TEACHING OF INTERNATIONAL LAW IN INDIA

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I. INTRODUCTION

Teaching of international law in India until 1990s had not been given due attention and support by the State and international institutions. The situation has changed in the present era of definite and progressive development of international law. Going global is fashionable these days. Course offerings in international law and comparative law abound; students and faculty exchanges are proliferating; transnational recruitment of faculty and students is expanding; international student initiatives such as mooting, journals, and internships are multiplying rapidly; visitor's programs and transnational collaborative research projects are ubiquitous.

In such a scenario, teaching of international law in India has become a challenging as well as an exciting task. However, it is distressing to note that many new course offerings are confusing international law with global law, comparative law, transnational law and foreign law. Therefore, it is pertinent to distinguish international law from either global law or foreign law or transnational law or comparative law.

The term 'global law' is commonly used as a loose reference to a mix of foreign, comparative, international and transnational law[1]. 'Foreign law' typically refers to the internal law of States other than our own.[2] International law, in contrast, has traditionally been viewed as governing relations between States. But since the advent of non-state actors (e.g. international institutions, NGOs, terrorist groups) on the international scene, it has been more aptly described as any form of law that is supranational. 'Comparative law' is more difficult to define, as the amount of scholarly literature devoted to the issue testifies.[3] However, it will be sufficient to say that the domain of comparative

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1 Catherine Valcke, *Global Law Teaching*, 54 JOURNAL OF LEGAL EDUCATION, 2004 at 160.

2 Foreign law is used in its most common understanding, as referring to geographical otherness only.

3 See generally A.T. Von Mehren, *An Academic Tradition for Comparative Law?* 19 AMERICAN JOURNAL OF COMPARATIVE LAW, 1971 at 624; G.

law does not differ from that of foreign law. Transnational law is still more nebulous. Most commonly, the term is used in a technical sense, to designate an amalgam of legal relations and instruments that, while involving private citizens directly, cross national boundaries[4]. Transnational contracting is a good example. Although the parties are private, not State actors, the contracts relate to more than one State. To this date, what is commonly referred to as 'transnational law' boils down to no more than international and internal state law applied to cross-border interactions involving private parties.

If the above distinction is kept into mind while teaching international law and devising new courses, it will be beneficial. That benefit will be manifested in the clear concept and vision of the teacher of the subject and its relevance to India. India is a developing country. International law has been initially moulded and developed by the developed western countries. Thus, contemporary international law needs to be analyzed and evaluated with a view to determine the interests of the developing and developed states. Such an analysis will be much more effective if Indian interests, policy and law and their compatibility with the international standards are given adequate focus.[5]

This paper is an endeavor to throw light on the teaching of international law in India in the contemporary times. Starting with the introduction in the first part, the second part deals with the rationale of teaching international law in India. The third part deals with the broad topics to be covered while teaching international law in India. Finally, the fourth part deals with the effectiveness of teaching international law in India.

Frankenberg, *Critical Comparisons: Re-thinking Comparative Law*, 26 HARVARD INTERNATIONAL LAW JOURNAL, 1985 at 411; B. Markesinis, *Comparative Law – A Subject in Search of an Audience*, 53 MODERN LAW REVIEW, 1990 at 1; A. Watson, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW, 2nd ed., (Athens, 1993); J. Gordley, *Is Comparative Law a Distinct Discipline*? 46 AMERICAN JOURNAL OF COMPARATIVE LAW, 1998 at 607; N.V. Demleitner, *Challenge, Opportunity and Risk: An Era of Change in Comparative Law*, 46 AMERICAN JOURNAL OF COMPARATIVE LAW, 1998 at 647; J.H.Merryman, *Comparative Law Scholarship*, 21 HASTINGS COMPARATIVE & INTERNATIONAL LAW REVIEW, 1998 at 771; M. Van Hoecke & M. Warrington, *Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law*, 47 INTERNATIONAL & COMPARATIVE LAW QUARTERLY, 1998 at 495.

[4] William Twining, *Globalization and Legal Theory*, 49 CURRENT LEGAL PROBLEMS, 1996 at 1 and 9.

