

# TEACHING INTERNATIONAL LAW: VIEWS FROM AN INTERNATIONAL RELATIONS POLITICAL SCIENTIST

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|   |     |
|---|-----|
| I. THE RELEVANCE OF INTERNATIONAL LAW .....   | 377 |
| II. PEDAGOGY FOR THE INTERNATIONAL LAW PROFESSOR .....  | 380 |
| A. <i>Come to the Classroom with a Clear Pedagogical Purpose<br/>in Mind</i> .....  | 380 |
| B. <i>Relate Conceptual Materials and Examples in a<br/>Coherently Organized and Intelligible Fashion</i> .....   | 380 |
| C. <i>Avoid Over-Analyzing Points and Issues</i> .....  | 381 |
| D. <i>Use the Classroom Experience to Arouse Interest<br/>and Provoke Discussion of Key Concepts, Issues<br/>and Problems</i> .....   | 381 |
| E. <i>Promote Decision-Making and Problem-Solving in<br/>the Classroom</i> .....  | 382 |
| F. <i>Relate Class Lectures to Theoretical Underpinnings of<br/>Legal Precepts, Then Apply These Concepts and Principles<br/>to Real World Situations in Order to Draw Lessons<br/>for Contemporary State Conduct</i> ..... | 383 |
| III. COLLABORATIVE LEARNING .....   | 384 |
| IV. WHY DEBATE INTERNATIONAL LAW AND UNITED<br>STATES FOREIGN POLICY .....  | 385 |
| V. CONCLUSION .....   | 387 |

## I. THE RELEVANCE OF INTERNATIONAL LAW

Contrary to common belief, international law is real and relevant to many professors of political science.<sup>1</sup> When analyzed in the context of the

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actual process of policy-making, it becomes clear that political scientists cannot help but be mindful of international law's real-world effects. International law provides stability and regularity in the conduct of international relations. International law thus creates expectations for decision-makers about the behavior of other actors in the international system.<sup>2</sup> Likewise, if policy-makers know what the law is, they can then fashion policy to conform with the expectations of other governments. In this way, international rules perpetuate regularity in international behavior, which should promote less conflict and greater stability in interstate relations.

International political science professors are increasingly coming to realize that legal concepts and principles actually contribute much to shaping the components and contours of the international system.<sup>3</sup> For one, international law embraces and legitimizes the concept of sovereignty. Sovereignty is the paramount political characteristic of the state. Sovereignty means that a state is independent from any authority superior to its own, that a state can not be bound without its consent, and that it enjoys judicial equality among other states. The state is politically independent, with equal legal status in the international community. While the exercised sovereignty of a state may fluctuate, the concept still constitutes a fundamental operating principle of international relations, and sovereignty remains a cardinal principle of international law.<sup>4</sup>

International law also determines the rules for membership in the international community. International law sets the standards for one

1. See generally JOHN KING GAMBLE & CHRISTOPHER C. JOYNER, *TEACHING INTERNATIONAL LAW: APPROACHES AND PERSPECTIVES* (1997); JOHN KING GAMBLE, *TEACHING INTERNATIONAL LAW IN THE 1990'S* (1993).

2. See Christopher C. Joyner, *The Reality and Relevance of International Law in the Post-Cold War Era*, *THE GLOBAL AGENDA: ISSUES AND PERSPECTIVES* 252-65 (Charles W. Kegley, Jr. and Eugene R. Wittkopf eds., 5th ed. 1997).

3. Unlike most international relations textbooks of the 1950's and 1960's, international relations texts since 1985 have included at least one chapter on international law and the search for order in world politics. *C.f., e.g.*, FREDERICK L. SCHUMAN, *INTERNATIONAL POLITICS* (4th ed. 1969); ARNOLD WOLFERS, *DISCORD AND COLLABORATION* (1962); HANS J. MORGENTHAU, *POLITICS AMONG NATIONS* (4th ed. 1967); ROBERT STRAUSS-HUPE, *POWER AND COMMUNITY* (1956) with CHARLES W. KEGLEY & EUGENE WITTKOPF, *WORLD POLITICS: TREND AND TRANSFORMATION* 478-513 (6th ed., 1997); FREDERICK S. PEARSON & J. MARTIN ROCHESTER, *INTERNATIONAL RELATIONS: THE GLOBAL CONDITION IN THE LATE TWENTIETH CENTURY* 311-38 (1992); and BRUCE RUSSETT & HARVEY STARR, *WORLD POLITICS: THE MENU FOR CHOICE* 406-434 (5th ed. 1996).

