International law teaching: Glass(es) half full? Rose coloured? Red/white and blue?

1 Introduction and background

I have been teaching international law for almost forty years and have been systematically examining its teaching for about half that long. I should explain the meaning of 'systematically examining'. The American Society of International Law (ASIL) has had an interest in the teaching of international law since its founding. In fact, the first page of the first issue of AJIL was US Secretary of State Elihu Root's call for better education in international law.

> One way to bring about this desirable condition (settling international controversies without war), is to increase the general public's knowledge of international rights and duties, and to promote a popular habit of reading and thinking about international affairs.[1]

ASIL began to practice what Secretary Root had preached and, in 1912, carried out what was probably the first large-scale, empirical study of international law teaching.[2] It was fifty years before ASIL undertook another large-scale survey. Under the direction of Richard Edwards, it examined international law teaching in both schools of law and departments of political science, and produced two excellent reports.[3]

In 1989, the Ford Foundation expressed interest in having ASIL carry out an up-dated study of international law teaching. I was selected to direct that study because I was probably the only ASIL member who regularly taught and did research about international law *and* had an academic interest in survey research. Beginning in the fall of 1990, questionnaires were mailed to administrators and international law teachers in departments of political science and schools of law in the US and Canada.

When I was organising the 1990 ASIL survey,[4] I assembled a group of some of the leading international law scholars in the world. We talked for several hours about teaching. The discussion ranged broadly and included the content of the questionnaire we would distribute to several thousand teachers and

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[1] Root 'The need of popular understanding of international law' (1907) 1 *AJIL* at 3, 2.
[2] Carnegie Endownment for International Peace 'Report on the Teaching of International Law in the Educational Institutions of the United States' (1913).
[3] Edwards *International legal studies: A survey of teaching in American law schools* (1963 1964); Edwards and Grimond *A survey of teaching of international law in political science departments* (1963).
[4] See Gamble *Teaching international law in the 1990s* (1992).

administrators. We also discussed requiring an international law course for law students. Almost on a whim, I asked how many in the group had *not* taken an international law course while pursuing their first degree in law. Among the hands, somewhat sheepishly raised, were those of Professors Abram Chayes and Louis Henkin. None of the Europeans at the meeting had to make comparable confessions. This helped me realise that international law teaching is complex and multilayered.

At the ILA Conference two years ago (The Hague, 2010) Neville Botha and I presented a detailed final report[5] reflecting on more than a decade's work: 'The International Law Association and the Teaching of International Law – what is to be done? (all due respect to VI Lenin) a candid assessment (July 2010)'.[6] We offered a number of observations that are reflected implicitly and explicitly in this paper. Probably the most intense, multi- faceted examination of teaching by the Committee was two workshops:

- 3 April 2004 in Washington, DC (co-sponsored by the American Society of International Law Teaching Initiative, and the Institute for International Law and Politics, Georgetown University); and

- 23 August 2004 at University of Potsdam, Germany (co-sponsored by the American Society of International Law, Teaching Initiative; Faculty of Law, University of Potsdam).

We also had some success in encouraging 'country reports,' ie, candid assessments of the status of international law teaching in individual countries. Professor Botha's survey of the Republic of South Africa was one of our most notable successes. However, objective, empirical assessments of international law teaching are fraught with difficulty. Later I elaborate on this problem and suggest remediation. One of the broadest and most poignant conclusions Neville Botha and I offered was '(a)fter all, effective teaching is the initial and probably most important way to sustain a cadre of professors and practitioners who appreciate and can advance the cause of international law'.[7]

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[5]Prof AHA Fred Soons, ILA Director of Studies at the time, asked John Gamble to organise a session on teaching international law for the 1998 Regional Meeting in Taiwan. This was successful and led to the creation of the Committee. Hilary Charlesworth, Australian National University, was the first chair. Neville Botha took over as chair in 2006. John Gamble has been rapporteur throughout. The ILA's Biennial meeting held 25 29 July 2000 in London was our first formal meeting. It was possible to get a group of five committee members together at a dinner meeting in Washington, DC in April 2000 following the ASIL Annual Meeting in Washington. This provided important guidance in formulating an approach and launching the committee.

[6]Gamble and Botha Committee on the Teaching of International Law 'Final Report' International Law Association: The Hague Conference 2010.

[7]*Id* at 12.

