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## International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society

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# International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society

John A. Barrett, Jr.\*

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## INTRODUCTION

With a click of a mouse, I shut off my e-mail program and turn on my word processor to begin writing this piece. Five minutes ago, I was communicating with colleagues in Europe and Japan. With another touch of a button, I can read Mexican statutes<sup>1</sup> or a recent WTO panel decision,<sup>2</sup> in my choice of languages. In many ways, this is a golden era for those interested in international law. Primary and secondary sources are becoming increasingly available to more people than at any time in history. Global communication is inexpensive and nearly instantaneous. Almost every night, television news programs show a segment about a trade dispute: on one day, United States Secretary of Commerce Mickey Kantor complains

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1. See *National Law Center for Inter-American Free Trade* (visited Aug. 19, 1997) <<http://www.natlaw.com/mexico/primary/primary.htm>>.

2. See *World Trade Organization* (visited Aug. 19, 1997) <<http://www.wto.org>>.

Japan has broken its commitments regarding automobile sales in Japan;<sup>3</sup> the month before, Europeans were afraid to eat British beef because of Mad Cow Disease.<sup>4</sup> Similarly, it is nearly impossible to look at the newspaper without reading another article about a company starting an overseas venture. From farmers in Washington selling wheat,<sup>5</sup> to the Big Three automobile makers in Detroit selling cars,<sup>6</sup> everyone is doing business abroad. My retirement savings plans, like most, allow me to invest in foreign stocks almost as easily as domestic ones.

Given this highly global world in which we live,<sup>7</sup> one would expect business to be booming for international law professors, and, in many ways, it is booming. Course offerings for international law classes are more common and varied than ever before. Almost every law school has international law classes.<sup>8</sup> Law schools publish numerous international law journals.<sup>9</sup> Summer abroad programs are growing at an alarming rate. Most schools participate in one or more international law moot court competitions, and most campuses have a student international law society. Despite all of these encouraging signs, the vast majority of students graduating from law school have little or no exposure to international law.<sup>10</sup> The important question, therefore, is whether today's students can afford to graduate without learning about international law. If such training is imperative for the twenty-first century, the next issue is how to ensure students receive it.

First, this paper will define its use of the term "international law." Second, it will examine the reasons why international law training is necessary for today's lawyer, much less the lawyer of tomorrow. Third, this paper will explore the level of internationalization<sup>11</sup> present in United States law schools. This exploration will be done in part by presenting the results of a study recently conducted by the International Legal Education Committee of the ABA's Section on International Law

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3. See *Japan Failing to Honor Trade Pact, Kantor Says*, BLADE, July 26, 1996, at 28.

4. See *Mad Cow Disease Has Britons and Europeans Saying No to Beef* (NBC Nightly News, Mar. 30, 1996).

5. See *It's Official, Foley Picked as Japan Envoy*, SPOKESMAN REVIEW, Aug. 30, 1997, at A1.

6. See *Chrysler Ads in Europe Will Push Yankee Chic*, SAN DIEGO UNION TRIB., Aug. 30, 1997, at WheelsNC5.

7. See John B. Attanasio, *The Globalization of the American Law School*, 46 J. LEGAL EDUC. 311 (1996).

8. But see *infra* notes 96-103 and accompanying text (noting, however, that required and heavily recommended courses still constitute one-half to two-thirds of the credit hours required for graduation, and only one school in the ABA Survey requires a course in international law).

9. See MICHAEL H. HOFFHEIMER, ANDERSON'S 1997 DIRECTORY OF LAW REVIEWS AND SCHOLARLY LEGAL PERIODICALS 18-23 (1997).

10. See JOHN KING GAMBLE, *TEACHING INTERNATIONAL LAW IN THE 1990s* 7 (1992) (noting that as of the 1960s, "probably not more than 25% of the law students elected international law").

11. For the purposes of this article, "internationalization" is used broadly to include all student exposure to international and comparative law, both within and outside of the classroom.

and Practice (the "ABA Survey").<sup>12</sup> This study will be contrasted with previous studies, including the 1963-64 Edwards Survey (the "Edwards Survey")<sup>13</sup> and the 1991 Gamble Survey (the "Gamble Survey").<sup>14</sup> The final section will compare various methods of increasing internationalization and suggest a first step of adding international components to domestic law courses.

## I. DEFINING "INTERNATIONAL LAW"

Legal scholars have defined "international law" as the rules governing the relations between states.<sup>15</sup> Some political scientists argue that based on this definition, international law does not exist.<sup>16</sup> These scholars argue that states do not follow rules when deciding how to act, but rather follow "power politics"—the state does what it can get away with and what is politically expedient. This view is problematic on several levels. First, states normally claim to be bound by certain rules and claim that other states are likewise bound.<sup>17</sup> Thus, states proclaim that international law exists, even though they do not always follow its rules.<sup>18</sup> Second, many state judiciaries enforce these rules even though the will of the sovereign may be to the contrary.<sup>19</sup> Third, there are numerous examples of states behaving in a manner grounded in a sense of obligation rather than expedience.<sup>20</sup> Each of these

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12. The ABA Survey was conducted by the International Legal Education Committee of the Section of International Law and Practice of the American Bar Association. The Survey is set forth in its entirety at the end of this article.

13. See RICHARD W. EDWARDS, JR., *INTERNATIONAL LEGAL STUDIES: A SURVEY OF TEACHING IN AMERICAN LAW SCHOOLS 1963-1964* (1965) (conveying the results of a survey of the 163 ABA-approved law schools).

14. See GAMBLE, *supra* note 10 (reporting the results of a survey regarding the status of international law at United States ABA-approved law schools and Canadian law schools).