4. See generally ALAN JAMES, *SOVEREIGN STATEHOOD: THE BASIS OF INTERNATIONAL SOCIETY* (1986); LOUIS HENKIN, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY* (1979).

government's recognition of the lawful existence of another state.<sup>5</sup> This means that international law determines the ground rules for a state's legitimacy in the international system. In this connection, international law also sets out the rights and duties of states. These general rights and duties send clear signals to foreign policy makers as to whether certain actions are permissible in international intercourse.<sup>6</sup> All these considerations are relevant for the analyst of international relations.

Further, international law provides the language of interstate diplomacy for national foreign policy makers.<sup>7</sup> When a government communicates with another state, it usually does so through international legal channels, using the discourse of international law. When foreign policy elites in a state criticize another government for its actions, some reference to the other state's failure to abide by international legal precepts is made in virtually every case. When a dispute or confrontation breaks out between a state and another government, legal principles nearly always become pivotal considerations in the international negotiations that usually ensue. Professors of international political science can not ignore these realities.

No less important for the professor of international political science is that international legal rules enable normative judgments of actions and assertions made by governments. Legal rules serve as indicators or guidelines for policy-makers regarding the procedures or actions to be pursued in order for some particular policy to be considered internationally legitimate. Foreign policy makers might decide to disregard those guidelines because they are not compatible with national interests or foreign policy objectives. But that does not obviate the fact that those officials are aware of those rules' existence, legal meaning and policy implications, and they do know when those rules have been breached: International political scientists must be mindful of these considerations.

The point here is clear: Government decision-makers nearly always will seek to determine what international legal implications are posed by a particular course of action. While they might opt not to comply with the law, decision-makers want to know what relevance the law holds for the policy in question. To do otherwise is to be blind to the rules of the road for international intercourse and to invite unintentional and unnecessary collisions with other governments. This is fundamental to the ability of states to engage in diplomatic and commercial intercourse, and thus it is essential to the study of state behavior in international political science.

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5. See GERHARD VON GLAHN, *LAW AMONG NATIONS: AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 66-90 (7th ed. 1996); MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 183-86 (2nd ed. 1993).

6. See G. VON GLAHN, *supra* note 5, at 123-200.

7. See generally Anthony Clark Arend, *Do Legal Rules Matter? International Law and International Politics*, 38 VA. J. INT'L L. 107 (1998).

International political scientists tell us that the rules of international law are interpreted by decision-makers to serve national interests. The plain facts of policy-making in the real world are these: when international law is viewed away from the academic realm of *realpolitik* (where it is regarded as weak, debilitated idealism), its role becomes elevated to the dimension of practical policy utility. International legal considerations remain salient and significant ingredients for international political scientists to assess in the mix of analyzing policy choices and motivations by governmental decision-makers.

## II. PEDAGOGY FOR THE INTERNATIONAL LAW PROFESSOR

International law is real and relevant to the study of political science. But, how can the political science professor teach international law more effectively at the undergraduate level? While few political science academics have experience as international legal practitioners, that need not be a handicap. Indeed, that a professor has not been an international lawyer may be a strength, since students in undergraduate political science courses are more likely to be interested in what the law is, why it is necessary, and how it works, rather than the niceties and nuances of cases derived from international adjudication.

For international political scientists, the pedagogical schema used to organize an international law course is critical. Such criteria are salient, since they determine how essential concepts and principles of international law will be relayed to students. Regardless of whether the approach taken is through lecture, case method, or seminar, the political science professor teaching international law to undergraduates should bear in mind six fundamental considerations as a framework for outlining concepts and sharing experiences:

### A. *Come to the Classroom with a Clear Pedagogical Purpose in Mind*

The most important element in teaching an international law course is to know what information should be presented and how it can best be conveyed to students. This task is also likely to be the most challenging for the political science professor teaching international law. It is essential that he/she be able to package and deliver the information so that students can learn from and build upon that knowledge. While developing students' appreciation for theory and conceptual reasoning about international affairs is important, no less important is the need to emphasize that international law is actually applied in the real world and constantly works to facilitate interstate relations.