My message here shows frustration that we – the community of scholars, diplomats, and practitioners who deal with international law – are not devoting enough time and energy to its teaching or, more accurately, to active collaboration in teaching.[8] As my title suggests, we may be looking at international law teaching through rose coloured glasses that convince us of the wealth of subject matter expertise permeating conferences like this one, will assure enlightened teaching. I question this assumption on several levels, the first of which is seen in the second part of my twisted metaphor. Have we agreed upon the content – the glass that holds the international law we wish to teach – especially in an introductory course? The contents might differ according to the country where the teaching occurs, but is there a certain core that should be covered in any course taught anywhere? Are we able to restrain that all-too-human tendency to sacrifice the good on the altar of perfection? Is it increasingly difficult to include everything our hearts tell us should be in an introductory course? How do we handle this uncomfortable situation? Acknowledge the impossibility and give up? Ignore the problem and continue to try to cover three times more material than is humanly possible? Finally, the 'red, white and blue' in the title is an acknowledgment that many of my observations and suggestions stem from decades of research and teaching principally in the United States.

Let me deal with an important yet often overlooked issue, to wit, how to define the limits of teaching. Analyses of the teaching of anything – be it international law, phonetics, or physics – often have a feast or famine aspect to them. At the famine end of the continuum, many contend that knowledge of the substance of a subject overshadows everything else. One need only know the cases, treaties, nature of IGOs, etc and teaching will magically fall into place – ie, teaching will take care of itself. All of us have had experiences that disprove this assumption: that damning with faint praise statement, 'this professor really knew her/his subject but cannot teach it effectively'. The feast end of the continuum is hardly more satisfying. Almost everyone with any exposure to international law has opinions on its teaching because they have experienced teaching, all as students and many as professors as well. One approach stated the following:

> International law teaching combines the worst aspects of sex and the weather. Everyone thinks they are an expert; they complain about problems but do nothing to improve the situation.[9]

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[8] Louis Henkin noted a similar point the variation and misunderstanding of international law which contributes to this lack of collaboration: 'Today, international law is taught in the universities, practiced by lawyers, weighed by foreign offices, invoked by governments in relations with other governments. About the scope of international law, however, about its role in international relations, about its influence in foreign policies of nations, there is little agreement and, I dare say, little learning and much misunderstanding.' Henkin *How nations behave* (1979) (2ed) at 2.

[9] Gambe 'Teaching or get off the lectern: Impediments to improving international law' (2007) 13 *ILSA J Int'l and Comp L* at 379.

This leads directly to a fact about international law teaching all faculty should acknowledge. How typical are our individual, often country-specific experiences; can we generalise from them? There are many manifestations of this. In the United States, we find a more-than-hundred-year-old argument about whether an international law course should be required for law students. A related issue in the US is the fact that international law questions are virtually never included in bar exams, which is one reason international law is seldom required.[10]

A recurring problem in analysing international law teaching, one on which I elaborate below, is how we assess actual behaviour. As a social scientist with a statistical bent, I would ask, what are the data and what do they show? As basic as this question appears, there are major obstacles to answering it. When a survey course in international law is required, it is relatively easy to tabulate the number of students who take it. However, in the US, to cite one major example, an international law course seldom is required as part of the three-year JD curriculum. Further, law schools are hesitant to release information about who takes what international law courses. Perhaps it is not yet feasible to assess international law course subscriptions in many countries, but at least we can specify where the difficulty lies and what information (data) we seek.

Now I shall turn to three areas where deeper discussion about teaching is needed, areas that I hope will resonate with professors from many countries.

2 The foci/limits of our teaching obligation

One of our obligations as teachers is clear and uncontroversial. We teach the students in the courses our universities assign to us. However, as we become more senior, many professors are able to modify their teaching obligations, often towards more advanced, specialised courses usually closer to their research interests. Does this shift course offerings away from required survey courses? Does it require a different kind of teaching?

Do we have a duty as international law professors, to explain – teach – international law to a wider public? Many professors are quick to respond in the negative, and there are convincing arguments for doing so. Most common is the point that international law is simply too complicated to teach to lower level university students, let alone to the general public. However, many leaders in our field have argued the opposite. For example, Judge Manfred Lachs would not limit knowledge of international law to law students:

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[10] In the US, bar exams are administered at the state level. See n 2 above (recommends questions on the US bar exam).

> Knowledge of public international law is essential as a consequence of the greater intensity of international relations and the growing interdependence of the world which is being expressed in the increasing penetration of the international element into national legislation. If it is justifiable to require from each student some insight into these international developments then this holds true particularly for the law student.[11]

This is not a new idea. The very first article published in *The American Journal of International Law*, written by US Secretary of State, Elihu Root, was entitled 'The need for popular understanding of international law'.[12] Secretary Root's message also addressed feasibility:

> Of course, it cannot be expected that the whole body of any people will study international law; but a sufficient number can readily become sufficiently familiar with it to lead and form public opinion in every community in our country on all important international questions as they arise.[13]

Another test of our responsibility to teach international law rests with national judges. One would hope that judges are educated about international law commensurate with the reality that international law issues are finding their way into municipal courts more than at any time in human history. The problem may be most acute in the United States due to the size of the country and the co-existence of a national and fifty state – eg, Pennsylvania – legal systems. Further, since international law is seldom required in US law schools, most judges took no international law in law school, and international law questions are virtually never included in bar examinations.[14] The American Society of International Law reacted to this situation by publishing *A handbook for judges*.[15] Justice Sandra Day O'Connor in the foreword to the *Handbook,* wrote:

> This overview of international law should provide much needed background in an area of the law that is rapidly emerging in ways that affect courts here and abroad ... The fact is that international and foreign law are being raised in our courts more often and in more areas than our courts have the knowledge and experience to handle comfortably. There is a great need for expanded knowledge in this field. And the need is now.[16]

Continuing our discussion of the limits of our responsibility to teach

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[11]Lachs *The teacher in international law: Teachings and teaching* (1987) at 148.
[12]Note 1 above.
[13]*Ibid.*
[14]Note 9 above.
[15]Bederman, Borgen and Martin *International law: A handbook for judges* (2003) 16 at xix and xxi.
[16]*Id* at xix and xxi.

international law, does it include 'teaching' international law to the mass media on the ground that they are the primary vehicle through which the public receives information? Do we need to use the mass media to plant some idea of international law in the minds of more people? American international lawyer Lucy Reed, wrote:

> The American media has (*sic*) given short shrift to international law, even when frontpage news raises international legal issues ... What are the structural and other causes of this lack of media attention? How can international lawyers better interact with and educate the media so as to encourage journalists to call upon us for international law content in their stories.[17]

There are many views on the role the media can or should play. Robert Entmann wrote of the media's control of public perception by 'omitting or de-emphasizing information, by excluding data about an altered reality that might otherwise disrupt existing support'.[18]

There are numerous pessimistic assessments of the media's role in the United States. Howard Friel and Richard Falk described

> This American disposition to pursue foreign policy free from the constraints of international law has grown dramatically since September 11 ... (and) lends urgency to the existence of an informed citizenry that believes in the need for its government to respect international law ... It is here that the news media in the United States bear such a heavy responsibility, which it has shirked to date.[19]

Should we academics who spend our professional lives on international law, worry about getting the message out to a broad public – often via the mass media? Do we have a more daunting task than scholars in other areas? Is *jus cogens* harder to explain to the mass media than the Higgs Boson Particle, or does physics simply try harder? If so, why? Does international law have publication outlets comparable to *Science*[20] and *Nature*?[21] Both journals target a general, scientifically-literate audience. They operate under the assumption that the quality of publications relates directly to the size of the audience.

> People on the streets of Peoria may be generally disposed against things international in addition to which international law seems dry, jargon ridden and, most importantly, not pertinent to their lives. One would hope that

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[17]Reed 'The Media's portrayal of international law' (2001) 95 *ASIL Proc* at 216.
[18]Entman 'How the media affect what people think' (1989) 51 *Journal of Politics* at 367.
[19]Friel and Falk *The record of the paper: How the New York Times misreports US Foreign Policy* (2004).
[20]AAAS *Science magazine* (2012) available at http://www.sciencemag.org/magazine.
[21]Nature Publishing Group *Nature International Weekly Journal of Science* (2012) available at http://www.nature.com/nature/current issue.html.

> terrorism, the globalising economy, and the war in Iraq would make knowledge of international law essential for US citizens and make them more receptive to media coverage of international law.[22]

There is no simple answer to this dilemma: does our teaching involve an obligation to reach the general public; if so, can/should we do so via the mass media? This issue is hardly new. US Secretary of State, Cordell Hull, addressing the ASIL Annual Meeting in May 1940, said:

> Upon those who are devoted to the improvement and application of international law there devolves a special duty to make the significance of international law a living reality in the heart and mind of every American.[23]

Philip Jessup, also writing in 1940, opined that the international law professorate is 'under an obligation to their profession to keep asking the simple questions which one might put to a beginners' class'.[24] I do not want to minimise the complexity of these issues. It is easy to assert that our teaching obligation extends from advanced seminars on esoteric subfields, to the person on the street in Peoria, Illinois (or on the Chapman Autobus). However, the modes of effective teaching may be markedly different.

3 A required course in international law: Whether, what, when?

An enormously important question is what, if any, international law courses should be required for the first degree in law. I wish there were a simple, reliable way to answer this question. It is possible to examine some of the reasoning behind choices to require certain types of international law-related courses. And, of course, the matter is less settled in some countries/regions (the US and Anglophone Canada) than others (the Republic of South Africa). The most lucid explanation I know was provided by Professor Mathias Reimann of the University of Michigan Law School who saw two broad approaches.

