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## WE CAN WORK IT OUT: PUTTING OUR BEST FOOT FORWARD IN INTERNATIONAL HIGHER EDUCATION INITIATIVES

*Julie Rowland\**

### INTRODUCTION

Student movement across national borders is increasing rapidly as a result of globalization, marketplace competition, and programs aimed at student mobility.<sup>1</sup> International higher education can be described as “the conscious effort to integrate and infuse international, intercultural, and global dimensions into the ethos and outcomes of postsecondary education.”<sup>2</sup> For the U.S., this broad description encompasses a variety of actors and programs: American students and professors at universities abroad, foreign students and professors at American universities, American universities’ branch campuses abroad, efforts to incorporate cosmopolitan and global

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<sup>1</sup> *About Project Atlas*, PROJECT ATLAS, <http://www.iie.org/Research-and-Publications/Project-Atlas/About> (last visited Mar. 28, 2013).

<sup>2</sup> *About NAFSA*, NAFSA, <http://nafsa.org/about/default.aspx?id=23912> (last visited Mar. 28, 2013).

dimensions into university curriculum, joint curriculum and degrees between universities, and more.<sup>3</sup>

Most scholars agree that two significant historical events in world history, World War II and the Cold War, contributed significantly to American policymakers' interest in issues of international education.<sup>4</sup> American interest in international and comparative education can be viewed as a corollary to the more pressing concern of U.S. competitiveness in the global marketplace.<sup>5</sup> In particular, "Sputnik Shock" ignited concern for the quality and competitiveness of the American education system mid-century.<sup>6</sup> The 1983 publication of *A Nation at Risk*,<sup>7</sup> an extremely influential report detailing the failure of American schools to produce globally competitive students, further compounded public awareness of competition from abroad.<sup>8</sup> The report declared that America's failing education system was "eroding the economy,"<sup>9</sup> creating a perceived

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<sup>3</sup> Brian J. Garavalia, *International Education: How It Is Defined by U.S. Students and Foreign Students*, 70 CLEARING HOUSE 215, 217-18 (1997); Anneke Luitjen-Lub et al., *On Cooperation and Competition: A Comparative Analysis of National Policies for Internationalisation of Higher Education in Seven Western European Countries*, 9 J. STUD. IN INT'L EDUC. 147, 153, 157 (2005).

<sup>4</sup> HANS DEWIT, INTERNATIONALIZATION OF HIGHER EDUCATION IN THE UNITED STATES OF AMERICA AND EUROPE: A HISTORICAL, COMPARATIVE, AND CONCEPTUAL ANALYSIS 19 (Philip G. Altbach, ed., 2002).

<sup>5</sup> FRANK NEWMAN, HIGHER EDUCATION AND THE AMERICAN RESURGENCE: A CARNEGIE FOUNDATION SPECIAL REPORT 13-15 (1985).

<sup>6</sup> Michael Dobbins & Kerstin Martens, *A Contrasting Case—The U.S.A. and Its Weak Response to Internationalization Processes in Education Policy*, in TRANSFORMATION OF EDUCATION POLICY 179, 182 (Kerstin Martens et al. eds., 2010) (defining "Sputnik Shock" as occurring when "the Soviet Union launched the first satellite in 1957," which demonstrated to American policymakers "the Soviet Union's technological superiority or at least its equality with the U.S.A. in this area").

<sup>7</sup> NAT'L COMM'N ON EXCELLENCE IN EDUC., A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM (1983), [http://datacenter.spps.org/uploads/SOTW\\_A\\_Nation\\_at\\_Risk\\_1983.pdf](http://datacenter.spps.org/uploads/SOTW_A_Nation_at_Risk_1983.pdf).

<sup>8</sup> DAVID TYACK & LARRY CUBAN, TINKERING TOWARD UTOPIA: A CENTURY OF PUBLIC SCHOOL REFORM 13-14 (1995); *but see* MICHAEL B. KATZ, RECONSTRUCTING AMERICAN EDUCATION 130 (1987) (explaining the controversial nature of *A Nation at Risk*).

<sup>9</sup> TYACK & CUBAN, *supra* note 8, at 34.

crisis in American education.<sup>10</sup> In light of growing global competition, policymakers viewed the education crisis as a “national security risk.”<sup>11</sup> Education in the U.S. is largely a state issue, but a national security risk required a federal government response. Faced with opposition from state policymakers, the Reagan administration made a strategic decision to elevate the crisis to an international level.<sup>12</sup> The administration pushed the Organization for Economic Cooperation and Development (OECD) to compile comparative statistical data on student achievement,<sup>13</sup> allowing the U.S. to focus education policy decisions on competition with other nations. This event marked the beginning of the education system’s use as an important tool for maintaining America’s global competitive edge. Today, the Obama administration’s education policy programs continue to reflect an awareness of international competition, especially competition as demonstrated by international test scores.<sup>14</sup>

The U.S.’s uncertain position in the global education competition has led to reform movements in compulsory education, such as the No Child Left Behind Act.<sup>15</sup> Over the past several decades, the comparative data generated through the OECD’s Programme for International Student Assessment (PISA)<sup>16</sup> has pushed other nations to make significant improvements in their

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<sup>10</sup> *Id.* at 78.

<sup>11</sup> Kerstin Martens & Stephan Leibfried, *The PISA Story: How Educational Policy Went International: A Lesson in Politics Beyond the Nation-state*, ATLANTIC TIMES (GER.) Jan. 2008, [http://www.atlantic-times.com/archive\\_detail.php?recordID=1132](http://www.atlantic-times.com/archive_detail.php?recordID=1132).

<sup>12</sup> *Id.*

<sup>13</sup> Martens & Leibfried, *supra* note 11.

<sup>14</sup> Tonia Bieber & Kerstin Martens, *The OECD PISA Study as a Soft Power in Education? Lessons from Switzerland and the US*, 46 EUR. J. EDUC. 102, 109-10 (2011); *but see* TYACK & CUBAN, *supra* note 8, at 34-37 (exploring the controversy around sources of comparative education data).

<sup>15</sup> *Id.* at 109.

<sup>16</sup> OECD Programme for International Student Assessment, AUSTL. COUNCIL FOR EDUC. RESEARCH (2012), <http://www.acer.edu.au/ozpisa/assessment/> (“PISA assesses the extent to which students near the end of compulsory education have acquired some of the knowledge and skills that are essential for full participation in society. In all cycles, the domains of reading, mathematical and scientific literacy are covered not only in terms of mastery of the school curriculum, but in terms of important knowledge and skills needed in adult life.”).

education systems to remain globally competitive.<sup>17</sup> In the realm of higher education, the U.S. has consistently been a leader in attracting foreign talent.<sup>18</sup> Since 9/11,<sup>19</sup> however, the international dimension of U.S. higher education has contracted.<sup>20</sup> At the same time, many other nations have rapidly expanded the international dimension of their higher education through participation in international initiatives.<sup>21</sup> These initiatives seek to increase student mobility by harmonizing higher education systems.<sup>22</sup>

To demonstrate how the U.S. can become more involved in international higher education initiatives, this comment will first give an overview of the history of these initiatives globally.<sup>23</sup> Section III will explore the legal and soft governance mechanisms involved and their feasibility of application to the U.S.<sup>24</sup> A description of the structures of these initiatives and the difficulties associated with each will follow, aiding in the understanding of how the U.S. can fit into the international picture.<sup>25</sup> Section IV will examine examples of harmonization in the U.S. to demonstrate the feasibility of U.S. participation in international initiatives.<sup>26</sup> This comment will conclude by considering possible courses of action for U.S. in this area.<sup>27</sup>

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<sup>17</sup> Bieber & Martens, *supra* note 14, at 108.

<sup>18</sup> ACE CTR. FOR INT'L INITIATIVES, AM. COUNCIL ON EDUC., STUDENTS ON THE MOVE: THE FUTURE OF INTERNATIONAL STUDENTS IN THE UNITED STATES (Oct. 2006) <http://www.acenet.edu/news-room/Documents/IssueBrief-2006-Students-on-the-Move-The-Future-of-International-Students-in-the-United-States.pdf>.

<sup>19</sup> Rodolfo Altamirano, *Viewpoint: The Impact of 9/11 on International Education*, MICH. DAILY, Sept. 8, 2004, <http://www.michigandaily.com/content/viewpoint-impact-911-international-education> (explaining how the Student and Exchange Visitor Information System database, additional border security, and the difficulty of obtaining visas impact international student mobility); *see also* David A. Urias & Card Camp Yeakey, *International Students and U.S. Border Security*, NEA HIGHER EDUC. J. 187, 187 (Fall 2005).