15. See Case of the S.S. "Lotus," 1927 P.C.I.J., ser. A, No. 10, at 18; J.L. BRIERLY, *THE LAW OF NATIONS* 1 (1963).

16. See FRANCIS ANTHONY BOYLE, *WORLD POLITICS AND INTERNATIONAL LAW* 3 (1985); see also L. Ali Khan, *Internationalizing the Law School Curriculum*, 22 SYLLABUS 8 (1991) (noting that many smaller law schools fail to appreciate the importance of international law).

17. See Philip C. Jessup, *The Reality of International Law*, 18 FOREIGN AFF. 244-46 (1939-40).

18. Admittedly, such proclamations may be nothing more than part of a complex game of politics.

19. See Jessup, *supra* note 17, at 244; see also *Regina v. Secretary of State for the House Dep't ex parte Sivakumaran*, 2 U.L.R. 92 (1988) (stating that based on the language and drafting history of the Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 2545, "a well founded fear of persecution" required for a claimant to obtain refugee status was a less formidable obstacle than the British Government would have preferred).

20. Evidence of the obligatory nature of international law can be seen from the actions of the executive branch of government, specifically, after French agents destroyed the *Rainbow Warrior* in New Zealand territory. See *Ruling Pertaining to the Differences Between France and New Zealand Arising from the Rainbow Warrior Affair*, 26 I.L.M. 1346,

arguments has a counter-argument, and any government led by people who do not believe in the existence of international law will not feel bound by its terms. In a sense, the "power politics" school, when it convinces people that it is the correct description of the nature of international relations, becomes a self-fulfilling prophecy. In any event, the existence of international law, as classically defined, is not the focus of this paper. There is a long history of scholarship and commentary on the rules governing relations between states, regardless of whether or not the rules are consistently followed. These rules, together with a proper analysis of whether they are indeed rules or merely propaganda, are a classic area of study in international law.

Other legal theorists define international law courses as including studies of other legal systems. Commonly known as comparative law, such courses focus on the various families of law. These families include common law, civil law, socialist law, and Islamic law.<sup>21</sup> Comparative law courses can focus on a singular legal system, such as Mexican law, or an element of a particular system, such as German criminal law.<sup>22</sup> Although disagreement may exist, legal history courses with a foreign focus would also fit in this category of comparative law. Neither Roman Law classes nor English legal history classes teach law as it is practiced today. Like more traditional comparative law courses, however, they provide a variant to purely domestic treatment of legal issues and they help explain how other nations have dealt with these issues.

Another type of international law course deals with interactions between private citizens of different states or between a state and citizens of a different state. These courses include international business transactions, international dispute settlement, international tax, and immigration law. Such courses may look solely at the domestic laws of different states. A course may, for example, define what law a court will apply in resolving a dispute or what United States law requires with regard to the sale of computers to various countries. These courses may also study what types of permits are needed or may look at international conventions between states that affect such interactions, for example, tax treaties or the United Nations Convention on the International Sale of Goods.<sup>23</sup> Some legal theorists argue that these courses are not truly international law courses, but are courses about domes-

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1359 (1987) (noting assurances of cooperation given by the President of the French Republic despite the lack of a binding agreement on mutual criminal assistance). France paid various reparations despite the fact that New Zealand's ability to economically or militarily coerce France seemed extremely limited. However, one could argue that France was concerned about how other states, such as members of the European Community, would react or how failure to pay would affect domestic politics. *See id.* at 1361 (stating the French government's recognition that the attack violated New Zealand's sovereignty and international law).

21. *See Interview with Arthur J. von Mehren*, 29 HARV. INT'L L.J. 293, 294-95 (1988) [hereinafter *von Mehren*] (discussing how comparative law classes are currently taught and how they might be improved).

22. *See id.*

23. *See* United Nations Conference on Contracts for the International Sale of Goods, Apr. 11, 1980, U.N. Doc. A/CONF.97/18, 19 I.L.M. 668 (entered into force Jan. 1, 1988).

tic law's effect on international actors.<sup>24</sup> However, the proliferation of multilateral conventions that govern private relationships and the expansion of international trade make these topics increasingly relevant in international transactions, if not international law.

Other subdivisions of international law can be created to deal with topics such as international organizations or international monetary systems. Most of these courses, however, fit in one or more of the previously described categories.

For purposes of this paper, "international law" includes all of the above described relationships. The fundamental issue is whether international law, as so broadly defined, is an important element in a law student's preparation for practice.<sup>25</sup> As the next section will demonstrate, this family of topics cannot be ignored. Students must become familiar with the issues presented by these areas, or at a minimum, recognize when these issues may arise. Additionally, this broad definition of international law will maximize the total percentage of students who can claim to have taken an international law course. When one observes how few students take an international law course on this broad definition, the full scope of the lack of preparation begins to come into focus. For anyone who sees one of these topics as particularly critical to a student's preparation for practice, the current enrollment figures for any such topic are frighteningly low.<sup>26</sup>

## II. WHY STUDY INTERNATIONAL LAW?

### A. INTERNATIONAL LAW GENERALLY

The fundamental question to be answered is: Why should a law student learn any particular subject in law school? There are three possible answers to this question: (1) the subject is of interest to the student; (2) the subject is inherently worthwhile or enriching; or (3) the subject is useful. Additionally, there are two types of useful subjects: those that provide exposure to substantive facts or information that will be necessary or useful in the future and those that help develop skills or approaches to problems (but not necessarily provide substantive information). Clearly, many legal subjects are worth learning for more than one of these reasons, but not all of the reasons can be given to support learning every subject. Additionally, what one does for a living affects the types of skills and knowledge that will prove useful.

