



AMERICAN BAR ASSOCIATION INTERNATIONAL SECTION

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Last week I attended four days of panel discussions organized by the International Section of the American Bar Association. The topics that interested me (and are reported on below) are NOT areas of my expertise, so most of what I present below reflects only what I learned at the Conference. Some of the information may be incorrect. Subjects covered:

Block Chain, Supply Chain and Crypto Currencies	Data Protection and Privacy	Brexit
Bribery, Money Laundering and Art	Cross Border Evidence Sharing	NAFTA
Employment and Domestic Relations Law	Arbitration	Ethics
Regional Conflicts	Election Manipulation	

The biggest development covered was the EU's General Data Protection Regulation (GDPR) and the coming conflict between it and the new US CLOUD Act. Americans and Europeans see personal data from very different points of view, although Americans are now - thanks to Facebook and Data Analytics - beginning to move towards the EU position. Similarly, the US wants more local content under a revised NAFTA, but Canada has just adopted TPP trade treaty, which will permit *more* Chinese content. Long term, block chain will have the biggest effect. On a cultural note, the French marriage and estates attorney got me to watch Johnny Hallyday on YouTube. If you do not know him, you will thank me. I understand why he is a French hero, despite being Belgian and a (now former) resident of California.

SUMMARY

BREXIT – UK attorneys are doing their best to minimize the negative effects of Brexit on the British legal establishment. Other European law centers treat Brexit as a “gefundenes Fressen.” [A bit like own goal.] Brexit increases uncertainty and raises costs of cross-border transactions, particularly financial and trade.

NAFTA – The German auto industry holds off making investments in Mexico until North American trade has been clarified. It would take 3-5 years for North American auto manufacturers to change their supply chains to comply to a more restrictive NAFTA. In the meantime, production would move from Mexico to Southeast Asia. Canada's adoption of TPP (Pacific trade) moves Canada away from President Trump's demand for more US content. Elections in Mexico and the US and US legislative procedures complicate any quick amendment to NAFTA.

TECHNOLOGY – The US government treats crypto currencies as legitimate assets. Money transfers involving countries without first world financial structures can be sped up substantially and avoid corrupt bureaucrats.

Under the GDPR, law firms face new obligations regarding the client data they collect. Lawyers engaged by a lead firm may also have to comply. Attorneys admitted in multiple jurisdictions must comply with several sets of laws and ethical obligations.

Some Canadian lawyers do not store any client data in their computers or phones due to intrusion by border control agents, including confiscating the devices and holding attorneys who decline to give passwords. These lawyers leave the information in the cloud.

BIG DATA – A Ukrainian speaker claimed that drones photograph soldiers' faces, match them to social media photos and then track down family members for reprisal. Data (including personal data) is often stored in many different countries. (The film camera of the 19th century was also considered to be an intrusion on privacy.)

BRIBERY – International enforcement of anti-bribery laws has increased, despite President Trump's policies.

ART – Due to greater restrictions on money laundering, art becomes a more frequently used means of transferring and hiding wealth. The art market is anyway known for its confidentiality. Tax laws encourage evasion and fraudulent valuation. New York City is opening an art "freeport" to compete with Zurich, Singapore and China. Destruction of cultural heritage is now prosecuted in the ICC as a war crime.

EVIDENCE – The internet means that evidence of criminal conduct may be stored in many countries besides the one where the crime was committed or the criminal resides. Traditionally, sharing evidence between countries was very slow. The US recently enacted the CLOUD Act which should speed up the process, so long as the requesting country has entered into a treaty with the US. How will the CLOUD Act interact with the GRPR? The two laws seem to have been adopted without any consideration for each other. [This is typical of the US.]

ARBITRATION – Lawyers often draft sloppy arbitration provisions at the last minute. Post Brexit London may lose significance as an arbitration center.

EMPLOYMENT – Foreign employees sent to the US may be subject to state taxation even if exempt from federal. When sent to Europe, they may be entitled to benefits and extra payments not due them in the US.

DOMESTIC RELATIONS – Law varies greatly from country to country on how marital property is owned, shared and divided. Some countries do not have marital property regimes at all. The way pre-nuptial contracts are handled varies greatly. Some panel lawyers argued for having one will for each jurisdiction and another [Mexico] said that was very dangerous. Trusts are less helpful today and some countries use corporations and the issuance of shares to accomplish a similar purpose. The use of social media in domestic disputes differs greatly from country to country. The Johnny Hallyday estate battle [California vs. France] will make interesting reading.

