THE FUTURE LANDSCAPE FOR THE GLOBAL UNIVERSITY:

Trends from a Transatlantic Perspective

1. A challenging marketplace

The future landscape for international universities is highly competitive and likely to become increasingly so. This is a strong and growing market as developing nations turn to higher education and research as engines for growth and demographic trends and the prospects of a deepening economic recession in 2012 compel universities in Europe to seek more international students outside the European Union (“EU”). Every university worth its salt regards itself as having an “international” dimension, but in reality many are not sufficiently geared up to meet the global challenge and those which are publicly funded will be subject to the risk of government interference which can easily override headline policy objectives, for example in relation to border security. These factors combined with the unmet demand for higher education in an increasing knowledge-driven world, a shift in student mobility away from the traditional East-West pull, a greater investment by private sector institutions in the global market place and the unprecedented pace of technological change create an uncertainty as to how universities should respond to the new market forces – representing a challenge for all and a threat to many.

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2. UK trends

UK universities have traditionally punched well above their weight and continue to do so in the business of attracting international students and research (see the appendix for an upbeat snapshot of trends in 2010 published by the UK Higher Education International Unit). However, behind the headline facts there is evidence that the tectonic plates are shifting.

In 2003 the British Council predicted a huge growth for UK transnational education and forecast that this would outstrip demand for study in the UK by 2010. A study of figures
provided by the Higher Education Statistics Agency shows that the UK has now reached this significant “tipping point”. In 2009/10 there were 340,000 students on UK transnational programmes outside the European Union. In comparison, in the same year there were just 309,000 non-EU domiciled students on higher education courses in the UK. This represents a growth of at least 70 per cent over the last decade in the number of students on UK transnational programmes. The tightening of UK immigration controls on students entering the UK from outside the European Economic Area (“EEA”) will have contributed to the “tipping point,” and are probably responsible at least in part for the reduction in applications to UK universities from India. These constraints have added momentum to the need for UK higher education institutions to promote transnational education rather than rely on student recruitment into the country.

The recruitment of EU and non-EU students is also set to change. Traditionally the UK has been conspicuously successful in accepting more students from other EU countries than any other member state, but in the EU as a whole the number of young people is predicted to reduce by over 20 per cent by 2020 (Higher Education Policy Institute 2007), and so demographic trends in Europe point to UK universities in the future having to recruit many more students from non-EU countries to make up the EU deficit and a probable drop-off in the enrolment of UK ‘home’ students in response to the economic downturn and the adverse publicity surrounding the recent increase in ‘home’ tuition fees ( effective in England from 2011/12).

As a result of these trends UK Higher Education is adopting more aggressive strategies to maintain its position as a market leader. While the UK at present has a relatively small number of branch campuses abroad (see the appendix and for a more detailed consideration the paper by Nicholas Saunders also submitted to the National Conference), the vast majority of UK universities are involved in overseas delivery. In 2008 it was estimated that at least 65 percent have some form of transnational education activity (Department for Innovation, Universities and Skills study 2008) and this proportion will have increased significantly since then.

‘Transnational education’ (“TNE”), as is the case with so much education terminology, means different things to different people. However, for the purposes of this review the simple British Council definition (“education provision from one country offered in another”) will be adopted so that TNE will be understood as covering a wide range of delivery models including:

- full scale campuses, for example the University of Nottingham in China and Malaysia;
- faculties in “educational villages” /boutique campuses, for example Heriot-Watt University in Dubai’s Knowledge Village and University College London in Adelaide;
- franchising of UK degrees for local delivery/ Twinning arrangements with study in both local country and UK;
- validation of local programmes by UK institutions;
- distance learning programmes, for example the Open University, Oxford Brookes and through international consortia (such as Resource Development International); and
- collaborative delivery with shared input in curriculum, for example joint/double/double/dual degrees.

According to one authoritative source in September 2011, interest in TNE in UK Higher Education has “exploded” with evidence of a varied mix of provision and increased competition. In particular on the back of government programmes, such as the Prime Minister’s Initiative for International Education (“PM12”), the UK-India Education and Research Initiative (“UKIERI 1&2”) and the Development Partnerships in Higher Education (“DelPHE”), there has been a surge of new strategic alliances and partnerships between UK and overseas universities, the majority of which centre on collaboration in a much greater range of countries.

