

# Teaching International Law: Challenges and Perspectives

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Teaching international law stands at a different pedestal when compared to all other branches of law. We as teachers face certain challenges over and above routine challenges that are encountered in teaching law. To start with, the current trend of students is oriented towards lucrative employments in corporate sector. Hence, what sells in most of the law schools in India is the corporate law courses, depending on the market conditions. It is tragic to note that most of the law schools/colleges in India provide for one or at the maximum two international law papers during graduation level. More significantly, the paper/s offered would also combine public international law with human rights law<sup>2</sup>, making it impossible to do justice to both of them in a Semester of approximately four to five months. There are also institutions, which include international organisations or international environmental law or law of the sea along with international law and human rights to have one course!<sup>3</sup>

Thus, it is evident that the law curriculum in most of the Indian law schools is heavily domestic law oriented.<sup>4</sup> This can also be seen at the post graduation level with only handful of Universities in India offering LL.M. in international law. Hence, the requisite training for teaching international law subjects is a rarity in India. Most teachers who teach international law

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<sup>2</sup> See for example <[https://www.unigoa.ac.in/uploads/syllabus/121\\_syllabus\\_LLB\\_degree.pdf](https://www.unigoa.ac.in/uploads/syllabus/121_syllabus_LLB_degree.pdf)> and <<https://targetstudy.com/courses/lb-hons.html>> Last visited, 05 May 2018.

<sup>3</sup> See for example <<http://www.pondiuni.edu.in/sites/default/files/downloads/lm201011.pdf>> Last visited, 05 May 2018.

<sup>4</sup> While appreciating the Indian teams' achievements in Philip C. Jessup International Law Moot Court Competitions, Arun Mohan Sukumar cautions that the performance of Indian teams is certainly not the true reflection of international law scholarship in India. He views that special significance, which needs to be given to international law courses, has never been given in Indian Universities. See Arun Mohan Sukumar, 'How India Lost Its Way in the Study and Use of International Law', available at <<https://thewire.in/diplomacy/india-is-lagging-behind-in-the-study-and-use-of-international-law>> Last visited, 05 May 2018.

subjects in Indian Universities are the makeshifts for the purpose of catering to the need of the institution to teach compulsory international law subject/s mandated by the Bar Council of India. Given the fact that many among them believe that international law is a failure, it is inherently difficult for them to portray and convince the students about everyday success of international law. These factors have resulted in institutionalization of a negative approach towards international law subjects in India.

Absence of sufficient number of international law courses to supplement the foundational course on public international law has heavily taxed the teachers involved in teaching public international law. They would always be under a dilemma as to what should be included in the syllabus and what should not be. While including many of the emerging areas in the course may make the course interesting for the students, it would be unrealistic in terms of implementation and successful completion of the syllabus. It would also be doing injustice to fundamentals of international law, which would be taught in a superficial manner in the zeal to complete huge syllabus. On the contrary, if the teacher confines himself to teaching fundamentals of international law, creating interest among the students in the subject would become a herculean task. Therefore, the first step in the direction of overcoming challenges in teaching international law in India must be the reversal of their negative attitude towards teaching international law subjects by the institutions. Sufficient number of compulsory and optional papers on international law should be introduced at the graduation level along with introduction of international law specialization at the post graduation level.

In the wake of excessive emphasis on marketability, students also tend to neglect international law courses. This concern is further enhanced by the failure to comprehend the sphere of application of international law. One of the questions that often come to the mind of a student of international law is; how is international law significant in our day to day activities? Answer to this question requires a proper orientation towards the interrelationship between the international law and municipal law. As rightly remarked by Martti Koskenneimi, "The task for international lawyers is not to learn new managerial vocabularies but to use the language of international law to articulate the politics of critical universalism."<sup>5</sup> So the first task of a teacher of international law is to make his student to understand the application of

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<sup>5</sup> Martti Koskenneimi, 'The Fate of Public International Law: Between Technique and Politics', *Modern Law Review*, Vol. 70, No. 1, 2007, pp. 1 - 30 at p. 1.

international law in the municipal sphere to better appreciate its practical significance. This doesn't mean to have a module on inter-relationship by just referring to age-old theories of relation between international law and municipal law. What is significant is underscoring the relevance of international law in the domestic sphere while discussing every aspect of international law, and thereby, making the student to understand that international law matters.<sup>6</sup> Failure to do this would result in loss of student interest in studying international law, which in turn pushes international law into the realm of mere formality to study.

