INTERNATIONAL LAW ASSOCIATION

NEW DELHI CONFERENCE (2002)

COMMITTEE ON THE TEACHING OF INTERNATIONAL LAW

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SECOND REPORT

This is the second report of the Committee. The first, produced for the London (2000) Conference, was in many ways preliminary. In the last two years, many more branches have appointed members, so that we now are in a position to move forward with our important work.

We communicated with all Committee members in developing our strategy for this report. Further, because of the nature of teaching, i.e., carried out in very different contexts with diverse philosophies, it is essential to understand the actual experiences of members with teaching. We asked members to considering contributing in one of three areas: The Current Status of International Law Teaching, An Effective New Pedagogic Technique for International Law, or Problems with International Law Teaching. More than half of Committee members sent us statements. Not only do these furnish important insights into international law teaching today, but illustrate the broad-based nature of the Committee's work.

Several other important matters are addressed in this report. There seems to be keen interest in developing a website dealing with international law teaching. We attempt to spell out some of the possibilities and risks with such a site. There has been a lively debate about requiring an international law course for law students. In many countries, especially Common Law jurisdictions, international law seldom has been required for the law degree. A section of our report deals with two examples where universities recently have instituted a mandatory course in international law. Finally, we are delighted to have a statement from Professor Anne-Marie Slaughter, Professor, Harvard Law School and President-Elect of the American Society of International Law (ASIL) about their activities and possibilities for cooperation between the ILA and ASIL.

Part I: A Web Site Dealing with Teaching: Problems and Opportunities

John King Gamble, American Branch and Committee Rapporteur

Since the inception of this Committee, there have been a number of discussions about the desirability of creating a website devoted to the teaching of international law. The contributions in this report provided by Committee members show how the web is used in many aspects of our teaching. It seems to me incumbent upon us to think seriously about what niche might exist in the area of teaching. The web already is used extensively in the teaching of international law; the level of usage can only increase. Most research in international law already uses the Internet. Law school faculty in the U.S. and Canada often complain that their students refuse to use anything except electronic sources for their research papers. This produces some strange results. For example, important journal articles written before 1980 are much less likely to be available in fulltext electronic form so they are ignored by students who have this Internet-only mindset.

I believe it is important to understand potential problems with a website. These are evident to anyone who makes even minimal use of the World Wide Web. Good sites, be they for international law or automobile tires, must meet at least three standards:
1. accuracy;
2. up-to-date or at least clearly dated; and
3. ease of use.

Almost every day, I encounter a web site that, at first blush, seems excellent, but is years of out-of-date. Worse still, a neophyte user may be linked to a site that is visually stunning but simply wrong on content. As international law experts, we can sort out the good sites from the terrible ones, but, even for us, this takes time, our most precious resource.

International law teachers already are using the web. Contributions herein from Professors Franckx and Piotrowicz mention how teachers must assist students in dealing effectively with web resources. Even more complex is the issue of whether international law scholars have an obligation to assist a broader audience, i.e., beyond our students, in evaluating international law sites. For example, assume there is a beautiful website "explaining" how the U.N. General Assembly operates as a global legislature passing international law binding all countries in the world. The point is that a website can do great damage by conveying misinformation under the guise of authority. In the pre-Internet age, a high quality, leather-bound book from a pre-eminent
publishing house gave at least some assurance of authority.

Let me suggest some of the functions an international law teaching website might provide, listed roughly in order of difficulty starting with the easiest.

1. bibliography of articles and books about the teaching of international law. This would continue on the bibliography we developed for our first report. We might categorize the entries; additions would need to be made regularly.

2. descriptions of successful teaching strategies. As one can see from this report, teachers have developed a number of approaches that work very well. It would be relatively easy to place these on a website, perhaps categorized according to subfield of international law.

3. course development. When teachers develop or improve their international law courses, it can be enormously helpful to see what colleagues have done in similar situations. A starting point could be syllabi perhaps keyed to leading textbooks.

4. evaluation of electronic sources for international law. ASIL is dealing with this issue. It would be very helpful if scholars could obtain a good, professional judgment about sites for various areas of international law. This would require someone to evaluate the sites according to prescribed criteria.

5. an on-line course introducing international law. I am convinced the experiences and talent are readily available to develop an excellent self-paced course bringing together the best of print and electronic media.

The above list is merely illustrative. There is a huge potential for using the World Wide Web to improve our teaching through the ILA and in cooperation with other associations such as ASIL.

Part II: The Mandatory Course in International Law— Two Examples

While most law schools offer courses in international law, often dozens of them, this is no guarantee students will take those courses unless they are required. Recently, two law schools, the University of Michigan and the Australian National University, have begun to require international law of all their law students. The following syllabi provide a fascinating view of how two distinguished universities are implementing mandatory courses.

A. University of Michigan

Transnational Law
Winter 2002

Prof. Tim Dickinson
Prof. Mathias Reimann

SYLLABUS

Introduction

Mon. Jan. 14
1. From Russia With Love - The Romanov Jewels Story
2. What is Transnational Law? - an Overview, - Flowcharts
3. Logistics, - Professors' phone numbers and office hours - Exam Instructions

I. Actors, Sources, and Principles

Tue., Jan. 15 **1. Actors**

a.States (herein the Russian Federation) (MR)
Read: Bederman, ch. 5 (pp. 49-50)
- Agreements Establishing the Commonwealth of Independent States
- Declaration by the Heads of State
- Mullerson, The Contuinuity and Succession
- UN Charter artt. 3-4, 51
- ILC Draft on State Responsibility artt. 1-5

b.International Organizations (UN and OECD)
Read: Bederman, ch. 6 (pp. 60-69)
- UN Charter (excerpts)
- The United Nations System (Overview)
- Reparation for Injuries Case (ICJ 1949)
- OECD Convention

Tue., Jan. 22
c.Individuals in International Law
Read: Bederman ch. 7 (pp. 69-79)
aa. Rights
- Universal Declaration of Human Rights
- Covenant on Civil and Political Rights
- Optional Protocol to Covenant
- European Convention on Human Rights
bb. Responsibilities
- Kadic v. Karadzic

- Rome Statute (International Criminal Court)

d.Non-Governmental Organizations
- UN Charter artt. 61-62, 64, 71
-UN General Assembly, Implementation of Human Rights Instruments
- Optional Protocol to the Convention on the Elimination of
  Discrimination Against Women

Mon., Jan. 28 **2. Sources**

A.Sources of Public International Law
- ICJ Statute

a.Treaties (MR)
Read: Bederman ch. 3 (pp. 25-40)
- Vienna Convention on the Law of Treaties
- United States v. Alvarez-Machain

Tue., Jan. 29

b.Customary International Law (MR)
Read: Bederman ch. 2 and 4 (pp. 12-25, 41-48)
- Paquete Habana

c.General Principles (MR)

d.Regulatory Regimes (TD)
_ OECD Guidlines for Multinational Enterprises
- OECD Recommdation on Combating Bribery

Mon., Feb. 4

e.International Law and Domestic Law (MR)
Read: Bederman, ch. 14 and 15 (pp. 149-169)
- US Const. Art. 2 § 2, Art. 6
- Foster and Elam v. Neilson (self-execut.)
- OECD Convention on Combating Bribery (1997)
- Foreign Corrupt Practices Act (as amended)
- Murray v. The Charming Betsy (excerpt)
- Whitney v. Robertson
- The Paquete Habana (reminder)

Tue., Feb. 5

B.Sources of Private International Law

a.International Conventions (TD/MR)

- Convention on the International Sale of Goods

b.Domestic Law (MR)
- The Bremen v. Zapata Offshore Co.
- UCC 1-105 / 1-301
- Swiss Private Intl. Law Act (excerpts)

c.Draft Principles/Rules Unidroit/Uncitral, Lex Mercatoria?)

Mon., Feb. 11 **3. Principles**

A. The Groundrule: The Lotus Presumption
Read: Bederman ch. 16 (pp. 170-185) - The Lotus Case

B. Principles of Jurisdiction
- Rest. 3d (Foreign Relations) § 402

a.Territoriality (MR)
- American Banana Co. v. United Fruit Co.

b.Nationality (MR)
- Blackmer v. US

Tue., Feb. 12

c.The Effects Doctrine (and Comity I) (TD/MR)
- US v. Aluminum Co. of America
- Sherman Act art. 6a

d.Protective Principle
- Rocha v. US

e.Universality Principle
- Israel v. Eichmann
- Rest. 3d (Foreign Relations) § 404

Mon., Feb. 18

C. Limitations (Comity I)
- Timberlane v. Bank of America
- Rest. 3d (Foreign Relations) §
- Hartford v. California

Tue, Feb. 19

- 15 USCA § 62 (Webb Pomerene Act)
- EU Treaty artt. 85-86
- Ahlström Osakeyhtiö v. Commission (Wood Pulp)
- EC-US Agreement on Competition Law 1991
- EC-US Agreement on Competition Law 1998

II. International Dispute Resolution

Mon., Mar. 4

1. Disputes Among States: The World Court (MR)

- UN Charter artt. 92-96
- ICJ Statute
- Germany v. United States (LaGrand case)

Tue., Mar. 5

2. Among Private Parties: Intl. Jurisdiction (MR)
- Asahi Metal v. Superior Court (excerpts)

- Born, Reflections on Judicial Jurisdiction

Mon., Mar. 11

3. Private Parties v. Sovereigns (MR/Joel Samuels)
a. Foreign Sovereigns
- Foreign Sovereign Immunities Act (excerpts)

b. The Act of State Doctrine
- Banco Nacional de Cuba v. Sabbatino
- Hickenlooper Amendment

c. An Example and Exercise
- Schroder v. Russian Federation

Tue., Mar. 12

4. Concurrent Jurisdiction (Comity II) (MR)
a. Parallel Proceedings
- Laker Airways v. Sabena (excerpts)
b. Deferral (lis pendens)
- EU Regulation artt. 27-29
c. Dismissal (forum non conveniens)
- Piper Aircraft v. Reyno
d. Combination
- Hague Jurisdiction Convention artt. 21-22

Mon, Mar. 18

5. Enforcing Foreign Judgments (Comity III) (TD/MR)
a. The Basic Approach
- Hilton v. Guyot
b. American Statutory Rules
- Foreign Money Jgts. Recognition Act

c. An International Convention?
- Hague (Jurisdiction) Convention (Draft)

Tue., Mar. 19

6. International Commercial Arbitration (TD/MR)
a. The Legal Framework
- UN (New York) Convention
- US Arbitration Act (Overview and Excerpts))

b. What Can be Arbitrated?
- Mitsubishi v. Soler Chrysler

c. Recognition of Foreign Arbitral Awards
- Parsons Whittemore v. Societé Générale

III. International Transactions

Mon., Mar. 25

1. Providing for Dispute Resolution (TD)
- Nelson, Alternatives to Litigation
- Dillenz, Drafting Arbitration Clauses

Tue., Mar. 26

2. International Negotiations (TD)
- Salacuse, Making Global Deals
- Ciricillo et al., International Negotiations
- Sample Contracts