### B. *Relate Conceptual Materials and Examples in a Coherently Organized and Intelligible Fashion*

Keep comments simple and straight forward. Most students appreciate crisp, cogent explanations. In answering questions, be thorough, succinct,

and honest. If you do not know the answer to a question *do not try to fabricate one*. Students detect that. More importantly, students will respect you as a teacher if you admit that you do not know an answer, but will try to find it out by the next class meeting. It is imperative that you follow through on this pledge. Otherwise, students will see through this as a ploy, or discursive tactic.

### C. *Avoid Over-Analyzing Points and Issues*

Do not make the classroom experience tedious and overly pedantic. As the instructor, you know where the discussion should go. Your questions and comments should channel the discussion in that direction. In the same vein, use common examples to illustrate fundamental points. For instance, in underscoring the pervasive relevance of international law, make the following point: International law is essential to all our lives, even though we may not realize it and take it for granted every day. Ask the class: Do you drink coffee, tea, or coca cola? Do you own a car, television, camera, VCR, clothes, or CD player? If that product, or any part of it was made abroad and imported into the United States, international law was the means for getting it here. International trade works through international legal channels. Ever fly in an airplane to a foreign country? Take a cruise to the Caribbean? Send a letter to a friend or relative in a foreign country? Watch the Olympics or CNN covering an event in a foreign land? Have foreign classmates who studied here in the United States? It is international law that permits and facilitates all these occurrences. International law is practically everywhere, and it affects nearly everyone. The fact that it works so well, so much of the time leads most of us to take it for granted until the sensational event occurs, the invasion, or act of armed aggression, by one government against another state that brings the credibility of international law into question.

### D. *Use the Classroom Experience to Arouse Interest and Provoke Discussion of Key Concepts, Issues and Problems*

A course in International law in political science usually attracts a wide variety of student interest, including foreign students. This situation can make for a very rich learning environment, as students of differing nationalities bring to the classroom disparate views and opinions on international events and issues. Take advantage of that range of attitudes. Encourage students to react to various legal concepts and points. A profound educational point can be made with the realization that international law is often subject to varying interpretations, depending on an observer's national perspective. Where a student stands on an international legal issue may well reflect the national perspective of the state where he/she is from. Substantiating that point in the classroom can make the discussion a microcosm of international relations.

Class discussion about international law can be substantially enriched by relating key legal concepts being discussed to contemporary issues and events. Not only does this compel students to take a more active interest in *what's in the news*, it also underscores the relevance of international law to the real world today, as opposed to cases *back then*. Use reports and analyses in the daily newspaper as illustrations that highlight the relevance of international law to foreign policies and world events, as well as the successes, frustrations, or controversies in international legal concerns. That is, before meeting a class early in the term, pick up any major newspaper (e.g., *New York Times*, *Washington Post*, *Los Angeles Times*, *Wall St. Journal*), and circle in bold red magic marker the stories having to do with foreign affairs. (I suspect that nearly every one you find will have certain international legal implications). Bring the paper to class and show the stories to the class, point out and discuss with students what possible international legal ramifications could be involved. After this exercise, students are more likely to read international stories with an eye to their international legal implications, rather than consider them merely to be about some event that happened to foreign people, over there. International law becomes more than an academic subject; the international legal repercussions of foreign events will take on real world relevance.

#### *E. Promote Decision-Making and Problem-Solving in the Classroom*

An essential purpose in teaching a course on international law is to make students think in a reasoned, more analytical fashion. Teaching such legal logic in an international political science course is not intended to prepare them for law school (although many students think it will do so). Rather, such pedagogy aims to instill in students a greater appreciation for the rationale of creating international law to fulfill specific purposes in regulating the conduct of states. The use of the case method approach and hypothetical situations has proved extremely effective in this regard.