ELECTIONS – US election mechanisms are outdated and subject to easy interference. A foreign entity may not want to elect a particular candidate so much as create distrust in democracy generally. Although each US state has its own voting officials, elections are really run by the company which supplied the voting equipment and software. State procedures intended to assure proper vote counts

are often ignored. Of course, the US has been “interfering” with elections and political processes in foreign countries since the end of WWII.

REGIONAL CONFLICTS – The German ambassador to the UN argued for use of troops from neighboring states in domestic unrest (like Mali and possibly even Venezuela). [Given Germany’s history with its neighbors and the US with Latin America, this suggestion did not persuade me.]

DETAILS

BREXIT

This subject has monopolized British front pages for 18 months. Of course, none of the panelists knows what the outcome will be, so we witnessed a mixture of jokes, attempts to take advantage of the uncertainty and brave British faces. One term heard was “BRINO” – Brexit in name only.

At the end of March 2019, the UK will be out of the EU. There will be transitional rules from 2019 to December 2020.

What effect does Brexit have on existing contracts, such as swaps and derivatives? It is not likely an excuse for a party not to perform its obligations or to terminate the contract. But Brexit MAY result in a ratings downgrade or reduce the value of a contract. Lenders could call for more collateral. New contracts will likely have “Brexit provisions.” If the parties are in the EU but the UK is not, why would the parties apply UK law? The UK representatives argued that UK judges and courts still bring added value to transactions. The UK has a special “financial list” of judges with special expertise. It also has a special court with the capability to answer a sophisticated financial question which is not the subject of a dispute.

If contracts refer to the EU, such as in territorial definitions, permitted territory or non-competition, what is the result? Tariffs and cross-border transfers are likely to generate more costs. Which party bears them? Customs inspections also increase costs. If costs are tied to labor indexes, will the UK exit affect those?

The UK has adopted GDPR and added some stronger safeguards, so data exchange should not be affected.

As to the reason for Brexit, continental Europe viewed the EU as a method of avoiding war. The UK viewed it from a strictly commercial standpoint. Of course, the election results were not expected.

Non-commercial aspects of the change include security, intelligence sharing and police cooperation.

The Irish border is a special problem. Goods flow freely across that border today. To erect a new border would violate the Good Friday Agreement. [I have read separately that some observers fear the new customs stations would be a target of renewed terrorism.]

NAFTA

North American trade law directly affects Germany because of substantial auto production in Mexico and Canada.

The United States is moving away from the post WWII structures it established and from a rule of law to a power-based system. The US proposal for a 5-year sunset on any NAFTA arrangement creates instability and reduces investment.

The Republicans want a quick deal, so they can campaign on it in November. But Mexico has a Presidential election in July which will slow the process. Even once agreed on in principle, any legislation will take months to pass due to congressional procedures and waiting periods.

President Trump has focused on blue-collar manufacturing jobs, but agriculture and services (banks, insurance) are also affected. Mexico could benefit from any restrictions China puts on food importation from the US. Trump's trade priorities are quite different from those of the Republican Congress.

The possible outcomes are 1) a revision of NAFTA, 2) NAFTA's staying the same, 3) NAFTA's termination and 4) least likely, a shift to TPP as the focus.

If auto manufacturing is reduced in Mexico, it is not likely to move back to the US. China and Southeast Asia are more likely areas for investment. The same applies to textiles presently made in Mexico.

Mexico's elections will put pressure on its government to be "treated fairly." The left of center candidate [Andres Manuel Lopez Obrador] has a large lead in the polls. Tensions between the US and Mexico have increased, and this can have negative effects on cooperation generally – crime, drugs, immigration. [If US policies disrupt the Mexican economy, we know where Mexicans seeking better opportunities will come.] US policies have the indirect effect of stopping German and Japanese investments in Mexico while the situation stabilizes.

Many NAFTA points HAVE already been tentatively agreed on. Democrats in Congress will have a hard time voting for any Trump trade policies, so any legislation will have to be an all-Republican bill. There is the danger that the Democrats will take back Congress in November, so Republicans will push for a pre-election vote.

