

EDUCATING GLOBAL LAWYERS

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ABSTRACT

This Article considers the recent growth of global law firms. Global firms now employ thousands of lawyers, have multiple offices around the world, and generate billion-dollar profits. As a result, legal academics need to consider how to provide opportunities for students to reflect upon the realities of global legal practice. Using a discussion of the Central Asian Baku-Tbilisi-Ceyhan (BTC) pipeline case, the Article demonstrates the powerful role that global lawyers play in structuring complex legal transactions for multinational clients. It argues that, as the boundaries between clients' economic goals and their social and environmental responsibilities move closer, law students need to be prepared for the responsibilities and tensions this creates.

INTRODUCTION

In September 2012, the latest *AM Law Global 100* was released, confirming what the legal profession and academy are realizing: the size of the world's largest law firms is growing and a small number of mega or "global" law firms now dominate the international market for legal services.¹ These global firms employ thousands of lawyers, have multiple offices in diverse jurisdictions around the world, and generate billion-dollar profits.² Their growth offers more opportunities for lawyers to engage in "high-end" transnational work or to be based in legal offices abroad. For example, more than 25,000 lawyers are employed by the top twelve global firms.³ Of these,

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1. See *The 2012 Global 100: A World of Change*, AM. LAW. (Sept. 28, 2012), <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202471809600>; Chris Johnson, *The Hustlers: Law Firm Mergers and the Rise of Vereins Create New Players in the Global 100*, AM. LAW. (Oct. 1, 2012), <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202572358339>.

2. See *infra* Table 1.

3. See *infra* Table 1.

more than 50% work in offices outside their firm's home jurisdiction, with 84% of the lawyers at Baker & McKenzie (the largest global law firm) working in regional offices around the world.⁴ In the context of these developments, it is suggested that legal academics need to consider how best to increase their students' understanding of the nature and implications of global legal practice. Lawyers engaged in global work regularly structure complex foreign investment and multi-jurisdictional finance, trade, and commercial arrangements. They advise multinational corporations, transnational institutions (including development agencies), and even states.⁵ Their clients are often the most powerful members of the global community and the deals they facilitate frequently impact multiple communities around the world.⁶ In structuring these transactions, global lawyers help to define the legal standards, rights, and obligations of their global clients. They also play a pivotal role in determining how these obligations are subsequently operationalized and how individuals and entities comply with them.

As the boundaries between a multinational client's economic goals (to make profit) and its social and environmental responsibilities move closer, law students need to be prepared for the responsibilities this interconnectedness creates. This Article seeks to demonstrate the potential for raising such issues using a discussion of the Central Asian Baku-Tbilisi-Ceyhan (BTC) pipeline case.⁷ As that case demonstrates, large law firm lawyers play a powerful role at the global level, even in areas as diverse as human rights. As a result, it is essential that we, as legal academics, prepare our students for such roles. For as Michael Swygert notes, "if we escape or deny responsibility for what is right, best, or good for society . . . in time so will our students likely emulate our isolationism in their roles as lawyers."⁸

4. See *infra* Table 1.

5. See, e.g., John Flood, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*, 14 *IND. J. GLOBAL LEGAL STUD.* 35, 37 (2007).

6. See generally LESLIE SKLAIR, *THE TRANSNATIONAL CAPITALIST CLASS* 149-55 (2001) (discussing transnational businesses, global corporate citizenship, and international corporate governance).

7. See discussion *infra* Part II.

8. Michael I. Swygert, *Striving to Make Great Lawyers – Citizenship and Moral Responsibility: A Jurisprudence of Law Teaching*, 30 *B.C. L. REV.* 803, 817 (1989).

I. THE GROWTH OF GLOBAL LAW FIRMS

Over the last two decades, globalization has increased many areas of legal practice,⁹ including banking and finance, competition and trade law, mergers and acquisitions, securities regulation, dispute resolution, environmental law, intellectual property, and taxation.¹⁰ The large law firm sector has benefitted from this growth with the size, income, and geographical spread of many national law firms growing exponentially.¹¹ As Carole Silver documents, there has also been significant growth in the number and roles of lawyers globally, with the number of overseas offices maintained by the 250 largest U.S. law firms almost quadrupling between 1988 and 2008 and the “number of lawyers working in [these] overseas offices . . . increas[ing] by nearly twelve-fold.”¹² Furthermore, as set out in Table 1 below, from 2011 to 2012, the largest global law firms employed at least half of their lawyers in countries around the world.¹³ These firms also increased both the percentage of their lawyers working overseas and the countries in which they have operations. For example, Norton Rose increased the number of lawyers working overseas in twenty-five countries (expanding to six more countries) to 80%, and DLA Piper increased the number of lawyers working in thirty-two countries (expanding to three more countries) to 66%.¹⁴ In addition, the global market for legal services grew, with the total revenue accrued by the top twenty-five law firms increasing by 15.5% to \$38.1 billion.¹⁵ That was almost twice the revenue generat-

9. Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANSNAT'L L. 763, 782-83 (2007).

