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Recent Trends in European Legal Education: the Place of the European Law Faculties Association*

Dr. Dr. h.c. Norbert Reich**

I. Changing Paradigms in European Legal Education

Legal education in Europe has undergone important changes in the last decade, even though we cannot observe a convergence with the American model of professional education so ably monitored by the AALS. The changes are superimposed to some extent on the traditional model—or, should I say, models—of legal education in different European jurisdictions.

A. *The Traditional Model: Nationalism, Protectionism, and Regulatory “Overkill”*

The traditional model of legal education in Europe was characterized by a great diversity. Legal education depended, to a great extent, on national policies with regard to law in general and the legal profession in particular.¹ Legal education in Universities on the continent derived from the Roman law tradition – law being regarded as an academic and scholarly discipline to be taught by a specialized and highly prestigious professorial staff. In common law countries this was not always so—many English Law Lords never had any University law training!—and it became a result only of developments in recent years.

While on the continent the subject matter of legal studies was still quite uniform till the 18th century, the nationalistic wave coming from the French revolution and the codification movement had a special impact on

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1. Unfortunately including the denial of the rule of law and human rights principles by national-socialism, soviet socialism, fascism, and the like.

legal education: it became an integral part of the nation state. In Germany and Italy, this “nationalization” only came later and was paralleled by a strong romanistic tradition in legal research and teaching which today is withering away. The *ius commune*-tradition of the *usus modernus* gradually became lost.

This focusing of legal education on the nation state resulted in strong tendencies towards protectionism and closure of the legal profession: legal education was to be conducted in one language (with remnants of Latin where Roman law was and is still taught); in one legal system, namely the national law (with little possibility for specialization in international and comparative law) giving exclusive access to the national legal profession, namely as a lawyer. Other branches of the law usually required some additional training, this again being restricted to nationals. There was no free movement in the legal profession; to the contrary, in fact, it remained one of the most protected and national professions until quite recently. Only academic titles like the doctor's degree found mutual recognition, but these usually were of no importance for acquiring access to the respective legal professions.

The recruitment of law professors by university law faculties with a monopoly in legal education followed this nationalistic and protectionist path despite high academic and scholarly requirements. There were exceptions in areas that were more internationalized—e.g., comparative law, history of law, legal theory, public international law (including European law)—but these subjects were frequently regarded as exotic and as not really qualifying for access to the legal profession. What was wanted, and expected, were teaching and training in such core subjects as civil law and procedure, criminal law and procedure, administrative law, and, later, constitutional law.

Interestingly enough, the European model—if there is such a model at all—was uniform in one respect: education in the university, or rather in specialized law faculties, was always an *undergraduate education*. The United States model of legal education as post-graduate education was never accepted on the continent. Nor did it prevail in the common law jurisdiction of the U.K., even though the professional orientation was stronger than on the continent.

Within this model of undergraduate university education, the national and sometimes regional systems differed greatly (e.g., with regard to length of studies and the university and/or state exams, specialization or uniformization of the model-type of jurist, practical training, etc.). The following overview may be helpful to the American reader to understand the diversity of “European” legal education.²

2. The following chart has been taken from Hildegard Schneider, *Die Ausbildung*

Country	Diploma required	Length of University studies	Length of professional training	Total length of education
Belgium	Licence en droit/licenciaat in de rechten	5	3	8
Denmark	Cand iur.	5	3	8
Germany	Referendar- (= first state) Examen	3,5 (de facto 4,5)	2 (+ waiting time)	5.5 (de facto 8 years average)
Finland	University-diploma	5	4	9
France	Maitrise en droit	4	3	7
Greece	University diploma	4	1,5	5,5
Ireland	Law degree	3	2	5
Italy	Laurea in giurisprudenza	4	2	6
Netherlands	meester in de rechten	4	3	7
Austria	Mag. iur.	4	5 (!)	9
Portugal	Lic. en direito	5	1,5	6,5
Sweden	Jur. kand.	4-5	5 (!)	9/10
Spain	Lic. en derecho	5	0	5
UK/England	Law degree	3	3	6 (solicitor)

The surprising result is the *extraordinary length of legal education* in most European jurisdictions. With the exception of the UK, Ireland, and possibly Spain, a young lawyer will enter the profession only when coming close to his/her thirties!