From the Canadian perspective, there are many points unsettled, including government procurement, dispute resolution, the sunset proposal, de minimis provisions, market access for agriculture and textiles. Due to all the procedural requirements built in to trade legislation, including a 90-day waiting period, the timing is very difficult. The most likely period for passage is during the US "lame-duck" period after the elections but before the new representatives take office. If the left-wing candidate Obrador wins in Mexico and the Democrats win in the US, labor and environmental provisions would become more important. NAFTA *does* need to be updated.

Investor-State Dispute Settlement (ISDS) is also a major point. Congress and US industry are for ISDS, but President Trump is against it. The alternative is state-to-state dispute resolutions, but businesses know political factors can argue against the US government's pressing private claims. ISDS takes the state out of the process and so de-politicizes it. Furthermore, President Trump even wants to weaken the state-to-state process and have only "advisory positions." Another US goal is the free movement of data across borders. This goal is contrary to the trend in Europe.

Initially NAFTA revision included labor and data mobility, but these aspects have become secondary or even forgotten. Mexico does not expect any changes here.

There was talk in the US of revisiting TPP, but any US involvement is now unlikely. The current TPP treaty left out many of the aspects President Obama wanted. So, Trump would be lucky to get those aspects back in. Japan does want the US to be in TPP. In the meantime, Canada entered a free trade treaty with the EU and 98% [?] of Canadian-EU trade is duty-free. So, Canada sourcing from Europe is increasing.

Areas of focus between Canada and the US are autos, aircraft, softwood, ores and metals, chemicals and dairy. On some of these points, Canada knows it has to make concessions and the question is how much, not whether. But if the US pulls out of NAFTA, there are pre-existing trade rules and treaties which go back into force automatically.

Many of the Canadian proposals for NAFTA come from TPP, which Canada has adopted, Mexico too.

Without NAFTA, no car maker in North America could make cars as it does today. It would take 3-5 years to change the supply chain. Some parts cross borders 4 times before being integrated into the final product.

US financial and insurance companies sell a lot of services into Mexico, including managing Mexican retirement funds.

The US is anti WTO dispute settlement. The US feels it wins rights in the treaty but loses them before the WTO.

The US also resents having to compete with foreign state-owned enterprises (SOE's) and does not like the people who sit on WTO dispute panels.

The Chinese ambassador to Canada said in a speech that President Trump was "looney." This kind of talk is quite unusual. [I found this quote confirmed on the Globe and Mail website but each time I found the article, I was immediately blocked. Did President Trump exercise his right to be forgotten?]

Given the time frame, the likely outcome is to win a few points on NAFTA and declare victory. A thoughtful updating, which is necessary, is unlikely.

NOTE: Many panels dealt with technology, data, privacy, blockchain, crypto currencies and they are lumped together below.

BLOCKCHAIN

Blockchain technology replaces trusted intermediaries in transactions. There is often no need now for a central clearinghouse and associated fees and delays. The parties deal directly with each other. In blockchain, every person has a unique identity. Each entry confirms the identity and the time. This information is distributed across the ledgers of several members.

In trade and supply chains, each item is uniquely identified, and each step is time stamped. Access to the information can be limited to specific parties. The location of the goods can be determined by GPS. Documents can be attached to each entry – although the system is not suitable for 200-page acquisition agreements or lengthy representations and warranties. The more appropriate system now is the "smart contract" which is a list of the actionable steps envisioned in the longer contract. When are goods loaded; where are they shipped; what happens next? Once the final step is achieved, payment occurs automatically. The speed of processing these transactions permits faster payment and so reduces the

cost of capital. A bale of cotton shipped from Texas to China is paid for the moment it arrives in China, for example.

IBM and Maersk have formed a joint venture. Its information is based in the IBM cloud. IBM has no proprietary control over it. It is based on open source “hyper ledger fabric.” Its purpose is cheaper supply chain management. In the joint venture, unlike block chain, the players are not anonymous.

Besides location, the sensor can report temperature and humidity (for example). Markers can be radio frequency identification devices (RFID) or popcode or QR codes.

Software is often used already in trade, but with bad results if the programmers do not understand the law. There are many examples where the programs produce incorrect results. The interface of the computer memories may not comply with the law – such as the requirement that records be kept for 6 years. A 3rd party provider may not be able to find the records. Software has to be updated when statutes or regulations or even court decisions change. It is likely that governments will want access to the blockchain, detailed information and not all shippers and processors will want that. Some of the blockchain applications can be loaded on iPhone, so even lesser developed countries can access the technology.

