OPENING OUR DOORS TO THE WORLD: INTRODUCING INTERNATIONAL LAW IN LEGAL WRITING AND LEGAL RESEARCH COURSES

BY DIANE PENNEYS EDELMAN

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Introduction

Why should we, as teachers of legal writing and legal research, introduce our students to international law in our first-year courses? Many of us think of international law as a subject better left to upper-level courses, business lawyers and tax specialists. Many times we have heard (or even said) that international law does not really exist, or is too abstract to have any relevance to the first-year law school curriculum or to the average lawyer’s law practice. So why on earth should we bring this complex and nettlesome subject into the first-year law school curriculum when our students already have so many subjects to master and so many “more practical” methods of legal research to learn?

The answer is rather simple—the world is growing smaller. As the millennium draws near, the information superhighway is rapidly bridging the gaps and reinforcing the connections among nations, and the economic, social, and political bonds among individuals, governments, and other entities are becoming more intertwined. People simply don’t

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2 As used in this essay, “foreign” law refers to the laws of jurisdictions other than the United States, “comparative” law refers to the comparison of foreign legal systems with one another, and “international” law refers to the many legal regimes that govern transactions or matters pending before various international judicial and arbitral bodies and other entities.

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Printed by West Publishing Corporation as a service to the Legal Community.
comfortable with international legal research and analysis and with putting their results into writing—and thus we must take on the responsibility of introducing them to these skills.

This essay will not attempt to provide a comprehensive bibliography of international research materials, as that difficult task has already been well performed by others,1 but will briefly introduce the differences between domestic and foreign/international law research, suggest some methods for familiarizing ourselves with this area, and propose ways to integrate these subjects into the first-year law school curriculum.

Different Fora, Different Issues

Foreign or international legal issues, like any others, arise in several different fora—domestic, foreign, and international. When these issues originate in domestic legal situations (e.g., when we are asked to determine whether a United States corporation may hire a foreign worker or whether a Pennsylvania resident may sue a foreign corporation in a Pennsylvania state court), we can simply look to the relevant state or federal laws. However, what happens when a dispute or transaction crosses our national boundaries—when a client is sued in a foreign court, arrested in a foreign country, or wishes to sell goods abroad? The somewhat unnerving answer is obvious—we must look to sources of law other than the traditional ones with which we are so much more familiar and comfortable.

When legal matters take on this enhanced international dimension, we must look to foreign laws, international law, or both. Unfortunately, we will not find either in our constitutions, statutes, or case reporters—the tools with which we are familiar. Instead, we must look at the texts of foreign laws and treaties, and sometimes the more elusive realm of "customary international law."2 We may have to understand the nuances of civil law to advise clients about investments in Quebec or Spain, or learn whether our client is subject to extradition under a bilateral treaty. Daunting as this may sound, we should not be dissuaded from becoming familiar with these sources of law and how to find them. By doing so, we can demystify this subject matter for ourselves as well as for our students.

Getting Started

Once we accept the premise that familiarity with foreign and international law—or at least with what they are and how to find them—will be indispensable to any future lawyer, we are ready to move to our next task—imparting that message to our students, convincing them to take this subject seriously too. But how can we first convince ourselves that this material is relevant and feel comfortable teaching it?

There are some relatively painless ways to do this. First, try a simple exercise. Think of any ordinary legal problem that a client (whether an individual, corporation, or other entity) might have. Now add an international dimension: make one party a foreign national or corporation, or imagine that a transaction must take place in a foreign country. Should you be familiar with the laws of France or with the tax treaty between the United

1 I highly recommend a recent article by Linda Karr O’Connor, Faculty Services Librarian at the Hugh and Hazel Darling Law Library, University of California-Los Angeles School of Law. Linda Karr O’Connor, International and Foreign Legal: Research: Tips, Tricks, and Sources, 28 Cornell Int’l L. J. 417 (1995). In her thorough article, the author briefly reviews some of the issues relating to international legal research, and then provides reference to a host of current background resources, foreign law materials, Internet resources, and United Nations, European Union, and treaty materials. For another useful source, see the Butterworth publication Guide to International Legal Research (2d ed. 1993), a comprehensive guide to foreign and international law research materials.

