

# TEACHING INTERNATIONAL LAW TO UNDERGRADUATES AND OTHER NON-LEGAL AUDIENCES: PRACTICAL SUGGESTIONS FOR PEDAGOGICAL APPROACHES

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## I. INTRODUCTION

Unquestionably, there is growing interest in the subject of international law at several educational levels and among a broad constituency of students. This is due to a variety of factors. Not the least of which is a widespread desire to better understand the events of September 11, 2001 and the international response to terrorism. In addition, as the world becomes more interdependent, the importance of the field continues to expand. This phenomenon is hardly surprising when one considers that matters, which have always constituted a focus of international law, such as terrorism, trade, human rights and global environmental protection resonate through a number of different disciplines today. Accordingly, there is a visible demand for courses in the subject at many

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graduate schools, business schools, undergraduate political science, and continuing education programs.

Over the last several years, I have had the honor and the responsibility of teaching courses in public international law, international dispute settlement and international environmental law to student bodies with little or no formal background in the study of law. This undertaking is most enjoyable as I consider it a privilege to give students an introduction to a discipline I value so highly. At the same time, teaching international law to undergraduates and other non-legally trained audiences carries with it unique challenges that need to be addressed by the conscientious educator. This paper highlights a few such challenges and offers suggestions and observations on how best to address them in the academic environments in which they are experienced.

## II. AN ACADEMICALLY DIVERSE STUDENT BODY

Indeed, one cannot refer to “undergraduates and other non-legal audiences” pursuing courses in international law as a homogeneous educational class. On the contrary, this population typically presents far greater diversity of educational background and skills than are observed in international law classes at the law school level. This is because law school entrance requirements and uniformity of law school curricula generate students with a certain predictable level of knowledge and skills at the various stages of their legal education. At the undergraduate level, however, a student might be law school bound, taking a course in international law as part of her major field of study. In this case, the student might express a great interest in, and curiosity for, the study of international law. On the other hand, an undergraduate student might be majoring in a completely unrelated field and choose the class because it fits an open time-slot on his course schedule. Both types of students, and many others with diverse interests, are found in undergraduate international law courses; the thoughtful instructor must take their respective needs and aspirations into account.

In graduate programs, such as international affairs, where courses in international law are often an important, if not required, part of the course of study,<sup>1</sup> students are often very familiar with the underlying issues and political disputes that are addressed by international law, but at the same time may be quite unfamiliar with the legal instruments and institutions by which they are addressed. In continuing education programs, perhaps the most challenging venue of all, an instructor is likely to find a dizzying variety of students ranging

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1. Degree requirements and fields of specialization of key graduate programs in international affairs may be accessed on the Association of Professional Schools of International Affairs (APSIA) website, at <http://www.apsia.org>. *Id.* APSIA is a non-profit association and information source for two-year master's degree programs. *Id.* APSIA presently has 23 member institutions and 15 affiliated institutions.

from undergraduates to those simply curious about the subject, to United Nations diplomats and experienced professionals with advanced graduate degrees.<sup>2</sup>

As international lawyers we can probably agree that broader and deeper appreciation for our field across many disciplines is a very healthy sign. Admittedly, our subject is difficult and not widely understood. To those who are not lawyers, indeed to many who are, an introduction to international law is often met with skepticism and resisted with biases. For example, “international law isn’t really law because there is no enforcement” and “what good is a world court if states need to consent to its jurisdiction?” In my experience, these comments more often than not reflect unfamiliarity with the subject as opposed to deeply held convictions. The job of the good international law teacher is to give the student the tools and the knowledge to test these beliefs in a rational and well-informed manner.

### III. WHERE TO START?

As a teacher of international law I proceed from the assumption that my subject matters, that it has a role to play in world affairs and that it offers potentially effective, yet admittedly imperfect, mechanisms to address serious global problems. Making the case that the study of international law is a worthwhile endeavor is a good place to start.

#### A. *Develop the Idea that International Law Matters*

The primary actors of public international law may be nation-states, but ultimately it is about real people. There is a tendency among students new to the discipline to think of international law as an esoteric discipline that is only of concern to diplomats and law professors. To the surprise of many students, this misconception is one of the easiest to disabuse. For most instructors, one of the first cases we teach in any introductory course is the *Paquete Habana*.<sup>3</sup> This U.S. Supreme Court opinion, so often used to demonstrate the role of *opinio juris* as an element of customary international law, can also be used to demonstrate the applicability and availability of public international law to individuals. In that case the owners of fishing boats wrongfully seized during the Spanish-American War successfully availed themselves of a principle of

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2. In my experience teaching at the New York University School of Continuing and Professional Studies, such academic diversity is the norm in a typical international law course.