> The first approach introduces a 'global' perspective in the first year curriculum by presenting occasional comparative, international or transnational perspectives in all (or most of) the courses in a piecemeal fashion … The problem is that this approach is relatively difficult to implement.[25]

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[22]Gamble and Dirling 'Mass media coverage of international Law: (Benign) neglect?, distortion?' (2006) 18 *Fl JIL* at 1, 297.
[23]The American Society of International Law (May/July 2005) 21/3 *Newsletter* at 3, 6.
[24]Jessup 'In support of international law' (1940) 34 *AJIL* at 506, 507.
[25]Reimann 'Two approaches to internationalizing the curriculum: Some comments' (2005 2006) 24 *Penn St ILR* at 805.

> The second approach ... is to create a separate introductory course ... This allows students to see the larger picture, to recognise connections, patterns, and general features of transnational law.[26]
>
> While the choice between the two models mentioned must be well considered, it is ultimately of secondary importance. The most important thing is to take action.[27]

Reimann explained that Michigan chose the second (mandatory introductory course) approach. He acknowledges it takes significant faculty time and resources[28] but believes it is well worth the effort for several reasons including:

- the Transnational Law course is a recruitment asset; [29]
- graduating a student body every member of which has at least a minimal knowledge of law beyond American borders;[30]
- a transnational law course provides a basis for upper class international courses;[31]
- sharing the teaching of the transnational law course has integrated the faculty, particularly its international component, because we each had to learn a minimum about each other's fields.[32]

The Michigan course is called 'Transnational Law'. Reimann explained in some detail how and why Michigan chose this approach.[33] This is a very brief outline of the principal elements covered in the course.

1 A basic introduction to the state system
2 The making of international law, including treaty law, customary law, and 'soft' law
3 The creation and evolution of states
4 International organizations, including global, regional, and functional bodies
5 Modalities of resolving transnational disputes, including diplomacy, sanctions, arbitration, and international courts
6 The role of corporations and NGOs in the transnational system

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[26] *Id* at 806.
[27] *Id* at 808.
[28] Reimann 'Making transnational law mandatory: Requirements, costs, benefits' (2004 2005) 23 *Penn St ILR* at 787 788.
[29] *Id* at 789.
[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid.*
[33] Reimann 'From the law of nations to transnational law: Why we need a new basic course for the international curriculum' (2003 2004) 22 *Penn St ILR* at 397 415.

7 The incorporation of international law into domestic legal systems, in particular that of the United States
8 The jurisdiction of states to make and apply law, including extraterritorial jurisdiction and immunity from jurisdiction
9 Certain selected topics of current concern, eg, human rights, the use of armed force, terrorism, and trade
10 The effectiveness of international law vs domestic law.[34]

Time does not permit a consideration of every introductory/survey course but the offering from the Australian National University Law School is a 'standard' public international law course, hence a somewhat different approach from Michigan. *ANU College of Law handbook* online (2012) described the required course this way:

> This course deals with the body of law known as International Law or sometimes 'Public International Law', as distinct from 'Private International Law'. The field of International Law deals with many aspects of the functioning of the international community (including the relations of States with each other and with international organisations); it also affects many activities that occur within or across State boundaries (including the treatment by States of their citizens, environmental law, military operations, and many other areas). The impact of international law on the Australian legal system and the globalised nature of many governmental, judicial and social activities means that a basic knowledge of the terminology, institutions, and substance of international law is not only worthwhile acquiring in its own right, but is also a necessary part of the knowledge and skills of any law graduate.[35]

Two other US law schools take very different approaches to introducing all their law students to a transnational perspective (my characterisation). Harvard Law School uses a distribution requirement described as follows:

> INTERNATIONAL/COMPARATIVE LAW
>
> In their first year of law school, students learn to locate what they are studying about public and private law in the United States within the context of a larger universe global networks of economic regulation and private ordering, public systems created through multilateral relations among states, and different and widely varying legal cultures and systems. 1Ls may satisfy the International/

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[34]More information about this course can be found in the following link, as well as comments made by professors teaching the course. This might allow for further insight, especially into how Michigan professors actually teach their material. Law School Course Description: Transnational Law. Michigan Law. (July 18, 2012) available at http://web.law.umich.edu/ ClassSchedule /aboutCourse.asp?crse id 038594.

[35]ANU College of Law 'The Australian National University LLB and JD handbook' (2012) available at http://law.anu.edu.au/Publications/llb/2012/LLB JD Handbook 2012.pdf.