Mon., Apr. 1

3. Drafting International Agreements I (TD)
- Doing Business and Investing Abroad

Tue., Apr. 2

4. Drafting International Agreements II (TD)
- Dickinson & Landmeier, Negotiating and Structuring
International Joint Ventures

IV. Specific Areas

Mon., Apr. 8

1. International Human Rights (JH)
a. The Political Level
- UN Human Rights Organizational Structure
- Commission on Human Rights (Mandates)
- Report on Afghanistan (from Karima)

b. Enforcement under International Regimes
- Optional Protocol to the CCPR
- Toonen v. Australia

c. Enforcement under Domestic (Private) Law
- Kadic v. Karadzic (default judgment)

Tue., Apr. 9

2. International Trade (RH)
- US Import Prohibition of Certain Shrimp (WTO Appellate Body)

Mon., Apr. 15

3. European Union Law (DH)
- Shaw, European Union Law
- Treaty of Rome (1957) artt. 119, 177
- Defrenne v. Sabena(European Court of Justice)

Conclusion

Tue., Apr. 16 (TD/MR)

2. Australian National University

The Australian National University
International Law (13 week semester)
Course convenor is Dr Penelope Mathew
MathewP@law.anu.edu.au

READING AND EXPECTATIONS

The prescribed text is Dixon and McCorquodale, Cases and Materials on International Law THIRD EDITION (2000). The extracts in this book are quite short. Consequently, lecturers may choose to refer students to selected paragraphs of ICJ cases. Most ICJ cases are also available online at http://www.icj-cij.org/

A small "brick" of extra reading material will also be available. Students are also advised to read the relevant chapters of Blay, Piotrowicz and Tsamenyi, Public International Law: an Australian Perspective (1997). (Note: a second edition of this book will probably be available in 2002)

UNIT OUTLINE

TOPIC 1: INTRODUCTION, SYSTEM AND SOURCES

Reading: Dixon and McCorquodale (hereafter "D and M") chapters 1, 2, pp 139, 140-1, 146-49, 154-5, 160-8, 180-81, and 609 - 618; United Nations Charter, at http://www.un.org/aboutun/charter/index.html

WEEK 1
Lectures A and B: Nature of international law and actors in the international legal system

1.1. The nature of international law and the international legal system - chapter 1, D and M

1.2. Actors in the international legal system

1.2.1. Definition of a State in international law - Montevideo Convention on the Rights and Duties of States 1933 (D and M, 139)

1.2.2. The role of recognition - Brownlie, *Tinoco Arbitration*, EC Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union, EC Declaration on Yugoslavia, Security Council Resolution 277 (1965), Australia's recognition policy (D and M 160-167, 179-80).

1.2.3. Membership in the United Nations - Articles 2 and 4 of the United Nations Charter, Security Council Resolution 777 (1992) (D and M, 140 - 1)

1.2.4. International Organisations - Articles 104-5 UN Charter, Reparations Case(D and M, 146-149)

1.2.5. Individuals - Optional Protocol to the International Covenant on Civil and Political Rights, Article 34 Statute of the International Court of Justice (D and M 154 - 155)

WEEK 2
Lectures A and B: The ICJ and the sources of international law

1.3. The International Court of Justice

The key documents relating to the ICJ are the UN Charter, chapter XIV, the Statute of the ICJ (appended to the UN Charter and available at http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm) and the Court's rules (available at http://www.icj cij.org/icjwww/ibasicdocuments/ibasictext/ibasicrulesofcourt_20001205.html).

1.3.1. Introduction -Arts 2, 3, 26, 27, 31, 34 Statute of the ICJ, Schwebel (D and M, 609-610)

1.3.2. Contentious jurisdiction - acceptance of jurisdiction and reservations - Art 36 ICJ Statute, *Norwegian Loans Case, Nicaragua Case, Legality of Use of Force Case* (D and M, 611 and 615 - 618)

1.3.3. Whom do ICJ decisions bind? -Art 59 ICJ Statute, Art 94 UN Charter (D and M, 627)

1.3.4. Advisory Opinions - Art 96 UN Charter, Art 65, 66 ICJ Statute, *Interpretation of Peace Treaties Opinion, Western Sahara Opinion*, (D and M, 628 - 630).

1.4. Sources of International Law

1.4.1. Treaties - Vienna Convention on the Law of Treaties (selected articles in D and M, 24 - 25, full text available at the Australian Treaty database http://www.austlii.edu.au/au/other/dfat/treaties/1974/2.html)

1.4. 2. Custom - Akehurst, *North Sea Continental Shelf Cases* (first extract), *Nicaragua Case* (first extract), Charney ("Universal International Law"), Schachter ("New Custom"), *Asylum Case*, Charney ("Persistent Objector"), Schachter (more from "New Custom") (D and M, pp 27 - 39)

1.4.3. Relationship between treaty and custom - Baxter, North Sea Continental Shelf Cases (second extract), Nicaragua Case (second extract), Article 38 ICJ Statute (D and M, 39 - 44)

1.4.4. ***Jus cogens*** - Articles 53, 64 Vienna Convention on the Law of Treaties (D and M, 44).

1.4.5. General principles of law - von Glahn, Akehurst, *South West Africa Advisory Opinion, River Meuse Case, Frontier Dispute Case* (D and M, 45 - 49).

1.4.6. Judicial decisions and the opinions of jurists - Article 59 ICJ Statute, *The Paquete Habana* (D and M, 50 - 51).

1.4.7. Resolutions of international organisations - Articles 1 - 14 UN Charter http://www.un.org/aboutun/charter/index.html), Sloan (D and M, 52 - 54).

WEEK 3: SEMINAR - Taking a case to the ICJ

ASIL Guide to Electronic Resources for International Law, at http://www.asil.org/resource/ergintr1.htm

WEEK 4: SEMINAR - Taking a case to the ICJ continued, Quiz on sources

In the first hour, we will discuss the question of how we would litigate last week's problem in the ICJ. In the second hour, students will take 20 minutes to do the quiz(to be distributed in class) and we will then discuss the answers.

TOPIC 2: LAW OF TREATIES.

Reading: Chapter 3, D and M.

Much of the law of treaties is quite straightforward, and can be readily grasped by a careful reading of the Vienna Convention on the Law of Treaties (VCLT, available at http://www.austlii.edu.au/au/other/dfat/treaties/1974/2.html)

WEEK 5: LECTURES A AND B

Reading: Chapter 3, D and M, Preliminary Conclusions of the International Law Commission on Reservations to Normative Treaties Including Human Rights Treaties (printed materials).

2.1. Which aspects of the VCLT represent customary international law? - Sinclair, *Danube Dam Case, Golder v United Kingdom* (D and M, 64 - 66)

2.2. What is a treaty? - Article 2 Vienna Convention on the Law of Treaties, *Qatar v Bahrain* (D and M, 59 - 61), "Memoranda of Understanding" in H. Reicher (ed), Australian International Law: Cases and Materials (1995), pp 833 - 838 (printed materials).

2.3. What is the effect of unilateral statements at international law? - *Nuclear Test Cases, Frontier Dispute Case* (D and M, 61 - 64)

2.4. Formation and Application of treaties - VCLT Art 6, 7, 8, 11, 12, 14, 15 (D and M, 66 - 7)

2.5. When does a treaty enter into force? - VCLT Art 18, 24, 28 (D and M, 67 - 8)

2.6. ***pacta sunt servanda*** and ***pacta tertiis*** - VCLT Art 26, 34, 35, 36, 37, 38 (D and M, 68 - 70).

2.7. Succession to Treaties - Vienna Convention on Succession of States in Respect of Treaties (full text available at http://www.un.org/law/ilc/texts/treasucc.htm#abstract: note this Convention entered into force in 1996), *Guinea-Bissau v Senegal* (D and M, pp 70 - 73)

2.8. Invalidity of treaties - VCLT Arts 42 - 53, 64 (D and M, 90 - 92)

2.8.1. When may an error be relied upon to invalidate a treaty? - *Temple Case* (D and M, 93)

2.8.2. What is the content of ***jus cogens*** and what is its effect? - Report of the ILC, Sinclair, *Barcelona Traction Case* (D and M, 93 - 96).

2.8.3. What is the status of the doctrine of "unequal treaties" - Wesley-Smith (D and M, 96 - 97)

2.8.4. What procedure must a State follow if it wishes to assert that a treaty is invalid? - VCLT Art 65, 69, 71 (D and M, 96 - 98)

2.9. When and how may a State terminate a valid treaty? - VCLT Arts 45, 54, 56, 57, 59, 60, 61, 62, 70, 72, (D and M, 98 - 101)

2.9.2. Material Breach - Article 60 VCLT, Report of the ILC (D and M, 101), *Namibia Case* (D and M, 103), *Danube Dam Case* (D and M 104)

2.9.3. ***Rebus sic Stantibus*** - Article 62 VCLT, *Fisheries Jurisdiction Case* (D and M, 102)

WEEK 6: SEMINAR - Interpretation of treaties

Fitzmaurice, VCLT Arts 31, 32, 33, *Golder v UK*, Koskenniemi, Applicant A (D and M, 84-7)

WEEK 7: SEMINAR - Reservations to treaties

Reservations Case, VCLT Arts 2, 19, 20, 21, 22, 23, *Belilos v Switzerland*, *English Channel Arbitration*, Human Rights Committee's General Comment on reservations(D and M, 73 - 80, 82-84), Preliminary Conclusions of the International Law Commission on Reservations to Normative Treaties Including Human Rights Treaties(printed materials).

TOPIC 3: AUSTRALIA AND THE INTERNATIONAL LEGAL ORDER.

WEEK 8: Lectures A and B

Reading: Chapter 4, D and M. Sections 51(xxix), 61 *Australian Constitution, Mabo and Others v the State of Queensland* (No 2) (1992) 175 CLR 1; *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 128 ALR 353; *Polites v. the Commonwealth and Another* (1945) 70 CLR 60, *Nulyarimma v Thompson*, *Buzzacott v Hill* [1999] 165

ALR 621; *Tien v Minister* for *Immigration and Multicultural Affairs[*1998] 159 ALR 405; *Baldini v Minister for Immigration and Multicultural Affairs* [2000] FCA 173 (25 February 2000, available at <www.austlii.edu.au>) (printed materials)

3.1. The establishment of Australia - Mabo (printed materials).

3.2. The relationship between Australia and the international legal order - *Nuclear Tests Cases* (D and M, 61) ; *Nauru Case* (D and M, 619); *East Timor Case* (D and M, 619); Press releases concerning reform of the UN treaty body system (printed materials).

3.3. The role of international law in Australian law

Lecturers will draw on the materials extracted in D and M, pp 109 - 112; 114 - 137.

3.3.1. Treaties in Australian law - s 51(xxix), s 61 Australian Constitution, Review of The Treaty-Making Process, August 1999, Teoh (printed materials)

3.3.2. Custom in Australian law - *Nulyarimma v Thompson* (printed materials),
Anti-Genocide Bill (1999) (printed materials).

3.3.3. Indirect uses of international law by the judiciary

3.3.3.1. Interpretation of statutes - *Teoh, Polites* (printed materials)

3.3.3.2. Development of the common law - *Mabo* (printed materials)

3.3.3.3. Treaties and the Doctrine of Legitimate Expectations - *Teoh*, Joint
Ministerial Statements (printed materials), Administrative Decisions (Effect of International Instruments) Bill 1999, *Tien, Baldini* (printed materials).