<sup>20</sup> Dobbins & Martens, *supra* note 6, at 189.

<sup>21</sup> *Id.* at 188-89.

<sup>22</sup> *See infra* Section II.

<sup>23</sup> *See infra* Section II.

<sup>24</sup> *See infra* Section III.

<sup>25</sup> *See infra* Sections IIIB - D.

<sup>26</sup> *See infra* Section IV.

<sup>27</sup> *See infra* Section V.

American education policy remains largely decentralized and focused on local control.<sup>28</sup> Politicians consistently address global education competitiveness, but the U.S. has yet to respond significantly to international initiatives.<sup>29</sup> This is in part because the U.S.'s decentralized education system makes policy-making on a national level challenging.<sup>30</sup> While individual higher education institutions can and do participate in international mobility efforts by accepting and sending students across borders, a unified and consistent policy does not currently exist in the U.S.<sup>31</sup>

Participation in international initiatives to increase student mobility is said to have a significant impact on the competitive edge of nations.<sup>32</sup> These mobility enhancing initiatives can increase economic cooperation, the prestige of a nation's institutions, goodwill between nations, and the quantity and quality of data available to comparative education researchers.<sup>33</sup> However, international initiatives in education would likely require cooperation on all governance levels—state, federal, and international. Initiatives by international organizations such as the European Union (E.U.) affect not only national governments, but also regional or state entities and individual higher education institutions.<sup>34</sup> Individual

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<sup>28</sup> U.S. DEP'T OF EDUC., EDUCATION IN THE UNITED STATES: A BRIEF OVERVIEW 6 (2005), <http://www2.ed.gov/about/offices/list/ous/international/edu/index.html>; Dobbins & Martens, *supra* note 6, at 180.

<sup>29</sup> Dobbins & Martens, *supra* note 6, at 180.

<sup>30</sup> *Id.*

<sup>31</sup> HUM. RES. DEV. WORKING GRP., CTR. FOR THE STUDY OF HIGHER EDUC. AT THE UNIV. OF MELBOURNE, HIGHER EDUCATION DIPLOMA SUPPLEMENTS AMONG APEC MEMBER ECONOMIES 7 (2010) [hereinafter APEC DIPLOMA SUPPLEMENT REPORT], [http://hrd.apec.org/images/c/cc/APEC\\_Higher\\_Education\\_Diploma\\_Supplement\\_-\\_Final\\_Report.pdf](http://hrd.apec.org/images/c/cc/APEC_Higher_Education_Diploma_Supplement_-_Final_Report.pdf).

<sup>32</sup> Luijten-Lub et al., *supra* note 3, at 150; Laurel S. Terry, *The Bologna Process and its Impact in Europe: Much More than Degree Changes*, 41 VAND. J. TRANSNAT'L L. 107, 210 (2008) [hereinafter Terry 2008].

<sup>33</sup> MINISTERS ATTENDING THE ASIA-PACIFIC EDUC. MINISTERS' MEETING, THE BRISBANE COMMUNIQUE (2006), <http://shelbycearley.files.wordpress.com/2010/06/thebrisbanecommunique.pdf>; Alexander W. Wiseman & David P. Baker, *The Worldwide Explosion of Internationalized Education Policy*, in GLOBAL TRENDS IN EDUCATION POLICY 10-11 (Alexander W. Wiseman & David P. Baker, eds., 2005).

<sup>34</sup> APEC DIPLOMA SUPPLEMENT REPORT, *supra* note 31, at v-vi, 27.

higher education institutions, acting through unifying organizations such as the Council for Higher Education Accreditation (CHEA) or the Association of American Colleges and Universities (AACU), can affect the policies made by national and international actors.<sup>35</sup> Additionally, national policymakers may use international organizations' initiatives as way of legitimizing their own national goals or promoting particular approaches to international policy in general.<sup>36</sup> International higher education initiatives, in short, require significant coordination and transparency among a variety of entities with sometimes greatly differing motivations.<sup>37</sup>

The U.S. is capable of this level of cooperation and coordination internationally.<sup>38</sup> Current domestic programs demonstrate this capability by slowly harmonizing the qualification frameworks of higher education among states.<sup>39</sup> For the purposes of this comment, qualification frameworks refer to the systems that classify higher education by "level, workload, quality, profile and learning outcomes."<sup>40</sup> The common framework in the U.S., for example, allows students to transfer from one institution to another while retaining many of their credits because the institutions recognize curricular similarities and account for the differences.

In harmonizing qualification frameworks across nations, international initiatives seek to make key connections between frameworks so that qualifications are treated relatively equally in all

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<sup>35</sup> Barbara Brittingham, *Accreditation in the United States: How Did We Get to Where We Are?*, in NAT'L ADVISORY COMM. ON INST'L QUALITY & INTEGRITY, U.S. DEP'T OF EDUC., REPORT OF THE FEBRUARY 3-4, 2011 MEETING 14, 14 (Feb. 3, 2011), <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2-11-presenters.html>.

<sup>36</sup> SACHA GARBN, EU HIGHER EDUCATION LAW: THE BOLOGNA PROCESS AND HARMONIZATION BY STEALTH 213 (2011).

<sup>37</sup> *Id.* at 212.

<sup>38</sup> Wiseman & Baker, *supra* note 33, at 4 ("Being open to external forces, like common worldwide understanding about how sectors like education should work in all nations, makes national policymaking ripe for internationalizing?").

<sup>39</sup> *See infra* Section III.

<sup>40</sup> DANIELA ULICNA ET AL., EUR. COMM'N & AUSTL. DEP'T OF EDUC., STUDY ON THE (POTENTIAL) ROLE OF QUALIFICATIONS FRAMEWORKS IN SUPPORTING MOBILITY OF WORKERS AND LEARNERS 57 (Oct. 2011), [http://ec.europa.eu/education/more-information/doc/2011/australia\\_en.pdf](http://ec.europa.eu/education/more-information/doc/2011/australia_en.pdf).

nations.<sup>41</sup> The U.S. has slowly moved toward coordination with other nations by continuing international harmonization but thus far has refused to be bound by international initiatives.<sup>42</sup> Unlike the U.S., many of the member nations of the Asian-Pacific Economic Cooperation (APEC) and the E.U. have begun processes of international harmonization through their respective international organizations.<sup>43</sup>

In the U.S., higher education policy is moving toward a more internally centralized and harmonized system on several fronts.<sup>44</sup> While the U.S. has not yet engaged significantly with current international higher education initiatives, it has employed similar harmonization programs internally among states and across North American borders.<sup>45</sup> These programs have come both from grassroots organizations and agencies (the ground-up approach) and from the Department of Education and other national policy making entities (a top-down approach).<sup>46</sup> The U.S. has yet to take significant steps toward cooperation with international initiatives. As a global leader, it is time for the U.S. to seriously consider further international harmonization in the increasingly globalized world of higher education.

#### I. OVERVIEW OF INTERNATIONAL HIGHER EDUCATION INITIATIVES

To create international higher education initiatives, member nations of international organizations may enter into formal agreements.<sup>47</sup> Many of these agreements are not legally binding in the

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<sup>41</sup> OLUSOLA OYEWOLE, HARMONISATION OF DEGREE STRUCTURES, AND REGIONAL QUALIFICATIONS FRAMEWORKS IN THE AFRICAN HIGHER EDUCATION SPACE 1 (2011).

<sup>42</sup> Laurel S. Terry, *International Initiatives that Facilitate Global Mobility in Higher Education*, 2011 MICH. ST. L. REV. 305, 329 (2011) [hereinafter Terry 2011].

<sup>43</sup> *Id.* at 318, 330.

<sup>44</sup> *See infra* Section III.

<sup>45</sup> DEWIT, *supra* note 4, at 30-31, 39; *see also Program for North American Mobility in Higher Education*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/programs/fipsenortham/index.html> (last modified June 16, 2011).

<sup>46</sup> *See infra* Section III.

<sup>47</sup> GARBEN, *supra* note 36, at 5-7.



ordinary sense.<sup>48</sup> The purposes of these agreements are to coordinate institutions to facilitate increased student mobility and to encourage participation in international education projects and programs.<sup>49</sup> Initiatives include the European Community Action Scheme for the Mobility of University Students (ERASMUS), the European Credit and Transfer System (ECTS), the Bologna Process, and various efforts of APEC.<sup>50</sup> The U.S. has also been peripherally involved in international higher education initiatives and has strengthened its student mobility framework.<sup>51</sup> The selected initiatives below are a sampling of key programs and do not represent an exhaustive list of the programs around the world.