For example, consider the fundamental question that all professors must confront in teaching international law, namely: Why do governments obey international law? For much the same reason that drivers are inclined to stop at a four-way intersection. Nearly all drivers stop their cars at a four-way intersection in order to protect the driver and passengers from being hit by other vehicles, either those that are being driven recklessly, carelessly, or dangerously by other drivers. Most people do not stop because it's the law and the right thing to do. Most drivers do not stop because they actually fear getting caught by a policeman who might be watching from some hidden location. Rather, drivers stop because they realize that it is in their personal safety and interest to stop, to watch what other cars do, and then to proceed cautiously, even though they have the right of way.

Governments tend to obey international legal rules for the same reason. Stop, look and listen. Proceed with caution. That is what the law

says. The expectation is that if you follow through on that, you will in all likelihood pass through international relations unscathed and unharmed. But watch out for the drunk driver, whose senses are impaired (by ideology or parochial national interests). And watch out for the big truck that comes barreling through the intersection (the hegemonic regional power) who does not care who gets in its way because it has the largest engine and greatest bulk on the road. If you drive recklessly long enough, accidents will happen; furthermore, sooner or later, you will pay a high price, perhaps the ultimate price, for your recklessness.

**F. *Relate Class Lectures to Theoretical Underpinnings of Legal Precepts, then Apply These Concepts and Principles to Real World Situations in Order to Draw Lessons for Contemporary State Conduct***

International law is often depicted as little more than idealistic ambitions, when in fact its rules provide the essential sinews that hold processes of international relations together. International treaties and conventions (including arms control agreements, environmental accords, and telecommunications arrangements), as well as civil aviation flight routes, international commercial transactions, campaigns by non-governmental organizations, actions by the United Nations and other international organizations--all these activities involve real world international law efforts to promote more orderly conduct in interstate relations. Simple news stories can be used amply to demonstrate this point.

Here is another analogy. International law functions with authority much akin to the role of officials in a football game. Football is a game of power, strategy, and interests, played on a field according to rules. Large, mighty linemen, fast backs, and quick, brutish line-backers all collide during the course of the contest. The referees and other officials determine when rules are broken, and when penalties should be imposed. Why is it that all these strong men, who are much bigger than the officials, all condescend to a referee's rulings? The strength and power of the team does not determine the rules or how the game is played. The rules are actually intended to put the game figuratively on a level playing field—to allow all teams to play by the same rules, and to have expectations about what will happen if those are broken: penalties result, penalties are called and marked off against those big strong football players by little men in black and white striped shirts. The big strong football players accept those penalties, regardless of the power differential between them and the referees. Why? The answer is similar to why governments most often decide to obey international law: because it works to their interests to play by the rules. But if they get caught in a violation, it is best for them to accept the appropriate penalties for the sake of the game being played out.

The role of international law is to provide the rules of the international relations game. So long as states abide by those rules, international relations will work fairly smoothly. But if some government decides to

cheat, to violate the rules by going offside, or using its hands to hold or block, or interfere with a pass illegally, then it violates the laws and becomes subject to international sanctions or punishment. Granted, there is no impartial group of officials in international relations to make the call in international law as during the football game. The states themselves become the referees, call the violations themselves, and impose the penalties. Still, more often than not, governments, like football players, know the rules and tend to play by them. It serves their interests to do so. Otherwise they become known as rogue states, trusted by few but known by all on account of their ill-repute.

### III. COLLABORATIVE LEARNING

For many international law courses taught from a political science perspective, the most sustained and most rewarding learning experience can come from a collaborative process. Teaching international law is not supposed to be a platform for the professor to pontificate or proselytize. Rather, it furnishes an opportunity for a community of persons to learn together, in effect, to use the classroom experience for shaping and testing new ideas after being exposed or basic philosophical concepts and general principles of international law.

For collaborative learning experiences to be especially meaningful for political science students, it is essential that they reflect exposure to various legal problems, hopefully set out in authentic setting with real world analogies. This means that hypothetical cases, if used as learning devices, should be constructed in such a manner that mirrors as truly as practicable real world events and real world circumstances. International law must function in a real world political environment, and simulation exercises should reflect that fact.