WEEK 9: Seminar - The courts v parliament?

TOPIC 4: USE OF FORCE

WEEKS 10 and 11: Lectures A and B - the use of force

Reading: Chapter 14, D and M.

4.1. The Unilateral Use of Force

3.1.1. What is the general rule concerning unilateral uses of force (that is force used by one or more States outside the auspices of the UN Security Council)? - Article 2(4) UN Charter, *Arechaga*, McDougal and Feliciano, Franck, Henkin, *Nicaragua Case* (first extract) (D and M, 553 - 561)

3.1.2. What measures may legitimately be taken in self-defence? – *Caroline Incident*, Article 51 UN Charter, Arechaga (second extract), *Nicaragua Case* (second extract), Hargrove, *Nuclear Weapons Advisory Opinion*, Nicaragua Case (third extract) (D and M, 561 - 574)

3.1.3. Can the forceful protection of nationals abroad be justified as an exercise in self-defence under Article 51? - Akehurst (D and M, 575-6)

3.1.4. What terms in Article 2(4) might be construed so as to justify humanitarian intervention? - Lillich, Brownlie, Press conference on Kosovo (D and M, 576 - 80)

3.1.5. Are interventions to support self-determination movements justified? - Wilson, (D and M, 583 - 5)

4.2. Enforcement of International Peace and Security by the Security Council and peacekeeping

4.2.1. Which principal organ of the UN has primary responsibility for the maintenance of international peace and security? - Art 24 UN Charter (http://www.un.org/aboutun/charter/index.html)

4.2.2. Who are the members of the Security Council and what voting power do they have? - Arts 23, 27 UN Charter (http://www.un.org/aboutun/charter/index.html)

4.2.3. Can the General Assembly order enforcement action? - Uniting for Peace Resolution, *Certain Expenses Case* (D and M, 591 - 593)

4.2.4. When may a regional organisation act to maintain or restore international peace and security? - Arts 52, 53, 54 UN Charter, Akehurst (D and M, 593-5)

4.2.5. What are the three triggers for action by the Security Council under Chapter VII? - Art 39 UN Charter (D and M, 586)

4.2.6. What measures may the Council adopt in order to maintain or restore international peace and security? - Arts 41, 42 UN Charter (D and M, 586)

4.2.7. How has Article 43 of the Charter been bypassed in practice? - Art 43 (D and M, 586) Security Council Resolutions 661 (1990), 678 (1990), 748 (1992), 1264 (1999) (D and M, 588 - 591)

4.2.8. What are the consequences for States of a Security Council "decision" under Chapter VII? - Art 25 UN Charter (D and M, 52)

4.2.9 May the ICJ review decisions of the Security Council? - Lockerbie Case, Genocide in Bosnia Case (D and M, 632 - 637).

WEEK 12: SEMINAR - Use of Force problem

This week, we look at a hypothetical problem involving the use of force.

WEEK 13: SEMINAR - Revision

In this seminar, we will run through some of the questions on a past exam paper. Document name: IL 2001 Unit Outline rev5

Part III: Experiences and Views of Committee Members

Committee members were invited to contribute statements about their experiences. We asked them to try to focus their remarks on one of the following three areas.

A. The Current Status of International Law Teaching

1. Márcio Pereira Pinto Garcia, Brazilian Branch, *The Current Status of International Law Teaching in Brazil*

Introduction

As a preliminary thought, it should be pointed out that the study of public international law in Brazil does not get the attention it deserves. We could probably say that there is cultural resistance to international law in the country. The

domestic legal community usually consider a closer study of the discipline a superfluous effort. It is not a coincidence that the Constitution does not specify the status of international law in the Brazilian legal order and, worse, that in the silence of the Constitution the Supreme Court applied the latter in time rule in the event of a conflict between local law and international law.

It can be difficult to explain the reason for such treatment by a country that has contributed enormously to the discipline. It is perhaps enough to mention that presently Brazilian nationals play important roles in major international tribunals [Rezek (International Court of Justice, The Hague); Cançado Trindade (Inter-American Court of Human Rights, San Jose); Marotta Rangel (International Tribunal for the Law of the Sea, Hamburg) and Olavo Baptista (recently elected member of the Appellate Body - WTO, Geneva)].

In a world that has witnessed in the post-war period a growth of treaties dealing with matters of concern to private individuals (e.g. human rights, environment, trade, telecommunications and intellectual property), the situation demands a new approach by the Brazilian legal community. Little would be gained if these treaties remained unimplemented in the domestic sphere. Another important development contributing to the change of this mentality is the Southern Common Market (Mercosur).

The Treaty of Asuncion (1990), with its modest 24 articles, gave birth to the third-largest trading bloc in the world (after the EU and NAFTA). The success of the enterprise can be seen in the increase of the trade within the bloc and by the so called democratic clause. The expansion of economic interaction resulted in the development of new interest groups and business involvement that favored additional integration. Moreover, both bureaucracies and politicians from all member states became involved with the integration program. All efforts demanded expertise in international law in order to build the Common Market and to deal with its consequences.

In short, nowadays we are witnessing a change in the old attitudes of the Brazilian legal community towards international law. The discipline is gaining importance within the country's legal system. According to the Brazilian Bar Association ["Ordem dos Advogados do Brasil"(OAB)], there are 565,000 lawyers in the OAB. We must add to those figures 11,400 judges, 546 Federal prosecutors and close to 10,000 State prosecutors in the Public Ministry offices across the 27 States of the Federation (26 States plus a Federal District).

There are close to 350,000 undergraduate law students. Graduate and doctoral students in law number around 20,000. The number of undergraduate law schools in Brazil is 312. Each of the 27 Brazilian States has one Federal university and some even have State universities as well. The majority of the law courses are taught in private institutions. The quality of the courses varies tremendously with public ones generally being the best.[1]

To understand this report, we must keep these figures in mind. They are a consequence of being the eighth largest economy in the world and having the fifth largest territory and population. These numbers are important to understanding the difficulties we experienced while writing this report. We relied on the information provided by colleagues nationwide, specially the members of the Center of Studies on International Law,[2] and on our experience of eight years teaching the discipline.

Law schools' curricula: the place of international law

According to national regulation,[3] public international law is to be taught as a compulsory course for the law degree. From the creation of the Law Courses in Brazil by the Imperial Act of August 11th, 1827 until 1972, when it became optional,[4] international law was obligatory. The new rule of 1995 again made the subject mandatory for all law students.[5]

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[1]Recently the Brazilian Bar Association elected the best law schools, 52 in total (see. "OAB recomenda: um retrato dos cursos jurídicos". Brasília: OAB, 2001).
[2] An NGO based in Brasília dedicated to the study of international law (www.cedi.org.br).
[3]Administrative Rule N° 1.886/94 from the Ministry of Education (Official Gazette, January 4th, 1995, p. 238).
[4] Resolution N° 3/72 from the National Education Council (Conselho Federal de Educação).
[5] It is important to observe that the topic still does not have a prominent place for the Bar examination, except in the States of Rio Grande do Sul and São Paulo.

The purpose of the compulsory course is understood by many as a way to provide every student with the basic knowledge needed by a lawyer. For others, the idea is to give the students the sort of background knowledge in international matters necessary for a better understanding of other courses. It is worth noting that there are teachers who still do not regard the subject as a highly desirable component in the lawyer's education. National regulation specifies the minimum requirements and teaching hours for each subject to obtain a law degree. Thus, every law student has to take a one semester course in general international law, which corresponds to 3 to 4 hours per week, i.e., about 60 to 70 hours altogether.

Since the Constitution of 1988 (art. 207), Brazilian universities have acquired an unprecedented degree of autonomy. Now generally they are able to decide for themselves what to teach. There is no centrally-imposed national syllabus. In each university, the essence of the course is determined by the professor in charge. Even in the most traditional courses, where the content needs to be approved by the Board, the lecturer has a great deal of independence.

The great majority of law schools teach the traditional syllabus as reflected in the leading textbooks. Since international law is too voluminous to be mastered by students in one semester, some lecturers have decided to favor depth over breath and have chosen to concentrate on traditional subjects.

Clearly it is impossible to cover everything-- even superficially-- in one semester. Thus the problem becomes deciding what is to be included and in what detail. The following topics are usually covered: (i) sources, (ii) subjects of international law, (iii) relationship between municipal and public international law, (iv) state responsibility and (v) dispute settlement.

Some teachers have tried to relieve the "congestion" in international law syllabi by introducing optional courses, e.g., human rights. However these "alternative courses" are not common amongst law faculties. Another problem is that the courses available lack rigor; teachers tend to move into areas of international law in which students have insufficient background.

We believe that a program of specialization is more necessary than ever to deal with a rapidly-expanding subject. This expansion is in our opinion inevitable and very healthy for the discipline. It must nevertheless have a solid foundation. The study of public international law should provide a good working knowledge at least of the core subjects.

Public International Law is a second or third year course in Brazil. The pattern varies over the country, but usually it is taught in the middle of the law course.[6] In general, the student does not have any further contact with the subject. The University of São Paulo (USP) is probably the only exception. USP offers undergraduates the possibility of a specialization in public international law.

International law as a discipline

Most teachers favor the traditional method of formal lectures. A minority uses mooting or game-playing techniques. Others invite guest speakers. Even though this is not a common practice, the interchange of lecturers, particularly in giving seminars in specialization areas, is growing. Recently, for the first time, Brazil entered teams in the Jessup International Moot Competition.

We must emphasize that the average undergraduate course in Brazil does not provide face-to-face discussion between teacher and student. In this sense, our academic model is clearly more influenced by the European style (civil law countries). It remains more descriptive than analytic for most courses. The traditional way of teaching is reflected in the examination methods. Consequently, courses seldom use the "case-method" for analysis and synthesis. Nonetheless, the huge volume of international judicial decisions and arbitral awards in addition to decisions from our own and other national courts proves the importance of public international law.

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[6]Art. 1 of Rule N° 1.886/94 provides that the law course shall have at least 3.300 hours of activities, distributed in the minimum of 5 years and maximum of 8 years course.

In spite of some problems related to the lack of good literature in Portuguese and well equipped libraries throughout the country, access to current information changed a lot due to the Internet. The web is a wonderful tool for someone teaching in a very poor – bibliographically speaking -- atmosphere. In this sense, the newer generation will benefit very much from the availability of information on the web. Hopefully, more and more information will be at everyone's
disposal.

In short, the teaching of public international law in Brazil follows very much the traditional method of teaching law subjects in civil law countries. Changes are being implemented with increasing interest stemming from globalization, integration phenomenon, terrorism, environment, human rights, etc.

Conclusion

Under the guise of a conclusion, we would like to make some suggestions that we believe would improve the teaching of international law:

(a) to prepare [sponsored by some entity (e.g. ILA, university, private enterprise, Ford Foundation, UN and ASIL)] a manual of cases, documents and teaching materials on contemporary practice in international law. The book could be modeled after the very useful volume edited by the International Committee of the Red Cross entitled How Does Law Protect in War? by Marco Sassóli and Antoine A. Bouvier. The chapter dedicated to possible teaching outlines is very good. The publication could be a start. Needless to say, each teacher could adapt this to fit his/her own approach.