Another common trend in European legal education should be mentioned: there is no other profession as *tightly regulated* as the legal profession, whether this is monitored by the state, the judiciary, or by professional associations like the bar. Regulation increases, as we know from economic theory, *barriers to entry*, even though it is usually justified on quality grounds that may have a hidden protectionist objective. One may indeed find the presence of a regulatory overkill in European legal education, which only lately has been challenged and modified. In recent years, educational content regulation has been softened due to the case law of European and national Constitutional courts, mostly relating to freedom of speech and free provision of service issues, but entry is still tightly controlled by national regulations which only recently have become Europeanized under the impact of secondary Community law.

II. New Trends: Europeanization, Competition, and De-Sovietization

The most important trends in European legal education—if there is such a thing at all!—could be regarded as its Europeanization and the impact of competition. The Europeanization movement has come from the European Union, the competitive element from American law schools. For Central and East-European (CEE) countries there should at least be mentioned what might be called “de-sovietization:” the result of establishing a new legal system based on democratic values and rule-of-law principles replacing the authoritarian system derived from Soviet times. A brief and somewhat simplistic overview follows.

A. *Europeanization: Mutual Recognition and Student Mobility*

The Europeanization of legal education comes from two sides: from the both the University side and the side of the legal profession. With regard to the University side, the programs on student—and teacher—mobility known as ERASMUS-SOCRATES also had an important, though quantitatively limited impact on legal education. The idea was that law schools cooperate across borders in the EU, as well as with later accession countries, to allow for student exchange and mutual recognition of credits through the ECTS (European Credit Transfer System). The EU would give financial incentives to students, teachers, and law faculties in order to promote this process but would not intervene in the curricula or the accreditation process. An optimistic estimate says that about 5 % of EU-law students participated in these programs in the last 10 years. The impact on curricula was more indirect than direct: in order to make their law schools more attractive, Europeanized studies had to be developed, frequently in English, and the traditional nationalistic approach to law studies had to be broken up.

On the other side, namely access to the legal profession, the recognition directives of the EU, adopted after long and protracted negotiations in the Council and Parliament (e.g., 89/48/EEC of 21.12.1989³ and 98/5/EC of 16.2.98⁴), allow a lawyer established in one EU country to practice law in another EU country under his home and/or host title, either after an additional exam or period of study determined by the host country, or after three years of actual and continuous legal practice there. I do not know how many lawyers have made use of these possibilities, but it seems that the programs tend to play a role mainly within neighboring jurisdictions, particularly in the UK and Ireland, France and Belgium, and Germany and Austria, where there always have

3. OJ (Official Journal of the EC) L 19/16 of 21.1.89.

4. OJ L 77/36 of 13.3.98.

been very close historic, academic, and linguistic ties in legal education. The remaining directives on freedom to provide services only cover random activities and do not allow for genuine mutual recognition. It is too early to say that the recognition directives have been a failure or a success, but they have not had the liberalizing effect on entry into the legal profession, and in the transformation of legal education in the EU, that one might have expected. But this may change.⁵

B. Competition

The opening of the legal profession and legal academia to competition has probably been the most dramatic development in European legal education in the last ten to fifteen years, and it is here that the American model has had the greatest influence. The first such development concerned the type of studies themselves, especially the popularity of LL.M. programs offered by highly qualified U.S. law schools and which host some of the best European law students. Many European law faculties followed suit and have now developed their own post-graduate programs. These studies are much more open, competitive, and specialized than the traditional legal education. They are now an attractive and popular addition to what are still nationally oriented undergraduate law studies. In its *Kraus* judgment of 1993,⁶ the European Court of Justice officially recognized the LL.M. programs and titles offered by EU law schools as part of professional career planning and training, even though they do not, as such, give access to the legal profession.

Another element of competition has been the expansion of the big U.S. law firms (mostly via mergers with British, Dutch, and German firms) which require a different type of lawyer: one who is proficient in both English and his or her native language, who masters international transactions, and refers them back to national law (i.e., taxation, company, environmental, consumer law, and mergers and acquisitions), and who is aware of the European and global impact of his or her professional work. The traditional national model of legal education is much too narrow for this new profile of an internationally mobile lawyer.