A quick sampling from an undergraduate curriculum may help illustrate this point. If you ask someone why they should take an art or music appreciation

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24. See *Interview with Oscar Schachter*, 29 HARV. INT'L L.J. 273, 276 (1988) [hereinafter *Schachter*]; ASIL PROC. 108, 109 (Apr. 18, 1991) (commentary by David Weston) [hereinafter *Weston*].

25. See Alberto Bernabe-Reifkohl, *Tomorrow's Law Schools: Globalization and Legal Education*, 32 SAN DIEGO L. REV. 137, 152 (1995).

26. See GAMBLE, *supra* note 10, at 7 (indicating that only 30 to 50 percent of law students took international law in the early 1990s).

course, the answer is likely to be, "because it is self enriching," and "because no one should be ignorant of the arts." The justification is based on the subject's enriching character, not on the uses to which the knowledge or skills will be applied. Although an artist or a music teacher may learn useful skills or knowledge (e.g., how the eye is drawn to certain elements in a painting or how to distinguish a sharp from a flat), most will probably never use such knowledge or skills in daily work. A course in nutrition may provide useful facts to help one eat a more balanced diet, but it may not provide any new skills. The value of the course is not the enriching nature of the subject matter, but rather the uses to which the knowledge obtained can be applied. A course in logic will provide useful skills for law, research, or even arguing with friends. It gives a student a framework for approaching problems. However, it is unlikely that one will ever need to know the rules applicable to boolean algebra or categorical syllogisms in the course of one's personal or professional life. Some subjects fit more easily into multiple categories. A cooking course, for instance, provides useful skills, useful facts, and is inherently enriching. Of course, studying a subject because it interests you is another reason, but given the subjective nature of personal preferences, it is not likely to be a reason that a person would use to convince another to undertake similar studies.<sup>27</sup>

The definition of international law affects the potential reasons why, as a subject, it is valuable to know. Thus, the reasons for studying comparative law may be very different from the reasons for studying international business transactions. It is relevant, therefore, to examine the reasons for studying each of the three areas of international law.

In looking at the reasons to study international law, worthwhile inquiry can be made into both the skills and the knowledge it provides. On the other hand, attempting to persuade someone to study a subject because of the speaker's interest in the subject or the inherently worthwhile or enriching character of any subject is unlikely to be persuasive if the listener is not already inclined toward the subject. Most of us tend to think that the subjects we find interesting are inherently worthwhile and should be a mandatory course of learning. Conversely, subjects we are not interested in are frequently dismissed. Thus, the issue of which subjects are enriching is highly controversial and subjective. For example, it may seem inconceivable for a student to consider herself educated in the law without a basic understanding of different legal systems and of how states interact with each other. On the other hand, she may not be overly concerned with a lack of knowledge about sports law, even though sports permeate our daily culture in the United States. Some, however, would see this issue in an opposite light. In short, although many of us think the study of international law is inherently worthwhile, this belief is unlikely to be persuasive to others.

Furthermore, the inherently enriching nature of international law has not changed in a meaningful way in the modern era. Just as it was intrinsically valuable to know international law one hundred years ago, so, too, is it valuable today.

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27. See Weston, *supra* note 24, at 109 (indicating student or faculty interest as a reason to study international law).

Changes in the modern world, however, have significantly affected the value and the usefulness of the skills and knowledge that studying international law provide.<sup>28</sup> These world changes make the need to study international law more pressing than ever before and the consequences of failing to study it more severe. What world events have increased the value of having the knowledge and skills provided by studying international law? What knowledge and skills are acquired in studying international law that are needed in today's world?

The world has become more international on many different levels.<sup>29</sup> The world has evolved from largely independent societies, to a multicultural, interdependent, interconnected collective.<sup>30</sup> Many feel this trend will continue and that the world will become increasingly more international. Worldwide communication and transportation are convenient, commonplace, and affordable. People travel to foreign countries in unprecedented numbers, and often enjoy it so much that they buy vacation properties abroad. Every day more people communicate efficiently with people outside their country, whether by phone, facsimile, e-mail, overnight courier, or the Internet.

Business has never been more international, and the rate of growth has been exponential.<sup>31</sup> The number of multinational corporations has grown from a handful in the 1960s to the point where guides to multinational corporations now limit themselves to the largest five hundred companies.<sup>32</sup> These companies manufacture, sell, and incorporate subsidiaries abroad.<sup>33</sup> This is a multidirectional trend. Japanese manufacturers have plants in the United States, Europe, and lesser developed nations.<sup>34</sup> United States companies have factories in Asia,<sup>35</sup> Europe, and Latin

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28. See Bernabe-Riefkohl, *supra* note 25, at 137-38 (explaining that due to global economic, social, and political changes, the modern practice of law should be designed to meet these changes).

29. See von Mehren, *supra* note 21, at 298.

30. See *id.*

31. See Schachter, *supra* note 24, at 276; Joel R. Paul, *The New Movements in International Economic Law*, 10 AM. U. J. INT'L L. & POL'Y 607, 612-13 (1995).

32. See WORLDWIDE BRANCH LOCATIONS OF MULTINATIONAL COMPANIES; DIRECTORY OF MULTATIONALS (David S. Hoopes, ed. 1994).

33. See Susan Saltonstall Duncan, *Preparing for New Practice Areas*, N.J.L.J., June 2, 1997, at 31 (explaining that most Fortune 500 companies in manufacturing and services experienced recent growth mainly in foreign markets, and that American-based companies see greater than 50% of their growth outside of the United States); Mike Seemuth, *Latin America Grows, Capital Flows*, BROWARD DAILY BUS. REV., Aug. 22, 1997, at A4 (discussing fast-food franchise expansion by Burger King, McDonalds, and Kentucky Fried Chicken in Latin America).