A Canadian border official inspected an iPhone which had a program that deleted information. The official held the owner for 8 hours. [Americans consider their customs and border control agents to be overbearing. For example, the Delta French apple fine.]

<https://www.cnn.com/2018/04/23/us/apple-delta-fine-customs-flight-500-trnd/index.html>

CRYPTO CURRENCIES

Crypto currencies depend on blockchain but are not the same as blockchain.

Bitcoin is treated like any other asset by the US government. When it sells forfeited assets, it includes Bitcoins along with motorboats and fancy cars.

Cryptology is essential to the value of cryptocurrencies – if the formula and procedures are defeated, inflation by introduction of “counterfeit” currency can erase the currency’s value. [However, the expense of undoing blockchains is a significant safeguard. To change an existing blockchain, each prior blockchain entry back to the “Genesis entry” has to be changed and requires 10 minutes of computer work and the agreement of over 50% of the computers in the network. I wonder about easing and tightening of currencies, as normally done by central banks.]

Government factors involved in such currencies include anti-money laundering, terrorism and KYC (know your customer) obligations. How are currency gains taxed? How does the government get information available to it with normal currencies?

In countries in which citizens do not trust their governments, putting wealth in such currencies may be reasonable and legitimate. China has made payments to African entities using bitcoin, in part because some countries do not have 1st world financial networks. Such payments also can bypass corrupt government officials.

Attorneys may be paid in crypto currencies, but the same rules apply as with payments in cash.

BIG DATA

Artificial intelligence (AI) has dramatically changed in the last 5 years. 5 years ago, AI learned the game Go by studying human game results. It then played a human champion and won 4 of 5 games. Recently AI taught itself the game – without human examples - and beat the old AI champion 100 games in a row.

A Ukrainian panel member claimed that drones took pictures of soldiers, using facial recognition and social media identified the soldiers and then located their family members for attack.

Many websites run data collection programs in the background. Can a cell phone user understand what is happening?

The Max Schrems suit against Facebook involved determining where his personal data was stored. It had been transferred to the US and so – under the new GDPR – will be subject to higher privacy standards. Often a person's data may be stored in many different jurisdictions, including information which to a normal person seems to be one data package, like an email or photo. Different data companies store data differently. Taking "meta data" seems relatively harmless but it shows who is connected to whom. The post 9-11 Bush administration took this data for "security" purposes.

There was never a golden age of internet privacy. An earlier example is the use of tiny cameras to take pictures without the subject's knowledge. [Germans living in small towns know there are no secrets. Pittsburgh is similar.]

Compared to private companies, governments have greater power but fewer people focused on the average citizen. Private companies are much more focused.

DATA PROTECTION – GDPR

The GDPR is a BIG deal. It goes into effect May 25, 2018. Potential fines will be very large and painful. Very minor cross border contacts may still subject the business to GDPR rules and risks. Not just internet companies need to pay attention. For example, law firms need to comply. Clients and contract partners may require others to certify that they comply with GDPR. [The complexity of GDPR prevents me from trying to describe it and EU readers are already quite familiar with it. Few Americans have heard of it.]

PRIVACY

Americans and Europeans have very different concepts of privacy. The UK in particular [which most Americans think of as being similar to the US] has quite different views from ours. In the UK, there must be an overriding public interest for private things to be made public. The Queen's having a private account in Panama was not viewed as being newsworthy. Can a libel claim be inherited or does the claim die with the person claiming to have been libeled? In the UK, libel law was developed to reduce deaths due to duels. There, even famous people doing everyday things in public can be sure their pictures will not show up in public. The exception is the "red carpet" rule. By contrast, in the US, a PR agent will call the press and tell them where some would-be movie star will be eating dinner. Paul Weller won minor damages due to the publication of California photos made of his teenaged daughter. In the US, the place where the person was resident can be determinative. Marilyn Monroe was found to have been a resident of New York at her death and so had no posthumous right of publicity. [A 2012 case.] IP rights are different, and some individuals register their names and images to protect them.

Facebook's invasion of privacy has been noted, but Google collects many more times the personal data.

Generally, the US is more interested in technology and the EU in privacy, but some US states are beginning to follow Europe.

Oddly, old Americans assume anyone can find their phone numbers – they grew up with phone books - but young people consider that information private.