Of course the need to feed the national legal profession with lawyers, judges, prosecutors, state officials, company executives, and interest group lobbyists, trained in specific legal systems, will continue to

5. For a comprehensive discussion of the issues involved, see Julian Lonbay, *Lawyer Ethics in the Twenty-first Century: The Global Practice Reconciling Regulatory and Deontological Differences: The European Experience*, 34 VAND. J. TRANSNAT'L L. 907 (2001).

6. Case C-19/92, *Kraus v. Land Baden-Wurtemberg*, ECR I-1663 [1993].

exist. In my opinion, there will be a *co-existence* between a more European/international type of lawyer on the one hand, the European complement to the Wall Street lawyer, and of the traditional “main street” lawyer on the other, from which the national legal staff is recruited. Legal teaching and practice may have to serve both needs, and this is only possible via more specialization, cooperation, and internationalization/Europeanization.

C. *De-Sovietization*

This term is meant to describe a process that has occurred in the past 10 years in the CEE-countries which became fully independent after the collapse of the former Soviet block. These include Poland, the Czech Republic, Hungary, and the Baltic States.⁷ Most of them expect accession to the EU very soon and have concluded Europe Agreements for that purpose. Programs for legal change and transition have been initiated both by the U.S. (CEELI) and the EU (PHARE), programs in which this author has participated in a number of countries.

The impact of this dramatic change in substantive law on legal education is, however, not yet clear. On the one hand, most countries have developed new models of legal studies. Private law schools financed through substantial tuition payments of their students have become very popular – probably more popular in the CEE-countries than in the EU! Not all countries are as lucky as the Baltic States to have found donors for a highly qualified post-graduate education which does not charge tuition fees, as is the case with my own Riga Graduate School of Law (RGSL), which is financed by the Swedish government, the Soros Foundation, and the Latvian government for a period of 10 years.

The old and sometimes very traditional law faculties are, however, coping with an inadequate personnel structure inherited from Soviet times; many of them have not yet found their place in modern legal education. Because they are generally under-financed, with students and professors alike finding it necessary to work in other jobs outside the University in order to earn a living, there is little time left for genuine academic research; consequently, there is little output by bright young academic teachers.

Access to the legal profession is still somewhat opaque in the CEE countries, and only a few jurisdictions have developed rules of their own in this respect. It was perhaps easier to shake off the body of law inherited from Soviet times than the persons who administered it. On the

7. Cf. Krystian Complak, *The Past, Present and Future of the Legal University Studies in Poland*, 0 EUR. J LEGAL EDUC. 32 (2001).

other hand, there is a great need for qualified legal services, especially in establishing market relations and preparing for membership in the EU.

III. The Role of the European Law Faculties Association

A. *The Need to Create an Umbrella Organization of European Law Faculties*

The European Law Faculties Association (hereinafter “ELFA”) can be said to be the fruit and the result of the above mentioned new trends in European legal education.⁸ The Europeanization of law studies through the ERASMUS/SOCRATES programs created the necessity for closer cooperation between European law faculties, a willingness to exchange experiences with such new instruments as the ECTS,⁹ and the joint development of curricula attracting foreign and domestic students alike, with a special emphasis on European law. In response, ELFA was founded in 1995 and has created its own infrastructure. It is centered around a Board of five law professors from member faculties, with board seats renewed every year. A President is elected for a term of one year. The ELFA-Secretariat is located in Leuven (close to Brussels, the capital of the EU), one of the oldest, most prestigious, and “europeanized” law faculties. ELFA’s activities are highlighted by the annual general assembly taking place in the last weekend of February at the law school of the acting President. The most recent assembly was in Riga, the first time ELFA moved east to a CEE country.

Unlike AALS, ELFA cannot, as of yet, base its work on a common model of legal education. It must, therefore, adapt to the diversity and regulation described above, even though suggestions for a more European and competitive approach are under consideration. ELFA must rely on the voluntary input of its members—with all their different historical, legal, and linguistic traditions—and there exists no single ELFA language, even though English has unofficially become the working language, while German, French, and Spanish are official languages.