3. The *Paquete Habana*, 175 U.S. 677 (1900) (holding that as a matter of customary international law, fishing vessels peacefully practicing their trade are exempt from capture as prize of war).

international law in the federal courts of the United States.<sup>4</sup> Similarly, the classic cases of *Nottebohm*<sup>5</sup> and *Mavrommatis Palestine Concessions*<sup>6</sup> to name just a few examples, offer excellent opportunities to humanize the study of international law.

In other words, international law is about real people with real problems. The field of human rights arose from the very real experiences of the Holocaust and other abominations. The legal framework through which we address the threat of global terrorism is so dramatically influenced by the events of September 11, and continues to evolve with world events. When this is pointed out, the most skeptical student needs to acknowledge the genuineness and importance of the subject.

At the same time we are demonstrating the importance of international law, it is useful to say something about its acceptance and appreciation within the community of nation-states. Do states abide by international law? How often? Why? As we can all agree, these questions are the subject of much philosophical, doctrinal and contextual debate. The need to raise them in the context of an introductory course, however, should be beyond question. To a new student, an introductory course in international law is often about shifting, or at least expanding, their existing paradigms of what "law" is. A student's pre-conceived notion of law, as derived from her likely point of reference — a domestic legal system — should be challenged to assimilate the new concept of international law.

A deliberate dialogue with the class early in the semester, developing the reasons why states participate in the international legal system, will lay the foundation for much of what will follow. If assisted to do so, in their own time, students will appreciate that international law is predicated on state consent, that reciprocity of obligations is a driving force and that most states want to be perceived by other states as stable and responsible actors in world affairs. The fact that international law is not followed in a great many highly visible examples need not be fatal to the enterprise. Are all laws followed in domestic legal systems? Does this diminish the significance of all international legal objectives in the first instance?

If a discussion of the importance and applicability of the subject precedes more substantive aspects of the study of international law, an instructor will find

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4. *Id.* This case was actually two appeals from decrees of the United States district court for the southern district of Florida condemning two vessels and their cargo as prizes of war taken during the Spanish-American War.

5. *Nottebohm Case (Liech. v. Guat.)*, 1955 I.C.J. 4 (Judgment of Apr. 6) (holding that only an individual's state of "real and effective" nationality may exercise diplomatic protection on his behalf).

6. *Mavrommatis Palestine Concessions (Jurisdiction) (Greece v. Gr. Brit.)*, 1924 P.C.I.J. (ser. A) No. 2, at 11 (Aug. 30) (holding that a state may espouse the claim of one of its nationals in an international tribunal thereby converting a private dispute into a matter of public international law).

students more receptive to material built upon that foundation. With that as a point of departure, other pedagogical considerations fall into place more easily.

### *B. Choose an Excellent Textbook*

One of the most important decisions the teacher of a legally oriented course needs to make is the decision of what textbook to adopt. While classic casebooks at the law school level allow for more authentic review of actual international legal cases, there is no shortage of textbooks that are specifically geared to the needs of international law courses offered in venues other than traditional law schools. Some utilize a modified case-method of instruction while some proceed from a policy-oriented or political science framework. Still others simply aim to present the reader with the basic factual and conceptual elements of the subject. The most useful texts are those that convey the necessary information while permitting the instructor the flexibility to adapt to the particular focus of the academic program in which the course is offered. Some of the better texts that are available are:

Peter Malanczuk (ed.), *MODERN INTRODUCTION TO INTERNATIONAL LAW* (7th Rev. ed.), Routledge (1997) (8th edition due in early 2003);

Valerie Epps, *INTERNATIONAL LAW FOR UNDERGRADUATES*, Carolina Academic Press (1998);

Martin Dixon, *TEXTBOOK ON INTERNATIONAL LAW*, Blackstone Press Ltd. (1996);

William Slomanson, *FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW* (3d ed.), West (2000);

James H. Wolfe, *MODERN INTERNATIONAL LAW: AN INTRODUCTION TO THE LAW OF NATIONS*, Prentice Hall (2002).

Whatever textbook is chosen it is useful to give students some exposure to the case method of study. This is not only because some, or perhaps many, of the students found in undergraduate or continuing education international law courses are law school bound, but also because exposure to the methods of the discipline should be part of introductory study. Of the textbooks enumerated above, only Epps features cases in sufficient form to facilitate case study. Slomanson, however, offers edited and abbreviated cases in highlighted boxes that give students the key aspects of important international law cases. The other textbooks listed above all refer to and discuss major cases in international law as part of the textual explication of topics and issues.

Where the instructor chooses a textbook without cases, it might be advisable to assemble some of the key international legal cases in a separate reader. Most university bookstores can arrange copyright compliance on

supplemental course materials requested by the professor. Integrating case study with classic college learning paradigms allows students to gain a flavor for law school-style case study.