(b) to create a web site designed for the international law teacher/student with doctrine, jurisprudence, applicable law, syllabi from different courses all over the world etc.;

(c) to prepare a bibliography of textbooks available worldwide to provide an idea of what the leading authors of various nations think is important;

(d) to prepare a bibliography of articles on the teaching of international law, without time or language limits, to provide an idea of the evolution of our topic and to have a notion of how other cultures perceive the subject;

(e) to establish an international association of international law teachers (IAILT) or an international association for the study or international law (IASIL). These could provide the forum to sustain and develop ideas raised by this Committee;

(f) to initiate a program of academic exchange. Visiting scholars would provide an idea of how international law is studied in their countries while gaining exposure to different teaching methods. This could be especially useful for teachers from countries culturally and economically different.

2. Charlotte Ku[1], American Branch, *What does it mean to teach International Law?*

Providing context for my observations

My perspective may be different from that of other members of the Committee because I draw my observations from experiences that include teaching in non-law school settings and in overseeing the development of programs of outreach for law and non-law audiences. At the same time, I have had the opportunity to become acquainted with the curricula of many schools in the United States from service on the Membership Review Committee of the Association of American Law Schools that periodically reviews the teaching programs of law schools in the United States.

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Understanding the audience and defining relevance

Through these experiences, I have come to realize that the development of effective teaching strategies begins at the same point: assessing what the audiences need to know and why it needs such information. In developing a teaching strategy, one must remember that not all students have the same degree of interest in the subject. This is especially true for any required course. As international lawyers, we probably are not in the best position to understand what an individual who is less interested in international law may need to know as part of a basic legal education.

Identifying what needs to be taught

Although the case for teaching international law hardly needs to be made to a committee of the International Law Association, an examination of the reasoning underpinning the conclusion that international law is important for lawyers might prove useful. In the article, "American Lawyers and International Competence," ASIL Director of Research and Outreach Christopher J. Borgen and I wrote:

> United States law and the legal profession are each evolving due to globalization. Conversely, U.S. law and the legal profession each play a part in fostering globalization. This trend towards increased interdependence should make the internationalization of law school curricula a priority for the academy so that its students may meet the challenges of modern legal practice. Such internationalization would include not only increased analysis of foreign law, but also of public and private international law.[2]

It would probably be difficult for anyone other than the most committed and interested student to study all of these subjects carefully during their time in law school. We noted:

> The term "international law" has been used at various times to describe public international law, private international law, comparative law and international business law. Historically, there have been two divisions in the field: one between private international law – conflicts of law, international business transactions and the like – and public international law, "the law which regulates the intercourse of nations." Anecdotal evidence suggests that U.S. students and practitioners have traditionally been more responsive to learning private international law because it seems more "real world' than the supposedly academic public international law. There has also been a divide between international lawyers in general and comparativists who study the similarities and differences of different domestic legal cultures. While in the past there was a certain division between these specialties, this article argues that today the U.S. practitioner is likely to need to be competent in each of these facets of what one can broadly term "international law." Thus, while this term has usually referred to public international law and focused on nation states rather than peoples, business entities, and individuals, this classic, Westphalian definition of international law is under pressure from the realities of modern practice.[3]

Failing a focused study of all these subjects (assuming all are available), are there other approaches? The two most common other approaches are 1) to develop a strong set of electives that students are encouraged to take; or 2) to integrate elements of the international and comparative law into domestic law courses. Does this potpourri approach provide what is needed?

The realities of modern practice

Whether it is the force of globalization[4] or the melding of the public and private, there is some indication that international and comparative law courses, commonly divided into separate fields in U.S. law schools, may not provide the most appropriate basic education for a legal professional today. Rather, a well trained professional today needs to understand many legal questions requiring facility with both foreign law and international law. Further, the well-trained lawyer needs to be aware that there is more than one way to handle a legal problem. At a higher level, introducing international and foreign law encourages students to "rais[e] questions of authority, legitimacy and acceptance."[5] This, in turn, can hone a student's skills to consider "the state's claim of exclusivity

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[2]Charlotte Ku and Christopher J. Borgen, "American Lawyers and International Competence," 18 Dickinson Journal of International Law 493 (2000).
[3]Id. at 494-5.
[4]See Adelle Blackett, "Globalization and its Ambiguities: Implications for law School Curricular Reform," 37 Columbia Journal of Transnational Law 58-79 (1998-9).
[5]Id. at 67.

over law-making power and juxtapose it with cultural pluralism and emerging transnational legal practices, such as *lex mercatoria* or informal sector labor and migration."[6]

If we believe that some basic understanding of law beyond that of one's own country is required for professional competence in the twenty-first century, it might be useful to consider how languages are taught. Beginning with a basic course emphasizing grammar and structure one then advances to basic conversation and subsequently develops specializations such as literary criticism, classic forms of a language, literary history, and so on. In like manner, it might be useful for the international law community – both in practice and in the academy – to determine what basic elements of international law need to be taught, i.e., what is the grammar and structure of international law.[7] From there, one can move to broader applications in a specific subject matter. For the student who intends to pursue international law as an academic vocation, a wider philosophical and jurisprudential lens seems appropriate.

Continuing education

Many professionals have found the pace of legal developments is such that some form of ongoing professional development is needed even for those who are well grounded in international law. This is all the more true for attorneys who do not have a grounding in international or comparative law, but now find it integral to their work. Such audiences require different materials and different teaching strategies than law school students, but also are opportunities to engage or re-engage people with international law. Teaching needs to go beyond the confines of basic legal education and become part of continuing education. One might consider either important professional milestones or important audiences such as judges to develop teaching opportunities. Although crucial in any educational setting, providing reliable information resources is especially important for continuing legal education. The Internet is an ideal platform for such information resources if they can be adequately maintained.[8]

Reflections on international law and legal education

I would conclude by suggesting this Committee consider the development of a short bibliography on international law and legal education as part of its report to provide help in understanding the intricate subject of teaching both strategy and content. I would further urge development through this Committee's reports of tools and resources to identify and to understand audiences who would benefit from international legal education.

To keep up with the volume and pace of international law today, effective teaching in international law needs to extend beyond law school and be available throughout a lawyer's professional life. Furthermore, we may need to acknowledge that international law has burst the seams of a single course and may require greater attention to its interactions with various bodies of domestic law which in turn might argue for the need for shorter more specialized courses. None of this is meant to suggest replacing the traditional general course or a required basic course, but rather to consider teaching opportunities that may remain largely untapped.

3. Neville Botha, South African Branch, *The Situation in South Africa*

The Context

Until the introduction of the new constitutional dispensation in the Republic of South Africa in 1994, international law was not a major academic subject. Although it was offered at most universities, at few was it a compulsory component of the undergraduate law degree. The general attitude of students, practitioners and the bench alike was at best neutral and, at worst, negative. Because the subject was of little relevance for practice, few students elected to take the course. This filtered through to practice and the courts both lower and superior. The result was that, when the new constitutional dispensation was introduced first under the Interim Constitution in 1994, and finally under the

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[6]Id.

[7]One such effort has been developed by the University of Michigan in its required course on Transnational Law that has as its purpose providing "an introduction to the international dimensions of law." See University of Michigan Law School syllabus, "Transnational Law" as taught by Professors Tim Dickinson and Mathias Reimann, Winter 2002.

[8]See John King Gamble, "Recommendations," in Teaching International Law in the1990s 132-9 (1993).

Republic of South Africa Constitution Act 108 of 1996, there was literally only a handful of “international” lawyers in the country and a legal profession by and large unschooled in international law.

Because of the prominent role international law had played in the liberation struggle in Southern Africa, and in fervent resolve never again to be seen as a pariah nation openly flouting the precepts of the world order, international law was given an unprecedented role in South African law under the new dispensation. This came as a considerable shock to the legal fraternity as a whole, and even to the international lawyers who had been advocating for such a move. Apart from the basic shift away from the Westminster model of parliamentary sovereignty to constitutional supremacy, the single most profound change in the South African legal system resulting from the new constitutional dispensation undoubtedly is the role accorded international law.

Apart from permeating the preamble and the principles underlying the Constitution, international law is addressed directly in no less than 11 of the 243 sections in the Constitution. The new dispensation also saw a re-assessment of the traditional legal qualifications and eventually the introduction of a single law degree, the LLB, spanning 4 years and allowing admission (subject to articles or pupilage respectively) to both the attorneys’ and advocates’ professions. Those entrusted with compiling the curricula for this degree were advised that international law should form a “core” or compulsory subject for the undergraduate law degree. This, too, was one of the recommendations emanating from the Truth and Reconciliation Commission which further recommended that all judicial officers be “trained-up” in international law.

Consequently, it can be seen that in a relatively short period of six years, the role of international law in South African society and at South African universities has changed dramatically. There is a groundswell of interest in the subject as a whole, and new courses, particularly in the economic or trade related aspects of the field, are constantly under development at major universities. The courts, too, are slowly shedding their initial skepticism and uncomfortable relationship with the subject; a number of innovative judgments dealing with international law have seen the light of day. Both the teaching and practice of international law are entering a challenging, dynamic and exciting period in South African law.

The table below shows the results of a survey of all South African universities. South Africa has some 20 universities, 19 residential and 1 offering only distance education (UNISA). Statistical data on the teaching of international law at 17 of these institutions are summarised.

