Asian Summit on Legal Services* (Aug. 4, 2006) (on file with author) [hereinafter 2006 Asian Summit Agenda]. The 2006 Asian Summit Agenda listed seventeen speakers who would cover the topics of introductions, handle introductions, an overview (including Professor Lutz's overview of issues for discussion during the Roundtable, perspectives from Japan, Hong Kong, China, Australia, India, Korea, and Singapore. *Id.* The third agenda item was a roundtable discussion with bar leaders, in which comparative perspectives would be solicited on five topics: 1) Nature of National and International Legal Services Markets – Recent Legal Services Liberalizations; 2) Market Access Barriers to Practice in Asian Countries; 3) Market Access Barriers to Practice in the United States; 4) GATS or Bilateral Positions or Developments; and 5) Prospects for Bilateral Mutual Recognition Agreements For Bar Qualification, Admission or Reciprocal Discipline. *Id.* The last agenda item was "Future Areas of Cooperation." *Id.*

91. *See* Minutes, ABA Task Force on GATS Legal Services Negotiations 3 (Aug. 22, 2006), *supra* note 80, at 2 (Mr. Reisenfeld was the immediate past chair of ITILS and was co-author, with Professor Lutz, of the letter of invitation).

92. *Id.*

should be priorities for liberalization," and indicated that "next steps will be identified in the near future."[93]

Although the ITILS Committee has not consistently circulated minutes of its meetings, this practice was more common during the early years of its existence, including the time period when Professor Lutz served as ITILS Chair.[94] The existing minutes show that there was a flurry of activity during 2006-07, much of which built upon issues discussed in the 2006 *Summits*. For example, on September 12, 2006, the ABA GATS Task Force, as ITILS was then known, held a roundtable meeting at the U.S. Department of Commerce to discuss topics that included both outbound and inbound TLP issues.[95] During the October 24, 2006 ITILS meeting, Chair Lutz solicited (and received) volunteers for subcommittees that would address the topics of the U.S. Offer and Schedule for the ongoing WTO negotiations; GATS Disciplines issues; bilateral negotiations and mutual recognition agreements (MRAs); state implementation of ABA MJP Commission Recommendations 8 & 9 regarding foreign legal consultant (FLC) and temporary practice (FIFO) rules; and a research committee which included NCBE President Erica Moeser and Professor Carole Silver.[96] By February 2007, these subcommittees had expanded to include a "thinking outside of the box" committee, a model Mutual Recognition Agreement committee, and an immigration committee.[97]

During the same October 2006 meeting, Professor Lutz reported that he had sent a letter to Chief Judge Bell, who was President of the Conference of Chief Justices, to thank the CCJ for its July 2006 adoption of a resolution endorsing state adoption of the ABA's *Model Rule on Foreign*

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93. *Id.*

94. *See supra* note 12 (noting that Professor Lutz was Chair of ITILS during 2006-07, 2007-08, and 2008-09).

95. Agenda, Roundtable with Ana Guevara, Deputy Assistant Secretary of Commerce, and ABA GATS Task Force (Sept. 12, 2006) (the topics for discussion included: 1) enlisting DOC in Identifying and Removing Access Barriers in Countries the US Legal Profession Wants to Liberalize; and 2) Outreach to U.S. States to Encourage Adoption of Rules Permitting FLCs and FIFO by Foreign Lawyers).

96. *See generally* Minutes, ABA Task Force on GATS Legal Services Negotiation (Oct. 24, 2006) (on file with author) (listing these committees). During the prior year, Chair Ken Reisenfeld had established working groups to address issues such as issues related to the "Schedule" that the United States would file in the ongoing GATS negotiations, the issue of GATS disciplines, immigration, and bilateral trade agreements and Mutual Recognition Agreements); *see, e.g.,* Minutes, ABA Task Force on GATS Legal Services Negotiations 2-4 (Feb. 10, 2006) (on file with author).

97. *See* Minutes, ABA Task Force on International Trade in Legal Services 5 (Feb. 10, 2007) (on file with author).

Legal Consultants. [98] (Chief Judge Bell had been one of the invitees to the 2006 *Summits*.)[99] Professor Lutz also reported on meetings he participated in during October 2006 with staff from the USTR, Department of Commerce, and CSI.[100] During the February 2007 ITILS meeting, Tom Edmonds, who was the ITILS liaison from the National Association of Bar Executives [NABE] and was a 2006 S*ummit* invitee, reported that Professor Lutz had been invited to speak at the NABE business meeting at the 2007 ABA Midyear Meeting and was well-received by the group; he also noted that there was a realization that the bar must work with the courts and that there is a general need for education on TLP issues.[101]

The following summer, in August 2007, the ABA held two more summits. As noted above, Volume 42 of the *International Lawyer* provided the same description for all four summits held in 2006 and 2007;[102] it stated that the 2006 and 2007 US-EU and Asian Legal Services *Summits* were convened "to discuss differences in legal services regulation and to identify areas of agreement and disagreement about goals and approaches."[103] Although the reported descriptions of the 2007 *Summits* is sparse, additional information is available.

Unlike the invitations to the prior *Summits,* the letter of invitation to the 2007 4th Annual US-EU *Summit* was signed by both EU and ABA representatives.[104] The invitation letter indicated that the August 11, 2007 *Summit* would be two hours long and would be held in connection with the

98. *See* Minutes, ABA Task Force on GATS Legal Services Negotiation (Oct. 24, 2006), *supra* note 96, at 1; *see also* Conference of Chief Justices, RESOL. 4*, Regarding Adoption of Rules on the Licensing and Practice of Foreign Legal Consultants* (Aug. 2, 2006), https://perma.cc/3ZHQ-Y3SA; Terry et al., *Vol.* 43, *supra* note 16, at 963 (reporting the CCJ's adoption of this resolution).

99. *See* 2006 EU-US Summit Invited Participants, *supra* note 76, at 4; 2006 Asian *Summit* Invited Participants, *supra* note 88, at 2.

100. *See* Oct. 24, 2006 Minutes, ABA Task Force on GATS Legal Services Negotiations, *supra* note 96, at 1 (stating "Chair Lutz reported on a series of meetings he participated in with staff of the Department of Commerce, USTR and the Coalition of Services Industries in Washington D.C. during the first week of October").

101. *See* Feb. 10, 2007 Minutes, ABA Task Force on International Trade in Legal Services, *supra* note 97, at 1 (including the comments listed in Article text. Mr. Edmonds also stated that he would like to send out the packet of materials that Bob [Lutz] provided for his remarks to the NABE listserve and Justice Lacy "requested a copy of the advocacy pieces and asked that the NABE materials be provided to the entire task force."); *see also* 2006 EU-US Summit Invited Participants, *supra* note 76, at 4 (showing that Thomas G. Edmonds was an invitee to the 2006 *Summits*).

102. Terry et al., *Vol*. 42, *supra* note 16, at 842.

103. *Id.*

104. Letter from Robert E. Lutz, Chair, ABA ITILS, and Jonathan Goldsmith, CCBE Secretary General, to Bar Leader (July 12, 2007) (on file with author) [hereinafter Lutz and Goldsmith, *2007 US-EU Invitation Letter*].

ABA's Annual Meeting in San Francisco.[105] The invitees were substantially similar to the invitees to the 2006 US-EU *Summit*.[106]

The content of the 2007 US-EU *Summit* letter of invitation was similar to the content from the prior year.[107] It noted that the purpose of the *Summit* was "to continue the valuable dialogue that has taken place in prior *Summits"* and also noted that *Summit* would "continue to explore areas of current and possible future initiatives and cooperation."[108] The agenda items listed in the invitation letter were substantially similar to the agenda items from the prior meeting, but included a few new items, such as "free trade agreements as a future vehicle for legal services liberalization" and a reference to "discussion of the Proposed Reciprocal Disciplinary Protocol."[109]

The agenda distributed at the 2007 US-EU *Summit* was much more detailed than the proposed agenda contained in the 2007 letter of invitation. It listed five "Roundtable Discussion Issues" and identified both U.S. and European speakers for each issue.[110] The 2007 US-EU *Summit* was the first time that the meeting agenda listed "Future Plans" as an explicit topic; Bob Lutz and Jonathan Goldsmith were assigned to lead this discussion.[111]

The materials for the 2007 US-EU *Summit* included, *inter alia*, a document prepared by Professor Carole Silver entitled "US Exports of Legal Services" that presented the results of empirical TLP research she

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105. *Id*.

106. *Compare* 2006 EU-US Summit Invited Participants, *supra* note 76, *with* Invited Participants for Asian *Summit* on Legal Services and US-EU *Summit* on Legal Service (Aug.10, 2007) (on file with author) [hereinafter Invited Participants for the 2007 EU and Asia *Summits*].

107. *See* Lutz & Goldsmith, *2007 US-EU Invitation Letter*, *supra* note 104.

108. *Id.*

109. *Id.* (listing in the Invitation Letter these seven bulleted agenda items: 1) Introductions of various parties and organizations represented; 2) Discussion of the Proposed Reciprocal Disciplinary Protocol; 3) Discussion of the idea of a Mutual Recognition Agreement (MRA); 4) Intra-U.S. and EU multijurisdictional practice experiences; 5) Inter-U.S./EU MJP experiences; 6) Free Trade Agreements as a future vehicle for legal services liberalization; and 7) Plans for next meeting) *Compare id*. (listing 2007 agenda topics, *with* Lutz, *2006 EU-US Summit Invitation Letter*, *supra* note 74 (identifying the 2006 agenda topics).