ELFA does not take part in the accreditation and evaluation process of law faculties in Europe. This matter is exclusively for the respective

8. For an overview of the structure and activities of ELFA, see Norbert Reich, *Bericht über die European Law Faculties Association* [Report on ELFA], ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT, 2001, 180-186.

9. Cf. an informative paper by Frans Vanistendael, *Problems of the ECTS-system: The Experience at KU Leuven*, ELFA NEWSLETTER, No. 1, 2001, at 56; see also Joergen Albaek Jensen, *Introducing and Applying the ECTS-System*, *id.* at 59; see also Steve Adam, *Credit Recognition and Transparency in Transnational Education*, 0 EUR. J. LEGAL EDUC. 35 (2001).

member country bodies which are as diverse as legal education itself. This is, nonetheless, regrettable in a process of Europeanization under competitive conditions: it is clear that there must, eventually, be common standards for the quality control of European legal education, especially so if the objective is compete in the international market for legal services. If ELFA hopes to bring about such access it may be fortuitous to start with scrutiny of the different exchange programs under the ECTS system and with a comparative evaluation of the LL.M. programs which are now abundantly offered by law faculties.¹⁰

ELFA has supported—through grants of the EC Commission—research, exchange, and teaching projects between member faculties. A *European Journal of Legal Education* has been founded. To overcome the nationalistic, protectionist, and regulated atmosphere of legal education in Europe is not an easy task!

ELFA extension to the CEE countries, and beyond, is a reflection of the fact that interest in its work is particularly strong: the need to exchange information, to cooperate in law teaching and research, and to europeanize curricula is felt everywhere.

B. The So-Called Bologna Challenge: ELFA's Reaction

The model of higher education in Europe has, as of late, come under considerable criticism insofar as it lacks transparency, mobility, and competitiveness in comparison to the U.S. model; in that it does not attract enough qualified students or, when it does, keeps them too long in the University; in that it produces remarkable drop-out or failure numbers; and, in that it does not live up to the standards demanded by an ever-changing international, professional, and academic environment. Such criticism is not specifically directed at *legal* education, even though in most ELFA member countries there is an intense debate on the future of traditional legal education. Reform models, it seems, are being experimented with everywhere.¹¹ ELFA seeks to influence and steer this process as far as legal education is concerned. But it must proceed cautiously, step-by-step, out of respect to the idiosyncrasies of its member faculties. It cannot simply propagate a uniform new model of European legal education. ELFA must (and will) respect the diversity of legal education in Europe.

10. Suggestions of this nature have been made by Frans Vanistendael, *Legal Education in Europe and the Challenge of the Sorbonne-Bologna-Declaration*, ELFA NEWSLETTER, No. 1, 2001, at 48, 51-54; see also Norbert Reich and Frans Vanistendael, *Bologna und der Euro-Jurist*, ZEITSCHRIFT FÜR RECHTSPOLITIK, 2002, 268-272.

11. With respect to Germany, see Johannes Riedel, *The Reform of Legal Education in Germany*, 0 EUR. J LEGAL EDUC. 3 (2001).

The so-called Bologna-process in Europe is intended as an answer to the deficits detected in higher education.¹² It started in 1998 as an initiative of European University Rectors. The group assembled in Paris, home of one of the oldest and most prestigious European Universities. It was followed, one year later, by the European Ministers of Higher Education, who assembled in Bologna, an even older place of higher education with particular importance for law. The 1999 Bologna Declaration of the European Ministers of Education suggests, to put it simply, a restructuring of higher education by a uniform 3/5/8 year sequence of degrees (e.g., the “Bologna Process”), following suit with the classical American college and university education model. It therefore starts with a bachelor’s degree, possible after three years of studies. It then offers, for more qualified students, a master’s program of an average of two years. After three more years of study and research, the result is a doctoral degree, intended for those wanting to enter academia. Obviously this new model of awarding degrees is not an end in itself: the goal is to increase the quality, transparency, and competitiveness of a truly *European area of higher education* and, at the same time, considerably shorten the length of studies and reduce drop-out rates.

The Bologna Process, regularly nourished by biannual meetings of the European Education Ministers, has had its first successes in some countries that are trying to restructure their higher education systems by offering bachelor’s and master’s degrees, and abolishing the old and somewhat chaotic diversity of academic titles. Universities in other countries are keeping their traditional grades and degrees, but complement them with the new scheme.