> Comparative Law requirement with one of several courses offered. By way of example, the class of 2011 could fulfil this requirement with: Comparative Law: Introduction to European Legal Traditions; Comparative Law: Why Law? Lessons from China; The Constitution and the International Order; International Law; Law and the International Economy; or Public International Law.[36]

Georgetown University Law Centre uses a more concentrated approach called 'Week One':

> To prepare for this transnational environment, first year students at Georgetown University Law Center begin their second semester with a one week intensive course called 'Week One: Law in a Global Context' ('Week One').
>
> During the week, students analyze a complex legal problem involving not only US law, but also international and/or foreign law in a transnational legal setting. The problems are designed to introduce some of the various transnational sources of law and dispute resolution techniques that students may encounter in the future.
>
> Each problem also emphasizes the importance of careful analysis of statutes, regulations, or international agreements, as well as analysis of case law ...
>
> In small group settings, students are introduced to at least one legal decision making process in addition to those of adjudication in US courts eg, arbitration and/or negotiation and/or proceedings before a foreign tribunal.
>
> Week One is a required, one credit course for first year students, which is graded pass/fail ...[37]

I am a bit hesitant to gore sacred oxen – Georgetown and Harvard are among the highest-rated law schools in the United States. I wonder how much knowledge of international law their students gain. Would it be adequate preparation for a seminar on international trade law? Would these students recognise the error if CNN reported that the International Court of Justice in Den Haag was beginning to try a suspected war criminal?

I realise many important subjects must compete for a finite amount of space in law curricula. How much room is there for a basic understanding of international law? It is important to teach students that the concepts and principles they learned about their municipal law systems can be an uncomfortable fit with international and comparative law. Awareness of this

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[36] Harvard Law School 'The new 1L curriculum' (2012) available at http://www.law.harvard.edu/current/careers/ocs/employers/about our students/the new 1l curriculum.html.

[37] Georgetown University Law Center 'Week one: Law in a global context' (2008) available at http://www.aals.org/documents/curriculum/documents/GeorgetownWeekOne.pdf.

dissonance is a beginning, but understanding it is far more important. There is more than a little irony stemming from the fact that law schools around the world trumpet the global inter-connectedness of many types of law. How can one, for example, grasp the connection between environmental and economic law without knowing something about each?

4 The digital/Internet age: Blessing and/or curse

The Internet age in which we live places an obligation on us to discuss how the teaching of international law might be affected - alas it does not make the task any easier. In the mid-1990s I ventured far out on a limb and wrote an article for the *Michigan Journal of International Law* entitled 'International law in the information age'.[38] I looked through that article in the hopes of gaining some ideas for this section and am happy to report I found only a few instances of acute embarrassment. I devoted nine pages to hypertext, and discovered its origin in 1945. Thirty years ago, we still defined, analysed, and speculated about hypertext since it had not yet become simply how all computers operate:

> [N]onsequencial writing text that branches and allows choices to the reader, best read at an interactive screen. As popularly conceived, this is a series of text chunks connected by links which offer the reader different pathways.[39]

Today we never use the term 'hypertext' but the word 'link' is ubiquitous, refers to all measure of information that can be stored digitally, and operates at breathtaking speed. Near the end of the Michigan piece, I predicted that 'computers and the global networks they drive will produce the most profound changes to international law since Grotius wrote *Mare Liberum*'.[40]

What can we say about new information technologies and teaching of international law? We are more than two decades into the information age so one would think we would have some indication of how our teaching is changing. Many have remarked that the information age has already fundamentally changed how we obtain information. Peter Trooboff at an ASIL meeting some years ago, remarked that the principal problem for the practitioners and professors was once finding information, but had now become authenticating information.[41] We certainly can find more information, more quickly, often instantly, as we teach.

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[38]Gamble 'International law in the information age' (1996) 17 *Mich JIL* at 747 799.
[39]Nelson *Literary machines* (1987).
[40]*Id* at 799.
[41]I could find no written record of Mr Trooboff's comment. A similar point was made at an ASIL panel 'Modern Technology and its Effect on Research and Communication' by Gavin Clabaugh 'Proceedings of the Annual Meeting' (1992) 86 *ASIL* at 605 ('The problem is no longer one of finding information; rather, it is one of finding the right information.')

Based mostly on my experiences teaching at Penn State, by some definitions the largest university in the United States, but also involving conversations with scores of colleagues, I would pose these questions about our teaching of international law in the information age. I also have answered my own questions, briefly, of course reflecting one professor's experience at one university:

- Has the information age changed your classroom mode. Do you use PowerPoint?
  The brief answer is yes. All classrooms have good computers that are relatively easy to use. They are flexible enough to satisfy most professors. I use PowerPoint sparingly. Many students tell me they don't like it, but others expect entire lectures to be PowerPoint.

- Does your university force you to use new teaching technologies or is it voluntary?
  So far the pressure is pretty subtle, but it does exist. I foresee a time when there will be no choice. The IT/computer folk have little understanding of the amount of faculty time necessary to learn and decide whether to adopt new teaching technologies.

- Does your university offer a number of on-line courses? Have you developed any?
  Yes, Penn State has an enormous operation and it scares me. There is a financial incentive for faculty to get involved – to develop an e-Course. I worry about a growing gulf between faculty and courses. We need much more rigorous study of the impact and quality of these courses on students and faculty. These studies must be carried out by those with no vested interest in a particular result.