The reasons for this interest lie partly in student recruitment difficulties in the UK ‘home’ market but also in the positive advantages of TNE in internationalising UK Higher Education. Those advantages include:-

(a) providing access to a UK qualification for a wider range of students than traditional methods can reach and meeting goals of increasing access. This has allowed UK institutions to tap into new markets which can be defined as the new emerging middle class in developing countries, and ‘third nationals’ who are drawn to educational hubs such as Singapore, Malaysia and Hong Kong due to the number of UK qualifications available on offer there;

(b) enabling UK universities to export the quality standards of UK education since the programmes have to meet the same quality assurance criteria that is expected in the UK;

(c) in the case of the more successful programmes, developing a wider and deeper range of partnerships beyond the delivery of the programme itself. These include staff exchange, research partnerships and joint development of curriculum. Whereas staff exchanges ensure mutual learning, student mobility programmes are seen as bringing benefits to both international and domestic students as ”global citizens;”

(d) providing an attractive way to diversify funding with domestic recruitment relatively stagnant and, as observed previously, demographic trends pointing to reduction in the number of EU students;
(e) extending the influence of UK Higher Education in globally significant regions, for example by assisting governments in developing their own capacities. This has been explicitly stated by a number of UK Vice-Chancellors, and certainly a presence in South East Asia where the bulk of TNE arrangements are targeted enables wider influence at a research and governmental level to be exerted.

Where do UK institutions find themselves in this competitive market place for international students? Despite the almost universal complaint that the UK government is not doing enough (the absence of any mention of the international agenda in the government’s HE ‘White Paper’ “Students at the Heart of the System” in June 2011 was roundly criticised), Higher Education in the UK enjoys a number of factors which play in its favour compared with other lead countries in the market place for international students: the position of the UK’s research-intensive universities in the international rankings, the respect in which its advanced research degrees are held (see the appendix for a snapshot in 2010), the continuing demand for English taught degree courses, and its short and flexible structure of bachelor’s (three or four years) and master’s (one or two years) degrees. However, the last factor (the bachelor’s/master’s structure), calls for a note of caution since the UK’s competitive advantage is being eroded as the Bologna process takes hold in the rest of Europe (Higher Education Policy Unit 2008). The recent increase in UK ‘home’ tuition fees and (at least until they were radically softened in April 2011) unhelpful UK student visa arrangements have created a more negative impression of UK Higher Education abroad, but overall the UK’s internationalisation policies have proved their worth in attracting foreign students to the programmes of UK universities and this pattern is unlikely to be reversed.

However, alongside this trend there are three powerful counter-pulls – a reducing number of ‘home’ and EU students wishing to study in the UK, competition from the growing number of overseas universities and multiple partnerships, and the spread of private provision as public funding proves insufficient to meet the global demand for higher education. These will be considered below.

3. Global trends

The main trends from a global perspective are a continuing steep increase in the total number of international students (forecast to rise to 8 million by 2025), an enormous and unsatisfied demand for higher education in the developing world (especially China, India and Latin America), a shift from West to East in student mobility, the seemingly relentless advance of private provision and the development of radically new models to deliver tertiary education globally.

International higher education, as measured by the number of mobile students enrolled outside their countries of citizenship, presents itself as the tip of an iceberg. The latest OECD and UNESCO statistics show that only 2 per cent of the total world student population is “internationally mobile”, but that the number of students enrolled in tertiary education has risen by 85 per cent since 2000. The current economic difficulties in
Europe and America do not appear to have staunched the global number of students who are eager to study abroad (although this may change in certain countries which are particularly vulnerable to recession). In the UK, for example, there are estimated to be between 50 and 90 campuses or branches of US universities in addition to campuses established by universities from Iran, Malaysia, Poland, Pakistan and India (Higher Education Policy Institute 2011).

Even more important drivers of change, however, are the emerging new middle classes and national aspirations of China, India and Latin America which have fuelled a voracious demand for educational services. To offer an indication of the scale of that demand, estimates of the number of post secondary student enrolments in Europe are put at 17 million, but China alone has 23 million students representing only 21 per cent of the relevant age group, India has 16 million students with an even lower proportion (13 per cent) of the age cohort in post secondary education (and this delivered by a staggering 18,000 institutions, most small and poorly equipped, compared with only 4,000 institutions in Europe), and in Latin America (especially Brazil, Mexico and Chile) there are 10 million students enrolled, representing 27 per cent of the relevant age group. One major global provider (Apollo Global Inc 2011) has projected a demand for higher education at 262 million student places by 2025.

The People’s Republic of China is an interesting case study. Although China’s universities and colleges award 4 million degrees each year and China has 700 million workers, the country only has 40 per cent of the skilled labourers found in OECD countries. Indeed the shortfall in the supply of graduates has become so pronounced that US companies have rated the lack of qualified Chinese employees as the most pressing challenge of their operations in China (Journal of College and University Law, NACUA, 2010). This confirms the impact of the Apollo predictions mentioned above and the urgency of the challenge. However, the demographics of an ageing population in China suggests that the demand for higher education will begin to peak from 2013 and result in a progressive falling-off in the numbers of Chinese students enrolled on study programmes abroad (1.27 million in 2010/11). China illustrates the difficulty in making long term forecasts and the potential volatility of particular markets.