Of course, there is also widespread criticism of the Bologna-model, even though a general and somewhat diffuse agreement can be found on the question that *something* must be done to improve higher education in Europe, make it more competitive, and to combat high drop-out rates.

C. *ELFA’s Inquiry Into the Specificities of the Bologna Process for Legal Education*

What is the place of legal education in the Bologna model? It seems that professional education has not seriously interested the European ministers of education; hence, ELFA took the initiative to point out some specific points of the Bologna declaration regarding legal

12. For a good overview, see Inge Knudsen, *Introduction to the Sorbonne Declaration*, *id.* at 45. For a point of view from the United States, see Mary Kay Kane, *An American Perspective on the Bologna Declaration*, ELFA NEWSLETTER, No. 1, 2001, at 62; see also Carl Monk, *Comments . . .*, *id.* at 64.

education. The following paper of the ELFA board,¹³ parts of which were initially presented, in May 2001, to the European Ministers of Education and of Justice, as well as to the responsible EC Commissioners themselves, has been submitted to a vote by its member faculties.

I quote the most important parts of this draft declaration:

The last three annual conferences in Amsterdam (24-25 February 2000), Milano (23-24 February 2001) and Riga (22-23 February 2002) were devoted to an assessment of the "Joint Declaration of the European Ministers of Education, convened in Bologna on the 19th of June 1999" (hereafter referred to as the Bologna Declaration) and its consequences for legal education in Europe. The papers delivered at these conferences and additional materials have been published in the ELFA Newsletter and in the recently started *European Journal of Legal Education*. ELFA proposes to take the following position on the philosophy underlying the Bologna Declaration and the proposals elaborated within it.

ELFA is very much in favour of the spirit underlying the Bologna Declaration, namely a general concern about the quality, transparency and mobility in European (legal) education, an increase in competitiveness of European institutions of higher education in a globalising world, the achievement of greater compatibility and comparability of systems of higher education, a reduction of student drop-up rates in law faculties, and an orientation of university degrees also towards needs of the changing labour market, whilst always maintaining high standards in academic education.

The Bologna Declaration is usually associated with the so-called bachelor/masters/doctorate (B/M/D) model of awarding degrees in higher education according to which the cycle of studies is to be divided into

- A three year undergraduate study resulting in a *bachelor's degree*
- A one or two year(s) post-graduate programme leading to a *master's degree*
- A three year *doctoral programme*.

ELFA recognises, as has particularly been demonstrated during its Riga conference (a summary of the debate is on the ELFA website

13. For ELFA's statement concerning the Bologna-Declaration of the European Ministers of Education of 1999, see *For a European Space of Legal Education*, available at http://elfa.bham.ac.uk/ELFA/Bologna_Declaration_1999/bolognafinal.htm (last visited August 15, 2002).

and in the Summer 2002 issue of the Newsletter), that many countries and many of its member faculties have already undertaken or are about to undertake changes of their curricula in order to fulfil the requirements of the Bologna Declaration. This process needs careful monitoring and evaluation to avoid a drifting apart of the different initiatives.

In the overall appreciation of the changes undertaken, it should not be forgotten that the creation of a European space for higher education as envisaged by the Bologna Declaration should also lead to a *European space of legal education*. However, a European space for legal education is only realistic if it is paralleled by a *European space of professional practice in law*.

In this spirit, ELFA wants to draw the attention of those responsible for managing and reforming legal education in the countries of its member faculties to certain aspects which, in its initial view, have not yet adequately been covered by the Bologna Declaration. ELFA also makes some proposals of its own for a more Europeanised system of legal education.