- Have your textbooks and other teaching materials changed due to the information age?
  Yes, but less than I expected. I can put readings on a website for the course. But most textbooks seem to be produced as before with e-versions sometimes available (at half the price).

- Has your communication with students changed – for good to ill?
  Yes, and for good and ill. It is easy for me to e-mail all students in a class or any sub-group. Most students check regularly for these e-mails. The downside is many students (perhaps 20%) expect instant e-mail response to virtually any question. Everyone's favorite: 'Hey Dr Gamble, I missed class on Wednesday and Friday, did we do anything important?'

- Has the nature of your examinations changed?
  Yes and I did not anticipate this. New technologies make it very easy to give instant multiple choice tests at any time, and to project the class results in seconds. I tried this and do not like it! The automated grading software available encourages instantly-available grades; usually this means false precision. Most ominous, the Internet has made cheating on research papers much more prevalent. Penn State's policies do not encourage the quick resolution of academic dishonesty issues. Consequently, I have more papers written during class.

I would like to use Wikipedia as an example. Over the years, I have made extensive use of Wikipedia, with mixed results. Often my students relied so heavily on it, that I forbade its use. But how good, or bad, is Wikipedia when it comes to international law? I 'navigated' Wikipedia to see how well it handled international law to try to answer this question – my somewhat surprising verdict: not bad with the quality improving as the links lead to more specific information. I have reproduced two very brief examples from Wikipedia, first the initial page for 'international law'[42] and second the link to 'sources of international law'.[43]

> International law is the set of rules generally regarded and accepted as binding in relations between states and nations. It serves as the indispensable framework for the practice of stable and organized international relations. International law differs from *national legal systems* in that it primarily concerns nations rather than private citizens. National law may become international law when *treaties* delegate national jurisdiction to *supranational* tribunals such as the *European Court of Human Rights* or the *International Criminal Court*. Treaties such as the *Geneva Conventions* may require national law to conform.
>
> International law is consent based governance. This means that a state member of the international community is not obliged to abide by international law unless it has expressly consented to a particular course of conduct. This is an issue of *state sovereignty*.
>
> The term 'international law' can refer to three distinct legal disciplines:
>
> - *Public international law*, which governs the relationship between *provinces* and international entities. It includes these legal fields: *treaty law*, *law of sea*, *international criminal law*, the *laws of war* or *international humanitarian law* and *international human rights law*.

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[42] Wikipedia 'International law' (2012) available at http://en.wikipedia.org/wiki/International law.
[43] Wikipedia 'Sources of international law' (2012) available at http://en.wikipedia.org/wiki /Sources of international law).

- *Private international law*, or *conflict of laws*, which addresses the questions of (1) which jurisdiction may hear a case, and (2) the law concerning which jurisdiction applies to the issues in the case.

- *Supranational law* or the law of *supranationa*l organizations, which concerns regional agreements where the laws of nation states may be held inapplicable when conflicting with a supranational legal system when that nation has a treaty obligation to a supranational *collective*.

The two traditional branches of the field are:

- *jus gentium* law of nations

- *jus inter gentes* agreements between nations

...

Sources of international law are the materials and processes out of which the rules and principles regulating the *international community* are developed. They have been influenced by a range of *political* and *legal theories*. During the 19th century, it was recognised by *legal positivists* that a *sovereign* could limit its authority to act by consenting to an *agreement* according to the principle *pacta sunt servanda*. This consensual view of international law was reflected in the 1920 Statute of the *Permanent Court of International Justice*, and preserved in Article 38(1) of the 1946 Statute of the *International Court of Justice*.

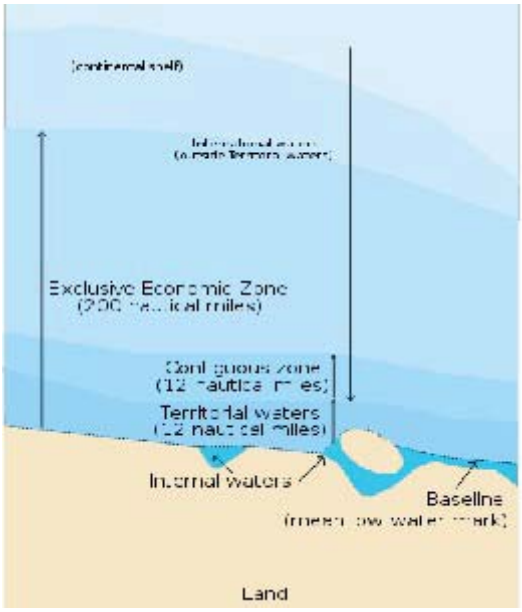
Article 38(1) is generally recognised as a definitive statement of the sources of international law. It requires the Court to apply, among other things, (a) international conventions 'expressly recognized by the contesting states', and (b) 'international custom, as evidence of a general practice accepted as law'. To avoid the possibility of *non liquet*, sub paragraph (c) added the requirement that the general principles applied by the Court were those that had been 'the general principles of the law recognized by civilized nations'. As it is states that by consent determine the content of international law, sub paragraph (d) acknowledges that the Court is entitled to refer to '*judicial decisions*' and the most highly qualified juristic writings 'as subsidiary means for the determination of rules of law'.