One successful collaborative learning experience is to assign a series of topics for team debates before the classroom. This compels students on each debate side to conduct legal research on the merits of a particular issue, formulate proposed rationales for its lawfulness, follow the debate, and take questions from class members on the legal implications and merits of their respective positions. It combines individual responsibility with the necessity of collaborative intra-group learning.

Confronting international law in practice is critical to achievement of the course objectives, and this is effectively done through a series of debates in a course that I teach on International law and United States Foreign Policy. Students try to WIN the games by garnering support from the rest of the class based on the merits and suasion of their legal arguments, although past experience indicates that clear winners are not often produced. The degree of success this exercise enjoys depends on two key factors: first, the willingness of students to assume their adopted roles with energy and, second, the extent to which student participants in the debates can learn and relate how, where, and why international law is

integrated into the United States foreign policy decision-making process and can demonstrate the tensions between national security considerations and international legal constraints in formulating United States foreign policy. Taken in tandem, these two ingredients can produce a successful and unique learning experience that fosters a deeper understanding of the subject matter than would likely be attained through a lecture-format course.

#### IV. WHY DEBATE INTERNATIONAL LAW AND UNITED STATES FOREIGN POLICY?

Use of the debate can be an effective pedagogical tool for education in the social sciences. Debates, like other role-playing simulations, help students understand different perspectives on a policy issue by adopting a perspective as their own. But, unlike other simulation games, debates do not require that a student participate directly in order to realize the benefit of the game. Instead of developing policy alternatives and experiencing the consequences of different choices in a traditional role-playing game, debates present the alternatives and consequences in a formal, rhetorical fashion before a judgmental audience. Having the class audience serve as jury helps each student develop a well-thought-out opinion on the issue by providing contrasting facts and views and enabling audience members to pose challenges to each debating team.

These debates ask undergraduate students to examine the international legal implications of various United States foreign policy actions. Their chief tasks are to assess the aims of the policy in question, determine their relevance to United States national interests, ascertain what legal principles are involved, and conclude how the United States policy in question squares with relevant principles of international law. Debate questions are formulated as resolutions, along the lines of: "Resolved: The United States should deny most-favored-nation status to China on human rights grounds;" or "Resolved: The United States should resort to military force to ensure inspection of Iraq's possible nuclear, chemical and biological weapons facilities;" or "Resolved: The United States' invasion of Grenada in 1983 was a lawful use of force;" or "Resolved: The United States should kill Saddam Hussein." In addressing both sides of these legal propositions, the student debaters must consult the vast literature of international law, especially the nearly 100 professional law-school-sponsored international law journals now being published in the United States. This literature furnishes an incredibly rich body of legal analysis that often treats topics affecting United States foreign policy, as well as other more esoteric international legal subjects. Although most of these journals are accessible in good law schools, they are largely unknown to the political science community specializing in international relations, much less to the average undergraduate.

By assessing the role of international law in United States foreign policy-making, students realize that United States actions do not always measure up to international legal expectations; that at times, international legal strictures get compromised for the sake of perceived national interests, and that concepts and principles of international law, like domestic law, can be interpreted and twisted in order to justify United States policy in various international circumstances. In this way, the debate format gives students the benefits ascribed to simulations and other *action learning* techniques, in that it makes them become actively engaged with their subjects, and not be mere passive consumers. Rather than spectators, students become legal advocates, observing, reacting to, and structuring political and legal perceptions to fit the merits of their case.

The debate exercises carry several specific educational objectives. First, students on each team must work together to refine a cogent argument that compellingly asserts their legal position on a foreign policy issue confronting the United States. In this way, they gain greater insight into the real-world legal dilemmas faced by policy makers. Second, as they work with other members of their team, they realize the complexities of applying and implementing international law, and the difficulty of bridging the gaps between United States policy and international legal principles, either by reworking the former or creatively reinterpreting the latter. Finally, research for the debates forces students to become familiarized with contemporary issues on the United States foreign policy agenda and the role that international law plays in formulating and executing these policies.<sup>8</sup> The debate thus becomes an excellent vehicle for pushing students beyond stale arguments over principles into the real world of policy analysis, political critique, and legal defense.

