Teaching and Researching International Law by Resource-Constrained Academics

By:

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There are two basic problems that may resonate with those who are engaged in teaching and researching international law in developing countries: first, motivating students, and second, seamlessly accessing the requisite resources for teaching and research. This essay presents and outlines challenges and proposes some solutions to address them. This is not to say that these are the only constraints they face, rather this choice is driven by the length of this essay. Motivating students who are nationally minded in their future career pursuit to study international law can be daunting. The presence of only one or a few international law courses in the undergraduate curricula also does not help.

Specifically, to many undergraduate students of law, the sources, subjects, courts, and the approach to enforcement (or more appositely often the lack of

its direct presence) may seem baffling and make the discipline seem like anything but law. In addition, some colleagues, particularly those who are engaged in teaching and researching on core ‘practically oriented and useful’ law courses, seem to harbour this attitude. After all, for states on the fringe of the international community, with little international clout and very little presence in international diplomatic or dispute settlement fora, engaging with international law is merely of esoteric academic value making none or, at best, a peripheral contribution to the law school’s reputation. According to this school of thought, it seems that legal research work that is rarely accessed by the intended primary audience of the legal academe—the bench and the bar—or does not contribute to the law reform process in some form is of limited value. However, this peripheral mindset towards international legal research seems to ignore that what counts as good research may pose a myriad of complicated questions and may vary from discipline to discipline or within the tranches of the same discipline.

The single-minded focus on international law often overlooks the fact that many of the so-called national laws of today *are not* necessarily national, but directly or indirectly intrinsically connected with, if not shaped by international law. Few lawyers working in the national legal system would benefit from a pathological disregard of international law. Many cases litigated in the national courts in matters, such as extradition, the determination of asylum applications, treatment of aliens, among others, involve questions of international law. Many national courts today in judicial review cases are, on occasion, confronted by questions of the application of international law. In deciding these cases, the courts have not always confined themselves to analysing international treaty and customary laws which have been assimilated into national law, but also looked towards international treaty and customary law per se. These cases and the approach taken by courts in settling them often mean that the traditional line between monist and dualistic approach of national courts towards the application of international law is often blurred. Sometimes even purely commercial contractual dealings between private parties fought within national legal systems may see that international legal provisions are invoked by the parties. For example, in the last two decades the Bangladesh Supreme Court has been vexed by questions of international law in constitutional cases on the right to life, right to health, protection of the environment, and even family law.

It is well-known that the advent of the idea of human rights in the post-World War II era has often pushed the boundaries of international law in areas which have been hitherto perceived within the exclusive domain of states. States are routinely questioned on their human rights treaty compliance in international treaty bodies, as well as international judicial bodies. Even national tariff schedule or investment-related national legal provisions are affected by the international legal obligations of states. The same applies to some extent to disciplines such as intellectual property law, admiralty law, transportation law, and many others. Dealing with any of these areas need knowledge of the working of international law. Thus, even those who confine their practice spheres to the national bar or the bench can in no way be oblivious to international law. An army of professionals in various national civil society organisations routinely delves into questions of international law in their everyday work.

Mastering international law is not only necessary for survival in professional life. The learning of international law can earn dividends even in the days of law school. Moot competitions increasingly attract participation not only by students from states in the Global North but also by those in the South, and are often based on one or the other aspects of international law. Many might attest that mooting is one of the closest resemblances to the practice of law in the court that one can do within the boundaries of the school. The research and other generic skills that students gain by participating in these mooting competitions transcend the legal principles that they have to master as part of the mooting that they would do. All these mean that the perks of studying international law may be less visible, but they *are not less*. Thus, presented properly, all these may motivate even the most nationally minded law students to embrace the study of international law more enthusiastically. Rather than didactic teaching, a thorough dissection of domestic cases demonstrating how domestic legal issues are intertwined with international legal questions often seem to do the trick. The discussion of matters occupying space in the popular news media and their nexus with international law may also demonstrate that international law is not confined to the ivory tower of academia occupied by some scholars divorced from the real realm of law operating within the national sphere.

Another challenge of teaching and researching on international law is the lack of state-of-the-art databases which can put further pressure on most academics who are already heavily encumbered by the taxing teaching load. Few law schools in developing states can match their counterparts in advanced economies. The use of sophisticated legal databases can give a researcher a significant edge over those who do not possess it. That being said, concomitant with the meteoric rise of the subscription-based international legal databases (Oxford University Press alone, for example, maintains multiple databases on international law protected by pay-walls), there is an increasing number of scholarly blogs and open-access resources made available by various research centres of international law. The availability of primary sources, such as the judgments of many international courts (sometimes even pleading of the parties) and awards of arbitral tribunals in electronic form have, in some cases, given inquisitive researchers in the under-developed states access which they could not possibly have had so easily in the pre-internet era. While there seems to be no systemic study facilitated by some research funders, the number of open-access materials on outlets otherwise protected by pay-walls seems to be on the rise too. While none of these can match the sophistication and breadth of materials offered by commercial databases, there seems to be some distinct advantages of these open-source resources, particularly the scholarly blogs.

Researchers not having the benefit of access to subscription-based databases may be forced to work harder with the limited primary materials at their disposal. This may (hopefully) foster more reflective engagement with the primary materials, even if at the same time making the research outcome prone to the accusation of lacking a ‘scholarly look’. This is concomitant with the various forms of letterhead bias that researchers in less privileged schools sometimes face—a situation which makes it even more difficult for scholarship from the Global South to appear in some prestigious scholarly outlets. However, one can, at the same time, hope that this may give international legal research a breath of fresh air and less clutter, as too many footnotes do not always add value to the work.

Scholarly blogs generally present materials succinctly, making them arguably more attractive than heavily footnote-laden scholarly articles. Some of these blog materials reviewed by peers may well work as a sort of primer for further

and more extensive research. The comparatively shorter length of these materials may make them more appealing to a wider number of students. As long as they do not supplant extensive scholarly writings as a tool for teaching or research, they may be good supplementary tools for teaching and researching on international law. This would be more so for scholars in developing states whose libraries often struggle to bear the cost of subscription to scholarly databases. All these should mean that while scholars with a lack of resource may have to work harder to place their works in prestigious outlets, they still would have a fair shot at that.

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