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ABSTRACT

Information on teaching and research in international law for countries of the Asia-Pacific region is presented in proceedings of a 1984 conference sponsored by the United Nations Educational, Scientific, and Cultural Organization. In addition to a regional overview, suggestions are offered for promoting regional cooperation in international law. Challenges in the teaching and study of international law, problems areas for students graduating in international law, and problems of the profession are considered. Status reports for nine countries on teaching and research in international law are provided by conference participants as follows: Australia (James Crawford), India (M. L. Upadhyaya), Indonesia (Komar Kantaatmadja), Japan (Onuma Yasuaki), Republic of Korea (Chi Young Pak), Pakistan (M. A. Mannan), The Philippines (Adolfo S. Azcuna), Sri Lanka (A. R. B. Amerasinghe), and Thailand (Vitit Muntarbhorn). Appendices include: a conference program, list of participants and brief introductory conference addresses by Jae Hoon Choi, E. Hyock Kwon, Bong-shik Park, and Yogesh Atal. (SW)

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Teaching and Research in International Law in Asia and The Pacific

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Seoul, Republic of Korea
10-13 October 1984

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Part I
GENERAL REPORT

Chapter One

INTRODUCTION

1. *BACKGROUND*

In accordance with its Budget and Programme for 1984-85, Unesco convened a meeting of experts on "Teaching and Research in International Law" for countries of the Asia-Pacific region, in collaboration with the Korean Association of International Law and the Korean National Commission for Unesco. This meeting was held from 10 through 13 October 1984 at the International Conference Hall of the Korean National Commission for Unesco, Seoul, Republic of Korea.

The meeting was attended by participants from Australia, India, Indonesia, Japan, the Republic of Korea, Pakistan, the Philippines and Thailand. For some unavoidable reasons, the participant from Sri Lanka could not attend. The participants had been requested to prepare country status reports on teaching and research in International Law, based on the guidelines provided by the Unesco secretariat. These were circulated in advance of the meeting.

Observers were present from the Ministry of Education, Government of Korea, the Korean Association of International Law, various Korean universities, the Association of Southeast Asian Institutions of Higher Learning (ASAIHL), and Korean Social Science Research Council (KOSSREC).

Unesco was represented by Dr Yogesh Atal, Unesco Regional Adviser for Social and Human Sciences in Asia and the Pacific.

2. *INAUGURAL SESSION*

The meeting was officially opened on Wednesday, 10th October 1984. Dr Joe Hoon Choi, President of the Korean Association of International Law, delivered the opening address. He emphasized the need to establish a just and peaceful world based on the Rule of Law and its links with the role of education in international law, complemented by greater regional and international co-operation. A congratulatory address was then delivered on behalf of the Minister of Education of the Republic of Korea, who expressed the hope that the meeting would contribute to paving the way for a new international legal order. This was followed by a welcoming address from Dr Bong-shik Park, Secretary-General of the Korean National Commission for Unesco, observing that international law should play an important role not only in preventing wars or conflicts, but also

in contributing to the welfare and prosperity of the people of the world.

Dr Atal, speaking on behalf of Unesco, expressed thanks to the Government of the Republic of Korea, the Korean Association of International Law, and the Korean National Commission for Unesco for their kind hospitality and assistance; and to the participants who had prepared the country papers. Dr Atal said that the meeting was convened as part of Unesco's Programme XIII.1, namely Maintenance of Peace and International Understanding, for which there was a sub-programme on Reflections on the Factors Contributing to Peace. The meeting was thus a component of that sub-programme, aimed at promoting the development of international law and forming part of Unesco's contribution to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of Interntional Law. This task was also conceived as preparatory to the Inaternational Year of Peace to be celebrated in 1986.

Dr Atal noted certain influences on the development of international law, including various forms of interdependency, the United Nations system, and the instruments emanating from the United Nations. Of particular note was the question of human rights, including the various Unesco instruments relating to human rights. A landmark in the area of human rights was the convening of an International Congress on the Teaching of Human Rights in Vienna in 1978, as part of Unesco's celebrations of the 30th anniversary of the Universal Declaration of Human Rights. He noted that traditions of human rights exist in all the major religions and cultures of the world. Complementary to this, the task of Unesco in this area was three fold: (i) incorporation of fundamental human rights and international public laws into the legal institutions of different countries, (ii) promotion of research and training of specialists, and (iii) introduction of these concepts in school curricula. He identified some of the current challenges of international law, such as the New International Economic Order, the law of the sea, internal conflicts leading to the mass exodus of refugees, problems of migrant workers, the demand for nuclear-free zones, and collaboration in the use of outer space. In this aspect, the country reports prepared for the meeting would provide a basis for a regional profile on the teaching of international law. He also emphasized the need to create better channels of interaction and exchange of information among scholars and institutions of the different countries of the region, and welcomed suggestions on the role of Unesco in identifying the most appropriate means for promoting regional co-operation and collaboration. Cross-cultural comparative research was an essential consideration for the meeting. In conclusion, he thanked the President of the Korean Association of International Law, Dr Joe Hoon Choi for inaugurating the meeting, and the Vice Minister of Education for kindly sparing

the time to come to the meeting and for conveying the congratulatory message from the Minister of Education.

3. *ELECTION OF OFFICE BEARERS*

The participants elected the following office bearers:

Chairman:	Choung-il Chee Republic of Korea
Vice Chairmen:	James Richard Crawford Australia
	M.L. Upadhyaya India
Rapporteurs:	Vitit Muntarbhorn Thailand
	Myong-joon Roe Republic of Korea

The provisional agenda, and the time table proposed by the Unesco Secretariat were approved by the group. These are set out in Appendix II and III respectively.

Organization of Sessions

The meeting met in plenary session on October 10, 11, and the morning of October 12 to listen to country statements and discussions.

The concluding session was held on October 13 when the draft report was discussed and adopted.

The meeting closed with expressions of thanks to Unesco and to the local hosts.

Chapter Two

COUNTRY STATEMENTS

The initial sessions of the Consultation Meeting were devoted to the presentation of country papers on Teaching and Research in International Law. The country papers covered the following points:

AUSTRALIA : *James Crawford*

International law teaching and research in Australia has gone through three distinct phases. The first, from the establishment of law schools in Australia in the late nineteenth century until the 1914-18 War, saw international law as a basic (usually compulsory) part of the Law degree : this was a result of the idea of a Law degree as part of a liberal arts education, and also of the influence of English models. The second phase, from 1918 to the 1950s, saw the emergence of Australia as a state in international law and the growth of Australian participation in international affairs (especially in the period 1943-50) but paradoxically a reduction of interest in international law studies in the universities. Pre-occupation with local Australian law and affairs, and perceptions of international law as substantially irrelevant to local law, were among the reasons for this. The third period, covering the past 25 years, has seen the slow development of the study of international law in Australia, and of the influence of Australian international lawyers on the literature of international law. Julius Stone and D.P. O'Connell were the first to exercise a substantial influence of this kind.

In the universities, the study of international law has always been centred on the Law Schools, with international relations, political science and other social sciences having for the most part only a peripheral or subsidiary interest in the subject. This is regrettable, and has resulted in a lack of real interdisciplinary work on the subject. However, there have been significant developments in the Law Schools, with a growth in the number of international law-related subjects taught (notably international human rights and international economic law), and the introduction of post-graduate courses in international law. These are offered at a number of universities, especially the Australian National University which has a specialist Diploma/Master's course in International Law. At the same time the proliferation of 'specialist' international law courses at under-graduate level is not without its difficulties, since it carries the risk of fragmentation of effort and loss of coherence in the teaching of general international law as such.

Research and writing on international law in Australia has been increasingly active, and more broadly-based than, say, in the 1960s. The communication of ideas and information has improved considerably through the *Australian Year Book of International Law* (including a section on Australian practice in international law), through *Australian International Law News* (initiated in 1983) and in other ways. Topics on which there has been special emphasis include statehood and state succession, the status of Antarctica, maritime claims and fisheries, international law and federalism, nuclear non-proliferation, extraterritorial jurisdiction, human rights and the domestic implementation of human rights standards, foreign state immunity, the position of minorities in international law (with recent emphasis on indigenous peoples), and the refugee problem. Many of these questions are of special relevance to Australia, but because legal research in Australia is individually-inspired and conducted, consensus among Australian international lawyers on such questions is not to be expected. Indeed, such a consensus might not even be desirable, since the aim is principally to contribute to the development of *general* international law, rather than some local or regional artefact.

INDIA : *M.L. Upadhyaya*

International law in India has been taught in M.A. courses in Political Science for the last eighty years, in LL.M. courses for the last thirty years, and in LL.B. courses for the last twenty years. It is now a compulsory subject for the LL.B. degree in many universities. In the newly proposed Five Year LL.B. course it has received due attention. International law is included in the syllabus for the Indian Administrative Service (IAS) examination.

In Delhi, Bombay, Calcutta, Madras, Poona and Waltair, there are good libraries, teachers and other facilities for advanced study in internationa law. Research is being carried out on human rights, law of the sea, the New International Economic Order, the problems of refugees and stateless persons, hijacking, international trade law, prisoners of war, the United Nations, state succession, peaceful settlement of international disputes, war crimes, intervention, neutrality and non-alignment.

Special mention may be made of publications such as the *Indian Journal of International Law*, the *Indian Yearbook of International Affairs*, the reports of the Afro-Asian Legal Consultative Commitee (based in New Delhi) and those published under the auspices of the Indian Branch of International Law Association.

While some of the universities impart instructions in regional languages, the effort to produce good textbooks or to translate well-known English textbooks into the regional languages did not make much progress. India continued the legal system introduced by

the British, but in international law, while following the syllabus and textbooks prevalent in common law countries, Indian scholars have adopted in their research an approach independent of British or American views and have at times, supported the third world perspective.

From the Indian standpoint, the following areas deserve special attention : human rights, multi-national corporations, foreign investments, international trade law, settlement of disputes, refugees and stateless persons, international criminal law, and the law of the sea.

The need for more resources and facilities is felt. In their absence it is becoming very difficult to train a cadre of competent teachers. Resources are also needed to build good libraries of reference materials. It would be ideal if a suitable regional agency were to be set up to pool regional resources for the purposes of dissemination of information and training of international lawyers.

INDONESIA : *Komar Kantaatmadja*

After Independence, Indonesia took over the bulk of written Netherlands - Indies Codes as part of Indonesian law. In consequence, later efforts have had to be made to review these laws and to draft new laws and regulations to fulfill the needs of an independent and developing Indonesia.

A similar approach prevails also in legal education as well as in the teaching and research of international law. Subjects related to legal drafting and the legal policy process have been added to the existing curriculum. The socratic and case methods are being introduced alongside the existing practice oriented method of teaching by lectures.

The teaching of international law is provided by various institutions : law schools, schools of political science, the School of Diplomacy, the Armed Forces Academy, the Naval Staff and Command School, and various academies and teacher colleges. Although the syllabus and course description of the items offered varies between different class of institutions, there is a standard core syllabus and course description for each such class.

Policy with respect to scientific research in general is co-ordinated by the Ministry of Research and Technology, the Institute of Sciences (LIPI), and Ministry of Education. In the field of international law, the focus is on various problems arising out of the new Law of the Sea Convention. The complexity and comprehensive character of this Convention necessitates co-ordinated research among various institutions, ministries and universities.

The prevailing legal curriculum in each law school varies according to the availability of the teaching staff and the needs of the region. However, a minimum standard of courses and credits is required for every semester.

Indonesia is now at the stage of developing the under-graduate curriculum which comprises a package of 156 credits during 9 semesters, and thereafter forms the graduate curriculum.

The graduate curriculum comprises course work and research with a credit value of 45 credit units during 4 semesters.

Various problems are encountered in teaching and research in international law, due to inadequacies in personnel (limitation of expert law librarians, law professors, students interested), training facilities (library duplicating machines/printers/microfisch etc.) and inadequate funding for research. Lack of proficiency in foreign languages adds to the existing difficulties.

Training programmes, exchanges of information, and access to overseas data, etc., are some of the means to solve the problems. These should be given priority attention in the future.

JAPAN : *Onuma Yasuaki*

In the past, teaching and research in international law in Japan had two major features: (1) a statist tendency, and (2) a Eurocentric inclination. Both were due to the fact that Japan, when it abandoned its isolation policy, was determined to "modernize", (i.e., westernize) its society at any cost, in order to maintain its national independence and, later, to become one of the Great Powers. The significance of international law was emphasized so long as it was conceived to serve the interest of the state.

The first feature has basically disappeared since the end of the Second World War. The new Constitution guarantees academic freedom. Also the mentality of Japanese publicists has changed. The second feature, however, has remained as an implicit framework of international legal studies. It is one of the important duties of Japanese publicists to overcome this defect and to contribute to the discipline of international law by making use of its traditional concepts of norms, customs, societies, etc., as well as of its understanding of western legal doctrines and theories. In order to fulfil this task in the present linguistic situation of the world, Japanese scholars are required to publish their writings and to express their thoughts in English or in French, the two dominant languages. Thus, the task is two-fold, and, in a sense, contradictory, for, expressing non-western thoughts in European languages inevitably leads to a distortion or alteration of the original logic. Notwithstanding this dilemma, this task must be done. One of the practical ways to lessen the difficulty is to entrust some

organization with the task of translating representative writings published in a non-dominant language into English or other international languages. Unesco can be one of the appropriate organizations to handle this task.

PAKISTAN : *M.A. Mannan*

Nine universities in Pakistan teach Law at the LL.B. level and two of them have also introduced LL.M. programmes. The Punjab University at Lahore, the oldest in the country, was authorized to confer the degrees of LL.B. and LL.D. in 1890. The other universities have been established since independence in 1947. In all these universities the LL.B. is a professional degree course of two years with a similar curriculum. International law is one of about fourteen subjects taught in two years. It is taught through the lecture method with discussion of some important cases. There has been no research at a higher level on a regular basis, though scholars have written articles on various topics of international law, as particular issues came under discussion. However, the recently introduced LL.M. programmes in the Punjab and Karachi universities have introduced the teaching of some branches of international law at a fairly high standard, which is likely to lead to doctoral research level. The Islamic University at Islamabad has introduced a three years' LL.B. (Honours) course : one of the subjects is international law with special reference to Islamic principles on the subject.

Unfortunately, it is difficult to attract scholars to academic work and research in the universities as the scope for using their skills in international law is very limited. Similarly, the financial incentive for their efforts on the academic side, as compared to legal practice, is also negligible. An average lawyer is unlikely to get a case involving some aspect of international law, perhaps in his whole career. The absence of any positive incentive is perhaps the reason that no serious effort has been made to start an international law journal or any international law association.

The rules of international law as such are not binding on the courts, but in deciding cases the courts have followed established rules of international law if they were not in conflict with the provisions of the law of Pakistan.

The number of students who take the LL.B. degrees from all the universities in the country every year exceeds four thousand. All of them take international law as a compulsory subject, but very few opt for specialization in international law.

The teaching of international law ought to relate to the practical lives of the people, such as human rights and dealings with other nations. To promote research in it, well equipped libraries and well-qualified staff are the first requirement. Finally, scholars should feel that there will be some openings for the application of their skills, and that the efforts they make will not go in vain.

PHILIPPINES : *Adolfo S. Azcuna*

International law has been taught in Philippine law schools since 1901 as part of the requirements for a law degree. The Supreme Court is the institution that admits applicants to the practice of law and, together with the Ministry of Education and Culture, it has prescribed international law, public and private, as part of the core law school curriculum. It is also one of the eight bar examination subjects.

Researches in this field reveal a pattern of pragmatic responses to current developments. The syllabus emphasizes positive law, practice and usages. Most legal writing appears in law journals -- practically all in the English language. The Philippine Society of International Law, founded in 1961, publishes an excellent journal annually.

After early dependence on American authors, the Philippines has developed its own international law scholars, mostly trained in the United States. They have shown concern and interest in the fields of Philippines-U.S. relations, human rights, law of the sea (especially the archipelagic doctrine), treaty law, Asian regional co-operation for development, the law relating to refugees and the rules governing war or armed conflict.

For the future, it is felt that the courses/syllabus should be up-dated and special courses on economic law or world organizations be offered even as electives; new textbooks and casebooks should be made available; the possibilities of an exchange of scholars or scholarly knowledge in the field at least for Asian international lawyers should be investigated. Funds for the activity could perhaps be raised in the same manner as raised for the University of the Philippines Law Centre -- from a portion of the filing fees in court.

REPUBLIC OF KOREA : *Chi Young Park*

The early development of the international law discipline in the Republic of Korea was heavily influenced by the European tradition, but after World War II, the Anglo-American influence became more visible.

Korean institutions of higher learning began to offer international law programmes on a large scale only after World War II. In particular, the involvement of the United Nations in the Korean problem, especially in the Korean War, further spurred general interest in international law. It was during the late 1950s that graduate programmes began to operate on a more formal and regular basis. In the 1970s, Korean scholarship reached the stage of development where emphasis was placed on the qualitative growth of academic work. Despite some problems and difficulties, international law has steadily grown as a solid discipline, occupying an important position in jurisprudence in Korea. Teaching has been improved in terms of content, approach and quality of teaching materials; and research is focused more and more on the newer areas of legal concern.

However, there are some problems which have detracted from effective teaching and creative research activities in the area of international law. The lack of adequate teaching and research materials is very serious. To solve this problem, which is common to many other countries in the region, perhaps all the international law associations in Asia and the Pacific region could make a joint effort to promote the exchange of information and personnel on a regional basis.

SRI LANKA : *A.R.B. Amerasinghe* (Discussed in absentia)

International law is taught both at LL.B. and LL.M. level. It is also taught to the students of political science and diplomacy. The Bandaranaike Centre for International Studies runs a Diploma course in International Law and Affairs. The Ministry of Foreign Affairs maintains a good library on the subject. The material kept in this library is, however, not available to students. Ways should be devised to make it available to students and to assist scholars wishing to specialize in international law to go abroad. They should also be assisted to work in international law after graduation and thereby to contribute to the growth of teaching and research in international law.

The country report refers to the setting up of the Human Rights Centre of Sri Lanka, the Sri Lanka Foundation Institute and the Marga Institute's Law and Development Division. It takes note of the fact that though some individual scholars have made a significant contribution in the area, there is no local association devoted to the study and research in international law.

THAILAND : *Vitit Muntarbhorn*

Although elements of international law may have been taught in a non-formal sense prior to the advent of schools and universities in Thailand, the first formal course on international law was introduced with the establishment of the first law school in Thailand in 1897. Subsequently, teaching of international law expanded and it is now offered by 4 universities : Thammasat University, Chulalongkorn University, Ramkamhaeng University and Sukothai Thammathirat Open University. A number of private colleges also offer courses on international law. All these institutions cater for LL.B. degrees, but only Thammasat University and Chulalongkorn University have post-graduate courses leading to LL.M. degrees.

Some of the problems facing teaching and research in international law in Thailand include : lack of access by the general population to the institutions of higher learning where international law is taught; poor teaching methodology; fragmentation of courses; lack of teaching staff both in terms of number and quality; too much emphasis on the vocational side of legal education; a surplus of law graduates and a lack of synchronization with the labour market; over-centralization; lack of inter-disciplinarity; Eurocentrism; an insufficient appreciation of the horizontal application of international law at the national and local levels; insufficient relevance of international law courses; lack of access to materials and foreign personnel related to international law; linguistic difficulties; plagiarism; lack of research related to national and local matters; lack of publications on international law.

With respect to Thailand, the new challenges include questions of development and international law, human rights, the New International Economic Order, and the law of the sea. But there are too few teachers and specialists on international law. A welcome attempt to overcome some of these difficulties is the establishment of the International Law Association of Thailand in 1984.

Among the proposals for the future, there are four elements of note : access, relevance, methodology, and employment. International law teaching should reach out beyond the formal system of education. There is a need to set up at least one comprehensive library on International Law in Thailand and to establish contacts with foreign scholars. Better documentation on international law should be encouraged : this should be both relevant to local needs and inter-disciplinary in outlook. The methods of teaching need much improvement, while the employment opportunities of students need further exploration.

Chapter Three

TEACHING AND RESEARCH IN INTERNATIONAL LAW: A REGIONAL OVERVIEW

The status reports on teaching and research in international law in nine countries of the region, which are summarized in Chapter Two, provide a fairly representative basis on which to outline a regional profile of the academic speciality of international law.

To begin with, the diversity of the vast Asia-Pacific region must be acknowledged. The education systems of the countries have been influenced by a wide variety of factors, and these also account for the different stages of development of higher education, including the introduction of disciplines and the levels at which they are taught. A common factor that has influenced the introduction of "modern" education is the first international contact in the form of colonization. All countries have been influenced by this process whether they were directly colonized by a western power or not. Colonization, whether direct or vicarious, has significantly affected the choice of subjects for teaching, language of instruction, and manner of teaching. The main influences have come from the British, French, Dutch, Spanish and American academic traditions. Though Japan was never colonized, its system was influenced by German, British, and French traditions in its earlier phase of modernization, and Japan in turn became a colonial power and exercised its own influence, in Korea for example. In the post-colonial phase, the structures that were established earlier have mostly continued, but the range of influences from external sources have also broadened, and in recent years North American academic influence has become more prominent in many of the countries covered in the present survey.

The review reveals that international law is taught in all these countries, but there are differences, for example, in how recently such courses have been introduced, and the level at which it is taught. In some countries international law was first introduced in universities via the discipline of political science, where it was taught as part of course on international relations. Later, it was also taught in Faculties of law. In other countries (e.g. Australia) international law was first taught in law schools, and indeed in Australia there is still very little international law teaching outside the Departments of Law or Legal Studies.

Like other academic disciplines, international law is still, to a degree, Eurocentric in orientation. Thus most countries use, either in the original or in translation, teaching materials and texts produced in Western Europe and North America, and courses are patterned after them. Some of these texts do not adequately reflect the practice and literature of international law on a worldwide (as distinct from Western) basis. Many academics in the region are aware of these defects and many have begun expressing concern about it. On one extreme, are assertions of need to localize, or indigenize, international law; on the other, to contribute to international law from the experiences and traditions of these countries to make international law truly universal. There is also recognition of influences other than those emanating from Europe which have influenced international law; as an example, mention may be made of Chinese Confucianist tradition, spread of Buddhism from India, and Islam (even in those countries where Muslims are in minority). There is also a trend towards harmonizing international law with the basic tenets of Islamic Jurisprudence, in some countries.

The country reports show that (except perhaps in Australia and Japan) there is something of a crisis of recognition of international law. The crisis is four fold: (i) the entry of international law into academia as a distinct discipline, (ii) its popularity among students, (iii) the availability of jobs for those specializing in this subject, (iv) recognition by the state in terms of its significance, and also by the adoption or integration of international law into the national legal structure. It may be mentioned that state recognition has affected the inclusion (or exclusion) of topics in the curricula.

The aims of teaching international law can be said to be: (i) to educate law and political science graduates in an important aspect of the studies for their degree, (ii) to improve general education, and (iii) to train people for a variety of jobs that require knowledge of international law. Thus international law is taught to a varied student clientele. Within the university system, it is taught to students of political science and public administration, international economics, international relations, and law; in some cases it is taught as an independent discipline. Training is also imparted to students in staff colleges for army personnel (Navy, Army and Airforce), to officials in foreign ministries, and ministries of trade and industry, diplomacy colleges, teachers' colleges, and recruits of transnational corporations. Some countries have taken steps to promote teaching of some aspects of international law, particularly human rights, in secondary schools. International law is also included in the syllabi of competitive examinations for recruitment to civil and judicial services in some countries of the region. In some countries there now exist a sizable group of people who devote their time to international law, and have

established professional associations. Most of the countries also have branches of the International Law Association (ILA). Lawyers, law teachers, and judges from the region play an active part in the activities of the ILA, of Lawasia, and of the World Peace through Law Centre. Mention may also be made of the regional organization, the Asian-African Legal Consultative Committee (Delhi). There are a number of established international law periodicals in the region.

In almost all countries of the region, one course on general principles of international law is taught for the LL.B. In LL.M. Programmes, a greater variety of courses on international law may be available. Teaching is done through an amalgam of the lecture method and the case method. At centres such as the School of International Studies at Jawaharlal Nehru University in New Delhi, or the Australian National University in Canberra, full-fledged courses on international law are offered.

There is a conspicuous absence of interaction among specialists of international law within the region. This is partly due to the 'Eurocentic' orientation referred to; the fact is that most scholars of the region know little about the work done by their counterparts in neighbouring countries. Linguistic problems are another reason for this. Because of recent emphasis on use of national language both as medium of instruction and of writing, language barriers are being created in international communication. It is also proving to be a handicap for the student who is unable to consult the material published in international languages, such as English.

There are many themes of special interest among specialists of international law in the region. The following list is illustrative rather than exhaustive:

1. Statehood and state succession
2. Status of Antarctica
3. Law of the sea
4. Self-determination and decolonization
5. Nuclear non-proliferation and disarmament
6. Human rights
7. Sovereign immunity
8. Minority rights
9. The relationship between international law and municipal law
10. The status and treatment of refugees
11. Neutrality and non-alignment

12. Air and space law
13. International administrative law
14. International economic law
15. International criminal law and international terrorism
16. The North-South dialogue and the New International Economic Order
17. International humanitarian law
18. International commercial arbitration
19. Peaceful settlement of international disputes
20. National development and international law
21. Indigenous parallels of international law.

In the teaching of international law, many problems are encountered. Many of these are common to other legal specialities, and indeed to other social sciences. But the nature of international law as a discipline makes them matters of particular concern. They need careful examination and an effort to find suitable solutions.

1. *PROBLEM OF ACCESS*

There are three barriers to access : communicational, bureaucratic, and commercial. Because of use of local/national language, outside scholars are unable to read the literature; similarly, practitioners not proficient in any of the international languages are unable to make use of enormous literature that appears in those languages. Access is sometimes denied to a scholar by government departments who have the records. With the rising cost of publication, books published abroad may be prohibitively expensive and thus out of reach both to faculty members and students.

2. *PROBLEM OF DISSEMINATION*

There is a need to disseminate knowledge about international law not only among professionals but also among the general public. Occasional use of mass media, popular lecture series, celebration of U.N. day, or Human Rights Day, publication of professional journal are some of the ways through which some dissemination takes place, but this is not sufficient. Effective measures for wider dissemination are needed.

3. *PROBLEM OF INTER-DISCIPLINARITY*

International law as a discipline requires an inter-disciplinary approach, but there is very little inter-change between disciplines that contribute to the growth of, and understanding of, international law.

4. *QUALITY OF COURSES*

Some dissatisfaction was expressed about the quality of courses offered. In practice, it is often necessary to compromise conflicting demand, for example for quantity as against quality of teaching, academic compared with vocational emphasis, shorter compulsory courses as against mere adequate optional ones, uni-disciplinary as against an inter-disciplinary approach, and so on. The balance sheet may often not be satisfactory from the point of view of international law as a discipline.

5. *QUALITY OF STAFF*

The need for improvement in staffing is generally felt. Since legal practice is more lucrative than law teaching, many of the best minds have been lured away, and few incentives exist to attract them to teaching profession. An additional problem is the burden of teaching. In most countries a teacher has to teach not only international law but also several other courses in national law; this makes specialization much more difficult.

6. *CONCENTRATION OF RESEARCH FACILITIES*

Most research centres are located in metropolitan towns. Teachers in far-flung colleges and universities may thus be prevented from participating in research programmes.

7. *LACK OF INFRA-STRUCTURAL SUPPORT*

This includes financial support, setting up of dependable libraries and documentation centres, and facilities for the preparation of teaching materials.

8. *PAUCITY OF RESEARCH*

The research effort in international law in this région has been ad hoc, unsystematic, and, in some countries, peripheral. Joint research projects involving scholars from more than one country have not been carried out.

The need is also felt for some kind of a regional mechanism which will promote better interaction among scholars within the region, exchange of information, translation (from national language to international language and vice versa), abstracting service, and exchange of scholars as visiting professors.

Against the background of trends and problems in international law and teaching and research in the region, it is possible to describe the challenges for the future, and suggest some ways they may be met.

Chapter Four

CHALLENGES AND RESPONSES IN THE TEACHING AND STUDY OF INTERNATIONAL LAW

I. CHALLENGES

1. *THE RELEVANCE OF INTERNATIONAL LAW*

As Chapter Three points out, the countries of the region have had very different histories, and the role and relevance of international law have accordingly varied in each of them. Some have had a long and distinguished history of speculation about international order and international affairs (e.g. India). Others acquired an interest in international law as an aspect of the need to deal with foreign countries -- e.g. Japan in the Meiji period. For most, however, international law has only become relevant in this century, with the acquisition of sovereignty and the corresponding need to carry on a wide range of international transactions and affairs. The study of international law in each country has been correspondingly influenced. University law schools or departments of political science were established in a number of countries in the nineteenth century (India, Pakistan, Japan, Australia) and the study of international law was a part of this process. In Thailand and Indonesia, the establishment of universities and the teaching of international law were a much more recent phenomenon. In Korea and the Philippines, international law was taught earlier in the century during the time of colonial rule, but the accession to independence and the demands of the post-war period made it of much more direct relevance to those countries.

There can be no doubting the importance of international law in the modern world. It is one of the principal means by which the world community seeks to deal with the wide range of problems facing it -- problems ranging from international peace and security (global, regional and in space) to economic and social development, and the maintenance of human rights. But the countries of the Asia-Pacific region -- especially those which have achieved independence since 1945 -- have a range of other pressing social, political and economic problems, and international law is not always perceived as having the same immediate relevance or importance as these other problems. In the context of education -- especially legal education in universities and colleges -- there are also many pressures militating against interest in international law. These include the primarily

vocational character of many law courses, oriented towards the local practising legal profession, the limited employment opportunities for international lawyers as such, and increasing restrictions upon student choice of subjects in those countries where international law is not compulsory (e.g. Australia) or where it is not a required subject for the purposes of the judicial examination system (e.g. Republic of Korea).