#### A. ERASMUS

The ERASMUS program, initiated in 1987 by the E.U.'s European Commission,<sup>52</sup> has been moderately successful at its goal of promoting student mobility across higher education institutions in Europe.<sup>53</sup> To participate in ERASMUS, institutions are required to have an ERASMUS University Charter.<sup>54</sup> This charter helps the institution coordinate with the European Commission by providing the basic framework, principles, and requirements for participation.<sup>55</sup> ERASMUS uses both centralized and decentralized efforts to coordinate institutions with the E.U.<sup>56</sup> After its establishment,

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<sup>48</sup> *Id.* at 174.

<sup>49</sup> *Id.*

<sup>50</sup> Terry 2011, *supra* note 42, at 305.

<sup>51</sup> DEWIT, *supra* note 4, at 30-31; *see also* U.S. Network for Education Information, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/ous/international/usnei/edlite-index.html> (last modified Dec. 22, 2007).

<sup>52</sup> The European Commission is the European Union's executive body. *See About the European Commission*, EUR. COMM'N, [http://ec.europa.eu/about/index\\_en.htm](http://ec.europa.eu/about/index_en.htm) (last updated Nov. 16, 2012).

<sup>53</sup> Heather Field, *Higher Education in the Twenty-First Century: Integrating Tertiary Education in Europe*, 585 ANNALS 182, 187 (2003).

<sup>54</sup> *The ERASMUS Programme – Studying in Europe and More*, EUR. COMM'N, [http://ec.europa.eu/education/lifelong-learning-programme/doc80\\_en.htm](http://ec.europa.eu/education/lifelong-learning-programme/doc80_en.htm) (last updated Jan. 9, 2013).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* (“[S]o called ‘decentralised actions’ that promote individual mobility are run by national agencies in the 33 participating countries and ‘centralised’ actions, such as networks, multilateral projects and the award of the ERASMUS

ERASMUS expanded to encompass countries outside Europe, including the U.S. via the Atlantis program.<sup>57</sup> Through competitive grants, the Atlantis program promotes mobility and a “transatlantic dimension” to higher education.<sup>58</sup> The Atlantis grant competition was cancelled for fiscal year 2011 due to Congressional budget reductions.<sup>59</sup>

## B. The European Credit Transfer and Accumulation System (ECTS)

ECTS was created in response to the needs of newly mobile students in the ERASMUS program.<sup>60</sup> As a system promoting cross-institution degree and credit recognition, ECTS marks the first of several mechanisms developed to harmonize higher education institutions across Europe.<sup>61</sup> A recent report, Problems of Recognition in Making Erasmus (PRIME), showed that fifty-nine percent of European higher education institutions surveyed use ECTS as their only credit system, and thirty-seven percent use ECTS with a national credit system.<sup>62</sup> In addition to ECTS, the European

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University Charter, are managed by the EU’s Education, Audiovisual and Culture Executive Agency.”).

<sup>57</sup> Terry 2011, *supra* note 42, at 314.

<sup>58</sup> *European Union-United States Atlantis Program*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/programs/fipseec/index.html> (last modified June 16, 2011).

<sup>59</sup> *Id.*

<sup>60</sup> Terry 2011, *supra* note 42, at 315 (explaining that “the needs of the ERASMUS programme led directly to the creation of another EU initiative that has been highly influential,” ECTS).

<sup>61</sup> EUR.COMM’N, ECTS USER’S GUIDE 7 (2009) [hereinafter ECTS USER’S GUIDE], [http://ec.europa.eu/education/lifelong-learning-policy/doc/ects/guide\\_en.pdf](http://ec.europa.eu/education/lifelong-learning-policy/doc/ects/guide_en.pdf) (describing ECTS as “a tool that helps to design, describe, and deliver programmes and award higher education qualifications. The use of ECTS, in conjunction with outcomes-based qualifications frameworks, makes programmes and qualifications more transparent and facilitates the recognition of qualifications. ECTS can be applied to all types of programmes, whatever their mode of delivery (school-based, work-based), the learners’ status (full-time, part-time) and to all kinds of learning (formal, non-formal and informal).”).

<sup>62</sup> EREN DICLE ET AL., PRIME REPORT 2010 16 (2010), [http://prime.esn.org/sites/prime.esn.org/files/PRIME20Report%202010\\_0.pdf](http://prime.esn.org/sites/prime.esn.org/files/PRIME20Report%202010_0.pdf) (“In order to facilitate recognition of degrees and study achievements; a clear system of accreditation, the European Credit Transfer and Accumulation System (ECTS) has been introduced to replace various local systems.”); *Key Results*, PRIME, <http://prime.esn.org/content/key-results> (last visited Jan. 30, 2012).

Commission, the Council of Europe and UNESCO collectively created the Diploma Supplement.<sup>63</sup> This supplement provides a “standardised[*sic*] description of the nature, level, context, content and status of the studies” completed by each graduate.<sup>64</sup> ERASMUS and ECTS are implemented through national agencies equivalent to the U.S. Department of Education.<sup>65</sup> ECTS exemplifies a classification framework implemented through an international initiative, ERASMUS.

### C. The Bologna Process

The Bologna Process was not initiated by a centralized authority like the European Union. Rather, through the Bologna Declaration of 1999, twenty-nine countries agreed to facilitate mobility for students, graduates, and higher education faculty.<sup>66</sup> Essentially, the process of the Bologna Agreement consists of creating the European Higher Education Area by “ironing out” national idiosyncrasies and slowly “Europeanizing” higher education.<sup>67</sup> Key areas of attempted harmonization are both substantive, as with the Europeanization of curriculum,<sup>68</sup> and procedural, as demonstrated by the creation of a framework for comparable or uniform credits and degrees.<sup>69</sup> The Bologna Process uses the ECTS framework as one mechanism of harmonization.<sup>70</sup>

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<sup>63</sup> Terry 2008, *supra* note 32, at 136.

<sup>64</sup> *The Diploma Supplement*, EUR. COMM’N, [http://ec.europa.eu/education/lifelong-learning-policy/doc1239\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/doc1239_en.htm) (last updated Feb. 7, 2013).

<sup>65</sup> DICLE ET AL., *supra* note 62, at 23 (“The National Agencies (NAs) are the link between the European Commission and Higher Education Institutions.”).

<sup>66</sup> Field, *supra* note 53, at 183.

<sup>67</sup> *Id.*

<sup>68</sup> *See generally* EUR. COMM’N, EU RESEARCH ON SOCIAL SCIENCES AND HUMANITIES: HIGHER EDUCATION INSTITUTIONS’ RESPONSES TO EUROPEANISATION, INTERNATIONALISATION AND GLOBALISATION. DEVELOPING INTERNATIONAL ACTIVITIES IN A MULTI-LEVEL POLICY CONTEXT (June 2005).

<sup>69</sup> *Id.* at 184, 186.

<sup>70</sup> ECTS USER’S GUIDE, *supra* note 61, at 9.

The Bologna Process is entirely voluntary,<sup>71</sup> and participating countries include all E.U. member nations and twenty non-E.U. countries.<sup>72</sup> The U.S. is not presently a participant, though policymakers are closely monitoring its progress.<sup>73</sup> Scholars view the Bologna Process as a response to the view that European universities could not compete in a “global ‘knowledge-based economy’” because of “brain-drain, the poor international reputation of national universities, low graduate outputs and success rates, rising academic unemployment, [and] insufficient financial resources.”<sup>74</sup> This description could easily describe the motivation behind the initiatives of the E.U. and APEC as well.

#### D. APEC’s Efforts

APEC is an organization of twenty-one member economies including the U.S., Canada, Mexico, China, Singapore, Japan, Korea, and Russia.<sup>75</sup> According to the White House, the total U.S.-APEC trade has reached at least \$2.3 trillion in goods and services since APEC’s inception.<sup>76</sup> A 2010 study by the University of Melbourne explains that APEC member economies are increasingly incorporating their own Diploma Supplement into their higher education systems.<sup>77</sup> The structure and content of supplements in APEC economies are highly influenced by those of Europe, Australia, and New Zealand.<sup>78</sup> The study also reports “widespread support” for an APEC-developed Diploma Supplement.<sup>79</sup> Currently,

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<sup>71</sup> Eva M. Voegtle et al., *To What Extent Does Transnational Communication Drive Cross-national Policy Convergence? The impact of the Bologna-process on Domestic Higher Education Policies*, 61 HIGHER EDUC. 77, 78 (2010).