The right to be forgotten means the right to defeat certain search engine results, NOT the right to have the information itself deleted. It is just harder to find.

Post conference I found the following report on Madonna typical of US attitudes on privacy.

<https://www.nytimes.com/2018/04/24/arts/music/madonna-tupac-shakur-letter-auction.html>

And Facebook faces ever greater criticism, moving the US closer to Europe in some regards.

<https://www.nytimes.com/2018/04/24/business/economy/facebook-privacy.html>

ATTORNEY ETHICS and GDPR

New privacy laws apply to law firms, to partners and to their subordinate colleagues. Do a law firm's service contractors have access to protected information? A foreign lawyer who is also admitted in a US jurisdiction has to comply with both sets of obligations. The geographical scope of these rights and regulations is much greater than with the previous "safe harbor" rules.

If a lawyer engages a lawyer from another law firm, the first lawyer may need to get the 2nd to explicitly agree to comply with the GDPR. Attorneys should collect the minimum data of the client needed to deal with the project and to hold the data only for as long as needed. This is contrary to the impulse of most attorneys. The client has the right to have the attorney delete all the data. The law firm may have its own, legitimate reasons for keeping the data, such as for defending possible malpractice claims. If a data security breach occurs, the law firm has 72 hours to report it.

Some jurisdictions [Brazil was the country discussed] have almost no rules on data privacy. Brazil's constitution does include a strong right to client confidentiality.

Attorneys traveling in and out of Canada have a particular problem. The Canadian Border Services can take an attorney's iPhone or laptop and go through it. If the attorney resists, the police can take and keep the device. Canadian lawyers generally do NOT travel with laptops containing sensitive client information. They access their clients' data in the cloud.

ART

Legal issues involving art include fraud and money laundering. Banking regulations to prevent money laundering do not [yet] apply to art. There is no government regulator of the art market. The art market is full of intermediaries and confidentiality. Other factors in the art market include tax havens, freeports, tax benefits and private museums.

Art has similarities to crypto currencies because they are both means of hiding wealth.

Hiding wealth in Cayman Island bank accounts – those days are over. If wealth is put into a trust, the ultimate beneficiary must be disclosed.

Art CAN still be used to evade taxes. In some European countries, tax authorities now do a physical inspection of the decedent's home(s) to inventory art. However, there is no registry of art ownership and it is difficult to value.

New York City is a major world art center, but it imposes an 8.8% sales tax. Galleries used to ship art and jewelry outside New York to avoid taxes, but schemes involving empty boxes and crates (supposed to contain art or jewelry) got to be well known. The Aby Rosen [a client of my office when he first came to NYC] tax avoidance case was discussed. He ultimately paid the tax. Other examples are Alec Baldwin and Michael Shvo.

Much art is donated to art museums for the resulting tax deduction. Many newer museums get 80% of their collections through donations. 1/3rd of art donated was valued at 3x its actual value. In Canada, the credit is 100% the object has cultural significance. The question is what is culturally significant. A Canadian collector bought works by Annie Liebowitz for \$4.8 million and then claimed a donation value of \$20 million.

Freeports were developed in the 19th century to store grain. Now they store art. Switzerland, Singapore and China are major freeport centers. New York is developing an art freeport in Harlem. Delaware already has one.

Certainly, people involved in today's art market argue against any additional government regulation of the market.

Often the art buyer and seller are unknown to each other and only the agents meet. Some reasons for anonymity are the shame of having to sell, family dynamics or fear of being targeted due to wealth. Some collectors know that publicity will bring further attention. On the other side, secrecy creates a loss of the history of the art.

Common litigation involves fraud or misunderstandings as to the financial terms between the seller and his or her agent. How much may the agent keep from the sales proceeds? Cases are *Accidia v. Dickinson*, *Schulhof v. Jacobs*, and *Aldi Achenbach* – which resulted in criminal penalties. EU anti-money laundering legislation is likely.

A Christie's representative said Christie's does frequent checks on the activities of its major customers and stolen art registers. They also require representations from their sellers. They check 20 databases for Holocaust related claims. They prohibit 3rd party payments or payment in cash over \$7,000.

However, many galleries and dealers are much smaller than Christie's and Sotheby's and will have a hard time implementing sophisticated controls. Imposing these requirements would help the big houses.