34. See *Manufacturers Alliance Reports on Implications of Foreign Investment in U.S. Manufacturing*, available in Lexis, Nexis Library, Cumews File, Aug. 4, 1997 (noting that of 80% of foreign investment in United States manufacturing affiliates, Japanese investment constitutes 11%).

35. See James Harding, *Early Setbacks Aside, Foreign Car Companies Are Keen to Stay in China Because of Its Huge Potential*, FIN. TIMES, June 25, 1997, at 29 (discussing Ford Motor's investment in Chinese auto plants).



America; European companies are similarly spread out. Equally significant is the rise of small domestic companies looking abroad for new markets and facing new competition from abroad.<sup>36</sup> United States international trade amounted to \$753.64 billion in exports and \$635.94 billion in imports in 1995.<sup>37</sup> Capital is also moving globally, with Japanese companies developing ski resorts in Colorado and United States retirement plans investing in the Japanese stock market.<sup>38</sup> In 1990, the United States had over forty-three billion dollars invested in the finance and service sectors in underdeveloped countries.<sup>39</sup> As clients have moved abroad, so have their lawyers, and the number of foreign legal consultants practicing abroad continues to grow.<sup>40</sup> With increasing globalization, business is not the only thing that has become international. Both business and personal disputes increasingly exist between parties residing across borders.<sup>41</sup>

On an inter-governmental level, of course, issues have always been international in scope. Several global developments have occurred, however, making governments more concerned with international issues than in the past. First, growth in international trade, travel, and communication has forced governments to be concerned with protecting their citizens abroad, both physically and financially.<sup>42</sup> A correlative development has been the increase in the scope and nature of domestic regulations on international interaction.<sup>43</sup> Additionally, problems facing the modern industrial world increasingly transcend national boundaries; environmental pollution, for example, stubbornly refuses to stay within national bounda-

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36. See Lawrence Richter Quinn, *Global Warning*, SALES & MKTG. MGMT., available in WESTLAW, Allnews Library, Apr. 1, 1997 (noting the case of a California-based privately held company, Advance Gear and Machine Corp., which shifted its domestic sales focus to international expansion and marketing efforts).

37. See DIRECTION OF TRADE STATISTICS at 2, 4 (Sept. 1996).

38. See Jeffrey Lieb, *Australia, Japan Maintains Rapid Pace of Investment in Colorado*, DENV. POST, Apr. 10, 1990, at 1C.

39. See Bernabe-Riefkohl, *supra* note 25, at 148.

40. See, e.g., Andrew Pardieck, *Foreign Legal Consultants: The Changing Role of the Lawyer in a Global Economy*, 3 IND. J. GLOBAL LEGAL STUD. 457 (1996) (demonstrating the need for more foreign counsel in international practice); Roger J. Goebel, *Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap*, 63 TUL. L. REV. 443 (1989); Bernabe-Riefkohl, *supra* note 25, at 149. For an in-depth analysis of the current state of the transnational practice of law, see Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1994) (analyzing the current state of transnational legal practice).

41. See W. MICHAEL REISMAN ET AL., INTERNATIONAL COMMERCIAL ARBITRATION (1997); GARY B. BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS (1996).

42. See Jane L. Garwood-Cutler & R. John Pritchard, *Domestic Adjudication of International Law Violations*, 146 NEW L. J. 527 (1996) (noting the recent trend in United States courts downplaying sovereign immunity provisions in cases of torture).

43. See, e.g., LUCINDA A. LOW ET AL., THE INTERNATIONAL LAWYER'S DESKBOOK (1996); RALPH H. FOLSOM & MICHAEL W. GORDON, INTERNATIONAL BUSINESS TRANSACTIONS (1995).

ries. Whether due to these developments or not, the result has been an explosion in the number of international conventions and treaties.<sup>44</sup> By 1995, the list of treaties to which the United States was a party was one hundred and forty-five pages.<sup>45</sup> There has also been a significant growth in governmental and non-governmental international organizations.<sup>46</sup> By 1995, there were over fifty major intergovernmental organizations,<sup>47</sup> and in 1992, the OECD listed over six hundred international non-governmental organizations in its member states.<sup>48</sup>

It should not be surprising to anyone that an international world requires increased international legal knowledge and skills.<sup>49</sup> For a few, the practice of law has been international in scope for a long time. Immigration lawyers, for example, have always considered international legal issues, broadly defined. For these lawyers, all that has changed are some of the particular rules and the number of clients.<sup>50</sup> Similarly, in major urban centers, a small group of businesses and corporate lawyers have had to deal with international business transactions for centuries.<sup>51</sup> Finally, a segment of the government workforce has always had careers directed toward the international arena.<sup>52</sup> This small group, however, has grown into the bulk of the bar.<sup>53</sup>

## B. COMPARATIVE LAW

Each area of international law supplies slightly different knowledge and skills. Comparative law can provide important knowledge about the laws of other jurisdictions. For example, studying the laws of Mexico will better prepare a lawyer to assist clients in Mexico. Additionally, this lawyer will have learned something about the culture and business practices of Mexico, thereby allowing him or her to

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44. See John W. Head, *Supranational Law: How the Move Toward Multilateral Solutions Is Changing the Character of "International" Law*, 42 U. KAN. L. REV. 605, 606 (1993-94) (arguing that due to a number of factors, the concept of supranational law has come to supplant that of international law).