Turning to the traditional East-West flow of international students, there are signs that the tide is beginning to turn (the Institute of International Education on global education mobility, 2011). Although today’s leading host countries - (in descending order) the US, UK, Germany, France, Australia and Canada - continue to exert strong attractions for international students, their market share has diminished and is likely to continue to do so. China and India in particular are investing heavily in higher education as many countries in the developing world have concerns about the “brain drain,” and education hubs in Malaysia, Hong Kong and Singapore and consortium models in the Middle East such as Quatar are increasingly drawing ‘third nationals’ to study there (see the appendix for the popularity of the UAE as a ‘host’ country for branch campuses and the interest of India in the UAE). So the trend seems to be one where mobile students are likely to choose destinations in or (in the case of education hubs) nearer to their own regions,
rather than the USA and Western Europe, resulting in less of an East-West pull in the
near future and more of a multi-directional flow in the longer term. Indeed, India is in
effect seeking to replicate the entire US and Western European university systems within
the next 10 years (‘The Observatory, Borderless Education’, September 2011), and China
is set to become the biggest international destination for mobile students after the USA
with an annual growth rate of 7 per cent and a projected total number of international
students of at least half a million by 2020 (note in particular President Obama’s “100,000
Strong Initiative” of 2009 to attract more US students to expand their horizons, and
extend the influence of the USA, by studying in China) (‘The Observatory, Borderless
Education’, April 2011).

The leading position of English speaking countries which presently account for 45 per
cent of all international student places is also liable to become less dominant in the
future. English language HE courses offered in non English speaking countries continue to
proliferate and international students already choose from a wider range of destination
countries. Between 2000 and 2008 the US saw its market share reduce from 26 to 19 per
cent and, although absolute foreign student numbers increased in every OECD country,
market shares were also lost by the UK, Germany, Belgium, South Africa and Sweden.
Notable gainers of market share were Russia, Australia, Canada, South Korea and New
Zealand (IIE report on global mobility, 2011). The urgency of the global challenge to
recruit the best international students and staff (and fear of being left behind) is
prompting certain countries to carry out a radical overhaul of their higher education
systems. This is the case in France where President Sarkozy has recently proposed the
reversal of the traditional egalitarian ideal in favour of the creation of an elite “Sorbonne
league” of five to seven “world-class” universities consisting of clusters of non-selective
universities, selective grandes ecoles and independent research organisations (Times
Higher Education Supplement, October 2011).

Another major trend is the growth of private higher education globally as the private
sector has expanded to become “demand absorbing” and traditional sources of public
funding have reduced. Globally the number of students in private institutions is growing
faster than in publicly-owned ones, and the boundary between “public” and “private”
providers has become blurred as funding streams for both come from private and public
sources and privatisation of the publicly funded sector increases (Higher Education Policy
Institute 2011). In the UK five private sector organisations have been granted degree
awarding powers (including notably BPP Ltd which is a subsidiary of Apollo Group in the
USA ) and the Higher Education Statistics Agency has identified a possible 670 private
higher education providers – some of which might be acquired by an overseas provider
as an entry point to the UK ‘home’ market. Significantly both the Apollo Group and
Kaplan (which owns Holborn College in London and is represented in public-private
partnerships with UK universities) are “for-profit” organisations.

But the important observation is that what is beginning to happen in the UK is part of a
much larger global trend where increasingly the private sector expands access by
creating niche offerings, entering new geographic locations, offering different delivery models and serving specific student populations.

4. **Global opportunities**

It is difficult to discern from the mass of articles and sometimes contradictory data hard and fast sign posts, but it can be stated with certainty that the current market for TNE is a growing one, is increasingly competitive and is liable to change in response to demographic changes, government aspirations and student “consumerism.” It follows that any provider of services to international universities, including but not limited to law firms, should establish so far as possible a flexible and networked global capability. The enormous scale of the education challenge worldwide is already propelling universities towards creating highly networked globalised systems. These can consist of multi-campus models such as New York University (40 per cent of its students study abroad at 10 international study campuses), and multi-partner network models, often set up in collaboration with private providers, such as INTO University Partnerships (since 2006 INTO has launched 11 international study centres in partnership with US and UK universities, and in April 2011 announced the opening of two new partnerships with universities in China). An essential ingredient of the new networked, multi-campus systems is the innovative use of the internet and the web. This element will enable the international university of the future to deliver mass global education more effectively than traditional ‘Ivy League’ higher education systems, such as the Group of 8/UK Russell Group, which were designed to operate in single countries for elite or semi-elite entry.