Of course, it is difficult to determine the accuracy of a resource like Wikipedia. This can create a 'Wiki 22', using Wikipedia to confirm information in Wikipedia. A major liability is multiple authorship of anonymous articles. Further, Wikipedia provides useful summaries of other articles raising issues of omission and judgment. However, to recontextualise Professor Louis Henkin's famous aphorism, '[m]ost Wikipedia articles concerning international law are mostly correct most of the time'.

Wikipedia provides a good introduction to many complex concepts including international law. It strives to be an unbiased source and generally succeeds,

although recent report of US legislators cleansing their articles raises serious issues.[44] Wikipedia also features maps, photos, and sound clips that can be very useful for classroom instruction. One good example is Wikipedia's articles on major multilateral treaties. For example, the discussion of the 1982 UN Convention on the Law of the Sea[45] is excellent and certainly suitable for classroom use. It is not perfect – often it uses the term 'territorial waters', not 'territorial sea' (fig 1). Many articles contain excellent maps and diagrams. I have found the colour-coded maps showing participation of countries in major multilateral treaties to be an especially useful pedagogic tool.

Figure 1[46]



5 Conclusions: Obstacles and opportunities

I should like to offer some suggestions about what might be done to improve the situation *vis-à-vis* international law teaching. This is done in light of decades of experience both with the ILA and ASIL. Both institutions have paid some attention to teaching, but seldom take a coordinated, long-term approach.

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[44]See Wikipedia 'US Congressional staff edits to Wikipedia' (2012) available at http://en.wikipedia.org/wiki/US Congressional staff edits to Wikipedia; Davis 'Congress "made Wikipedia changes"' BBC News online (2006) available at http://news.bbc.co.uk/2/hi/technology/4695376.stm.

[45]Wikipedia 'United Nations Convention on the Law of the Sea' (2012) available at http://en.wikipedia.org/wiki/United Nations Convention on the Law of the Sea.

[46]*Ibid.*

There are a few examples of conferences or workshops dealing with the teaching of international law, but I am struck by the tendency to diverge from a primary focus on teaching. The 66th Annual Meeting (1972) of ASIL had a session entitled 'International law teaching: Can the Profession tell it like it is?'[47] There is very interesting commentary but almost none devoted to actual behaviour in the classroom. This panel was held forty years ago; perhaps most remarkable when compared to today, is the large number of leading scholars who participated. This raises a fundamental point. If ASIL and ILA held plenary sessions dealing with teaching, would leading scholars from around the world be willing to participate? Another, very recent, example was a conference sponsored by the ASIL Teaching Interest Group Conference held in 2011, 'Teaching international law beyond the classroom'.[48] Some of the discussion is very interesting, but even the theme of the meeting suggests interest in things other than what occurs in the classroom.

I have been active in two professional associations not focused principally on international law: The American Political Science Association and The International Studies Association. Both are much larger than any international law-related professional association and have broader foci. Further, membership in both is overwhelmingly professors, certainly more than 80%. No doubt these factors make their task different from that of the ILA or ASIL. Both are markedly more involved in teaching – defined as a percentage of their activities with an explicit teaching focus – than is any international law organisation. To cite just one example: APSA recently issued a call for papers for its 10th APSA Teaching and Learning Conference to be held in February 2013.[49] What would it take to move ASIL and the ILA to the position where many notable professors in the field, regularly attend periodic conferences focused on teaching? Perhaps part of the solution lies in welcoming professors, practitioners and diplomats into our search for better teaching.

I believe serious examination of teaching tends to be irregular and tangential to what most scholars see as our principal job, research and scholarship -

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[47]Participants were Thomas Franck, James Baechle, Michael Barkun, Abram Chayes, Richard Edwards, Roger Fisher, Richard Frank, Ralph Humphrey, Saul Mendlovitz, Jiri Mladek, Ved Nanda, Marcus Raskin, Michael Reisman, Henry Richardson, Nigel Rodley, Peter Rohn, Alfred Rubin, Peter Trooboff, Burns Weston. 'International law teaching: Can the profession tell it like it is?' (1972) 66 *Am JIL Proceedings* at 4, 129 143.

[48]ASIL Teaching Interest Group Conference, held 6 May 2011. Major topics covered: Teaching with historical research; Conducting Empirical Research in International Law and Involving Students in its Pursuit; Discussion Lawfulness of killing Osama Bin Ladin; Employing Web 2.0 in International Law Teaching and Scholarship; Engaging Students in Experiential Learning in International Law.