110. Agenda, Fourth Annual EU-US *Summit* on Legal Services (Aug. 11, 2007) (on file with author) [hereinafter 2007 EU-US *Summit* Agenda]. The first topic listed on the distributed Agenda was intra-U.S. and intra-EU MJP experiences and the speakers were Peter Ehrenhaft and Hans Luehn. The second topic was inter-US-EU MJP experiences and the speakers were Carole Silver, Carol Needham, Steve Krane, and Jonathan Goldsmith. The third topic was reciprocal disciplinary protocol and the speakers were Bill Smith and Colin Tyre. The fourth topic was various tools for liberalization legal services—mutual recognition agreements and other possible devices and the speakers were Laurel Terry, Erica Moeser, and Peter Köves. The final discussion issue was liberalization via free trade agreements and other agreements and the speakers were Hans-Juergen Hellwig and Bob Lutz. *Id.*

111. *Id.* at 2.

had conducted.[112] Professor Silver's six page handout began with a short section that contained general data about U.S. and EU imports and exports of legal services, and was followed by narrative and graphic presentation of empirical data she collected about U.S. law firms with offices in the EU. Professor Silver's handout noted that she had studied 48 large U.S. law firms that had a total of 129 offices in twenty-three EU cities and fourteen countries. The document she shared included practice areas of the lawyers in these offices and the legal education and admission characteristics of the lawyers working in these foreign offices. The final page of this document (other than a one-page appendix) noted that nearly every EU office included a combination of US educated and non-US educated lawyers, and US licensed and non-US licensed lawyers; it also posed a series of policy issues that the *Summit* participants might want to consider.[113]

The August 10, 2007 Asian *Summit* on Legal Services was, in many respects, similar to the 2007 US-EU Legal Services *Summit* that took place one day later, on August 11, 2007. Professor Lutz issued the letter of invitation which noted that the *Summit* offered a "unique opportunity for leaders of the profession from Asian countries and the United States to discuss issues of mutual interest related to transnational law practice." [114] The invitation noted that "we will invite those from U.S. states we believe have current or potential interests in transnational legal practice regulatory issues, especially related to Asia.[115] The agenda in the letter of invitation differed in a few respects from the agenda for the US-EU *Summit* and indicated that part of the discussion would focus on barriers to practice in Asian countries and barriers to practice in the United States.[116] The invited participants included one or more individuals from Australia, Hong Kong,

112. Carole Silver, *Fourth Annual US-EU Summit of Bar Leaders on Legal Services, US Exports of Legal Services* (Aug. 2007) (on file with author). Other materials that appear to have been distributed include Professor Carol Needham's 2007 law review article entitled *Practicing Non-U.S. Law in the United States: Multijurisdictional Practice, Foreign Legal Consultants, and Other Aspects of Cross-Border Legal Practice*, 14 MICH. ST. J. INT'L L. 605 (2007).

113. *Id.* at 5. Some of the data that Professor Silver shared eventually made its way into her articles entitled Carole Silver et al., *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Global*, 22 GEO. J. LEGAL ETHICS 1431 (2009) and Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. U. J. GLOBAL LEGAL STUD. 67 (2007).

114. Letter from Robert E. Lutz, Chair, ABA Task Force on International Trade in Legal Services (ITILS) to Bar Leaders (July 12, 2007) (on file with author) [hereinafter Lutz, *2007 Asian Summit Invitation Letter*].

115. *Id.*

116. *Id.* (the five bulleted agenda topics were: 1) Discussion of major U.S., Asian country, GATS developments, and future MJP prospects; 2) Discussion of barriers to Asian countries faced by U.S. lawyers; 3) Discussion of barriers to the U.S. faced by lawyers from various Asian countries; 4) Discussion of prospects for reciprocal disciplinary and bilateral mutual recognition agreements for the legal profession; and 5) Future areas of cooperation). *Id.*

India, Indonesia, Japan, Korea, People's Republic of China, and Thailand, as well as the Inter-Pacific Bar Association and various international bar associations, such as the IBA and UIA.[117]

The informal minutes of the 2007 Asian *Summit* show that Professor Lutz chaired the meeting and that the topics of discussion included: 1) Baseline Data on U.S. Outbound Legal Services, led by Professor Carol Silver; 2) Baseline Date on U.S. Inbound Legal Services, led by Professor Carol Needham; 4) GATS and Bilateral Negotiations and Agreements, led by Tim Brightbill, who was the ABA's current representative to the statutorily-required U.S. Industry Advisory Committee on Services; and 5) Significant Country Developments and Perspectives, with reports about Japan, Australia, Korea, India, China, Vietnam, and Indonesia.[118]

Similar to the 2007 US-EU *Summit*, the materials for the *2007 Asian Summit* included a document Professor Carole Silver prepared that summarized the results of her empirical research about the foreign offices of large U.S. law firms; the 2007 Asian *Summit* document covered thirty-three U.S. law firms that had seventy-six offices located in nine cities in Asia-Pacific.[119] The data was presented in narrative and graphic form and was similar in format to the document Professor Silver had prepared for the 2007 US-EU *Summit* regarding U.S. law firms in Europe. Professor Silver's conclusion for Asia-Pacific was similar to her conclusion for Europe—"nearly every A-P [Asia-Pacific] office for each firm studied includes a combination of U.S. and non-U.S. lawyers, both in terms of education and licensing."[120] Similar to the EU document she prepared, Professor Silver's handout about A-P firms posed a series of policy questions after presenting the data.[121] The additional materials distributed at the 2007 Asia-Pacific

117. *See* Invited Participants for the 2007 EU and Asia *Summit*s, *supra* note 106, at 1. It is unclear how many of the invited participants attended the 2007 Asia Summit. An undated document (on file with the author) entitled "2007 Asian *Summit* RSVPs" listed positive RSVPs for attendees from China, Hong Kong/China, India, Japan, Korea, the Philippines, and the United States. It appears likely, however, that more countries were represented than was reflected in the RSVPs. The informal minutes, *infra* note 118, show that the 2007 *Asian Summit* included reports about Australia, China, Indonesia, and Vietnam.

118. Asian *Summit* on Legal Services, Aug. 10, 2007 [undated informal minutes] (received by the author from ITILS staff Kristi Gaines) (on file with author) [hereinafter Informal Minutes, 2007 Asian Summit].

119. Carole Silver, *Second Annual Asian Summit of Bar Leaders on Legal Services, US Exports of Legal Services* (Aug. 2007) (on file with author).

120. *Id.* at 5.

121. *Id.* at 5-6.

Summit include a summary of U.S. rules regarding inbound foreign lawyers.[122]

In a Committee meeting held after the *Summit*, ITILS Chair Lutz "reported on the success of the second annual Asian *Summit* on Legal Services" noting that he hoped to continue the summits and "pursue other efforts to engage in a dialogue with foreign bar leaders on transnational legal practice issues."[123] The meeting minutes pointed out that "the Australian Law Council is having considerable success at consulting directly with various states and the group would like to hear from them regarding the current status of their efforts."[124]

There were numerous kinds of follow-up activities that occurred after the 2007 *Summits.* At the meeting held immediately after the Asian *Summit,* ITILS members discussed additional representatives that could be added to ITILS, including a liaison from the Conference of Chief Justices.[125] The ABA sent two letters to USTR officials about WTO negotiations[126] and there were ongoing negotiations among the ABA and others regarding discipline cooperation.[127] Additional activities included meetings between and among representatives of groups attending the *Summits*, including CCBE and Australian interaction with the CCJ, conversations among New York delegations and the Law Society of England and Wales and Japan, and a new India-U.S. Joint Working Group on Legal Services, as well as the regular updates by, and outreach to, the liaison groups and other stakeholders.[128]

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122. *See* Informal Minutes, 2007 Asian *Summit*, *supra* note 118 (listing this fact in the handwritten notes the author wrote on these informal minutes).

123. Minutes, ABA Task Force on International Trade in Legal Services 1 (Aug. 11, 2007) (on file with author).

124. *Id.*

125. *Id.* For example, one of the follow-up items was adding a liaison to ITILS from the CCJ [Conference of Justices]. *Id.* at 3. This was accomplished. *See, e.g.,* 2007-08 ITILS Roster, *supra* note 14, at 4 (A roster sent as an attachment with the Feb. 9, 2008 ITILS agenda listed Chief Judge Shirley Abrahamson as a liaison from the CCJ, as well as Dick Van Duizend, whose position was described *supra* note 58).

126. Minutes, ABA Task Force on International Trade in Legal Services Meeting Agenda, and attachments (Mar. 19, 2008) (on file with author).

127. *See, e.g.*, Minutes, ABA ITILS, August 8, 2008, Business Meeting (on file with author) (containing a report from Ellyn Rosen regarding ongoing discussions with the Australians and Canadians on the reciprocal discipline protocol); ABA ITILS, Meeting Agenda (Feb. 9, 2008) (listing as an agenda item "Status of Draft Model Rule on International Reciprocal Disciplinary Enforcement") (on file with author). *See also supra* notes 84-85 for articles providing additional information about the history of the discipline cooperation issue.

128. *See, e.g.*, Meeting Agenda, ABA Task Force on International Trade in Legal Services (Nov. 13, 2007) (on file with author) and Meeting Agenda, ABA Task Force on International Trade in Legal Services (Dec. 11, 2007) (on file with author) (the agenda issues included bilateral initiatives involving the EU, India, and Korea, future *Summit*s, and the items noted in the text).