45. See TREATIES IN FORCE at 313-458 (1996).

46. See Head, *supra* note 44, at 606.

47. See BRIAN HUNTER, THE STATESMAN'S YEAR-BOOK 3-58 (1995-96).

48. See Org. FOR ECON. COOPERATION & DEV., DIRECTORY OF NON-GOVERNMENTAL ENVIRONMENT AND DEVELOPMENT ORGANISATIONS IN OECD MEMBER COUNTRIES (1992).

49. See Interview with Rudolf B. Schlesinger, 29 HARV. INT'L L.J. 280, 283 (1988).

50. See INS Wants to Double Fee to Process New Citizens, S.F. CHRON., Aug. 8, 1997 (reporting a record number of immigrants applying for naturalization).

51. See REISMAN, *supra* note 41, at 202 (discussing the concept of *lex mercatoria*, which developed in medieval times.)

52. For example, one only needs to examine the diplomatic corps and other offices of the State Department or similar agencies in other governments.

53. See John F. Murphy, *Present (Almost) at the Creation*, 42 U. OF KAN. L. REV., 499, 504 (1993-94) (predicting that the explosive increase in transnational litigation will affect even small town law practices); Pardieck, *supra* note 40, at 457 (noting that as small and medium sized United States businesses become active in foreign markets, international trade and business are likely to become everyday concerns of many lawyers).

negotiate and structure agreements more easily and effectively.<sup>54</sup> Such cultural awareness not only saves the client time and money in closing the deal, but also increases the likelihood for success of the venture. Unfortunately, it is difficult to predict which country's laws may come into play in a particular practice. For a lawyer living in Arizona, Mexican law might be a good guess, but even in Phoenix, a lawyer may have a major Japanese client. What if the lawyer lives in New York City? Additionally, a lawyer's client list changes and attorneys relocate. Thus, although knowledge of the laws of a particular country may prove useful to the lawyer's practice and may be attractive to particular employers, such knowledge does not seem to be the most compelling reason to study comparative law.

A far more important reason to study comparative law is the skills it provides. Comparative law demonstrates how other societies handle various legal issues.<sup>55</sup> This awareness can assist a practitioner in honing several different skills necessary to deal with international clients or domestic clients doing business overseas.

First, most legal systems fit into a family of legal systems. There are widely regarded to be six families of law.<sup>56</sup> Therefore, knowledge of one legal system will provide a basic familiarity with the structure and approach of other legal systems in that family. For example, while a lawyer well-versed in Mexican law working with a case based on Argentine law will have to learn the rules of the new jurisdiction, these rules frequently will be similar. More importantly, the rules will be understood in the context of how that legal system is likely to work. In other words, studying comparative law gives a context in which to understand the particular rules of a given government.<sup>57</sup> This understanding is crucial to giving competent advice to clients. It is also crucial to properly interacting with local counsel.

Second, studying the complexities of another legal system effectively demonstrates the differences between various legal systems and cultures.<sup>58</sup> Comparative law courses also allow students to realize the lack of depth in their knowledge of other legal systems. This recognition of ignorance is a powerful ally. It prepares students for the learning that must be undertaken. Effective lawyers cannot enter negotiations or cases with a blind eye, thinking that everything will be as it is in

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54. See von Mehren, *supra* note 21, at 296; Goebel, *supra* note 40, at 454-60 (noting that in courses dealing with negotiation, teaching cross-cultural and legal aspects could contribute substantially to student preparation for dealing with foreign clients).

55. See Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945, 959 (1991).

56. See generally RENE DAVID & JOHN E. C. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* (1978) (analyzing differing legal theories and jurisprudence throughout the world).

57. See von Mehren, *supra* note 21, at 296 (addressing the importance of providing a comparative dimension in legal education); Goebel, *supra* note 40, at 444-54 (discussing the practice of transnational law).

58. See Whitmore Gray, *The Challenge of Asian Law*, 19 FORDHAM INT'L L.J. 1, 3-4 (1995) (acknowledging the need for law students in the United States to know how to deal with Asian clients, specifically, and foreign clients, in general); Goebel, *supra* note 40, at 457 (arguing the benefits of a year of study in a foreign country after getting a JD degree).

the United States. Additionally, studying a different legal system teaches students that there are many different ways of handling similar issues. This awareness forces students and lawyers to focus on the issues that are critical to a client, rather than on a particular legal regime. With experience, practitioners develop a methodology for learning the critical elements about the legal system and culture one is working in and for questioning basic assumptions that would be taken for granted in a domestic transaction. How strictly are contracts construed? Is equitable relief available? What are the ramifications of suing someone? Are there juries? These skills are readily transferable from one legal system to another.

Comparative law can also be of benefit in the purely domestic context. By showing that there are multiple approaches to the same problem and by teaching students to question the basic assumptions of a legal order, students can develop creativity in structuring business deals and legal arguments. Especially for those students that use their law degree to enter government, seeing multiple approaches helps remove the blinders of tradition and promotes innovative and more effective solutions to problems.

### C. PUBLIC INTERNATIONAL LAW

The study of classic international law, the rules governing interactions between states, has somewhat different benefits.<sup>59</sup> Knowledge of public international law may provide useful skills for dealing with the uncertainties and ambiguities inherent in international business transactions.<sup>60</sup> It also provides a useful grounding in the nature and source, as well as the limitations, of the power of a government.<sup>61</sup> For example, a better understanding of the limits imposed on United States law by international law is demonstrated by human rights law, which helps courts to uphold the basic rights of its nation's citizens.<sup>62</sup> Traditionally, litigators have not

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59. Some noted internationalists have stated that there is actually already sufficient interest in public international law. See *Interview with Louis Henkin*, 29 HARV. INT'L L.J. 252 (1988) [hereinafter *Henkin*].