Because of the subtle aspects of some topics and the fact that most students are being exposed to the subject for the very first time, it is advisable to require that reading assignments be completed in advance of class discussions. While advanced reading is certainly necessary for the case method of study to be effective, it is recommended under any circumstance to sensitize students to the substance and direction of class discussions. If the instructor does not specify this, there may be a tendency to treat the chapter on human rights, for example, as “homework” to be completed after the lecture on human rights. The goal of reading assignments should be to maximize preparedness for classroom learning.

#### IV. DIDACTIC APPROACHES: SUBSTANCE AND PROCESS

##### A. *Experiment with Problem-Based Learning*

Many students indicate that the study of a new subject becomes more meaningful for them when they have some opportunity, however limited, to apply what they are learning. Accordingly, at least once during a semester it can be helpful to introduce a hypothetical dispute or problem that the students can work on either as a class or in smaller groups.

This type of exercise can be a hypothetical territorial dispute where the students are asked to negotiate a settlement. Similarly, they could be asked to negotiate the terms of a *compromis* to create an arbitral tribunal or a special agreement to confer jurisdiction on the International Court of Justice. To suggest another possibility, it could be a “use of force” problem where students are asked to play the role of a head of state that needs to make decisions about military action based on an evolving set of facts (i.e., “When is force justified under international law?”). Such hypothetical exercises allow students the opportunity to work with and apply what they have learned, but in a very controlled way.

##### B. *Devote at Least One Class Session to Research Methods*

At some point in the semester, but well before any writing assignments are due, an instructor should devote some class time to the tools and techniques of researching international legal issues. While adequate research skills, such as the use of LEXIS-NEXIS, can be presumed at the graduate and law school levels, undergraduate and continuing education instructors need to help their students develop these skills. As every international lawyer knows, the ability to access treaty databases, acts, and resolutions of international organizations,

major yearbooks, and key professional journals are among the most important skills of the profession. Giving students an elementary exposure to available resources allows them to take their first real steps as scholars in their own right.

At most colleges and universities, library personnel are ready and able to orient students to the resources available at the school. This typically includes electronic databases, journals, and reference materials for designated subjects. This may also include access to law libraries where students can conduct more traditional legal research and avail themselves of law reviews and professional journals.

In conjunction with a library orientation, it is important that students receive some instruction in Internet resources in international law. There is no shortage of websites containing excellent resources in both public and private international law, including intergovernmental organizations (IGOs), nongovernmental organizations (NGOs), professional associations and those maintained by academic institutions and practicing attorneys. The websites of United Nations,<sup>7</sup> Multilaterals Project of the Fletcher School of Law and Diplomacy at Tufts University<sup>8</sup> and the World Trade Organization (WTO)<sup>9</sup> are among the very best and contain lots of information that students can use for research purposes and to better understand coursework. It is even helpful to provide them with a list of websites as part of the course syllabus.

### *C. Class Assignments and Assessments Should Address as Many Skills as Possible*

To determine students' performance and assign grades it is both useful and fair to rely on a variety of factors. As with most academic learning this may include one or more exams, a writing assignment and class participation. Basing grades on several components will allow students to demonstrate their skills across a spectrum of those necessary to achieve some mastery of the discipline. This includes not only knowledge of key concepts and terminology but also analytical thinking, persuasive writing and the ability to articulate subtle ideas. It also affords those who are deficient in one area an opportunity to balance it with others.

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7. United Nations website, at <http://www.un.org> (last visited Mar. 9, 2003).

8. Multilaterals Project of the Fletcher School of Law and Diplomacy website, at <http://fletcher.tufts.edu/multilaterals.html>. The Multilaterals Project contains an excellent searchable treaty database.

9. World Trade Organization (WTO) website, at <http://www.wto.org> (last visited Mar. 9, 2003).

### 1. Exams

There are several ways an instructor can design an exam for an introductory course in international law. While it may be appropriate in some courses to adopt the traditional law school hypothetical format, it is important for lawyers to remember that most non-law school exams do not test students' knowledge in this way. Therefore the skills of "issue-spotting" which become second nature to law students would need to be explained and taught in other academic milieus. Multiple-choice examinations are useful to determine, for example, definitional knowledge of key principles or the structure and objectives of international organizations, but this format undervalues the nuances of many international legal concepts. It is probably wiser to utilize essay-type questions that can be drafted to adapt to the level and needs of a particular course. Essays can test course content at definitional, conceptual and theoretical levels. In addition, this style of exam is generally familiar to undergraduates and others.