10. In this Article, globalization is taken to mean “the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and . . . people across borders.” JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 9 (2002).

11. Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1, 2 (2011).

12. *Id.* at 2-3; Yves Dezalay & Bryant G. Garth, *Corporate Law Firms, NGOs, and Issues of Legitimacy for a Global Legal Order*, 80 FORDHAM L. REV. 2309, 2310 (2012).

13. See *infra* Table 1.

14. Kath Hall, *Global Law Firms Lose Ties to Home*, AUSTRALIAN, Oct. 26, 2012, <http://www.theaustralian.com.au/business/legal-affairs/global-law-firms-lose-ties-to-home/story-e6frg97x-1226503404138>.

15. Johnson, *supra* note 1.

ed by the second quartile of firms, which saw aggregate revenue increase by just 4.5% during the same time.¹⁶

Clearly such increases are linked to the growth in global business. In 1995, world output—measured in purchasing power parity—was \$42.3 trillion, and by 2005, it had grown to \$61.3 trillion.¹⁷ Whilst the global financial crisis significantly reduced global capital and banking markets,¹⁸ today, global business continues to grow, fueled by the expansion in developing economies. For example, “[t]he total value of the world’s financial stock, comprising equity market capitalization and outstanding bonds and loans, has increased from \$175 trillion in 2008 to \$212 trillion at the end of 2010.”¹⁹ Similarly, cross-border capital flows were \$4.4 trillion in 2010, with 28% of global trade taking place exclusively between emerging economies.²⁰ Developing countries and economies in transition are expected to continue to grow, on average, by 5.6% in 2012 and 5.9% in 2013.²¹

In this context, competition in the international market for legal services has strengthened, with many of the world’s largest law firms expanding their global operations in an effort to increase their market share and revenue. Indeed, as indicated below in Table 1, this has resulted in an elite tier within the legal profession made up of global law firms.²² These firms are defined by the international focus of their operations and their diverse geographical spread.

16. *Id.*

17. WORLD BANK, 2007 WORLD DEVELOPMENT INDICATORS 185 (2007), available at <http://data.worldbank.org/sites/default/files/wdi07fulltext.pdf>.

18. UNITED NATIONS, WORLD ECONOMIC SITUATION AND PROSPECTS 2012, at 1 (2011), available at www.un.org/en/development/desa/policy/wesp/wesp_current/2012wesp.pdf.

19. CHARLES ROXBURGH ET AL., MAPPING GLOBAL CAPITAL MARKETS 2011, at 1 (2011), available at http://www.mckinsey.com/insights/mgi/research/financial_markets/mapping_global_capital_markets_2011.

20. *Id.*; MARK PURDY ET AL., THE RISE OF E2E INTEGRATION: HOW TRADE AND INVESTMENT BETWEEN EMERGING MARKETS IS RESHAPING GLOBAL 2 (2012).

21. UNITED NATIONS, *supra* note 18, at 2.

22. Of the remaining firms in the *AM Law Global 100*, 44% are transnational, employing between 10% and 50% of their lawyers in foreign offices, and the rest are national law firms, or “homebodies,” employing more than 90% of their lawyers in their home jurisdictions. Hall, *supra* note 14. Examples of transnational firms include Latham & Watkins (ranked fourth in the world in terms of gross revenue and employing 30% of its lawyers outside the United States) and Minter Ellison (ranked twenty-fifth in the world in terms of gross revenue and employing 17% of its lawyers outside Australia). *Id.* Examples of highly successful national firms include Paul Weiss Rifkind Wharton & Garrison (a New York-based litigation firm with gross revenue of \$780 million in 2011) and Slaughter & May (the only large elite U.K. firm to adopt a near-exclusive focus on U.K. law and boasting a gross revenue of \$654 million in 2012). *Id.*

TABLE 1. GLOBAL LAW FIRMS²³

Name	Home Jurisdiction	Lawyers Working Overseas	Countries with Offices	Lawyers in Firm	2011 Gross Revenue (in thousands)
Baker & McKenzie	Verein (U.S.)	84%	44	4004	\$2,313,000
Norton Rose	Verein (U.K.)	80%	25	2216	\$1,321,000
Clifford Chance	U.K.	71%	24	2518	\$2,090,500
Freshfields Bruckhaus Deringer	U.K.	69%	16	2014	\$1,827,500
White & Case	U.S.	65%	26	1906	\$1,331,000
DLA Piper	Verein (U.S.)	66%	32	3746	\$2,247,000
Allen & Overy	U.K.	65%	27	2330	\$1,898,000
Linklaters	U.K.	64%	20	2151	\$1,936,000
Hogan Lovells	Verein (U.S.)	63%	18	2253	\$1,665,000
Squire Sanders	Verein (U.S.)	58%	16	1231	\$741,500
Simmons & Simmons	U.K.	53%	11	656	\$404,000
Ashurst	U.K.	50%	13	816	\$516,500

23. *The 2012 Global 100: Most Attorneys*, AM. LAW., http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202571229481&The_2012_Global_100_Most_Attorneys (last visited Mar. 22, 2013); *The 2012 Global 100: Most Revenue*, AM. LAW., http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202571228982&The_2012_Global_100_Most_Revenue (last visited Mar. 22, 2013).