TEACHING OF INTERNATIONAL LAW IN SOUTH AFRICA

Institution	Undergraduate	Post graduate: Taught/ Coursework LLM	Post graduate: Research LLM & LLD
University of Cape Town	One **compulsory** semester course taken in the second year of study (80 -100 students) One **optional** semester course taken in final year (30 students)	masters papers in 8 areas	N/A
University of Durban-Westville	**Compulsory** semester course taken in pre-final year of study (100 students)	African Regional International Law (20 students)	N/A
University of the Free State	**Compulsory** semester course taken in final year of study (80 students) 1 **Optional** semester course	masters papers are offered in 2 areas	Masters (LLM) 2 students

University of Natal (Durban) **University of Natal (Pietermaritzburg)**	One **optional** semester course taken in final year of study (40 students) One **optional** semester course taken in final year (10 students)	N/A N/A	N/A N/A
University of the North	**Two compulsory** semester courses one general, one advanced, in final year of study (150 students for each course)	N/A	N/A
University of the North West	**Two compulsory** semester courses taken in final year (150 students)	One LLM paper on topical issues in international law (7 students)	Doctorate (LLD) 2 students
University of Port Elizabeth	**Compulsory** semester course third year of study (80 students) 2 **Optional** semester courses	N/A	N/A
University of Potchefstroom	**Compulsory** semester course taken in final year (90 students)	*Import & Export - including international aspects (15 students) * Topical capita from international law (8 students)	Masters (LLM) 1 student
University of Pretoria	**Compulsory** semester course in final year of study (400 students)	masters papers are offered in 5 areas	Masters (LLM) 1 student
Rand Afrikaans University (Johannesburg)	One **compulsory** semester module taken in the second year of study (160 students)	General course on topical aspects varying from year to year (15 students)	Masters (LLM) 1 student
Rhodes University	**Two optional** courses one general, one International Trade Law (20 and 14 students respectively)	N/A	Masters (LLM) 1 student Doctorate (LLD) 1 student
University of South Africa (UNISA)	**Compulsory** semester course final, pre-final year (1 200 student pa) **Optional** LLB papers in 3 areas	Two masters papers are offered in 2 areas	LLM (Masters) : 6 students in a variety of topics *Doctorate (LLD) 6 students in a variety of topics
Stellenbosch University	Two **optional** semester courses one general, one advanced in final, pre-final year (35 and 25 students respectively)	Masters papers are offered in 4 areas	Masters (LLM) 1 student Doctorate (LLD) 3 students
University of Venda	**Compulsory** semester course taken in pre-final year of study (80 students)	International Human Rights (3 students)	N/A

University of the Witwatersrand	**Compulsory** semester course taken in pre-final year of study The following **optional** semester courses in 3 areas	Masters papers are offered in 5 areas	Masters (LLM) 2 students Doctorate (LLD) 1 student
University of Zululand	**Compulsory** semester module in final year (70 students)	N/A	N/A

International law is compulsory at all but three of the 20 universities. The compulsory undergraduate course in international law is at all universities a general course spanning topics such as the nature, sources, subjects, territory, humanitarian law, state liability and the like. In all instances, this is a semester (6 months) course offered (with a few exceptions) in the pre-final or final year of study. A number of optional undergraduate papers in international law are also offered by several universities, again in the final or pre-final year. There is a growing trend towards specialisation after the initial law degree and the coursework Masters degree is gaining in popularity. The most popular among the options offered are those involving international trade and trade-related topics.

During 2001 there were approximately 3,100 students taking the compulsory undergraduate course in international law and approximately 520 students enrolled in optional undergraduate courses in international law. Some 220 students were enrolled for various papers for the coursework Masters degree in international law. There were 15 students registered for Research Masters degrees in international law; thirteen students registered for Doctoral degrees in international law.

Additional Comments

The techniques used at present are limited to the traditional text/ lecture/tutorial/seminar. Most universities participate in the All Africa Human Rights Moot Court Competition and the Jessup Moot Court Competition. This, however, is by and large, the only applied or practical component available to students at this stage (and to a very limited number of students). The majority of the universities use John Dugard's International Law: The South African Perspective (2nd, 2000) as the basic text around which they teach on the undergraduate level. At the post graduate level, subject specialist works and journal articles supplement basic international documentation. All respondents expressed considerable interest in learning of any new techniques which have been identified.

On the whole, few specific problems were identified. At the universities where international law is not yet a compulsory course (Natal, Rhodes and Stellenbosch), the typical pre-constitution problem of attracting students was identified. Certain of the universities (particularly those which can be classified as 'previously disadvantaged') identified a lack of suitable teaching and reference material available in their libraries as a serious problem for both lecturers and students.

4. Ryszard Piotrowicz, British Branch— *The Current Status of International Law Teaching in England/Wales, Scotland, and Australia*

I am commenting on the teaching of international law in three jurisdictions where I have had experience: England and Wales, Scotland and Australia. I have been teaching at the University of Wales, Aberystwyth for nearly three years. Prior to this, I taught for about ten years at the University of Tasmania, where I was Dean of Law. I have also taught at the Universities of Durham and Glasgow. In each of these jurisdictions, law is an undergraduate discipline. I have studied international law in Poland, Germany and Greece. There is significant teaching of international law at the taught Masters level in the U.K., less so in Australia, but I restrict my comments to undergraduate teaching. I have taught a variety of international law courses at each of these universities, including the general course, advanced general courses, Methodology of International Law, Human Rights, Law of the Sea, Antarctic and Southern Ocean Law, International Trade and Jessup Moot.

To the best of my knowledge, international law is not generally a compulsory course in the U.K. or Australia, although there may be some law schools that offer it on this basis. The closest I have come to offering a compulsory

course was in Tasmania. There, students had to take at least one course from each of several groups of subjects. This was introduced around 1989. One of the groups was named “International,” and included International Law, Advanced International Law, Human Rights, Law of the Sea, Antarctic and Southern Ocean Law, and Jessup Moot. Most, but not all, students studied international law and a significant number would choose other subjects from this group as additional elective courses. The general course in international law was not a prerequisite for any of the others, apart from Advanced International Law, although it was recommended.

In the U.K., international law generally is offered as an option. My view is that the U.K. tends to be less receptive to the importance of the subject in the sense that its relevance to the general law curriculum is not readily appreciated, although I think this is changing as a consequence of the reception in U.K. law, through the Human Rights Act, of the European Convention on Human Rights. This point is important for some remarks I will make below on the teaching of international law.

At Aberystwyth, international law is an optional subject. Until two years ago, it was taught annually, and had an enrollment of about 70-80. The year I was appointed, a decision was taken in my absence to offer it only every second year, although that has since been reversed, partly through fairly strenuous lobbying by me. There is significantly less receptivity to the general relevance of international law here, although that appears to be changing. We now are offering a themed LL.B in Human Rights, as a consequence of which our syllabus is being extended by an extra Human Rights course, so that we will now offer one general introductory course and another, worth double the weight, concentrating on substantive topics. This will have a significant international humanitarian law component. I also teach some refugee law as part of our second European Union law course. This is not compulsory, but is very popular. I think this is a good context in which to teach the subject as European developments in refugee law are very much driven by the European Union agenda. I also teach a small amount of international law to first year students in our Legal Process course, the aim being simply to make them aware of the existence of the subject and its possible relevance to their law studies as a whole. I am not responsible for all of these initiatives, but they have been driven largely by me.

Some U.K. law schools have deliberately focussed on international law as an area in which to develop excellence through the appointment of significant numbers of international lawyers. Nottingham and Essex are good examples of this. We did the same at one time in Tasmania, when there were three international lawyers from a staff of about twenty; this helped significantly to develop awareness of the subject.

Both in the U.K. and Australia, it is comparatively unusual to find staff who teach only international law. There is an expectation of flexibility amongst teaching staff. At various times for instance, I have taught tort, contracts, comparative law, European Community Law, Legal Process (legal methodology) and environmental law. I still teach tort law. This may have the effect of diluting the efforts of international lawyers, but I believe the overall effect is beneficial in helping to maintain and develop the links between international law and domestic law, rather than letting international law be seen as a subject somehow apart, as some academic lawyers in the U.K. persist in believing.

My overall conclusion is that international law is probably better appreciated in Australia than in the U.K. for its value in the general law curriculum. I think that it still to some extent suffers from the misperception that it is an add-on to law studies, rather than an integral element. I have little doubt that the overall trend is encouraging for those of us who seek to promote awareness of the subject within law schools, but I suspect that, in the U.K., receptiveness to the subject may be driven as much by fear of the impact of the Human Rights Act as by appreciation of the inherent value of the discipline.

B. Effective New Pedagogic Techniques for International Law

1. Michael P. Scharf, American Branch, *Internationalizing the Study of Law*[9]

Not too long ago, the American Bar Association published a study on the teaching of international law, which indicated that, while there is a proliferation of international law courses at the top tier law schools, the lower two tiers of law schools continue to offer very few international law courses. Although the practice of law has become internationalized throughout the country, the curricula at many law schools do not yet reflect that trend.

When I began teaching at New England eight years ago, we, too, had very few international law courses. Today, in contrast, eight full-time faculty members and three adjunct professors teach fifteen international law courses at New England. Included in our international offerings are an International Law Clinic, an Immigration Law Clinic, and an International War Crimes Project, in which students do work for the Office of the Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. We have a summer abroad program at the National University of Ireland in Galway, and a student exchange program with the University of Paris X. And we have added international law components to fifteen domestic law courses, including Civil Procedure, Constitutional Law, Contracts, Criminal Law, Business Associations, Property, Torts, and Tax.

Why, you might ask, would a school like New England want to develop its international law offerings as extensively as we have in the last eight years? When we began to internationalize, there was some resistance. A few faculty members said, "if students want international law, they'll go to Harvard. And New England isn't going to be able to out Harvard, Harvard." But what we found through market research is that there are a large number of prospective law students who are history or political science majors with a concentration in the area of international relations. When these students enter law school, they are still itching to continue their education in that area. And if they are not in the top two percent of applicants that can get into Harvard or N.Y.U., they are out of luck unless lower tier schools start offering more courses in international law.

So, it is an admissions marketing issue. When I began teaching at New England, a survey of entering first year students revealed that only five percent chose international law as their primary area of interest. Last fall, twenty-eight percent of the entering students said international law was their primary area of interest. We may not be able to "out Harvard, Harvard," but our international law program is becoming a strong draw with the vast majority of law school applicants who don't have the credentials to go to Harvard.

A second reason for internationalizing the curriculum is to better prepare students to practice law in any field, since international law issues are becoming more and more common throughout the practice of law. For instance, a former student of mine recently joined a family law practice, and it turned out that one of his first cases involved inter-country adoption. A short time later, he handled a child custody dispute involving people from two different countries. And now he has a thriving international law practice at what he thought was going to be a family law firm. Let me stress that this is not a unique case. Every year, more and more young lawyers are finding that international law issues are creeping into their domestic law practice.

What was New England's recipe for internationalizing on a modest budget? First of all, a school has to start with a core specialist in international law. I was hired from the Office of the Legal Adviser of the U.S. Department of State. I now teach many of the international law courses on a rotating basis, including public international law, international human rights law, the law of international organizations, international criminal law, and the law of war. I also supervise the international law clinic, serve as Director of the Center for International Law and Policy and Director of the Summer Abroad Program in Ireland, advise the International Law Journal and International Law Society, and coach the Jessup International Law Moot Court Team.

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[9]Derived from remarks originally presented at the American Association of Law Schools meeting. Forthcoming in the Penn State International Law Review, reproduced with their permission.

But as important as having a faculty member anchor the international law program is getting a large number of other faculty members to dabble in international law. At New England, the Environmental Law professor now teaches International Environmental Law, the Conflicts professor teaches European Union Law, the Tax Law professor teaches courses on International Tax Law and International Business Transactions, the Native American Law Professor teaches a course on International Indigenous Peoples Rights, and one of the Constitutional Law professors teaches a course on International Women's Issues while another teaches Comparative Constitutional Law. The third step was to hire adjunct professors to teach some of the specialty areas that were not covered by the full-time faculty. Thus, immigration law, the immigration law clinic, military justice, and admiralty are taught at New England by adjunct professors, who are experts in these fields.

But expanding the number of international law course offerings is not, in itself, the answer. A recent ABA survey indicated that even in top tier schools with many international law course offerings, only about thirty percent of the students are going to take those courses. The rest are worried about taking the core courses that are necessary for the Bar Exam and they just do not have the time in their second and third years to take many of the specialty courses. Recognizing this, New England decided to take steps to internationalize our entire domestic curriculum. We did this by using a financial inducement.