[5] Gurdip Singh, INTERNATIONAL LAW (New Delhi, 2003) at vii.

II. Rationale of Teaching International Law in India

To teach international law in India, one will certainly look for the reasons to teach the subject. Our judiciary has recognized that nations must march with the international community and the municipal law must respect rules of international law[6]. It means that rules of international law must be known to the students of law and to the policy makers of India. When rules of international law are cited before the domestic courts, they are given respect and enforced under certain circumstances. It has been repeatedly affirmed by our apex court that it is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law[7]. Even with respect to those rules of municipal law, which can be given two interpretations, that interpretation will be adopted by the courts which lean in favor of international law. Only when the municipal law is inconsistent with the international law that municipal law is accorded primacy over international law. Therefore, it is extremely important for the students of law to be taught international law.

The next rationale behind teaching international law in India is to sensitize the students about the effects of international law on the individuals of any nationality. International law is more than ever aimed at individuals. It is not confined to regulating the relations between the States. Today, matters of social concern, such as health, education and economics apart from human rights fall within the ambit of international regulations[8]. Individual has been granted limited procedural capacity to enforce rights granted under international law. Individual may also be punished for violation of international law, such as under Optional Protocol to the Covenant on Civil and Political Rights, 1966; International Convention on the Elimination of All Forms of Racial Discrimination, 1966; Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965; UN Convention on the Law of the Sea, 1982; Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of the Crime of Genocide,1948 and Rome Statute, 1998. The developments in international

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6 It was so held by Justice O. Chinnappa Reddy in *Gramophone Company of India Ltd.* v. *Birendra Bahadur Pandey* (1984) 2 SCC 534.

7 For example, *Vellore Citizens' Welfare Forum* v. *Union of India* (1996) 5 SCC 647; *People's Union for Civil Liberties (PUCL)* v. *Union of India* (1997) 1 SCC 301.

8 *Peoples' Union for Civil Liberties (PUCL)* v. *Union of India* (1997) 1 SCC 301.

law show that individuals have rights and duties under international law. In fact, international law has fractured traditional link of the state with international law and by selecting individuals as members of international community for rights and duties, even against their respective national states[9].

The next significant rationale of teaching international law is to provide knowledge to students about the implementation mechanism of a rule of international law. Many jurists differ in their views about implementation. As the substantial portion of international law is the creation of developed western countries, jurists and the courts of those countries recognize the implementation of customary international law without implementing legislation. Some countries are trying to give a new shape to international law in the aftermath of 9/11. They also claim to have implemented international law. Such an approach needs to be assessed by the developing countries according to their needs, aspirations and interests. Problems in implementation shall certainly face problems in case of international environmental law and international trade law. India's record of implementing international law is better than the other Asian countries. Except some important areas like refugee law, criminal law and environmental law, India has several feathers in its cap when it comes to implement international law. To mention a few, our Parliament has enacted The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 to implement law of the Sea. It has come up with Geneva Conventions Act, 1960 to implement international humanitarian law. Recently, the Government has enacted the Patents (Amendment) Act, 2005 to implement GATT obligations. To implement international law, therefore, domestic legislation may be required but not always essential.

Finally, rationale to teach international law comes from contemporary challenges in international law. The problems for the UN Charter based World Order system posed by the conflicts within the Security Council need to be discussed today. New legal claims are advanced such as, a revised doctrine of humanitarian intervention; pre-emptive military strikes as an exercise in self-defence; and multilateralism versus unilateralism in the exercise of the peace and security powers under the UN Charter[10]. International terrorism has been a threat to India. A comprehensive and

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[9] *Supra* n. 5 at 85.