Indiana GOP Congressman Mark Messer is drafting legislation on money laundering which would also affect art transactions. Certain reports would also be required of art dealers. In contrast, France already has money laundering laws applicable to art and galleries.

The US has civil forfeiture laws (19 USC Sec. 1497) which apply to art and other precious objects. Bringing such items into the US without declaration subject the owner to their forfeiture. The government does not have to prove knowledge or intent. There is no “innocent owner” defense. Forfeiture also results if the value of the object is substantially understated.

High profile cases include a moon rock original given to a Central American country and Ka Nefer Nefer, an Egyptian mask which the St. Louis Art Museum refuses to return to Egypt. ISIL is looting Syria and other areas and selling ancient treasures.

A problem in identifying stolen art is that many museums are small and have poor descriptions and photos of the missing items. Not long ago many small, country French churches had valuable art but no records or controls.

Several recent cases involved attempts to sell to undercover FBI agents. A Panamanian escaped prosecution because he had diplomatic immunity. The US federal government may have jurisdiction if the object crossed state lines. This was the basis for prosecution of a researcher in the Vatican library. In another case, a person broke the thumb off a Chinese terracotta warrior and took the thumb home from the Philadelphia museum to his home in Delaware.

Despite much better cooperation among governments, Italy is home to important information sources which do not cooperate.

New York also has its own statutes governing art. One statute is focused on “fences” of less exotic things of value, but it also applies to art dealers. It presumes the seller has knowledge of its source if the dealer is in the business of selling this sort of object. The dealer must have made a reasonable inquiry.

Stolen art is often connected to other crimes and money laundering.

France has extensive laws regulating art and its exportation. It adopted new regulation in 2017, going into effect in 2019.

The International Criminal Court has recently begun prosecuting people as war criminals for the destruction of cultural sites. Al Mahdi and Al Hasan were convicted and imprisoned.

Art authenticators have been sued by disappointed art owners. The French courts now protect these experts under “freedom of expression” theories. If the provenance of a piece there is in question, no authentication will be offered.

CROSS BORDER EVIDENCE

Traditionally, crimes were committed in one country, with evidence in that country. Now evidence can be in other countries or in the cloud. How do prosecutors get digital evidence? Some require local servers to disclose it. Some hack the server. Some have arrested the employees of the server owner. Companies providing storage services have real difficulties balancing various inconsistent laws, protection of their brand and balancing of privacy obligations. Microsoft litigated a dispute which involved a US request for data stored in Ireland. Before a final decision could be reached, the CLOUD Act was passed. (Clarifying Overseas Use of Data Act).

The mix of variables includes 1) the location of the server owner, 2) the location of the data, 3) the citizenship of the person whose data is sought, 4) existence of a treaty, and 5) privacy and other laws of

the countries involved. [A matrix of variables would have been helpful.] The US will force a US server owner to comply with a foreign government's request in some instances. A series of bilateral treaties is expected, giving non-US governments rights under the treaty and the CLOUD Act. The UK is expected to be the first of many countries to enter these treaties. If a foreign government meets US standards, it can become a Qualified Foreign Government. If US compliance would violate a foreign law, then the service provider can challenge the warrant in US court. The initial determination on compliance is by attorneys for the service provider itself.

The CLOUD Act includes a complex formula as to when another country must be informed about a request for information. If a country has not entered a treaty with the US on the subject, it is not involved in the screening process. So, the US expects to enter a great many such bi-lateral treaties. Despite US "lax" protections of privacy (by European standards), US law provides greater protection from government snooping than most foreign laws. In light of governmental abuse of power in many countries, US service providers might want to give its customers notice of such requests.

Under the old Mutual Legal Assistance procedure, foreign governments could not come directly to the US service provider. Under the CLOUD Act, they can if they are parties to a treaty. The US Attorney General is empowered to certify whether the foreign government provides minimum legal protections to its citizens. A panelist questioned whether Egypt or Hungary could expect such certification. A foreign request about a US citizen would not fall under the new Act.

Real time "wire taps" are also possible but the US does not permit them absent extreme circumstances.

Integrating the CLOUD Act with the GDPR will be interesting. Also, the EU has a non-discrimination principle as among all EU members. Can the US certify one EU country and deny similar rights to another? Indeed, the GDPR may prevent EU member compliance with the new US law.