They focus on creating integrated networks of international legal offices with competitive advantages achieved by leveraging assets and competences held by one office through the firm's entire network. As stated on Baker & McKenzie's website:

We bring to matters the instinctively global perspective and deep market knowledge and insights of more than 4,000 locally admitted lawyers in 72 offices worldwide We have the deep roots and knowledge of the language and culture of business required to address the nuances of local markets worldwide. And our culture of friendship and broad scope of practice enable us to navigate complexity across issues, practices and borders with ease.²⁴

In this context, it is argued that global lawyers carry increasing responsibilities because of their capacity to facilitate (and avoid or mitigate) harm.²⁵ Doreen McBarnet observes that "[f]ar from being the means to the implementation of rights . . . lawyers create the devices which obviate them and render them ineffective."²⁶ Bryant Garth argues that transnational lawyers deliberately "structure[] transactions to avoid governmental regulation and promote business profits."²⁷ At the recent 2012 International Bar Association Annual Meeting, Nobel Prize winning economist Joseph Stiglitz argued that lawyers must play a part in assisting global organizations to address the gross inequalities of wealth and opportunity that exist

24. *Welcome to Baker & McKenzie in Australia*, BAKER & MCKENZIE, <http://www.bakermckenzie.com/Australia/> (last visited Mar. 22, 2013). In December 2012, Acritas' Sharplegal Global Elite Brand Index 2012 named Baker & McKenzie the strongest global law firm brand; this award was based on clients' ranking of awareness, favorability, and frequent consideration for multi-jurisdictional deals and litigation. *Baker & McKenzie Named Strongest Global Law Firm Brand for the Third Consecutive Year*, BAKER & MCKENZIE (Dec. 4, 2012), <http://www.bakermckenzie.com/news/BakerMcKenzieNamedStrongestGlobalLawFirmBrandfortheThirdConsecutiveYear/>. The firm "has received the highest ranking in each of the three years that the index has been published The Global Elite Brand Index was compiled from responses of general counsel from companies worldwide with revenues of US\$1 billion or more . . ." *Id.*

25. See Vivien Holmes & Simon Rice, *Our Common Future: The Imperative for Contextual Ethics in a Connected World*, in ALTERNATIVE PERSPECTIVES ON LAWYERS AND LEGAL ETHICS: REIMAGINING THE PROFESSION 56, 59 (Francesca Bartlett et al. eds., 2012).

26. Christopher Whelan, *Ethics Beyond the Horizon: Why Regulate the Global Practice of Law*, 34 VAND. J. TRANSNAT'L L. 931, 948 (2001) (quoting Doreen McBarnet, *Law, Policy & Legal Avoidance: Can Law Effectively Implement Egalitarian Policies?*, 15 J. L. & SOC'Y 113, 118-19 (1998)) (second alteration in original).

27. Bryant G. Garth, *Transnational Legal Practice and Professional Ideology*, 62 MICH. Y.B. INT'L LEGAL STUD. 3, 11 (1985).

across the world.²⁸ How these responsibilities play out and, in particular, the importance of raising law students' awareness of the challenges created by global legal practice are demonstrated by a consideration of the legal arrangements surrounding the BTC pipeline.

II. BTC PIPELINE CASE

The BTC pipeline was completed in 2005 and runs more than 1700 km from the Caspian Sea, across Azerbaijan, Georgia, and Turkey to the Mediterranean.²⁹ It is based on an ambitious plan to increase access to the oil reserves of the Caspian Sea by diverting them away from the Persian Gulf and Russia.³⁰ Because of the enormous size of the project and its spread across a number of developing countries, its construction was financed by both private corporations and public international institutions (including the International Finance Corporation).³¹ British Petroleum (BP), which, at the time, was the fourth largest multinational oil corporation based on production and revenue, headed the project.³² Lawyers from the United States played a key role in designing and structuring the legal framework for the pipeline's construction and operation. In particular, lawyers from Baker Botts LLP,³³ an international law firm, assumed the cen-

28. See Rebecca Lowe, *Economic Reform Must Focus on World's Poorest, Say Nobel Laureates*, INT'L BAR ASS'N (Oct. 15, 2012), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=B5600436-6C13-4DC3-BC46-89DD510FE5B6>.