<sup>72</sup> Terry 2011, *supra* note 42, at 318.

<sup>73</sup> Terry 2008, *supra* note 32, at 111.

<sup>74</sup> Voegtle et al., *supra* note 71, at 77-78.

<sup>75</sup> *Member Economies*, ASIA-PACIFIC ECON. COOP., <http://www.apec.org/About-Us/About-APEC/Member-Economies.aspx> (last visited Mar. 28, 2013).

<sup>76</sup> Office of the Press Sec’y, *APEC: Fact Sheet on 19th Annual Leaders Meeting Outcomes Creating Jobs, Growth, and Economic Opportunity with AELM Declaration & Annexes*, WHITE HOUSE (Nov. 13, 2011), <http://www.whitehouse.gov/the-press-office/2011/11/13/apec-fact-sheet-19th-annual-leaders-meeting-outcomes-creating-jobs-growt>.

<sup>77</sup> APEC DIPLOMA SUPPLEMENT REPORT, *supra* note 31, at 6-7.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

member economies may also use Memoranda of Understanding—government-to-government agreements—to assure that higher education meets mutual standards of quality.<sup>80</sup>

#### E. U.S. Movement

In 1995 the U.S., in collaboration with Canada and Mexico, created the Program for North American Mobility in Higher Education, a competitive grant program designed to encourage mobility and a “North American dimension” to higher education.<sup>81</sup> A byproduct of this program has been a movement toward development of mutual credit recognition and joint curricula and degrees across Mexico, the U.S., and Canada.<sup>82</sup> However, the grant competition was cancelled for fiscal year 2011 due to Congressional budget reductions.<sup>83</sup>

Nevertheless, there is evidence that the U.S. is engaging with the higher education initiatives of international organizations on its own terms. For example, the U.S. and Canada, two APEC member economies, signed the Council of Europe’s Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Convention).<sup>84</sup> The Council of Europe is an organization of forty-seven countries that focuses on promoting human rights and the rule of law in Europe.<sup>85</sup> The Lisbon Convention promotes the use of the Council of Europe/UNESCO

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<sup>80</sup> *Id.*; AUSTL. UNIVS. QUALITY AGENCY, ENHANCEMENT OF QUALITY ASSURANCE SYSTEMS IN HIGHER EDUCATION IN APEC MEMBER ECONOMIES 37-38 (2006), <http://m.apec.org/Press/Features/2007/~//media/Files/Press/Features/2007/2007Par0001Filev2.ashx>.

<sup>81</sup> *Program for North American Mobility in Higher Education*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/programs/fipsenortham/index.html> (last modified June 16, 2011).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *See Convention on the Recognition of Qualifications concerning Higher Education in the European Region*, CETS No.: 165, COUNCIL OF EUR. [hereinafter, *CETS No. 165*], <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=&DF=&CL=ENG> (last updated Nov. 18, 2012).

<sup>85</sup> *Who We Are*, COUNCIL OF EUR., <http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en> (last visited Mar. 28, 2013).

Diploma Supplement.<sup>86</sup> Russia and Australia have signed and ratified the Lisbon Convention.<sup>87</sup> The U.S., as a non-member with observer status, signed without accession, i.e. agreeing to be legally bound.<sup>88</sup> In conjunction with signing the Lisbon Convention, the U.S. Department of Education initiated the U.S. Network for Education Information (USNEI) purportedly as a response to requests from within the federal government and from education associations.<sup>89</sup> The USNEI provides information for U.S. students or workers seeking education abroad and to foreign students or workers seeking U.S. education.<sup>90</sup>

## II. SOFT GOVERNANCE

### A. Definition

The international higher education initiatives discussed above are forms of soft governance. Soft governance is typical of international agreements because of the absence of a centralized authority.<sup>91</sup> The definition and significance of soft governance, and its accompanying term “soft law,” are debated and elusive. However, soft law can be identified by distinguishing it from hard law, or what is commonly thought of as binding law in domestic legal systems.<sup>92</sup> Soft law typically lacks some element of “obligation, precision, [or] delegation.”<sup>93</sup> A more flexible form of governance, soft law may more readily facilitate cooperation between distinct, autonomous entities, but it is criticized for the ambiguity it leaves in its wake.<sup>94</sup> Typical instruments of soft governance include: “norm setting, opinion formation, financial means, coordinative activities, [and]

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<sup>86</sup> *The Lisbon Recognition Convention*, COUNCIL OF EUR. [http://www.coe.int/t/dg4/highereducation/recognition/lrc\\_EN.asp](http://www.coe.int/t/dg4/highereducation/recognition/lrc_EN.asp) (last visited Mar. 28, 2013).

<sup>87</sup> APEC DIPLOMA SUPPLEMENT REPORT, *supra* note 31, at 7.

<sup>88</sup> *CETS No. 165*, *supra* note 84.

<sup>89</sup> *About USNEI*, ED.GOV, <http://www2.ed.gov/about/offices/list/ous/international/usnei/edlite-about.html> (last modified Feb. 11, 2008).

<sup>90</sup> *Id.*

<sup>91</sup> Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 423 (2000).

<sup>92</sup> *Id.* at 422-23.

<sup>93</sup> *Id.* at 422.

<sup>94</sup> *Id.*

consulting services.”<sup>95</sup> The international education initiatives described above typically consist of declarations of intended action, rather than treaties that can bind the signatory nations.<sup>96</sup>

#### B. Feasibility of an Initiative

If the U.S. seeks to participate in international higher education initiatives, it is necessary to examine the feasibility of soft governance in the U.S. context. In general, the degree to which a nation participates in a soft governance initiative can be examined using two different approaches: 1) the veto players in the state and national governments; and 2) the nation’s guiding principles.<sup>97</sup>

First, veto players include people or institutional components within a national government that have the ability to hinder the progress of an initiative.<sup>98</sup> Essentially, the greater the number of players who agree with or are somehow advantaged by the initiative’s policy, the greater the likelihood that the nation will successfully harmonize with the international initiative. In the U.S., potential veto players at the national level—Congress, the President, leaders in the Department of Education—must contend with potential veto players at the state and local level, both public and private, because of the decentralized nature of U.S. education.<sup>99</sup> Therefore, any discussion of the U.S.’s international dimension to higher education must always include an examination of the multiple players involved. This complexity may explain U.S. policymakers’ hesitance to address an American approach to international higher education. However, because of the decentralized nature of American education, a veto

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<sup>95</sup> Alexander-Kenneth Nagel et al., *Introduction—Education Policy in Transformation*, in *TRANSFORMATION OF EDUCATION POLICY* 3, 10-12 (Kerstin Martens et al. eds., 2010).

<sup>96</sup> GARBEN, *supra* note 36, at 90.

<sup>97</sup> Nagel et al., *supra* note 95, at 13-14.

<sup>98</sup> *Id.*

<sup>99</sup> PETER D. ECKEL & JACQUELINE E. KING, AN OVERVIEW OF HIGHER EDUCATION IN THE UNITED STATES: DIVERSITY, ACCESS, AND THE ROLE OF THE MARKETPLACE 3 (2004), <http://www.acenet.edu/news-room/Documents/Overview-of-Higher-Education-in-the-United-States-Diversity-Access-and-the-Role-of-the-Marketplace-2004.pdf>.

player in the U.S. is not likely to impede efforts to cooperate with international organizations.<sup>100</sup>

Instead, the U.S.'s guiding principles are likely to determine its willingness to engage in international higher education initiatives. Important guiding principles in the context of this discussion may include beliefs about the purposes, significance, and expected outcomes of higher education and international cooperation.<sup>101</sup> In the U.S., state and federal policymakers consistently link education with economic success on a personal and national level.<sup>102</sup> However, organizations like the Association of American Colleges and Universities (AACU) promote the ideals of a liberal education.<sup>103</sup> The AACU defines a liberal education as one in which “students develop a sense of social responsibility” and which promotes “broad learning in multiple disciplines and ways of knowing.”<sup>104</sup> The philosophy of American education has historically alternated between an emphasis on liberal and vocational styles of education.<sup>105</sup>

International scholars have identified a positive correlation between the cultural, institutional, and socioeconomic similarities among nations and the similarity of policymakers' interpretation and

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<sup>100</sup> Nagel et al., *supra* note 95, at 265.