2 Customary international law is a source of law recognized by many international judicial tribunals as well as by United States courts. Unlike a treaty, which has a retrievable text like a statute and is readily found in various treaty collections or series, customary international law is law that develops as a result of consistent practice by a nation performed with a sense of "legal obligation," or opinio juris. See, e.g., Mark W. Janis, An Introduction to International Law 46 (2d ed. 1993).

3 To be convinced of the relevance of customary international law, our students need only glance at a few of the many federal and state court decisions in which the courts have looked to customary international law to resolve disputes. See, e.g., United States v. Alvareza-Machain, 504 U.S. 655, 666 (1992) (addressing whether the abduction of an alien by U.S. officials prevented the court from exercising jurisdiction based on principles of customary international law); United States v. Alaska, 503 U.S. 569, 588 (1992) (finding that artificial alterations of a coastline will extend a nation’s boundaries under customary international law); Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 432 (1989) (ruling in an international tort action that there was no basis under statutory, treaty, or customary international law for jurisdiction over the defendant); Harrison & Co. Advertising v. Republic of Cuba, 127 So. 2d 687, 692 (Fla. Dist. Ct. App. 1961) (holding that customary international law did not provide sovereign immunity for a government when non-governmental functions were involved); Petroleos Mexicanos v. Occidental, 786 S.W.2d 97, 99 (Tex. Ct. App. 1990) (holding that the sovereign immunity of a state, a well-established rule of customary international law, precluded discovery against a corporation that acted as an agent for the foreign government).
States and Spain to complete your client's transaction? Does foreign law govern your client's wish to adopt a baby from Romania or open a manufacturing plant in Germany? If your answer is "yes," then you should take a deep breath and familiarize yourself with the available resources relevant to the client’s problem.

One of the most effective ways to become familiar with the nature and breadth of foreign and international law and research materials is to take a look at the materials mentioned in the notes to this essay and view portions of the new International Law Video Course produced by Professor Elizabeth F. Defeis of the Seton Hall University School of Law in cooperation with the American Society of International Law (ASIL).³ This 10-tape series provides a good introduction to both teachers and students unfamiliar with international law.⁴ If you want to explore additional foreign and international materials at the touch of a button, browse the databases assembled by LEXIS²⁶ and WESTLAW²⁷. In addition, one of the most useful resources for obtaining a quick answer to a specific international legal research question (e.g., Is there a Greek statute regulating fishing rights? How can I obtain the text of a recent Australian court opinion interpreting the United Nations Convention on the Rights of the Child?) is the Int-Law electronic conference (or e-mail list) on the Internet, which is available to anyone "interested in the exchange of information on topics, and discussion of issues, pertaining to foreign, comparative and international legal materials." Another extremely useful resource is "What's Online in International Law," a column by Paul Zarins, social sciences bibliographer at the Stanford University Libraries, that has appeared as a regular feature in the ASIL Newsletter since 1992 and is now also available online at the ASIL home page.⁸

**Introducing International Law Early On**

Now that we’re convinced that to be competent practitioners, our students must be familiar with (or at least not terrified by) methods for solving their future clients’ foreign or international legal problems or negotiating international business transactions, how can we initiate our students into these areas of law early in their law school careers? How can we broaden their research and writing perspectives before they are exposed to the outdated notion that international law doesn’t exist or will not be relevant to their practices?²⁰

There are many ways to accomplish this. For teachers of legal research, this task is easiest: simply include a basic lesson on foreign and/or international legal research in your first-year courses. Don’t wait until the upper-class years, if simply for the reason that the students may assume that if they were not exposed to this subject during their first year, it’s just not worth learning. If your school offers a “doctrinal” first-year course on sources of law or legal process, encourage and work with the responsible professor to include a lesson or unit on this subject.