29. *Baku-Tbilisi-Ceyhan Pipeline*, BP, <http://www.bp.com/sectiongenericarticle.do?categoryId=9006669&contentId=7015093> (last visited Mar. 22, 2013).

30. See Robert Peachey, *Petroleum Investment Contracts After the Baku-Tbilisi-Ceyhan (BTC) Pipeline*, 31 NW. J. INT'L L. & BUS. 739, 744-45 (2011) (describing an Amnesty International paper in May 2004 that criticized the BTC pipeline).

31. *BTC Signs Project Finance Agreements*, BP (Feb. 3, 2004), <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=2016340>.

32. 2005 *Top 250 Companies*, PLATTS TOP 250 GLOBAL ENERGY COMPANY RANKINGS, <http://top250.platts.com/Top250Rankings/2005/Region/Industry> (last visited Mar. 22, 2013). As of 2011, BP ranked 118th on account of the cost of the Deepwater Horizon oil spill in the U.S. Gulf of Mexico. 2011 *Top 250 Companies*, PLATTS TOP 250 GLOBAL ENERGY COMPANY RANKINGS, <http://top250.platts.com/Top250Rankings/2011/Region/Industry> (last visited Mar. 22, 2013). However, as of 2012, BP's ranking has rebounded to fourth. 2012 *Top 250 Companies*, PLATTS TOP 250 GLOBAL ENERGY COMPANY RANKINGS, <http://top250.platts.com/Top250Rankings/2012/Region/Industry> (last visited Feb. 19, 2013).

33. Baker Botts is ranked fifty-ninth in the 2012 *AM Law Global 100*, which ranked law firms by revenue. *The 2012 Global 100: Most Revenue*, AM. LAW., <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202571228982> (last visited Mar. 22, 2013). Its home base is Texas, with offices in Houston, Dallas, and Austin, and it specializes in energy, technology, and life sciences law. *Welcome*, BAKER BOTTS LLP, <http://www.bakerbotts.com>

tral role of acting for both BP and the government of Azerbaijan.³⁴ The U.S. government, through the Trade and Development Administration, also funded the Washington-based law firm Dickstein Shapiro LLP to represent the governments of Georgia and Turkey.³⁵

Whereas the legal arrangements underpinning such projects are usually kept confidential, pressure from international non-governmental organizations and civil society groups within the host countries led to the public release of key legal documents.³⁶ For many observers, the most striking aspect of these documents was the unprecedented approach adopted to skirt the Consortium's human rights standards. BP, through its lawyers, created arrangements that used both private and public international law to circumvent the Consortium's obligation to comply with human rights laws.³⁷ In particular, it negotiated contractual agreements with each host state and an Intergovernmental Agreement among the host states (that operated as a treaty) that included "stabilization" clauses.³⁸ These clauses required host countries to reimburse the Consortium for any new human rights legislation passed after the commencement of the project and to indemnify the Consortium for any liability for human rights abuses.³⁹ Together, these provisions had the effect of allowing the agreements to supersede all national laws (except the national constitution) and exempt the Consortium from liability under human rights legislation.⁴⁰

As Abigail Reyes notes, these agreements went significantly further in reducing the protections for human rights and state sovereignty than previous agreements negotiated in the context of such mega-development projects.⁴¹ For the lawyers involved, the agree-

(last visited Feb. 19, 2013). It also has fourteen offices overseas, spanning China, Europe, and the Middle East. *Offices*, BAKER BOTTS LLP, <http://www.bakerbotts.com/offices> (last visited Feb. 19, 2013).

34. Abigail S. Reyes, *Protecting the "Freedom of Transit Petroleum": Transnational Lawyers Making (Up) International Law in the Caspian*, 24 BERKELEY J. INT'L L. 842, 856 (2006).

35. Abigail Reyes notes that the lawyers who negotiated these agreements did so "behind closed doors in conjunction with the international oil companies ("IOCs") and host statesmen they represent[ed]." *Id.* at 848.

36. *See id.* at 846.

37. *Id.* at 863.

38. *Id.* "The project agreements use rights language to describe host states' obligations, not only to the consortium, but seemingly to the 'petroleum' itself." *Id.* at 867. This included an obligation to ensure the safety and security of all petroleum in transit. *Id.*

39. *Id.* at 845, 857-63, 870.

40. *Id.* at 869-72.