1. The Bologna B/M/D model of division of higher learning has the advantage of a certain simplicity and transparency but is not completely compatible with the needs and conditions of professional education and training, e.g. in law. ELFA urges the responsible persons engaged in the process of implementing the Bologna Declaration to devote more attention to the specific needs and standards of professional education. For legal education this is all the more important since the mutual recognition of diplomas and free establishment of lawyers has already been regulated by EC directives 89/48/EEC and 98/5/EC. It may therefore be useful to co-ordinate and make transparent, without trying to harmonise them *strictu sensu* on a European basis, the minimum standards of academic and professional training allowing access to the legal professions. This should also help to avoid distortions of competition in the exercise of the legal professions which are now provoked by different requirements and different length of study and training in law.
2. In considering the recommendations contained in the Bologna Declaration, their most important impact on legal education as offered by ELFA member faculties would be the introduction of the possibility of obtaining a *Bachelor* degree after three years of higher education in law – a possibility

which already exists in the UK, Ireland and France but which is not accepted by most European jurisdictions. Some countries and some member faculties have in the meantime created or are considering creating the possibility for law students to obtain a Bachelor degree in law after three years of study as a sort of “fast track” education. However, this degree will not and cannot give immediate access to the legal profession (as a lawyer, judge, state official, company or organisation law expert). *All* (except Spain, where plans are advanced to introduce it) *European jurisdictions* require substantial additional theoretical and/or practical training of usually a minimum of two years, in several jurisdictions even more. It remains to be seen whether a general framework can be established for all European jurisdictions (despite many peculiarities in their legal systems and therefore law studies) within which a law student can be admitted to practice law. Concrete proposals are developed [below].

3. Whether these two phases of legal education (the undergraduate and the graduate part) should be finished with separate Bachelor’s and Master’s degrees must remain subject to further discussion and finally to the decision by those competent in the countries of ELFA’s member faculties. Many member faculties of ELFA already award a Master’s degree as an *additional diploma* to students already trained in law. These are often based on a one year degree programme documenting specialised legal or interdisciplinary training improving the job opportunities of the degree holder (e.g. LL.M. EUR, LL.M. Taxation, LL.M. Int. Law etc.). It is submitted that this type of master’s degree can be integrated into the Bologna model of legal education. The European Court of Justice has recognised the importance of such an additional degree for the free movement of persons in the European Union in the *Kraus* decision of 31.3.1993.
4. The Bologna Declaration is silent about two further important points in the current debate on higher education, the first one being access to higher education (in law). Some but not all jurisdictions restrict or severely control *access to legal studies* e.g. by *numerus clausus*, entrance requirements, mid-term exams etc. No uniformity exists with regard to access to law schools in Europe, and it seems difficult to imagine that this will ever be possible. ELFA’s prime concern has always focused on student and teacher mobility within the existing ERASMUS/SOCRATES framework. It is therefore paramount to ELFA that the consequences of the Bologna

Declaration on student mobility are taken into consideration. As a rule, every student admitted to law school should be allowed and encouraged to study at least one semester in a foreign law school before being awarded a degree in law.

5. The second point on which the Bologna Declaration is silent concerns the **financing of higher education**. Most European jurisdictions adhere to public funding, but this consensus seems to be withering. In Germany, a private law school has been founded in Hamburg (Bucerius School of Law) where access is highly regulated and considerable tuition fees (with the possibility to obtain scholarships) are charged. Private law schools financed by tuition fees are becoming increasingly available in Eastern European countries (e.g. Poland, Estonia, Hungary, Czech Republic). ELFA is worried that financial constraints in all European jurisdictions may induce governments to pull out of public responsibility for the financing of undergraduate education (including law) which would only increase the indebtedness of young law graduates and make more difficult their later success in the professions. ELFA would welcome a clear commitment of the European education ministers not to change the existing public financing of undergraduate studies and they should maintain and improve it for post-graduate legal education.

6. ELFA is currently planning to undertake an inquiry among its member faculties on the practical experiences with the **ECTS system** and its development from a credit transfer to a credit accumulation system. At the moment the existing schemes of grading and assessment in the study of law vary considerably among European jurisdictions, and simple solutions to overcome these differences will not easily be found. In our opinion, considerable work still has to be done to extend the ECTS system as a true and reliable indicator of quality in higher education.

If European legal education wants to compete with the highly successful US-American system of education for lawyers, a number of additional and more courageous steps have to be taken which will need a careful discussion (which has already been started by ELFA during its annual conferences in Amsterdam, Milan and Riga and which will continue on-line at the ELFA forums and at Birmingham conference in February 2003).