In 2008, ITILS was involved in three *Summits* held during the ABA Annual Meeting, rather than the single summit held in 2004 and 2005 or the two summits held during each of 2006 and 2007. The three 2008 *Summits* included a *Summi*t with representatives from India, a *Summit* with representatives from Korea, and a meeting with representatives of U.S. law firms with multiple foreign offices. The *TLP Year-in-Review* article for 2008 contained very little detail about these three *Summits*.[129] Volume 43 summarized the India and Korea *Summit*s very briefly, noting that "participants discussed the issues and concerns related to transnational practice."[130] With respect to the *Summit* involving large U.S. law firms, Volume 43 stated that its purpose was "to explore the issues facing these law firms."[131] (Volume 43 also reported that although there had not been a 2008 US-EU *Summit*, ABA leaders "had ongoing discussions CCBE leaders.")[132]

Although the *International Lawyer's* summary of the 2008 *Summits* was abbreviated, additional information is available. For example, an emailed invitation for the Indo-US Roundtable on Legal Services stated that the general topics for discussion would include " a) Regulatory Framework for Legal Services in India and the United States; (b) Forthcoming Events and Activities of Interest to Lawyers in India, and (c) Proposals for Continuing the Conversation," and indicated that "your suggestions for subjects to be taken up" would be most welcome.[133] The contact information included with the invitation meant that participants could easily communicate with one another afterwards and this type of follow-up communication occurred.[134] Unfortunately, the author could not locate any

129. Terry et al., *Vol.* 43, *supra* note 16, at 962.

130. *Id.*

131. *Id.*

132. *Id.*

133. *See, e.g.*, Invitation to "Roundtable on India—U.S. Legal Services" (Aug. 10, 2008) (on file with author) [hereinafter 2008 India *Summit* Letter of Invitation]; Email from Gene Theroux, Senior Counsel, Baker & McKenzie LLP, Co-Chair, U.S. Panel, US-India Bilateral Working Group on Legal Services to Participants, ABA Indo-US Roundtable on Legal Services (Aug. 10, 2008) (on file with author) (including the list of participants, with contact information and indicating that it was from Mr. Theroux, Professor Lutz, and Ashish Prasad, Partner, Mayer Brown, Co-Chair, U.S. Panel, US-India Bilateral Working Group on Legal Services).

134. Following the *Summit*, I emailed the participants several attachments, including ABA and other bar association opinions that found that U.S. and foreign lawyers can be partners, even though, at the time, all jurisdictions except D.C. had an ethics rule that prohibited fee sharing with nonlawyers and a law review article by Mark Harrison on this topic, as well as links to several items that had been mentioned during the *Summit*, including the ABA/NCBE Comprehensive Guide to Bar Admissions, and ABA CPR webpages that showed the implementation status of the ABA's MJP policies. Email from author to *Summit* Attendees (Aug. 12, 2008) (on file with author).

additional details about the 2008 Korea *Summit*, but it is worth noting that in 2007, Korea and the United States signed a free trade agreement in which Korea had agreed to open up its market to legal services, and thus the conversation likely included this topic.[135]

As noted above, the third *Summit* in 2008 was for large U.S. law firms. The minutes of the August 2008 ITILS Business Meeting provide greater detail about the conversations that occurred during this large law firm *Summit.*[136] For example, the minutes explain that the participants commented on "the difficulties in bringing foreign lawyers into the firms' U.S. offices," identified the countries that were their outbound areas of priority, and noted ongoing issues of association and mobility in the EU.[137] There was consensus that the document on barriers to legal services produced by the Coalition of Service Industries should be updated and the attendees agreed to help with that effort.[138]

Some of ITILS' activities during 2008-2009 were related to topics that came up during these three 2008 *Summits.* For example, ITILS members were involved in several follow-up activities concerning the U.S. and India; ITILS considered whether and how to update the CSI Legal Services Barriers Chart; and ITILS began actively monitoring, and later participating in, the Asia Pacific Economic Cooperation [APEC] Legal Services Initiative.[139] During the December 2008 ITILS meeting, two USTR officials joined the ITILS monthly conference call to "give an update on the proposed APEC Legal Services initiatives."[140] ITILS members were also

135. *See, e.g.*, James Lim, *News: Korea to Open Legal Services Market to Foreign Lawyers as Part of Trade Deal*, 23 ABA/BNA Law. MAN. PROF'L CONDUCT 391 (July 25, 2007). *See also From GATS to APEC*, *supra* note 54, at 939-40 (table compares the provisions of the pending Korea-U.S. Free Trade Agreement that are relevant to legal services to the provisions in other U.S. FTA agreements).

136. *See* Minutes, ABA ITILS, August 8, 2008, Business Meeting, *supra* note 127.

137. *Id.* at 2.

138. *Id.* Although the author is not sure what happened with the CSI Barriers project, it is worth noting that the Office of the U.S. Trade Representatives produces an annual report entitled "National Trade Estimate Report on Foreign Trade Barriers." The author has knowledge that ITILS works with the USTR to gather legal-services related information to include in this report and regularly publishes on the ITILS webpage the current version of the report. *See, e.g.*, USTR, 2021 NAT'L TRADE ESTIMATE REP. ON FOREIGN TRADE BARRIERS, https://perma.cc/YD4M-9BWQ; ABA, STANDING COMMITTEE ON INTERNATIONAL TRADE IN LEGAL SERVICES, https://perma.cc/S3K2-8KF9 (showing that on Oct. 22, 2022, the ITILS homepage had a link to the 550+ page USTR document entitled *2021 National Trade Estimate Report on Foreign Trade Barriers* and a five-page excerpt that noted some of the legal services barriers included in that report).

139. *See generally* Agenda, 2008-09 ABA Task Force on International Trade in Legal Services (Dec. 10, 2008) (on file with author).

140. Minutes, ABA Task Force on International Trade in Legal Services (Dec. 10, 2008) (on file with author).

involved in, and reported back about, the newly-formed Special International Committee of the ABA Section of Legal Education and Admissions to the Bar, as well as numerous other activities.[141]

Volume 43 of the *International Lawyer*, which published the short report referenced above about the three 2008 *Summits*, included a sentence in which it referred to an upcoming 2009 "*Domestic Summit*."[142] Although there was significant discussion during ITILS meetings about a *Domestic Summit* that would be held during the 2008-09 ABA year, this *Summit* did not go forward.[143] Nor were there any other gatherings hosted by ITILS that were directly or indirectly referred to as a *Summit.*

On the other hand, despite the lack of any 2009 gatherings labeled as a *Summit,* there were numerous places where "summit-like" TLP legal services conversations happened during 2009 and 2010 and many of these involved ITILS members. Many of these opportunities were described in Volume 44 of the *International Lawyer*.[144] For example, Professor Lutz attended an APEC Legal Services Initiative workshop in Singapore during July 2009 and exchanged information and perspectives with representatives from other countries.[145] There were conversations among global actors that

141. *See, e.g.*, Memorandum on Global Legal Profession Initiatives from Author to ABA CPR/SOC Joint Committee on Ethics and Professionalism (Feb. 2, 2009) (on file with author) ("The ABA Section of Legal Education and Admission to the Bar has formed a new international committee to make recommendations to its Council regarding what the Section should be doing in the international arena. The Committee will have its first in-person meeting during the 2009 ABA Midyear Meeting."). Chief Justice VandeWalle, Justice Lacy, Professors Lutz and Silver, and the author were ITILS members who served on this Committee, which issued a report in July 2009. *See* A.B.A Sec. of Legal Ed. & Admissions to the Bar, *Report of the Special Committee on International Issue*s 5 (July 2009), https://perma.cc/X27X-YGM8.

142. Terry et al., *Vol*. 43, *supra* note 16, at 954 (stating that the upcoming "Domestic *Summit*, described below, may contribute to further developments in this area.").

143. Telephone Interview with Kristi Gaines, Senior Legislative Counsel, Governmental Affairs Office, American Bar Association (Dec. 17, 2021) (stating that although the ABA initially planned to hold a "domestic summit" in March 2009 in connection with the ABA's annual Bar Leaders' Institute conference, that summit was cancelled. It initially was rescheduled for July 31, 2009, during the ABA's Annual Meeting, but it did not go forward).

144. *See, e.g.*, Terry et al., *Vol*. 44, *supra* note 16, at 571, 575-76 (identifying the ABA Commission on Ethics 20/20 and the APEC Legal Services Initiative as settings where global TLP-related conversations occurred).

145. *See, e.g.*, *id*, at 575 n.86 and accompanying text (providing a cite to the Singapore Workshop materials); Robert E. Lutz, *The Role of Commercial Lawyers in the Profession* (APEC Legal Services Initiative Workshop, Doc. No. 2009/SOM2/GOS/WKSP/004, 2009), https://perma.cc/H69A-MRAV (Professor Lutz's presentation notes from Singapore conference). APEC is the acronym for the Asia-Pacific Economic Cooperation. *Id.* at 575; *see generally* Laurel S. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43 HOFSTRA L. REV. 95 (2014) (showing additional information about the globalization mandate of the ABA Commission in Ethics 20/20); *see also*

took place at the ABA Section of International Law Spring 2009 meeting, at the National Conference of Bar Examiners' 2009 Bar Admissions Conference, and during meetings of the ABA Commission on Ethics 20/20, which was created to study whether any changes to the ABA Model Rules of Professional Conduct were required because of increased technology and globalization.[146]

Perhaps most significantly, however, during May 2009, the ABA Center for Professional Responsibility, with the assistance of many ITILS members, devoted significant resources to sponsoring a summit-like, invitation-only meeting for the members of the Conference of Chief Justices (CCJ) (or their delegees), in order to brief them on recent international TLP developments that could affect their regulation of the legal profession.[147] Volume 44 of the *International Lawyer* contains this description of the May 2009 conference for the CCJ, which members of ITILS helped plan:[148]

> [I]n May 2009, the [2007 UK Legal Services Act or] LSA was a primary focus of a conference organized for the Conference of Chief Justices by the ABA Standing Committee on Professional Discipline, the ABA Center for Professional Responsibility, and the Georgetown Law Center for the Study of the Legal Profession. The overall purpose of the conference was to extend to the Chief Justices conversations about globalization's influence on the profession, including how the LSA affects activities and actors outside of the United Kingdom.[149]

From GATS to APEC, *supra* note 54, at 891-99, 983 (identifying additional information regarding the APEC Legal Services Initiative).