Furthermore, whatever the formal status of international law in the local legal system [varying from constitutional incorporation (Japan) to selective common law adoption (Australia, Pakistan)], in practice relatively few cases involving international law questions reach the local courts.

On the other hand, the practical importance of international law to the world community and to the region is a function of the range of pressing questions which can only be addressed though international co-operation (e.g. nuclear non-proliferation, the treatment of refugees) or to the solution of which international law is increasingly called on to contribute (e.g. international trade disputes, human rights issues). Paralleling this, international law as a subject of education is of the greatest value. It introduces students to a range of issues and problems extending beyond any one country, and to a large and sophisticated body of literature and practice. It gives them valuable lessons about the uses and limits of law as a means of social regulation, and of some of the ways in which the conflicts of interests and values in the world can be addressed, and perhaps resolved. It is of increasing relevance also to national administration and law, as international laws and treaties are adopted or implemented by each country.

2. *THE EXPANSION OF INTERNATIONAL LAW*

This relevance is increasing also as international law expands and develops to meet new challenges. The shape and content of international law has changed in a remarkable way since 1945, and this is reflected in the provision of a range of new, specialist courses in many of the countries of the region. These include courses on human rights, international organizations, international economic and trade law, the law of the sea, air and space law, and so on. On the other hand, the expansion in the range of international law courses at the under-graduate level is not without its difficulties. There is a risk of fragmentation of courses, which can detract from the analysis of the nature and structure of international law as a whole, which is its major source of value as a subject of legal education. This problem is especially great where a large number of courses has to be taken each year for a Law degree (as is the case, e.g., in Thailand). But provided basic courses in international law of sufficient length to treat the

subject as a whole are maintained, the expansion of international law courses is desirable. Indeed it is an inevitable reflection of the expansion of international law and of the demand for study of special areas. That this is so is reflected by the remarkable uniformity in the trend to increase the range of subjects offered, which is common to the countries represented at the Meeting (with the partial exception of Japan).

3. *'LOCALIZATION' AND 'INTERNATIONALIZATION'*

International law teaching is by its nature concerned with developments going beyond each particular country. On the other hand, emphasis on international developments can be viewed as esoteric and unreal in countries faced with pressing local problems of their own. The challenge to international law teachers is therefore to make the subject relevant to local conditions and circumstances. This can be done in a variety of ways, for example, through discussion of questions of special relevance to the country or region, or of the ways in which international laws and treaties have been made part of, or had an impact on, national law. "Localization" has other implications too. The argument that international law or its materials are 'Eurocentric' in emphasis calls for an analysis of the relevance of local values, policies and traditions and their impact on international law. Such an analysis may be an important part of international law, human rights and related courses. On the other hand, there is a real danger, especially when problems of language and access to materials are added, of parochialism and of mistaking the genuinely open-textured and international character of international law. The proper balance has to be established, therefore, between 'localization' and 'international' emphasis.

4. *THE NEED FOR DISSEMINATION*

If international law is to be effective in its varied and important aims, it needs to be communicated to those affected, directly and indirectly, by it. The task of dissemination is particularly difficult in this region, given linguistic barriers, problems of distance, variable and often poor communications, and large populations (including large student populations).

Some suggestions for better dissemination of international law materials to teachers and scholars are made below. These will obviously assist students indirectly, but other measures need to be taken to make up-to-date books and other materials available in local languages at a cost which is not excessive. The problem of dissemination extends also to the higher levels of the legal profession : it was suggested that in some countries the judges'

ignorance of international law was leading to poorly informed decisions in cases involving international law questions, and that this was a reason for at least some compulsory element of international law in law degrees.

Dissemination among the wider population of basic information about international law and human rights is, obviously, even more of a challenge. Some organizations (e.g. the International Committee of the Red Cross, the U.N. High Commissioner for Refugees) have responsibilities in specific areas. In some countries there are bodies set up with the duty to educate and inform in this field: e.g. the Australian Human Rights Commission, which has produced booklets on human rights designed for use in schools. More could be done along these lines.

II. PROBLEMS OF STUDENTS GRADUATING IN INTERNATIONAL LAW

The following were identified as problem areas for students.

1. *ACCESS TO INFORMATION*

The language barrier is most evident in the countries where English is not the mother tongue. In Thailand, for example, students are reluctant to read documentation in English due to poor language proficiency. This is compounded by the cost of books, especially foreign books, in developing countries. Moreover the large size of classes is a major factor in preventing interaction between teachers and students; the lack of small group teaching in countries like Thailand stultifies critical analysis. This is further compounded by the uni-disciplinary style of education.

With reference to documentation and materials, there is a problem as to access to good libraries. In Thailand, there is not a single comprehensive International Law library, while in countries like Pakistan, whatever libraries there are tend to be concentrated in one or two major cities. With regard to documents from government ministries, access is often impeded by confidentiality. Student knowledge about current developments and materials related thereto is also insufficient.

In some countries such as Japan and Republic of Korea, there seems to be a considerable number of monographs and periodicals available in the national language. However, foreign documents are still very much needed. In other countries such as Thailand, the poor quality of certain publications and the inadequate numbers of publication often pose problems to students trying to study international law.

2. *ACCESS TO POST-GRADUATE COURSES*

Students wishing to specialize in international law (as distinct from studying it as part of a general education in law or in international relations) need access to post-graduate courses in the subject. In the past, most students from the region seeking to do post-graduate work in international law have gone to Western Europe or North America. Although this continues to occur in some cases, and should not be discouraged, there is a need for some post-graduate facilities within the region. The past ten years have seen a substantial growth in such courses, which are now available in Australia (especially the Australian National University's Graduate Diploma/Master in International Law), India (e.g. Jahawaral Nehru University), Indonesia (Padjadjaran University), the Republic of Korea (e.g. Seoul National University), Pakistan (Punjab University and Karachi University) and the Philippines (The University of the Philippines). In Japan, such courses have been available for even longer period (e.g. at Tokyo University). However, the provision of adequate and up-to-date international law materials is even more important for post-graduate than for under-graduate study : there is much to be said, therefore, for centralizing post-graduate work in one or a few centres, thus assisting in providing adequate library and other facilities. Other disincentives to post-graduate work include cost (such as the special charges levied on foreign students in some countries). However, the supply of post-graduate courses in international law in the region does not seem to be adequate, having substantially improved in a number of countries in the last decade.

3. *EMPLOYMENT*

The problem of employment and market absorption is evident in some countries, especially Thailand. There, the mass education available through the country's open universities has led to a surplus of law graduates. This is compounded by the fact that employment for lawyers, especially those specializing in international law, tends to be highly selective and competitive. The limited opportunities available for entering legal practice are seen in the case of Pakistan. In Japan, a high percentage of gradutes do not practise law, while this trend is also beginning to emerge in Australia. Many graduates are entering government employment or other jobs which require a broader than a merely professional legal education. This heightens the importance of international law as part of the general education provided by the law degree. But in other countries there is a lack of sufficient planning and synchronization at the national level between legal education and the labour market.

PROBLEMS OF THE PROFESSION

1. *THE 'PROFESSION' OF INTERNATIONAL LAW*

International lawyers do not form part of a single 'profession'. One has to look beyond the teaching staff of the universities where international law is taught, to include civil servants working in the Ministry of Foreign Affairs or the Attorney General's Departments as career diplomats or departmental officials, and lawyers practising in law firms.

With regard to professional associations, six of the countries represented have some kind of international law society or association. There are branches of the International Law Association in Australia, India, Japan, the Republic of Korea, and the Philippines. In addition, national professional associations include the Indian Society of International Law, the Japanese Association of International Law, the Korean Association of International Law, the Philippine Society of International Law, and the newly formed International Law Association of Thailand. However, no such association exists in Indonesia, Pakistan, or Sri Lanka.

In those countries where professional associations exist, they have stimulated publication of materials on international law. Existing publications include the *Australian International Law News*, the *Indian Journal of International Law*, the *Indian Yearbook of International Affairs*, the *Japanese Yearbook of International Law*, the *Korean Journal of International Law*, and the *Philippine International Law Journal*. It is proposed to publish a *Thai Yearbook of International Law*.

2. *PROBLEMS OF TEACHING AND RESEARCH*

The general situation is that the profession faces great difficulties in the teaching field. There are too few knowledgeable teachers of international law and there is a lack of incentives for them. This has been the cause of a brain-drain from the academic community. Moreover, the qualitative nature of teaching is at stake : the courses taught may not reflect current practice in International Law, and may not be of sufficient relevance to the national and local contexts. There is also a tendency in one country to introduce Islamic International Law; this could have repercussions for the teaching of international law. In particular, the following problems were mentioned in the country papers and the discussions during the meeting:

(a) Linguistic Problems

Linguistic problems were emphasized by all the participants, especially by those from non-English speaking countries such as Indonesia, Japan, the Republic of Korea and Thailand. Problems arise in three areas : physical access, mental access, and translation difficulties. With reference to physical access, it is difficult to gain access to materials in a common language, such as English, where they are published outside the countries represented. This is compounded by the lack of access to materials in regional and local languages and by the prohibitive prices of many publications. With reference to mental access, scholars have problems of comprehension and writing in languages other than their own. Not only are they unable to make use of the whole range of international law documentation but they are also sometimes reluctant to write in foreign languages. One consequence is that some of the best literature in the local language has remained out of reach to those who do not know the language. Even if such difficulties can be overcome by translating foreign documents into the local language and by translating local documents into foreign languages, there is no guarantee that the translation concerned would capture the nuances of each language.

(b) Adequacy of Libraries

Difficulties in library facilities were mentioned especially by those from the developing countries. These include lack of textbooks, and legal materials. Periodicals may be unavailable, or limited in number, or may need up-dating. The documentation available tends to be centralized in certain cities only. The non-availability of many documents is also due to the fact that Government Ministries are selective in releasing their documents and may unnecessarily classify documents as confidential, thereby precluding access by international lawyers and the general public to them.

(c) Specialization in International Law

There is an increasing tendency to offer specialized courses in international law as part of the curriculum. This is taking place not only in university law schools but also other institutions offering courses on international law such as non-law faculties, armed forces colleges, and academies administered by Government Ministries. This implies that there is a move away from the past tendency to concentrate on single courses on public international law and private international law as such. However, there is a lack of staff to teach the wide range of courses available. This

is aggravated by the demands of University law schools for teaching a range of subjects, for involvement in administration and other purposes, in addition to the rapid growth of legal literature on international law.

(d) Fragmentation of Courses

Linked with the trend of specialization in international law is a danger of fragmentation of courses. On the one hand, such fragmentation could lead to a decline in the quality of the courses offered by the teaching staff due to lack of sufficient preparation time and on the other hand, from the angle of the students, the more extensive workload from the wider range of courses could prevent them from appreciating the courses in great depth due to lack of time to read about the subject outside the classroom setting.

(e) Contacts with Other International Law Teachers

Lack of contacts with other international law teachers, especially those of this region, was emphasized. This involves not only insufficient knowledge of each other's writing but also exchange of visits. Exchange programmes, whether at the bilateral or regional level, are too few.

It was noted that the present meeting between scholars of this region was the first of its kind and was much welcomed.

(f) Need for Inter-disciplinary Work

The uni-disciplinary nature of most international law teaching and research was a defect noted by several participants. There is insufficient realization of the need to link law to other disciplines. This is aggravated by the atomistic nature of some teachers as well as the lack of inter-disciplinary and cross-cultural research within the region. These characteristics inhibit teaching and research in international law from being genuinely relevant to the context in which international law has to operate.

(g) Regional and Other Contacts

It was felt that there was a lack of contacts between those involved in international law in the region whether at the regional, national, local or other levels. This is compounded by the failure to identify the catalysts of international law within the region, whether personnel or agencies. There is little knowledge of the existence of other international law scholars within the region, of the work of such scholars and other activities on their past. There is a need to capitalize upon the ability of existing agencies

within the region to disseminate international law. Some of the agencies which could be instrumental in such dissemination, although insufficiently utilized for such purpose, include the Asian-African Legal Consultative Committee, LAWASIA, the ASEAN Law Association and national associations of international lawyers. Lack of contacts also include failure to communicate sufficiently between Government Ministries, law faculties and other faculties engaged in, or related to, international law teaching and research.

Chapter Five

SUGGESTIONS FOR PROMOTING REGIONAL CO-OPERATION IN INTERNATIONAL LAW

The Regional Consultation Meeting was deeply appreciative of the initiative taken by Unesco in organizing this meeting. It also recorded its appreciation to the local hosts -- the Korean National Commission for Unesco and the Korean International Law Association -- for joining Unesco in convening this meeting, which is the first of its kind to be held in the Asia-Pacific region. It has given an excellent opportunity to scholars from various countries to learn about the trends and developments in international law in neighbouring countries, and to reflect together on the ways and means to promote further regional co-operation.

The intensive discussion carried out in the various sessions led the meeting to make certain concrete suggestions for furthering regional co-operation among scholars and institutions devoted to international law. These are listed below:

1. The meeting proposed that the Report on this consultation be published by Unesco and distributed widely in the region among universities and departments and institutes of international law. It recommended inclusion of the full country papers in the Report. The authors agreed to revise their papers in the light of discussions and to send them to Unesco RUSHSAP, which will take the responsibility of having them edited for publication in the Report.

2. It was agreed that bi-lateral exchanges between the countries of the region in respect of information on the development of international law should be promoted. These may include exchanges of publications on international law, exchange of scholars and teachers of international law. The programme of these bi-lateral exchanges may be organized through National Associations of International Law if they exist in a country. In the absence of such an organization, some other institution or agency performing similar functions may be approached for this purpose. It is suggested that the possibility of including this item in cultural agreements between governments be explored.

3. The meeting noted the positive initiative given to students of international law by the American Society of International Law's Jessup Competition which invites teams of international law students from all over the world to participate in its moot court competition. An effort to institute a similar moot court competition at the Asia-Pacific level may be one way to encourage study and research in international law in the region. Alternatively, countries of a particular sub-region may hold a sub-regional final for the Jessup competition in an appropriate language (whether or not a team can be sent to the international final in Washington).

4. Because of the increasing use of national languages as the medium of instruction and for scholarly writing in most of the countries of Asia, the need is urgently felt for translation of works -- both from national languages into international languages and vice versa. Unesco may be approached to provide financial assistance under its Participation Programme for such efforts, which would assist in breaking down communication barriers. The possibility of a regional documentation and abstracting service may also be explored, seeking support from the developed countries within the region.

5. The success of the Meeting, and the common problems it revealed in the countries represented, gave rise to suggestions for some regional mechanism for the exchange of information about research, teaching and other international law developments in each country. It may not be practical at this stage to set up any formal organization or structure. But a brief newsletter, distributed two or three times a year to a national contact organization, is a real possibility. The contact organization would be responsible for the further distribution of the newsletter (if necessary in translation) to interested members within the country in question. In each case it would be possible to nominate the most appropriate international law association or organization (if more than one) in each country. For countries with no such association, an individual scholar might accept responsibility for distribution. Responsibility for the preparation of the newsletter would rotate between institutions in different countries, on an annual or biennial basis. The Unesco Regional Unit for Social and Human Sciences in Asia and the Pacific agreed to write to the appropriate organizations in each country seeking their opinion regarding the establishment of a network and their agreement to participate in it. This would involve only:

(1) the designation of a local scholar who would write to the current newsletter editor at appropriate intervals with a short note on local developments

(2) agreement to distribute the newsletter (with other communications made by the organization) to interested persons.

Upon receipt of responses, efforts may be made to find volunteers who can take on the responsibility to edit and publish the newsletter.

6. The problem of access to international law materials produced in the region is indeed serious. It was proposed that exchanges of publications on international law should be facilitated -- particularly yearbooks of national international law societies, law school journals and book reviews. It was agreed that initially Unesco's Regional Unit for Social and Human Sciences should facilitate such an exchange by contacting the respective national law associations proposed by the participants.

7. A variety of topics emerged from the papers and discussions of the meeting, that are presently of interest to the international law scholars. These are: statehood and state succession, status of Antarctica, law of the sea, self-determination and decolonization, nuclear non-proliferation and disarmament, human rights, sovereign immunity, minority rights, the relationship between international law and municipal law, the status and treatment of refugees, neutrality and non-alignment, air and space law, international administrative law, international economic law, international criminal law and international terrorism, the North-South dialogue and the new international economic order, international humanitarian law, international commercial arbitration, peaceful settlement of international disputes, national development and international law, and indigenous parallels of international law.

The group suggested that for future research it will be desirable to give priorities to the following topics for research, and for regional seminars and symposia:

i) International Refugee Law and Asia
ii) National and International Perspectives of Human Rights
iii) Newly emerging nations and International Law
iv) National Development Planning and International Law
v) Environmental and Resources Law
vi) Asia-Pacific Contribution to International Law
vii) Compatibility of International Law and National Law.

The group also recommended that Unesco should consider organizing a seminar in the biennium 1986-87 on *Asia-Pacific Contribution to International Law*, as part of its regular programme.

Part II
COUNTRY PAPERS

1

AUSTRALIA : James Crawford
University of Adelaide
Reform Commission

I. *HISTORICAL BACKGROUND*

1. *The British Acquisition of Australia and its Implications*

In terms of the history of mankind, Australia has been settled for a considerable period of time: estimates of the length of time the Aboriginal peoples of Australia have been living there vary, and the date has tended to be pushed back by recent discoveries and the use of advanced dating techniques. At present, the estimate is of the order of 40-50,000 years, though some parts of Australia were settled much more recently than that. Unfortunately, this aspect of Australia's history went virtually unrecorded: there were undoubtedly contracts between Northern Australian groups and people from what is now Indonesia and Papua New Guinea, and perhaps with Portugese sailors and traders also. Aboriginal groups undoubtedly had frequent contacts with other groups. Some of these were hostile but others involved trade, exchange, intermarriage and alliance.[1]

In terms of recorded history, the first event of significance both to the Aborigines and to the intending British settlers of Australia was an international legal event, or at least an event with international legal implications: the so-called "discovery" of Eastern Australia and the claim to British sovereignty over the whole of Eastern Australia made by Captain Cook in 1770, and followed up by the settlement of Sydney Cove and the Proclamation of Eastern Australia as the colony of New South Wales in 1788. This event had implications both externally, so far as the competing claims to territory of other countries (by this stage principally the French) were concerned, and internally, so far as the Aborigines were concerned. The British annexation of Australia proceeded on the basis that the whole continent was legally *terra nullius,* and no treaty or other arrangement (similar for example, to the Treaty of Waitangi in the North Island of New Zealand) was concluded.[2] Australian courts have always regarded the process by which Australia was acquired in international law, and even (so far) the appropriate classification of that process, as a matter which is not justiciable by virtue

of the Act of State doctrine.[3] However, the consequences of acquisition remain justiciable, and there was very active debate, commencing at the early stages of settlement after 1788 but which has, remarkably enough, continued to the present day, about the impact of settlement on the status and allegiance of the Aboriginal peoples. The argument that, receiving no protection from British Laws, the Aborigines owed no allegiance to them, was made and rejected in 1836,[4] but it has continued to arise, in various forms, since. Indeed, a Parliamentary Resolution moved by the Commonwealth's Minister for Aboriginal Affairs in 1983, would have declared that:

> (a) the people whose descendants are now known as the Aboriginal and Torres Strait Islander people of Australia were the prior occupiers and original owners of Australia and had occupied in the territory of Australia for many thousands of years in accordance with an Aboriginal system of laws which determined the relationship of Aboriginal responsibility for and to the land to which they belonged;
>
> (b) from time of arrival of representatives of King George III of England, and the subsequent conquest of the land and the subjugation of the Aboriginal people, no settlement was concluded between those representatives and the Aboriginal and Torres Strait Islander people;
>
> (c) as a result of the colonization of the lands by Great Britain the rights of the original owners and prior occupiers were totally disregarded...[5]

Again however, the debate relates to the consequences of the situation, not its factual or legal effectiveness. And these consequences are now bound up, inseparably, in a range of concerns about the present position of Aboriginal people, concerns which are reflected in a developing interest (in western countries at least) as to the international law relating to minority and indigenous rights.[6]

2. *The Colonial Period (1788-1920)*

The first lawyers in the new Australian colonies were of course British trained, and most of them were officials. Conditions in the colonies in the early years were exceptional, and often very difficult, but the emphasis in terms of change was towards rather than away from British models. Trial by jury was introduced, in as near as possible its English form, and many other peculiarities of English institutions, including the separa-

tion of law and equity, were adopted as part of the general following of English models.[7] The treatment of Australia as a settled colony entailed the general application of English common law, which was adjudged suitable to the condition of the colony's with only minor exceptions, and of statutory law as at the date of reception (which was either the date of initial colonization or some later date fixed by statute).[8] At this time, international law issues were of comparatively minor significance, such matters being dealt with by the Imperial authorities in Whitehall.

On the other hand, when Australian universities started to be established in the latter half of the 19th century (e.g. Sydney (1850), Melbourne (1852), Adelaide (1874), it was envisaged that Law would be one of the degrees offered, although the realization of these plans took considerably longer to achieve.[9] To quote Professor Shearer:

> "As in England, the first courses in Law in Australian universities were given in the faculties of Arts and were associated with the teaching of history. Hearn, in Melbourne, for example, arrived in 1855 to teach in the areas of History, Political Economy and Law, and did not assume the title of Professor of Law until the establishment of separate Faculty of Law in 1873. In Sydney there was no regular curriculum in law until the establishment of a School of Law, and the appointment of Pitt Cobbett as its first professor in 1890. The same year saw the establishment of the first chair of law in the University of Adelaide, with Dr. F. W. Pennefather as its incumbent, although the School of Law itself had been formally created in 1883."[10]

The early Australian law schools were small institutions, with a handful of students each year, and with the teaching shared between one full-time member of staff, the Professor of Law, together with part-time teachers drawn from the local legal profession. Indeed this remained the pattern for legal education until the 1950s, when the modern professional law schools, with a preponderance of full-time staff and a signicant number of students, began to be established. Moreover, students studied legal subjects in conjunction, in most cases, with work as articled law clerks in local legal firms. Nonetheless, partly because of the tendency to adopt English models (so far as legal education is concerned, comparatively recent models) of university

education as with other things, and partly perhaps because the demand for "practical experience" and attention to the minutiae of legal practice was substantially met by the dose of experience law students had as articled clerks, the actual curricula of the early Australian Law Schools were remarkably broad and general in character, including both classical languages, some art subjects, and general law subjects with an emphasis upon public law, both constitutional law (most of it *English* constitutional law) and international law. International law was a compulsory subject in all the early Australian law courses, though it did not always remain so.[11] It is probably that the subject international law was taken to encompass both a fairly broad range of Public International Law (both the laws of war and of peace. which were then much more nearly co-equal in terms of emphasis in the subject than they are now) and aspects of private international law. This is no longer the case: all Australian law schools offer their own separate courses in conflicts of law or private international law, for the most part taught by persons who do not profess to be public international lawyers. The irony is that the links between private international law and public international law are in some respects closer now than they ever were, with the elaboration of considerable numbers of uniform conventions on private international law (e.g. under the auspices of the Hague Conference on Private International Law and similar bodies[12]), and through the adoption of uniform conventions on substantive private law matters, especially in the area of international trade. These developments present special problems of private international law and of legal interpretation to which international lawyers have a contribution to make.[13]

Whatever the reason for the early emphasis on public and international law issues in Australian law courses, the fact is that the first Australian law professors tended to be public lawyers, and a number of them made a name for themselves as international lawyers. Pitt Cobbett, whose only major work, *Leading Cases and Opinions in International Law* was first published in 1885, was born in Adelaide, and after an education in England was appointed to the first Challis Chair of Law at Sydney University in 1890. He advised the Commonwealth Government during the First World War in international law matters. His book. which went to six editions, was frequently cited by other writers in the first half of the century, and was the first book produced by an Australian to have any impact in the field of international law.[14] Indeed, it was probably the first book produced by an Australian on any international law topic. By contrast, other early law professors, though they often taught international law, had primary areas of

interest elsewhere, for example in constitutional law (Hearn and Harrison Moore), legal history (Jenks), or jurisprudence (Salmond and Jethro Brown).

It has to be remembered that, despite the federation of the six Australian colonies in 1900 to form the Commonwealth of Australia, Australia remained, both legally and attitudinally, very much a British colony until the First World War. There was no significant international involvement on the part of Australia in terms of international conferences or other diplomatic activities, although there grew up practices of consultation and involvement of the colonies in imperial treaty making, a process recorded in detail by Professor O'Connell.[15] The impact of the First World War, the first general war in which Australia was involved, began to change both the attitudes and the law. Australia was separately represented, though as part of an Imperial delegation, at the Versailles Conference, and became a separate signatory to the Treaty of Versailles.[16] It was a separate party to the League of Nations. These were the first significant steps towards the acquisition by Australia of a recognized international personality, and towards its separate involvement in international relations.[17]

3. *The period of growing involvement in international relations: 1920-1945*

It might have been expected that this development would lead to an increased interest in the study of international law in Australia Law Schools. Paradoxically the reverse seems to have been the case. As Professor Shearer has recorded,[18] international law was not taught at all at Adelaide, or as a separate subject at Melbourne, in the period of 1918-1932 -- the crucial period of the evolution of Australia's separate personality, and an even more crucial period in modern international relations. The exception was Sydney, where a Challis Chair of International Law and Jurisprudence was established in 1920, to which A.H. Charteris was elected. Both Charteris and Coleman Phillipson of Adelaide (Professor of Law, 1920-1925) produced a considerable amount of writing on international law matters,[19] and K.H. Bailey (later Sir Kenneth Bailey), appointed professor at Melbourne in 1927, and professor of public law in 1930, was also to achieve a considerable international reputation as a government lawyer and diplomat.[20] But as Professor Shearer points out, their individual reputations do not seem to have coincided with any general increase of interest in the subject in Australia.[21] Although there are exceptions, the general outlook of the Australian

legal profession at this time, and for several more decades, remained remarkably insular, with little concern for or knowledge of even North American developments, let alone developments elsewhere in the world outside the British Empire. The growth of expertise in international law was largely limited to the new Department of Foreign Affairs, and even then, as Professor Shearer suggests, the growth of specialization was inhibited by the substantial influence of Kenneth Bailey as Commonwealth Solicitor General (1946-1964).[22] Authoritative advice on international law matters was thus readily available, and although the Department of Foreign Affairs had its own Legal Adviser, Bailey's was the dominant voice.

II. *THE SLOW GROWTH OF INTERNATIONAL LAW SPECIALIZATION IN THE UNIVERSITIES: 1945 TO THE PRESENT*

Although Australia played a significant role in international relations in the immediate post-war period (including some role in the drafting of the United Nations Charter, and the presidency, held by Dr. Evatt in 1948-9 of the United Nations General Assembly[23]) this seems to have had no direct impact on international law research or teaching 'at home'. However, the period from 1945 to the early 1960s saw the beginnings of a very substantial change in legal education in Australia and closely associated with it a growth of increased professionalization and specialization in international law studies, teaching and research. The two senior Australian international lawyers who have had a major impact on the literature of international law were establishing themselves during this period. Julius Stone was appointed Challis Professor of International Law and Jurispudence, in succession to Charteris, in 1942: he was to hold that Chair for thirty years.[24] D.P. O'Connell was appointed to a readership in law at the University of Adelaide, his first academic job, in 1953, after completing a doctorate at Cambridge and spending a short time in legal practice in New Zealand.[25] He was to hold that chair for nearly twenty years, before being appointed to the Chichele Chair of International Law in the University of Oxford in 1972.[26] It is worth noting that both Stone and O'Connell were born and educated outside Australia, Stone in the U.K., O'Connell in New Zealand and the U.K. Both came to Australia to take up senior university positions. Other non-Australian international law teachers and scholars spent shorter periods in Australia during the 1960s and 1960s, before going elsewhere: these included Wolfgang Friedman,[27] and also C.H. Alexander (Alexandrowicz).[28] But Stone and O'Connell, who stayed in Australia for long periods of time and whose work, though never in any sense parochial or merely local in focus, ac-

quired an Australian connotation, can be regarded as the first Australian international legal scholars, since Pitt Cobbett, to achieve an international reputation. It is fair to say that the "trade" was not all one way: Australian-trained lawyers who went on to make their mark on international law in North America included Edward McWhinney[29] and L.F.E. Goldie[30]. At this time also, Australian-born international lawyers whose subsequent careers were essentially Australian included J.G. Starke[31] and Kevin Ryan.[32]

During the 1960s Australian legal education changed rapidly and decisively. Whereas until the 1950s, law schools had consisted of a very small number of full-time teachers assisted by substantial amounts of part-time teaching from members of the legal profession, during the 1960s with the very substantial increase in the number of students seeking a legal education, and the increasing specialization of Australian law, the structure and (to a lesser extent) the aims of Australian law schools changed significantly. Many new members of staff were recruited, new law schools were established, and the bulk of teaching came to be carried out by full-time university teachers. This process has continued, though with some consolidation in the face of economic stringency in the past decade.[33] Accompanying these changes has been an increase in the range of subjects offered for the law degree, an increase in choice for students amongst those subjects, and a concomitant increase in specialization in teaching particular subjects. This situation has carried with it both difficulties and challenges for international law as a discipline, which I will refer to later in this paper. It has certainly led to a substantial increase in the number of Australian legal scholars professing some substantial interest in international law or particular aspects of it. There has also been an expansion of postgraduate teaching in international law, most of it as part of coursework postgraduate Diplomas or Masters degrees, though this has tended to be confined to a few universities including Sydney University and Monash University, but especially the Australian National University, which is the only Australian university with a specialist postgraduate course in international law (leading to a Diploma in International Law or a Masters in International Law).[34]

III. *THE PRESENT SITUATION*

At present, international law is offered in some form in each of the ten university law schools in Australia, as well as at the New South Wales Institute of Technology Law School. It is also offered in one of two other Australian universities which

has a Legal Studies course, rather than a professional law course (La Trobe; the other Legal Studies course, at the University of Newcastle, does not include international law, having a predominately commercial orientation). Details of the courses offered by the twelve institutions are set out as Appendix 1 to this paper. (It should be noted that courses in international trade law (with an emphasis on private and commercial relations), civil rights (with an emphasis on Australian as distinct from international human rights law) and conflicts of law are excluded from the list in Appendix 1.) It is noteworthy that these twelve institutions between them offer no fewer than 48 distinct courses, again reflecting the trend towards specialization and diversification of curricula which has been a feature of Australian legal education in the last 15 years. But this phenomenon has other reasons, amongst them the enormous growth of the scope and content of international law since 1945, and the consequent difficulty of dealing with it in any comprehensive way in a single course. The courses listed in Appendix 1 may be classified as follows:

CLASSIFICATION	*NUMBER OF COURSES*	*COMMENTS*
General International Law Courses	12	Offered by all institutions as a full or part-year subject.
Advanced International Law Courses	3	Adelaide; ANU; Sydney (extended undergraduate course, in fact concerned with international humanitarian law)
International organization	5	ANU; Macquarie; Monash (2); Queensland
Human Rights/Humanitarian Law	8	Human Rights offered by Adelaide; ANU; La Trobe; Monash; NSWIT; NSW; Tasmania. International Humanitarian Law offered by NSW, and see comment re Sydney Advanced International Law Course.
Law of the Sea	4	ANU (2); Melbourne; Monash
Air and Space Law - International Transport Law	5	ANU (2); Monash; NSWIT; Sydney

International Economic Law	7	ANU (3); Monash (2); NSWIT; Sydney
Other International Law	3	ANU ("Enforcement of International Law"); La Trobe ("International & Comparative Environmental Law and Policy"); Monash ("Law of Treaties")
Other non-law	2	ANU (2) ("Principles of International Economics" and "International Politics", both required for Grad. Dip. Int.L./M.Int.L.)