<sup>101</sup> *Id.* at 14-15.

<sup>102</sup> Matt Compton, *The Blueprint for an America Built to Last*, WHITE HOUSE (Jan. 24, 2012, 11:19 PM), <http://www.whitehouse.gov/blog/2012/01/24/blueprint-america-built-last> (“We need to promote new skills and better education so that all Americans are prepared to compete in a global economy.”); *Regional Economic Development Councils*, N.Y. ST., <http://regionalcouncils.ny.gov/faq> (last visited Mar. 28, 2013) (“Public and private higher education institutions are essential components of the State’s economic engine, serving as centers of innovation and research, teaching the business leaders of tomorrow, anchoring our communities, and creating jobs.”).

<sup>103</sup> *Liberal Education*, ASS’N OF AM. COLLS. & UNIVS., <http://www.aacu.org/resources/liberaleducation/index.cfm> (last visited Mar. 28, 2013).

<sup>104</sup> *What is a 21<sup>st</sup> Century Liberal Education?*, ASS’N OF AM. COLLS. & UNIVS., [http://www.aacu.org/leap/what\\_is\\_liberal\\_education.cfm](http://www.aacu.org/leap/what_is_liberal_education.cfm) (last visited Mar. 28, 2013).

<sup>105</sup> *See generally* DIANE RAVITCH, *LEFT BACK: A CENTURY OF BATTLES OVER SCHOOL REFORM* (2000); KATZ, *supra* note 8; TYACK & CUBAN, *supra* note 8.



implementation of international policies.<sup>106</sup> In other words, similar participating nations are more likely to participate in an initiative in similar ways. Because cultural, institutional, and socioeconomic considerations shape how a nation addresses welfare issues such as education, these factors may dramatically influence how a nation filters the international initiative down through national, state or regional, and local government.

### C. Structuring an Initiative

International soft governance measures can be initiated by international organizations, such as the E.U.'s ERASMUS program, or they can be initiated outside of one formal body, such as the Bologna Process. The E.U.'s initiative can be characterized as a top-down effort to harmonize higher education institutions. The E.U.'s powers, called competences, are set forth in treaties such as the Treaty on the Functioning of the European Union (TFEU).<sup>107</sup> Member nations grant competences and give legitimacy to the E.U., and treaties take effect only with the consent of the signatory nations.<sup>108</sup> The E.U. holds only the power granted to it, explicitly or implicitly, and the remaining powers are retained by member nations.<sup>109</sup> The European Court of Justice (ECJ) has interpreted the E.U.'s competences broadly to include education as it relates to the internal market.<sup>110</sup> Additionally, Article 165 TFEU delineates the E.U.'s education competence.<sup>111</sup>

In addition to the flexible and ambiguous powers of international organizations in the E.U. and the national government in the U.S., education is also affected by the General Agreement on Trade in Services (GATS).<sup>112</sup> The U.S. and E.U., as well Japan, New

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<sup>106</sup> Torben Heinze & Christoph Knill, *Analysing Differential Impact of the Bologna Process: Theoretical Considerations on National Conditions for International Policy Convergence*, 56 HIGHER EDUC. 493, 495, 506 (2008).

<sup>107</sup> GARBEN, *supra* note 36, at 57-59.

<sup>108</sup> *Id.* at 58.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 100.

<sup>111</sup> *Id.* at 59.

<sup>112</sup> KEMAL GÜRÜZ, HIGHER EDUCATION AND INTERNATIONAL STUDENT MOBILITY IN THE GLOBAL KNOWLEDGE ECONOMY 189 (2011).

Zealand, and Australia, voluntarily participate in GATS to “expand the opportunities for global trade in services by removing barriers.”<sup>113</sup> GATS has raised controversy because it may supersede national and institutional authority, leaving academic autonomy vulnerable to future repercussions of the agreement.<sup>114</sup> Additionally, some higher education institutions balk at the valuation of higher education as good to be traded rather than a beneficial social service.<sup>115</sup> A tension exists between the economic and socio-cultural values of education.<sup>116</sup> While globalizing education advances a nation’s place in the knowledge economy, nations tend to protect national education strategies because of their socio-cultural value.<sup>117</sup>

In contrast to E.U. initiatives, the Bologna Process can be characterized as a ground-up initiative in the sense that no single international organization coordinates and guides the process.<sup>118</sup> The participating nations have proceeded in a purposefully ground-up manner to avoid granting control to any international organization.<sup>119</sup> Nevertheless, many would argue that national education agencies compelled individual institutions to comply with the Bologna Process’s changes without soliciting views from those most affected, i.e., the institutions themselves.<sup>120</sup> The distinction between top-down and ground-up initiatives is further complicated by the increasing reliance of both public and private institutions on funds from students and corporate partners.<sup>121</sup> Increased reliance on the private sector leads to increased demand for accountability, often through quality assurance measures.<sup>122</sup> Additionally, many Bologna Process changes intersect with other initiatives of international organizations

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> GARBEN, *supra* note 36, at 137.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 211.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> DEWITT, *supra* note 4, at 153.

<sup>122</sup> *Id.*

like the E.U., causing confusion for those charged with implementing changes.<sup>123</sup>

#### D. Difficulties Encountered by Initiatives

Scholars have criticized both the top-down and ground-up approaches to international higher education initiatives. The E.U.'s higher education initiatives are controversial because the E.U.'s legal authority in education issues is attenuated and unclear.<sup>124</sup> Additionally, the European Court of Justice (ECJ) has repeatedly expanded E.U. authority in education to an unprecedented degree.<sup>125</sup> In this way, the E.U.'s influence on higher education may be said to lack democratic legitimacy, as well as transparency and openness.<sup>126</sup> Similarly, the Bologna Process lacks transparency and the checks and balances inherent in formal organizations' structures.<sup>127</sup> Some scholars have noted that the "not-so-hidden agenda" of the Bologna Process participant nations is to mold European higher education institutions to resemble American higher education institutions.<sup>128</sup> Others claim that Bologna has contributed to European higher education outpacing American higher education in attractiveness to foreign students because of its greater transparency of degrees and qualifications.<sup>129</sup>

Beyond these broader governance issues, harmonization efforts have encountered implementation problems as well. A 2010 report identified the following difficulties with implementing the ERASMUS program: incompatibility of study programs, problems with credit calculation, problems with grade transfer, bureaucratic issues, attitude of professors who refuse to recognize courses, and a lack of information exchange.<sup>130</sup> While the Diploma Supplement has

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<sup>123</sup> GARBEN, *supra* note 36, at 211.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 137.

<sup>126</sup> *Id.* at 211.

<sup>127</sup> *Id.*

<sup>128</sup> GÜRÜZ, *supra* note 112, at 184.

<sup>129</sup> Dobbins & Martens, *supra* note 6, at 189.

<sup>130</sup> DICLE ET AL., *supra* note 62, at 72-81.

been a popular harmonization mechanism, only half of participating European countries had fully implemented it as of 2009.<sup>131</sup>

A 2010 APEC report noted similar problems with implementing its own international initiative.<sup>132</sup> The report lists as key issues the need to convince institutions of the value of additional documentation and the difficulty of providing diploma supplements to nations with different qualifications frameworks.<sup>133</sup> These issues highlight how diploma supplements that make mobility more feasible are distinct from qualifications frameworks, which aim to harmonize levels of education, content of levels, and learning outcomes.<sup>134</sup> Diploma supplements may be better suited for individual institutions that want to add an international dimension. On the other hand, the structures and classifications provided by qualifications frameworks are meant to be grafted onto national systems.<sup>135</sup> By interfering with the national structure of higher education—for example, by changing the number of years necessary for bachelor’s degree equivalent—qualification frameworks can have consequences for a nation’s economy and culture.<sup>136</sup> Despite governance and implementation difficulties, and despite the differences in culture and language involved, these harmonization efforts are inspiring nations around the world to discuss, plan, and implement new strategies to join the harmonized higher education of the future.<sup>137</sup>

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<sup>131</sup> APEC DIPLOMA SUPPLEMENT REPORT, *supra* note 31, at 25 (“Despite the commitment to issuing the [Diploma Supplement] to all graduates . . . by 2005, only half of the countries have managed to implement it fully by 2009.”).

<sup>132</sup> *Id.* at 15.

<sup>133</sup> *Id.*

<sup>134</sup> DANIELA ULICNA ET AL., *supra* note 40, at 5.