[10] Edward Mc Whinney, THE SEPTEMBER 11 TERRORIST ATTACKS AND THE INVASION OF IRAQ IN CONTEMPORARY INTERNATIONAL LAW (Boston, 2004) at 11.

insightful analysis of the pertinent domestic, bilateral, regional and international legal developments need to be carried out while teaching international law. There is a threat of nuclear and cyber terrorism now. The problems of detention of terrorists as unlawful combatants and their trial merit discussion and analysis. The recent difficulties faced by the Government of India in extraditing the fugitive offender Abu Salem from Portugal is an example of India's slow response to new challenges in the world order. The Extradition Act of India is of the year 1962 when the whole world had a different order and speed to take action. Now, the International Criminal Court has been established in the year 2002. Its relevance to India has to be understood and examined in greater detail. International criminal law recognizes around fifty acts as war crimes.[11] But, the India's Geneva Conventions Act, 1960 recognizes very few of them as war crimes. Should we re-examine our law or should we be threatened by expanding international criminal law? Can we say that domestic law is becoming so deeply enmeshed with the global environment that teaching it in isolation from this environment would be tantamount to distorting it?[12]

III. Broad Topics to be Covered

Teaching of international law in India should cover the basic topics. The UGC Model Curriculum for Law is a good example of such basic topics. It has given a good guideline to the universities to include those topics. However, implementing body is the concerned university. The concerned university knows the requirements of its students and the time constraints. Those universities, which follow semester system in law schools, find very tough to include all basic topics in one semester itself. Trimester system law schools[13] cannot include all basic topics at all in one semester. The University of Delhi covers the very basic topics of international law in one semester and then other issues of it in other two semesters. However, the other two are optional and the students are free to opt it or not, but the first part of international law is compulsory one.

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[11] See for example, Art. 8 of the Rome Statute of the International Criminal Court. 1998.

[12] See in this respect John Sexton's explanation that "few significant legal or social problems today... are purely domestic—whether one thinks of labor standards and NAFTA, criminal law, intellectual property and trade, or the impact of foreign creditors on United States monetary policy. It is virtually impossible to avoid the transnational implications of almost any subject," John E. Sexton, *The Global Law School Programme at New York University*, 46 Journal Of Legal Education, 1996 at 329-34.

[13] For example, National Law Institute University (NLIU), Bhopal follows trimester system.

At least there are fifteen topics that are important and should be taught at the law schools. But the general experience of the teachers of international law is that the students find the study of international law as not a rewarding one. The reasons are- the syllabus for lower judiciary places least emphasis on international law, law firms in India are primarily catering to the needs of domestic industry and mastery over domestic law is considered to be a *sine qua non*. Except those law students who aspire to become a civil servant and opt law as an optional subject, no other student seems to be attracted to the study of international law.

The first topic to be taught should be development, nature and current status of international law. The present day international law is said to have started its evolutionary journey four hundred years back. At the start of its journey and unto its half way, international law was not considered to be as 'law' proper. Now, the international jurisprudence has acquired the maturity to realize that an effective international legal system is indispensable to ensure peace, develop international co-operation and guarantee the sovereign rights of states. The process of international legislation (i.e. law-making treaties) has, therefore, geared itself to such an enormous extent that it has dominated the relatively slow process of international custom which has ever since the main source of international law.

In this connection, the sources of international law have become important to be discussed. Two kinds of sources- traditional and modern- need to be discussed. Traditional sources are mentioned in Article 38 of the Statute of the ICJ. However, modern sources, which include resolutions of General Assembly and Security Council, become relevant discussions. Such discussion will include ICJ decisions, *Advisory Opinion of ICJ on Namibia*,[14] *Advisory Opinion of ICJ in Western Sahara*,[15] *Texaco Overseas Petroleum et al.* v. *Libyan Arab Republic*, [16] and *Advisory Opinion of ICJ on Legality of the Threat/Use of N-Weapons*.[17]

The relationship between international law and municipal law comes thereafter. Apart from various theories on relationship, the practice of States like India, U.S.A., U.K., and Australia needs to be discussed. While discussing India's practice, its constitutional position, treaty-making power of the executive and implementing power of the executive and the legislature need to be discussed. In such discussion, judicial decisions can be the best illustrations.

[14] ICJ Rep., 1971.

[15] Advisory Opinion, ICJ Rep., 1975.

[16] (1978) 17 INTERNATIONAL LEGAL MATERIAL 1.

[17] (1996) 35 INTERNATIONAL LEGAL MATERIAL 809.

