Teaching and Learning From Where You Stand: a Reflection

By:

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Is there really any doubt as to whether we are taught, and therefore learn, international law through the eyes of the West, regardless of where we study it? Maybe this is a blanket statement, more anecdotal than scientifically proven (although serious studies on the matter are increasing and getting mainstream recognition). However, there is some truth in the assertion, and the situation might be something worth trying to change.

I remember a day, many years ago, when I was about to study treaties for the first time during my undergraduate degree in Mexico. “The first international treaty entered by Mexico was the 1822 Treaty between the Mexican Empire and the Comanche Nation”, said the professor. “However,” he said, “this was not what we would consider a treaty under international law.” With this piece of trivia, he began his lecture on the Vienna Convention on the Law of Treaties of 1969 (VCLT), starting with its article 2.1(a) on the definition of ‘treaty’:

> “(…)’treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;(…)”

The piece of trivia was not important to the lecture, and any deeper analysis on why the 1822 Treaty should or should not be considered a treaty could have complicated the lecture, even when it was in my view very relevant. For example, the professor could have asked us to consider whether the VCLT applies to treaties between States and the Comanche Nation, and whether the Comanche Nation was a State. But the problem would not have stopped even if we were to take the broader definition proposed by the International Law Commission during its works towards the VCLT, as presented in its Report of its fourteenth session (24 April-29 June 1962), which included other subjects of international law as possible parties to a treaty. The Comanche Nation was clearly not what those drafters had in mind when they wrote the words “other subjects of international law.”

The professor mentioned the 1822 Treaty as one of many historical events, dates and facts, that were part of the standard class narration in an attempt to connect the syllabus to the history of our country. I commend his efforts to “tropicalize” the subject. What he inadvertently did, however, was to show how what we were really doing was to try to fit our history into a foreign framework and paradigm, one that promised to be universal but short-changed us along the way.

The Comanche Nation is a Native-American tribe whose historic territory consisted of most of the present-day US regions of northwestern Texas and areas in eastern New Mexico, southeastern Colorado, southwestern Kansas, western Oklahoma, as well as the northern Mexican state of Chihuahua. Back in 1822, when the Treaty was signed, these territories were claimed to be mostly part of the new Mexican Empire which had gained independence from Spain the year before. Colonialism put the Comanche Nation in the territory of the Viceroyalty of New Spain, and subsequently what would become the modern-day States of United States of America and Mexico. Hence, from the perspective of International Law, the 1822 Treaty is a mere agreement between

a central government and a local tribe; nothing further to an international treaty. But how dismissive of local history and realities this is!

Going further into the history of the 1822 Treaty is beyond the scope of this post. I mention it only as an example of a phenomenon I have seen happen multiple times in the teaching of international law in Latin America and Asia, and I am sure something similar happens also in Africa. We as teachers are prescribed to follow a syllabus, the most "international" syllabus we can find, and many local experiences suffer the fate of "erasure by the mainstream." I am not claiming that modern international law does not respond to the realities of the Global South, nor that former colonies don't participate in the making and applying of international law. My assertion is that the basic building blocks of international law, the concepts on which we build and practice international relations, were mostly born within a Western paradigm. Asia, Africa and Latin America are regions considered "peripheral" to the classical centers of knowledge creation, from which law is frequently professed and diffused as if it was neutral, universal and unique. Consequently, those concepts that emanated from Eurocentric and US-centric visions of international law sometimes struggle to accommodate the experiences from other latitudes. The recognition of this fact is paramount to the understanding of the system as a whole, and it is our responsibility as scholars to make sure the new lawyers we are training fully comprehend the relevance and role they and their communities play in the continuous construction of the international legal order, and step up to the challenge of increasing such influence.

Over the past couple years I had the pleasure of working on the Teaching and Researching International Law in Asia (TRILA) program of the Centre for International Law, National University of Singapore, a project that aims to do just that. I had the opportunity to meet international law scholars from all over the region, help build a network with members from all over the world, and also strengthen links with similar projects such as Proyecto REDIAL in Latin America (Rethinking International Legal Education in Latin America). These projects have plenty in common, but one of the key aspects is reclaiming the narrative to approach international law from a local perspective, with the aim of transforming their regions into "rule makers", rather than continuing as "rule takers". To achieve this, scholars not only need to explore new avenues of

research with these issues in mind, but a bottom-up approach is vital, starting with reforming the contents of the syllabi to include local, regional, and other "peripheral" approaches.

As shown in studies of both TRILA and REDIAL, the regions' teaching and research practices to this day still fail to engage with rich traditions of thought from their respective regions, ranging from more conventional theories to critical approaches such as the dependency, TWAIL and decolonial schools, which mostly remain outside the field of international law in these regions. The idea pursued by both projects would be to bring these traditions to the classroom, to undertake a deep analysis of the contents of our teaching and decide which elements we defend and keep, and which we abandon, contrast, supplement, or substitute with local contents to better serve the context and objectives pursued by us and our institutions.

Neither TRILA nor REDIAL have suggested ideal syllabi or judged particular ones as good or bad; what they seek is to provide the community with enough resources to pursue such analysis on a case by case basis, so that each element of a syllabus is a deliberate decision for the benefit of its intended students. And furthermore, to make those students aware of the existence of a more complex landscape, full of debates and unexplored topics, than what the table of contents of a mainstream international law textbook would suggest. The aim is not to get rid of Eurocentric or normative contents, but simply to question their epistemological assumptions, and when possible, contextualize them within their historical and political realities. If only such an exercise would have taken place during my first class on treaties, our understanding of the 1822 Treaty and the Comanche Nation would have taken on exciting new nuances for my classmates and me.

With this post I seek nothing more than prompt the reader to question their experiences, recount their anecdotes and challenge how the way we learned, and what and how we teach today. I invite you to take the chance of making a pause in the inertia that academic life entails, and become part of the discussion on how to transform our discipline to be better researchers and more effective teachers to the lawyers of the future. There is no excuse not to, the debate is alive and happening in fora, such as AfronomicsLaw, REDIAL and

TRILA.

Over the many meetings, workshops, conferences, lunches and dinners I have spent with scholars of the Global South, I have realized that often we are conditioned to follow and not question, to teach what is assigned to us and to do research on what is valued by the mainstream. We live by the aphorism that if we want to play in the big leagues we need to play by their rules. So we do not stop to think and question, and we only replicate patterns. And many times, more than I care to admit, we are not as critical of our profession as we demand our students to be on their papers and exams. We owe it to our students not only to remind them, as we do, that international law is relevant to their life, but to demonstrate it, to make the discipline real and tangible. And furthermore, to show them how each one of them, in their corners of the world, is powerful and relevant to international law.

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