146. Terry et al., *Vol*. 44, *supra* note 16, at 570-71; *see generally* Laurel S. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43 HOFSTRA L. REV. 95 (2014) [hereinafter Terry, *Ethics 20/20 Reflections*] (detailing additional information about the globalization mandate of the ABA Commission on Ethics 20/20).

147. *See* ABA, *Global Legal Practice*, https://perma.cc/VK5Y-RZNW (referring, inter alia, to the May 2009 CCJ Conference); *see also* ABA & The Bureau of Nat'l Affs., *Chief Justices, Others, Consider Ideas on Regulating Lawyers in Global Setting*, 25 LAW. MAN. PROF. CONDUCT 300 (June 10, 2009), https://perma.cc/VK5Y-RZNW; ABA., *The Future Is Here: Globalization and the Regulation of the Legal Profession Recent Global Legal Practice Developments Impacting State Supreme Courts' Regulatory Authority Over the U.S. Legal Profession*, (May 26-27, 2009) (listing the conference materials for the American Bar Association Center for Professional Responsibility and Standing Committee on Professional Discipline & Georgetown Center for the Study for the Legal Profession Present), https://perma.cc/H2E3-DUN4; *see also* Laurel S. Terry, Slide Presentation at The Future Is Here Conference: Introduction: Recent Global Developments (May 27, 2009), https://perma.cc/5K9P-5PEX.

148. The author has personal knowledge that she and ITILS Staff Counsel Ellyn Rosen were among those who participated in planning this conference.

149. Terry et al., *Vol*. 44, *supra* note 16, at 565 (footnotes omitted).

At the time this Article was written, the ABA Center for Professional Responsibility continued to maintain on its website information about this CPR/CCJ conference, along with the extensive materials that were prepared for the conference and a news article about the conference.[150] Thus, although the ABA did not sponsor any *Summits* in 2009, during 2009 global TLP conversations occurred in multiple settings.[151]

Similar to the situation in 2009, during the years 2010-2012, the ABA ITILS did not organize any meetings that it denominated as a *Summit.* On the other hand, as two articles in Volume 47 of the *International Lawyer* demonstrate, there were numerous global TLP conversations that occurred during 2010, 2011, and 2012, including sessions at a Conference of Chief Justices' meeting and at events hosted by the ABA's Commission on Ethics 20/20, whose mission included evaluating whether, as a result of globalization, the ABA should recommend changes to the ABA Model Rules of Professional Conduct.[152] Many of these conversations took place among individuals who had met each other at the *Summits* or deepened their relationships there.

After going five years without a meeting designated as a *Summit*, the ABA ITILS decided in 2013 that it would host two *Summit* meetings. Accordingly, during the August 2013 ABA Annual Meeting in San Francisco, U.S. and European stakeholders met for a fourth US-EU *Summit*, which they also referred to as a 2013 CCBE-ITILS Roundtable.[153] (This 2013 *Summit* was also referred to as the *Transatlantic Trade and Investment Partnership [TTIP] Summit* because of the US-EU TTIP free trade agreement negotiations that were underway.[154]) The second summit held during the 2013 ABA Annual Meeting was a Trans-Pacific Bar Leaders Roundtable.[155] At the time of the 2013 Trans-Pacific *Summit*, the U.S. was engaged in negotiations regarding the proposed Trans-Pacific Partnership [TPP] agreement.[156]

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150. *See* ABA, *Global Legal Practice*, *supra* note 147.

151. *See generally* Terry et al., *Vol*. 44, *supra* note 16.

152. *See generally id.; see also* Terry, *Ethics 20/20 Reflections*, *supra* note 146, at 96-101 (summarizing the transnational legal practice aspects of the ABA's Ethics 20/20 Commission).

153. *See* CCBE-ITILS, Roundtable Agenda (Aug. 10, 2013) (on file with author) [hereinafter 2013 CCBE-ITILS Agenda].

154. *Compare* Terry & Silver, *Vol*. 49, *supra* note 16, at 424 (referring to the 2013 US-EU Summit as one of two "Transatlantic Trade and Investment Partnership [TTIP] Summits" *with* 2013 CCBE-ITILS Agenda, *supra* note 153 (using as the Agenda title "CCBE-ITILS Roundtable").

155. Terry & Silver, *Vol*. 49, *supra* note 16, at 420, 424 (mentions the Trans-Pacific Bar Leaders' *Summit* held in San Francisco on Aug. 10, 2013).

156. *See, e.g.*, U.S. Trade Representative, *Overview of the Trans-Pacific Partnership*, https://perma.cc/L2J8-NL88.

Volume 49 of the *International* Lawyer, which was published in 2015, contains a summary of these two 2013 *Summits*, as well as a 2014 *Summit*.[157] Its summary was brief and consists of the following:

> The ABA ITILS also has been a key factor in generating information, facilitating discussions and negotiations, and drafting model regulatory proposals related to TLP. It convened three summit meetings in the last two years—the Trans-Pacific Partnership Summit, held in August 2013, and the Transatlantic Trade and Investment Partnership Summits held in August 2013 and 2014—each of which was designed to bring together legal profession stakeholders from the countries involved in these trade negotiations in order to facilitate communication among these groups.[158]

Although the published account of the 2013 and 2014 *Summits* is thin, the materials prepared for the *Summit* show that these were useful opportunities for stakeholders to engage with one another. For example, the agenda for the 2013 Transpacific Bar Leaders' *Summit* was detailed and included a discussion about engagement and cooperation of bar associations.[159] The Agenda's second topic anticipated that the TPP negotiators might suggest the use of a Professional Services Annex similar to those found in other trade agreements and asked this series of questions about the shape a Professional Services Annex should take:[160]

> The TPP, and potentially other trade agreements, likely will contain a provision to encourage relevant bodies in member countries to consider issues regarding transnational legal practice and regulation of foreign lawyers. Is this the right model? Are they asking the right questions and including the right topics? Potential topics may relate to means of service delivery, scope of practice and other issues, such as:

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157. *See* Terry and Silver, *Vol*. 49, *supra* note 16, at 421, 424; *cf.* Wojcik, *Vol*. 48, *supra* note 16 (the TLP article reviewing 2013 activities focused on whether "undocumented aliens" could be admitted to the bar; it did not refer to the 2013 Summit). Volume 49's TLP Year-in-Review article introduced and analyzed the concept of domestic and international "TLP-Nets." Although these TLP-Nets provided the framework for the article's discussion, the article referred to events and developments that had taken place in 2013 and 2014.

158. Terry & Silver, *Vol*. 49, *supra* note 16, at 424.

159. Trans-Pacific Bar Leaders *Summit*, Agenda (Aug. 10, 2013) (on file with author) [hereinafter 2013 TPP *Summit* Agenda].

160. For information about the use of Professional Services Annexes in trade agreements, see *From GATS to APEC*, *supra* note 54, at 888-89, 933-40 (citing the Professional Services Annex in the US-Australia FTA that gave rise to the May 2006 meeting and listing the portions of other trade agreements that contained this type of Annex). The issue of Professional Services Annex remains timely. For example, the author recommended the use of one in the event that the U.S. and UK sign a bilateral trade agreement after BREXIT. *See* Laurel S. Terry, *Introduction to Legal Services Roundtable*, US-UK Trade and Investment Working Group, at 18-19 (Washington, D.C. Nov. 6, 2018), https://perma.cc/45QL-T47J. As of Feb. 15, 2022, these slides were linked from the ABA ITILS homepage, *supra* note 138.

1. whether a foreign law firm may open an office in the jurisdiction;
2. provide services to clients through temporary entry (fly-in/fly-out);
3. the conditions, if any (including residency), under which a foreign lawyer may provide services on to clients more frequently than on a "temporary" basis;
4. the permitted scope of practice for a foreign lawyer;
5. the manner in which a foreign lawyer may associate with a local lawyer, including the possibility of fee sharing, employment and partnership;
6. the law firm name under which the foreign lawyer may practice; and
7. the ethics, discipline and regulatory rules to which a foreign lawyer should be subject.[161]

Professor Lutz provided the introductory remarks at the 2013 Trans-Pacific *Summit* and began by noting that "we are trying to build bridges."[162] One of the questions he posed during his introduction was "whether there is someone or someplace in your jurisdiction that we can turn to when questions arise."[163] The jurisdictions that had attendees present included the United States, Australia, Japan, Mexico, and Singapore, but the one of the attendees also served as President of the Law Associations for Asia and the Pacific. (LAWASIA).[164] The 2013 Trans-Pacific *Summit* participants exchanged contact information to facilitate future communication.[165] As the subsequent ITILS agendas show, the ABA ITILS continued to follow TPP developments and found the *Summit* helpful for understanding the perspectives and issues of the other attendees and for participating in developments related to the TPP and other initiatives in the Asia-Pacific region.[166]

Similar to the 2013 Trans-Pacific *Summit*, the 2013 US-EU *Summit* was held in San Francisco during the August 2013 ABA Annual

161. 2013 TPP *Summit* Agenda, *supra* note 159, at 1-2.