To some extent these classifications are misleading. Sydney's advanced international law course at the undergraduate level is essentially a course in humanitarian law. Queensland general international law course has a very substantial law of the sea component, equivalent to some of the separate semester courses in other institutions. The two non-law courses listed as part of the Australian National University's postgraduate requirements are included because they are a prerequisite for those specialist international law degrees. In all Universities it would be possible for students with an interest in international relations to take equivalent subjects in other Faculties, and a number do so as part of Law/Arts, or Law/Economics degrees.

Nonetheless the figures are remarkable, and very different from what would have been shown by a similar survey undertaken, say, in 1960, which would have revealed only 7 Australian law schools (one in each State, and the Australian National University), and only one general international law course in each. The change is apparently even more striking when the numbers of undergraduate and postgraduate courses are compared; of the courses listed in Appendix 1, 29 are specifically undergraduate courses, as many as 15 are specifically postgraduate courses (as part of the ANU Diploma or Masters courses, the Monash Diploma course, or subject Masters degrees in other universities), and 4 (all at the ANU) are available both to undergraduate and postgraduate students. In 1960, there were no postgraduate coursework degrees in law in Australian universities.[35]

In another respect these statistics are also somewhat misleading. There is no denying the increased range of choice in international law and related courses now open to Australian students. But a number of the courses are not offered in any par-

ticular year (5 of the 33 undergraduate courses in 1984) and of those that are offered, a number have very small enrollments. Outside the major centres of Sydney, Melbourne and Canberra, only relatively small numbers of students undertake postgraduate coursework degrees. Moreover, many of the undergraduate courses are offered over less than the full academic year (which consists, depending on the particular university, of two semesters or three terms). In 1960, almost all law school courses would have been full year courses. The overall picture is one of diversification and increase in choice, but with the risk of fragmentation, leading to the loss of coherence that a full year international law course can achieve.

As I have suggested, one reason for the diversification of courses is the growth of specialization in international law itself; this is especially evident in areas such as human rights, international economic law and to a lesser extent, the law of the sea and international organizations. But another major reason for the diversification has been the general trend in the development of legal education. The increased range of general law subjects, and the pressure on students to do subjects which are perceived to be particularly useful for professional purposes (especially the commercial law and taxation subjects) has been one factor leading to the offering of smaller elective courses which students can afford to take. Developments in areas of local interest but with international law implications have also led to the offering of subjects in which students do aspects of international law rather than general international law: the proliferation of human rights and humanitarian law courses is the best example of this. It is not normally a prerequisite to the study of these subjects that the students have done the general international law course.

In addition to the postgraduate coursework degrees, all Australian universities offer the opportunity to students to undertake Masters or Doctoral degrees by thesis, taking from two to five years.[36] A number of international law theses have been done this way, although Australian law graduates wishing to undertake postgraduate work, especially thesis work, will often attempt to do so overseas, either in the United Kingdom or North America or (less commonly) Western Europe.

Obviously, each Australian law school which offers one or more international law courses has to provide appropriate teachers for those courses, and in fact each of the institutions listed in Appendix 1 has on its staff between 1 and 5 persons professing some level of specialization in international law. Although such classifications are necessarily imprecise, it is possible to count

slightly more than 30 persons in this category, though not all of these would class themselves as primarily international law specialists. Nonetheless a survey of persons currently teaching international law and related courses in Australian universities is of some interest. Of those who would regard themselves as primarily international lawyers, there are four professors, two of whom (D.H.N. Johnson of Sydney, D.W. Greig of the Australian National University) were English trained but are now naturalized Australians, two of whom did their undergraduate degrees at Adelaide, and went on to do post graduate work in England or North America (the present writer, at Adelaide; I.A. Shearer of University of N.S.W.).[37] This comparative diversity of origins is also reflected in a survey of the larger group of international law teachers in Australian Universities, which includes lawyers trained in New Zealand, England, Western Europe, Ceylon, India and possibly elsewhere.

On the other hand, there is very little international law teaching or international law-related research carried out outside the Law Departments in Australia, a situation which contrasts markedly with that in many other countries in the region (e.g. India, Japan, Republic of Korea). Only a few non-lawyers have made a significant contribution to the field in Australia: J.R.V. Prescott, a political geographer from Melbourne University, is one of the exceptions.[38]

IV. *KEY EMPHASES IN TEACHING AND MAJOR TRENDS IN RESEARCH*

1. *General Observations*

This outline of the development of international law teaching in Australia already says a good deal about the key emphases in teaching. So far as research is concerned, the basic emphasis of the "Australian" international lawyers, and this is as true of those lawyers trained in Australia as of those (such as Stone and O'Connell) who came to Australia after their legal education was completed, and with some at least with the basic groundwork done, has been on making a general contribution to the literature of international law, for the most part without specifically or identifiably Australian elements or even emphases. This has certainly been the case with the older generation of international lawyers such as Stone (whose field of interest where primarily international dispute settlement, the use of force between states, and the status of Palestine and Israel), O'Connell (who was a general international lawyer but whose specific interests included state succession, the law of the sea, and problems of maritime zones in federal states) and J.G. Starke. It is, I believe, equally true of the present gene-

ration of Australian international lawyers, whose work will be referred to as appropriate in the rest of this paper.

2. *Themes of Special Interest to Australia*

Nonetheless, there has, especially in more recent times, been a degree of focussing of interests and research on subjects of particular concern to Australia or to what is loosely described as the Australian and Asian-Pacific "region". Thus important work has been done on a range of topics such as:

- Questions of statehood and state succession, including issues relating to the emergence of Australia as a state.[39]
- The status of Antarctica, and of Australian claims to Antarctica.[40]
- The law of the sea (with some emphasis upon maritime resources zones and fisheries).[41]
- International Law and federalism in its various aspects (constitutional power, treaty making and treaty implementation, and maritime zones).[42]
- Decolonization, in particular as its related to Australia's former colonial territories.[43]
- Nuclear non-proliferation, which has been a particularly active subject of debate in Australia in the last decade.[44]
- Extra-territoriality, in particular in the context of extensive United States claims for extra-territorial jurisdiction in antitrust matters.[45]
- Human rights, especially the debate over Australia's ratification of the International Covenant on Civil and Political Rights of 1966, and over the domestic implementation of the Covenant.[46]
- The law of foreign state or sovereign immunity, both at common law and with a view to possible Australian legislation on the topic.[47]
- The question of indigenous or minority rights in international law, in particular having regard to Aboriginal demands for change.[48]
- The relationship between Australian law and international law, both general international law and treaties.[49]
- The status and treatment of refugees.[50]

However, it would be wrong to suggest that the research and writing detailed under each of these heads (and the list is not exhaustive) reflects any single Australian position or perception on these issues. Certainly, the work can be identified as being

broadly within the "Western" tradition of international law scholarship, though the techniques and, in theory at least, the material of international law are common to the discipline and are not, or should not be, particular to specific national, regional or cultural traditions. The basic point remains that the writings listed above are on the whole Australian only in the focus of their concerns, and then only partly so. For example, there has been both support for, and opposition to, the validity of Australian claims to Antarctica, as well as some informed scepticism.[51] A range of views has been taken on the relevance of international law to indigenous people such as the Aborigines.[52] Australian and international lawyers have both supported and criticized the broad interpretation of the external affairs power in the context of implementation of treaties,[53] recently adopted by the High Court of Australia.[54] There has been support both for an international convention on foreign state immunity (presumably based on the work of the International Law Commission), for further common law development, and for Australian legislation.[55] Similar disagreements or divergences of approach could be pointed to in other areas.

In short, it is doubtful whether there are "trends" in international law research in Australia, if this is intended to mean the emergency of a consensus of opinion on a range of issues, as distinct from a tendency to focus on a range of issues. And, given the wide-ranging interests of different international lawyers in Australia, and the tendency towards specialization in international law teaching already described, even the the notion of a focus of interest in international law research in Australian might seem an overstatement.

V. *RESPONSES TO NEW CHALLENGES*

1. *Various Challenges, Various Responses*

As this conclusion would suggest, it is not the function, and it certainly has not been the practice, of international law teachers in Australian universities to respond collectively to new challenges facing Australia as a society, internally or in international relations. Of course, responses there must be, but they have been mostly mediated through the individual research and other work of particular scholars, as is practically inevitable in an individualistic system such as exists in Australia. Even where there has been some uniformity in response, as Appendix 1 suggests there has been in the area of curriculum development and the provision of courses, this has been more by

way of a similar response to similar conditions and pressures facing universities than the result of any ordered or collective decision.

On the other hand there can be no doubt that Australia as a society is responding in a variety of ways to perceived developments and pressures at the international level, as well as employing international developments in various ways for reasons of its own. This is true, for example, in areas such as human rights protection,[56] law reform,[57] and treaty making.[58] Moreover, there has been a considerable increase in the level of Australian participation in international relations in a variety of forums, both general and regional, as an expression of Australian concerns on particular issues and for the peace and stability of the region and the world. This can be seen in the increased Australian involvement in the acceptance of refugees, especially from South-East Asia but also from elsewhere.[59] It can be seen in Australian involvement in the nuclear non-proliferation debate, a matter of particular concern given the export of some of Australia's very large reserves of uranium.[60] One area in which this response has been most marked has been that of human rights: in the past ten years there have been two major pieces of Federal legislation, based on international conventions, for the protection of human rights. These are the Racial Discrimination Act 1975, based upon the International Conventing for the Elimination of all Forms of Racial Discrimination of 1965,[61] and the Sex Discrimination Act 1983, based substantially upon the Stockholm Convention for the Elimination of All Forms of Discrimination against Women of 1979.[62] Moreover, there has been a continuing debate about the proposal for an Australian Bill of Rights based (for constitutional reasons) upon the International Convenant on Civil and Political Rights of 1966. The Australian Labor Party, which was in Government at the Federal level between 1972 and 1975, and has been again since 1983, has supported the introduction of an enforceable Bill of Rights in some form. Earlier versions of such a Bill of Rights were rejected by the Senate, the upper house of the Australian Parliament, in 1973 and 1975,[63] and somewhat different proposals for a Bill of Rights are again under consideration. On the other hand the Liberal-National Country Party Coalition which has been in Government in Australia for most of the last thirty years, has historically opposed an enforceable Bill of Rights on a variety of grounds.[64] Their alternative was a Human Rights Commission, with power to investigate and report upon alledged violation of human rights as enunciated in the International Covenant on Civil and Political Rights and other instruments, but with no enforcement powers.[65] The debate is a continuing one, but on any view

the impact of international law in the area of protection of human rights in Australia has been significant. This is only one among a number of areas in which international developments are increasingly likely to affect Australian law, and to be at the centre of debates about policy and public affairs. Plainly enough, in informing and educating the public, and in other ways, the role of international lawyers in Australia in these areas is an important one. It is perhaps the principal "new challenge", though the response, so far at least, remains decentralized and diffuse.

2. *Participation in International Law Activities*

In parallel with the Commonwealth Governments' increased involvement, in the last 15 years, in international affairs, is the potential for increased involvement on the part of individual international lawyers in international activity of a variety of kinds. The record of individual involvement, through participation and election, is a good one, though so far it falls short of the highest aspirations. There has been only one Australian judge on the International Court of Justice, Sir Percy Spender, a former Cabinet Minister and Minister for Foreign Affairs, who as President of the International Court in the *South West Africa Cases (Second Phase)*[66] cast the fateful casting vote which resulted in the Court declaring the applications in that case inadmissible. The reasoning of the "majority" decision was more the product of Judge Fitzmaurice's merciless analysis than it was of President Spender's vote, but President Spender's vote it was that carried the day. The decision has been criticised, and much of the substance of what was denied by the Court in 1966 was regained, over Judge Fitzmaurice' strident dissent, in the *Namibia Opinion* in 1971.[67] The bitter reaction on the part of some third world countries against the Court's decision has been said to be one factor for Sir Kenneth Bailey not achieving election to the International Court in succession to Sir Percy Spender.

Australia had had no representative on the International Law Commission, and no very distinguished record of elected experts to United Nations expert committees. Australia has engaged in international litigation on a few occasions, most notably before the International Court of Justice in the *Nuclear Tests case* against France, the jurisdiction strategy for which was devised by Professor O'Connell,[68] but the result of which, from an Australian perspective, was perhaps only a draw. On the other hand at the individual and private level the record is considerably better. Perhaps the most significant is the impact individual scholars have had through their writing and other professional

work. No younger international lawyer has yet achieved the distinction of Professors Stone and O'Connell in the field, but there have been significant contributions in particular areas, and the general texts by O'Connell, Starke and Greig have been widely used. There have been only three Australians elected to the *Institut de Droit International*, Bailey, Stone and O'Connell; with Stone's resignation from the Institute, there is now no Australian member. Two Australian international lawyers have received the Certificate of Merit of the American Society of International Law for particular works (Stone, 1956; Crawford, 1981).[69] A number of Australians have been honoured by invitations to deliver lectures on particular topics at the Hague Academy of International Law, [70] and Australian lawyers have been prominent in the sessions conducted by the San Remo International Institute of Humanitarian Law.[71] At the local level the *Australian Year Book of International Law* is now well established: it was first edited by J.G. Starke, and is now entitled from Canberra by Professor D.W. Greig.[72] Most Australian international lawyers are also members of the International Law Association, the Australian branch of which (founded in 1959) is the second largest of the branches of that Association. Until relatively recently, the principal activity in which the Branch was involved was the biennial meetings of the Association, and work on committees on particular projects in relation to those meetings. However, the Australian Branch has broadened the scope of its activities in recent years, both through holding seminars on particular topics, through the publication of a series of short monographs entitled *Martin Place Papers*,[73] and through the publication on a quarterly basis of a newsletter entitled *Australian International Law News*, which apart from local news of interest in the international law field, carries recent documents and other information of interest to members of the association. Finally, in recent years students from Australian law schools have been actively engaged in the Jessup International Law Moot, with considerable success. Eight Australian teams have now travelled to the United States to participate in the final round of the Jessup Moot (Adelaide (4), Melbourne (2), ANU and NSW one each). These teams have competed with considerable success, and two of them have reached the grand final of the competition, Adelaide losing in 1979, and the Australian National University winning in 1981.[74] Participating in the Jessup Competition has proved a splendid opportunity for Australian law students, with teams from a majority of Australian law schools now involved on a regular basis.[75]

VI. *PROBLEMS OF THE PROFESSION*

In an important sense, Australian international lawyers do not form part of a single "profession". Some of them, of course,

are civil servants working within the Department of Foreign Affairs or the Attorney-General's Department as career diplomats or departmental officials. Others are law teachers in universities or similar institutions. A few work for Government agencies or as members of private legal firms. In each case, and irrespective of the orientation of the individual lawyer towards international law, it can be argued that the profession to which he or she belongs is at least broader if not different. Some officials in the Department of Foreign Affairs have both training and a considerable interest in international law: indeed, apart from their contribution to the work of the Department of Foreign Affairs through attendance at diplomatic conferences etc., a number have made valuable contributions to the literature of international law.[76] But the Australian Department of Foreign Affairs (and in this respect it may well be no different than any of its counterparts in other countries) regards its primary function as representing Australia's interests in the international arena, as these are perceived or determined from time to time. Moreover, promotion within the Department requires officers to engage in a variety of functions, including ordinary diplomatic work, the administration of sections or divisions, and so on. The emphasis upon a range of generalist skills and experience is inimical to specialization. Conflicting demands and loyalties also exist for other members of the international law "profession". For example, university teachers, though they may regard international law as their primary specialization, nonetheless work in Departments of Law in which the teaching and administrative demands are great, and which cover a very wide range of subjects. There is considerable pressure upon international law teachers to teach other areas of law in addition, and (except at the most senior levels) these pressures are supported by natural desires for promotion within the Department and University. Indeed there are few international lawyers in Australia who do not spend significant amounts of their time teaching other subjects (quite often other public law subjects, such as constitutional and administrative law, but quite often subjects which may be entirely diverse, such as commercial law, the law of torts etc.). At senior levels of the law teaching profession, there may be greater facility to specialize, but there are also greater demands in terms of university and departmental administration. Most law schools have only two or three professors of law: in such situations, the "other" responsibilities are likely to be great, and the teacher's own sense of responsibility may require the teaching of large compulsory subjects, nothwithstanding a personal preference for international law teaching and research.

There is, therefore, probably not in any clear or obvious way an international law "profession" in Australia. But this does not mean that international lawyers have no community of interest, or that their concerns and problems cannot be addressed in some collective way. In fact there is a considerable collegiality amongst international lawyers, especially in the universities, in Australia, which is supported by annual meetings at the time of the Australian final of the Jessup Moot Competition (regularly held in Canberra in February), through meetings of an international law interest group at annual meetings of the Australasian Universities Law Schools Association in August, and in other ways.

There are, I think, three main problems facing international lawyers in Australia, at least those who are also law teachers, which present obstacles to the achievement of the highest professional standards, and the highest professional goals, in the field. These are, first, the comparative absence of international legal work outside governmental circles in Australia; secondly, the remoteness of Australia and consequent difficulties of access to materials; and thirdly, the problems of specialization in the university environment.[77] I shall say something briefly about each of these.

Australia is a relatively remote and very large country of only 15 million people. Although it engages in a substantial amount of international trade, it is not itself, at least yet, a centre for international banking, finance or other international activity. There is only one international organization based in Australia, an offshoot of the Antarctic Treaty concerned with the marine environment.[78] Australia is not a place at which international conferences are regularly held, or which is regularly visited by Heads of State, Ministers of Foreign Affairs or other senior personnel of other countries from outside the region. As a consequence, there is relatively little work directly in the international law area in Australia compared with the situation, for example, in Western Europe or North America. Most of the work that is done is done by governments or government agencies. It is therefore difficult for international lawyers in the universities to accumulate much experience in the day to day issues of international law, or to acquire a feeling for the practice of international law. This problem is made worse by the fact that traditionally the Department of Foreign Affairs has been, for whatever reason, resistant to involving international lawyers from outside the Department in its work. It is perhaps significant that, as far as the present writer is aware, neither Julius Stone nor D.P. O'Connell were substantially used as advisers by the Department of

Foreign Affairs, during what were otherwise very successful international law careers. (The principal exception, in O'Connell's case, was his involvement as counsel in the Nuclear Tests Case, although it appears that the initiative for that case came from outside the Department.) There has in the past been no tradition of Department of Foreign Affairs support for leading Australian international law scholars, in the context of membership of bodies such as the International Law Commission, a situation which contrasts markedly with the British record in this respect. On the other hand, it may well be that this situation - which is perhaps more a matter of impression than of any deliberate or considered policy - is undergoing change. There have certainly been movements from Government Legal Service to the universities and vice versa: the present Legal Adviser to the Department of Foreign Affairs is a former university law teacher,[79] and there is now a facility for selected academics to spend a year in residence within the Department (a facility not limited to international lawyers but certainly available to them). Moreover, the barriers which used to exist between the Commonwealth Public Service and the universities or private enterprise are themselves becoming less formidable. A university professor was, for example, recently appointed as Secretary (that is, permanent head) of the Department of Foreign Affairs, and similar outside appointments have been made to some other Commonwealth Departments. Moreover, there are good personal relations between members of the Legal and Consular Division of the Department of Foreign Affairs and international lawyers in the universities, and these relations have been strengthened and supported by invitations to university teachers to lecture to the Department's Foreign Service Training Course, and by jointly organized seminars held from time to time.

A second difficulty, which adds considerably to the problems of remoteness outlined in the previous paragraph, is simply the product of Australia's geopolitical position. Notwithstanding modern methods of communication, Australia remains remote, and it can be difficult to obtain the full range of information, on an up-to-date basis, as to what is happening in international affairs. Moreover, much helpful information is obtained not through formal sources but through contact and discussion with colleagues. In Australia this is difficult enough even between individual universities, and more difficult still on an international basis. Books and periodicals, unless the extra expense of airmail is incurred, take three to four months to arrive. Attendance at seminars or conferences overseas is expensive, and since the timing of these conferences is frequently planned to fit in with the northern academic year (September/October to June) rather than the southern academic year (March to November) it can

also clash with university commitments. Again, however, it is important not to overstate these difficulties. Compared with the difficulties which existed, for example, in 1942 or 1953, they seem slight. Most Australian law schools have good law libraries and a number have good international law collections (the informal ranking of international law collections at present appears to be, first, Adelaide (the D.P. O'Connell collection), second, the Australian National University, and third, the University of N.S.W. (which includes the Jenks collection)). Moreover, there are at least some facilities and funds for Australian legal scholars to travel on both short and longer visits overseas, and there is an increasing flow of overseas visitors to Australia. The problems caused by comparative isolation have not disappeared but they have been substantially reduced.[80]

The third problem has already been referred to: the problem of maintaining an international law specialization against the demands of university law schools for teaching a range of subjects, for involvement in administration, and so on. The problem is all the greater for the character of modern international law, an entire legal system which in the last thirty years has grown at a phenomenal rate, and the literature and materials of which, taken alone, are probably greater than those of any single municipal legal system, including even the common law systems. There is in Australia only one Chair of Law specifically devoted to international law: the Challis Chair at Sydney.[81] Elsewhere university promotion tends to depend upon being good at more than a single subject, no matter how large or important it may be.

Despite these continuing difficulties, the fact remains that good work is being done by Australian international lawyers, both within government agencies and in the universities. If ultimately the "top jobs" in international law from the point of view of scholarship or research would require resettlement in North America or Western Europe, perhaps this is only a reflection of the economic and political realities. And the demands and needs of Australia, as an increasingly multicultural society in its part of the world, demand their own attention and analysis, attention and analysis which they are increasingly receiving.

VII. *AGENDA FOR THE FUTURE*

For reasons which should have already become clear, there is I think no agreed agenda, and probably could not be. Australian international legal scholars would agree on the need for a continuing general contribution to the literature of international law, a contribution which has, as the bibliography for this paper

demonstrates, already been a considerable one. One might suggest that there will be emphases over the next ten years on particular areas, such as those already outlined in this paper. One might predict these emphases to occur in three broad fields: in ascending order of importance, the relationships between international law and municipal law (in this case Australian law), issues of international economic and resources law, and questions of international peace and security (including in particular nuclear non-proliferation and disarmament). But it is a function of a divided but interdependent world that these three questions could fairly be regarded as (what ought to be) the top of the world's agenda for itself. Lacking a distinctive national tradition, it is the opportunity of Australian international lawyers to contribute to these general, and crucial issues.

FOOTNOTES

1. See K. Maddock, *The Australian Aborigines* (Pelican, 2nd edn., 1982); G. Blainey, *Triumph of the Nomads* (Sun Books, rev.edn., 1983).

2. For a comparison see E. Evatt, 'The Acquisition of Territory in Australia and New Zealand', in H. Alexandowicz (ed), *Grotius Society Papers 1968, Studies in the History of the Law of Nations* (The Hague, 1970) 16.

3. *Cooper* v *Stuart* (1889) 14 App Cas 286,291; *Milirrpum* v *Nabalco Pty Ltd* (1971) 17 FLR 141 (Blackburn J); *Coe* v *Commonwealth of Australia* (1979) 24 ALR 118.

4. *R* v *Jack Congo Murrell* (1836) 1 Legge 72. See A.C. Castles, *An Australian Legal History* (Law Book Co., Sydney, 1982) 526-31.

5. House of Representatives, *Parl Debs* (8 December 1983) 3485. The resolution has not been further proceeded with. See also Commonwealth of Australia, Senate Standing Committee on Constitutional and Legal Affairs, *Two Hundred Years Later ... The Feasibility of a Compact or 'Makarrata' between the Commonwealth and Aboriginal People* (Canberra, AGPS, 1983) esp.35-48. For a somewhat different view see J. hookey, 'Settlement and sovereignty' in P. Hanks & B. Keon-Cohen (eds) *Aborigines and the Law* (George Allen & Unwin, Sydney, 1984) 1.

6. See e.g. the Australian works cited below, n.48.

7. Castles, 97-8, 111-12, 132-9, 178-9. cf. *Dugan* v *Mirror Newspapers Ltd* (1978) 22 ALR 439.

8. Castles, chs 1,15,17.

9. Here as elsewhere in this Paper I rely heavily on I.A. Shearer, 'The Teaching of International Law in Australian Law Schools' (1983) 9 *Adelaide LR* 61.

10. id, 63.

11. id, 65,69-70.

12. Australia is a party to both the Statute of the Hague Conference on Private International Law, 1955: *Aust. TS* 1983 No.29, and the Statute of the International Institute for the Unification of Private Law, 1940 (as amended): *Aust. TS* 1973 No.10. There is useful discussion of developments in these and related fields at the International Trade Law Seminars convened annually by the Commonwealth Attorney-General's Department: see e.g. *Tenth International Trade Law Seminar* (Canberra 18-19 June 1983) (AGPS, 1983).

13. See e.g. J. Crawford & W.R. Edeson, 'International Law and Australian Law' in K.W. Ryan (ed.) *International Law in Australia* (Law Book Co., Sydney, 2nd edn., 1984) 71.

14. See Shearer, 66-7 for details of Pitt Cobbett's career.

15. D.P. O'Connell, *State Succession in Municipal Law and International* (Cambridge UP, 1967) I, 16-47; D.P. O'Connell, 'The Evolution of Australia's International Personality', in D.P. O'Connell (ed.) *International Law in Australia* (Sydney, Law Book Co., 1966).

16. See J. Crawford, *The Creation of States in International Law* (Oxford, Clarendon Press, 1979) 238-46.

17. ibid; O'Connell, 'The Evolution of Australia's International Personality' (above n.15); D.P. O'Connell & J. Crawford, 'The Evolution of Australia's International Personality', in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co. Sydney, 1984) 1; M.H.M. Kidwai, 'International Personality and the British Dominions: Evolution and Accomplishment' (1976) 9 *UQLJ* 76.

18. Shearer, 69-70.

19. id, 70.

20. See id, 71-2, 75 for Bailey's career. After the 1930s he did not write much; but see e.g. K.H. Bailey, 'Australia and the Geneva Conventions on the Law of the Sea' in D.P. O'Connell (ed.) *International Law in Australia* (Sydney, Law Book Co., Sydney, 1984) 419.

21. Shearer, 72-3. An Australian and New Zealand Society of International Law was established in 1933, but produced only

one volume of *Proceedings* before disappearing: see (1935) 1 *Proceedings of the Australian and New Zealand Society of International Law.*

22. Shearer, 75.

23. H.V. Evatt (1894-1965) was, at different times, a judge of the High Court of Australia, Attorney-General and Minister for Foreign Affairs, and Federal Opposition Leader. See K. Tennant, *Evatt, Politics and Justice* (Angus & Robertson, Sydney, 1970). For his writings on international law and relations see e.g. H.V. Evatt, *The United Nations* (OUP, Melbourne, 1948); H.V. Evatt, *The Task of Nations* (Greenwood Press, Westport, 1972 (reprint of 1949 edn.)).

24. For a survey of Stone's career see Shearer, 76; and see also A.R. Blackshield (ed.), *Legal Change. Essays in Honour of Julius Stone* (Butterworths, Sydney, 1983). Stone's successor in the Challis Chair is Professor D.H.N. Johnson, formerly Professor of International Law and Air Law in the University of London. For his views on some of the issues dealt with here see D.H.N. Johnson, 'Lecture on the Study of International Law' (1980) 3 *Soochow LR* 1.

25. Shearer, 76-7.

26. He died (in part from overwork) in 1979: see I.A. Shearer, 'Obituary" Professor D.P. O'Connell' (1981) 7 *Aust. YBIL* xxiii. For review of his international law work see J. Crawford, 'The Contribution of Professor D.P. O'Connell to the Discipline of International Law' (1980) 51 *BYIL* 1.

27. Shearer (1983) 75.

28. Alexandrowicz was an Associate Professor in International Organizations at Sydney University from 1961 to 1968: see e.g. C.H. Alexandrowicz, *The Law-Making Functions of the Specialized Agencies of the United Nations* (Australian Institute of International Affairs and Angus & Robertson, Sydney, 1973); and C.H. Alexandrowicz, 'Australia and GATT', in D.P. O'Connell (ed.) *International Law in Australia* (Law Book Co., Sydney, 1966) 87.