60. See *id.* at 256. Interestingly, Henkin has also asserted that one needs to know something about transnational law to truly understand how international law works.

61. See, e.g., Martin A. Rogoff, *Interpretation of International Agreements by Domestic Courts and the Politics of International Treaty Relations: Reflections on Some Recent Decisions of the United States Supreme Court*, 11 AM. U. J. INT'L L. & POL'Y 559, 568-69 (1996) (positing that a court's interpretation of an international agreement should consider the objectives of that agreement, especially when explaining the scope of the agreement); Patrick M. McFadden, *Provincialism in United States Courts*, 81 CORNELL L. REV. 4, 5 (1995) (discussing provincialism in U.S. courts and the laws that tend to minimize the importance of international law). But cf. Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 816 (1997) (criticizing the doctrine that customary international law should have the status of federal law).

62. See Rogoff, *supra* note 61, at 582-83; cf. McFadden, *supra* note 61, at 38 (stating that courts often are unaware of international aspects of a case and incorrectly assume international sources are the same as domestic ones).

looked to international law in framing legal arguments before United States courts, and these courts have often misapplied or misconstrued international law. This is due, in part, to ignorance as to its sources and the relative weight to accord to these sources.<sup>63</sup> However, with a better understanding of international law, the courts will have the tools necessary to properly apply that law, and litigators will be able to properly argue relevant issues of international law before these courts.<sup>64</sup>

Furthermore, the United States has numerous duties and obligations under international law, and the parties primarily responsible for ensuring compliance are the three branches of government. Two branches draw heavily from the ranks of the legal profession and the third is made up almost exclusively of law school graduates.<sup>65</sup> If those responsible for ensuring that the United States complies with its international obligations are ignorant of those obligations and international law generally, United States obligations will likely remain unfulfilled.<sup>66</sup> This may explain, at least in part, why the United States has an unimpressive record with regard to its international obligations.<sup>67</sup> In a world with increased interdependency between nations, and with numerous multilateral treaties and conventions, in order to ensure compliance and credibility it is important for leaders to understand when and how international law imposes obligations on the United States.<sup>68</sup>

Another equally significant benefit of studying public international law is the factual knowledge it provides. In applying international law to legal disputes, judges are forced to become familiar with the specific laws, not just the general nature of international obligations.<sup>69</sup> The proliferation of multilateral treaties and conventions makes knowledge of them increasingly important to the average prac-

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63. See generally Rogoff, *supra* note 61, at 613 (finding courts often look to domestic law when interpreting international agreements and conventions); McFadden, *supra* note 61, at 29 (stating that the recurring judicial argument that the executive branch can best resolve international legal problems, together with the existence of many rules that prevent international law from providing the rule of decision in American cases, encourage courts to treat international cases as if they were domestic ones).

64. See McFadden, *supra* note 61, at 63-65 (stressing that judges and lawyers should be educated about international law).

65. See, e.g., ALMANAC OF THE FEDERAL JUDICIARY (1996); BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774-1989 (1989).

66. But see Henkin, *supra* note 59, at 256 (noting that understanding international law requires an understanding of transnational law).

67. See McFadden, *supra* note 61, at 37 (stating that international law is generally unknown, not frequently raised, and unusual); Rogoff, *supra* note 61, at 567-68 (examining the Supreme Court's restrictive approach in interpreting international agreements).

68. See Interview with Milton Katz, 29 HARV. INT'L L.J. 259, 264 (1988) [hereinafter Katz]; Head, *supra* note 44, at 620-35 (discussing the role of international organizations in international law); Rogoff, *supra* note 61; McFadden, *supra* note 61, at 30-35 (discussing the harmful effects U.S. provincialism can have on U.S. courts, the United States as a nation, and international law generally).

69. See McFadden, *supra* note 61, at 35-37 (describing the harms of provincialism in the United States domestic courts' application and understanding of international law).

itioner.<sup>70</sup> Cases involving human rights and international environmental law will increasingly be heard in domestic courts, as will cases involving treaties and conventions that regulate an individual's actions within a state.<sup>71</sup> The penetration of international law into domestic law continues to grow due not only to numerous international agreements, but also to the formation and growth of supranational organizations, which increasingly create domestic law.<sup>72</sup> Even though the formulation of binding decisions and regulations by supranational organizations—such as the European Court of Human Rights, the European Court of Justice, and the European Union Commission—is a more common occurrence in the European Union, the United States has also started down this path.<sup>73</sup>

The North American Free Trade Agreement ("NAFTA")<sup>74</sup> and the World Trade Organization ("WTO")<sup>75</sup> provide for various international dispute resolution panels. Although the United States must incorporate such panel decisions into its domestic law, it is beginning to look beyond its national borders for sources of law. In addition, to serve fully their clients' interests, it is important for attorneys to have knowledge of how these international entities actually work. The treaties that create these entities contain procedures for dispute settlement as well as for the protection of people and businesses in member countries. Whether one represents an American mother whose child has been taken to France, broom manufacturers,<sup>76</sup> or tomato growers, knowledge of such conventions and organizations is necessary to provide complete legal representation of one's client. Today it is important to know when emergency protection from imports is available under the NAFTA and when anti-dumping and countervailing duties are permissible under the WTO. An understanding of international conventions also requires knowledge

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70. See Head, *supra* note 44, at 621-35 (outlining multilateral conventions such as the General Agreement on Tariffs and Trade and the Bretton Woods Conference agreement creating the International Monetary Fund as examples of ever-evolving international agreements).