41. *Id.* at 846.

ments were likely a response to concerns about the secondary liability of the Consortium's participants for human rights abuses occurring in connection with their investment. These concerns had been fuelled by the case of *Doe v. Unocal Corp.*,⁴² where Unocal had agreed to settle claims for secondary liability for human rights abuses by security forces along the company's Yadana gas pipeline in Thailand.⁴³ In the context of the BTC pipeline, local and international organizations had already started to raise concerns about human rights abuses—including the forced appropriation of land and abuses by pipeline security—while the parties negotiated the agreements.⁴⁴

However, the extent of the legal response to minimize the Consortium's human rights obligations drew widespread criticism from around the world, particularly from Amnesty International.⁴⁵ As a result, in 2004, BP modified the original stabilization clauses in the agreements by entering into a "Human Rights Undertaking."⁴⁶ This included BP adopting the voluntary *Principles for Security and Human Rights*, a pledge to adhere to other related human rights commitments and "a self-imposed legal obligation . . . to use the project's legal framework as a strengthening of—not as an escape from—national law."⁴⁷ BP also amended its contracts to allow for changes in laws by host states as required under international human rights, labor, health and safety, and environmental treaty obligations.⁴⁸

In addition, international concerns were raised about the pipeline's security, which, under the legal agreements, was delegated to the host country security forces.⁴⁹ Because the pipeline bypassed Armenia and passed through Georgia and the edges of the Kurdish region of Turkey, it required constant guarding to prevent sabo-

42. 395 F.3d 932 (9th Cir. 2002).

43. Reyes, *supra* note 34, at 849–50.

44. *Id.* at 850–51.

45. See Peachey, *supra* note 30, at 761 (describing an Amnesty International paper in May 2004 that criticized the BTC pipeline).

46. *Id.* at 743.

47. Jonathan Elkind, *Economic Implications of the Baku-Tbilisi-Ceyhan Pipeline*, in *THE BAKU-TBILISI-CEYHAN PIPELINE: OIL WINDOW TO THE WEST* 39, 57 (S. Frederick Starr & Svante E. Cornell eds., 2005).

48. See Peachey, *supra* note 30, at 761; see also ANDREA SHERBERG, *STABILIZATION CLAUSES AND HUMAN RIGHTS* 26 (2008) (explaining that social and environmental laws are legislative areas that are easily identifiable and can protect rights and directly impact investors).

49. See Peachey, *supra* note 30, at 752.

tage.⁵⁰ Yet many critics noted “the poor human rights records of Azerbaijani, Georgian, and Turkish police forces.”⁵¹ Georgia formed a special purpose battalion to sentry the pipeline.⁵² In Azerbaijan, there is increasing evidence of increased military build-up and growing state revenue that fuels authoritarianism.⁵³ The United States intervened with unmanned aerial vehicles and employed a private military contractor and a network of commando and special operations forces to maintain the security of the pipeline.⁵⁴ Furthermore, in 2011, the U.K. government found against BP on the basis that it had failed to investigate and respond to complaints from local people regarding intimidation and torture by state security forces in Turkey.⁵⁵ This finding resulted from non-governmental organizations filing a complaint against the Consortium with the National

50. *Id.* at 764–65.

51. *Id.* at 754 (quoting Christopher P.M. Waters, *Who Should Regulate the Baku-Tbilisi-Ceyhan Pipeline?*, 16 GEO. INT’L ENVTL. L. REV. 403, 406 (2004)).

52. *Id.* at 768.

53. *See id.*, at 742. In October 2003, Ilham Aliyev, the son of the previous long-term Azeri ruler, won Azerbaijan’s presidential election. Alex Rodriquez, *Azerbaijan Elects President’s Son*, CHI. TRIB., Oct. 16, 2003, http://articles.chicagotribune.com/2003-10-16/news/0310160197_1_geidar-aliev-polling-places-polling-stations. The election, described by official observers from the Organization for Security and Co-operation in Europe as “fraudulent,” was followed by a brutal clampdown against opposition parties. OFFICE FOR DEMOCRATIC INSTS. & HUMAN RIGHTS, REPUBLIC OF AZERBAIJAN PRESIDENTIAL ELECTION 15 OCTOBER 2003: OSCE/ODIHR ELECTION OBSERVATION MISSION REPORT 2 (2003), available at <http://www.osce.org/odihr/elections/azerbaijan/13467>. In his inauguration speech, Aliyev promised that he would use oil revenues to build up the army and threatened to restart the war with Armenia. Speech in the Inauguration Ceremony by Ilham Aliyev, President of the Republic of Azerbaijan, October 31, 2003, “HEYDAR ALIYEV HERITAGE” INT’L ONLINE LIBR., <http://lib.aliyev-heritage.org/en/2773818.html> (last visited Mar. 22, 2013). These disturbing events were met with a deafening silence from the West, which was keen not to upset oil interests in the region. *See Oil Rigged: The U.S. Commitment to Democracy Doesn’t Extend to Azerbaijan*, MOTHER JONES, Dec. 5, 2003, <http://www.motherjones.com/politics/2003/12/oil-rigged>.

54. *See* Peachey, *supra* note 30, at 747–48.