The students would also find difficulty in understanding certain aspects of international law due to the fact that they might not be able to find their respective domestic logical reasoning in international law. This primarily happens due to the difference between common law and civil law systems as well as differences in societal perceptions. Absence of doctrine of precedent in the international level, despite its celebrated common law position<sup>7</sup>, is the best illustration of this problem. Added to this, certain aspects of international law are completely dependent on political and economic considerations, which the legal brains cannot appreciate. One of the best examples of such an area of international law is world trade law.<sup>8</sup> With everything in international trade being dependent on politico-economic negotiations between the States, world trade law is more of economics and politics rather than law. Even the functioning of international organisation like United Nations is not free from political and economic factors.

As stated by Prof. Anthony D'Amato, "... international law is intrinsically difficult to theorize about. Lacking courts of compulsory jurisdiction and centralized legislation, it is a kind of law that must be inferred from the accommodations that sovereign States make with each other in their daily

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<sup>6</sup> McGill University has introduced trans-systemic curriculum by integrating domestic and international perspectives as well as civil and common law perspectives in each individual course curriculum. See Harry W. Arthurs, 'Law and Learning in an Era of Globalization', *German Law Journal*, Vol. 10, No. 7, 2009, pp. 629 - 640 at pp. 636 - 638.

<sup>7</sup> See John Hanna, 'The Role of Precedent in Judicial Decision', *Villanova Law Review*, Vol. 2, Issue 3, 1957, pp. 367 - 384.

<sup>8</sup> See generally Helen V. Milner, 'The Political Economy of International Trade', *Annual Review of Political Science*, Vol. 2, 1999, pp. 91 - 114.

interactions.”<sup>9</sup> Hence, it can be viewed as a compromise in the sovereign relations involving factors extrinsic to the core domain of law. This would also mean that many areas of international law differ from country to country due to the difference in the level of compromising sovereignty in their mutual relations. Aspects of trade relations, investment cooperation, immigration norms, norms on foreign employment etc are some of the examples of such diversity. Added to this, substantial portion of the international law is also made up of customary norms, which also differ. These factors add on to the difficulties of students in comprehending international law subjects.

Absence of doctrine of precedent and non-availability of strong mechanism for enforcement of international law also bring forward uncertainties in the development of international law as well as enforcement of laws.<sup>10</sup> Hence, a student of international law would always be in dilemma as to the future position of a specific aspect of international law. This means, whatever the student studies during his college days might not be good law at the time when he joins employment. Such a concern takes away the practical utility of studying international law subjects. Consequently, the students tend to avoid international law subjects in choosing their optional courses. To meet with this challenge, students need to be convinced that the fundamental principles of international law remain same, and any change in the jurisprudential development can be appreciated with a strong understanding of fundamental principles. Hence, the teaching of international law should be oriented towards making students to meticulously comprehend the fundamentals of international law.

Meeting the above concerns of international law teaching requires the adoption of different teaching methods. It is best to keep in mind that choosing appropriate methods also vary depending on the subject area of international law and students’ capability. To start with, lecture method of teaching cannot be undervalued. It is best suited for larger student groups and also helpful in communicating the basics of the subject area. Lecture method requires sufficient preparation and effective communication. Sensible use of technology in the traditional lecture method (may be in the

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<sup>9</sup> Anthony D’Amato, ‘International Law in the Curriculum’, *Pace Yearbook of International Law*, Vol. 2, Issue 1, 1990, pp. 83 - 91 at p. 84.

<sup>10</sup> See Matus Stulajter, ‘Problem of Enforcement of an International Law - Analysis of Law Enforcement Mechanisms of the United Nations and the World Trade Organization’, *Journal of Modern Science*, Issue No. 2/33, 2017, pp. 325 - 335.

form of power point presentations or showing short videos) is useful in retaining interest of students in the subject.<sup>11</sup> One of the most significant aspects of lecture method is responding the genuine queries of students in an effective manner. However, this exercise should not end up in entertaining all irrelevant questions in the classroom, which disturbs the class.