A debate exercise is particularly suited to an examination of United States foreign policy, which in political science courses is usually studied from a theoretical, often heavily *realpolitik* perspective. In such courses, international legal considerations are usually given short shrift, if discussed at all. As a result, students may come to believe that international law plays no role in United States foreign policy-making. In fact, serious consideration is usually paid by government officials to international law in the formulation of United States policy, albeit sometimes *ex post facto* as a justification for policy, rather than as a *bona fide* prior constraint on consideration of policy options. In addition, lawyers are prominent advisers at many levels of the foreign-policy-making process. Students should appreciate the relevance of international law for past and current US actions, such as the invasion of Grenada or the refusal of the United States to sign the law of the sea treaty and landmines convention, as well as for

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8. The choice of issues for debate reflects this objective: each debate topic is a concern widely discussed in the news media, and often in Congressional hearings and debates. In addition, each subject tests the lawfulness of US policy vis-à-vis current treaties, principles, and norms of international law to which the United States is formally committed.

hypothetical (though subject to public discussion) United States policy options such as hunting down and arresting war criminals in Bosnia, withdrawing from the United Nations, or assassinating Saddam Hussein.

Through collaborative learning students become problem solvers, contributors and analytical discussants. The more undergraduate students learn through these exercises to form and test their own ideas about international law, the more significant the professor's role becomes as the class mentor and source of authority in the learning process. Teaching international law offers a unique opportunity to depart from the traditional approach to classroom learning from lecture and rote regurgitation of dates, events and situations. The interactive quality of the learning environment allows for students to move from a strategy of peer competition to one of peer collaboration. Participation in these exercises can be important for the learning process, particularly since students are encouraged to develop keener judgment on the merits of legal questions, gain insights into the potential of group decision-making, and acquire greater self-confidence about their contribution to planning and decision-making for the class presentation.

The role of the professor in this collaborative learning process comes principally as a bridge between international law theory and the real world.

Much of the emphasis in contemporary international relations courses aims at emphasizing theoretical concepts to students in order to make them think more critically about the process and motivations of state behavior in international affairs. Symbolic thinking is often substituted for historical analysis. The teacher of international law as international relations should strive to introduce the theory and conceptual thinking behind the law as states have created it. More than this, however, he/she should offer to students various models and examples for real world engagement with situation-specific exercises. This should permit students to engage in a collaborative learning process, such that they can improve their critical, flexible, and creative thinking skills in dealing with real-world problems that are ambiguous, ill-defined and unfamiliar.<sup>9</sup>

## V. CONCLUSION

International law is expressly relevant for the foreign policy process and international relations. While some political scientists note and highlight theoretical deficiencies of international law, governments do not deem international rules to be irrelevant in formulating real world foreign policy choices. Indeed, governments attach considerable importance to international rules, and decision-makers expend much energy and effort contending over issues concerning their interpretation and evolution. Clearly, policy-making elites strive to fashion, revise and interpret

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9. See Christopher C. Joyner, *Crossing the Great Divide: Views of a Political Scientist Wandering in the World of International Law*, 1987 AM. SOC'Y INT'L L. Proceedings 385-91 (1990).

international law such that the outcome best serves their state's purposes and advances their national interests. This is evident from the functional role assigned to legal advisers in a government's foreign policy apparatus, and it should be reflected in the teachings of international political scientists.

A debate exercise provides students with deeper insights into and appreciation of the complexities of integrating international law into the foreign policy making process. The success of any given debate depends upon the quality of the team members' efforts to research and present a topic, and on their ability to relate concepts and principles of international law to the ways in which foreign policy objectives are formulated and achieved. The exercise is not intended to train international lawyers or to promote forensics as a skill, but rather to give undergraduate political science students a greater sense of the real-world process by which foreign policy is made and implemented, and of the place international legal considerations must be given in that process. In this way, the relevance and reality of international law can be more effectively demonstrated for students of political science in general and of international relations theory in particular.