162. The author has personal knowledge regarding this statement.

163. *Id.*

164. *Id.*

165. *Id.*

166. The author has personal knowledge about the helpfulness of the *Summit*. *See also* Terry et al., *Vol*. 44, *supra* note 16, at 575 n. 86 (regarding Professor Lutz's attendance at a Singapore workshop regarding the APEC Legal Services Initiative); Email from Todd Nissen, Off. of the USTR, to Kristi Gaines, Staff, ABA (Dec. 3, 2013, 12:27 PM) (on file with author) (inviting the ABA to provide additional information about state measures for the upcoming 2013 APEC Legal Services Initiative report).

Meeting.[167] The agenda for the 2013 US-EU *Summit* was shorter than the agenda for the Trans-Pacific *Summit*, but the language quoted below shows that, in comparison to the Trans-Pacific *Summit*, the participants had reached a much deeper level of understanding and engagement. The proposed agenda shows the degree to which the ongoing Transatlantic Trade and Investment Partnership (TTIP) trade negotiations provided the framework for the *Summit* conversations:

I. Welcome and Introductions
II. Background on TTIP countries and legal services regulation
    A. Overall objectives of the negotiations; desired roles of parties.
        B. Current status of access (e.g., does access go beyond WTO commitments and if so, should that be memorialized in an FTA).
III. Exchange of views and information on the TTIP negotiations.
        A. Will legal services be a priority or objective of either side?
        B. What process will each side use to consult with legal profession?
IV. Challenges presented by lack of central regulatory authority on both sides and diverse constituencies that need to be consulted
        A. State-based regulation in the U.S.
        B. Country-based regulation in the EU
V. Procedures for going forward—is it possible to structure some process by which we agree to communicate and consult, and then to relay that to the negotiators on both sides?[168]

The exchange of information among the attendees continued after the 2013 EU-US *Summit*. For example, there was a follow-up meeting between ABA and CCBE representatives on October 10, 2013 during the IBA Annual Meeting in Boston; before this meeting, the CCBE circulated to ABA ITILS and CCJ representatives a confidential draft document that attempted to categorize the TLP rules in EU Member States and U.S. jurisdictions.[169] The left hand column of this document listed the

167. *See* 2013 CCBE-ITILS Agenda, *supra* note 153.

168. *Id.*

169. *See* Email from Peter McNamee, CCBE Staff, to Kristi Gaines, Senior Legislative Counsel, ABA Government Affairs Office, and others (Oct. 1, 2013, 1:02 PM) (on file with author) (transmitting, before the 2013 CCBE-ITILS Roundtable, two draft documents prepared by Alison Hook; one was the Word document described *infra* in n.170; that used red and green boxes to evaluate the access granted by various US and EU foreign lawyer rules; the other document

jurisdiction and the next nine columns represented various TLP-questions.[170] The table was based on data contained in the not-yet-final 2014 IBA Global Legal Services Report.[171] Because ITILS thought some of the data about the United States was inaccurate, especially with respect to the issue of "association" between foreign and domestic lawyers, the conversations continued long after the 2013 *Summit*.[172]

An especially significant follow-up event occurred in January 2014 at the Conference of Chief Justices' 2014 Midyear Meeting. The CCJ program included a session entitled "Regulating the Practice of Law in a Global Arena" that included CCBE, USTR, ABA, and CCJ speakers.[173] By the end of that January 2014 meeting, the CCJ had adopted a resolution encouraging states to consider using the TLP "State Toolkit" that was developed by the State Bar of Georgia and adapted by ITILS.[174]

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was an Excel chart that contained narrative information from the not-yet-final IBA Report, cited *infra* in note 171. The Word document is the document referred to in the Article's text.).

170. *See* Alison Hook, *Summary of EU-US Mutual Access in Legal Services* (on file with author) [hereinafter EU-US Mutual Access] (noting that it would also be sent to two CCJ representatives). The nine columns in this table were: 1) whether the U.S. jurisdiction had a limited license rule (Y/N); 2) if so, whether the FLC rule included the practice of international law; 3) whether the FLC rule included home country law; 4) whether partnership foreign lawyers could partner with local [US] lawyers; 5) whether foreign lawyers could employ local [US] lawyers; 6) whether the state had a temporary practice FIFO rule; 7) whether the state had a pro hac vice rule that applied to foreign lawyers; 8) whether the state had a nationality requirement for fully-licensed lawyers; and 9) whether the state allowed requalification, described as recognition for bar exam or equivalent access procedure. *See also* Email from Kristi Gaines, ABA Staff, to ABA ITILS Members (Oct. 25, 2013) (on file with author) (the email accompanying the ITILS meeting agenda and attachments stated with respect to the EU-US Mutual Access document that "PLEASE NOTE THAT THE ATTACHED DOCUMENTS ON EU-US RULES SHOULD NOT BE SHARED OR DISTRIBUTED FURTHER AT THIS TIME.").

171. *See* Int'l Bar Ass'n, *IBA Global Regulation and Trade in Legal Services Report 2014* (2014*),* https://perma.cc/Y57R-V46K. The author has personal knowledge that the data in the two draft documents referenced *supra* in note 169 drew upon the work that Alison Hook was doing for this IBA report.)

172. The author has personal knowledge of this fact.

173. *See* CCJ, *Midyear Meeting January 25-29, 2014, Regulation of the Practice of Law: Education Program* (on file with author) (program speakers were Jonathan Goldsmith, Secretary-General of the Council of Bars and Law Societies of Europe [the CCBE], Thomas Fine, Director for Services Trade Negotiations, Office of the U.S Trade Representative, the author, and moderator Jonathan Lippman, Chief Judge of the New York State Unified Court System); *see also Table of Contents of Materials for the CCJ Conference Jan. 28, 2014*, https://perma.cc/UB5M-CW4P (submitted materials include many ITILS items). The author has personal knowledge that because of issues that had been raised about the CCBE documents cited *supra* note 169, and ongoing US-verification efforts, the CCBE decided not to circulate these documents as part of the materials for the January 2014 CCJ program.

174. CCJ, *Resolution 11 In Support of The Framework Created By The State Bar Of Georgia And The Georgia Supreme Court To Address Issues Arising From Legal Market Globalization And Cross-Border Legal Practice* (Jan. 2014), https://perma.cc/UTV2-N8Z9. *See also* Terry, Vol. 47 (U.S.), *supra* note 16, at 107 (regarding the toolkit and Bill Smith's role). *See also*

ITILS sponsored one last *Summit* during 2014—the US-EU *Summit* that was held in Boston on Aug. 9, 2014.[175] Although the published report of this *Summit* does not contain any additional information beyond the date and the fact that there was an agenda,[176] there is quite a bit of information available about this *Summit.* The agenda distributed at the meeting was two pages long and included the topics for discussion, speaker names, and time allotments.[177] This two-page agenda also contained the CCBE's TTIP trade requests to the United States, as well as the ABA's TLP policies and trade requests.[178] ITILS Chair Steven Younger provided the welcoming remarks at the *Summit*; Professor Lutz served as one of the introductory speakers and covered the topic of discussion format and issues.[179] The *Summit* "brought together more than forty-five bar leaders and other lawyers from the US and the EU to discuss the current status of the [TTIP] negotiations and issues relating to market access and cross-border practice in each of the jurisdictions."[180]

International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience, ABA, https://perma.cc/FJ96-LZH7 (Feb. 2012, Updated Mar. 2021).

175. *See* Terry and Silver, *Vol*. 49, *supra* note 16, at 421 n.47.

176. *Id.* at 421 n.47, 424.

177. *EU-US Legal Services Roundtable, Agenda and Supporting Materials* (Aug. 9, 2014) (on file with author) [hereinafter 2014 EU-US *Summit* Agenda]. The supporting materials referred to in the agenda title were 2 pages of information, presented under the headings "EU/CCBE REQUESTS TO THE US" and "US REQUESTS to the EU/CCBE and RELEVANT ABA POLICIES."

In addition to this two-page *Agenda and Supporting Materials*, the attendees received 17-pages of additional "Attendee Materials" that included a TTIP fact sheet, CCBE slides, the CCBE's TTIP "requests" to the U.S.; the U.S. "requests" to the EU/CCBE and RELEVANT ABA POLICIES, a chart prepared by the author that had a colored map of the United States that showed foreign lawyer practice rights in each state, and an amended version, limited to EU countries, of the red/green colored Word document that the CCBE had first circulated at the 2013 Summit. These 2014 *Summit* supporting materials were assembled in a pdf entitled Attendee Materials [hereinafter 2014 Summit Attendee Materials]. The 2014 Agenda and Attendee Materials were emailed to the US and EU Summit leaders before the Summit by ITILS Staff Kristi Gaines. Email from Kristi Gaines, ITILS Staff, to Summit Attendees (Aug. 7, 2014) (on file with author).

178. 2014 EU-US *Summit* Agenda, *supra* note 177. TTIP is the abbreviation for the Transatlantic Trade and Investment Partnership (TTIP), which was a set of trade negotiations between the United States and the European Union. *See generally Attendee Materials, infra* note 182 (discussing TTIP). These negotiations were sometimes referred to as T-TIP, rather than TTIP. *See, e.g.,* USTR, Transatlantic Trade and Investment Partnership (T-TIP), https://perma.cc/JJ8E-ADWZ (archived page) and Terry, *Vol*. 50, *supra* note 16, at 535-539 (using the T-TIP acronym). For the sake of consistency, unless a quote is involved, this Article refers to these negotiations as TTIP not T-TIP.