71. See, e.g., CISG, *supra* note 23; Convention on the Civil Aspects of International Child Abduction, 19 I.L.M. 1501 (Oct. 25, 1980); McFadden, *supra* note 61, at 5-8. *But cf.* Bradley & Goldsmith, *supra* note 61 (arguing that federal common law ought not to incorporate customary international law).

72. See Head, *supra* note 44, at 621-35 (outlining the new roles of international organizations).

73. See e.g., AM. SOC'Y. INT'L LAW, PROC. OF THE 85<sup>TH</sup> ANN. MEETING (1991) (Commentary of Elisabeth Zoller); David M. Trubek, et al., Symposium, *The Future of the Legal Profession: Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407 (1994) (analyzing the effects of the EC and NAFTA on the practice of law).

74. See North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 605 (entered into force Jan. 1, 1994).

75. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194.

76. See e.g., *Broom Firms Blame Loss on NAFTA*, BLADE, July 30, 1996, at 1 (describing small broom makers who were affected by a 32 percent tariff on Mexican brooms imported into the United States).

of the scope of activities of international non-governmental organizations ("NGOs"). Some NGOs, like the European Bank for Reconstruction and Development,<sup>77</sup> are valuable sources of funding for projects, while others, like Earthwatch and Amnesty International, affect issues involving pollution or workplace conditions. Understanding how these groups function, as well as what their roles are in creating, monitoring, and enforcing international law, is increasingly necessary as private practitioners interact more with NGOs and as NGOs provide more international legal career opportunities.<sup>78</sup>

#### D. INTERNATIONAL BUSINESS TRANSACTIONS

By examining how private citizens of two or more nations interact or how governments interact with citizens of another state, one gains a sensitivity for the type, nature, and scope of regulations that governments impose on international interaction, as well as the basic skills necessary to negotiate and structure international ventures. Without prior coursework in international business transactions, a practitioner may fail to obtain an export license before shipping products abroad, fail to consider tax consequences in competing jurisdictions, or be unfamiliar with foreign reaction to a standard, but lengthy, United States contract. Tax and export regulation laws change from country to country, but the awareness of the need to deal with these issues, and the ability to develop common strategies to deal with them, are basic skills every attorney needs to know.

Studying international business law, moreover, provides useful knowledge about laws that potentially apply to international transactions. Failure to know such regulations leads not only to embarrassment, but also to substantial financial exposure for your client and possibly a malpractice action.<sup>79</sup> Foreign participation in transactions, even inside the United States, may trigger numerous domestic laws, some of which have surprising reach and significant ramifications.<sup>80</sup> Unfortu-

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77. See Head, *supra* note 44, at 635-649.

78. See *id.* at 368 (commentary by Michael Scharf) (describing United States government efforts to further the United Nations Decade of International Law); see also AM. SOC. INT'L LAW, PROC. OF THE 87TH ANN. MEETING, 358, 360-362 (1993) (commentary by Hans Corell) (delineating national objectives that he suggests be adopted to further the United Nations Decade of International Law, including an explanation of what NGOs, universities, and other educational institutions can do).

79. See AM. SOC. INT'L LAW, PROC. OF THE 85TH ANN. MEETING, *supra* note 73, at 120 (remarks of Anthony D'Amato) (challenging the stand that it does not matter whether law students take international law courses).

80. See, e.g., Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. §§ 3501-3508 (1994) [hereinafter Agricultural Foreign Investment Disclosure Act] (providing for penalties of up to 25 percent of the value of a parcel of land owned by a foreigner for failure to file information related to such foreign ownership); International Investment Survey Act of 1976, 2 U.S.C. §§ 3101-3108 (1994) [hereinafter Investment Survey Act] (providing the President with authority to gather information on United States investment abroad and foreign investments within the United States by authorizing a benchmark survey to gather financial and employment data).

nately, because most American attorneys do not even know these laws exist, they cannot consider their legal ramifications in a particular transaction. One can only imagine the number of real estate attorneys that previously have, and will continue to engage in, sales of property to foreigners based on the belief that such sales are subject to the same legal requirements as sales to domestic parties. Unfortunately, these attorneys remain blissfully unaware of the potential liabilities under the Agricultural Foreign Investment Disclosure Act and the International Investment and Trade in Services Act.<sup>81</sup>

The threat of malpractice is not the only reason attorneys must have knowledge of international business law. The depth and breadth of international business in the modern world means that virtually every attorney, from New York City to Topeka, Kansas, has clients with international legal needs.<sup>82</sup> Even baseball, "America's pastime," has a significant percentage of its professional games abroad.<sup>83</sup> When a player for the Mets earns part of his salary playing in Montreal, must he pay Canadian income tax? Furthermore, all indications are that the trend in business is toward more internationalization, not less.<sup>84</sup> Given the client's need for legal advice on international legal matters, attorneys must either know international law or risk losing clients to other attorneys who can meet such needs.<sup>85</sup> Attorneys with manufacturers or distributors as clients must be prepared to advise their clients on creating enforceable contracts for purchases and sales from abroad, the scope of foreign products liability law, and the licenses needed to export or import products. Lawyers with service providers as clients must structure transactions so that tax rates do not capture the majority of profits and, additionally, so that the clients obtain the appropriate visas.

The need for the practitioner to know international law is not limited to the business attorney. The proliferation of international transactions will invariably result in a growth in international disputes. Litigators increasingly find themselves representing or suing foreigners.<sup>86</sup> The modern day litigator, whether defending

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81. See Agricultural Foreign Investment Disclosure Act, *supra* note 80; Investment Survey Act, *supra* note 80.