<sup>135</sup> *Id.*

<sup>136</sup> Wiseman & Baker, *supra* note 33, at 5. The economic and cultural consequences of implementing a qualifications framework are beyond the scope of this comment.

<sup>137</sup> Dobbins & Martens, *supra* note 6, at 188 (“Bologna has proven to be more than just a voluntary declaration, but has also created a platform for policy exchange and the emulation of best practice.”).

### III. ON THE GROUND IN THE U.S.

#### A. Accreditation

The debate over whether higher education should become increasingly centralized is similar in the U.S and the E.U.. Looking specifically at accreditation provides an example of the issues surrounding centralization. In the U.S., hundreds of billions of taxpayer dollars are tied up in the accreditation of higher education institutions.<sup>138</sup> Accreditation is a key area affected by international initiatives to harmonize higher education because of its relation to the structure and content of higher education. Leaders in higher education organizations recently began to debate the merits of domestic harmonization, which could lead to participation in international harmonization.<sup>139</sup> Education scholar Philip Altbach explains that the “accreditation process is becoming internationalized and commercialized,” making it easier and more acceptable for an accreditation agency in, for example, the U.S. to offer its services to a higher education institution abroad.<sup>140</sup>

American accreditation is defined by the Council for Higher Education Accreditation (CHEA) as “a collegial process of self-review and peer review for improvement of academic quality and public accountability of institutions and programs.”<sup>141</sup> The distribution of power in accreditation in the U.S. is often referred to as “the triad” because power is divided relatively evenly between the state governments, federal government, and private accrediting

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<sup>138</sup> National Advisory Committee on Institutional Quality and Integrity, U.S. DEPT OF EDUC., <http://ed.gov/about/bdscomm/list/naciqi.html> (last modified Feb. 13, 2013); Brittingham, *supra* note 35, at 21.

<sup>139</sup> Scott Jaschik, *Wake-Up Call for American Higher Ed*, INSIDE HIGHER ED (May 21, 2008, 4:00 AM), <http://www.insidehighered.com/news/2008/05/21/bologna>.

<sup>140</sup> Philip G. Altbach & Jane Knight, *The Internationalization of Higher Education: Motivations and Realities*, 11 J. OF STUD. IN INT’L EDUC. 290, 301 (2007).

<sup>141</sup> COUNCIL FOR HIGHER EDUC. ACCREDITATION, STRENGTHENING HIGHER EDUCATION THROUGH STRENGTHENING ACCREDITATION 1-2 (Jan. 2000), [http://www.chea.org/pdf/chea\\_glance\\_2003.pdf](http://www.chea.org/pdf/chea_glance_2003.pdf).

agencies.<sup>142</sup> The triad is a unique approach that requires the cooperation and mutual trust of many actors.<sup>143</sup> State government roles vary, but generally the state government oversees licensing and consumer protection.<sup>144</sup> The federal government's oversight is directly linked to the funding it provides in the form of financial aid to institutions.<sup>145</sup> Accreditation agencies set standards for and measure quality of institutions, allowing the federal government to determine which institutions are eligible to receive funding.<sup>146</sup> These accrediting agencies are thought to act as a "bulwark" against potential government over-reaching.<sup>147</sup> Finally, the Tenth Amendment protects states' higher education choices, fostering the rich diversity that is unique to American higher education.<sup>148</sup>

In the United States, the Department of Education's National Advisory Committee on Institutional Quality and Integrity (NACIQI) is a key body for policy questions of higher education accreditation.<sup>149</sup> Since its creation through the Higher Education Act's 1992 amendments, NACIQI has made recommendations to the Secretary of Education regarding accreditation.<sup>150</sup> Each of the Secretary of Education, the Senate, and the House appoints six members to form the eighteen member committee.<sup>151</sup> In general, NACIQI determines the criteria for establishing and maintaining accrediting agencies that are reliable and maintain high standards.<sup>152</sup> Individual accreditation

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<sup>142</sup> Peter Ewell & Dennis Jones, *Higher Education Quality Assurance in America: Approaching a Crisis*, in NAT'L ADVISORY COMM. ON INST'L QUALITY & INTEGRITY, U.S. DEP'T OF EDUC., REPORT OF THE FEBRUARY 3-4, 2011 MEETING 42, 42 (Feb. 3, 2011), <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2-11-presenters.html>.

<sup>143</sup> Brittingham, *supra* note 35, at 14.

<sup>144</sup> *Id.* at 21.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 24.

<sup>147</sup> ECKEL & KING, *supra* note 99, at 4.

<sup>148</sup> Ass'n of Specialized & Prof'l Accreditors, *What is the "Triad," in* NAT'L ADVISORY COMM. ON INST'L QUALITY & INTEGRITY, U.S. DEP'T OF EDUC., REPORT OF THE FEBRUARY 3-4, 2011 MEETING 76, 76 (Feb. 3, 2011), <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2-11-presenters.html>.

<sup>149</sup> Ewell & Jones, *supra* note 142.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

agencies often cover a region or a particular kind of university or program.<sup>153</sup>

At a recent NACIQI forum, stakeholders representing key organizations and researchers highlighted the current debate over the involvement of the federal government in the traditionally grassroots industry of accreditation.<sup>154</sup> Clifford Adelman, a leading education researcher, explained that, using grants as an incentive, the federal government is encouraging accreditation agencies to try their own version of a Degree Qualifications Profile (DQP).<sup>155</sup> In response to this federal push, Adelman advises the federal government to “please stay away and let this be a ground-up phenomenon, as the competency based DQP is truly a transformational challenge to U.S. higher education.”<sup>156</sup>

The technical and philosophical challenges to a national qualifications framework that could extend beyond U.S. borders are immense. The U.S. accreditation system is praised for its cost-efficiency, self-governed and partly volunteer-based structure, and flexibility.<sup>157</sup> Judith Eaton, president of CHEA, observed that taxpayers are pressuring the federal government to become more involved in the higher education system in which it invests so many taxpayer dollars.<sup>158</sup> Yet the U.S. accreditation and higher education systems can become internationalized without losing their grassroots nature. Similarly, the federal government should not react to public pressure by involving itself in accreditation with a heavy hand.

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<sup>153</sup> *Id.*

<sup>154</sup> Judith Eaton, *Roles and Relationships: Accreditation and the Federal Government*, in NAT'L ADVISORY COMM. ON INST'L QUALITY & INTEGRITY, U.S. DEPT OF EDUC., REPORT OF THE FEBRUARY 3-4, 2011 MEETING 37, 37 (Feb. 3, 2011), <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2-11-presenters.html> (“However unexpectedly, we have arrived at a decision point about accreditation and the federal government.”).

<sup>155</sup> Clifford Adelman, *Remarks on the Next Reauthorization of the Higher Education Act*, in NAT'L ADVISORY COMM. ON INST'L QUALITY & INTEGRITY, U.S. DEPT OF EDUC., REPORT OF THE FEBRUARY 3-4, 2011 MEETING 1, 1 (Feb. 3, 2011), <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2-11-presenters.html>.

<sup>156</sup> *Id.*

<sup>157</sup> Brittingham, *supra* note 35, at 11.

<sup>158</sup> Eaton, *supra* note 154, at 3.

Rather, the federal government can use its position in relation to both international and domestic education to harness the invaluable experiences and expertise of U.S. accreditors and other stakeholders.

## B. Additional Examples

Other efforts to harmonize higher education demonstrate the U.S.'s capacity for implementing programs similar the harmonization initiatives abroad. The Carnegie Classifications and Complete College America (CCA) are ground-up phenomena that demonstrate how classifications and an emphasis on accountability and transparency have already led to an increasingly harmonized higher education system at home. The Carnegie Classifications, first published in 1973, represent the "leading framework" used by U.S. higher education institutions to classify and organize higher education.<sup>159</sup> These ubiquitous classifications are used to determine qualification for grants and other funding, as well as to categorize a wide variety of institutions for comparison in widely-read publications such as the U.S. News and World Report's college and university rankings.<sup>160</sup> The Carnegie Foundation itself has noted that the value placed on its classifications can create significant pressure on institutions to maintain or change their classification.<sup>161</sup> The mutual interests of individual institutions and the federal government in these classifications make them well suited for use in future harmonization initiatives, as a model or a starting point.<sup>162</sup>

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<sup>159</sup> *Carnegie Classifications*, CARNEGIE FOUND., <http://classifications.carnegiefoundation.org/> (last visited Mar. 28, 2013).