Each service provider has its own protocol as to where customer data is stored and whether it is all in the same place...or whether it is moved. Often the same information is in more than one location.

OECD ANTI-BRIBERY CONVENTION

In the 1990's only the United States had anti-corruption legislation and it was seldom enforced. Today, governments have become much more willing to support the criminal investigations of other countries. The US government got very good cooperation from the German government in the US investigation of Siemens, for example. The speed of response has improved. Earlier, cooperation was pursuant to a "mutual legal assistance request" [mentioned above] and getting the information might take months or years. Under President Trump, anti-corruption efforts may be a lower priority.

Failure of companies to have adequate internal controls is a strict liability violation.

ARBITRATION

Arbitration clauses are often added to contracts as an afterthought, just before signature. Many clauses make little sense, are contradictory or give authority to some entity which does not exist. Some entities often engaged in litigation prefer civil courts if the courts' decisions provide valuable precedents. However, juries are generally avoided. Look for the arbitration agency's model clause as a start, with some additions possible, such as the subject matter qualifications of the arbitrator(s). London has been a center of arbitration, but BREXIT may affect this. Certainly, lawyers from continental cities are using

BREXIT as a reason not to arbitrate in London. The UK will, however, remain a party to non-EU treaties regarding arbitration and enforcement.

If a contract has been performed or the term expired but a dispute arises, does the arbitration provision survive?

EMPLOYMENT [Most of this is well known.]

When sending an employee into a foreign jurisdiction, don't assume he/she will have only the rights granted in the home country. For example, the employee may have rights under the new country's laws to a 13th and even 14th month's salary. Does the employee create a "presence" for his/her employer in that country? Do overtime rules protect the employee? Health care, parental and health leave, vacation rights and retirement. Also, rights to inventions. Severance? [Years ago, I learned that a German manager sent to the US by the German mother company may – wrongly – assumed that the German standards of sexual harassment still applied to him, at least when dealing with other German employees in the US.]

US federal and state income tax rules may subject the employee to tax obligations. Some states are more aggressive than the federal government.

DOMESTIC RELATIONS

In some jurisdictions, a prenuptial agreement is a physical part of the marriage certificate. The UK does not provide for property regimes. In the UK, all the property is put in a pot and divided.

The French expert mentioned the current Johnny Hallyday estate, with California and France having an interest. Hallyday left all his estate to his last wife, disinheriting his grown children, a result not permitted in France.

Some attorneys recommended having a separate will for each jurisdiction where the testator had property, but in Mexico, having more than one will is a problem.

France [as common in civil law countries] does not recognize trusts or foundations. The Chilean solution is to enter a prenuptial. Trusts do not assure privacy in the UK. There a judge can demand disclosure and can change the trust terms. Chile also does not recognize trusts. It has forced heirships. The solution in Chile is to form a company and issue shares to the potential heirs. In Mexico, trusts are expensive because they cannot exist without a bank, and bank fees are significant.

Divorce lawyers use social media as evidence. However, nasty posts about the spouse can be used as a basis for finding that the posting partner is at fault. Immigration also looks at an applicant's social media. Mexico and Chile are restrictive as to its use. France also has broad privacy laws.

Citizens of some countries enjoy rights under that country's law regardless of their domicile.

Laws regarding a lawyer's obligation to check the source of payment for large purchases or for his/her fees vary greatly. Some countries do require investigation and reporting; others, not.

ELECTIONS

Separate from influencing voter attitudes, election mechanisms themselves are subject to several sorts of electronic interference including disruption of voter registers, unauthorized collection of voter

information and counting of election results. Voting rights are a matter of state statute and administration. The actual voting mechanism is run more by companies which provide the equipment and software than by elected officials. The statutes are often ignored. For example, officials are supposed to print out and sign a so-called “zero tape” showing that there are no votes registered in the voting machine the morning of the election. In fact, the tape is often printed out days before the election, in private, and presented for official signature on the day of the election. This is no control at all. Ballot boxes are supposed to be sealed in public, to control against stuffing the box. This is not done. No election commission has an IT department; many election computers have no basic firewalls.

States claim that their election mechanisms are decentralized, but in fact the results of many voting sites are often collected to one location, often outside the voting state. States claim that their methods are diverse and therefore strong. But that may mean that the least protected of the methods presents an entrance to outside influence. And that one, weak election device, once manipulated, may change the result of the election. One does not have to affect every jurisdiction to win an election.