29. See e.g. E. McWhinney, 'On the Vocation of our Age for Law-making: Constitutional and International Codification in an Era of Transition and Rapid Change' in A.R. Blackfield (ed.) *Legal Change. Essays in Honour of Julius Stone* (Butterworths,

Sydney, 1983) 241. McWhinney was a Sydney graduate whose subsequent career has been entirely North American.

30. See e.g. L.F.E. Goldie, 'International "Confidentiality": State Sovereignty and The Problem of Consent' in A.R. Blackshield (ed.) *Legal Change. Essays in Honour of Julius Stone* Butterworths, Sydney, 1983) 316. Goldie, a graduate of the University of Western Australia, worked in government and at the ANU until 1959; since then he has taught at various United States Law Schools.

31. See Shearer (1983) 75-6, and see esp. J.G. Starke, *An Introduction to International Law* (8th edn., Butterworths, 1977); J.G. Starke, *Studies in International Law* (Butterworths, 1965); J.G. Starke, 'Australia and the International Protection of Human Rights' in K.W. Ryan (ed.) *International Law in Australia* (Sydney, Law Book Co., 1984) 136. Starke is Editor of the *Australian Law Journal,* maintaining in that Journal a monthly segment 'International Legal Notes'.

32. K.W. Ryan was Garrick Professor of Law in the University of Queensland until his appointment to the Queensland Supreme Court in 1984. His wide ranging interests included both public international law and international trade law. See e.g. K.W. Ryan, 'Australia and International Trade Law' in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., 1984) 277.

33. See generally Australasian Universities Law Schools Association, Report No.2., *Legal Education in Australian Universities* (Butterworths, 1977).

34. For details see Appendix 1. The new courses are one of a number of innovations brought about by Professor D.W. Greig, Professor of Law at ANU since 1974. See e.g. D.W. Greig, *International Law* (2nd edn., Butterworths, 1976) and the works cited below. Monash University has a specialist Diploma in International and Comparative Law: for details see Appendix 1.

35. For analogous developments in Canada see R.St.J. Macdonald, 'An Historical Introduction to the Teaching of International Law in Canada Part III' (1976) 14 *Can YBIL* 224,253-6.

36. See Appendix 1, n.e.

37. See Crawford (above n.16): I.A. Shearer, *Extradition in International Law* (Manchester UP, 1971). Other Australian law professors with some interest in international law include R.D. Lamb (Queensland), A.C. Castles (Adelaide), C.G. Weeramantry (Monash).

38. See e.g. J.R.V. Prescott, *Map of Mainland Asia by Treaty* (Melbourne UP, Melbourne, 1975). There are also a number of international lawyers not directly involved either in University work or in the Foreign Affairs or Attorney-General's Departments: e.g. Dr. R.P. Schaffer, Dr. K. Suter.

39. See the works cited above, nn.16-17.

40. See especially F.M. Auburn, *Antarctic Law and Politics* (Hurst & Co., London, 1982). cf. also A.C. Castles, 'The International Status of the Australian Antarctic Territory' in D.P. O'Connell (ed.) *International Law in Australia* (Law Book Co., Sydney, 1966) 341.

41. See esp. D.P. O'Connell, *The International Law of the Sea* (ed. I.A. Shearer) (Oxford, Clarendon Press, vol. 1 (1982) vol. 2 (1984)). See also D.P. O'Connell, 'The Juridical Nature of the Territorial Sea' (1971) 45 *BYIL* 303. On issues of immediate concern to Australia see Brennan (above n.20); R.D. Lamb, 'Australian Coastal Jurisdiction' in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., 1984) 370; M. Landale & H. Burmester, 'Australia and the Law of the Sea - Off Shore Jurisdiction' in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., Sydney, 1984) 390; H. Burmester, 'Australia and the Law of the Sea - The Protection and Preservation of the Marine Environment' in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., 1984) 439; K.W. Ryan & M.W. White, 'The Torres Strait Treaty' (1981) 7 *Aust YBIL* 87; H. Burmester, 'The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement' (1982) 76 *AJIL* 321.

42. On the Australian constitutional implications see G. Sawer, 'Australian Constitutional Law in Relation to International Relations and International Law' in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., 1984) 35; H.B. Connell, 'International Agreements and the Australian Treaty Power' (1968-69) 4 *Aust. YBIL* 83; L. Zines, *The High Court and the Constitution* (Butterworths, Sydney, 1981) ch.13. On the role of the States see H. Burmester, 'The Australian States and Participation in the Foreign Policy Process' (1978) 9 *FLR* 257.

43. See A.C. Castles, 'International Law and Australia's Overseas Territories' in D.P. O'Connell (ed.) *International Law in Australia* (Law Book Co., Sydney, 1966) 292; Commonwealth of Australia, Senate Standing Committee on Foreign Affairs and Defense, *United Nations Involvement with Australian Territories* (AGPS, 1975); Crawford (above n. 16) chs.13-14.

44. e.g. D.W. Greig, 'The Interpretation of Treaties and Article IV.2 of the Nuclear Non-Proliferation Treaty' (1978) 6 *Aust. YBIL* 77. See also Commonwealth of Australia, Ranger Uranium Environmental Inquiry, *First Report* (AGPS, 1976) chs.12-13.

45. e.g. M. Sornarajah, 'The Extraterritorial Enforcement of U.S. Antitrust Laws: Conflict and Compromise' (1982) 31 *ICLQ* 127.

46. See e.g. G.D. Evans 'An Australian Bill of Rights' (1973) 45 *Aust.Q* 4. G. Triggs, 'Australia's Ratification of the International Covenant on Civil and Political Rights: Endorsement or Repudiation?' (1982) 31 *ICLQ* 278. For a recent statement of Commonwealth policy see G. Evans, 'Human Rights and International Law' (1984) *Aust. ILNews* 133.

47. G. Triggs, 'Restrictive Sovereign Immunity: The State as International Trader' (1979) 53 *ALJ* 296; D.H.N. Johnson, 'The Puzzle of Sovereign Immunity' (1978) 6 *Aust. YBIL* 1; P. Sutherland, 'Recent Statutory Developments in the Law of Foreign Sovereign Immunity' (1981) 7 *Aust. YBIL* 27; J.R. Crawford, 'Execution of Judgments and Foreign Sovereign Immunity' (1981) 75 *AJIL* 820; J.R. Crawford, 'A Foreign State Immunities Act for Australia?' (1983) 8 *Aust. YBIL* 71; J. Crawford, "International Law and Foreign Sovereigns: Distinguishing Immune Transactions' (1983) 54 *BYIL* 75; M. Sornarajah, 'Problems in Applying the Restrictive Theory of Sovereign Immunity' (1982) 31 *ICLQ* 66; G. Triggs, "An International Convention on Sovereign Immunity? Some Problems in Application of the Restrictive Rule' (1982) 9 *Monash ULR* 74; Australian Law Reform Commission, Report 24, *Foreign State Immunity* (1984).

48. See E.G. Whitlam, 'Australia's International Obligations on Aborigines' (1981) 53 *Aust. Q* 433; G. Nettheim, 'Justice and Indigenous Minitories: A New Province for International and National Law', in A.R. Blackshield (ed.) *Legal Change, Essays in Honour of Julius Stone* (Butterworths, Sydney, 1983) 251; G. Nettheim, 'The Relevance of International Law' in P. Hanks & B. Keon-Cohen (eds.) *Aborigines and the Law* (George Allen & Unwin, Sydney, 1984) 50; Australian Law Reform Commission,

Aboriginal Customary Law Research Paper 10, 'Separate Institutions and Rules for Aboriginal Peoples - International Prescriptions and Proscriptions' (1982) and see the works cited above n.5.

49. For general survey see Crawford & Edeson (above n.13). See also D.P. O'Connell, 'The Relationship between International Law and Municipal Law' (1960) 48 *Georgetown LJ* 431; I. Tammelo, 'Relations between the International Legal Order and the Municipal Legal Orders - A "Perspectivist" View (1967) 3 *Aust. YBIL* 211; J. Crawford, 'The International Law Standard in the Statutes of Australia and the United Kingdom' (1979) 73 *AJIL* 628; J. Crawford, 'General International Law and the Common Law' (1982) 76 *PASIL;* W.R. Edeson, 'Conclusive Executive Certificates in Australian Law' (1981) 7 *Aust. YBIL* 1. cf. also R.P. Schaffer, 'The Inter-Relationship between Public International Law and the Law of South Africa: An Overview' (1983) 32 *ICLQ* 177.

50. e.g. D.H.N. Johnson, 'Refugees, Departees and Illegal Immigrants' (1980) 9 *Sydney LR* 11; R.P. Schaffer, 'South-East Asian Refugees - the Australian Experience' (1981) 7 *Aust. YBIL* 200; D.W. Greig, 'The Protection of Refugees and Customary International Law' (1983) 8 *Aust. YBIL* 108; J.P.L. Fonteyne, 'Burden-Sharing: an Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees' (1983) 8 *Aust. YBIL* 162; G.J.L. Coles, 'Temporary Refuge and the Large Scale Influx of Refugees' (1983) 8 Aust. *YBIL* 189.

51. See the works cited above n.40.

52. See the works cited above n.48.

53. Constitution s.51(xxix). See the works cited above n.42.

54. *Koowarta* v *Bjelke-Petersen* (1982) 39 ALR 417; *Commonwealth* v *Tasmania* (1983) 46 ALR 625. On the international law implications of the latter case see also M. Sornarajah, 'International Law and the *South West Dam Case*' in M. Sornarajah (ed.) *The South West Dam Dispute: The Legal and Political Issues* (University of Tasmania, 1983) 23.

55. See above n.47.

56. See below nn.61-65.

57. The Law Reform Commission Act 1973 (Cth) s.7 requires the Commission in its work to have regard to the terms of the International Covenant on Civil and Political Rights 1966. A number of the Commission's projects also have international implications outside the human rights field: e.g. foreign state immunity (see above n.47), admiralty jurisdiction.

58. On Australian treaty practice see N.D. Campbell, 'Australian Treaty Practice and Procedure' in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., 1984) 53. The volume of Australian treaty-making has substantially increased in the last 15 years, as attested by the Cumulative Supplement to the *Australian Treaty List (Aust. TS* 1971 No.1): mimeo, Dept. of Foreign Affairs, Canberra, 1983.

59. See above n.50.

60. See above n.44.

61. *Aust. TS* 1975 No.40. The constitutionality of the Act was upheld by the High Court in *Koowarta* v *Bjelke-Petersen* (1982) 39 ALR 417 under the Convention in conjunction with the external affairs power (s.51(xxix)).

62. *Aust. TS* 1983 No.9. The Act is based in part upon the external affairs power and the Convention, in part on other powers.

63. e.g. Human Rights Bill 1975 (Cth). See above n.46.

64. For a lucid expression of this view see R.G. Menzies, *Central Power in the Australian Commonwealth* (Cassell, London, 1967) 49-55.

65. Human Rights Commission Act 1981 (Cth).

66. ICJ Rep. 1966 p.6.

67. ICJ Rep. 1971 p. 15. See Crawford (above n.16) ch.13.

68. ICJ Rep. 1974 p.253.

69. For, respectively, *Legal Controls of International Conflict* (Stevens, London, 1954) and *The Creation of States in International Law* (Oxford, Clarendon Press, 1979).

70. J. Stone, 'Problems Confronting Sociological Inquiries Concerning International Law' (1956) 84 *Recueil des cours* 61;

C.H. Alexandrowicz 'The Afro-Asian World and the Law of Nations (historical aspects)' (1968) 123 *Receuil des cours* 117; D.P. O'Connell, 'Recent Problems of State Succession in relation to New States' (1970) 130 *Recueil des cours* 95; N.C.H. Dunbar, 'Controversial aspects of sovereign immunity in the case of some States' (1970) 130 *Recueil des cours* 197.

71. For comments on the Institute from an Australian perspective see J.G. Starke, (1982) 56 *ALJ* 374; (1983) 57 *ALJ* 185; (1984) 58 *ALJ* 469.

72. Vol.9, containing the papers delivered at a Red Cross Conference on International Humanitarian Law in February 1983, will appear shortly.

73. The Papers so far published are: D.F. Flint, *Foreign Investment and the New International Economic Order* (Martin Place No.1, Sydney, 1983) (reprinted in K. Hossain & S. Roy Chowdhury (eds.) *Permanent Sovereignty over Natural Resources in International Law* (Frances Pinter, London, 1984) 144); I.A. Shearer (ed.) *Prospects for a New Law of the Sea* (Martin Place Paper No.2, Sydney, 1983).

74. See (1981) 5 *ASILS ILJ* 145.

75. Overall the Australian record has been as follows:

Year	*Subject*	*Winner of Australian Regional Rounds*	*Place in International Division*
1977	Nuclear Energy	Adelaide	3rd
1978	*Succession*	Adelaide	2nd
1979	Transfer of Technology	Adelaide	1st, and runner up in Jessup Cup.
1980	Air and Outer Space	Melbourne	2nd
1981	Maritime boundaries	ANU	1st, and Winner of Jessup Cup.
1982	Human rights	Melbourne	4th
1983	Transnational pollution	University of N.S.W.	9th
1984	Expropriation of foreign property	Adelaide	4th

76. See e.g. K. Widdows, 'What is an Agreement in International Law?' (1979) 50 *BYIL* 117; K. Widdows, "The Form and Distinctive Nature of International Agreements' (1981) *Aust. YBIL* 114; K. Widdows, 'The Unilateral Denunciation of Treaties Containing No Denunciation Clause' (1982) 53 *BYIL* 83; D.F.J.J. de Stoop, 'Australia and International Criminal Law', in K.W. Ryan (ed.) *International Law in Australia* (2nd edn., Law Book Co., 1984) 155; G.J.L. Coles (above n.50). P. Brazil of the Attorney-General's Department (now Secretary of that Department) has also made a contribution in a number of areas; see e.g. P. Brazil, 'Some Reflections on the Vienna Convention on the Law of Treaties' (1975) 6 *FLR* 223.

77. Some of the problems of specialization for Government lawyers are referred to above.

78. The Commission for the Conservation of Antarctic Marine Living Resources, established by the Convention on the Conservation of Antarctic Marine Living Resources 1980 (*Aust. TS* 1982 No. 9) with its base in Hobart, Tasmania (Art XIII).

79. G.A. Brennan. See e.g. W.E. Holder and G.A. Brennan, *The International Legal System. Cases and Materials with Emphasis on the Australian Perspective* (Butterworths, Sydney 1972). His co-author, W.E. Holder, is now a legal adviser with the IBRD in Washington.

80. Australian practice on international law is also now more readily available through the section on 'Australian Practice', prepared by Mr. Jonathon Brown of the Department of Foreign Affairs: see e.g. (1983) 8 *Aust YBIL* 255-458.

81. See above nn.14,24.

APPENDIX I

INTERNATIONAL LAW AND RELATED COURSES OFFERED AT AUSTRALIAN UNIVERSITIES

UNIVERSITY	*COURSE(S)*[1]	*UNDERGRADUATE*[2] / *POSTGRADUATE*[3]	*DURATION*[4]	*APPROX. ENROLLMENT 1984*	*COMMENTS*
Adelaide University	International Law I	u/g	2 terms	30	General course.
	International Law II	u/g	1 term	*	Advanced course, emphasising sources of international law.
	Human Rights	u/g	1 term	6	International and domestic human rights law.
Australian National	Principles of International Law	u/g	1 semester	20	General course.
	Law of International Organisations	u/g	1 semester	10 u/g	Offered with increased assessment requirement as Dip.Int.L./M. Int.L. elective.
	Law of the Sea	u/g	1 semester	12 u/g	Offered with increased assessment requirement as Dip.Int.L./M. Int.L. elective.
	International Air & Space Law	u/g	1 semester	8	In substance also offered as Dip.Int.L./M. Int.L. elective under name of International Transportation and Communications Law.
	International Law of Human Rights	u/g	1 semester	20 u/g	Offered with increased assessment requirement as Dip.Int.L./M. Int.L. elective.
	Enforcement of International Law	u/g	1 semester	*	

ANU (contd)	International Law of Natural Resources	u/g	1 semester	6	Ditto
	Graduate Diploma in Int'l Law/Masters in Int'l Law[5]				Total enrollment 55 (intake 30 p.a.)
	Compulsory Courses				
	International Law	p/g	full year		Advanced course in general international law.
	Principles of International Economics	p/g	1 semester		
	International Politics	p/g	1 semester		
	Electives (4 required)				
	Law of International Organisations	p/g	1 semester		Content as for undergraduate subject.
	Law of Sea I	p/g	1 semester		Ditto
	Law of Sea II	p/g	1 semester		
	International Transportation & Communications Law	p/g	1 semester		In substance also offered for undergraduate students as International Air & Space Law.
	International Law of Human Rights	p/g	1 semester		Content as for undergraduate subject.
	International Law of Natural Resources	p/g	1 semester		Ditto
	Legal Aspects of the International Trading System I	p/g	1 semester		
	Legal Aspects of the International Trading System II	p/g	1 semester		
La Trobe University (Department of Legal Studies)	International Legal Order	u/g	full year	10	General course.
	Human Rights	u/g	1 semester	25	
	International and Comparative Environmental Law & Policy	u/g	1 semester	13	

Macquarie University	Transnational Law	u/g	1 semester	30	General course, but includes transnational corporations, freedom of movement, human rights.
	Law of International Organisations	u/g	1 semester	*	Offered every second year.
Melbourne University	International Law	u/g	full year	98	General course.
	Law of the Sea	p/g	1 semester	5	As part of course-work LL.M.
Monash University	International Law	u/g	1 semester	30	General course.
	International Organisations	u/g	1 semester	12	
	Human Rights B	u/g	1 semester	15	International and regional human rights.
	Diploma of International & Comparative Law				Candidates are required to take 8 courses from a range of options: only public international law-related courses are listed here. Available also for course-work LL.M.
	Law of the Sea	p/g			
	International Air Law	p/g			
	International Economic Law & Organisations	p/g			
	Law of International Political Organisations	p/g			
	Government Regulation of International Trade				
	Law of Treaties	p/g			
New South Wales Institute of Technology	Public International Law	u/g	1 semester	20	Offered twice-yearly.
	Air Law	u/g	1 semester	12	
	Human Rights	u/g	1 semester	15-20	
	International Economic Law	u/g	1 semester	15	

Queensland University	International Law	u/g	1 semester	30	Emphasis on Law of the Sea.
	International Organisations	p/g	1 semester	*	
Sydney University	Public International Law	u/g	full year		
	Basic Course		2 hrs. p.w.	74	General course.
	Extended course		3 hrs. p.w.	30	Addition of International Humanitarian Law.
	International Economic Law	p/g	full year		Seminar course for course-work LL.M.
	International Transport Law	p/g	full year		Seminar course for course-work LL.M.
University of New South Wales	Public International Law	u/g	1 semester	36	4 hours per week.
	International Humanitarian Law	u/g	1 semester	20	2 hours per week.
	Human Rights Law	u/g	1 semester	35	4 hours per week.
University of Tasmania	Public International Law	u/g	full year	*	General course.
	Human Rights Law	u/g	half year	*	
University of Western Australia	International Law	u/g	full year	50	General Course.

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NOTES:

* Indicates not offered in 1984.

1. Courses on Conflicts of Laws (Private International Law) and International Trade Law are offered in most Australian law courses, but are not listed here.

2. All undergraduates courses listed are 'optional' rather than 'compulsory' subjects for law students, although in some States international law ranks among a restricted list of subjects at least one of which must be taken to qualify the student for admission as a barrister and/or solicitor.

3. All Universities offer postgraduate degrees by thesis only at both Masters (LL.M.) and Doctorate (Ph.D.) level. International law-related theses are not uncommon, but in general the level of postgraduate thesis work is low. In 1984 Sydney (6 students) and the ANU (1 student) had postgraduate students actively work on international law topics.

4. In general, the Australian University year is divided either into 3 terms of 8 or 9 weeks each or 2 semesters of 14 or 15 weeks each.

5. Candidates for the M.Int.L., in addition to subject work, are required to complete a thesis of approx. 15-20,000 words.

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APPENDIX II

BIBLIOGRAPHY

NOTE: Items listed here include those by 'Australian' authors referred to in the Paper, and a few other items by such authors. It is not a comprehensive bibliography of Australian work in the field.

Alexandrowicz, C.H.	1966	'Australia and GATT;, in D.P. O' Connell (ed.) *International Law in Australia* (Law Book Co., Sydney, 1966) 87.
Alexandrowicz, C.H.	1968	'The Afro-Asian World and the Law of Nations (historical aspects)' (1968) 123 *Recueil des cours* 117.
Alexandrowicz, C.H.	1973	*The Law-Making Functions of the Specialized Agencies of the United nations* (Australian Institute of International Affairs and Angus & Robertson, Sydney, 1973).
Auburn, F.M.	1982	*Antarctic Law and Politics* (Hurst & Co., London, 1982).
Australian Law Reform Commission	1982	Aboriginal Customary Law Research Paper 10, 'Separate Institutions and Rules for Aboriginal Peoples - International Prescriptions and Proscriptions' (1982).
Australian Law Reform Commission	1984	Report 24, *Foreign State Immunity* (1984).
Bailey, K.H.	1966	'Australia and the Geneva Conventions on the Law of the Sea' in D.P. O'Connell (ed.) *International Law in Australia* (Sydney, Law Book Co., 1966) 228.
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2

INDIA : M.L. Upadhyaya
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I. *HISTORICAL BACKGROUND*

India has a long history and tradition of study and research in international relations and politics. Kautilaya's *Arthasatra* is a well-known classic in the field of diplomacy and international relations. The first all-India empire was that of the Mauryas; Kautilya had a large share in its founding. He was chancellor of the emperor Chandragupta Maurya.

The earlier writers on law in India accepted the basic concept of *Dharma* as the basis of society and polity. *Dharma* was supplemented by another basic concept of *Danda* meaning sceptre which lent sovereignty to a King. It is difficult to translate the word *Dharma* in English but the nearest rendering would be a just legal order. Kautilya, in his *Arthasastra*, places prudence and expediency above rectitude.[1] In the earlier law books called *Dharmasutras, Dharma* prevailed over *Artha* in all cases of inter-state conflicts. Baudhayan, for instance, stated three simple rules for the guidance of a King in his relation with other states, namely, that (1) he should not retreat from a battle-field; (2) he should not strike with barbed or poisoned weapons; and (3) he should not fight with frightened persons, inebriates, lunatics, disarmed persons, women, children and old men except when they threatened his life. The rule against retreat from the battle-field was part of what Manu, the first law giver of Hindus, called *Kshatriya Dharma*, meaning higher duty of a King. Manu says that a King should seek to avoid war as far as possible, because victory in battle is both uncertain and impermanent in its results; but in the field, the clear duty of a King is that he must not retire, but must fight to the finish, ever remembering that victory means fame and that death secures him a place in heaven.

In these early writings we find detailed treatment of topics such as rules of war, distribution of booty taken in the battle field, capture of a camp or seizure of a fort, law of contraband, rights of conqueror over a conquered territory, practice of deputing ambassadors to foreign courts and the concept of alliances of states.[2] These works refer to a large number of events from the history and mythology of India to explain the working of these

rules. The war between Alexander the Great and the Indian Kings illustrates the rules that prevailed before Christ. The practice regulating the law on diplomacy is illustrated by the ambassadors sent out by Emperor Ashoka to various countries. Even before Ashoka, the epic *Ramayana* mentions King Rama having sent Hanuman and Angad as his envoys to the Court of Ravana.

During the early Muslim rule as well as under the Moghal rulers, kings and emperors of *Hindustan*, as the country was known then, had maintained diplomatic relations with other states. The British East India Company was found in the year 1600 under a Royal Charter and Sir Thomas Roe called on the Moghal Emperor as ambassador of Britain. During the East India Company's rule, the Governor-General sent his political agent as his envoy to the Court of native kings. In the year 1858, when Queen Victoria took over the administration, the country became a colony in the British empire. But under the Government of India Act, 1919, the country regained its international personality and was admitted to the membership of the League of Nations.

Notwithstanding the advanced level of development of study and research in international law during the ancient and medieval times, there appeared a complete vacuum in the eighteenth century. The native schools imparting a rudimentary knowledge of languages and other subjects were not well-equipped to teach subjects like international law. This had to wait till the introduction of western education in India.[3]

The foundation of the Asiatic Society in January, 1784 marks the beginning of the modern cultural era. In 1800, Lord Wellesley founded the College at Fort William in Calcutta. The teachers at Fort William College devoted themselves to learning Sanskrit and other native languages so as to benefit from the writings of native scholars. William Carey, the Baptist Missionary, was one of them. Sir William Jones, a Puisne Judge of the Supreme Court in Calcutta (which was established in 1774) took a leading role in giving shape to the Asiatic Society. The establishment of the Fort William College was followed by the establishment of Sanskrit College and Hindu College in 1817, Bishop's College in 1819, Scottish Church College in 1840 and others. In spite of the fact that a number of colleges had been established, there was no university in India till 1857.

The University of Calcutta was the first to be established on January 24, 1857; the University of Bombay and the University of Madras were also established later in the same year. The universities were modelled after the University of London. The universities awarded the degree of Bachelor of Laws from their very

inception. Indeed, the law classes were held in the colleges even before the universities came into being. The classes were conducted by the judges and barristers. Law, legal profession and legal education had a prominent place in the early universities. It was, therefore, not surprising that Sir James William Colvile, then Chief Justice of the Supreme Court at Calcutta and later Member of the Judicial Committee of the Privy Council, became the First Vice-Chancellor of the University of Calcutta. The second Vice-Chancellor was Advocate-General of Bengal. The third Vice-Chancellor was Judge of the Bombay High Court. The fourth Vice-Chancellor was no less a person than Sir Henry James Sumner Maine, Regius Professor of Civil Law at the University of Oxford.

The Faculty of Law was among the first four faculties created by the first Act of incorporation. The faculty conducted two examinations, one for the Licentiate Examination in Law and another for the degree of Bachelor of Law. There was provision for the degree of Doctor of Laws.

In the year 1868, Raja Prosanno Coomar Ragore, one of the Foundation Fellows of the Senate of the University, bequeathed a munificent grant to create a Tagore Law Professorship. Professor Herbert Cowell was elected as the First Tagore Law Professor in 1870.

In 1875, the University was empowered to confer an honorary degree of Doctor of Laws. At a special Convocation held on January 3, 1876, an honorary degree of Doctor of Laws was conferred on His Royal Highness Albert Edward, Prince of Wales. In 1885, the former President of the Law Faculty became the first President of Indian National Congress, which won independence of the country in 1947.

It must be said, however, that the University College of Law at Calcutta University was established much later in July 1909. The courses taught in the initial years did not include international law. But the postgraduate department of History, started in 1912, offered a course in International Law. The University set up its department of Political Science in 1948, which also offered public international law as one of the papers for the Master's degree.

Thus in India, international law was first introduced on the syllabi of Master of Arts degree in history and political science and not in that of Bachelor of Laws degree. The reasons for not teaching international law in the law colleges or law departments of the universities were not far to seek. For long, law was taught under the aegis of High Courts and the law colleges. Until of the creation of Bar Councils, the legal profession and

legal education were regulated and directed by the High Courts. The aim of legal education was only to prepare judges and pleaders for the lower courts. For them, knowledge of international law was not regarded as very relevant.

After India was admitted to the League of Nations, interest in international affairs and international relations gradually grew and the need for a systematic study and research in international law was felt. The department of history of the University of Calcutta could be said to be the first in the country to respond to the need. As and when the departments of political science came to be opened, international law was almost a compulsory course therein. The College of Law of the University of Calcutta in 1960 included international law in its syllabi for the degree of Bachelor of Laws as an optional course. In the newly proposed Five Year course for the degree of Bachelor of Laws, political science is to be taught as a compulsory subject divided into three papers, one of them devoted to the general principles of international law and international organisation. In the programme leading to a Master's degree in law, some universities teach four to six courses on international law. International law has been included as one of the subjects in the competitive examinations held for the recruitment to civil services under the Union Government and the state governments as also to the state judicial services. The endowment creating Tagore Law Lectures invited several scholars from abroad to pursue study and research on any branch of law, including international law. In the last more than hundred years since the creation of this endowment Chair, four Tagore Law Professors have delivered their lectures on international law. The Tagore Law Lectures for the year 1922 were delivered by Professor Wilford Garner, of the University of Illinois and the same were published by the University of Calcutta in 1925. The theme of the lectures was Recent Developments in International Law. The Tagore Law lectures for 1931 by Professor Arnold D. McNair, of the University of Cambridge were on *The Law of the Air*.

The 1962 Tagore Law Lectures by Mr. Jagadish Swarup, former Solicitor General of India, were on *Human Rights and Fundamental Freedoms*. Professor Gerard J. Mangone of the University of Delaware delivered 1979 Tagore Law Lectures on *"Law for the World Ocean"*. All these lectures were later published as books.

By 1950, most of the university teaching departments of political science and law, introduced international law as one of the courses. Several scholars engaged themselves in research in the area. Some of them worked on the doctoral dissertation and others on writing monographs on issues. The Kashmir issue, the Korean problem, the case of Namibia, the right to self-determination, UNCTAD and the New International Economic Order.

The University of Madras set up a postgraduate department of international law and constitutional law around 1950 under the leadership of Charles Henry Alexandrowicz to conduct a Master of Laws course and a doctoral programme. In the course of time, he prepared a band of devoted teachers and scholars of international law. He took active interest in setting up a study group on international law, international relations and international affairs. The Study Group started the publication of the Indian Yearbook of International Affairs. The Yearbook publishes articles on topical themes, both by Indian as well as well known foreign authors and includes important discussions on international law. The Yearbook has a section on review of recent books on international law. Another band of scholars, such as M.S. Rajan, and A. Appadorai, with the help of eminent statesmen and jurists, like Hridayanath Kunjru and M. C. Setalvad, the first Attorney-General of India, set up the Indian Council of World Affairs. The Council, with the patronage and assistance from the Government of India, decided to perpetuate the memory of Sir Tej Bahadur Sapru, a great jurist and statesman, by establishing a national library in international law at Sapru House in New Delhi. Subsequently, the Indian School of International Studies was attached to it. In due course, the school became a nucleus and was integrated into the Jawaharlal Nehru University. The Indian School of International Studies and the Jawaharlal Nehru University helped publish a large number of monographs, books and articles on diverse aspects of international law. The Indian School of International Studies conducted only the doctoral programme. Afters its merger with the Jawaharlal Nehru University, it began courses for the Master of Philosophy degree, which is now a prerequisite for a Doctor of Philosophy degree.