### 2. Term Papers

Term papers are excellent tools to introduce students to the research techniques and information resources of the field. Researching and writing a paper for an international law course should require a student to discover, analyze and integrate facts, law and scholarly commentary. These skills, necessary for many other fields of study as well, form the cornerstone of international legal scholarship. I strongly recommend that students have the broadest possible latitude in the selection of their term paper topic. This is because it is important for them to be engaged in the process; allowing them to pursue what interests them will help keep them engaged. Requiring students to submit their paper topics for pre-approval, along with a brief outline and partial bibliography will help insure that their intended focus is appropriate and productive.

### 3. Class Participation: Socrates or Aristotle?

To the extent an instructor bases a grade on class participation it should represent not only the level of preparation and knowledge of the student, but also his or her willingness and ability to articulate that knowledge. Expressing oneself in the unfamiliar tongue of international legal discourse is not easy for many. Credit should be given to those who try hard to master it and share their thoughts with others.

Styles for classroom discussions will certainly vary among instructors (not to mention the group dynamics of each individual classroom), but one of the biggest questions facing new instructors is the extent they should utilize the

“Socratic” method of teaching that has tested the intellect of every American law student since time immemorial. To offer just one perspective, the classic Socratic method is probably not so constructive a didactic tool in non-law school environments. If it is utilized at all, it should probably be used only occasionally.

There are several reasons to disfavor the Socratic method. First, the Socratic method, as it is commonly practiced in American law schools, may be seen as intimidating and confrontational to students unfamiliar with its spirit and purpose. Second, to the extent the goal of class-time is to clarify principles from reading assignments, convey information and promote a general understanding of the subject matter, traditional university lecturing may be a more practical and effective way of achieving those objectives. This can be contrasted with the domain of legal education where the objective is to produce lawyers with finely honed analytical skills sufficient for professional practice.

Finally, a Socratic exchange between teacher and student may stifle other types of discussion of course content where a diversity of opinions and perspectives should be encouraged. For example, classroom debate on political and legal issues can be initiated more easily when students feel comfortable expressing their own ideas as opposed to simply responding to the professor’s questions. It is widely understood that students learn a great deal from each other.<sup>10</sup> Vigorous and open classroom discourse is consistent with the best traditions of liberal arts education. On the other hand, there is no real harm in giving students a taste of the Socratic method as part of an overall strategy of teaching international law.

## V. INSTILL A LIFELONG INTEREST IN THE SUBJECT

It is almost axiomatic in education to assert that a teacher who creates passion for a subject among her students will be more effective.<sup>11</sup> Motivation is a key to better learning.<sup>12</sup> One way for an instructor to do this is to explain why they themselves are passionate about the subject and why they entered the field. Another is to encourage the students to reflect on the importance of the subject of international law at the end of a semester as compared with their ideas about it when the semester began. Before the end of a semester ask students to read a morning newspaper and find international law issues even where they are not expressly presented as such. In so doing, students will realize that what they have learned allows them to read the same news stories as they had before but

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10. See James B. Levy, *The Cobbler Wears No Shoes: A Lesson for Research Instruction*, 51 J. LEGAL EDUC. 39, 50 (2001).

11. See Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51 (2001).

12. See Levy, *supra* note 10, at 41-45.

with greater insight and understanding as to the legal context and consequences of world affairs. The framework of international law addresses, for example, military conflicts, trade disputes, territorial disputes and environmental disasters – in other words, important world events. When students understand this they may be interested in keeping up-to-date in the field or in pursuing it with further education.

If students are interested in keeping current with the subject, a good way for them to do so is with membership in a professional organization like the American Society of International Law (ASIL).<sup>13</sup> Membership in a key professional association not only provides access to valuable educational resources but also an opportunity to demonstrate commitment to an area of study on their *curriculum vitae*. Some students may even choose to pursue international law at the law school or graduate level and then perhaps as a career. There are few moments so satisfying for an educator as when they hear they were responsible for introducing a student to their life's work.

## VI. CONCLUSIONS

Interest in international law at various educational levels is a developing phenomenon that will likely continue for some time. Teachers of the subject need to be responsive to the particular needs of individual student constituencies and appreciate the differences between legal education at the law school level and other academic venues. Students should be encouraged to challenge their initial assumptions about the subject of international law and be allowed to express their ideas in vigorous classroom debate. Conscientious instructors should seek to instill some passion and fascination for the subject that will allow students to make informed and reasoned choices about further study and career paths. Whatever professional fields students ultimately pursue, they should go forward with a meaningful, albeit introductory, understanding of the subject of international law and the important global problems it addresses.

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13. Membership applications for the American Society of International Law (ASIL) are available on the American Society of International Law website, at <http://www.asil.org/member.htm> (last visited Mar. 9, 2003). The ASIL is a premier professional organization with many useful resources for students and scholars. It welcomes as members all who are interested in the subject. Annual membership includes six issues of the ASIL Newsletter and a one-year subscription to the American Journal of International Law. *Id.*