Little attention has been paid so far how the bachelor and the master's programmes can be organised so as to avoid unnecessary

repetition of subjects. The following proposal is put up for discussion by members of ELFA faculties:

- The bachelor part should be devoted to a *comprehensive study of the national law* of the respective faculty. It should focus on essential subjects like constitutional, administrative, criminal and civil law and procedure to be studied more under *methodological* and less under content related aspects. There should be enough room to allow for optional courses for students at least from the beginning of the second year. The bachelor exam should be possible after *three years*, but some countries may want or need a longer period for awarding the bachelor's degree which however in no case should exceed four years.
- The master's part should consist of *European Community and Human Rights Law* as well as of "*generic*", i.e. "Europeanised" and "internationalised" courses on constitutional, administrative, commercial, intellectual property, environmental, competition and/or consumer law. Faculties will have to develop their own profiles and compete for their models. This part should not exceed *two years* and could terminate with a special master's exam and degree which should be recognised EU-wide as such.
- This proposal would be without prejudice to the schools of law that already include the suggested masters' topics in their undergraduate law degrees (primarily schools in the UK, Ireland and France).
- There have been suggestions to turn this schedule "upside down": to start the bachelor's programme with "generic" and European subjects, and later to concentrate on national law during the master's programme, similar to US law schools. In the opinion of ELFA, such a model now would be premature on a general scale, but could be tried out by some faculties as pilot projects. It would also require complete new teaching materials, some of which already exist, e.g. in tort law as prepared by the working group under the direction of Prof. Van Gerven, or in contract law using the principles of "European Contract Law" under the editorship of Prof. Lando and Prof. Beale.

The Bologna model, if carefully implemented and monitored as suggested above, would also give a chance to develop a genuine cross-border model of European legal education which is recognised

ex lege in two jurisdictions:

- The Bachelor degree could be obtained in the students' "home jurisdiction" and should in principle allow him/her, after appropriate additional practical training to be determined by the state of his residence, to practice law there.
- The Masters' degree received in the jurisdiction of another EU country should give immediate access to professional legal training in this country without the cumbersome and lengthy process of directives 89/48/EEC and 98/5/EC. This would of course require that the masters' programme is tailored so as to allow an understanding (not a detailed knowledge!) of the law and the language of the host country of the student already holding a bachelor's degree from his home country.
- This cumulation of degrees would require a co-operation between two law schools from different EU/EEA countries which is already taking place via pilot projects between Groningen/NL and Bremen + Oldenburg/Germany, Cologne and Paris II etc. which award a joint bachelor's /master's degree purporting to grant access to the legal profession in both participating countries without further exam requirements, but still allowing for practical training periods to be determined by the host jurisdiction.

The Bologna model of higher education, adopted to the specific needs of a European space for legal education could, in the opinion of ELFA, therefore result in *three different options* which have to be chosen by the participating faculties:

- The *generic LL.B./LL.M. model* (1) would combine basic training in one jurisdiction with a later masters phase concerning a certain Europeanisation and specialisation of graduates; cross-border practice would follow from EU-Directives 89/48/EEC or 98/5/EC.
- The *cross-border LL.B./LL.M. model* (2) is more concentrated on immediately being able to join professional practice training which would then be recognised in at least two countries
- The third model would be the current UK/Irish model(3);

cross border practice following from EU directives 89/48/EEC and 98/5/EC.

It is not up to ELFA to decide which model is the one of the future. Each may be very attractive to different types of students. Much will depend on how faculties organise their basic bachelor's and their advanced master's programme. The competent jurisdictions should allow a certain degree of *flexibility and experimentation*. Professional associations or state examination boards should not put too restrictive a set of conditions upon final access to the legal profession which should be possible *at the latest after six years (3 + 2 + 1 or 4+ 1+1 or 3+1+2)*.

The process of *Europeanisation and flexibilization* of legal education in Europe will need careful monitoring which may eventually result in the evaluation and eventual accreditation of truly European study models. This task should be conferred upon ELFA in co-operation with relevant university and professional associations.