The panel members argued about whether issuing “provisional ballots” to voters whose votes were initially rejected was an adequate remedy.

The goal of the US voting system is to pick a winner of the election. The goal of a foreign government may not be to affect the winner but rather to undermine confidence in the whole system and in democracy in general.

Attitudes about electronic voting differs between generations, with younger voters being convinced that it is easy to change their votes and so preferring paper ballots.

After the Bush-Gore election debacle, the US passed the Help America Vote Act. It provided no standards but gave states money to upgrade their voting systems. However, they quickly bought old technology. So today, lots of voting equipment is out of date and finding replacement parts is impossible.

One of the panel members conducted a “shodan” search about the time of an election and found easy access to the voting lists held by seven secretaries of state.

Election systems are generally not connected to the internet during the election but rather connect only when the votes for the particular site have been counted and the results submitted to a central location.

There is no time to correct these weaknesses before the US November 2018 elections, reducing the legitimacy of those results.

Russia has effectively created distrust in our election system but the US Congress has made the distrust worse.

As to Russian mis-information, Russia does not have to post it on US sites or pretend to be American. Americans will find the posts and then repeat them.

Russia has been interfering in foreign elections for decades. But the United States has too, including assassinating foreign leaders and sending cash to the opposition. Putin is convinced that Hillary Clinton tried to get him voted out of office and she supported demonstrations against him. The New York Times wrote an article on the long history of US efforts.

<https://www.nytimes.com/2018/02/17/sunday-review/russia-isnt-the-only-one-meddling-in-elections-we-do-it-too.html>

REGIONAL CONFLICTS and RULE OF LAW

The German Ambassador to the UN Christoph Heusgen was a member of the panel. His main message was that regional violence should be handled by troops from that region. German troops are in Mali, but do not speak the language of the residents and are generally inappropriate. [This position ignores local rivalries and histories of prior conflicts, something very familiar to Germans. The US would have the same problems with US intervention in Central and South America.] Ambassador Heusgen argued that any action regarding Venezuelan societal collapse should be handled by its neighbors.

Violation of international law does not bring punishment as would a normal criminal conviction, but the threat of international condemnation may affect the way a state shapes its actions – so as not to clearly violate international norms. [President Trump may have shaped the US (French/UK) military response to the Syrian use of chemical weapons to be able to argue that it conformed to international norms.]

Germany in particular has a constitutional obligation to act in accordance with international law. But to get the 28 NATO members to approve a response would take months.

The post-World War II international structures put constraints on the national participants. A state had to believe that those constraints were worth it. Now that belief is being questioned. Humanitarian intervention has no agreed-on standards. Countries fear any definition could be used to justify action against them.

The United States is a party to over 10,000 treaties. Even under Jessie Helms (very anti United Nations Senator) we entered 23 treaties a year. Under President Obama, we entered 2-3 a year. Under President Trump, we have not entered any.

Some standards of international behavior arise from non-treaty sources. For example, international corporations try to protect their brand image by good behavior, including that of their suppliers. The US Foreign Corrupt Practices Act was a public-private initiative to protect human rights. Some standards arise from the G-20. Some government programs incentivize businesses to create jobs in lesser developed countries. So, some of these pressures to conform do not come from states.

International law tends to support national integrity. Recognition of Kosovo as a separate nation concerns Spain (Catalonia) and Canada (Quebec). [Even Texas and California talk about leaving the union – albeit not seriously.]

In earlier decades, developed countries would let a corrupt or violent ruler abdicate and keep the millions he had stolen to enjoy in exile. Today, the impulse is to bring him to justice, making abdication more difficult. States and NGO's gather evidence today for use against dictators decades hence.

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A US government lawyer said that in 2001 his group assumed that Guantanamo would be closed long before 2011.

The internet makes the old Westphalian nation state, with fixed borders, irrelevant.

One panel member focuses solely on fashion law. Are his clients concerned he might inadvertently share trade secrets or they might pay for work which he might then use to benefit competitors? I recall an accountant at a big accounting firm told me that VW did not need to hire Jose Ignacio Lopez away from GM. VW could have just hired the accounting firm and gotten the same information for less than GM paid.

Almost no German speakers were present at the conference.

Not surprisingly, many of the jokes were at President Trump's expense, despite his domestic relations involving two Europeans and his close financial relations with a major European country.

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