<sup>160</sup> ALEXANDER C. MCCORMICK & CHUN-MEI ZHAO, RETHINKING AND REFRAMING THE CARNEGIE CLASSIFICATION 55 (2005), <http://classifications.carnegiefoundation.org/downloads/rethinking.pdf>; Alexander C. McCormick, *Hidden in Plain View*, INSIDE HIGHER ED (May 10, 2007, 4:00 AM), <http://www.insidehighered.com/views/2007/05/10/mccormick>.

<sup>161</sup> MCCORMICK & ZHAO, *supra* note 160, at 55.

<sup>162</sup> JOHN AUBREY DOUGLASS, CTR. FOR STUD. IN HIGHER EDUC., THE CARNEGIE COMMISSION AND COUNCIL ON HIGHER EDUCATION: A RETROSPECTIVE 14 (2005), [http://cshe.berkeley.edu/publications/docs/ROP\\_Douglass.Carnegie.14.05.pdf](http://cshe.berkeley.edu/publications/docs/ROP_Douglass.Carnegie.14.05.pdf).



Complete College America, a nonprofit organization, works with the National Governors' Association (NGA)<sup>163</sup> to improve college graduation rates in each state and to “build consensus for change” among key players at the state and national levels.<sup>164</sup> CCA was founded in 2009 and is supported by organizations like the Carnegie Corporation, the Bill and Melinda Gates Foundation, and the Lumina Foundation.<sup>165</sup> Through the Complete to Compete program of CCA, states use common metrics to measure progress and outcomes.<sup>166</sup> Progress metrics measure enrollment and success in remedial education, success in first year college courses, credit accumulation, retention rates, and course completion.<sup>167</sup> Outcome metrics measure degrees awarded, graduation rates, transfer rates, and time and credits necessary to achieve a degree.<sup>168</sup> CCA recommends that states generate common definitions for certain metrics terms, such as “remedial education courses.”<sup>169</sup> The technical guide to the common metrics also lists disciplines and defines which categories of courses fall into each discipline.<sup>170</sup> By beginning this process of common definitions, states are already taking steps toward a more coordinated and cooperative system. Other key examples of harmonization efforts in the U.S. include the Association of American Colleges and Universities' Liberal Education and America's Promise (LEAP) initiative,<sup>171</sup> the Lumina Foundation's Tuning USA

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<sup>163</sup> *Common Metrics*, COMPLETE COLL. AM., [http://www.completecollege.org/path\\_forward/commonmetrics/](http://www.completecollege.org/path_forward/commonmetrics/) (last visited Mar. 28, 2013).

<sup>164</sup> *Complete College America*, COLL. BOARD, <http://completionarch.collegeboard.org/content/complete-college-america>.

<sup>165</sup> *About Us*, COMPLETE COLL. AM., <http://www.completecollege.org/about/> (last visited Mar. 28, 2013).

<sup>166</sup> *Common Metrics*, *supra* note 163.

<sup>167</sup> NGA CTR. FOR BEST PRACTICES, COMPLETE TO COMPETE: COMMON COLLEGE COMPLETION METRICS: TECHNICAL GUIDE 2 (2010), <http://www.nga.org/files/live/sites/NGA/files/pdf/1011COMMONTECHGUIDE.PDF>.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 12.

<sup>170</sup> *Id.* at 18.

<sup>171</sup> *Liberal Education and America's Promise (LEAP)*, ASS'N OF AM. COLLS. & UNIVS., <http://www.aacu.org/leap/> (last visited Mar. 28, 2013).

project,<sup>172</sup> and the Common Core State Standards Initiative, which is also a project of the NGA.<sup>173</sup>

Through these programs, the U.S. demonstrated a strong capacity to create common terminology, standards, and qualification frameworks. These programs also demonstrate that, on a state and regional level, certain common classifications already exist despite the absence of formal measures.

#### IV. COMING TOGETHER: CONSIDERATIONS & RECOMMENDATIONS

##### A. What We Measure Signals What We Value<sup>174</sup>

International soft governance can help unify national policies, but often at the price of transparency and accountability found in the policies of a legitimate, binding authority.<sup>175</sup> In the U.S., higher education institutions and organizations are accustomed to dealing with the federal government on a voluntary basis.<sup>176</sup> Over time federal power in K-12 education has expanded, requiring increased cooperation on the local and state levels.<sup>177</sup> Similar to international organizations' influence over national education policies, the U.S. federal government influences local and state entities that act relatively independently.<sup>178</sup> In higher education, the federal

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<sup>172</sup> TUNING EDUC. STRUCTURES USA, <http://tuningusa.org/> (last visited Jan. 31, 2012).

<sup>173</sup> COMMON CORE ST. STANDARDS INITIATIVE, <http://www.corestandards.org/> (last visited Mar. 28, 2013).

<sup>174</sup> Quoted from COMPLETE COLL. AM., UNIFORMLY MEASURE PROGRESS AND SUCCESS: ESSENTIAL STEPS FOR STATES 1 (no date), <http://www.completecollege.org/docs/CCA%20Essential%20Steps%20Common%20Measures%20of%20Progress%281%29.pdf>.

<sup>175</sup> GARBEN, *supra* note 36, at 181.

<sup>176</sup> ECKEL & KING, *supra* note 99, at 3-4.

<sup>177</sup> GAIL L. SUNDERMAN & JIMMY KIM, EXPANSION OF FEDERAL POWER IN AMERICAN EDUCATION: FEDERAL-STATE RELATIONSHIPS UNDER THE NO CHILD LEFT BEHIND ACT, YEAR ONE 12 (2004), <http://civilrightsproject.ucla.edu/research/k-12-education/nclb-title-i/expansion-of-federal-power-in-american-education-federal-state-relationships-under-the-no-child-left-behind-act-year-one/sunderman-kim-expansion-federal-power-american.pdf>.

<sup>178</sup> *Id.* at 15.

government uses the provision of financial aid funds to dictate certain requirements, thereby involving itself in higher education policy-making.<sup>179</sup> This soft governance-like control allows the federal government to mold higher education like it molds K-12 education.<sup>180</sup> This is especially true when higher education policy relates to areas like international affairs or economic competitiveness, which are constitutionally assigned powers of the national government.<sup>181</sup>

On both national and international levels, soft governance control can lead to the setting of norms in higher education. These norms might determine how we view quality of education, the value of particular subject areas, or the legitimacy of institutions or higher education structures. Moreover, specific educational practices not deemed valuable and legitimate by the policy-making entity may go unnoticed and eventually be lost. In this way, the unique characteristics of individual institutions, states, or nations may not survive an increasingly harmonized higher education system.

Nevertheless, on an international scale nations are incentivized to fall in line with the harmonization process. The incentive may come from the international organization itself, or the international aspect may be an attractive shell for national policies that have received prior resistance but became legitimized through an international organization's support.<sup>182</sup> As the global movement toward harmonization continues, it is important for the U.S. to become an active participant in shaping the future of higher education. Equally important, however, is that the U.S. examine its own motives for participation. While the U.S. may be accustomed to a position of leadership, even dominance, in its foreign affairs, this approach is unlikely to yield positive results in an area already dominated by the efforts of other nations.<sup>183</sup>

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<sup>179</sup> ECKEL & KING, *supra* note 99, at 3.

<sup>180</sup> *Id.* at 3-4.

<sup>181</sup> Carol E. Head, Comment, *The Dormant Foreign Affairs Power: Constitutional Implications for State and Local Investment Restrictions Impacting Foreign Countries*, 42 B.C. L. REV. 123, 124 (2000).

<sup>182</sup> GARBEN, *supra* note 36, at 213-15.

<sup>183</sup> Stephen M. Walt, *Taming American Power*, 84 FOREIGN AFF. 105, 112 (2005).

The American harmonization measures described above demonstrate that the U.S.'s values correlate with those of international organizations. These values in the higher education context emphasize reaching a consensus on classification measures and stress accountability and transparency. Consensus, accountability, and transparency lend legitimacy to initiatives.

## B. Recommendations

At present, the U.S. has three options with regard to international higher education initiatives: 1) continue its policy of abstinence on the national level and mild participation on an institutional level, 2) attempt to supersede current efforts by generating its own qualification framework and popularizing it with other nations, or 3) engage cooperatively with international organizations as a key partner.