55. Organization for Economic Co-operation and Development [OECD], UK National Contact Point, *Revised Final Statement: Specific Instance: BTC Pipeline* (Feb. 22, 2011), <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/11-766-revised-final-statement-ncp-btc.pdf>. The ruling gives BP three months to review and report on what it can do to strengthen its procedures to address these failings. *Id.* at 19 (requiring that BP provide an update on June 8, 2011). In Turkey, the Gendarmerie, a group which has been repeatedly criticized by the Council of Europe and the European Court of Human Rights, guards the BTC pipeline. CAMPAGNA PER LA RIFORMA DELLA BANCA MONDIALE [CAMPAIGN FOR THE REFORM OF THE WORLD BANK] ET AL., INTERNATIONAL FACT-FINDING MISSION BAKU-TBILISI-CYHAN PIPELINE – TURKEY SECTION 31, 40 (2003), available at http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Tu_FFM.pdf.

Contact Point for the OECD Guidelines for Multinational Enterprises.⁵⁶

While BP voluntarily agreed to improve its human rights compliance and fully investigate any claims of mistreatment by security personnel,⁵⁷ the fact that this has been necessary calls into question the approach adopted by the lawyers in drafting the original agreements. Although the lawyers were almost certainly concerned with minimizing the economic risk to the Consortium's participants as a result of any secondary liability, these lawyers' actions resulted in significant reputational damage and pressure upon BP and the Consortium participants.⁵⁸ In addition, it is clear that their tactics created a legal framework that drew significant criticism and seriously undermined efforts to protect human rights in some of the world's most vulnerable communities.⁵⁹

III. THE ROLE OF GLOBAL LAWYERS

This case not only raises serious questions about the conduct of the lawyers involved, but also raises issues about the proper role of lawyers generally. Many within the profession would likely view the contentious aspects of the deal as the consequence of creating legal certainty and stability for the Consortium members and achieving the project's commercial objectives. Such an approach has long been supported by the dominant view in the United States of

56. See CAMPAGNA PER LA RIFORMA DELLA BANCA MONDIALE, *supra* note 55, at 5. This claim was made in the United Kingdom as BP is a British company. See BP, BP ANNUAL REPORT AND FORM 20-F 2011 (2012), available at http://www.bp.com/assets/bp_internet/globalbp/globalbp_uk_english/set_branch/STAGING/common_assets/bpin2011/downloads/BP_Annual_Report_and_Form_20F_2011.pdf.

57. *Human Rights*, BP, <http://www.bp.com/extendedsectiongenericarticle.do?categoryId=9048970&contentId=7085280> (last visited Mar. 22, 2013).

58. See Heather Stewart, *BP Failed to Act in Reports of Intimidation Along Turkish Pipeline*, GUARDIAN, Mar. 9, 2011, <http://www.guardian.co.uk/business/2011/mar/09/bp-intimidation-turkey-btc-pipeline>; *BP Violating Human Rights Rules, Says U.K. Government*, CORNER HOUSE (Mar. 9, 2011), <http://www.thecornerhouse.org.uk/resource/bp-violating-human-rights-rules-says-uk-government>.

59. See Lars H. Gulbrandsen & Arild Moe, *BP in Azerbaijan: A Test Case of the Potential and Limits of the CSR Agenda?*, 28 THIRD WORLD Q. 813, 820-21 (2007). Lars Gulbrandsen and Arild Moe note that in Azerbaijan, "oil revenues have neither led to development of non-oil sectors of the economy nor to any country-wide distribution of benefits." *Id.* at 827. In addition, numerous corruption, bribery, and contract rigging allegations have been made with regard to the wealth accumulated by state participants and associated contractors. See *id.* at 817.

lawyers as neutral partisans.⁶⁰ For example, in the large firm context, reasons such as, “this is just the way things are done” or “if we had not done it, someone else would have,” draw upon prevailing beliefs about the role of commercial lawyers in facilitating their client’s goals.⁶¹ Developing justifications in favor of a client’s actions is also easy in legal practice because,⁶² as Milton Regan argues, lawyers are particularly skilled at rationalizing their actions:

Lawyers are adept at creative interpretation of rules and at fashioning plausible arguments in support of their interpretations. This may enable them more than other people to convince themselves that they are not violating a given rule, thus reducing any psychological dissonance that they might feel by engaging in certain behavior in the absence of this rationalization. The result is that a lawyer may not have to work as hard as a non-lawyer to justify acting in a way that a more detached observer would characterize as a rule violation.⁶³

Although the lawyers involved in designing the BTC legal framework may have rationalized that their role was to zealously protect the interests of their clients, many legal commentators would question this view.⁶⁴ For example, Regan argues that, in prac-

60. See, e.g., Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. ARK. LITTLE ROCK L. REV. 1, 26–32 (2011).

61. See *id.* at 31 (“[T]he neutral partisan ideology has made it less likely that lawyers would think that they should tell clients that they are ‘damn fools and should stop’ when clients purport to act in a legal manner that disregards cooperation, trust, or causes harm to others. Conceiving of their clients as autonomously self-interested individuals and entities, lawyers are more likely to assume and facilitate their clients’ autonomous self-interest, or accept without comment and challenge client objectives that are decidedly non-relational.”).