179. *See generally* 2014 EU-US *Summit* Agenda, *supra* note 177. (The author has personal knowledge that Professor Lutz covered this part of the Agenda).

180. ABA ITILS, Conference Call Minutes 1 (Sept. 24, 2014) (on file with author).

The 2014 US-EU *Summit* attendees received extensive additional material during the *Summit.* [181] These "Attendee Materials" included a fact sheet about the TTIP negotiations prepared by the USTR, a one-page document entitled "CCBE request to the United States in the context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations" that had been adopted Feb. 27, 2014; CCBE slides that provided background information and elaborated upon its TTIP requests; a one-page document entitled "US Requests To the EU/CCBE and Relevant ABA Policies;" a document prepared by the author entitled "Summary of State Foreign Lawyer Practice Rules (8/1/14) that included a table showing state adoption of the so-called foreign lawyer cluster of rules and a U.S. map that included colors and symbols illustrating the data in the table; and the EU portion of the EU/US red and green colored table that originally had been circulated by the CCBE in 2013.[182]

The detail in these documents provided the basis for the discussions at the August 2014 *Summit*, as well as ongoing discussions among the ABA, the CCBE, the CCJ, state regulators, and other stakeholders. For example, after the 2014 *Summit*, the ABA received an Excel chart prepared by the Law Society of England and Wales that had data about U.S. law firms in London, UK law firms in the United States, and the number of solicitors licensed in each U.S. state.[183] In November 2014, the ABA President

181. *See* 2014 Summit Attendee Materials*, supra* note 177. *See also* Email from Kristi Gaines, ABA Staff to ABA ITILS Members (Sept. 24, 2014) (includes an attachment called "Attendee Materials" and explained that "For those of you who were unable to attend the "EU-US Legal Services Roundtable" hosted by the task force at the 2014 Annual Meeting in Boston, I am recirculating the materials that we provided to the participants and audience." (on file with author).

182. *See* EU-US *Summit* 2014 Attendee Materials, *supra* note 177.

The Attendee Materials included documents intended to capture the TLP status quo in both the United States and European Union using documents prepared by each side. *Compare id*. at 16-17 (2014 EU table in the Attendee Materials listed only EU Member States) *with* the CCBE 2013 Tables, *supra* note 170 (containing Yes/No and green/red notations in multiple categories for both the EU Member States and US jurisdictions). The author prepared the U.S. summary using data from the ABA Center for Professional Responsibility. *See* Attendee Materials, *supra* note 177, at pp. 14-15. The US-summary was an update of a document that the author originally prepared for a presentation at a 2014 CCJ meeting. *See* Table of Contents, CCJ Meeting Materials, *supra* note 173. Because of the popularity of this colored map and chart, I have periodically updated it and posted it on my webpage. *See, e.g.,* Laurel S. Terry, *US State Implementation of 5 Methods of Foreign Lawyer Practice in the United States*, https://works.bepress.com/laurel_terry/80/ (June 5, 2018) https://perma.cc/8G69-NNPJ).

183. *See, e.g.,* Email from Charlotte Ford, Law Society of England and Wales Staff, to author (Sept. 3, 2014) (explanatory cover email explaining and transmitting an excel document with solicitor and firm data) (on file with author). *See also* Silver, *2007 Handout on US Firms in the EU*, *supra* note 112; Laurel S. Terry, *Law Firms Located in U.S. States That Have At Least One Foreign Office [Based on data provided by General Counsel Metrics, LLC]* (Apr. 9, 2015), https://perma.cc/G4ZL-SHPN.

formally responded to CCBE regarding its TTIP "requests," noting that ABA policy was consistent with all of the CCBE's TTIP "requests."[184] Other follow-up activity included CLE sessions and ongoing conversations,[185] as well as a January 2015 resolution by the Conference of Chief Justices urging state courts to consider adopting each of the ABA's policies about inbound foreign lawyers.[186]

The 2014 EU-US *Summit* is the last official meeting that the ABA ITILS designated as a *Summit.* Despite the lack of additional *Summits,* the final two *TLP Year-in-Review* articles show a continuation of the type of international and ITILS-related conversations that the *Summits* began.[187] For example, Volume 50 notes that "[d]uring 2015, the ABA, the National Conference of Bar Presidents, and the Conference of Chief Justices (CCJ) all participated in discussions about the TTIP with the Council of Bars and Law Societies of Europe (CCBE)."[188] Volume 50 also reported on 2015 conversations and activities that took place among CCJ members and representatives from Australia and Canada, the establishment of National Organization of Bar Counsel committees that included international members who were responsible for preparing items for a Global Resources webpage, and international conversations at the National Conference of Bar Examiners' annual bar admissions conference, as well as state-based activities such as those in Colorado, the District of Colombia, and New York.[189] Volume 51 similarly cited *Summit*-like global conversations,

184. Letter from William C. Hubbard, ABA President, to Aldo Bulgarelli, President, Council of Bars and Law Societies of Europe [CCBE] (Nov. 19, 2014), https://perma.cc/498A-ZCCB. Because ABA policy is generally aligned with the CCBE's requests, the ABA has worked with the CCBE to help it identify state policies that are not consistent with ABA policy and identify opportunities and individuals where the CCBE can communicate with the states.

185. *See, e.g.,* ABA, *It's a Small World After All: Global Tour of Transnational Regulatory Changes Affecting You*! (July 31, 2015) (CLE flyer circulated to ITILS) (on file with author). The speakers at this complimentary CLE held during the ABA Annual Meeting were Professor Robert Lutz, Hon. Jonathan Lippman, Chief Judge of the State of New York and Chair of CCJ committee responsible for TLP issues; Professor Carole Silver, Stephen Denyer, Law Society of England and Wales, and David Tang, K&L Gates and current Chair of ABA ITILS. *Id.* At the time of this program, the U.K. had not yet voted on Brexit and therefore was included in the TTIP negotiations.

186. CCJ, *Resolution 2, In Support of Regulations Permitting Limited Practice by Foreign Lawyers in the United States to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice* (Jan. 2015), https://perma.cc/G7HH-LXFR. *See also* Terry, *Vol*. 50, *supra* note 16, at 534-35 (reporting on the adoption of this resolution and noting the way in which it responded to the TTIP trade negotiation "requests" that the CCBE had submitted to the ABA and the CCJ).

187. *See supra* note 16 (explaining why Volume 51 of the *International Lawyer*, which was published in 2017, was the last TLP Year-in-Review article).

188. Terry, *Vol*. 50, *supra* note 16, at 532.

189. *Id.* at 535-537.

including conversations among CCJ and CCBE representatives,[190] a second networking breakfast for U.S. and Canadian regulators held during the ABA's annual ethics conference,[191] the second and third global workshops on proactive management-based regulation,[192] a global conversation and materials on the topic of "Association" during the 2016 ABA Annual Meeting,[193] and the annual International Conference of Legal Regulators meeting, which was hosted in September 2016 by the DC Office of Disciplinary Counsel.[194] The examples listed above are taken from Volumes 50 and 51 of the *International Lawyer,* but there have been many TLP-related interactions over the years that were never documented in the pages of the *International Lawyer* or that occurred after Volume 51 was published.[195] The Section that follows elaborates upon this point and explains why I chose to write about the ABA's *Summits* for this Symposium honoring Professor Lutz.

IV. THE LASTING IMPACT OF THE ABA'S *SUMMITS*

At the beginning of his last year as Chair of what was then the ABA Task Force on International Trade in Legal Services,[196] Professor Lutz told the ITILS Task Force members that "one measure of success is the establishment of relationships with U.S. and international stakeholder groups and that the task force will continue to pursue such

190. Terry, *Vol*. 51, *supra* note 16, at 541-42.

191. *Id.* at 544. *See also Professor Terry Participates in 2021 Can-Am Regulators' Roundtable*, https://perma.cc/UH7C-FWG8 (providing a history of the Can-Am networking breakfasts).

192. *Id.* at 544. For links to the 2016 and prior PMBR workshops, see Laurel S. Terry, *Materials for VIRTUAL REALITY: PMBR Past, Present and Future, 2021 NOBC Midyear Meeting* 3 (Feb. 12, 2021) https://perma.cc/EY3D-NBYX; ABA Cntr. Prof'l Resp., PMBR Articles, https://perma.cc/J4NM-VB9S.

193. Going Global: Association between Local and Foreign Lawyers and Law Firms (Aug. 6, 2016), https://perma.cc/9HD7-6Q2H.

194. Terry, *Vol*. 51, *supra* note 16, at 545.

195. *See, e.g.,* Email from Becky Stretch, ABA Staff, to author (July 11, 2014) (concerns a visit to the United States by a Korean delegation that was interested in, inter alia, statistics about the number of foreign legal consultants working in the United States and the number of lawyers working in the United States for foreign firms) (on file with author). This visit, which occurred after the 2013 Trans-Pacific *Summit* and the 2009 Korea-U.S. *Summit* is one of many TLP interactions that might have been cited.