The Indian Council of World Affairs brings out a Journal called, *Indian Quarterly*.

V. K. Krishna Menon, during his tenure as Minister in Prime Minister Nehru's cabinet helped set up the Indian Society of International Law at New Delhi. The society has been regularly bringing out a quarterly Journal called the *Indian Journal of International Law*. The Journal publishes articles, notes, decisions, documents, book reviews and, occasionally, a bibliography on a selected topic of international law. The Society organises an annual seminar on a theme or themes of contemporary interest and the papers read at the seminar are published in a special number of the Journal. The Society conducts a one year Diploma Course in International Law and Diplomacy through the Indian Academy of International Law. The regional branch of the International Law Association, set up a University Law Teachers' Research Group in 1969, to promote study and research on certain subjects of International Law which are

pending consideration before the various organs and specialised agencies of the United Nations. The Group helped publish several monographs and proceedings of the seminar; mention may be made of *Aircraft Hijacking and International Law* (1973)[4] and *Proceedings of the Seminar in Human Rights* (1980)[5].

The governments of Burma, Sri Lanka, Ceylon, India, Indonesia, Iraq, Japan and Syria constituted in 1950 the Asian Legal Consultative Committee. It was meant to serve as an advisory body of legal experts. Through this Committee, it was sought to exchange information on legal matters of common interest and to acquaint each country with the views of other countries on legal matters. In 1958, it became the Asian-African Legal Consultative Committee when the African States joined it. The Committee has a permanent secretariat in New Delhi. The Committee maintains close relations with the International Law Commission, the United Nations, and its other specialised agencies.

The University of Bombay set up in November 1959 a postgraduate department of Law to promote postgraduate teaching and research, in all branches of law, including international law. The international law group in the department has been very popular. The University has produced in the last twenty five years more than 100 students who have specialised in international law at the LL.M. level. One scholar has earned his Ph.D. in international law and two others are working on their Ph.D. theses.

Thus at present, there are about ten centres in universities and outside, where a band of scholars is engaged in higher studies and research in international law.

II. *KEY EMPHASES IN TEACHING INTERNATIONAL LAW*

The universities imparting instruction in international law at LL.M. level emphasize mainly thorough knowledge of basic principles of public international law and their application to recent developments. The courses covered in international law include the following:

(1) Public International Law
(2) International Organisation
(3) Law of the Sea
(4) Law of Air and Outer Space
(5) International Economic Law
(6) Human Rights.

A number of universities also teach private international law or conflict of laws in the international law group. The number of papers or courses and other details vary from university to

university. In some universities, those who specialise in international law are required to take three to six courses and a dissertation on some problems of international law.

Again special emphasis is given on certain topics in the courses stated above. For instance, in Public International Law, the following topics receive special attention:

(1) Sources of International Law
(2) Law of Treaties
(3) State Succession
(4) Recognition of State and Recognition of Government
(5) Territorial Sovereignty
(6) Laws of War
(7) Neutrality
(8) Peaceful Settlement of International Disputes.

In the course on international organisations, the United Nations' General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice, the International Law Commission, the Secretary-General etc. receive special attention.

In the courses on the Law of the Sea, the following topics are given special attention:

(a) Territorial Sea and Contiguous Zone
(b) Land-locked States
(c) Gulf, Bays, Straits etc.
(d) Continental Shelf
(e) Economic Zones and Fisheries Zones
(f) Archipelagos and Islands
(g) High Seas
(h) Exploitation of Sea bed and Ocean Floor
(i) Marine Pollution

In the course Law, the following topics receive special consideration and attention:

(a) Organisation and administration in Aviation,
(b) Aviation Industry,
(c) Aircraft,
(d) Aircraft Personnel,
(e) Air Navigation,
(f) Air Transport,
(g) Damage to Third Parties,
(h) Accidents,
(i) Insurance,
(j) Criminal Law on Hijacking,
(k) Solution of Disputes and Settlement of Claims.

In the area concerning the New International Economic Order, monographs have appeared on topics such as *Nationalisation of Foreign Property;*[6] *The Legal Framework of UNCTD in World Trade;*[7] and *Sovereignty over Natural Resources.*[8]

In the area of Law of the Sea, monographs have appeared on the following themes:

1. Legal Regime of the Seabed and the Developing Countries;[9]
2. Legal Regime of Islands;[10]
3. Law of the World Ocean.[11]

Two national seminars were held on Human Rights, one at Banaras Hindu University and another at Allahabad Centre of the International Law Association. The proceedings of both the seminars have been published.[12] There are proposals to introduce a course on Human Rights.

The University of Poona organised a seminar on the Law of Treaties and published the proceedings.[13]

The University of Patna organised a seminar on the United Nations and published the proceedings.[14]

The Indian branch of the International Law Association organised, through its University Teacher's Research Group, a seminar in collaboration with the Asian-African Legal Consultative Committee and published the proceedings.[15]

The Asian-African Legal Consultative Committee in the recent years dealt with several problems of common interest and submitted reports on the following subjects:

Diplomatic Immunities and Privileges
Status of Aliens
Legality of Nuclear Tests
Refugees
Relief against Double Taxation
The Law of the Sea
Law relating to International Rivers
Law relating to International Sale of Goods

In recent years, monographs have appeared on subjects of general interest such as:

1) The Expanding Jurisdiction of the United Nations.[16]
2) International Adjudication.[17]
3) Prisoners of War.[18]
4) International Water Law Disputes.[19]
5) New International Economic Order.[20]

In the course on International Economic Law, special attention is given to the following topics:

(a) GATT
(b) UNCTAD
(c) Sovereignty over Natural Resources
(d) Problems of Private Foreign Investment
(e) Carriage of Goods by Sea
(f) Maritime Law
(g) New International Economic Order
(h) North-South Diologue
(i) Nationalisation of Foreign Property
(j) Codification of International Commercial Law.

In the course on Human Rights, special emphasis is laid on the following issues:

(a) Analysis of the Basic Documents on Human Rights.
(b) The Case for their Incorporation in the Constitution and the Local Laws.
(c) Machinery for their Implementation and Enforcement.
(d) Local Problems concerning some Human Rights.

The special local problems may be stated here as follows:

A. Economic Freedom: Forced Labour, Poverty, Right to Employment etc.
B. Discrimination: Colour, Caste, Religion etc.
C. Freedom of Press: Speech, Expression, Censorship etc.
D. Refugees
E. Rights of Women
F. Minorities
G. Prisoners of War

III. *MAJOR TRENDS OF RESEARCH IN INTERNATIONAL LAW*

Since 1980, the major trend of research in International Law appears to be in the following areas:

(a) North-South Diologue and the New International Economic Order; UNCTAD etc.
(b) Law of the Sea
(c) Human Rights and their Implementation
(d) Humanitarian law i.e. Problems arising out of Armed Conflicts, Aggression, Intervention etc.
(e) International Terrorism; Aircraft Hijacking etc.
(f) Unification of International Economic Law
(g) International Commercial Arbitration

IV. *RESPONSE TO NEW CHALLENGES*

In response to challenges that the contemporary world--especially the Third World--faces, issues such as peaceful uses of atomic energy, ban on proliferation of nuclear arms, Indian Ocean as peaceful zone, non-alignment, exploration of seabed for the common benefit of mankind, protection of the interests of land-locked countries, war crimes, prevention of genocide, humane treatment of war prisoners, peaceful settlement of international disputes, non-intervention in domestic matters, problems of refugees and stateless persons, respect for and protection of human rights, implementation of international covenants on economic, political and cultural rights are being given special attention. The right to self determination, the South West Africa case, right to fisheries, the limit of contiguous zone and the economic zone have been matters of concern. The war in Vietnam, developments in Bangladesh, Afghanistan, the Middle-East have engaged attention of scholars. The treaty of mutual co-operation, no war pact, the treaty of friendship and the treaty of peaceful co-existence, unlike military alliances, have been developed as new instruments for promoting international peace, good will and understanding. Law of the sea, oceanography, marine science, merchant shipping and environmental law have been engaging special attention of all concerned in recent years. Legal aspects of exploration of Antarctica is anothor such field. An analysis of major writings of the Indian authors in the past decade will reveal that the authors have, for understandable reasons, taken a stand on certain issues which is independent of the Western approach and in some cases have supported the Third World perspective.

V. *PROBLEMS OF THE PROFESSION*

The profession of law in India has not been able to make its due contribution in the field of teaching and research in international law owing to a number of problems. The main among them are: lack of institutional funding; lack of dependable libraries; lack of data; and lack of personnel.

The universities in India, by and large, depend on the maintenance grants from the state governments, and development grants from the University Grants Commission. The universities established by an Act of State legislatures receive maintenance grants from the state governments. Such grants are too meager to allow the universities to carry on research and study of international law--still regarded as an esoteric branch of study by some state governments. The universities established under an Act of Union Parliament, otherwise known as the Central Universities, receive the maintenance grants direct from the University Grants Commis-

by Gaston de Leval of Brussels on "Prussian Law as Applied in Belgium" in August of 1981; and an article on "Law, War and the Future" by Sir Fredrick Edwin Smith, Attorney General of Great Britain, appeared in September 1918.

The pre-war articles close with two materials from the 1930 and 1932 issues of *Philippine Law Journal* published by the University of the Philippines: John A. Eubank of the New York Bar's "Ownership of the Airspace," incidentally, the first article dealing with international law in this law journal since its maiden issue in 1914; and, secondly, a book review on the World Court.

The pre-war years show a heavy dependence on foreign scholars and a pre-occupation with the laws of war and neutrality. This is due mainly to the dependent status then of the Philippines as a colony of the United States and to the concerns of the times about the past and the then impending global hostilities.

2. *The Early Post War Years: 1940s*:

The Philippines suffered destruction from the 1941 to 1945 World War. It took some time for research on international law to resume. When it did, in 1948-49, it dealt mostly with the effects of the war or aspects thereof. Jose L. Castigador examined "The Effects of War on Contracts of Lease Executed in the Philippines Prior to December 8, 1941", Milagros C. Nartatez propounded on "The Right of the Military Occupant to Establish Courts in the Occupied Territory." A different vein was struck, however, by Vicente Abad Santos -- Professor and later Dean of the University of the Philippines, now a Justice of the Supreme Court -- who wrote in December of 1949 on "A Study on the Proposed International Court of Human Rights." This was a fairly rapid response to the 1948 U.N. Universal Declaration of Human Rights.

3. *Late Post War Era and Early Independence in the 1950s:*

The 1950s saw the biggest production of Philippine legal literature on international law. This may be attributed to the transition from the late post war years to the period following the declaration of independence in 1946.

One line of research continues to cover the war and its effects. The text of the "Geneva Convention For The Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea", of August 12, 1949 was printed in 1952.

Francisco Ortigas, Jr., studied the "Effect of the Japanese Occupation on Life Insurance Policies Issued in the Philippines by American and Canadian Companies." Alberto de Joya expounded on the "Insurer's Liability for Life Policy That Has Lapsed Due to Impossibility of Payment of Premium on Account of War."

Florentino P. Feliciano wrote on "The Belligerent Occupant and the Returning Sovereign: Aspects of the Philippine Law of Belligerent Occupation." The text of the Convention on the Prevention and Punishment of the Crime of Genocide was published and the *Francisco Law Journal* of 1956 contained an article on "Individual Responsibility for International Crimes."

Human rights commanded increasing attention.

Minerva P. Gonzaga and Erlinda Q. Villatuya wrote on the "Social and Economic Rights in the Universal Declaration of Human Rights." Alejo Labrador -- who also became a Justice of the Supreme Court -- wrote on "The Universal Declaration of Human Rights." The text of this Universal Declaration was also printed in 1951 in the *Philippine Law Journal*. Priscilla Y. Santos wrote on "The U.N. and the Status of Women." Ricardo Paras, Sr., Chief Justice of the Supreme Court, authored "The Beginning and End of Human Rights," printed in the *Ateneo Law Journal* in 1957.

As the Philippines grappled with the tasks of independence, the legal aspects of the Philippine-U.S. Military Bases Agreement started to be closely investigated.

Roman D. Tanjuakio wrote "On the US-PI Military Bases Agreement," in September 1955. Pablo B. Badong followed up with "Philippine Jurisdiction Over the George E. Roe Case," involving the RP-US Bases Agreement.

An excellent series of articles on the Japanese Peace Treaty, the Senate Resolution Terminating the State of War with Japan, the US-Philippine Mutual Defense Pact and the Power of the President to send troops to fight abroad without a declaration of war, appears in the July 1952 issue of the *Philippine Law Journal*, with prominent authors, Vicente G. Sinco, Claro M. Recto, Lorenzo Sumulong, and others.

Other topics showed the emerging concerns of shaping foreign policy: Sotero B. Balmaceda wrote on the Philippine recognition of South Vietnam; Arturo E. Balbastro treated the right of diplomatic asylum and Ricardo Jose Romulo dealt with the rights and duties of states. Teodoro Padilla and Manuel

Escalar wrote on "Some Legal Effects of Changes of Sovereignty Over The Philippines." Arturo M. Tolentino, in the *Philippine Lawyer's Association Journal* of Sept.-Oct. 1959, discussed the law of the sea. Bienvenido C. Ambion touched on the organization of a World Court of international criminal jurisdiction, these last two dealing with matters *de lege ferenda*, not merely *de lege lata*, showing increasing confidence and ability of local authors in the field.

Foreign scholars were still welcome. Martin Arostegui, then the head of the U.N. Information Office in the Philippines, addressed the University of the Philippines College of Law on "Vitoria and the Right of Self-Determination." Dag Hammarskjold's paper on "International Law and the U.N." was also published locally during this period.

Meanwhile, the Philippine Supreme Court ruled on cases involving issues of public international law, particularly the power of U.S. Base Provost Marshal to file complaints; the meaning of "termination of war" with reference to private contracts; the admission of aliens into the Philippines; the Trading with the Enemy Act; the effect of a suit against the U.S. Government. Scholars analyzed these decisions in the law journals of the period.

Finally, in 1956 the book of Jovito R. Salonga and Pedro L. Yap entitled *Public International Law* was first published. This well-researched and authoritative work was used as textbook in practically all the law schools in the Philippines.

4. *Development and Significant Events: The 1960s*

During the next decade, the 1960s, significant events took place with their deep impact on international law: The Vietnam war, the entry in 1967 of the People's Republic of China into the nuclear power club; the Arab-Israeli war and the rise in the price of oil. The bipolar world of the 1950s gave way to multipolar centers of powers.

In November of 1960, Professor Myres S. McDongal of Yale and Professor Florentino P. Feliciano of the University of the Philippines, released their epochal article, "Community Prohibitions of International Coercion and Sanctioning Processes: The Technique of World Public Order," in 97 pages of the *Philippine Law Journal*. Jorge R. Coquia propounded on the role of law in the developing states of Southeast Asia. Similarly, Jeremias

U. Montemayor examined the role of law in the socio-economic development of Southeast Asia. Nelson D. Lavina researched on Executive Agreements while Salvador S. Carlota delved on the applicability of the Act of State doctrine in Philippine courts. Roberto Regala, diplomat and later Justice of the Supreme Court, wrote on the impact of the new nations on international law. The same author wrote on world peace as the greatest task of international law. Edwin Brown Firmage wrote on "Viet-Nam and International Law." The Declaration of Bangkok setting forth the conclusions and resolutions of the Southeast Asian and Pacific Conference of Jurists came out. Human rights continued to be discussed, with former U.N. Secretary General Carlos P. Romulo writing on the "History of the Declaration of Human Rights in the Context of International Administration," in the *Areneo Law Journal*.

The Philippine-U.S. relations were subjected to further studies, including the Philippine-U.S. tax convention and problems of jurisdiction under the Philippine-U.S. military bases agreement. Pacifico A. Ortiz, S.J., considered the legal aspects of the North Borneo question.

5. *Restructuring The International Order: 1970s:*

The next decade saw the emergence of the developing countries of the Third World as a force in international relations, leading the way to the move to restructure the international order, particularly in economics. Merlin M. Magallona of the University of the Philippines wrote on the New International Economic Order and the politics of multinational corporations. Victor R. Sumulong studied the U.N. Convention on the limitation period in international sale of goods. The idea of *jus cogens* in the Vienna Convention of the Law of Treaties, the problem of jurisdiction of the international court of justice, the emergent world federal system and its implications for international law and the legal status of mercenaries were analyzed. Developments on the Law of the Sea Conference, the proposed regimes for the seabed and the ocean floor were likewise touched upon, as was the development and significance of the 200-mile exclusive economic zone.

World peace through law was treated side by side with the law governing armed conflicts.

In 1979, the Philippine-U.S. Military Bases Agreement was amended and these amendments were studied. Separate works dealt with the grounds under international law for the abroga-

tion of the Philippine-U.S. military bases agreement, the Military Bases and Mutual Security Agreements in the light of the doctrines of *jus cogens* and *rebus sic stantibus*, and the Philippine perspective of the Status of Forces Agreements. Purificacion Valera-Quisumbing wrote on the right of self-determination and the promotion of international legal protections of human rights, discussing problems and strategies.

In the 1970s, too, more textbooks came out on public international law, notably Vicente Abad Santos, *Cases on International Law*; Edgardo Paras, *International Law and World Organizations*.

Also, the *Philippine Yearbook of International Law* in 1974 published an excellent collection of articles on the law of the sea and the national territory.

Finally, it was in this period, in 1978, that the Philippine Treaty Series first came out, providing a collection of the texts of treaties and other international agreements to which the Philippine is a party. Published by the University of the Philippines Law Center, it was edited by Haydee B. Yorac and Merlin M. Magallona. It now has six volumes.

6. *The Present Era: The 1980s:*

The present decade has ushered in an era of regional alliances and cooperation, as Asian countries realize the need for unity and mutual assistance especially in development.

Purificacion Valera-Quisumbing authored a thematic work entitled "Can Asean Forge a Viable Legal Regime For Regional Cooperation? Ma. Luisa Ylagan and Arno V. Sanidad looked into the Philippine-Japan Treaty of Friendship, Trade and Navigation. Eduardo P. Lizares assessed the Philippine position on the New International Economic Order and the International Center for the Settlement of International Disputes.

The 1980s also show increasing sophistication in the expertise of Philippine scholars. Miriam Santiago Defensor worked with Jovica Patrnogic on the promotion, dissemination and teaching of International Refugee Law, proposing a move towards a New International Social Order. Myrna S. Feliciano provided practical insights on human rights documentation. Jorge R. Coquia, an expert on the Law of the Sea Convention, traced the development of the archipelagic doctrine as a recognized principle of international law. Haydee B. Yorac did a study on the Philippine claim to the Spratly Islands Group. Raul Pangalangan and

Elizabeth H. Aguiling scrutinized the privileged status of national liberation movements under international law. The present author delivered a paper for The 1984 LAWASIA Conference in Manila on the Vienna Convention on Contracts for the International Sale of Goods. Florentino P. Feliciano expounded on the principle of *non-refoulement*, discussing the timely topic of international legal protection of refugees and displaced persons.

III. *RESPONSE TO NEW CHALLENGES TO INTERNATIONAL LAW*

The principal vehicle of response to new challenges in international law in the Philippines is the law journal article. Academic writers as well as government officials put down their thinking on these problems and challenges in the form of legal articles which are then discussed, analyzed or replied to in other articles.

This is supplemented by speeches and addresses given in special convocations or seminars from time to time in which a prominent authority, sometimes from abroad, delivers a lecture or paper on a specific topic of interest. There are, further, usually published in the law journals, as are texts of important and new international conventions and treaties.

The school curriculum has likewise shown capacity to adjust to shifts in perceptions of relative importance in international law, as in the case of the emphasis given to World organizations starting in 1966-1967.

International organizations of lawyers, such as the World Peace Through Law, the International Lawyers Association, the International Bar Association, the LAWASIA, and the ASEAN Law Association, likewise provide effective media for dissemination, discussion and decision on matters of international law of interest to its members, by way of its periodic conferences or conventions, a number of which have recently been held in the Philippines.

IV. *PROBLEMS OF THE PROFESSION*

A professional association of experts in the field of international law exists in the Philippines. It is called the Philippine Society of International Law, and its members are academic writers, jurists and lawyers active in the field of international law. It publishes the Philippine Yearbook of International Law.

The Philippine Society of International Law has some links with comparable societies abroad, such as the American Society of International Law. Occasionally, professors of law of

foreign international law societies come to the Philippines as guest lecturers of the Society.

The main problems of the profession are:

(a) Lack of interest of lawyers on international law as it does not provide opportunity for a lucrative practice;

(b) There are very few local lawyers who are really knowledgeable in international law;

(c) There is a dearth of books and materials on the subject due to high cost of imported books; and

(d) Most instructors of the subject teach international law more as history rather than its current development and practice. This is due to the fact that there is a dearth of literature and materials that contain the current practice of international law.

V. *AGENDA FOR THE FUTURE*

It is proposed that the law school syllabus should be updated to reflect new developments in international law.

It should cover the following topics:

I. The international legal community:

States, private persons, international organizations.

II. International legal acts:

The sources of international law

Illegal acts - international responsibility and diplomatic protection.

III. International co-operation:

Diplomatic and consular relations

Conventional co-operation and institutionalized co-operation (general theory

of international organizations)

International protection of human rights

Communications: road, railroad

The law of the sea, air law, space law

International trade and economic law

The international law of development and the technical assistance institutions.

IV. International peace:

Procedures for the peaceful settlement of disputes (good offices, conciliation, inquiry, mediation, arbitration, international courts of justice)

Neutrality during peace time

The role of international organizations in the maintenance and restoration of peace.

Furthermore, specialized areas of studies such as human rights, international business transactions, law of international institutions, should be offered as electives in the undergraduate course and, in more advanced form, in the LL.M. programs.

Professorial chairs in international law, with adequate funding, should be set up in the different universities, to encourage competent scholars to dedicate their careers on the subject. A Center For International Legal Studies should be set up, perhaps in the University of the Philippines, or by a group of law schools as a joint project, in which international legal studies and research can be done, where experts from all over the world, but particularly from Asia, can be invited to teach or lecture and exchange ideas with local experts and students and where a library of materials on public international law be assembled and augmented.

In the field of international organizations, there has been an increase in the number of importance of such world organizations. There is a need to open up new fields of research along these lines, covering basic documents with annotations and a des-

criptive directory.

Of note also is the fact that Justice Jorge R. Coquia and Mariam Defensor-Santiago have written a book on international law which is scheduled for release in the near future by the University of the Philippines. The final draft, which this author has reviewed as a Special Reader, indicated a well-researched and comprehensive volume that should fill the absence of an up-to-date textbook with sufficient excerpts of leading cases and materials. Other authors, including Professor Jovito R. Salonga, are also engaged in revising their books and are expected to publish these new materials in the near future.

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8

SRI LANKA : A.R.B. Amerasinghe
Ministry of Justice

I. *BRIEF HISTORY OF THE DISCIPLINE IN THE COUNTRY*

Public International Law has been taught as an optional subject for the Bachelor of Laws Degree for three decades. This subject is taught at the Faculty of Law of the Colombo University Campus. The Faculty also has a Masters Degree Course which places emphasis on Human Rights, the Law of the Sea and International Institutions.

The Sri Lanka Law College is a professional Law School which offers no degree but trains students to qualify as Attorneys-at-Law. The Bandaranaike Centre for International Studies has recently commenced a Post Graduate Diploma Course in International Affairs which in part deals with international law. The Open University of Sri Lanka which has recently commenced also expects to include international law as a subject in its undergraduate law courses leading to the LL.B. Degree.

Although international law has been available as an undergraduate optional course for almost three decades it is not a subject which has ever been popular among students. This is probably due to the lack of employment opportunities at home and abroad for the practical application of the subject. A further problem is the difficulty of finding competent staff.

Two teachers in the Faculty of Law are currently being trained in America with their major areas of interest being international law. Two others have obtained Masters Degrees, one from London University and the other from Harvard University. A major component of their courses was international law.

The Faculty of Law feels that a lack of materials constitutes a major constraint to research and teaching in the sphere of international law. A bibliography of research works is attached hereto as an Appendix A.

The Library of the Ministry of Foreign Affairs has certain basic research material including United Nations treaty series, the Year Book of the International Law Commission, the Reports of the International Court of Justice and certain Journals such as the American Journal of the International Law and the publications

of the British Institute of International and Comparative Law at undergraduate level. Lectures are conducted mainly in the Sinhala and Tamil languages and due to an insufficient understanding of English, access to even the limited available material in English is denied. Undergraduates are confined to their lecture notes.

The subjects taught at the University at LL.B. level are:

The Law of Peace, The Settlement of Disputes, International Organizations and Institutions with special reference to the United Nations Organization, The Law of War and the Law of Neutrality in so far as they relate to the above topics.

The Master of Laws Degree is awarded at the Faculty of Law of the University of Sri Lanka Colombo Campus with emphasis being placed on Human Rights and the Law of the Sea and International Institutions.

The subjects taught at the Bandaranaike Centre for International Studies are as follows:

1. *International Law*

    (1) Nature, Sources and Application of International Law
        (a) Definitions of International Law
        (b) Basis of the Law of Nations
        (c) Sources of International Law
            1. Customs
            2. Treaties
            3. General Principles
            4. Judicial Precedents
        (d) Sanctions and application in International Law

2. *The subjects of International Law*
    (a) Individuals as subjects of International Law
    (b) Sovereignty of States
        (i) Recognition of statehood
        (ii) Recognition of governments
        (iii) Recognition of a state of belligerency
        (iv) de facto recognition and de jure recognition
        (v) Implied recognition
        (vi) Consequences of recognition
        (vii) Extradition

3. *State Responsibility for Injuries Committed to Aliens*
   - (a) Nationality of Claims Rule
   - (b) The Duty of exhaust local remedies
   - (c) The Nature of the acts giving rise to state
     - (i) Acts of the Legislature
     - (ii) Acts of Judiciary
     - (iii) Acts of Agents and Officials
     - (iv) Acts of Private Individuals

4. *Transnational Corporations and Transnational Contracts*
   1. (a) Definition of Transnationals
      - (b) Transnational corporate behaviour
      - (c) Prospects for international regulation of Transnational
      - (d) Rights of aliens against states
   2. (a) Negotiation with Transnational Corporations
      - (b) Format of Transnational Corporation contracts
      - (c) New concepts of International Law in negotiating contracts.

5. *Armed Conflict - the Law of War*
   - (a) Historical background
   - (b) Terrorism - relation and state responsibility for acts of Guerillas and other irregular forces
   - (c) Force and War
   - (d) Lawfulness of use of force
   - (e) Laws and regulations of Warfare
   - (f) Refugees
   - (g) Prisoners of War
   - (h) Intervention
   - (i) Neutrality

6. *Treaties*
   - (a) Power to make agreement
   - (b) Process of treaty making
   - (c) Effect of International agreements
   - (d) Interpretations
   - (e) Termination and modifications of International agreements.

7. *Human Rights*
   - (a) The Human Rights Charter - Universal Declaration of Human Rights and the Covenants
   - (b) Implementation of Human Rights at the Regional and International Level
   - (c) Third World Approach to Human Rights

8. *Law of the Sea*
   1. (a) Historical background
      (b) Territorial Waters
      (c) The Regime of Territorial Waters
      (d) UNCLOS - The present developments
   2. Air and Space Law
      (a) Treaties regarding space
      (b) Internationalization of space
      (c) Satellites and violation of space

9. *International Monetary and Trade Law*
   1. (a) Emergence of International Monetary Law
      (b) The Creation of the International Monetary Fund
      (c) Par Values
      (d) Convertibility
      (e) Balance of Payments financing
      (f) Special Drawing Rights
      (g) Brettonwoods System and the Gold Standard
      (h) Outline of Reform
   2. Trade Law
      (a) Functions of the United Nations Conference Trade and Development
      (b) General Agreement of Trade and Tariffs
      (c) Present Developments
      (d) General System of Preferences
      (e) New International Economic Order

II. *RESPONSE TO NEW CHALLENGES IN INTERNATIONAL LAW*

Active interest and involvement in international law are almost entirely confined to the Legal Division of the Ministry of Foreign Affairs. This division provides advice to Government on matters concerning international law and it is a Centre for drafting, interpretation, execution and administration of treaties to which Sri Lanka is a party. Members of this division also convene conferences to discuss questions of Public International Law eg., conferences convened to study the Progressive Codification of International Law such as the Law of the Sea. Legal experts from this division also give lectures to members of the Sri Lanka Overseas Civil Service. These lectures generally cover the following topics:

(a) General Introduction to International Law
(b) Constitutional and legal aspects of United Nations and its specialized agencies
(c) Diplomatic and Consular Law
(d) Conclusion of International Agreements and
(e) Law of the Sea

Lecturers from the division also teach at the Bandaranaike Centre for International Studies and conduct specialized courses such as the Commonwealth Legislative Training Course held in Sri Lanka under the auspices of the Commonwealth Secretariat on the drafting aspects of international treaties. They have assisted in the supervision of dissertations for the Diploma Course of the Bandaranaike Centre.

Human Rights Centre of Sri Lanka: This has a small Library of Human Rights publications and some research has been undertaken in this area.

The Sri Lanka Foundation Institute: This institution has also shown some interest in international law. It has conducted seminars on international law themes, such as the status of refugees.

The Marga Institute Law and Development Studies Division: This also provides a forum to discuss international law themes.