In 1999, the New England faculty approved an innovative stipend program. Each faculty member was offered a $1,000 mini-stipend if they would design and incorporate an international law teaching unit into their domestic law courses to ensure that students are exposed to international law issues in required and highly recommended courses throughout the curriculum. Nearly half of our faculty took advantage of this offer. Our unique approach was profiled in the March 2000 issue of the National Jurist under the headline, "The Innovators--Students at Select Pace-Setting Schools are Getting an Edge from Creative Approaches--and Law Schools are Finding that Breaking the Mold Can Yield Great Results."

Our success with this program was due to three factors: First, I cannot overstate the value of the financial inducement. Second, we required the faculty to design the lesson plans themselves and to put together their own materials. We recognized that, if the domestic faculty were simply fed the materials or permitted to use canned materials for this purpose, they would be less likely to continue to employ them over time. And third, the faculty had to make a written pledge that they would list the international law unit in the syllabus to signal to the students that the material is important.

Now, in the interest of full disclosure, I must tell you that there was some initial resistance to the proposal. First, some of the faculty members asked why the school should be paying teachers to do what they are supposed to be doing anyway, namely incorporating important material into their courses, be it international or otherwise. Some domestic law casebooks are starting to include international law materials, and some faculty are starting to incorporate these materials on their own without prodding. But, with the financial incentive, we were able to internationalize a much larger number of courses in a much shorter time.

Second, some faculty members felt that if we were going to use mini-stipends to encourage the faculty to go in a new direction, why should it be international. There are so many other very important and competing directions, such as professional responsibility and legal ethics. The idea of teaching ethics throughout the curriculum is very important in law school. And yet, very few law professors actually do it. Shouldn't mini-stipends be used as an incentive to teach ethics rather international law, they argued. What about gender and race issues? Or what about inducing the faculty to incorporate high tech approaches to their teaching? In response, those who supported the internationalizing program said, if the idea of mini-stipends works, next year we can use them to try something else. This quickly mollified those raising this argument.

The third concern was that a little knowledge might be more dangerous than no knowledge, both on the part of the law professors who teach the material and the students who would be subjected to it. Our experience has proven this not to be a real problem. We have found that even domestic law professors who never took an international law course in law school have had very little trouble mastering the international component of their domestic law course, especially if they have to come up with their own materials and design it themselves. With respect to the students, our goal was merely exposure, rather than development of expertise. A student, for example, doesn't have to leave Contracts class knowing all the nuances of the U.N. Convention on the Sale of Goods; when she graduates from law

school, she should at least know that there is a possibility that this international treaty will govern the transactions with foreign companies that she handles.

The final concern was that if the school internationalized the domestic curriculum there would be decreased support for, and interest in, the international law specialty courses, which we had been expanding. What we found in practice was that by having all of the first-year students and many of the second-year students learning about international law in their required classes, they are now starting to swarm into the international law seminars as never before. We are now topping that thirty percent threshold by quite a bit because our program has wet the students' appetites for an exciting and useful area of the law.

2. Erik Franckx, Belgian Branch, *Interactive Education in a Wireless Laptop Class*

In Belgium, we are rather fortunate in the sense that international law forms a required element in the law curricula of all Belgian universities. Even after education became an exclusive Community competence in Belgium as a result of the reform of the state structure, the situation remained unaltered. At present, law schools in Belgium are in the process of adapting their curricula to the so-called Bologna Declaration, i.e., the Joint declaration of the European Ministers of Education Convened in Bologna on the 19th of June 1999.[1] This initiative of the European Union, which tries to obtain a greater harmonization of the university curricula in the different member states in general, has far-reaching implications. It provides, for instance, that a distinction should be made between two main cycles: an undergraduate and a graduate one. The former should last at least for three years and be relevant to the European labor market as an appropriate level of qualification. For Belgian law faculties, which are structured along a two year "candature" cycle, where general topics such as history, economics, and psychology are taught and a three year "licence" cycle, where the different sub-branches of the law are taught, this requires a profound adaptation, especially since the first diploma, obtained after two years of study, does not provide any real job opportunities. Despite these profound changes, in the present stage of the implementation of the Bologna Declaration, international law remains one of the obligatory courses. What is more, this course will in all likelihood form part of the undergraduate level, whereas at present at the Vrije Universiteit Brussels, for instance, this course is taught during the third year of law studies, meaning in the first year of the "licence" cycle.[2] Even though it is not yet clear what professional opportunities students will have after finishing undergraduate law studies, international law will have been part of their education. For the moment, the international law course is estimated at 210 hours of study, valued if completed at eight study-points, and consisting of 60 hours of classical teaching and 15 hours of tutorials.[3]

Now, I would like to reflect briefly on an effective new pedagogic technique for teaching international law. We have been actively involved in a new project which was started at our university during the academic year 2000-2001, called "Interactive education in a wireless laptop-class."[4] This small-scale project aims at meeting the demands of university staff favoring active and collaborative teaching methods by using computers. A special room was arranged to host a number of wireless laptop computers. This makes it possible for teaching staff to alternate between classical methods of teaching, based on teacher-group conveyance of information, and more individualistic forms where students acquire knowledge either on an individual basis, in pairs or in small groups. It thus tries to energize students in their own learning process based on the application of the principle of learning by doing.

Having experimented with the introduction of ICT in the international law courses for some time now (PowerPoint presentations, incorporation of fragments of the video-series on international law realized under the auspices of the American Society of International Law)[5], this wireless laptop-class seemed a real opportunity to try to counteract

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[1]To be found on Internet at
<www.unige.ch/cre/activities/Bologna%20Forum/ Bologne1999/bologna%20declaration.htm>.
[2]The full law curriculum at this university can be found on the Internet at <www.vub.ac.be/RG/rechtstu.html>, look at "Basisprogramma". Even though this information is basically in Dutch, each course description normally contains an English description as well.
[3]A description, in English, can be found on the Internet at
<http://134.184.28.169/vub/frame.stm?pagina=opleidingsonderdelen_readonly.html?ra_stam nummer=21360>, under "Volkenrecht".
[4]More information (in Dutch) on the project can be found on the Internet at <www.vub.ac.be/ onderwijsvernieuwing/laptop/>.
[5]A short description in English can be found on Internet at <www.vub.ac.be/INTR/ teachinginnov.html>.

the traditional passive attitude of law students in civil law countries. At the same time, it provided the necessary framework to be able to explore fully the Internet medium, with its incredible richness in international legal materials, especially as far as sources are concerned. In an area of law where changes and developments occur at an ever faster pace, this medium appears once again to open interesting possibilities. In their subsequent careers, this probably will be the most consulted source of information for the average law graduate in order to find updated information on a particular issue in a timely manner. Acquainting students with electronic sources for international law, while at the same time warning them about the great difference which exists in the intrinsic value and credibility of the different sites, is a desirable goal both for a basic course in international law and for specialized courses. Two main projects were set up by the Center of International Law to fit into this new project, one relating to the basic international law course and a second to a specialized course on the International Law of the Sea.

International Law

Because of technical restraints, namely that the laptop class could seat only between 20 and 30 students, combined with the fact that the number of students following the international law class exceeds 100, the option was adapted to use the tutorials to fit this course into the new project. Tutorials indeed take place in small groups (15 to 20 people) and were therefore better suited. The case-study method was followed. The recent developments in the Congo were taken as point of departure. In groups of two to three, students had to search for information on a specific sub-topic (child soldiers, aggression, refugees, court cases, *uti possidetis iuris* principle as applied in Africa, international humanitarian law, UN peacekeeping operations, human rights in Africa, war diamonds, other natural resources ...). The different groups first seek relevant information (with guidance of the instructor), write a short memorandum on the basis of the materials found, and finally present these results orally to their fellow students.

Based on the first reactions of students, the results of this experiment are rather positive and encouraging despite the fact that, because of the particular timing of this project, the laptop tutorials took place at the very end of the academic year when students are normally already concentrating on exams rather than on innovative methods of learning.

International Law of the Sea

Besides the main course in international law, a specialized course on International Law of the Sea formed part of this pilot project. This class is post-graduate, normally taken by a smaller group of students (between 10 and 30). This course uses PowerPoint presentations as a method of teaching. One chapter of this course, namely the exclusive economic zone, was however not taught that way last year. Instead, the laptop class was used here for two distinct reasons.

First, the students were introduced to a CD-ROM on fisheries law, created together with a colleague from the University of Ghent, in the framework of an educational project with South Africa sponsored by the Flemish Government.[6] During the class, this CD-ROM was presented to the students. Access was given to each student through the Internet by means of password-protected access through the website of the Center for International Law. The idea was that students could study this chapter themselves, at their own pace, from any place with access to the Internet.

A second approach, much like the international law tutorials, was to teach students how to use the Internet to solve practical legal problems. Here the contemporary issue of regional fisheries organizations was the central theme. In groups of two, the students analyzed the structure and function of a particular regional fishery organization according to a strict plan of relevant issues drawn up beforehand by the instructor. At the end of the course, students were required to present their findings. These findings subsequently were included in a comparative table on the blackboard. This allowed students to understand how other regional fisheries organizations function and how the regional fishery organization they analyzed fits into the general framework. The students were advised to use two good Internet sources: the official website of the Food and Agriculture Organization of the United Nations on the with its detailed information on this subject (www.fao.org/fi/body/rfb/index.htm) and the Internet Guide to

[6]A short description in English can be found on Internet at <www.vub.ac.be/INTR/ extfinpren.html>.

International Fisheries Law (www.oceanlaw.net), to which we serve as Associate Advisor. Here too, the first reactions of students were positive.

Both “experiments” are being repeated during the academic year 2001-2002. At present, we also are incorporating this innovative way of teaching international law in educational projects we have with other countries. One example is the project on Curriculum and Methodology Development in the Areas of International and European Law, where we are cooperating with a number of Russian institutions of higher learning.[7]

3. Valerie Epps, American Branch, *Providing Low Cost Clinical International Law Internships for Law Students*

Introduction

Many law schools that have course offerings in international law and/or human rights find that students ask for and could benefit from clinical experience in these areas. If the school has the resources to mount a fully staffed clinical program to serve these students that obviously is the best option, but many schools lack the resources to fund such clinics. One alternative is to place students in non-profit legal service agencies or regular law firms that have ongoing human rights work. In large cities that serve as the headquarters of human rights or international law non-governmental organizations (NGOs), there are many opportunities for such internships. The American Bar Association requires law students to be directly supervised by a lawyer if the student is to receive academic credit for an internship.

Law schools located in smaller cities and towns and even those in large cities that do not house the legal offices of NGOs can find the task of locating international law internships a challenge. My own school, Suffolk University Law School, is located in the heart of downtown Boston, a large city, but, even though NGOs addressing international law issues abound in the area (Amnesty International, Oxfam, U.N. Association etc.), none of them has legal offices located in the Boston area. Students can be encouraged to volunteer in these offices and they will probably pick up some useful knowledge, but it will not be legal knowledge in the strict sense of the word and such work will not meet the ABA criteria for academic credit.