One consequence of this global interconnectivity is that the governance paradigm for the delivery of mass higher education will need to be developed on radically different lines, and this presents an historic opportunity for the major networked players. Three US examples spring to mind – Laureate International University which operates a network of 58 accredited campus based and on-line universities; Kaplan International which through its two units, Kaplan Europe and Kaplan Asia Pacific (note the franchise in 2011 by Murdoch University to Kaplan of over 20 new programmes in Singapore), claims to educate 1 million students at 500 locations in more than 30 countries; and Apollo Global Inc, set up as a joint venture between the Apollo Group and a private equity company, which provides education and training in the UK, Chile, Mexico and the USA. Looking beyond the horizon, these transnational and multi-jurisdictional organisations are likely to be the models for the delivery of mass higher education, and for ever closer collaboration between higher education providers, the private sector and other partners to form the international universities of the future. They will operate as part of a highly networked globalised education system alongside a **cadre** of elite research-intensive universities which enjoy established world-ranking credentials and a larger number of regional universities, ‘clusters’ of universities and education hubs which will reach out to both regional and international communities on a scale which universities founded 50 or 100 years ago in a single country for systems based on elite or semi-elite entry could not have envisaged.
5. Conclusion - the role of lawyers

The limitations of this paper will be clear: the review contains no analysis of trends in international research or of higher education in Western Europe (other than in the UK and fleeting references to other EU member states) or of the Bologna process in Europe; the barriers to the growth of international education, for example immigration controls and the heavy hand of state regulation, have not featured in any systematic way; there has been insufficient time to look at the global “brain wars” for recruitment and retention by top ranking universities of the best staff; and international trends of student “consumerism” and what we mean by “multiculturalism” (a topic to be addressed at the National Conference) have passed by largely unremarked.

However, certain conclusions may be drawn in relation to the role of lawyers in the process of forging a new, robust and networked system of higher education which will be fit-for-purpose in an increasingly knowledge-driven world. Lawyers are traditionally handicapped by being trained in only one legal system. Multi-national law firms have the advantage in this respect provided that they have the capability to identify the common problems and understand how experience in one system may (or may not) be applicable, suitably modified, in another. Legal training has therefore to recognise the increasing complexity of different laws and policies, but also the need for common grounding in fundamental principles and skills. Higher Education law is still in its early and formative stages in many countries and in many other countries is hardly visible. It will develop rapidly as higher education systems grow multi-nationally and across jurisdictions, becoming separate from the state and returning at least in part to the historic roots of learning and research institutions which transcend national boundaries. Bringing higher education lawyers and senior university administrators together from different countries is an invaluable means of increasing a shared understanding of the challenges faced by higher education institutions across a world which is in flux and in need of the benefits to the human condition which higher education uniquely offers.

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APPENDIX – a 2010 Snapshot of UK and International HE trends*

* “International HE in Facts and Figures” (UK Higher Education International Unit, Summer 2010)

UK higher education – a global leader

- The UK sells more brainpower per capita than anywhere else in the world. In 2008, this amounted to £118 billion in knowledge services – worth 6.3% of GDP (The Work Foundation).

- The UK has 1% of the world’s population but undertakes 5% of the world’s scientific research and produces 14% of the world’s most highly cited papers (UUK 2010).

- Higher education institutions are worth £59 billion to the UK economy annually and are a major export earner. Through their international activities they are one of the UK’s fastest growing sources of export earnings, and in 2009 brought in £5.3 billion (UUK 2009).

- There were 248,000 international students (excluding EU) enrolled at UK higher education institutions in 2008/09. There were also 121,000 EU students the same year (HESA 2010).

- Students from India make up 14% of all international students (excluding EU) in higher education in the UK. They are the fastest growing group: the 34,000 in 2008/09 represented a 31.5% increase over the previous year (HESA 2010).

International higher education trends

- More than 2.8% million students were enrolled in higher education institutions outside their countries of citizenship in 2007. This represented 123,400 more students than in 2006, an increase of 4.6%. Eleven countries hosted 71% of the world’s mobile students, led by the United States with 21.3% (UNESCO 2009).

- In 2007 almost half (42%) of postgraduate research students in the UK were from abroad. The UK had 15% of the global share of these students, more than its share of international students generally (UK HE International Unit 2008).

Transnational education

- In 2008/09 there were 388,000 students studying for a UK qualification outside the UK. Of this number 83% were non EU students (HESA 2010).

- In 2009 there were 162 higher education branch campuses operating globally, an increase of 43% from 2006. More than half were American, 11% were Australian and 10% were from the UK. The number of countries hosting international branch campuses also grew in those three years from 36 to 51. There were 11 Indian campuses operating, all but one in the UAE. The UAE remains the most popular host country (‘The Observatory on Borderless Education’ 2009).