Professional Associations: There is no professional association of experts in the field of international law nor are there any plans to set up such an institution.

III. *AGENDA FOR THE FUTURE*

Lack of materials, lack of access to materials because of linguistic difficulties, lack of teachers, lack of employment opportunities in which international law could be applied are some of the reasons that make international law relatively unimportant in Sri Lanka. International and regional co-operation at the level of providing basic materials and expertise would be most welcome.

9

THAILAND : Vitit Muntarbhorn

Chulalongkorn University

I. *TEACHING OF INTERNATIONAL LAW: HISTORICAL PERSPECTIVE*

Thai interest in international law is an inevitable corollary of her own historical scenario. The fact that Thailand was a buffer State between the British in Burma and Malaya and the French in Indochina in the 19th century heralded greater interest in international relations on her part. Concessions to foreign powers in the form of extra-territoriality through treaties, such as the Bowring Treaty with the British in 1855, whereby foreign nationals enjoyed the benefits of their own courts in Thailand and were not subject to Thai courts, implied that Thailand could no longer remain in isolation but had to take a more cosmopolitan outlook, including in relation to law.[1] Collateral to this, formal education, including legal education, began to take shape with the advent of western influence in the region.

In 1897, the first law school was established attached to the Ministry of Justice based upon the need for more civil servants in the country. This law school offered a course on international law,[2] but it seems that international law was an optional course at the time. Exams were also set on international law.[3] The school was later elevated to the status of a college of higher education and in 1919, curricular reform led to the creation of a new course entitled Public International Law.[4] Subsequently, an institution called the Council of Legal Education was established in 1924 and this body controlled the legal education through the college of higher education mentioned. The Public International Law course was widened to cover both Private International Law and Public International Law in 1931. However, the Council of Legal Education was abolished in 1933.

Legal education was then transferred from the institution noted to a newly established Faculty of Law and Political Science at Chulalongkorn University in 1933. However, the same year saw the demise of such faculty and the teaching of law was handed over to a newly established university known as the University of Moral and Political Science, which was later renamed Thammasat University. With this new university came the founding of law courses leading to law degrees in the form of LL.B., LLM., and LL.D. From the outset, courses conducive to the LL.B. included three

subjects on international law: Public International Law, Private International Law, and International Criminal Law.[5] In 1949, the syllabus at Thammasat University was amended and the subjects on international law were reduced to two in number, i.e. Public International Law and Private International Law.[6] At the LL.M. level, there was no specific course on international law as such, but one course which must have touched on international law was the course entitled: "Introduction to Political Science, Economics and Diplomacy".[7] In 1953, there was another amendment to the syllabus at Thammasat University and the course on Private International Law disappeared from the syllabus, leaving the course on Public International Law untouched.[8]

Complementary to the above, in 1947 a law school was re-established at the Ministry of Justice under the control of another newly established institution by the name of the Institute of Legal Education. Such law school has operated until the present day and it is oriented towards vocational education to prepare students for the BAR examinations. Teaching of international law at this school has been ad hoc. Between 1971 and 1980, Private International Law was taught in conjunction with Criminal Law as a course,[9] but at present such school offers no course on international law at all.

The progression of the teaching of international law has, however, continued at the university level. In 1948, the teaching of international law was taken up again at Chulalongkorn University with the establishment of a Faculty of Political Science at that university.[10] Both Private International Law and Public International Law were part of the syllabus of the new faculty. Subsequently, a Faculty of Law established at the same university in 1972 with compulsory courses on Private International Law and Public International Law.

More recent developments include the founding of Ramkamhaeng University, Thailand's first truly open university, in 1971 with a large Faculty of Law catering for an unlimited number of law students and offering courses on international law from the outset. This has been followed by the establishing of a second open university by the name of Sukhothai Thammathirat Open University in 1978, also with a large Faculty of Law. The main difference between the former and the latter is that while the former uses the formal classroom setting with lectures as the principal method of teaching, the latter uses distance teaching as its main method through the medium of television and correspondence courses, thus having no formal classes.

Complementary to the above, it should be noted that there are also several private colleges in Thailand which offer courses on international law as will be evident below.

II. *CURRENT TEACHING OF INTERNATIONAL LAW: EMPHASES*

On scrutiny, currently, there are more courses being offered on international law than meet the eye at first glance. The following subdivisions may clarify the present situation.

a. *Undergraduate Level: LL.B. Degree*

There are four universities with a faculty of law offering courses leading to an LL.B. degree, i.e. Thammasat University, Chulalongkorn University, Ramkamhaeng University, and Sukhothai Thammathirat Open University. The present situation is that Public International Law and Private International Law are compulsory courses taught in the fourth (final) year of the LL.B. courses. Many optional subjects on international law are also taught ranging from Human Rights to European Economic Community Law. Table I illustrates the present situation.

Complementary to the above, five private colleges of higher education also offer courses on international law, i.e. Bangkok College, the College of Business Administration, Kanasawat College, Sripatum College and Vongchavalitkul College. Again, the syllabus is similar to that of State universities: Public International Law and Private International Law are compulsory courses, while there is an array of optional courses available, as is evident in Table I.

b. *Undergraduate Level: Other Degrees*

There is a surprising number of non-law faculties that offer courses related to international law. The Faculty of Accountancy and the Faculty of Political Science at Thammasat University, the Faculty of Commerce and Accountancy and the Faculty of Political Science at Chulalongkorn University, the Faculty of Political Science at Ramkamhaeng University, the Faculty of Social Science at Chiangmai University (which has no law faculty), and the Faculty of Political Science at Sukhothai Thammathirat Open University all offer a variety of courses concerned with various aspects of international law. The selection is visible in Table II.

c. *Graduate Level: LL.M. Degree*

There are two universities that provide courses leading to an LL.M. degree, i.e. the Faculty of Law: Thammasat University, and the Faculty of Law: Chulalongkorn University. The courses on

TABLE I

Undergraduate Level: LL.B. Degree			International Law Courses	
			Compulsory*	Optional**
Institution	S.U.	P.C.	*	**
Thammasat University	✓		1,2	3-8
Chulalongkorn University	✓		1,2	6,9 10 11 12 13 14
Ramkamhaeng University	✓		1,2	6,7 8,9 11 15 16
Sukhothai Thammathirat Open University	✓		1,2	17 18 19 20
Bangkok College		✓	1,2	4,6 7,11 17 21
The College of Business Administration		✓	1,2	
Kanasawat College		✓	1,2	4,6 7,8 9
Sripatum College		✓	1,2	4,6 7,8 11
Vongchavalitkul College		✓	1,2	4,6 7,8 18

1 Public International Law
2 Private International Law
3 International Business Transaction
4 Maritime Law
5 Seminar in Maritime Law
6 Human Rights
7 Law of International Organization
8 Problems of International Law
9 Law of International Trade
10 International Organization
11 International Law of the Sea
12 International Criminal Law
13 European Economic Community Law
14 International Law of Development
15 Asean Laws
16 Air Law
17 Law of International Business
18 International Transaction Laws
19 International Institutes
20 Selected Problems in International Law
21 Law of International Economic Organization

S.U. = State Universities
P.C. = Private Colleges

TABLE II

Other Faculties offering Courses on International Law							International Law Courses
Institution	Degree					Courses given per Degree	
	a. B.Acc.	*b.* B.A.	*c.* M.A.	*d.* M.Sc.	*e.* Ph.D.		
Thammasat University A. Faculty of Accountancy	✓					*a.* 1,2 *b.* 3-7 *c.*14-18	1 Maritime Law 2 Seminar in Maritime Law 3 International Organization 4 International Law: Peace 5 International Law: War, Disputes and Neutrality 6 Principles of International Treaties and Conventions 7 Protocol, Diplomatic and Consular Relations 8 Law of International Business Transactions 9 Law of International Relations 10 Public International Law 11 Introduction to International Law 12 Law of the Sea 13 International Law and International Organization 14 International Law of Diplomacy and Consuls 15 Advanced International Law 16 Treaties 17 Seminar on International Organization and Cooperation 18 Research on International Affairs and Diplomacy I and II 19 International Law of the Sea 20 International Law 21 Development and Problems of International Organization
B. Faculty of Political Science		✓	✓				
Chulalongkorn University A. Faculty of Commerce and Accountancy	✓					*a.* 8 *b.* 3,9 *c.*20 *d.*19 *e.*20, 21	
B. Faculty of Political Science		✓	✓		✓		
C. Faculty of Science				✓			
Ramkamhaeng University Faculty of Political Science		✓				*b.* 3,10	
Chiangmai University Faculty of Social Science		✓				*b.* 3 11 12	
Sukhothai Thammathirat University Faculty of Political Science		✓				*b.* 13	

international law are mainly optional courses. It is ostensible that the range of courses on international law is broader at Thammasat University due to the fact that it has a specific section specializing in international law conducive to the LL.M. degree. The format in relation to these two universities can be seen in Table III.

d. *Graduate Level: Other Degrees*

Again, one finds a wide selection of courses on international law being offered by non-law faculties at the graduate level. In particular, the Faculty of Political Science at Thammasat University, and the Faculties of Science and Political Science at Chulalongkorn University cater for a variety of courses, as set out in Table II.

e. *Other Considerations*

Out of the four faculties of law at the four universities offering courses leading to an LL.B. degree, the smallest faculty is that of Chulalongkorn University. A similar situation prevails in the case of the LL.M. degree available at Thammasat University and Chulalongkorn University. The LL.D. degree at Thammasat University (the only University offering such degree through examinations) is practically non-existent with only one student graduating with such degree since its inception. Comparatively, the Faculty of Law at Thammasat University has a larger law student population than the Faculty of Law at Chulalongkorn University, but such universities are a far cry from the numbers enrolled at the two open universities, Ramkamhaeng University and Sukhothai Thammathirat Open University. From the statistics available, it has not been possible to decipher the ratio of students specializing in international law per se in proportion to those specializing in other areas of law. The figures attached in Table IV may, however, indicate the difference in size with respect to the student population on completion of their LL.B. and LL.M. degrees at the various universities concerned.

III. *CURRENT TEACHING OF INTERNATIONAL LAW: A CRITIQUE*

It may be of interest to examine the teaching of international law in Thailand in the light of certain dichotomies which are of relevance. The following analysis does not purport to be exhaustive but is only tendered as the genesis to one's appreciation of the subject.

TABLE III

Graduate Level: LL.M. Degree	International Law Courses
Institution	Courses given
Thammasat University	1-19
Chulalongkorn University	20-22

1 Fundamentals of International Law I
2 Fundamentals of International Law II
3 International Law: The Law of War
4 International Law: The Law of Treaties
5 Advanced Problems in International Law I
6 Advanced Problems in International Law II
7 Graduate Seminar
8 International Law: International Organizations
9 Law of the Sea
10 International Law: Human Rights
11 Aviation and Aerospace Laws
12 International Economic Law
13 European Communities Law
14 Private International Law
15 International Trade and Investment Law I
16 International Trade and Investment Law II
17 Maritime Law and Law of International Transportation
18 Law Relating to Maritime and Air Transportation
19 Law Relating to International Finance and Banking
20 Public International Law
21 Private International Law
22 International Commercial Law

TABLE IV

NUMBER OF LAW STUDENTS ON COMPLETION OF DEGREES

University	Year	Those Graduating with LL.B. Degree	Those Graduating with LL.M. Degree
Chulalongkorn University	1981	143	25
	1982	140	20
Thammasat University	1981	479	11
	1982	493	10
Ramkamhaeng University	1981	3,525	No Degree Offered
	1982	4,545	No Degree Offered

N.B. The other university in Thailand with a law faculty, Sukhothai Thammathirat Open University, has only been operating recently and there were no law graduates in the years above.

Source: Ministry of University Affairs and Faculty of Law, Chulalongkorn University, Bangkok, 1984.

a. *Quantitative and Qualitative*

The most marked feature of the teaching of international law in Thailand is that it is very much part and parcel of higher education with respect to law. Perforce, this implies that courses on international law are very limited to those having access to higher education.[11] This lack of access is somewhat ameliorated by the presence of the two open universities mentioned which cater for tens of thousands of those who are unable to find places in the closed universities. On the other hand, it should be noted that wherever the students are, they have to take up so many courses that the quality of what is studied may suffer. In some systems in Europe and elsewhere, students are only expected to cover some five courses a year for their three year LL.B. degree, while here, students may have to cover some fifteen courses a year for the four year LL.B. degree. The expanse of the curriculum in Thailand may thus mean that the depth of each course may be superficial. As one Thai legal scholar prognosticated some time ago: "Too much learning is no learning."[12] This is aggravated by the lack of specialists in international law to cater for the wide range of courses indicated in the tables attached.

From the pedagogical angle, the main defect is the "spoon-feeding" coupled with excessive learning by rote of students. The teaching system is based upon the magistral lecture and there is little or no small group teaching. At Thammasat and Ramkamhaeng universities, there are some "tutorials" given (the Thai name is "Tew") in addition to the lectures, but the groups of such sessions are large; usually, no less than fifty students. As the teaching methodology is left to the teacher to a large extent, there is no compulsion to hold small classes in pursuit of the Socratic paradigm. The large classroom setting of lectures means that the students have little opportunity to provide feedback. It is the contention of the author, however, that even in such setting, much can be done to improve the situation to induce more audience participation and feedback.

Moreover, it may be wondered whether the large number of courses on international law serve the purpose of providing in-depth analysis of international law issues. It is precisely because there are so many courses that students often have so little time to do reading about the subject on their own. This is further hampered by the fact that there are no comprehensive casebooks on international law compiled in the Thai language, compounded by the language problem. Since English and French are not the mother tongue of this country, students have great difficulties reading texts in such languages. Complementary to that is the reality that

there does not exist a single comprehensive law library with extensive international documentation in Thailand.

b. *Academic and Vocational*

International law holds a rather peculiar position in the curriculum of institutions offering courses thereon. Generally, law courses are taught in a vocational sense in Thailand, gearing students for the legal professions available. Yet, international law, by its very nature, seems more academic than the other subjects in the sense that it is not basically conducive to such vocations as judges, barristers and public prosecutors. It is precisely because of such anomaly that it is regarded as a subject of esoteric value rather than of immediate relevance to the future of the students.

However, if one believes that the academic approach is essential, then one should foster any field of law and any teaching of law that cultivate the mind.[13] One merit of teaching international law is that it is a method of training the mind for critical analysis, not necessarily to make students become the practitioners mentioned above, but to foster knowledge for its own sake. Nevertheless, one can come to terms with the vocational approach to some extent by making the teaching of international law more relevant to real life situations. Current events and examples of State Practice should thus be accorded high priority so as to confer upon in-international law courses a better image of relevance, thereby forestalling an academic vacuum.

Another conflict area between the academic and vocational approaches is that of employment. There is currently in Thailand a surplus of law graduates on the labour market and market absorption has already reached saturation point. This is visible from Table V. This is recognised by the government itself in a comment that "the imbalance in the production of high level manpower with the demand in the labour market has created wider unemployment and underemployment in various fields, particularly law."[14] The fact that there are too many lawyers on the market, compounded by huge turn-outs of graduates from the open universities, poses problems as to the national educational strategy as a whole. It raises most poignantly the question of synchronisation between higher education and the labour market; a question, as yet, unresolved.

c. *Formal and Non-formal*[15]

In the past, the teaching of international law was very much a prerogative of formal education at the level of universities and a few colleges of higher education within a closed struc-

TABLE V

Percentage of Graduates Unable to Find Jobs in Thailand: 1980-1981

Number Corresponding to Discipline	Discipline	Graduates Unable to Find Jobs	Graduates Filling in Questionnaire	%
Total		4,685	25,172	18.61
1	Education Science	672	7,954	8.45
2	Humanities	415	1,436	28.90
3	Fine and Applied Arts	9	80	11.25
4	Law	750	3,071	24.42
5	Social and Behavioural Science	1,550	3,629	42.71
6	Commercial and Business Administration	758	3,011	25.17
7	Mass Communication and Documentation	87	428	20.33
8	Economics	-	21	-
9	Natural Science	111	783	14.18
10	Mathematics and Computer Science	69	373	18.50
11	Medical Science	31	1,728	1.79
12	Engineering	52	1,163	4.47
13	Architecture and Town Planning	5	80	6.25
14	Agriculture, Forestry and Fishery	167	1,358	12.30
15	Other Programmes	9	57	15.79

Adapted from a Survey of the Ministry of University Affairs, Bangkok, 1980-1981.
Source: Ministry of University Affairs, *Preliminary Summary Report: Status of Job Placement Graduates 1980-1981*, 1983, Table 3 and Chart 3.

ture. It is thus a relevant question whether one should resort to non-formal and informal techniques to disseminate international law beyond the traditional institutions of higher education.

A novelty in this area is the use of postal courses and television as part of distance teaching adopted by Sukhothai Thammathirat Open Univeristy. This is an important stepping stone in taking international law teaching out of the ordinary formal classroom setting of closed institutions and reaching out to those further afield. This is also indicative of the need to take formalism out of pedagogy and democratise education by employing all available means to disseminate to those outside the traditional closed structure.

However, there remains the additional dilemma as to whether international law should be taught to those at the secondary and primary levels of education as well as those beyond the formal structure altogether. It is submitted that although not all the elements of international law may be immediately relevant to those at the secondary and primary levels and to those beyond the formal structure, there are some elements of international law which should be taught to everyone. Most important of all is the question of Human Rights. This should be disseminated to the general population, irrespective of their educational attainment, through all available means of education and at all levels. It is evident, in this respect, that in Thailand, at present, there is a tendency to disseminate information about the duties of the general population rather than about their rights.[16] This distortion needs to be redressed if Human Rights are to be accepted as universal norms to be applied to all strata of society, both national and international.

d. *Compulsory and Optional*

Currently, all the institutions of higher education which offer courses on international law conducive to an LL.B. degree make two courses of international law compulsory: i.e. Public International Law and Private International Law. These are thus considered to be a bare minimum of requirements for such degree. Collateral to these, a wide selection of optional courses are available as seen above.

Should we advocate a wider spectrum of compulsory courses on international law beyond the two already mentioned? It is the contention of the author that in the case of Thailand, as students are already overburdened with too many compulsory courses, it would

be unreasonable to make more courses on international law compulsory. This does not detract from the submission above, however, that outside such institutions of higher education, certain elements of international law, such as Human Rights, should be taught compulsorily at all levels, whether in the formal or non-formal setting. Moreover, the qualitative nature of the courses, compulsory or optional, must be enhanced.

e. *Substantive and Non-substantive*

It has already been stated that there are substantive courses on international law in Thailand at the level of higher education within the formal system of education. Should we, therefore, advocate more substantive courses on international law at the other levels of formal education as well as beyond the formal system itself?

It would perhaps be premature to propose the teaching of international law as substantive courses at the other levels of formal education and beyond such system, granted that resources, both human and financial, are limited. Yet, as has been adverted to above, some elements of international law, such as Human Rights, should be taught and these may be appropriately subsumed under other courses such as Introduction to Law. In this manner, such dissemination can act as a change agent in creating greater awareness of the whole context of international law.

f. *Centralisation and Decentralisation*

As has been discussed, in Thailand there are four law faculties at the university level which offer substantive courses related to international law leading to an LL.B. degree. It is ironic to find that those faculties are all based in Bangkok. There is no faculty of law belonging to the provincial universities as such. The only provincial university offering courses on international law, although having no law faculty, is Chiangmai University in the north of Thailand. (viz. Table II) Its Social Science Faculty provides three courses on international law, i.e. Introduction to International Law, International Organization and Law of the Sea.

It may be high time, therefore, to think in terms of deconcentrating the teaching of international law from this highly centralised setting. This is necesarily linked with the will to create more courses on international law in the provincial universities and the possibility of setting up more law faculties outside Bangkok.

g. *Uni-disciplinary and Inter-disciplinary*[17]

There is at present a realisation in Thailand that inter-disciplinarity should be accorded a greater role in legal education in general.[18] This is particularly germane to the context of "development" that surrounds the formation and enforcement of law, including international law, which necessitates appreciation of the nexus between various disciplines. In a way, the diversification of optional courses concerning international law evident in Table I indicates such trend by teaching international law beyond the traditional confines of Public International Law and Private International Law courses. The greater latitude of courses thus invites the possibility of greater inter-disciplinarity. Complementary to this is the fact that several non-law faculties are offering courses on international law, visible in Table II, thereby creating an inter-disciplinary connection.

With reference to the law faculties noted above, it must be admitted, however, that the uni-disciplinary approach of pure law is always impending, especially as those who teach international law courses may have been brought up in a relatively restricted tradition. This is a contraint to be borne in mind in any attempt to introduce more inter-disciplinarity into the teaching of international law. The challenge is the quality of the teacher himself.

h. *Internationalism and Parochialism*[19]

It can be said that much of the teaching of Public International law in Thailand is based upon the internationalist tendency. Private International Law courses are, however, more oriented towards a balance between the two polarities, because by their very nature, such courses have to make references to municipal systems. In respect of the former, however, the constraint on references to local considerations is evident, partly due to lack of access to local sources for analysis. Public International Law courses thus tend to concentrate upon the international spectrum.

Yet, there is an element of parochialism pervading all teaching of international law in Thailand in another sense. This includes the lack of comprehensive law libraries and the fact that much of the local documentation relating to contemporary international law happenings are to be found in an eclectic array of government ministries, often classified as confidential. Therefore, inability to resort to such documentation often means that references to international law are made in a vacuum without the capacity to link them to finite local considerations.

The ideal for the teacher of international law is naturally to internationalise local issues which are of relevance to the international community and to localise international issues which are of relevance to the local community. Yet, more often than not, he is hampered by lack of access to the empirical evidence that can implement such ideal.

i. *Eurocentric and Apolegetic*[20]

Much of the teaching and literature on international law in Thailand is eurocentric by nature. The courses on Public International Law are a classic case in point. One need only scrutinise the structure of such courses to see that they follow the path of Public International Law courses taught in the western world: e.g. sources of international law, individual legal personality, acquisition of territory, State jurisdiction, State immunity, State responsibility, diplomatic privileges and immunities, treaties, law of the sea, use of force, settlement of disputes, etc. This is inevitable to some extent because many of the teachers of international law in Thailand were trained in the West. Moreover, most of the texts in Thai on International law follow this pattern.

The above observation does not imply that the Eurocentrism is aberrant; on the contrary, much of it is very valuable. However, it may be incomplete in the sense that it lacks empathy for indigenous expressions of international law. It is of interest to note that the tide is now turning. Some Thai scholars are now searching for indigenous elements in areas such as Human Rights.[21] This volte-face is encouraging and should be encouraged, although there is also a need to avoid an exceedingly apolegetic standpoint such as claiming that all sources of international law originated in this region.

j. *Vertical and Horizontal*

The vertical nature of international law teaching, especially Public International Law teaching, is also evident. The danger surrounding such approach is that it may neglect those elements which determine the application and enforcement of international law at the national level. Do we provide sufficient answers to these questions: How is international law actually applied by the different sectors of each society? Can empirical evidence be ascertained for the horizontal implementation of international law in such sectors?

There is a paucity of literature on this subject in Thailand. The task is how to discern if and how international law is applied by the legislature, the executive and the judiciary,

and beyond. One must also strive to assess its correlation with the mass base of the population and extra-systemic mechanisms such as the press.

Such area calls out for greater appreciation of the interplay between national and international law. In this respect, it may also be astounding to find that it no longer suffices to talk in terms of a Public International lawyer as distinguished from a Private International Lawyer. One must perhaps be both.

IV. *RESEARCH IN INTERNATIONAL LAW IN THAILAND*

The adjective "peripheral" is an appropriate adjunct of research in international law in Thailand. International law is certainly not regarded as a core subject for research, nor is there great stimulus for it.

From the documentation available, it is apparent that there are several Thai texts on international law in Thailand. However, there is always the danger of plagiarism at hand, especially as drawn from sources in other languages. Moreover, as has been stated, there is a lack of analysis of how international law interacts with the Thai setting, especially in those texts dealing with Public International Law. At present, there is a geniune need for an up-to-date comprehensive general text on Public International Law in the Thai language.

From the angle of articles and other documents, it is ostensible that the main journal for articles on international law is *Saranrom* which is published by the Ministry of Foreign Affairs. However, it is restricted in circulation and does not reach out extensively to the general public. Moreover, until 1982 there was not a single law journal in Thailand that published completely in English. This situation has been rectified by the advent of the Chulalongkorn Law Review, Thailand's first English law journal published by the Faculty of Law, Chulalongkorn University. The first volume of this journal appeared in 1982.

On the question of topics for publication, it seems that in the past, the problem of privileges and immunities with respect to diplomatic relations was a favourite topic and several articles on this can be found in the *Saranrom* journal. This is no doubt due, partly, to the fact that Thailand signed the Vienna Convention on Diplomatic Relations (1961) on October 30, 1961, even though she has not ratified it to date. More recently, greater interest has arisen concerning the law of the sea, and this is shown by an increasing number of publications on this subject.

As for other interests, the documentation available shows a diverse spread of topics, but ultimately, what is often lacking is profound research on topics of international law in the Thai language. One need only recognise the sparse footnoting in many articles to understand the restricted scope of research, although, admittedly, footnoting alone is not the definitive criterion of profundity in research.

From the institutional angle, it can be said that there is no institute catering specifically for research in international law. The main research body in Thailand is the National Research Council of Thailand established in 1956.[22] However, this body has limited financial resources and has no specific policy to foster research in international law. There are several institutes dealing with international matters such as the Institute of International Affairs of the Foreign Ministry, the Institute of Security and International Studies of Chulalongkorn University and the Institute of Asian Studies of the same university, but there is a dearth of research being undertaken in international law. The main project related to international law existing at present is the South-east Asian Project on Ocean Law, Policy and Management (SEAPOL) which is a joint undertaking between the Institute of Asian Studies mentioned and the Dalhousie Ocean Studies Programme of Dalhousie University, Halifax, Canada. The project began in 1983 and is of several years' duration. It hopes to highlight those aspects of the 1982 Law of the Sea Convention as related to the South-east Asian region. Its first step is to commission country studies of topical subjects such as the exclusive economic zone, marine pollution, transfer of marine technology, and settlement of disputes in regard to the law of the sea. Such studies are in progress at present.

Of note also is the Thai Khadi Research Institute which is affiliated to the Faculty of Political Science, Thammasat University. This institute has a specific project on the study of Human Rights in Thailand. A series of publications are now pending on various aspects of Human Rights in Thailand approached from an inter-disciplinary standpoint, with researchers drawn from a wide array of people, not merely academics. This project is also of interest because it moves away from the Eurocentric teaching of Human Rights in many courses in Thailand and it tries to create greater stimulus for indigenous principles and practice. Its aim to publish a series of studies on Thailand as basic documents for teaching purposes should also alleviate the lack of documentation in this area.

Complementary to the above, international organisations and nongovernmental organisations have also been instrumental in fostering research to a limited extent, either directly or indirectly. In 1983, for example, the Office of the United Nations High Commissioner for Refugees and the Faculty of Law, Chulalongkorn University, sponsored a conference on refugees in Thailand and commissioned a series of papers relating to the title of the conference: "The Legal Aspects of Asylum-Seekers in Thailand". Likewise, the Environmental Co-Ordination Unit of the United Nations Economic and Social Commission for Asia and the Pacific commissioned studies on the "Development of Environmental and Socio-Economic Management Plan for the Inner Sector of the Gulf of Thailand", bearing upon law, in 1983.

Apart from the above, whatever research there is on international law tends to be sporadic and ad hoc by nature. This unsystematic trend is compounded by the fact that there is little incentive for such research due to lack of financial back-up. When there are research publications from the academic community, these are often due to a state of compulsion of "publish or perish" in terms of elevation of academic status, but even this incentive does not necessarily bring in much greater rewards to the researchers in a material sense.

V. *RESPONSE TO NEW CHALLENGES OF INTERNATIONAL LAW*

The number of current challenges of international law addressed to Thailand is infinite. Yet, there are some challenges which are more salient than others. The following selection is necessarily arbitrary, but they are merely tendered as an initial stepping stone.

1. *Development*

The term "development" is very much in vogue at present. It is as much an essential component of the international spectrum as the national spectrum, and provides a clue to the nexus between international law and the national setting.

It hardly needs elaborating that the style of the Third United Nations Development Decade of the 1980s is witnessing a change from the past emphasis on economic growth to the basic needs of man. As a corollary, international law has to bend with the times to be relevant to such pressing needs. In particular, its reorientation can be gauged from the following elements that pervade present-day international and national planning on development:

"i. The realisation of the potentialities of the human person in harmony with the community should be seen as the central purpose of development;
ii. The human person should be regarded as the subject and not the object of the development process;
iii. Development requires the satisfaction of both material and non-material basic needs;
iv. Respect for Human Rights is fundamental to the development process;
v. The human person must be able to participate fully in shaping his own reality;
vi. Respect for the principles of equality and non-discrimination is essential, and
vii. The achievement of a degree of individual and collective self-reliance must be an integral part of the process."[23]

Two of the necessary corollaries of this are the new features of Human Rights and the advocation of the New International Economic Order which will be discussed later. Suffice it to note here, however, that this perspective of development implies that international law, its teaching and research can no longer be left in an isolated shell of pure law but must be linked with other Social sciences. Moreover, it implies that there is an inevitable correlation between national development and international law. Calls for rescheduling of national debts, reforms of GATT and the general monetary system, more liberal access of goods from the developing world into the market of developed world, and the general restructuring of the global economic order are but some examples of such correlation. To take another example nearer home, it may be noted that the Fifth National Economic and Social Development Plan of Thailand (1982-1986) stipulates as one of its basic aims the need to negotiate joint deep-sea fishing ventures with various countries which have abundant marine resources within their 200 mile economic zones and ensure that Thailand's commercial fishing fleet is strictly abiding by the rules and regulations of joint venture operations.[24] Marine aspects of international law, therefore, come into play with the national development plan, thereby enhancing the interrelationship between the two spectra.