[49]The American Political Science Association 2013 APSA Teaching and Learning Conference (2012) available at http://www.apsanet.org/teachingconference/?CFID 19788674&CFTOKEN 11722070.

almost like diets or exercise routines, laudable pursuits, difficult to sustain. Most of us are more comfortable with our research and assume teaching will take care of itself.

This entire issue is complicated by the link between teaching and research. Scholars and philosophers have been discussing this for millennia. Wilhelm von Humboldt described the modern university as 'characterized by the unity of teaching and research'.[50] Von Humboldt also saw 'an organic link between the creation of knowledge and its transference'.[51] Recently a leading journal dealing with higher education stated that 'a strong relationship between teaching and research is generally understood to be the defining feature of a modern university and of academic identity'.[52] There is even an apposite ancient proverb: 'He who does not research has nothing to teach'.[53]

My reaction when I first encountered these fascinating discussions ranged from 'Eureka – this is what academic life is all about' to 'good luck applying this to my students in my courses'. I even was so bold (or foolish) as to publish an article on the subject, 'The relationship between teaching and research: Clear answers to the wrong questions'.[54] One answer, certainly true but damnably difficult to implement, is that the exact nature of von Humboldt's 'transference' is very complicated, and must be meticulously recalibrated for each teaching situation. Does the argument then become tautologous?

Let me move to practical suggestions. I do not believe the dominance of research over teaching *can* be changed; I am unsure if it *should* be changed. Neither are we going to persuade ASIL or ILA to modify their charters to make the word 'teaching' part of their official names. If some foundation or association were willing to donate a substantial amount of money for creative approaches to teaching international law, this would make a huge difference. Absent the above, how can we achieve better and more sustained attention to teaching? We have convincing arguments for doing so, probably the most formidable of which is that teaching international law effectively and widely is the best way to assure the influx of young scholars and practitioners who will help in the understanding and explanation of this complicated, imperfect,

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[50]Hohendorf 'William von Humboldt'(2000) 23 *Prospects: the Quarterly Rev of Comp Ed* at 613 623.

[51]See Kwiatkowski 'The organizational problems of combining teaching and research' (1980) 15 *Eur J Ed* at 355.

[52]Robertson and Bond 'The research/teaching relation: A view from the edge' (2005) 2 *Higher Education* at 3, 509.

[53]ThinkExist 'Proverb quotes' (2012) available at http://thinkexist.com/quotation/he who does not research has nothing to teach/334396.html.

[54]Gamble 'The relationship between teaching and research: Clear answers to the wrong questions' (1985) 19 *The Journal of Educational Thought* at 1.

vitally-important phenomenon – International Law – to which we have devoted much of our professional lives.

I should like to suggest five concrete actions that seem feasible.

5.1 Leaders publicising teaching

Encourage top leadership in associations like ILA and ASIL to talk about teaching, to raise the visibility of teaching, and to make it clear that teaching is an essential, central part of the work of the organisation.

5.2 A different kind of survey

There have many surveys of international law teaching, highly variable in approach, validitity, reliability, and representativeness. As a beginning, I suggest asking the simple question 'what per cent of those graduating from your law school (college, faculty) have taken a survey course in international law' (describe it briefly to include Michigan and the Australian National University, but not Harvard or Georgetown). We might ask other questions, eg, list other common courses and ask how many graduates per year have taken them. There are problems with any survey but this would be a beginning.

5.3 An on-line introductory course

Several people have asked why we do not have an on-line international law course available at no cost? It is a question worth asking, now more than ever. Can it be done in such a way that will distil the basics without bias towards any particular country or legal system? Can we agree on a brief, a barebones course? If so, we create many opportunities for augmentation on regional, country and linguistic bases.

5.4 Discussion group, blog, for 'emergency assistance'

Too much teaching occurs in relative isolation. We should make it easier for professors around the world to get immediate answers to specific questions, quickly, during the term the course is being taught. Many of the questions might be quite narrow and easy to answer, eg, is the US party to the 1982 UN Convention on the Law of the Sea.

5.5 An award for the best teaching of a major concept

Provide an award, annually, for the best teaching of a concept defined as a way to explain an important term or concept especially effectively. It would be limited to two pages and can take no more than fifteen minutes of class time.

Teaching is vital to the progressive development of any field, perhaps even more so in a field that uses the expression 'progressive development' in its

constitutive documents. However, it is tempting and convenient to avoid teaching or to minimise the explicit attention it receives. Rewards and status for professors are weighted heavily towards research rather than teaching, in part because it is easier to measure research. We professors have an obligation to think critically about how we teach this subject if we believe our own lectures about its importance. This obligation must include analyses of how we can teach international law efficiently, effectively and to a wider audience. The fact there may be no static, universally-applicable answers to questions about teaching, does not obviate the need to pursue them.

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