62. The most explicit recognition that the standard conception of the lawyer’s role can encourage pervasive and systemic rationalization comes from David Luban’s adversarial system excuse. DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 56–58 (1988); DAVID LUBAN, *LEGAL ETHICS AND HUMAN DIGNITY* 23–28 (2007); see also CHRISTINE PARKER & ADRIAN EVANS, *INSIDE LAWYERS’ ETHICS* 14–17 (2007) (discussing adversarial advocacy, the principle of non-accountability, and the reasons these conceptions of a lawyer’s role are often viewed as amoral).

63. Milton C. Regan, Jr., *Risky Business*, 94 GEO. L.J. 1957, 1972 (2006) (footnote omitted).

64. See, e.g., Robert W. Gordon, *A New Role for Lawyers?: The Corporate Counselor After Enron*, 35 CONN. L. REV. 1185, 1194 (2003); John T. Jost et al., *System Justification Theory and the Alleviation of Emotional Distress: Palliative Effects of Ideology in an Arbitrary Social Hierarchy and in Society*, in 25 *ADVANCES IN GROUP PROCESSES: JUSTICE* 181, 184 (Karen A. Hegtvedt & Jody Clay-Warner eds., 2008); see also ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 364–68 (1994); Susan Daicoff, *Asking Leopards to Change Their Spots:*

tice, the idea of lawyers as zealous advocates often supports lawyers acting unethically in order to pursue corporate or law firm objectives.⁶⁵ Christine Parker and colleagues call this reasoning “the way we do things around here.”⁶⁶ They argue that such rationalizations can result in a lawyer not even thinking of other ways of acting or recognizing that others might think that their actions are unethical.⁶⁷ Donald Langevoort argues that lawyers who strongly align themselves with the goal of serving their commercial clients are generally motivated to rationalize any subsequent information that challenges this role.⁶⁸ Indeed, in most large law firm settings, commercial rationalizations dominate the explanations given for all legal action. Just as lawyers are required to meet their client’s legal needs, so too are they required to earn revenue and generate billings for the firm. The result is often “pragmatic lawyering,” characterized by a “success-oriented philosophy based on maximizing one’s self-interest,”⁶⁹ and increasing profits. As Regan notes, the sheer size of large law firms makes it difficult to achieve a consensus on values beyond the common denominator of revenues and profit.⁷⁰

Certainly there were strong profit motives underlying the BTC pipeline project, for Consortium members, host states, and lawyers. As Robert Peachey notes, the commercial participants in the Consortium (particularly BP) reaped billions of dollars in profit from the project, even after accounting for the \$4 billion price tag.⁷¹ Similarly, within a year of the pipeline’s completion, the real gross domestic product of Azerbaijan had increased by 35%, and substantial transit

Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes, 11 GEO. J. LEGAL ETHICS 547, 561–63 (1998); Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 975–76 (1990); Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303, 1344–50 (1995); discussion *supra* Part II. See generally WILLIAM J. MCGUIRE, *CONSTRUCTING SOCIAL PSYCHOLOGY: CREATIVE AND CRITICAL PROCESSES* (1999).

65. Milton C. Regan, Jr., *Corporate Norms and Contemporary Law Firm Practice*, 70 GEO. WASH. L. REV. 931, 939 (2002).

66. Christine Parker et al., *The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour*, 31 U. NEW S. WALES L.J. 158, 165 (2008).

67. *Id.*

68. Donald C. Langevoort, *Ego, Human Behavior, and Law*, 81 VA. L. REV. 853, 863 (1995).

69. Daicoff, *supra* note 64, at 560–61; see also MILTON C. REGAN JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* 37–39 (2004).

70. See Regan, *supra* note 63, at 1963.

71. See Peachey, *supra* note 30, at 741.

fees had been accrued by Georgia and Turkey.⁷² For Georgia, the transit fees were estimated to produce an average of \$62.5 million per year,⁷³ and for Turkey it was estimated there would be between \$200 million and \$290 million in transit fees per year.⁷⁴