2. *Human Rights*

Human Rights are a recurrent theme in contemporary society even if it is often an abused term. It is just as poignant a question in Thailand as in other countries. The following chal-

lenges are still very much in the twilight zone in Thailand as elsewhere. Are we referring to Human Rights ascertained deductively or inductively? Are these national standards or international standards? Do they diverge between the First World and the Third World? Are they based upon collective or individual interests? Do they relate to groups, especially minorities, or individuals? Is the emphasis to be placed upon civil and political rights or economic, social and cultural rights? Do we work towards a preventive approach or a curative approach in Human Rights? Are we referring to Human Rights as protected by formal State organs or by non-formal organs beyond the State itself? What of national accession to the international istruments on Human Rights?

It is not possible to treat here the ramifications of such questions in detail. Suffice it to note, firstly, that the rise of the right to development as a Human Right is an innovative feature of international law.[25] Such right has not yet been widely advocated among academic circles in Thailand and it seems that the implications of such right have not been clearly grasped to date. However, it is of crucial importance for Thailand in the sense that it exemplifies the shift from First World enunciation of Human Rights to Third World expression of such rights.

Secondly, there is currently a reorientation of emphasis from the past stress on civil and political rights to economic, social and cultural rights as linked with development. This implies that basic needs in the form of food, shelter, education and decent living conditions are gaining ground as fundamental rights. Such rights are to be found in such instruments as the Universal Declaration of Human Rights of 1948 (Article 26 on education) and the International Covenant on Economic, Social and Cultural Rights of 1966 (Article 13 on education and Article 11 on adequate standard of living). It is thus encouraging to find greater interest in their implementation even if in an indirect manner in Thailand through the Fifth National Economic and Social Development Plan. At present, the Government has designated target areas in 38 provinces as "backward rural areas" for which rural development policy guidelines have five prominent characteristics:

"1. To be area specific, giving top priority to the high poverty concentration areas.
2. Develop high poverty concentration areas so that people will have enough to eat and clothe themselves. Basic public services will be made available in sufficient supplies.
3. Initiate people's self-help programmes.

4. Solve the poverty problems in all localities with emphasis on low-cost and self-help techniques.
5. Encourage the maximum participation by the people in solving their problems."[26]

On scrutiny, it is apparent that economic, social and cultural rights are accorded high priority in such context.

Finally, a caveat should be lodged. Although Thailand voted for the Universal Declaration of Human Rights of 1948, she has not acceded to subsequent international instruments which have concretised the contents of such Declaration, their aggregate name being "The International Bill of Human Rights".[27] These subsequent instruments are The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights of 1966. Her reluctance to accede to such instruments is due to various factors, including uncertainty as to whether she would be able to implement the rights enunciated in such instruments, National Policy-cum-Security, and lack of political will. This reticence is also indicative of her general wariness about acceding to international treaties in this field.

3. *The New International Economic Order*

Much literature can be found on the New International Economic Order outside Thailand. However, information on such topic in the Thai language and from the Thai perspective is very limited, as seen from the documentation available.

This does not imply that the New International Economic Order is irrelevant from the Thai standpoint. On the contrary, it is a most pertinent issue. The principles enunciated by the Declaration on the Establishment of a New International Order[28] such as sovereign equality of States, self-determination, and full permanent sovereignty of every State over its natural resources and all economic activities, are very much espoused by Thailand although she has not been in the forefront of exponents of such Declaration. Likewise, principles such as just and equitable relation between the prices of raw materials and goods exported by developing countries and raw materials and goods imported into the developing countries, and preferential treatment of developing countries have been advocated by Thailand in various fora, notably in its negotiations with the European Economic Community.[29]

However, it may be wondered to what extent Thailand is in favour of the totality of the other essential instrument relating to the New International Economic Order: the Charter of Economic Rights and Duties of States.[30] Article 2(2)(c) of such Charter propounds, for example, the right, particularly poignant in the developing world, to "nationalise, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State Adopting such measures." This seems to contradict the trend of fostering foreign investment in Thailand. In fact, the main legislation on this question, the Investment Promotion Act of Thailand (1977)[31], states specifically in Section 43 that "the State shall not nationalise the activity of the promoted person" which is tantamount to an important reservation on the view of the developing world on nationalisation in the Charter mentioned.

The tendency of Thailand not to espouse the New International Economic Order in its extremity may be partly due to the fact that Thailand has never been colonised, although, arguably, there is at present an element of economic dependency on the developed world which may be classified as economic neo-colonialism. Therefore, the anti-colonialist undertones of the New International Economic Order do not emanate expressly from Thailand and she distanced herself initially from the Group of 77, although she was later to join forces with the latter in the progression of the law of the sea that was to result in the 1982 Law of the Sea Convention.

Moreover, it is visible that unlike several other developing countries, Thailand has not been vocal about regulating the conduct of multinational corporations. Indeed, the trend seems to be to invite multinationals to invest in Thailand with open arms as seen in a recent statement by the Prime Minister of Thailand, General Prem Tinsulanonda, at a national conference on the role of multinational corporations in Thailand in July 1984 where he declared that:

> "Thailand has had no negative experiences with multinational corporations, although I am aware that opinions differ on their role in other countries. They can make substantial contributions in transferring technology and management know-how to local entrepreneurs."[32]

With such propensity for promotion of foreign investment, it is highly unlikely that Thailand would be an active proponent of such instruments as the United Nations Code of Conduct for Transnational Corporations and the UNCTAD International Code

of Conduct for the Transfer of Technology. Since several elements for such proposed instruments may dampen the enthusiasm of foreign investors, it is to be expected that Thailand would be reticent about advocating such instruments when she is most concerned about providing a positive image to induce more foreign investments into the country.

Finally, there are two other ramifications of note. Firstly, one should dispel the myth that just by advocating and recognising the New International Economic Order, one will lead to the creation of a New National Economic Order.[33] The New International Economic Order is no complete guarantee for the amelioration of the plight of those at the bottom of the economic ladder. Conversely, it may be added that even without the concretisation of the New International Economic Order, much can be achieved at the national level, given propitious conditions of political will and suitable national development planning. The New International Economic Order is thus not an instant panacea for all the woes of this world. Secondly, the term "New International Economic Order" may also be deceptive since it omits the term "social". The basic principles of the New International Economic Order concentrate mainly on economic priorities and economic restructuring. They fail to take enough heed of certain social complements, such as the role of education. The viability of the New International Economic Order may itself depend very much upon elevation of social conditions, especially through education.[34] If so, is a new international social order not a fundamental *sine qua non* for the operationalisation of the New International Economic Order?

4. *The Law of the Sea*

Perhaps the challenge of international law that is most immediately felt in Thailand at present is the orientation of the law of the sea as exemplified by the 1982 United Nations Convention on the Law of the Sea. Thailand herself signed this Convention on December 10, 1982, although she has not yet ratified it.

Most piquant of all is the problem of the exclusive economic zone. Thailand declared her 200 mile exclusive economic zone in 1981 and she now finds herself surrounded by the exclusive economic zones of her neighbours, all of whom have declared a 200 mile zone. In effect, she is a zone-locked and shelf-locked country. Many repercussions thus arise from this characteristic. Firstly, her fishermen are having difficulties in earning their livelihood. Whereas in the past, they were able to fish afar, they

are now constrained from doing so, compounded by depleting living resources within the Thai zone. Since some Thai fishermen still insist on penetrating the zones of other countries, conflicts are always a distinct possibility. Instances of arrests of Thai fishermen in the zones of neighbouring countries are frequent news in the newspapers.

Moreover, the concepts of "allowable catch" and "maximum sustainable yield"[35] have yet to be defined and analysed in the context of fisheries catches in the exclusive economic zone. This is extremely relevant to the conservation and utilization of living resources in the Gulf of Thailand, and it is an important area for scrutiny prior to Thailand's ratification of the Convention mentioned. One can surmise that problems of interpretation will arise in particular in relation to the following Article of such Convention: Article 62(2) which states that:

> "The coastal State shall determine its capacity to harvest the living resources of the Exclusive Economic Zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch..."[36]

It is not possible in such limited space to examine all the other consequences of the new directions of the law of the sea in relation to Thailand. Yet, one final caveat may be added. The question of delimitation of the exclusive economic zone and the continental shelf is still very much an unresolved issue especially in relation to such neighbours as Kampuchea and Vietnam, both of whom have overlapping zones with Thailand. This is potentially a great conflict area and if Thailand is to contemplate ratification of the 1982 Convention, this must be one of the foremost considerations. The nexus between such delimitation, settlement of disputes as provided for in Part XV of such Convention, and guiding principles such as "equity" is an inevitable challenge for the Thai position.

5. *Old Challenges Anew*

Beyond the above, it is worth bearing in mind that topics traditionally taught in international law courses are arising in a new light due to local situations. Most notable are the questions of recognition and of acquisition of territory. The question of recognition of Governments has been particularly publicised in the

last few years in relation to Kampuchea. The United Nations Resolutions on Kampuchea[37] have stirred much public interest and have provided the general public with insight into the role of the General Assembly in relation to recognition. Likewise, the question of acquisition of territory which is seemingly an age-old and rather unexciting subject is enjoying resurgence of public interest due to the present border dispute over the ownership of three villages between Thailand and Laos.[38] Rival maps are being submitted by both parties in negotiations, but settlement of such dispute is still uncertain. To some extent, this problem raises memories of the Temple case[39], a case before the International Court of Justice and to which Thailand was a party. Such parallels thus evoke old questions of international law in a new light and illustrate how local situations can invigorate those areas of international law which were reverting to dormancy.

6. *An Assessment*

The discussion above provides a modest selection of challenges of international law as related to Thailand. However, the extent to which they have affected the teaching of international law in Thailand varies according to the following considerations. As the scope and methodology of each course are very much at the discretion of the teacher, it is the role of the teacher which is primordial in bringing students' attention to new problems of international law. Complementary to that is the role of learned periodicals and the mass media in conveying information to the general public.

However, it may be said that information flow to students and the general public is limited for at least two reasons which have already been adverted to. Firstly, there is the language barrier between the local population who are mostly conversant in Thai and the international events which tend to be reported most extensively in English. Therefore, in-depth information in Thai providing a comprehensive spread of knowledge about international law tends to be the exception rather than the rule. Secondly, the National Security factor as linked with National Policy is often an obstacle to the disclosure of information concerning Thailand that may affect the international spectrum.

In the final analysis, the new challenges mentioned such as development, Human Rights, the New International Economic Order, and the law of the sea may be said to vary in their effect when gauged from their assimilation into the country's legal system.[40] In the case of the right to development, there has been no public advocation of this right as yet, but there is a national economic

and social development plan which has legal consequences and may help to concretise such right. In respect to Human Rights, it is worth remembering that Thailand has still not acceded to the treaties embodied in the International Bill of Human Rights, while on the matter of the New International Economic Order, she cannot be said to be its most vocal proponent. Collateral to that is the reality that although she has signed the 1982 Law of the Sea Convention, it is difficult to know when Thailand will ratify such Convention. This could depend partly on the translation and appraisal of such Convention in the Thai language; a task which could take many years. A more dynamic relationship between Thailand and the international spectrum on international law is thus much to be desired.

VI. *PROBLEMS OF THE PROFESSION*

This section addresses itself to two sectors concerning teaching and research in international law: the teaching staff and those beyond the teaching staff.

The teaching staff of international law tends to be a small corps of teachers trained at least partly abroad. The proportion of such teachers to the rest of the faculty staff is small. For example, the ratio at the Faculty of Law, Chulalongkorn University, is approximately 1:6. In some institutions, there is a lack of permanent staff for teaching international law. Again, this is partly due to the fact that international law is regarded by many as a peripheral subject while there is little incentive to draw potential specialists of international law into the teaching field. The greater financial rewards of the private sector often reap the cream of the crop, leaving a residual number to the academic community.

It should be noted that one of the ways of supplementing the number of teachers on international law is to borrow from the Foreign Ministry. This has been valuable not only as a numerical addition to the number of teachers that exist but also to bring in those with practical experience through the foreign service. However, the disadvantage of this method is that there is often a lack of continuity since diplomats borrowed from the Foreign Ministry often have to leave for assignments abroad.

On reflection, it seems that there is more room for channelling teachers to the academic world from the Foreign Ministry and vice versa. On the one hand, diplomats from the Foreign Ministry can open up new vistas to the students with their first-hand knowledge and experience. On the other hand, there comes a time when

the Foreign Ministry also has to resort to help from the academics from educational institutions to supplement its own research, especially where not enough diplomats have time to commit themselves to research. This bilateral and mutual flow would thus be conducive to creating a body of specialists in international law and linking practical experience with teaching and research.

As regards professional associations of experts in international law, at present there is only one organisation that falls into this category. It is the International Law Association of Thailand which was established in 1984, but it is very much at the nascent stage. It is hoped that such Association will take a leading role in the promotion and dissemination of international law in future. One of the plans of the Association is to work towards the publication of a Thai Yearbook of International Law if sufficient funding can be found. Moreover, it could act as a liaison between Thais interested in international law and the international community at large, thereby overcoming the present lacuna of insufficient contacts with other fora and personnages concerned with international law.

In retrospect, it may be reiterated that there is insufficient interest in international law within the framework mentioned. This is inevitably due to the fact that international law is not accorded high priority by many of those in the legal profession, compounded by the reality that legal education tends to be more vocational (and thus oriented towards national law) than academic. Ultimately, the challenge is how to import greater "relevance" into international law teaching and research. Unless it is conveyed as a subject germane to the national spectrum, there is little hope that it will gain ground in dissemination.

VII. *AGENDA FOR THE FUTURE*

There are perhaps four words that encapsulate the potential for international law teaching and research in Thailand: i.e., access, relevance, methodology and employment.

1. *Access*

It is imperative that we offer greater opportunities for access to international law education. Access here is used in respect of the following multivarious dimensions:

a. International law teaching should reach out beyond the formal system of education, at present limited to institutes of higher education. This does not

necessarily mean that substantive courses on international law have to be set up. Dissemination of certain elements can take place through other courses even if there is no substantive course on international law, e.g. Introduction to Law. Most pertinent of all is dissemination of Human Rights which should be extended to all strata of society.

b. There is at present a lack of comprehensive libraries on international law in Thailand. Very few periodicals in the English language, and fewer still in other languages are available. One should thus work towards the establishing of at least one comprehensive library on international law in Thailand. Another way of alleviating this problem is to install a computer connection system between this country and other countries which can channel information through such system. This should be useful for exchanging at least the bibliographies and other data available in each country.

c. Lack of access also refers to access to foreign scholars and their knowledge. Greater interchange between national scholars and foreign scholars should thus be fostered. This can be undertaken in various ways such as through exchange programmes and the initiation of joint research projects. Another method worth trying is to video-tape lectures of foreign scholars and circulate them in Thailand. The reverse process may also be possible, i.e. video-tape lectures of Thai scholars and circulate them abroad. This may facilitate internationalisation of views even where there is no actual exchange of the scholars involved.

d. There is at present a lack of a comprehensive and up-to-date textbook on international law in the Thai language. Thai academics should thus be encouraged to work towards producing reliable and informative texts to facilitate education on the subject.

e. There is a genuine lack of access to foreign texts and other literature on international law due to the language barrier. This is most evident amidst students who often complain about their inability to understand such documents in the English language. One method to circumvent this problem is to have more texts translated from English into Thai. Collateral to that is the need to improve English

education in general to improve student's proficiency in English.

f. There is at present no comprehensive casebook in the Thai language for use by students of international law. This implies that they have to rely more often than not on the lecturer's notes. Even when other recommended reading is suggested to the students, they rarely resort thereto because of lack of time due to the time consumed by attendance of lectures and/or difficulty in finding such additional reading for lack of convenient and well-stocked libraries. The compilation of a casebook may help to overcome some of these difficulties. This is all the more significant because it is a method of encouraging the students to read beyond the lecture notes at hand and facilitates comparative analysis.

2. *Relevance*

Unless courses on international law can create the impression of being relevant to the national spectrum, there is the likelihood that they will continue to be regarded as esoteric and peripheral. The following proposals may thus be germane to the situation:

a. The courses on international law that are taught at present should cite more practical cases concerning the national and local setting than in the past. This would thus avoid too much theorising at the expense of relevance to the environment in which international law has to function.

b. Precisely because international law teaching has to be placed in the environment surrounding its operation, a more inter-disciplinary approach is necessary. Its interrelationship with social, economic, political and other factors has to be emphasised if it is not to be posited in a void.

c. With reference to research, more research projects should be encouraged to link local problems with the international perspective and vice versa. This can be done unilaterally or in cooperation with other non-Thai organisations.

d. The International Law Association of Thailand should be given stimulus to initiate publications on international law from Thailand in the English as well as in Thai. Moreover, its potential as a go-between between Thai and foreign scholars and those interested

in international law should be maximised.

3. *Methodology*

One of the most disquieting factors about Thai education is that the methodology used is often inappropriate and stultifies critical analysis. As has been noted, the system of teaching is based mainly upon lectures and learning by rote. How to innovate such system depends upon one's willingness to apply other methodology, including the following:

a. One should advocate the need for more small group teaching to facilitate the evolution of feedback and critical analysis. This should also be aimed at redressing the balance which is tilted towards vocational rather than academic education at present.
b. One should work towards more audience participation and feedback even in the large classroom setting of lectures. Techniques of "breaking the ice" among students in such setting should be explored.
c. Audio-visual techniques should be applied more extensively to animate classes, e.g. overhead projectors, video-tapes, tapes, etc.
d. The casebook method has not been adopted yet in relation to teaching in general in Thailand. As already mentioned, no comprehensive casebook exists for this purpose in Thai. Although the casebook method has its own limitations, it should, nevertheless, be fostered as it enables the process of critical analysis to be maximised.
e. Mooting has not been undertaken in relation to international law. This is partly due to the fact that access to original sources of international law, e.g. the reports of the International Court of Justice, is impeded by lack of documentation and linguistic difficulties faced by students who have problems in English proficiency. Although mooting might be taken up in the future, it can only take place satisfactorily if the access problem is alleviated.

4. *Employment*

Perhaps the final challenge is the employment factor. As already discussed, there is already a surplus of lawyers in

Thailand and the labour market is saturated to the brim. The following guidelines may thus be necessary:

If one argues that teaching international law should be academic rather than vocational by nature, then it may not be too important to calculate whether such subject is of vocational use in the labour market, because one is merely fostering knowledge for its own sake. Yet, one must realistically pay some attention to the need for synchronisation with the labour market. It has to be admitted that the job opportunities of a student specializing in international law are very restricted at the local level. On the one had, if a student has specialized in international law related to business, he may find a job readily with a Law firm. On the other hand, if he has merely followed the courses that are de-linked from the business climate, his job opportunities are much less certain. He may try for the Foreign Ministry, the academia or international organisations, but all these professions are highly selective and competitive. It should thus be recognised that some kind of national planning on the relationship between graduates and the labour market is necessary and international law teaching has to take this planning process into account. However, this need to bear in mind the labour market does not detract from the fact that one must work towards redressing the balance of methodology which is at present tilted too far in favour of the vocational approach at the expense of the academic approach. An appropriate compromise must thus be attained between the qualitative nature inherent in the academic approach and the quantitative nature inherent in the vocational approach.

VIII. *CONCLUSION*

The above study has endeavoured to proffer a survey of the current state of affairs concerning the teaching and research in international law from the Thai perspective. Ultimately, the challenge for the teacher-cum-researcher is to assist in the dissemination of knowledge in this field and contribute to the evolution of international law itself. It is a perennial challenge and one that can only be satisfied if the protagonist concerned is ready to adopt and innovate with a sense of moderation and liberality. It is he - the teacher - who stands astride the national spectrum and the international spectrum. It is he who can transfer knowledge of international law from the highest arenas to the local settings and concretise the reverse process of internationalising local issues which are of significance to the international community.

In all modesty, he can only fulfil such role and maximise his true potential if he appreciates that he too is the catalyst in international law.

FOOTNOTES

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Part III
APPENDICES

Appendix I

OPENING ADDRESS

Jae Hoon Choi
President
Korean Association of International Law
Seoul

I am happy to welcome you on the occasion of this Regional Consultation Meeting on Teaching and Research in International Law, jointly sponsored by Unesco, the Korean Branch of Unesco, and the Korean Association of International Law. I will not be overly stressing the significance of this meeting when I state that our gathering here in Seoul today, will be a further step in the fulfilment of our hope for establishing a just and peaceful world based on the rule of law.

Indeed, ever since the inception of our civilization, we have constantly striven toward a creation of the world based on the rule of law and justice. In the development of such notion, we are aware that the academic world has played a vital role. I need not repeat the names of distinguished scholars who have contributed to the shaping of international law. We are too familiar with the names of such distinguished scholars as Grotius, Gentiles, Zouche, and Vattel, to name just a few, as we have been nursed with their ideals. It is for this reason that I attach a special significance to this meeting that we have gathered for.

The importance of the rule of law in international relations of our time has been witnessed by unceasing human conflicts that need to be resolved on the basis of accepted norms of conduct by states. Although frequently ignored and unadhered to, we are still proud to note that our history demonstrates that international law has played a vital role in the making of civilized international relations. Works by international tribunals and treaty practice by states have only illustrated examples that demonstrate our abiding faith to live by the rule of law. Thus, the existence of international law is no longer an academic question. It is a fact of international life and we must accept that international law is an essential ingredient for the development of a peaceful and orderly world.

We need not be reminded that education in the university and the works of learned societies have played a crucial role in molding international law. Academic endeavours represent a cradle for shaping and developing international jurispurdence. The testimony to the contribution of scholars to the development of international law is no more eloquently illustrated than what has been provided for under Sub-paragraph (d), Paragraph 1, Article 38, of the statute of the International Court of Justice.

Sub-paragraph (d) provides that "The teaching of the most highly qualified publicists of the various nations", is to be a "Subsidiary means for the determination of rule of law". Attention should also be drawn to the fact that the practice of appointing distinguished academic talents to benches of international tribunal as both judges and arbitrators, attests to the fact that the academic community has contributed to the development of international jurisprudence dealing with the conduct of states as well as individuals in the life of the international community. It is also significant to note that the Sub-paragraph (d), Paragraph 1, Article 38 of the statute of the ICJ refers to the publicists of "various nations", not just one nation. It is in this context that a gathering of scholars from various nations from the Asia and Pacific region assumes significance. Our exchange of views, while varying, on the problems involving international law at this time would undoubtedly bring about a result that should reflect a confluence of opinions and views that may eventually lead to a better understanding of international co-operation and learning of international law through sharing our thoughts.

I have also noted that our programme includes deliberation of the prospects for regional and international co-operation in international law. This topic should be important to us, the newly emerging nations of Asia and Pacific, as we are increasingly participating in the international life, thus helping to shape a new norm of international law with the effect of making the traditional international law truly universal. It is for this reason that we should approach our task at this meeting with seriousness and just purposes. Our work may turn out to be a landmark for helping the world to become safe from conflict and brutal use of force. In approaching our task, let us also remember that our task is a noble one to free the world from terror and injustice and that it is the rule of law instead of force that should prevail in the conduct by states in the ever increasing world of inter-dependence.

I wish you all the success and fruitful work ahead of you; let us strive together to that end with all our heart and energy.

CONGRATULATORY ADDRESS

E Hyock Kwon
Minister of Education
Republic of Korea

(Read by Dr Hi Chee Choung, Deputy Minister of Education)

I would first of all like to say how honoured I feel that Korea has been chosen as the site of this academic conference, and the people gathered here today are striving for the establishment of a peaceful international society, which is one of the most significant matters of our day.

I would also like to take this opportunity to extend my warmest welcome to the scholars who have travelled long distances to attend this meeting from various countries; Australia, India, Indonesia, Japan, Pakistan, the Philippines, Sri Lanka and Thailand.

In collaboration with Unesco, the Korean Association of International Law, an association that has continued its academic activities in teaching and research in international law over thirty years, is fully supporting your endeavours to contribute to world peace and to enhance academic level in this field.

Our era is one where international relations are becoming ever complex and closely entwined and where conflicts of interests are ever sharpening. We can call this an era of internationalization. Within this context of an international society, it is imperative that we establish new theories of international law, and develop new methods of teaching in the field of international law. In this light, we cannot but say that this academic conference is truly a timely and significant one.

I firmly believe that the opinions and ideas expressed during this conference will greatly contribute not only to the development of international law in the Asia-Pacific region, but also to the maintenance of world peace and the promotion of universal welfare and prosperity.

I hope that this conference will pave ways for the establishment of a new international legal order according to the demands of our time. I also hope that this conference will be able to yield the results expected of both domestic and international academic circles.

To my knowledge, this large-scale and comprehensive conference on "Teaching and Research in International Law in Asia and the Pacific" as its main focus of interest is the first one of its kind.

I hope that, beginning with this meeting, there will be continuous academic presentations and discussions, for the development of international law and the establishment of peace for all.

I would like to end my speech by expressing my gratutude to various people involved in this conference. My gratitude goes to President Jae Hoon Choi of the Korean Association of International Law and Dr Bong-shik Park, Secretary-General of the Korean National Commission for Unesco, and the other people involved in this project who, despite various adverse conditions, have made every effort over a long period of time in preparing this conference.

I would also like to thank all the scholars for preparing their invaluable presentations and all the professors from home and abroad for the sincere opinions they will express during this conference.

WELCOME ADDRESS

Bong-shik Park
Secretary-General
Korean National Commission for Unesco
Seoul

On behalf of the Korean National Commission for Unesco, I have the honour to extend our cordial welcome to all of you, who are participating in this meeting at this most comfortable time of 'high sky and plump horses' in Korea.

I appreciate the valuable efforts which the Korean Association of International Law has made in the preparation of the meeting, and would also like to extend our special thanks to Dr Atal and his colleagues for their guidance and assistance.

This meeting, in keeping with Unesco's role in contributing to world peace, has been convened to review the main trends and directions in teaching and research of international law in Asia and the Pacific, and also, to exchange our views on the matter, thus promoting mutual understanding and co-operation for the maintenance of peace in this region. As a political scientist I, as well as you, recognize that this meeting is very significant and timely and that the subject of international law and its specific relevance to Asia and the Pacific relates directly to the goals and dreams of Unesco.

As you are well aware, most people in Asia and the Pacific have experienced a variety of invasions, domination and exploitation, in violation of, yet often under the cloak of, international law. Even today, we observe violations against the international code of law, although we agree that there exists such international legal principles. This region is uniquely diverse, in terms of race, religion, political systems and ideology, so it would appear to be a very difficult aspiration to ensure lasting harmony in the region. Therefore, to the peoples in Asia and the Pacific, international law appears to have a very special implication. There is merit in the argument that the greater the diversity of a region the more it is in need of a recognized and established intra-regional code which transcends national proclivities and narrow self-interest. Asia and the Pacific is a bigger region calling for such international law with greater urgency than any other area of the world.

In this regard, our region is currently faced with numerous concerns requiring the rational voice of international law : How to overcome the tragic experiences of the past and how to solve the chronic issues of the present? How to respond to the coming challenges of the future and the adjustments necessary in an era when science and technology are developing without precedent and to such an extent that even outer space and the regions beneath the sea must become venues of international law? The global threat of nuclear war hardly needs to be mentioned, so great is its threat and implication. International law must play a most important role not only in preventing any form of war or conflict, but also in contributing to the welfare and prosperity among the people of the world if it is to endure as a viable international influence. It is easy to speak of international law and respect in the abstract, but without the international commitment to principle, no nation on earth can ever really be secure in its existence. We came to the conclusion that we host this meeting after we again became victim, almost exactly one year ago, of a serious breach in international law.

Unesco, since its inception, noting that wars begin in the minds of men, has tried to construct the defenses of peace in minds of men. Accordingly, it is appropriate it organizes this kind of project, placing emphasis on the importance of international law and encouraging national and regional institutions to undertake training and research activities in public international law. The Approved Programme and Budget for 1984-1985 clearly establishes this focus. Congruent with the goals and direction of Unesco, the Korean National Commission for Unesco has carried out a variety of programmes in the fields of education, science, culture and communication over the past three decades. I am proud that this Commission is recognized among Member States as one of the most active in its pursuit of the goals of Unesco.

This year we mark the thirtieth anniversary of this Commission, and this meeting will be the final one we have been honoured to host this year, as we leave our first generation and move to our next. As I mentioned a few moments ago, the autumn in my country is called "the season of high sky and plump horses", implying a comfortable time of bountiful harvest. In this sense, I sincerely hope that this meeting will be most productive as the concluding one in commemoration of our thirtieth anniversary, and as fruitful as the autumn in Korea.

INITIATORY REMARKS

Yogesh Atal
Regional Adviser for
Social and Human Sciences
in Asia and the Pacific
Unesco, Bangkok

I join Professor Bong-shik Park in welcoming you on behalf of Unesco. I bring to you the greetings and best wishes of our Director-General.

Allow me also to express Unesco's gratitude to the Government of the Republic of Korea, and to the Korean National Commission for Unesco for offering to host this meeting in Seoul and for the generous financial support towards its organization. As you know, this meeting is organized by the Korean National Commission in active collaboration with the International Law Association of the Republic of Korea. I would like to extend our thanks to the Association for their co-operation.

As usual, Professor Park has taken a personal interest in this activity. This is understandable because of his own academic background as a political scientist; he has long experience of teaching international relations, and among his students are some of the distinguished diplomats of this country. I am sure he will be able to spare time from his busy schedule to participate in the discussions.

I must also take the opportunity to express my thanks to the participants who had kindly conceded to our request for the preparation of country papers to serve as background material for this meeting, and who kept to the deadline. I know this must have caused than considerable inconvenience, but you will all realize that without such well-researched documentation the meeting would not have achieved its purpose.