196. *See supra* note 12 (explaining that Professor Lutz was Chair of ITILS during 2006-07, 2007-08, and 2008-09) and *see also supra* note 14 (explaining the history of ITILS, including its conversion to an ABA Standing Committee, and noting that in this Article, the term "ITILS" is used to refer to this group in all of its iterations and the word "member" includes all those listed on the ITILS roster, regardless of whether they were designated as a member, liaison, or former member).

opportunities."[197] This goal is now part of the mission of ITILS, which was converted to an ABA Standing Committee in 2016.[198]

I agree with Professor Lutz that the establishment of relationships is an important way to measure the success of ITILS.[199] In my view, ITILS has been extremely successful in this regard and the *Summits* that are the subject of this Article played an indispensable role in helping create these relationships and networks.

The *Summits* that are the subject of this Article promoted conversations among a wide variety of stakeholders. For example, some of the *Summits* focused on Europe, whereas other *Summits* focused on India, Korea, or the Asia-Pacific region more broadly.[200] Some of the *Summits* focused on U.S. lawyers and firms engaged in "outbound" U.S. legal services, also known as legal services exports,[201] whereas other *Summits* included discussion of issues related to foreign lawyers and legal services "inbound" to the United

197. Minutes, ABA ITILS, August 8, 2008, Business Meeting, *supra* note 127.

198. *See supra* note 14 (citing the Resolution that converted ITILS to a Standing Committee and the pertinent portion of the discussion in Terry, *Vol*. 50, *supra* note 16); Resolution Converting ITILS to a Standing Committee, *supra* note 14, at 1, which stated that the ITILS Standing Committee shall:

> 1) monitor the negotiations of international trade agreements that involve the United States and the provision of legal services; 2) coordinate the Association's positions on issues relating to the access by U.S. lawyers to the legal services markets of other countries and access by lawyers from foreign jurisdictions to the U.S. legal services market; 3) advise the U.S. Government of existing Association policies relating to these issues and of the Association's position on relevant aspects of the negotiations; 4) develop policy recommendations for adoption by the House of Delegates; 5) assist other Association entities in the implementation of current Association policies relating to these issues; and 6) educate and engage in outreach to interested internal and external entities relating to the status of international trade agreement negotiations relevant to legal services and provide those entities with a mechanism to provide their input for consideration and study.

Id.

199. In the original outline of this Article, I planned to identify some of the TLP "deliverables" that occurred during the past twenty years. I ultimately decided that it would be cruel to double the length of this Article, but it is worth noting that there were important TLP developments, not just conversations, that occurred during the past twenty years. These include, but are not limited to, ABA and CCJ resolutions, changes in state rules regulating foreign lawyers, education initiatives and resources, mechanisms that institutionalized collaboration and communication among stakeholders.

200. *See supra* notes 24-25 and accompanying text for a list of the *Summits* discussed in this Article; *see generally supra* notes 32-186 and accompanying text for details about these *Summits*. It is perhaps worth noting that some of the *TLP Year-in-Review* articles refer to Latin American Roundtables, as do some of the ITILS agendas. These Latin American Roundtables have not been included in this Article because neither ITILS nor the TLP Committee assumed the primary responsibility for organizing these gatherings or were substantially involved.

201. *See, e.g., supra* notes 136-38 and accompanying text (describing the law firm *Summits)*.

States,[202] and some *Summits* addressed both inbound and outbound issues.[203]

The TLP *Summits* that Professor Lutz helped organize included U.S. practicing lawyers, state bar leaders, academics, regulators, and others. The *Summits* attendees included both "day job" admissions regulators who belonged to the National Conference of Bar Examiners, as well as policymakers who were active in the Council of the ABA Section of Legal Education and Admissions to the Bar. At the other end of the lawyer regulatory spectrum, the TLP Summits included regulators whose "day job" was disciplining lawyers, and senior policymakers who belonged to the National Organization of Bar Counsel. The *Summits* drew upon the expertise of U.S. government officials such as those in the Office of the U.S. Trade Representative and the U.S. Department of Commerce, which led to additional meetings and interactions with these officials.[204] Some of the *Summit* conversations included Chief Justices (and other Justices) from the state high courts that regulate the legal profession. Moreover, even if some of the CCJ members of ITILS did not attend a particular *Summit*, the ITILS meetings made them aware of the planning, the materials, and the aftermath of these *Summits*.[205] And this list is just the U.S. participants! In short, under Professor Lutz's co-leadership of the *Summits* and afterwards, the ITILS *Summits* sought to engage a variety of stakeholders in person.

Despite all of this, one might wonder whether the *Summits* are a suitable subject for this Symposium because the last Summit was held in 2014. Some individuals might consider it a mistake for the ABA not to have scheduled additional *Summits,* especially in years in which foreign

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202. *See supra* notes 34-35 and accompanying text (describing the attendees at the August 2004 *Summit*); *supra* note 147 and accompanying text (describing the May 2009 Conference for the CCJ).

203. *See supra* notes 153-158, 167-186 and accompanying text (describing the 2013 and 2014 EU-US *Summit*s).

204. *See, e.g., supra* notes 41-42, 50-51, 166 and accompanying text (documenting interactions among USTR officials and ITILS). There were additional interactions this Article has not included such as ITILS' participation in a U.S. Department of Commerce Conference on trade statistics that USTR helped facilitate. U.S. Dep't of Commerce, *Measuring and Enhancing Services Trade Data and Information Conference: Better Data in Support of the National Export Initiative* (Sept. 14, 2010) (on file with author). *See also* Terry, *Vol*. 47 (U.S.), *supra* note 16, at 510 (noting that the USTR had consulted with ITILS about the Trans-Pacific Partnership trade negotiations); Terry, *Vol*. 49, *supra* note 16, at 416 (describing relationships among the USTR, CCJ, NOBC, ITILS and others). USTR officials periodically provided reports at ITILS meetings. *See, e.g.,* Minutes, ABA ITILS Meeting (Dec. 8, 2008) (on file with author).

205. *See, e.g., supra* notes 35 and 78 and accompanying text (describing the attendees at the 2004 *Summit* and invited participants for the 2005 *Summit*, which included three Chief Justices and CCJ staff Dick Van Duizend). *See also infra* notes 209-210 and accompanying text (describing the addition of CCJ representatives to ITILS and IGPAC).

individuals came to the United States for an ABA Annual Meeting.[206] While the author believes that there is a benefit from having regularly scheduled meetings, and supports trade agreements that include provisions that require a meeting, if not an outcome, such as the U.S.-Australia FTA Professional Services Annex, it is possible to view the lack of follow-up *Summits* as a measure of their ***success***, rather than a failure.

This perspective relies on the fact that the *Summits* were much more than a "one-off" meeting. For example, during 2006-2007, which was his first year as Chair of ITILS, Professor Lutz added "liaison reports" as a standard agenda item at the beginning of each ITILS meeting and this practice has continued. The liaison reports have helped reinforce the connections that had been made or deepened at the *Summits.* The liaisons who report typically include the ABA's ITAC representative,[207] the President of the National Conference of Bar Examiners, and representatives from the NOBC, the National Conference of Bar Presidents, the ABA Section of International Law, the ABA Section of Legal Education and Admissions to the Bar, the ABA Center for Professional Responsibility, and the ABA Section of Litigation, among others.[208] Although the USTR is not an official liaison to ITILS, it is not uncommon for a USTR representative to attend the ITILS meeting and provide a report. In short, the prior *Summits* helped establish the relationships that have made ITILS a vibrant group.

Another significant development that arguably can be attributed to the *Summits* is the expansion of the ITILS liaisons and those who are included on the ITILS roster. During 2007-08, which was the second year in which Professor Lutz served as ITILS Chair, ITILS expanded its list of liaisons to include a Chief Justice and a senior staff member from the National Center for State Courts. This practice has continued to this day and most ITILS meetings have a report from either a CCJ member or the CCJ staff liaison.[209] Moreover, as a result of the interactions between the

206. The author has heard this comment from others. These individuals may be pleased to know that during the October 17, 2022 ITILS meeting, the attendees—including Professor Lutz—discussed the possibility of hosting another *Summit*. (The author has personal knowledge of this conversation).

207. *See supra* note 54 and accompanying text (explaining in the text that ITAC is the statutory-required private sector body that advises government trade negotiators).

208. *See generally supra* note 14 (ITILS Rosters).

209. The author has personal knowledge of the facts in this sentence. *See also* ABA Task Force on International Trade in Legal Services, 2007-08 (listing as CCJ liaisons Wisconsin Chief Justice Shirley Abrahamson and Richard Van Duizend). After her initial appointment in 2007-08, Chief Justice Abrahamson remained as a member or CCJ liaison through 2019-2020; *see generally* ITILS Rosters, *supra* note 14. Mr. Van Duizend remained as a CCJ liaison through 2011-12. *Id.* In 2012-13, Judge Gregory E. Mize replaced Mr. Van Duizend as the CCJ liaison

CCJ and the USTR that the ABA helped facilitate, the federal government added a CCJ/National Center for State Courts representative to IGPAC, which is its Intergovernmental Policy Advisory Committee that advises federal trade negotiators.[210]

Many ITILS members have used the *Summits* to establish or deepen their global connections, as well as their domestic network. ABA Staff members Kristi Gaines and Ellyn Rosen regularly interact with, and provide information to, counterparts in other countries. ITILS members have assumed leadership positions in the International Bar Association[211] and the International Conference of Legal Regulators.[212] One of the current ITILS members, who is the Deputy General Counsel of the State Bar of Georgia, helped arrange an invitation to a CCBE staff member to speak to a Georgia committee considering what type of anti-money laundering rules to develop.[213] One of the CCJ liaisons to ITILS regularly wrote a series of memos advising the relevant CCJ committee of important international lawyer regulatory developments.[214] The immediate past chair of ITILS is a lawyer in private practice who previously chaired an important District of Columbia Bar international committee and helped organize a recent panel on the impact of COVID on international cross-border practice; information about this free on-demand CLE has been shared with international audiences.[215] The list could go on and on, but the examples listed above

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from the National Center for State Courts staff and has remained on the roster since that time, although Keith Fisher also joined as a CCJ liaison in 2019-20. *Id.* In 2009-2010, North Dakota Chief Justice Gerald VandeWalle joined ITILS as a member and has remained as a member or a liaison since that date. *Id.* Virginia Justice Liz Lacy had been a member since the Committee was created, representing the ABA Section of Legal Education and Admissions to the Bar, and remained on the roster through 2011-12. New York Chief Judge Jonathan Lippman was never listed on the ITILS Rosters, *supra* note 14, but served as Chair of the CCJ Committee (thereafter a Working Group) that addressed TLP issues and frequently interacted with ITILS members and liaisons.