In the highly competitive environment of commercial practice, firms want lawyers who help them achieve their goals, not lawyers who point out the problems or negative implications of a strategy.⁷⁵ Instead of seeing their actions as unethical, many lawyers conclude that they are legitimately assisting a business client when they exploit gaps or opportunities in the law.⁷⁶ This approach is exemplified in the works of a large law firm lawyer who commented, “[w]hen clients ask us [if they can do something] our job is to . . . figure out if there is a legally appropriate way to do it. That’s what we do.”⁷⁷ However, the view that transnational and global lawyers must act zealously on behalf of their clients not only risks reducing lawyers’ sense of responsibility for questioning their client’s actions, but can also be very harmful. As Robert Gordon writes, the problem is that “lawyers can assist corporate managers to inflict enormous damage and then argue . . . that they are only doing the job they are supposed to do.”⁷⁸ Similarly, Mark Sargent notes that:

Ironically, lawyers’ self-conception as advocates for the client, as neutral, non-judgmental facilitators of transactions, or as professionals trained to make “arguments” on either side of an issue, can allow a high degree of rationalization of their complicity in conduct that is ultimately not in their corporate client’s interest, certainly not in the public interest and often immoral if not illegal.⁷⁹

72. Republic of Azerbaijan – Concluding Statement of the IMF Mission, INT’L MONETARY FUND, <http://www.imf.org/external/np/ms/2007/092607.htm> (last visited Mar. 22, 2013).

73. Vladimir Papaua, *The BTC Pipeline: Implications for Georgia*, in THE BAKU-TBILISI-CEYHAN PIPELINE: OIL WINDOW TO THE WEST *supra* note 47, at 57; Elkind, *supra* note 47, at 49–50.

74. See Elkind, *supra* note 47, at 39–49.

75. See generally Regan, *supra* note 63.

76. See generally *id.*; MILTON C. REGAN, JR. & JEFFREY D. BAUMAN, LEGAL ETHICS AND CORPORATE PRACTICE (2005).

77. William H. Simon, *After Confidentiality: Rethinking the Professional Responsibilities of the Business Lawyer*, 75 FORDHAM L. REV. 1453, 1464 (2006) (second and third alterations in original).

78. Gordon, *supra* note 64, at 1190.

79. Mark A. Sargent, *Lawyers in the Moral Maze*, 49 VILL. L. REV. 867, 880 (2004); see also Mark A. Sargent, *Lawyers in the Perfect Storm*, 43 WASHBURN L.J. 1, 32 (2003).

Such an approach is particularly problematic in the global context. As demonstrated by the BTC pipeline case, in the absence of enforceable international human rights, global corporations can minimize their legal obligations to some of the world's most vulnerable communities. In such situations, lawyers have a difficult time remaining insulated from their clients' actions.⁸⁰ As Garth notes, "[l]egal talent has a political impact, and few believe anymore that . . . a skilled lawyer cannot do positive harm. Transnational legal practice provides a setting that makes this point especially difficult to deny."⁸¹ Furthermore, as the BTC pipeline case demonstrates,⁸² even for elite lawyers involved in servicing the needs of multinational corporations, ethical issues are still relevant.⁸³ The challenge is to encourage lawyers to accept that globalization is not just about allowing multinationals to profit globally, but that it has political and social dimensions as well.⁸⁴ This includes combining issues such as human rights, empowerment, and democracy with the dialogue on trade and commerce. Because the legitimacy of the global order depends upon the success of all of these concepts, lawyers play a key role in their promotion and development. "[A]rmed with the expertise and credibility that comes from connections with foreign trade and investment,"⁸⁵ lawyers are able to bring foreign law into developing jurisdictions as well as raise legal issues that have been sidelined in these developing jurisdictions.

CONCLUSION

Educating students for their possible future role as global lawyers is a significant and growing challenge for law schools. Already the curriculum is full and specialist courses on transnational or international law rarely touch upon issues related to the role of the lawyer or the ethical challenges that exist in global practice. In addition, many law students have limited experience of life in another country or of the fundamental inequalities that exist for vulnerable communities throughout the world. In this context, abstract discussions

80. Garth, *supra* note 27, at 3, 16.

81. *Id.* at 16.

82. *See supra* Part II.

83. *See* Dezalay & Garth, *supra* note 12, at 2315.

84. *See id.* at 2309, 2344–45.

85. *Id.* at 2311.

can be a poor substitute for real experience. Yet, as this Article has attempted to show, legal academics can use case studies to demonstrate the challenges that are involved in global legal practice. If future lawyers are to act upon the broader responsibilities that apply to their clients, their consideration of these issues must begin in law school. In particular, students must be provided with the opportunity to reflect upon the tensions created by global legal practice. As Vivien Holmes and Simon Rice state:

The world is connected as never before, and humanity's future is challenged as never before. In this context, the world needs lawyers to recognize the global effect of their conduct, and to take responsibility for it. . . . While an ethic of neutral partisanship allows lawyers to avoid taking this responsibility, a contextual approach to legal ethics preserves and respects the lawyer-client relationship while requiring lawyers to take moral responsibility for the consequences of their legal work. The world cannot afford lawyers to do otherwise.⁸⁶

86. See Holmes & Rice, *supra* note 25, at 28.