### 1. *Options One and Two*

Given the potential benefits of participation, the first option is not recommended. Participation can provide a streamlined means for bringing students to U.S. colleges and universities, thus contributing to the U.S.'s competitive edge in a global economy, and it would allow the U.S. to be an integral part of a key area of international development. The second option, which calls for attempting to supersede current efforts with a new, perhaps blended, framework, is feasible. The U.S. is uniquely positioned for this approach because of its connection to first-world APEC and European nations. Specifically, the U.S. is a member nation of APEC and also maintains significant cultural similarities and economic links to European nations. Additionally, the U.S. already is heavily involved with the World Bank and the OECD in education research, which contributes to the spread of an "institutionalized world culture" of education.<sup>184</sup> The U.S. and other wealthy nations produce the most education research, which in turn allows them to have the most influence on education trends.<sup>185</sup> Most importantly for U.S. impact on APEC nations, western (U.S. and European) higher

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<sup>184</sup> Wiseman & Baker, *supra* note 33, at 5.

<sup>185</sup> *Id.* at 6.

education credentials are given the most weight and legitimacy around the world.<sup>186</sup> By blending the experimental efforts in European and APEC nations, the U.S. could provide the missing link in harmonizing higher education across the globe.

Implementing a blended harmonization framework could provide U.S. higher education with an opportunity for mutually beneficial partnerships with other nations' higher education systems and individual institutions. European harmonization frameworks are still at an experimentation stage and have not been universally adopted, leaving room for U.S. influence. The U.S. system, specially adapted to encompass diverse institutions and function on a voluntary basis, is ideal for international expansion.

The U.S., APEC, and E.U. nations have already demonstrated sufficiently similar guiding principles in terms of education. All three place a premium on global competition and preparation for the changing job market, as well as emphasize goals of quality and equity in education generally.<sup>187</sup> The U.S. must consider all of the domestic veto players that might object to international participation. Adding an international dimension to higher education necessarily requires that the federal government act as liaison between the domestic and the international education communities.<sup>188</sup> Through NACIQI, however, the federal government already has in place the beginnings of a representative group. Additionally, organizations like CHEA

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<sup>186</sup> *Id.*

<sup>187</sup> Laurie Halverson, WHITE HOUSE, <http://www.whitehouse.gov/issues/education> (last visited Mar. 28, 2013) ("Our nation's economic competitiveness and the path to the American Dream depend on providing every child with an education that will enable them to succeed in a global economy that is predicated on knowledge and innovation."); *Strategic Framework for Education and Training*, EUR. COMM'N, [http://ec.europa.eu/education/lifelong-learning-policy/framework\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/framework_en.htm) (last updated Feb. 7, 2013) ("Politicians at the European level have recognised that education and training are essential to the development of today's knowledge society and economy."); *4th APEC Education Ministerial Meeting (AEMM) in Lima Peru*, ASIA-PACIFIC ECON. COOP., [http://hrd.apec.org/index.php/4th\\_APEC\\_Education\\_Ministerial\\_Meeting\\_%28\\_AEMM%29\\_in\\_Lima\\_Peru](http://hrd.apec.org/index.php/4th_APEC_Education_Ministerial_Meeting_%28_AEMM%29_in_Lima_Peru) (last visited Mar. 28, 2013).

<sup>188</sup> Richard F. Grimmett, *Foreign Policy Roles of the President and Congress*, U.S. DEPT. OF ST. (June 1, 1999), <http://fpc.state.gov/6172.htm>.

have already been strengthening their international dimension in response to a globalizing world.<sup>189</sup>

Because of the complexity of American higher education, a combined ground-up and top-down approach to development would be preferable. The federal and state governments, regional accreditors, and other stakeholders such as professional organizations would need to be persuaded of the necessity of framework development. Because effective persuasion could require significant time and resources, higher education organizations and accreditation agencies ought to develop a framework at a series of Bologna-style meetings. Institutions should be allowed to opt out of the framework to retain their independence. The federal government may consider offering financial incentives to institutions for participation, but this is not recommended. Financial incentives may present institutions with a false choice because they cannot in reality afford to dismiss a valuable funding source. Therefore, any financial incentives would ensure a largely top-down approach which might not reap the full benefits of the U.S.'s diverse higher education system.

U.S. policymakers strive to maintain America's leadership role in higher education.<sup>190</sup> A blended global qualifications framework would allow the U.S. the control it needs to participate in international harmonization while permitting other nations to share and contribute to the wealth of knowledge in the U.S. However, there are crucial concerns over taking a leadership role. Domestically, one of the higher education community's main concerns has been the loss of the value of a uniquely American, diverse higher education system. This concern could be addressed by requiring that developers and implementers are experts who are sensitive to the many unique qualities of higher education. A framework that seeks to incorporate the diverse higher education systems of nations around the world

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<sup>189</sup> CHEA *International Quality Group*, COUNCIL FOR HIGHER EDUC. ACCREDITATION, <http://www.cheainternational.org/default.asp> (last visited March 17, 2013).

<sup>190</sup> CHERYL OLDHAM, SEC'Y OF EDUC.'S COMM'N ON THE FUTURE OF HIGHER EDUC., *A TEST OF LEADERSHIP: CHARTING THE FUTURE OF U.S. HIGHER EDUCATION* vi-vii (2006), <http://www2.ed.gov/about/bdscomm/list/hiedfuture/reports/pre-pub-report.pdf>.

would by necessity be broad and likely encompass the unique qualities of American higher education. Internationally, an American-led framework could easily lead to the dominance of American values in higher education, which in turn could lead to the homogenization of higher education globally. These concerns should not be minimized and should weigh heavily in favor of U.S. involvement in this area.

## 2. *Option Three*

The U.S. is also uniquely positioned to make a tremendous show of good faith to the international community by engaging cooperatively with international organizations as a key partner. Rather than taking the lead, the U.S. can take steps to join existing initiatives that best support its goals. With the preeminent higher education network in the world, the U.S. is in a position to be influential without being aggressive. American universities are more likely to attract top students from around the world and influence the higher education of other nations.<sup>191</sup> The U.S. manages to combine both quality and quantity of universities, while maintaining an atmosphere of academic freedom and freedom of expression that fosters diversity and growth.<sup>192</sup> Significant time and resources would be necessary to emulate this approach in other nations.<sup>193</sup>

The benefits of an American cooperative effort with other higher education systems are plentiful. By demonstrating a willingness to compromise, cooperate, and contribute our nation's strengths to a global system, the U.S. makes a show of good faith to the world that could be invaluable in future international relations. Additionally, other participating nations are aided by increased mobility to the U.S. for students and educated workers. With increased mobility, students from all nations have the opportunity to learn skills and different perspectives abroad that can contribute to

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<sup>191</sup> Phil Baty, *The World University Rankings: Measure by Measure: the US is the Best of the Best*, TIMES HIGHER EDUC. (Sept. 16, 2010), <http://www.timeshighereducation.co.uk/world-university-rankings/2010-2011/analysis-usa-top-universities.html>.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

the human capital at home. The U.S. Supreme Court has recognized the importance of diversity in higher education for contributing to a “robust exchange of ideas.”<sup>194</sup>

The same parallels between the U.S. and other nations that support the feasibility of an American-led blended framework can also support the feasibility of U.S. cooperation with other nations and international organizations. Because this is an equally viable alternative to taking the reins of international initiatives, the next step should be significant investigation on the part of U.S. policymakers into the will and capacity in the U.S. for harmonization. Research should focus on joint studies with key players like the E.U. and APEC. The U.S. should consider how countries outside of APEC and the E.U., especially South American and African nations, could fit into the new scheme. Additionally, research into a future framework should reflect a growing movement toward massive open online courses (MOOCs) and the potential for the traditional structures of higher education to be revolutionized as a result of the internet. Armed with knowledge, the U.S. will be better equipped to choose an appropriate approach to the international higher education of the future.

Technology and increased mobility have contributed to greater interaction between national economies, politics, and cultures. As a leader in higher education, the U.S. is in a position of influence for the future of international higher education mobility initiatives. Participation and leadership in this as yet unsettled area of higher education should be a part of a broader push to revolutionize higher education through technology and a global perspective. Higher education institutions should not fear losing their unique characteristics in the face of globalization, as part of this broader push should include enhancing the connection between institutions and their surrounding communities to combat the pull of homogenization. Higher education must bear the tension inherent in globalization between viewing other nations as competitors or as respected, equal partners. Though controversial, globalization can occur peacefully and bring positive change if nations are willing to proceed thoughtfully and are open to compromise. The U.S. should

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<sup>194</sup> *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).



be training a generation of empathetic leaders for a globalized world, and the efficient movement of students across borders is crucial to exposing future leaders to one another in a structured learning environment.