Further, state responsibility is an important area worthy of being taught. After Herculean efforts by the international community and especially by the International Law Commission, a Draft Code on Responsibility of States for Internationally Wrongful Acts, 2001 was adopted. The Draft Code distinguishes between international responsibility and international obligations of states. It also deals with various forms of reparation. Therefore, the above distinction and forms of reparation need to be discussed threadbare. While discussing the aforesaid topic, certain decided cases, such as *Trail Smelter (US* v. *Canada)*[18]; *Corfu Channel*[19]; *Nottebohm*[20], *Barcelona Traction*[21] and *US Diplomatic and Consular Staff in Tehran*[22] need to be discussed.

The Law of Sea is another important area of international law teaching. India has taken important initiatives in the promotion of international law on the sea. The concepts of Territorial Sea, Contiguous Zone, Continental Shelf, Exclusive Economic Zone and High Seas need to be properly made understood to the students. The fact that India has been registered as a pioneer investor in 1987 makes it imperative that students should know the legal regime of various maritime zones as established by the U.N. Convention on the Law of the Sea, 1982 which came into force on 16th November 1994. India ratified it in 1995. Apart from the specific provision from the U.N. Convention, some landmark judgment such as, *Anglo- Norwegian Fisheries case*[23], *North Sea Continental Shelf case*[24], *Libya-Tunisia Continental Shelf case*[25], *Libya-Malta Continental Shelf case*[26] and *Qatar –Bahrain case*[27] are also to be discussed.

Other important areas of international law are international human rights law; international humanitarian law, international environmental law, international trade law, international refugee law, law of treaties, international terrorism, international criminal law, dispute settlement methods under international law are outlined, and air and space law. Here only ten very important broad areas of international law, which are quite useful from the student's perspective of utility and practice. It is submitted that contemporary areas should always be taught in international law.

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18 UN Rep., Int. Arb. Awards, 3, 1941.
19 ICJ Rep., 1949.
20 *Leichtenstein* v *Canada*, ICJ Rep., 1955.
21 *Belgium* v *Spain*, Second Phase, ICJ Rep., 1970.
22 *USA* v *Iran*, ICJ Rep., 1980.
23 ICJ Rep., 1951.
24 ICJ Rep., 1969.
25 ICJ Rep., 1982.
26 Reproduced in 25 INDIAN JOURNAL OF INTERNATIONAL LAW (1985) at 270.
27 Reproduced in 42 INDIAN JOURNAL OF INTERNATIONAL LAW (2002) at 371.

Those contemporary areas are rewarding in the sense that they offer job avenues. For that matter, law schools in India should go in for major revision of the course contents of their international syllabi. Such a revision should take into account the latest UGC Model Curriculum for Law, 184th Law Commission of India's Report on Reform of Legal Education and the guidelines of Bar Council of India.

IV. Enhancing Effectiveness in Teaching International Law

To enhance effectiveness in teaching international law, multi-pronged approach is required. It is not sufficient that we revise the course-contents in the curriculum and it shall become effective. The curriculum is only an instrument, after all is said and done, for the use of teachers and students.[28] It does not enhance the effectiveness of teaching methodology. It will also be not enough that we make study of international law compulsory for at least four semesters and the teaching will become effective. It will again not be enough that we make sixty-six percent attendance requirement mandatory for appearing in the examination and it will become effective. What is required, apart from the above initiatives, is to build an ambience, to build an atmosphere of learning, to build such an atmosphere of learning where students start to think international law. Unless international law will not become a way of thinking, a mode of reasoning, the receptivity and attentiveness of the students will remain low.

In so far as law becomes a way of thinking, a mode of reasoning rather than just a collection of rules, doctrines and institutions, the ultimate objective of legal education ought to be not so much the absorption of legal information as the development of the ability to think in law. So law schools should aim to render students capable of 'thinking like an international lawyer'. Not just thinking, but also to 'feel' it and 'behave' like a lawyer.