Internships in Refugee/Asylum Law

One area of human rights law that is widely practiced throughout the United States is refugee and asylum law. The U.S., like almost every other country, is a party to the 1967 Protocol Relating to the Status of Refugees which is incorporated into the Immigration and Nationality Act. The Boston area has a number of excellent NGOs that provide free legal services to aliens seeking to pursue refugee claims. (The International Institute, Greater Boston Legal Services, Catholic Charities Legal Services, The PAIR Project, Centro Presente, etc.) All of these NGOs have been receptive to supervising legal interns. There also are several private law firms doing similar work who are willing to take legal interns. If possible, students should first take a course in Immigration Law to provide them with an overall knowledge of the U.S. immigration system, including refugee law. If students have not taken an immigration course, it is relatively easy to teach them the basics of refugee law. Fortunately, that area of law is a fairly discrete subject; there are several good immigration textbooks and horn books with chapters specifically addressing refugee law. I find I can take a student with no knowledge of immigration law and walk them through the basics of refugee law in about an hour, pointing out the sections of books that they will need to read before they begin any internship.

Refugee Internship Experiences

One of the requirements we have for clinical refugee internships is that each student be assigned a faculty adviser and report weekly to the adviser to discuss his/her work. I have students keep a diary outlining in detail the work they are doing. Students are encouraged to discuss any problems with cases on which they are working. Problems

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[7]A short description in English can be found on Internet at <www.vub.ac.be/INTR/ extfinpren.html>. A more elaborated description can be found at <www.vub.ac.be/INTR/Russia.html>.

can range from difficult issues of law to clients turning up three hours late for appointments and often concern the mundane routine of problems with forms and other paper work.

Over the years, I have instituted a system where I introduce students to the notion that they are likely to hear some very disturbing stories when interviewing asylum claimants and preparing their cases for presentation. The idea that forewarned is forearmed seems to help the students. I get students to read through a pretty graphic tale involving rape, assault, and murder of close relatives to introduce the students to the type of claims that they may encounter. Some students can be so disturbed by their clients claims that they (the students) need counseling. I encourage students not to become emotionally involved with their clients because that can impair their ability to serve as legal counsel but, students are human and compassion is a good feature of good lawyers and can result in lawyers representing their clients more tenaciously. Nonetheless, we advise students to be careful observers of their own emotions and if they find themselves overwhelmed by the truly horrendous life stories that many refugee seekers tell, they should seek counseling. Most legal interns working in the refugee area are rapidly given the responsibility for interviewing clients and piecing together a coherent asylum claim. This requires not only making sure the client's report is internally consistent and meets the legal standards but also reading and incorporating as much of various country reports, from both governmental and other sources, that help corroborate the claim.

Internships in Death Penalty

For law schools that have criminal law clinics, it may be possible to add a death penalty internship experience. As everyone in death penalty work knows, representing inmates on death row is immensely time-consuming and each case lasts many years. Students can be useful in preparing motions, briefs and other documents along the route of direct and collateral review. Private law firms that undertake death penalty work, often on a *pro bono* basis, and state and federal defender offices may also be willing to take legal interns. (I have not yet persuaded Suffolk's criminal clinic to take on death penalty work but we have recently appointed a clinical director who spent a number of years in death penalty representation so I am hopeful that we can add this to our human rights clinical offerings).

Internships in International Dispute Resolution

Many law schools have one or more faculty members who teach various forms of alternative dispute resolution (ADR). It is sometimes possible to persuade these faculty members to incorporate international dispute settlement into their curricula. There are a number of NGOs that engage in international dispute settlement and, provided they have a lawyer on the staff (they usually do), students can be placed with such organizations and the ADR faculty member can serve as the faculty adviser. We placed our first student in an international dispute settlement NGO in the Boston area this fall (2001) and it has proved a good experience.

Conclusion

Law schools that lack funds for fully staffed international law clinics and are located near to government offices, international organization offices or legal offices of international NGOs still can provide useful international law internships. We have had good success with clinical experiences in the areas of refugee/asylum law, death penalty work and international negotiation by placing students in the legal offices of NGOs and private firms engaged in this work.

C. Problems with International Law Teaching

1. Sandra C. Negro, Italian Branch, *Organising the Content for International Law Teaching*

I shall describe hereunder the five most common difficulties encountered during my teaching experience at Argentine (Universities of Buenos Aires and Belgrano) and Italian Universities (Padua) in the field of Public International Law, Community Law and Political Science. Attention will be focused on the difficulties students have really grasping the content and essence of these subjects. As a contribution to solving some of the problems with the teaching of international law, a few suggestions are offered in the second part of these comments.

The Problems

1. One of the main difficulties in the teaching-learning process is related to the great variety of topics and the reduced abilities of students to understand the subject and to view it as a discipline in which topics are closely intertwined.

2. It is evident that students lack adequate knowledge of historical events regarding the emergence and development of the subject and rules of international law. This historical reference is indispensable for an understanding of these rules.

3. A third problem concerns the difficulties in analyzing international case law. Except for a few leading cases, students have trouble reading and understanding the decisions of the ICJ.

4. A fourth problem is related to the absence of a single comparable body of codified rules. Students find long lists of conventions governing certain topics and almost no body of rules
for others.

5. A final type of problem concerns the need for a clear link between international law and everyday reality. This means, in practice, constantly updating various topics, particularly important when dealing with general aspects of international law.

Proposals

1. How to organise the contents of the subject?

With the objective of improving students' understanding of the subject, my experience indicates the need to divide the course into two parts, i.e., a first section which I call "Public International Law – Generalities," and a second one, "Public International Law – Special Issues." I would include the following in the "Generalities" section:

I) The subjects of International Law
(a) The State as a primary subject:
Territory and territorial changes
Sovereignty. The limits of State sovereignty. State jurisdiction.
(b) International Organisations
Legal personality of international organisations.
Classification and powers.
Autonomy. Delegated powers.
Distribution of competences between States and organisations.
(c) Individuals as subjects of international law.
(d) Other subjects of international law: the Roman Catholic Church and the Sovereign Order of
Malta.

II) The Sources of International Law
(a) Characteristics and classification
(b) Customary International Law
(c) Treaties
(c) General principles
(d) Judicial decisions and the doctrine
(e) "Ex aequo et bono"
(f) Unilateral acts and soft law

I consider the following "Special Issues" to be essential:

1. The Settlement of International Disputes:
(a) the use of force. The law of national and international armed conflicts

(i) the principle of non intervention and the law of neutrality.
(ii) the peaceful settlement of disputes
(iii) self defence as an exception
(iv) regional organisations for collective defence. Defence and collective security
b) the peaceful settlement of disputes
(i) classification
(ii) diplomatic procedures
(iii) arbitration
(iv) adjudication
(v) dispute settlement in the framework of international and regional organisations
2. International responsibility:
(a) international responsibility of States
(i) international responsibility of States for unlawful acts.
(ii) international liability of States for the injurious consequences of acts not prohibited by international law
(iii) accountability of international organisations
3. The law of the sea
4. International watercourses
5. Airspace
6. Outer space
7.The polar regions: the Arctic and the Antarctic.
8. The International protection of the environment.
9. The international economic order.
10. Regional integration and international law.
11. Questions relating to State representatives. International Conventions.
12. Diplomatic protection: the nationality link. Acquisition and loss of nationality. Dual and multiple nationality. Conventions on the subject. Nationality and citizenship. Nationals and foreigners. Asylum.

<u>2. reference to historical events.</u>
Every topic and subtopic should be developed with reference to the main historical landmarks and the politico-economic and social context in which the law has been adopted. Reference also should be made to the difficulties in the implementation of the law.

<u>3. a thorough analysis of international case law.</u>
The analysis of international case law is of utmost importance to enhance the student's understanding of the task entrusted to the arbitral or judicial body, the rights and obligations of the states parties to a dispute and the elements and strategies used in defence of a position.

<u>4. lack of codification of the subject</u>
The use of ancillary methods designed by the teacher to serve as a guide for the treatment of the various topics provides an extremely useful tool. This enables the student to relate the theoretical topics to the process of adoption of both customary (written or unwritten) and conventional rules.

<u>5. the updating process</u>
When updating the topics, and with a view to "triggering" the interest of students, it is advisable for both parties – teacher and student- to look for pertinent references in the media (including the press, internet, films, videos and so forth). In this way, by researching and comparing, it will be easier to really understand complex issues likely to be misinterpreted if encountered only through readings. The danger is that the student will memorize information, but not grasp the practical aspects of a given legal question.

2. Anthony Aust, British Branch, *Getting Concepts Across*

Until my retirement this year as Deputy Legal Adviser in the British Foreign Office, I taught international law only infrequently, often to non-lawyers. This makes one think hard about how to explain concepts, principles and rules in an understandable way. It requires techniques that help the student to relate to the subject. It is easier with diplomats since they know at first hand the context in which international law operates. Other students' knowledge of international affairs and diplomacy is largely theoretical or gathered only through the media. For them, one has to set international legal issues against their real background. For example, before discussing the U.N. Security Council, I draw fourteen matchstick men, and one matchstick woman, with strings attached to their wrists and reaching upwards, i.e., puppets. Discussion of the meaning of this curious picture helps to impress upon them that one should not think of the Security Council as an organ, but just as 15 people - albeit intelligent and experienced diplomats - doing an immensely difficult job. But, although they work closely together, and soon develop a collegiate spirit, they are bound by the instructions of their governments. Each must report back and seek new instructions when the other members of the Council do not share the government's views. Except for the occasional maverick, the way an ambassador votes is decided by his government. Yet, within this straightjacket, he still has some room to manoeuvre and can influence his government's policy. If he gets stupid instructions. the clever operator will not act on them, but will instead report back that, 'despite the most intensive discussions, not enough members were able to support our position.' He will then suggest what might be acceptable.

Holding a mock Security Council meeting - though preferably informal consultations of the members of the Council - is also a useful teaching tool, and is increasingly being used. But, to be really effective, it must to deal with situations which have come before the Council, though with a few changes. (The one I have devised for this year is about Afghanistan, but is set against Gore's landslide victory and his attempt to get the Council to authorise the use of force, just when the Middle East Peace Process is stymied.) Each participant is given detailed 'instructions' from his foreign ministry and told of the importance of following them, or until the 'umpires' change them. Naturally, no member of 'the Council' is represented by a national of that state. If properly organised, the students soon get into the spirit of the thing. At least half a day should be allowed.

I became acutely aware of the lack of understanding of the way in which international negotiations are conducted, and international law - in the broadest sense - is made, when I took part in a Hague Academy workshop in 1992. I read a paper on 'The Procedure and Practice of the Security Council Today'.[1] My main point was to emphasize that collective discussion by the members of the Council of draft resolutions is done behind closed doors in informal consultations (though with simultaneous interpretation into the six United Nations languages). These consultations are preceded by meetings of groups of members, such as the five permanent members and the non-aligned. There is no common record of informal consultations; the verbatim record of the formal meeting of the Council at which a resolution is adopted tells one little or nothing about how it evolved and, most of all, why it was drafted as it was.