The meeting is convened as part of Unesco's regular programme for the biennium 1984-1985. As you are probably aware, from this biennium, Unesco's activities are planned around fourteen major programmes. Activities related to Peace, International Understanding, Human Rights and the Rights of People constitute major Programme XIII. Under the Programme XIII.1, namely Maintenance of Peace and International Understanding, there is a sub-programme on

Reflections on the Factors Contributing to Peace. The present meeting is a part of this sub-programme which is aimed at promoting the development of international law and which forms part of Unesco's contribution to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and wider appreciation of International Law. Among other activities foreseen in this area are the publication of volume IV of the series on "New Challenges to International Law" and the preparation of a student's handbook on international organizations to be published in 1986-87. All these efforts are also conceived as preparatory to the International Year of Peace to be celebrated in 1986.

In the past four decades the world has experienced radical changes not only in the scientific and technical spheres but also in social, political, and economic spheres. Several forces have worked in unison to bring the different societies closer to each other. Various forms of inter-dependencies have developed which have led to bilateral and multi-lateral arrangements. At the same time, the world faces a series of problems which are global in character and require united effort at an international level. We all realize that peace is in peril, that newer forms of dependencies are arising, that there are bottlenecks in north-south dialogue, that blatant violations of human rights occur in a number of societies, that there are encroachments on the environment, and that disputes arise between countries, the peaceful resolution of which require international intervention.

The United Nations System arose and has grown in response to these and similar needs. The structure of international organizations, the actions and decisions taken by these bodies, the Declarations adopted by them, and the various conventions and covenants that are accepted and ratified by the governments constitute a corpus of knowledge which must be known and transmitted to the coming generations. And this is the domain of international law.

The sphere of international law, somehow, does not sound as convincing and attractive, as does law -- criminal and civil -- of the state. For law, it is said, that "it has teeth that can bite"; international law is viewed as "law without teeth", or "law with teeth that are incapable of a bite". Nevertheless, the international law teeth are not a vestige; they are the product of an epigenetic process and must be viewed in that [illegible].

As part of the growing body of knowledge regarding international law, human rights assume a special significance. Article I of the Constitution of Unesco states that one of the aims of Unesco is "to further universal respect for justice, for the rule of law and for the human rights which are affirmed for peoples of the

world, without distinction of race, sex, language, or religion, by the Charter of the United Nations". Following this mandate, Unesco has established a series of declarations and conventions relating to those human rights which fall within its competence, namely, education, science, culture, and communication. Important among these are "Convention against discrimination in Education" (1960), "Recommendation Concerning Education for International Understanding, Co-operation and Peace, and Education relating to Human Rights and Fundamental Freedoms" (1974), and the "Declaration on Race and Racial Prejudice" (1978).

A major landmark in the area of human rights was the convening of an International Congress on the Teaching of Human Rights in Vienna in September 1978, as part of Unesco's celebrations of the 30th anniversary of the Universal Declaration of Human Rights. The Congress provided the needed stimulus to member-states for developing programmes of human rights education and research. It is heartening to mention that in Asia some centres have come up which specifically focus on human rights. It is also encouraging to note that *Lawasia*, which is an organization of lawyers from 16 countries of the Asia and the Pacific region, has created a Human Rights Standing Committee.

At the Vienna Conference, Unesco's Director-General, Mr M'Bow made the following remark:

> "If Unesco's efforts in this field aim in the first place to awaken the interest of jurists, it is because the first step to take with a view to protecting the fundamental freedoms is to embody them in a set of laws to be built into legal and political institutions. If human rights are to have a wider significance than that of abstract ideas they must be an integral part of the constitutional, legislative and judicial structure of every state. But it goes without saying that they must also penetrate all the other academic disciplines through avenues of approach specifically adapted to each discipline".

The first medium-term plan of Unesco also clearly stated that

> "Human rights are neither a new morality nor a lay religion and are much more than a language common to all mankind. They are requirements which the investigator must study and integrate into his knowledge, using the rules and methods of science, whether this is philosophy, the humanities, or

> the natural sciences, sociology or law, history or geography. In a word, the task is gradually to build up or promote a genuine scientific formulation of human rights".

Human rights is not a fad or a fashion, nor is it an example of an imported concept. It emerged as a result of collective thinking and deliberation, and it is growing in sophistication and detail through contributions from scholars drawn from all over the world. That traditions of human rights exist in all the major religions and cultures of the world was clearly brought out by an international seminar organized by Unesco in Bangkok in December 1979. It is not were adumbrationism to state that concern for Human Rights is an age-old concern, and that its present formulation is derived from a multitude of traditions. For human rights one need not look for outside reference; even a journey in one's cultural past can illumine him. I must, however, hasten to say that while there is a consensus on this broad generalization, very little by way of research has been done to substantiate the hypothesis.

It appears that the promotional task is three-fold: (i) incorporation of fundamental human rights and international public laws into the political and legal institutions of different countries, (ii) promotion of research and training of specialists, and (iii) introduction of these concepts into school curricula.

From the country reports prepared for this meeting, one comes to the conclusion that international law does not stand on the same footing as other law subjects, and that it is taught to a varied audience : students of political science, public administration, as well as law. The low priority given to it in some countries, is understandable, as knowledge and training in international law is not a paying proposition for more than a few specialists. Other laws of the state need their interpreters and defenders, and the legal profession survives on it. International laws are not so much for local courts as for promoting international peace and understanding. They are essential elements of the political socialization of modern man.

It must, however, be acknowledged that despite the relative indifference of the legal profession, the scope of international law is gradually expanding and its role in the international community is becoming more significant. Several international forums, under the aegis of United Nations have contributed to international law. The scientific and technical progress made in the present century has also posed new challenges to international public law. The commitment of the world community to establish a new international economic order further signifies the importance of

international law. Another crucial area that has animated debate relates to the law of the sea, which is intricately related with the question of the definition of a country's territory. The situations of internal conflict and crisis, leading to the mass exodus of refugees, is yet another area of concern to international law. We may add to this list the problems of migrant workers, the demand for nuclear-free zones, the use of outer space, and many more which will become as crucial in the wake of scientific and technical progress.

It is in this context that we wish to evaluate the present standing of international law in the institutions of higher learning in this vast Asia-Pacific region. The reports from the nine countries will help us prepare a regional profile of teaching of international law -- in terms of the topics taught and the kind of expertise available. We would like the meeting to identify the major obstacles -- both conceptual and organizational -- in the task of promoting the teaching of international law. Any suggestions for their introduction in disciplines and courses other than law will also be welcome. From my experience of the region, I feel that there is also a need to create better channels of interaction and exchange of information among scholars and institutions of the different countries of the region. What should be the most appropriate modality for promoting regional co-operation and collaboration? What is it that the academic community will like to see? What is expected of Unesco? These are some of the questions that need to be addressed. We, in Unesco, do not have ready-made answers to such questions. We look forward to the deliberations of this meeting for guidance for the future.

Unesco is convinced that work on three fronts is necessary to promote international law, namely, teaching, research, and regional collaboration. Unesco has assisted in the preparation and dissemination of teaching materials and textbooks, has organized national, regional, and international meetings of experts to deliberate on various aspects of international law, particularly those concerned with human rights; and has also commissioned research. It has contributed to the creation of institutional infra-structures to facilitate teaching and research, and to promote the exchange of information. In the years to come, Unesco plans to take steps to integrate the experiences and traditions of thinking, and action to promote and protect human rights, in the Third World countries. The new thrust on international law will require concerted action to build national and regional infrastructures to facilitate teaching, research, and exchange of information. It will call for a systematic campaign to introduce topics connected with international law at all levels of education

rather than merely for those who are graduating in law, or in international relations and political science. It will invite social scientists to conduct cross-cultural comparative research.

I am glad that this meeting has been inaugurated by the President of the Korean Association of International Law -- Professor Choi Jae Hoon. I welcome him to this meeting and would like to express our deep appreciation for the initiative and interest taken by his Association in the organization of this meeting, which may become a landmark for initiating action to further promote teaching and research in International Law in Asia and the Pacific.

I am also thankful to his excellency, Honourable Deputy Minister of Education, Dr Hi Chee Choung for sparing time to come here to convey the congratulatory message from The Honourable Education Minister of the Republic of Korea.

I am sure that the excellent facilities provided here at this building of the national commission, coupled with the traditional Korean hospitality, will make it possible for the group to discuss the theme of the meeting in a frank, academic atmosphere.

I wish you all a pleasant stay in this lovely city of Seoul, and I hope for a fruitful conclusion of the meeting.

Appendix II

AGENDA

Item 1. Opening of the Meeting

Item 2. Election of Officers

Item 3. Presentation and Discussion of Country Papers

Item 4. Regional Overview of the Present Situation and Current Trends in Teaching and Research in International Law

Item 5. Problems of the Profession and of the Students Graduating in International Law

Item 6. Prospects for Regional and International Co-operation in International Law

Item 7. Adoption of the Draft Report and Closing of the Meeting

Appendix III

PROGRAMME OF THE MEETING

10 October 1984
(Wednesday)

9:30-10:00	Registration
10:00-10:30	Agenda Item 1: Opening Session
10:30-10:40	Agenda Item 2: Election of Officers
10:40-11:00	Coffee Break
11:00-12:00	Agenda Item 3: Presentation and Discussion of Country Papers - Australia
12:00-14:00	Lunch Break
14:00-15:00	Agenda Item 3: Continued - India
15:00-16:00	- Indonesia
16:00-16:20	Coffee Break
16:20-17:20	- Japan
17:20-18:20	- the Republic of Korea

11 October 1984
(Thursday)

10:00-11:00	Agenda Item 3: Continued - Pakistan
11:00-12:00	- Philippines
12:00-14:00	Lunch Break

14:00-15:00	- Sri Lanka
15:00-16:00	- Thailand
16:00-16:20	Coffee Break
16:20-18:00	Agenda Item 4: Regional Overview of the Present Situation and Current Trends in Teaching and Research in International Law

12 October 1984
(Friday)

10:00-11:00	Agenda Item 5: Problems of the Profession and of the Students Graduating in International Law
11:00-12:00	Agenda Item 6: Prospects for Regional and International Co-operation in International Law
12:00-14:00	Lunch Break
14:00-	Free

13 October 1984
(Saturday)

10:00-12:00	Agenda Item 7: Adoption of the Draft Report and Closing Session

Appendix IV

LIST OF PARTICIPANTS

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Kim Sang-kyun	Chief Social Science Section
Lee Ku-pyo	Secretary Social Science Section

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RUSHSAP SERIES ON OCCASIONAL MONOGRAPHS AND PAPERS

1. *The Social Sciences in the Man and the Biosphere Programme: Report on Seven Seminars held in Asia, 1979.*
2. *Studies on Women in Southeast Asia: A Status Report by Leela Dube, 1980.*
3. *Social Sciences: In Response to Policy Needs—four case studies from Asia, edited by K.J. Ratnam, 1980.*
4. *Social Sciences in Agricultural Education—Eight Status Reports from Asia, edited by Yogesh Atal, 1982.*
5. *Swidden Cultivation in Asia, Volume One: Content Analysis of the Existing Literature, 1983.*
6. *Swidden Cultivation in Asia, Volume Two: Country Profiles, 1983.*
7. *Dynamics of Nation Building: Country Profiles in Historical Perspective, 1983.*
8. *Organization of Social Science Documentation and Information in Asia, 1983.*
9. *The Contribution of the Social Sciences to the MAB Programme in New Zealand 1971-83, 1983.*
10. *Political Science in Asia and the Pacific: Status Reports on Teaching and Research in Ten Countries; edited by Takeo Uchida, 1984.*
11. *Teaching and Research in International Law in Asia and the Pacific: Report of a Regional Consultation Meeting including Nine Country Status Surveys, 1985*

III. *RESPONSE TO NEW CHALLENGES OF INTERNATIONAL LAW*

Like many other countries of the Third World, the resolutions of the world fora and other decisions of the international community affecting the international law, are very slow in creating any significant impact in the country. Initially, such resolutions or decisions are dealt with by the Foreign Office for action on them and perhaps their implementation. Some enthusiastic teachers might try to bring them to the notice of their students by discussing them in the class. Therefore, such discussions are likely to stay within the academic circles only because, unless the changes are adopted into the legal system of the country by legislation or have been pleaded convincingly in a court of law, they will have no practical effect in the country. The chances of such pleadings in concrete cases are not very many as there are very few cases which might require principles of international law to be brought in for their decisions. It will be interesting to note that from 1947 up to the present day, that is, in a span of three decades, only 10 or 11 such cases have come up for adjudication before the superior courts of the country where some principles of international law were to be implemented. A reference to these cases and the international law points involved therein would be instructive to show as to how many busy lawyers could engage themselves in the study of international law for this purpose.

1. *Zafar-ul-Ahsan V. Republic of Pakistan, PLD 1959, Lahore 879.*

After independence the former servants of the Government of British India who became servants of Pakistan government tried to plead principles of international law with regard to their terms and conditions of service on the basis of agreement between the two governments. The court rejected this plea holdin that international law cannot be invoked in courts in proceedings in which relations of government and its servants are concerned.

2. *Federation of Pakistan V. Dalmia Cement Co., PLD 1962 Supreme Court 260.*

The point involved was as to whether a successor state is bound by "obligations" of its predecessor state in international law.

3. *Ali Nawaz Gardezi V. Muhammad Yusuf,*
   PLD 1963 Supreme Court 51.

Whether in international law a divorce will be recognised as valid if the law of domicile permits the dissolution of marriage in a particular way (*talag*).

4. *Gammon-Layton V. Secretary of State for U.S.A.*
   PLD 1965 Karachi 425.

The rule of international law with respect to immunity of States in foreign courts was discussed in it.

5. *Gladys M. Jacob V. Chief Settlement Commission,*
   PLD 1966 Lahore 464.

"Domicile" in international law for the purpose of residence and employment was one of the points involved in this case.

6. *A. M. Qureshi V. U. S. S. R.*
   PLD 1968 Karachi 443.

If municipal law and international law conflict, the former shall prevail. Courts will administer international law only if it has become a part of municipal law.

7. *Muhammad Rafique* V. Sarkar,
   PLD 1973 Azad J & K 51.

In extradition of offenders arrangements, a successor State is obliged in international law to honour the arrangements made by its predecessor.

8. *A. M. Qureshi V. U. S. S. R.*
   PLD 1981 Supreme Court 377.

The governments have immunity in international law from the jurisdiction of foreign courts; whether such immunity is available in ordinary commercial transactions.

9. *M. Younis Malik V. State Bank of Pakistan,*
   PLD 1981 Lahore 181.

If a government impounds its citizen's passport for his subversive activities, whether it affects Universal Declaration of Human Rights as recognised in international law.

As noticed earlier, the teaching of international law in all the universities of the country is generally at the LL.B. degree level, with a more or less uniform syllabus in all of them and the same text books are prescribed. The pattern of examination is also the same.

Teaching of the subject with regard to the happenings on the international scene is affected only to the extent that the important changes are made in the syllabus if they pertain to a topic already included therein.

Information to the general public with regard to changes is generally on a very limited scale indeed. It should be appreciated that the rate of literacy in the country is very low and even amongst the educated classes, only a very small fraction of elite is normally interested in such information. The usual method is through the press. A specialist scholar would occasionally write on the subject and that is the only source for bringing it to the knowlege of the general public.

For incorporating these changes into the country's legal system there are two methods. They are resorted to only if a change in international law effects the country in one way or the other. It could be either, by legislation or by recognition in the courts. For example, after the Sea Law Conference, a new legislation gave effect to the acceptable territorial water limits, fishery zones, economic zone and other matters. Similarly, the Geneva Conventions have become part of the legal system of the country. Although, there is no legislation on the Statute book to the effect that all principles of international law are automatically part of the law of the land, but the general rules of international law, even without legislation are recognised by the courts of the country and likewise as a member of the United Nations, the government feels itself obliged to follow, practice, and apply the general principles of international law.

IV. *PROBLEMS OF THE PROFESSION*

The field of professionalization of international law has not received much attention in this country. We have been most unfortunate in this respect. There is no professional association of experts in the field of international law. Sometime in the early sixties an attempt was made by some lawyers in this regard and they founded an "International Law Society of Pakistan". Somehow, the membership dwindled and the founding members lost their interest and all the plans to associate the Society, with other such bodies in the world and undertake research in in the field of international law and to start a journal of its own remained unfulfilled. Eventually, the Society became defunct.

Having discussed the matter with the founding members of the Society of its fate, my conclusions are that the Society was started by young lawyers freshly returning from Europe and America after finishing their studies and having some training in international law. The enthusiasm which they brought with them to do something in the field of international law gradually cooled off when they found no immediate scope for the application of international law in their day-to-day legal practice. They had to earn their living by competing in an already over-crowded profession and could not, therefore, afford the time and energy to pursue plans for work in the field of international law which could not attract clientele.

On the teaching side in the universities, the scope for the development of their interest in international law was also very limited. As noted earlier, all the universities have been teaching international law only at LL.B. degree level, on a sort of old traditional text book method, and once the universities had employed one or two teachers for this job, it left very little scope for the new entrants and they lost interest. For these reasons, professionally the field of international law did not develop in the country.

At the moment, there is no journal of international law as such published in the country. The only thing, that might come nearer to this description is *Pakistan Horizon* published by the Pakistan Institute of International Affairs, Karachi. In fact, this journal is meant mainly for projecting Pakistan's position in international relations. Therefore, this journal publishes articles contributed for this purpose and speeches and lectures delivered from time to time by invited guest speakers.

The other law journals of various universities and a PLD (Pakistan Legal Decisions) law journal occasionally might publish an article in the field of international law. Recently, another society, namely, "Pakistan Society for the Protection of Human Rights" has been set up by a group of lawyers with a view to propagating the implementation of human rights according to international law and declaration of the United Nations. Its performance has yet to be seen.

V. *AGENDA FOR THE FUTURE*

It appears that no significant move is contemplated at present in the field of the teaching and research in international law, except by the two universities, namely, the Karachi University and the Punjab University which started the LL.M.

courses in 1981 and 1982 respectively. They have included some subjects related to international law in their curricula and might expand the scope of their teaching by including more areas of the subject, such as, international sea law, international air and space law, in their LL.M. curricula, depending on the availability of funds and of teachers of high standard to undertake the responsibility for the courses. In the Punjab University, for example, there is a plan to embark on a Ph.D. programme, but the progress in this direction, is rather slow. Experts are not so readily available as the university is not in a position to offer attractive terms or give other incentives. Funds are limited even to meet the needs of a reasonably good library.

For a positive development of the teaching and research in international law, there is a need to make the public aware of its importance. The changes in international law should be felt by the people as affecting their lives in the same immediate way as the changes in domestic law do, or at least as near to it as possible. If the changes in international law remain remote to them as happenings of a different world with no concern to them, they will not bother to acquaint themselves with such changes. This can be achieved by the efforts of those who have the full knowledge of these changes and appreciate their significance.

A start can be made by reviving such societies as "the International Law Society" or by setting up some "International Law Institution" in collaboration with a similar organization in some developed country. Guidance and assistance from a well established institution will be a great help. Incentives should be given to those who are willing to devote themselves to this field; these could include training abroad, exchange scholars, assignment of projects to them for research, and participation in international conferences.

Publication of the results of research and the promotion of international law activities should be made known through journals of standard. Such societies or institutions should be encouraged to bring out such publications and keep them up.

The influence of scholars associated with these bodies should be used to bring changes in the teaching of international law in the universities. For example, curricula and syllabi which are out-dated and are being followed year after year out to be revised. More practical aspects of the international law should be included in the syllabus. Students should feel while studying the subjects that they are actually dealing with some real facts and cases and not talking of things in abstract.

Some openings in the international law areas should be found for those who do research at post-graduate and doctorate level. This incentive will add zest to the activities of the researchers.

The tradition of teaching and research in international law in Pakistan is not very strong. Only elementary teaching is done in this field, and research is quite sporadic. A lot of effort is needed to popularize this subject. The study of international law, in the universities is taken as an obligation to pass the examination only. The acquisition of the knowledge of international law is not connected with real problems of life in this country as in the case of municipal law. It does not affect directly the lives of the people and, therefore, they are not aware of its importance. Perhaps this situation will change in due course of time, as the mutual dealings between the nations of the world increase on bilateral and multilateral levels. With the increase of such an intercourse between nations, importance of the international law, both in the time of peace and during conflicts, will be realized.

Once the educated classes really become aware of the principles of international law as they affect our lives today and are likely to affect more and more in the future, then a feeling will naturally be inculcated in the minds of the people that the well recognized principles of international law are for the benefit of all and they should automatically become part of the municipal law and enforceable by the courts. The legislature should start taking note of these principles while legislating the laws. For example, the modern constitutions have started incorporating in them the principles relating to human rights as recognized by the U. N. Declaration or the European Convention of Human Rights. Similar treatment can eventually be given to some other well recognized principles of international law.

For the development of international law in Pakistan, some positive steps are required to be taken. These include:

1. The founding of centres of excellence in the field of international law. Such centres should undertake research at doctoral and post-doctoral level; make the people aware of their work and publicise it to make the educated classes aware of it and its importance in the world of today.

2. There should be regular publication of some journals of high standard devoted to international law.

3. The International Law Society should be revived and it should undertake the promotion of international law through publications, lectures, and symposia.

4. Universities should revise their curricula and syllabi of international law to give more emphasis to the discussion of international law problems in the light of the principles of international law rather than teaching its traditional theories only.

5. Diplomas courses in international law should be introduced.

6. Some openings for the specialists should be found in the job market, both at the national and international level as an incentive and also to utilise their skills properly.

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I. *BRIEF HISTORY*

On October 1, 1901, the Code of Civil Procedure, enacted by the Philippine Commission as Act 190, took effect. This law provided rules on admission to the practice of law in the Philippines: all residents of the Philippines, not subjects or citizens of a foreign country, at least 25 years of age, and possessing the necessary conditions of knowledge and aptitude, may be admitted to the practice of law in the courts of the islands (Art. 14, Act 190).

All aspirants to a license to practice law had to present before the Supreme Court satisfactory proof of good morals, and had to undergo examinations on the substantive and procedural law codes in force in the Philippines and of such other branches of law which the Supreme Court may determine by a general rule (Art. 15, Act 190).

The same law provided that examinations for admission to the Philippine bar should take place in Manila before the Justices of the Supreme Court or a commission of competent lawyers appointed by the Supreme Court, on such dates agreed upon by said Justices (Art. 16, Act 190).

Pursuant to this power, the Supreme Court has been giving bar examinations on eight subjects -- one of them being international law.

The earliest surviving records in the Philippine Supreme Court show that in 1933 the subject "international law," was among those covered by the bar examinations, given a unit of one (the lowest), as compared to civil law, for example, which had a unit of 4 (the highest).

The present Rules of Court, effective since January 1, 1964, provide much the same regulation:

> "SEC. 5. Additional requirements for other applicants: All applicants for admission other than those referred to in the two preceding sections shall, before being admitted to the exami-

nation, satisfactorily show that they have regularly studied law for four years, and successfully completed all prescribed courses, in a law school or university, officially approved and recognized by the Secretary of Education. The affidavit of the candidate, accompanied by a certificate from the university or school of law, shall be filed as evidence of such facts, and further evidence may be required by the court.

No applicant shall be admitted to the bar examinations unless he has satisfactorily completed the following courses in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation and legal ethics."

"SEC. 9. Examination; subjects: Applicants, not otherwise provided for in sections 3 and 4 of this rule, shall be subjected to examinations in the following subjects: Civil Law; Labor and Social Legislation; Mercantile Law; Criminal Law; Political Law (Constitutional Law, Public Corporations, and Public Officers); International Law (Private and Public); Taxation; Remedial Law (Civil Procedure, Criminal Procedure, and Evidence); Legal Ethics and Practical Exercises (in Pleading and Conveyancing)."

International law, therefore, had to be taught in the colleges and universities of the Philippines, particularly in the law schools, to prepare applicants to the Philippine bar in the Supreme Court examinations. It was offered as part of the course leading to the degree of Bachelor of Laws (LL.B.).

Pre-war statistics are not available but from the Supreme Court records we have the following on bar applicants:

BAR EXAMINATIONS - THE NATIONAL PERCENTAGE

Year	Applicants	Passing Percentage	Average considered as passing (in percent)
1946 (August)	20[illegible]	46.63	72
1946 (November)	478	56.69	69.45
1947	755	59.87	69
1948	901	62.26	70
1949	1,222	56.14	74
1950	1,325	31.92	75
1951	2,079	57.19	74
1952	2,749	62.02	74
1953	2,556	72.42	71.5
1954	3,206	75.17	72.5
1955	2,987	27.79	73.5
1956	3,647	62.60	73
1957	3,110	19.77	72
1958	3,951	21.97	72
1959	3,754	21.31	72
1960	4,178	39.9	72
1961	4,370	19.34	71
1962	4,635	19.4	72.5
1963	5,453	22.26	70
1964	3,567	25.09	71.5
1965	1,969	32.66	71.5
1966	1,947	36.72	74
1967	1,803	22.80	72
1968	1,643	21.11	73
1969	1,731	28.6	73
1970	1,761	27.9	73
1971	1,835	33.84	74
1972	1,907	28.66	70
1973	1,631	37.4	74
1974	1,956	35.02	70
1975	1,950	35.18	73
1976	1,979	49.77	74.5
1977	1,714	60.56	74
1978	1,890	56.93	73
1979	1,824	49.51	73.4
1980	1,800	33.61	73
1981	1,924	43.71	72.5
1982	2,112	20.5	75
1983	2,455	21.30	75

With some allowance for "repeater," these figures show, more or less, the annual figures of graduates who had studied "international law," as part of the law curriculum.

The number of law schools grew from about 5 before World War II to about 50 today.

Since public international law is a one-unit bar examinations subject, there is less emphasis on it in the law school and the average is one or two professors teaching it per school over the years. The study and teaching of international law have been tied up to the pursuit of a law degree and eventual admission to the practice of law by passing the bar examinations.

There was a critical phase in 1964-65, when the Bar applicants dropped from 3,567 to 1,969. This was the time when the Supreme Court decided to be more strict in the admission requirements and those who were not fit for the law profession were encouraged to seek other courses.

Since then, the number of graduates and applicants have stabilized from 1,500 to 2,000 per year, with a sign of a slow growth in 1981 to 1983.

II. *KEY EMPHASES IN TEACHING AND MAJOR TRENDS IN RESEARCH*

A. *Teaching*

Records of syllabi used in international law are difficult to trace. The Section of Higher Education of the Ministry of Education referred us back to the Ateneo de Manila College of Law as having the most complete file.

The Ateneo de Manila College of Law records show the contents of the syllabi and changes therein over the years, as follows:

> The school catalogue for 1941-42, the earliest extant catalogue on file, has this course description:
>
> > PUBLIC INTERNATIONAL LAW.-- The study of general principles of Public International Law, treating of the legal relation between states as developed by positive agreement, in the form of treaties or conventions, by common usage, and by diplomatic practice and the conduct of nations. (2 units)

The next available issue of the catalogue, which was for 1951-52, reads:

> PUBLIC INTERNATIONAL LAW AND CONSULAR PRACTICE.-- The study of the general principles of Public International Law, treating of the legal relation between states as developed by positive agreement in the form of treaties or based on the treatment of diplomatic and consular practices.

From there until the present, except for 1952-53, 1962-63, for which the office does not have a copy of the catalogue, the changes in the wording of the course description are the following:

> 1959-60: PUBLIC INTERNATIONAL LAW.-- The study of the principles governing relations among state and other international persons as developed from natural and from positive law.

> 1966-67: INTERNATIONAL LAW AND WORLD ORGANIZATIONS.-- This is a study of the principles of governing the relations among states; International Organizations; treaty relations between the Philippines and the United States and other countries. (2 units)

The records of other schools, particularly those of San Beda College, likewise show the same changes, including the emphases on world organizations starting 1966-67.

This shift of emphasis is a result of the growing perception of the importance of the United Nations and regional organizations to developing countries like the Philippines.

As to content or topics, therefore, there was a common syllabus used in all the law schools, as prescribed by the Ministry of Education and reflected in the syllabi above mentioned.

Sad to say, there is a lack of Graduate level programmes on international law in Philippine universities. The University of the Philippines (the State university) offers an LL.M. course

on Comparative Asian Law. The Ateneo de Manila College of Law is planning to offer the 4th year of the LL.B. course elective subjects such as international economic law.

B. *Research*

1. *Pre-War Years 1915-1939:*

Prior to World War II, the researches on international law appearing in the Philippines were mostly reprints of studies made abroad or, occasionally, speeches delivered locally by foreign experts.

The *Philippine Law Review*, whose pre-war issues are intact, shows the following:

In May 1915, the first article on international law appeared entitled "*Estudio Sobre la Destruccion de Presas Maritimas de los Neutrales*" (Study on the Destruction of Maritime Prize Belonging to Neutrals), which was taken from the *Illinois Law Review*.

In June 1915, S. Bibb's "*Estado Actual de la Doctrina de Monroe*" (Current Status of the Monroe Doctrine), was reprinted, in its spanish translation, from *Case and Comment*. Also in the same issue was an article on "*Los Submarinos Alemanes Peuden Ser Considerados Piratas?*" (The German Submarines - Can They Be Considered as Pirates?), from *Case and Comment*. Similar studies appearing in 1915 touched on Neutrality (H.B. Bowen); Belligerents taking refuge in neutral countries (R.P. Shephard); the sale of arms by Neutrals to Belligerents, (Charles Noble Gregory); and the Rights of Belligerent vessels in neutral posts (no author given) -- all taken from *Case and Comment*, except Gregory's work which came from *The Outlook*.

On February 17, 1918, Eugene A. Gilmore of the University of Wisconsin, addressed the Philippine Bar Association in Manila and his speech appeared in *The Philippine Law Review* in March-April 1918, entitled "Judicial Settlement of International Disputes." This was a departure, since it was at least locally given, the speech appeared in English, and it did not deal with War and Neutrality.

Next came Charles Evans Hughes' speech in New York on "War Powers Under The Constitution," published in May-June 1918. Then finally, one of our own is recorded: Feliciano Basa's "*Crisis y Progresos del Derecho Internacional*" (Crisis and Progress of International Law), in July of 1918. This was followed