Lecture method, though significant, cannot be the sole method in teaching international law. Demonstration as a method of teaching is indispensable for having effective teaching. Demonstration gives us sufficient scope for linking the fundamental principles of international law with the current reality. It may be done in terms of giving a hypothetical example, or alternatively, by linking to a practical scenario. Even while discussing the decided cases, the facts may be narrated and the students may be asked to respond with their observations before discussing the decisions given by the courts. Critically evaluating the judgments of the courts would also help the students to better appreciate the fundamental principles of international law in the context of possible future changes in the judicial position.

Effective classroom discussions reflect the strength of a teacher in delivering lectures.<sup>12</sup> The discussion method needs to be supplemented by a prior reading of the study materials by the students. So a teacher should finalise his reading list before the beginning of the course and the students must be regularly informed to read in advance for each class. Case study method and problem solving are two other tools that may be adopted by the teacher to stimulate interest in the international law classes. As we are aware of, lots of things are happening at the international level on day to day basis, which can all be subject of discussions in the classroom. By adopting the case study method, current issues of international law can be researched in detail and different perspectives of dealing with them can be analysed while teaching international law. Hypothetical problem solving in the class would help in encouraging creativity in classroom deliberations.

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<sup>11</sup> Reference can be made here to a study conducted by Sue Greener and Craig Wakefield of University of Brighton, United Kingdom, which concludes that the present day students hold an expectation of digital transformation. See Sue Greener and Craig Wakefield, 'Developing Confidence in the Use of Digital Tools in Teaching', *Electronic Journal of e-Learning*, Vol. 13, Issue 4, 2015, pp. 260 - 267 at p. 266.

<sup>12</sup> 'Characteristics of Good Teaching', available at <<https://www.uts.edu.au/research-and-teaching/learning-and-teaching/enhancing/characteristics-good-teaching>> Last visited, 08 May 2018.

International law teaching requires the adoption of comparative method for strengthening the understanding of students. Comparison needs to be both horizontal and vertical. Horizontally, one area of international law can be compared with another area, and analogy can be tried to be derived out of such comparison. Take for example, while teaching international space law, reference to other commons regime like law of the sea and Antarctic regime is absolutely required to better appreciate the subject. Vertically, international law principles can be compared with the municipal laws of different States. While studying the concepts of burden of proof, locus standi, justice and equity, exercise of judicial economy etc in the international dispute settlement, drawing parallel with relevant domestic laws is useful. This also helps the students in comprehending the usefulness of international law in their day to day affairs at the domestic level.

Presentation supplemented by deliberations and debates on contemporary issues can be used to further the interests of students in the subject. One or two students may be asked to prepare and make a short presentation on a topic or decided case, which may be followed by a question and answer session. Also dividing the class into two or more groups to have debate on a topic would go a long way in the better comprehension of subject through the participatory process of learning.<sup>13</sup> Participation in such exercises may be subject to evaluation in order to incentivise active participation of students.

While above are some of the key methods that can be employed in teaching international law, the emphasis to be given on each method needs to be decided by the teacher on case by case basis by weighing and balancing subject coverage and student reception. It is also important to note that the mixing of different methods of teaching has to be done on the basis of experimentation. Set of methods once used effectively by a teacher to teach an international law course might not be suitable for all subsequent years. We need to be inventive every year to cater to the ever-changing needs of students to keep them motivated with the international law subjects.

To conclude, legal fraternity is left with no doubt about the uniqueness of international law subjects and the difficulties in teaching them. However,

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<sup>13</sup> See Nadezhda O. Yakovleva and Evgeny V. Yakovlev, 'Interactive Methods in Contemporary Higher Education', *Pacific Science Review*, Vol. 16, 2014, pp. 75 - 80.

the response to these problems has been timid and patchy in the Indian context. Law schools/colleges in India have resorted to the practice of deliberate avoidance to address these problems by having minimum number of international law courses in their law curriculum. Though the National Law Schools are trying to reverse this trend by introducing several international law courses, they are yet to be successful in overcoming all challenges associated with international law courses. While most of these courses are offered as elective courses catering to a limited number of students, the teachers teaching them also lack scholarship. Hence, it is evident that a concerted effort at both institutional level and faculty level is required for overcoming challenges in teaching and promoting international law.