210. *See, e.g.,* Off. of the U.S. Trade Representative, Intergovernmental Policy Advisory Committee (IGPAC), https://perma.cc/STA8-6DSY. The author has personal knowledge that Chief Justice Shirley Abrahamson was the first CCJ/National Center for State Courts representative to IGPAC. The position is currently held by Judge Greg Mize.

211. *See, e.g.,* ITILS Staff Ellyn Rosen (who is Chair of the IBA BIC Regul. Comm.), https://perma.cc/XN4C-9Z88.

212. The author has personal knowledge that CCBE Senior Legal Advisor Peter McNamee spoke to the Georgia ITILS Committee on Feb. 22, 2018.

213. The author has personal knowledge of this.

214. *See generally* Gregory E. Mize, Judicial Fellow, National Center for State Courts, *Update on Issues Raised by Cross Border Legal Practice* (July 2015), https://perma.cc/X8TL-U3FB.

215. The author has personal knowledge that ITILS Immediate Past Chair Darrel Mottley organized at COVID-ITILS CLE session that remains available on demand, that information about this CLE has been shared with International Bar Association Committees, and that Darrel

should provide a flavor of the deep global connections that exist and that the *Summits* helped facilitate.

These kinds of connections are one reason why I believe that the global networks that the *Summits* helped establish will have a lasting impact. In a recent article, I offered the following observation about global legal profession networks:

> In sum, global networks have affected and will continue to affect lawyers around the world. These networks affect the topics of discussion inside and outside the United States, who participates in the discussions, and ensure that ideas do not remain within the physical confines or borders of a particular jurisdiction. Despite the global trend towards nationalism and changes in the way that globalization is sometimes discussed, I believe that globalization—and global networks—are a crucial part of the contemporary legal services landscape and that it is in the best interests of lawyers—and the clients they serve—to be aware of, and take advantage of the opportunities these global networks provide.[216]

Although the ABA has not held an in-person *TLP Summit* since 2014,[217] I do not believe that continued in-person *Summits* are necessary for the global networks they helped create to thrive. A companion article to the one cited above focused on a subset of legal profession networks, namely the networks involving lawyer regulation stakeholders. In that article, I identified ten categories of lawyer regulation stakeholders[218] and discussed

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Mottley chaired an influential District of Columbia committee that issued a report about international practice. *See* ABA, *Remote Border Crossing: COVID-19, Changes in Lawyer Mobility and International Trade in Legal Service,* https://perma.cc/2NPQ-HXKA. At the time this Article was written, this CLE remained a featured resource on the ITILS webpage, *supra* note 14, at https://perma.cc/S3K2-8KF9.

216. Terry, *Global Legal Profession Networks*, *supra* note 3, at 175.

217. *See supra* note 206 (noting that one of the topics of discussion during the ITILS October 17, 2022 meeting was whether the ITILS should sponsor one or more *Summits* during the upcoming year).

218. *Lawyer Regulation Stakeholder Networks*, *supra* note 11, at 1074-75. The ten categories of stakeholders set forth in this article were: 1) those on whose behalf regulations are adopted; 2) traditional U.S. lawyer regulators; 3) groups that represent, and are primarily comprised of, traditional U.S. lawyer regulators; 4) groups that purport to offer expert balanced advice to traditional U.S. lawyer regulators; 5) other U.S. regulators whose actions directly affect lawyer regulation; 6) those who do not have "hard law" regulatory authority over lawyers, but interact with lawyers and may be able to enforce regulatory-like rules or compliance; 7) those who are directly affected by lawyer regulation provisions (but are not the population for whose benefit lawyer regulations are adopted); 8) additional individuals or entities within the United States that may be affected by, or care about, U.S. lawyer regulation issues; 9) foreign governments, intergovernmental organizations, and international dispute resolution bodies that have adopted policies or rules that may directly or indirectly affect U.S. lawyer regulation; and 10) additional individuals or entities outside the United States that may be affected by, or care about, U.S. lawyer regulation. *See also id.* at 1076-82 (*Table 1: U.S. Lawyer Regulation Stakeholders* provided examples and explanations of the ten categories the Article identified).

five ways in which these lawyer regulation stakeholders could participate directly or indirectly in global networks:

1. Through in-person meetings or conferences;
2. Through virtual meetings or conferences;
3. Through law reform initiatives;
4. as a result of reading literature; and
5. as part of the information that is delivered by the "domestic" affiliation groups to which the U.S. lawyer regulation stakeholder belongs.[219]

The ITILS *Summits* were an example of the first method of creating networks—through in-person meetings or conferences. In my view, the *Summits* laid the groundwork for the other kinds of interactions listed in items 2-5, above. The network connections or nodes have continued to expand since the fourteen *Summits* described in this article, as individuals who participated in the *Summits* have expanded their connections, interest, and knowledge. In other words, the *Summits* had a significant "spillover" effect and there are now many more connections among lawyer stakeholders in the United States and those located elsewhere in the world. The connections that began or were deepened through one or more of the fourteen in-person *Summit* meetings have created an environment in which there are now opportunities for global stakeholders to engage with one another in virtual settings,[220] through participating in, or monitoring law

219. *Id.* at 1082-1104, 1110.

220. *See, e.g.,* Terry*, Lawyer Regulation Stakeholder Networks*; *supra* note 11, at 1088, which described the virtual attendance at a State Bar of Georgia ITILS committee meeting of a CCBE staff lawyer, who shared with the Georgia committee the EU experience with antimony laundering issues:

> The State Bar of Georgia's International Trade in Legal Services ("ITILS") Committee further illustrates how virtual meetings promote global connections and networks. This Committee conducts regular in-person meetings, but it also offers a telephone conference option. During one of its meetings, the Committee invited a representative from the Council of Bars and Law Societies of Europe to make a lengthy telephone presentation to the Committee members regarding anti-money laundering regulations in Europe.82 As a result of the representative's "virtual," rather than in-person participation, Georgia lawyers from large and small firms and from in-house and government practice settings heard about the EU's experiences.83 After this conversation and additional discussions, the Georgia ITILS Committee recommended an ethics rule change that would, in essence, add an anti-money laundering due diligence obligation to Georgia's ethics rules.

Id. Connections between the State Bar of Georgia and the CCBE date back to, and were reinforced by, the earliest *Summits* and have continued even as the lawyers who staff the Georgia committee changed. *See Resolution Issued by The American Bar Association Standing Committee on International Trade in Legal Services* [Regarding Bill Smith] (Dec. 7, 2016) (on file with author).

reform efforts,[221] by reading literature from one another,[222] and by dispersing global perspectives through seemingly domestic channels.[223]

In sum, the *Summits* played a critical role, but a rarely acknowledged role, in helping establish and deepen the relationships that allow global lawyer regulation stakeholder networks to flourish. The fourteen *Summits* that were held from 2004-2014 were important events that have had a lasting impact. This Symposium provides the opportunity to recognize the work that Professor Lutz did to make these *Summits* happen and to thank him for his efforts.

221. *See, e.g.,* IAALS, Unlocking Legal Regulation Knowledge Center, https://perma.cc/634Q-R93G (includes international lawyer regulation reform initiatives, as well as U.S. law reform initiatives, on this page monitoring current developments); *see also* Laurel S. Terry, *Regulatory Developments Related to Innovation, Technology, and the Practice of Law,* Law Soc'y of Ontario Special Lectures Conference Paper (2019-2020), https://works.bepress.com/laurel_terry/99/ (explaining how lawyer regulatory initiatives in California, Arizona, and Utah relied on developments that had occurred in Australia and England and Wales).

222. *See, e.g.,* Robert E. Lutz, *The Regulation of the Transnational Legal Profession in the United States*, 50 INT'L LAW. 445 (2017) (sharing the U.S. perspective in a Symposium issue); Robert E. Lutz, *An Essay concerning the Changing International Legal Profession*, 18 SW. J. INT'L L. 215 (2011); Robert E. Lutz, *Reforming Approaches to Educating Transnational Lawyers: Observations from Americ*a, 61 J. LEGAL EDUC. 449 (2012).

223. *See, e.g., Lawyer Regulation Stakeholder Networks*, *supra* note 11, at 1087-88 (noting that "Because the documents [the NOBC committees] produced were posted on the NOBC's "Global Resources" public webpage for a number of years and are still available in the members only section, the information this global network assembled was broadly dispersed among U.S. lawyer regulation stakeholders." Although these documents are no longer available, they illustrate the ways in which connections that were created or deepened in the *Summits* continue to be important. For example, Alison Hook attended the first EU-US *Summit* and also served as an NOBC Committee member.).