After the first Kosovo resolution (1160(1998)) was adopted there was much academic discussion about why the preamble had no formal determination, for the purposes of Article 39 of the Charter, that the situation in Kosovo was a threat to international peace and security: did this mean that this Chapter VII resolution had not been validly adopted? What had happened was that the determination which, according to Ivanov, Milosovic had been omitted by mistake from the first draft. The error was soon put right, but, at a very late stage, during a telephone call between the Russian foreign minister and the U.S. Secretary of State, the latter agreed to leave out the determination that Ivanov said Milosevic objected to strongly. In return, Mrs Albright got Russian agreement to include a point important to the United States. The other members of the Council accepted this deal with relief, and nothing was said about it on the record.

After I had read my workshop paper - which was to me fairly unremarkable - many of the participants said they had never guessed that the Council worked in the way I had described. Yet they were all distinguished academics who had studied and written about the Security Council for many years, and knew much more than I about its history. What disturbed me most was that none of them had enquired of people who had worked on the Council as to its

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[1]In R-J. Dupuy (Ed.), 'The Development of the Role of the Security Council, Workshop', Hague Academy of International Law Publications (1992), pp. 365-374. See also, M. Wood, ' Security Council Working Methods and Procedure: Recent Developments' (ICLQ 1996, pp. 150-161).

working methods, even though a cursory examination of the verbatim record of the adoption of a resolution today contrasts greatly to a record of only 20 years ago.

This lack of understanding of, and inquisitiveness as to how, multilateral diplomacy is done is not confined to Security Council matters. In 1995, an eminent British professor of international law criticised at a seminar the drafting of the short article (3bis) amending the Chicago Convention to confirm that a state must not shoot down civil aircraft except in self-defence.[2] The text does leave much to be desired, but it was a compromise that emerged after three weeks of intensive negotiations. It was finalised only at an evening reception for the participants on the day before the end of the conference, the final draft being written on the back of the proverbial envelope and passed around for approval.

Since then I have tried in lectures, articles and one book,[3] to describe, to lawyers (international and domestic) and non-lawyers, the unseen - even seamy - side of international relations. Such knowledge is indispensable for a true understanding of the international legal process.[4] For a long time, verbatim records have not been made of international conferences convened to draw up treaties, summary records are rare, and so much of the real work is done behind the scenes with no common record. Given the absence of reliable records, it is ever more important that teachers, writers and students of international law should hear from and talk to those who take part in such conferences. Two recent books give a realistic accord of how important diplomatic conferences work and should be recommended to students.[5]

But, the problem of getting people to look behind the documents is by no means confined to international law. Recently, a young British teacher of criminal law happily admitted that he had no intention of qualifying to practice, and had hardly ever attended a trial. He was quite content to be paid to read and write on his favourite subject. In some areas of domestic law, it may not matter too much if one teaches only on the basis of what one has read; the English law of contracts is to be found in the extensive and ever developing case law, though aspects of commercial law may require the writer to inquire into commercial practice. But, since his speciality was the law of criminal evidence, a firsthand knowledge of how a criminal trial is conducted would seem desirable.

However, knowledge of the reality of diplomatic negotiations is not of course a substitute for scholarly and critical examination of texts. The two complement each other. Recollections of the participants in international negotiations - like political memoirs - are necessarily imperfect and subjective. When written by serving officials, they are necessarily constrained by duties of confidentiality. But there remains great benefit in practitioners of the black art of diplomacy, and especially foreign ministry legal advisers, drawing on their inside knowledge to record the negotiation of important treaties.[6] It also gives them the opportunity to stand back and assess what they have been doing, to see the results in the context of other developments in international law, and to discover common elements and trends. Hopefully, this will make those who see themselves as little more than hacks or journeymen lawyers, into better informed and more thoughtful legal advisers, and thus more useful both to their clients, as well as the wider world.

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[2] ILM (1984), p. 705.
[3] Modern Treaty Law and Practice (Cambridge University Press, 2000).
[4] See, for example, my article on the negotiation of the Convention on the Suppression of the Financing of Terrorism in the Max Planck Yearbook of United Nations Law, forthcoming 2001).
[5] Margaret Macmillan, Peacemakers (2001), about the Paris Peace Conference of 1919, and Richard Holbrook, To End a War, (1998), about the Dayton conference.
[6] See for example, Lee (ed.), The International Criminal Court: The Making of the Rome Statute (Kluwer, 1999).

3. Ryszard Piotrowicz, British Branch, *The Everyday Relevance of the Subject*

I still confront the belief amongst academic lawyers that the Austinian handicap can explain away international law. This can be useful in that it regularly obliges me to consider and discuss with my students why international law really is law. But part of this problem is also that too many people do not appreciate the everyday relevance of the subject. Too many international law courses I have seen still start with sources of international law. In my view, this is to begin the subject out of context, because it gives the students too little background against which to understand some of the concepts being raised. For this reason, several years ago at the University of Tasmania, a colleague, Sam Blay, and I started teaching the subject to beginners by trying to place the subject more in context. We began by discussing the international system as we see it, largely since 1945, as the political context for the modern development of international law. We therefore discussed the role and structure of the United Nations before even daring to mention custom. The idea is that students would then understand something of the international law background, and I think this has been very effective in our teaching. We also tried to use this approach in our textbook on international law.[1]

I think that some international law courses still fail to "sell" the subject properly. I had this discussion with Professor Joseph Weiler recently. His view was that international law has to stand or fall by its own merits as a separate discipline. I think he is right; but we differed to this extent. I favoured much more aggressively selling the subject to students, especially those who may be doing it out of curiosity or because they have to pick an "international" subject. You cannot attract and retain good students by leading with a discussion of o*pinio juris*! My own approach is constantly to stress the relevance of the subject, even to those students who plan to become suburban lawyers. This is easier in the U.K. now that the European Convention on Human Rights is part of U.K. law, but that is only half the battle. It is possible to demonstrate the relevance of international law in many everyday ways, for instance to land lawyers, medical negligence lawyers and, of course, criminal lawyers. I do not think this is selling the subject cheap. We still have to address the difficult conceptual issues, but this does not mean they cannot be presented in such a way that most students will start to see how relevant the subject is for them. Leading with conceptual differences and problems is really to sell the subject short. At the anecdotal level, I can say that I have used these techniques while lecturing in Germany, Poland, the Czech Republic and Romania, and it was very popular with the students.

As part of the drive for accessibility, I normally begin my lectures by spending the first five to ten minutes with my class discussing the international law aspects of that day's news. Sometimes this will be an obviously international incident, but on other occasions I deliberately select items with no prima facie international dimension, then draw out the international angle with the students. In some particularly big cases, like the fall of the Berlin Wall and the attacks on the World Trade Center, I simply abandoned the course and concentrated on discussing these events, almost as they were happening.

Another technique I like to use is in assessment. We still use fairly traditional assessment, a mixture of assignments and examinations. But in Aberystwyth, the students are given the questions in advance and they invariably involve them in very pragmatic exercises, such as advising a builder whose diplomatic client has defaulted on a debt. The point is that the students will become involved in analysing legal issues which may also be politically controversial, and which require serious legal analysis. They will have to understand the concepts first, but then they will have to apply them to solve problems. I know this is hardly innovative but I do find it much more effective than asking abstract questions.

In summary, I think international law may be taught more effectively by stressing its practical relevance in everyday life. This is not an excuse for avoiding the difficult conceptual questions; it is a matter of presentation. I also think the subject can be made more immediate for students by constantly relating it to events that are actually taking place. I know of no law subject quite like international law, in that we can open the newspaper or listen to the news for a few minutes to get enough material for a whole lecture. I find that this approach has a profound impact on many students.

Finally, a different vein, I think that the Internet lends itself very well to teaching international law. The availability to all with Internet access of a wide variety of primary sources, often within hours, has democratised the subject. We

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[1] S. Blay, R. Piotrowicz and M. Tsamenyi (eds), Public International Law. An Australian Perspective (Oxford, 1997).

are no longer so dependent on contacts who would airmail or fax the latest materials to us because so much is now published very quickly. There is the challenge of information overload; I now devote time to explaining to my students how they can exploit the Internet without becoming overwhelmed by what is out there. I find that taking the students on a tour of some websites can make the subject come alive for many of them.

I have also experimented with a website specifically aimed at undergraduate students of international law. I started this at the University of Tasmania in 1996, which at the time was quite unusual in Australia. It was not a collection of links. It sought to merge the course outlines I used – with as many primary sources as possible in hypertext so that the students could access them immediately - with selected links, the aim being to provide the students with a manageable resource they could use to study the subject by themselves. The problem with the site was obtaining the resources to maintain it, because part of its success was its immediacy with links to the most important new developments. The website was quite successful at the time and I know that it was used by teachers in other Australian Law Schools. But I think there is substantial scope for using the Internet to teach international law in ways that may not be intrinsically innovative, but do make a qualitative difference to the pedagogic process.

Part IV: Emphases of the American Society of International Law with a View to Cooperation

Anne-Marie Slaughter, Professor, Harvard Law School, President-elect, American Society of International Law

For ASIL's teaching initiative, I have two prongs in mind. First is an expanded and updated website, designed very similarly to the "cookbook."[2] It should be a resource for international law teachers, particularly scholars planning to teach a course in international law for the first time or trying to revise an existing course. We would thus want to update syllabi and perhaps expand the categories of syllabi. A number of political scientists, for instance, have been teaching courses specifically entitled international law and international relations, which include a new generation of political science writing about international law. In addition, many scholars have developed more specialized courses in international legal theory, as well as in specific issue areas. It should be possible to develop a more varied menu of choices, assuming that we could organize and fund regular maintenance and updating of the site. This part of the site would also have a number of links to related sites, all designed to make it as easy as possible for an aspiring teacher to gather and organize materials.

The second prong would be aimed at developing a basic course in international law, very broadly defined, that all law schools would require or at least recommend as part of a basic legal education in the 21st century. The premise of this course would be that, just as all lawyers cannot or should not be able to graduate from law school without a course in constitutional law, regardless of their intended area of practice, so should they not be able to graduate without a basic course in the legal contours of the international system. The point of constitutional law is to teach all lawyers the basic framework within which domestic law and the constraints that it is subject to. It is the underlying map of any domestic legal system. We need a similar course for the global legal system, which would include many elements of current courses in public international law, such as sources and subjects of international law, treaty interpretation, and an overview of the UN system. But it would also extend further to cover various issue areas such as trade, the environment, and human rights in which the relevant law affecting actors' behavior -- both individuals and states -- is a mix of traditional international law, national law, foreign law, and soft law such as corporate codes of conduct and codes of best practices.

An international law teaching website should include a section devoted to brainstorming and developing such a course, aimed at law school deans and chairs of political science departments as much as professors. It should offer a number of flexible basic designs for such a course, with links to various websites of value in actually choosing materials. Teachers of courses such as international business transactions, foreign relations law, transnational law, and even comparative law will have much to contribute and to gain. Over the longer term, it may also be possible to fund individual scholars to develop case studies or problem on the business school model, which could then be disseminated through this site.

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[2]J. Gamble, C. Joyner (eds.) Teaching International Law: Approaches and Perspectives, American Society of International Law (1997), 110 pp.

Cooperation with the ILA would be terrific; in a world of information overload, the task is to provide interested individuals with less not more, quality over quantity. To that end, linking websites and working together through joint committees on the various projects discussed in this memorandum should be a priority.