D. Developing a Common Core of Teaching in European Law Faculties: A New Challenge for ELFA?

One of most recent and far-reaching challenges to legal education in Europe is the development of more Europeanized curricula. There is a fundamental debate among legal scholars whether European legal systems are converging or not.¹⁴ In my opinion—and I think most ELFA members share this opinion—the process of Europeanization has progressed rapidly in the last ten years, even though national systems retain their distinctive traits stemming from tradition, culture, and language. The Amsterdam annual meeting, in 2000, was devoted to this subject. In his keynote address, the former Advocate General of the European Court of Justice, Professor van Gerven, singled out a mutual process of *rapprochement* of European and national law. On the one hand, European law via its supremacy and direct effect theories is penetrating the everyday life of people and thereby becoming of practical importance for lawyers and other members of the legal staff. On the other hand, a process of a “common European law” in such areas as constitutional law, human rights, contracts, torts, criminal procedure is developing.¹⁵ Professor van Gerven stressed that there are a number of areas where *Europeanization*—and, to a lesser extent,

14. For an excellent overview of the somewhat exaggerated discussion, see MARKUU KIIKERI, *COMPARATIVE LEGAL REASONING AND EUROPEAN LAW* 63-69 (2001).

15. Cf. Reich, *supra* note 8, at 186.

internationalization—can be felt.

The case law of the European Court of Justice and secondary Community law, most notably directives, have not only had an impact on economic law as such (like competition and the four freedoms), but have entered divergent areas like labor law, environmental law, consumer law, data protection and, most recently, citizenship.¹⁶ European law is not just something to be taught as an optional course at the end of law studies, but has become the *fundamental subject matter* of how people live together and organize their transactions; not only in the EU, but also in the accession states.

The European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights in Strasbourg have become ever more important for the Member States of the Council of Europe, going far beyond the EU itself. Human Rights law has shaped and transformed such different areas as family law, criminal procedure, and election rights. One day it will become the common value of all European states, of their mechanisms of law enforcement, and of the legal position of their citizens themselves.

Beyond the area of hard law harmonization and uniformization, a *soft law common core* of European contract, tort, and personal securities law is rapidly emerging. Such important scholarly initiatives as the General Principles of European Contract¹⁷ and Tort¹⁸ Law have led to a lively discussion on the feasibility of a European Civil Code,¹⁹ which, in turn, provoked an EC-Commission communication on European Contract Law.²⁰ Why not use this valuable material for law teaching? Why not follow the American model and first try to flesh out the *common core* of European (contract, tort, procedural, constitutional) law and only at a later stage teach the specificities of national legislation? Such methods were already used in the Europe of the *usus modernus*, why not return to them today?

Internationalization of law teaching is a consequence of the

16. I have attempted to develop this point in greater detail in Norbert Reich, *Citizenship: Yesterday, Today and Tomorrow*, RGSL Working Paper No. 3, 2001 (copy on file with author).

17. See generally PRINCIPLES OF CONTRACT LAW, VOL. I+ II (Hugh Beale and Ole Lando eds., 2000).

18. See generally EUROPEAN TORT LAW – A CASE BOOK (Walter van Gerven ed., 2001).

19. See TOWARDS A EUROPEAN CIVIL CODE (A.S. Hartkamp et al. eds., 1998); a working group on a European Civil Code has been established by Professor von Bar.

20. Commission's Communication on European Contract Law, COM(01)398 final, available at http://europe.eu.int/comm/consumers/policy/developments/contract_law/index_en.html (last visited Aug. 22, 2002). For a detailed discussion, cf. AN ACADEMIC GREEN PAPER ON THE COMMISSION'S PROPOSAL ON A EUROPEAN CONTRACT LAW (Stephan Grundmann and Jules Stuyck eds., 2002).

globalization of legal Transactions. The Vienna Convention on the International Sale of Goods (CISG), which has been adopted by all European jurisdictions (with the deplorable exceptions of the UK and Portugal!) is a good example of this approach. Areas like transport law, maritime law, universally applicable conflict rules on contractual obligations, and commercial arbitration are already, to a great extent, globalized.

It is not the task of ELFA to work directly in the field of legal education, nor to develop common European curricula. But it will certainly stand at the forefront of those actively participating in the Europeanization and internationalization of legal education. ELFA will go about this without forgetting the rich legal culture from which its member faculties come. It is in this common objective that a more intense cooperation can be developed with its much-admired American counterpart, the *American Association of Law Schools*.