³ The ASIL is a 4,000-plus-member international organization that provides numerous educational programs worldwide for government officials, jurists, diplomats, professors of international law, practitioners, and students. It also publishes and provides access to a wealth of resources on international law. To obtain more information, contact ASIL at 2223 Massachusetts Avenue, N.W., Washington, D.C. 20008-2864 (202-939-6000; fax 202-797-7133). One of the most convenient ways to learn more about ASIL resources and membership is to visit the Society’s home page at <http://www.asil.org>. The home page provides numerous links to reference sites. Another useful international law Internet site is the American Bar Association Section of International Law and Practice’s reference site at <http://www.abanet.org/intlaw>.

⁴ The first tape, *Nature and Sources*, provides a good overview of the development and function of the international legal system for the novice. Additionally, the tapes on *Status and Law of Treaties* supply useful background on basic relationships and contractual arrangements among different countries. Other topics covered in these 30-minute segments include *Organizations, Dispute Settlement, Use of Force, Human Rights, Global Concerns, Criminal Law, and Economic Law*.

⁵ Both services provide extensive international and foreign law resources and publish helpful guides for navigating their databases. See LEXIS-NEXIS International Search Tips (which includes charts depicting the structure of several foreign judicial systems) and WESTLAW Guide to International Law Research for Law Review and Journal Students.

⁶ E-mail message from Milagros R. Rush, Int-Law listowner and moderator, dated May 24, 1996. This list was started in April 1991 at the University of Minnesota, and had 1,006 subscribers from 43 countries as of late May 1996. Id. To subscribe, send a message to <listerv@isr.umn.edu> stating: **subject: join int-law yourfirstname yourlastname**. The welcoming message will provide you with explicit directions on how to use the list.

⁷ An example of the usefulness of the Int-Law list hit home a few months ago when a colleague wanted to learn the meaning of the "Master of Rolls" in English law. When I posted this query on Int-Law, I received a dozen detailed responses within a day!

⁸ Collections of this column are also available by purchase from the ASIL.

¹⁰ In fact, an argument can be made that international law should be introduced at the high school level. See, e.g., Donald E. Buckingham, Why Not Teach International Law in High School?, ASIL Newsletter 20 (March-May 1995), which in part discusses Ontario’s incorporation of international law into its secondary school curriculum. As of 1995, more than 16,000 Ontario high school students had been exposed to international law in their final year of high school. Id.
For those who teach legal writing, the ways to integrate international law may be less obvious but are nonetheless plentiful. When you teach preparation of objective legal memoranda, for example, experiment by using a domestic statute with international ramifications to convey to your students the relevance of international legal matters.\textsuperscript{11} When you teach persuasive writing, base your problem, in whole or in part, upon a treaty instead of a statute. You can experiment with very "practical" treaties, such as the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters or the United Nations Convention on the International Sale of Goods, or develop problems based on more esoteric topics such as the right to asylum and other international human rights. Don’t think that you are distracting your students from learning basic legal concepts or teaching them information that will not help them in job hunts; rather, focus on the fact that you are broadening their legal horizons and introducing them to an area of law that may well become prominent in their academic and professional careers.

My three years of integrating international law into my legal writing course at Villanova have borne out this hypothesis. Many students in this course are members of the school’s three scholarly publications, the Moot Court Board, and other moot court teams. Many of these students have achieved leadership positions within those organizations. They have used their international law briefs as writing samples and discussed their unique experiences at interviews for both traditional and international law-oriented jobs. In fact, many students select this course to make themselves stand out from their classmates. In short, these students have learned basic research, analysis, and writing skills, but in a broader context than students who are not exposed to this area of law.

Need we, as teachers of legal writing and legal research, master the concepts of international and foreign law to convey them to our students? Need our students master this vast area to become competent practitioners? The answer is obviously "no." Rather, professors and students need to familiarize themselves with the basic skills needed to research, analyze, and convey in writing advice on international legal problems. Students should be introduced to these concepts during their first year of law school when they are most open to new ideas. In this way, we will demystify this area of law that will be so important to our students’ legal education and to their future practice of law.

\textsuperscript{11} For example, consider using Rule 44.1 of the Federal Rules of Civil Procedure, or my personal favorite, 28 U.S.C. § 1782, which governs ways in which United States courts may provide judicial assistance to foreign or international tribunals.

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