To make students think, feel and behave like an international lawyer, problem based teaching is the need of the hour. Pierre Legrand gave a swimming metaphor, which is surprisingly apt here: 'In order to learn how to swim, one had better jump in the water than read swimming treatises'.[29] Moot Court Competitions should be organized at least twice in each semester

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[28] Gitanjali N. Gill, V.K. Ahuja, Vijender Kumar, et. al., *Law Teaching and Legal Research Skills*, Background Paper presented at the Law Teaching and Legal Research Skills Training Program, 10-13 Feb. 2005, British Council, Delhi at 3.

[29] A translation of the French version of Pierre Legrand's swimming metaphor is given in Catherine Valcke, *Global Law Teaching*, 54 Journal Of Legal Education, 2004 at 172.

in every subject. Participation in those moot courts should be made compulsory for the students. The relevance of organizing moot courts by law schools has been repeatedly emphasized by Bar Council of India. Mooting is a specific form of simulation in which we ask the students to argue points of law before a simulated court.[30] The students need to be encouraged to take part in such moot courts on a regular basis. The Henry Dunant and Philip Jessup Moot Court Competitions organized by ISIL every year is a laudable effort and it gives students an exciting opportunity to develop their confidence at the international level. Such competitions should be increased in number.

Students should also learn Client counseling techniques. Those techniques are important skills to be acquired by the international law students. One such skill is negotiating skill. Negotiation is an art as well as science. As an art, it exhibits the imaginative and artistic ability of the negotiator in creating a worthwhile atmosphere where a good rapport is built between or amongst conflicting parties and the negotiator. As a science, it points to the logical, mechanical and procedural steps to be followed to attain an effective accomplishment of goals.[31] If the student knows the art and science of client counseling, he also knows handling pre-litigation matters. The students should command pre-litigation techniques. Client Counseling Competition is such a nice competition that students and the invitee judges are willing to say 'bye-bye' to moot court competition and 'hi' to client counseling competitions. India has not caught up with such developments. That needs to be done. That is how students will be having hands-on experience of the actual problems and disputes and its handling. That is how. Pierre Legrand's metaphor will be applicable.

Finally, teaching methods or techniques should also be improved a lot. The way that teachers organize situations to help students to learn can be called teaching techniques. When choosing and planning teaching technique. one should consider the type of learning involved, the ways that different people like to learn, and the context in which they are learning. There are different techniques/methods of teaching such as Lecture Method of teaching; Lecture with Discussion Method of teaching; Panel of Experts Method of teaching; Brainstorm Method of teaching; Videotapes/ Slides Method of teaching; Discussion Method of teaching; Small Group Discussion Method of teaching; Case Studies Method of teaching; Role Play Method of teaching;

Le Brun, Lansdell and Clarke, NEW PERSPECTIVE FOR TEACHING LEGAL STUDIES (Hobart, 1989).

Supra n. 28 at 2.

Report-Back-Session Method of teaching; Worksheet/Surveys Method of teaching; Index Card Exercise Method of teaching; Guest Speaker Method of teaching; Values Clarification Exercise Method of teaching, etc.[32] Out of these different techniques, the teacher should adopt that technique which he thinks best to convey properly to the students.

V. Conclusion

Teaching international law in India is not easy as well as exciting. It is not easy because international law is very vast and complex. One needs to understand the basic preliminary concepts very clearly and thereafter to establish the rationale of teaching international law. It is not so exciting because there is a limited audience. However, the recent plans of the Government of India to open up the doors of legal practice to foreign firms has stirred the students to know more and more about international law. Legal Process Outsourcing is also considered to be the future career by the current generation of students. These new developments have given a spurt in the study of international law. The students also want to study the contemporary challenge posed by the conflicts within the Security Council and the resultant problems for the UN Charter based world order.

The UGC Model Curriculum for Law, Law Commission's latest report and Bar Council of India's recommendations take these developments into account. The Universities in India should implement the recommended curriculum in the right earnest and even should add some new areas, which are considered rewarding by the students. Ultimately, the teaching of international law should be planned in such a manner that an atmosphere of learning is created where students start to think about international law. By organizing moot courts on international law, imparting client-counseling techniques, adopting better teaching techniques, such an atmosphere may be created.

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[32] *Id.* at 8.