82. See Lucinda A. Low, *Virtually All Areas of Law Profession Face Globalization*, THE NAT'L L.J., Aug. 5, 1996, at C9; Murphy, *supra* note 53, at 504; see also Terry W. Schackman, *Reflections in a Rock Garden: A Civic Commitment to International Understanding*, 42 U. KAN. L. REV. 531, 531 (1994) (stating that it is obvious that international implications of business transactions are significant); Pardieck, *supra* note 40, at 457 (analyzing the changing role of lawyers in a global economy in terms of the creation of foreign legal consultant partnerships with American attorneys); Katz, *supra* note 68, at 259 (discussing the importance of international legal studies for current students).

83. For example, in the American and National Leagues, the home games of the Toronto Blue Jays and the Montreal Expos are "games abroad" for the United States teams.

84. See *Overseas Privatization Drives Global Business Trends*, Phillips Exec. Says, PETROLEUM FIN. WK., Aug. 11, 1997, available in 1997 WL 7815235.

85. See *Profession Watch*, OF COUNSEL, Sept. 17, 1990, at 16.

86. See Houston Putnam Lowery & Peter W. Schroth, *Survey of 1994 Developments in International Law in Connecticut*, 69 CONN. B.J. 143, 156 (1995) (providing specific ex-



against a product's liability claim or bringing suit because a foreign purchaser failed to pay for delivery of a product, must know the peculiarities of transnational legal dispute settlement. Will a judgment from one jurisdiction be enforced in another? Might the case turn on how process was served?<sup>87</sup> Which law will be applied to decide the case? How do these issues affect choice of venue? Litigators can no longer afford to be ignorant of international law.<sup>88</sup>

Regardless of a lawyer's specialty, he or she must know something about international law to compete in tomorrow's market.<sup>89</sup> The Internet further exacerbates this need.<sup>90</sup> The World Wide Web allows inexpensive worldwide advertising for products in a way unprecedented in history—no doubt accelerating the brisk pace of international trade. Unfortunately, worldwide advertising via the Internet also allows the dishonest to infringe on an owner's copyright interest from the safety of a country that inadequately protects intellectual property.<sup>91</sup> Furthermore, the ability to send solicitations instantaneously, and virtually without cost, by electronic mail creates the possibility of "pyramid" schemes on a previously unheard-of scale.<sup>92</sup> Business attorneys and litigators certainly have significant international work to keep them busy for years to come.

Based on the foregoing information, it should be apparent that today's law school graduates need a basic grounding in international law to be prepared for practice.<sup>93</sup> Even though most attorneys still do not have a daily practice involving

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amples of Connecticut cases implicating international law, such as service of process of documents in Japan).

87. See Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361-73, 658 U.N.T.S. 163 (detailing the numerous procedural requirements for extraterritorial service).

88. See Lowery & Schroth, *supra* note 86, at 157.

89. See Low, *supra* note 82, at C9 (citing the effects of modern communications, booming international commerce, and other factors as the reasons that domestic lawyers face international issues in their everyday practices); Schackman, *supra* note 82, at 532 (stating that lawyers can bridge differing international cultural values by understanding more about global implications of specific legal cases); Pardieck, *supra* note 40, at 478-79 (arguing that an additional benefit of the creation of foreign legal consultants is that they can develop international transactional work that was previously nonexistent).

90. See Roberta Cooper Ramo, *A Practitioner Looks at Globalization*, 46 J. LEGAL EDUC. 313, 313-14 (1996) (stating that people now live in both a global economy and a global society, using as an example New Mexico's legal profession).

91. For a comprehensive compilation of international and regional copyright agreements, as well as the United States' obligations under both, see WILHELM NORDEMANN ET AL., *INTERNATIONAL COPYRIGHT* (1990).

92. See BENJAMIN WRIGHT, *THE LAW OF ELECTRONIC COMMERCE: EDI, E-MAIL AND INTERNET: TECHNOLOGY PROOF AND LIABILITY* (1996) (describing, as an emerging topic, Internet security breaches and their meaning for electronic commerce).

93. See *Interview with Myres S. McDougal*, 29 HARV. INT'L L.J. 266, 269 (1988) (arguing that every student who goes through law school should have a sense of the role and relevance of international law); Stein, *supra* note 55, at 958 (contending that substantial internationalization of law school curricula is inevitable over the next decade because law schools must prepare students for global practice); see also *ILJ Survey: Curricula, Extra-*

international law, gone are the days when only a handful of attorneys in major urban areas were required to understand international legal issues. Whether rural or urban, big firm or small, lawyer or judge, litigator or business attorney, nearly all attorneys today face international legal issues in their practices, and the frequency of such issues will only increase. While one might disagree about relative values of various types of international law courses, it is virtually impossible to ignore the need for today's law students to be exposed to international law.

### III. CURRENT STATE OF INTERNATIONAL LEGAL EDUCATION

In many ways, the current state of internationalization of U.S. legal education is encouraging. Never before have so many international law courses been offered by so many schools. In addition, ancillary international activities, such as summer abroad programs, international law reviews, international moot court competitions, and advanced degrees, all appear to be flourishing.<sup>94</sup> Unfortunately, the vast majority of law students continue to graduate from law school without any meaningful background in international law.<sup>95</sup>

Almost everyone has the opportunity to take a course in international law. Every school that responded to the ABA Survey indicated that its curriculum included at least one international law course.<sup>96</sup> The Gamble Survey from 1991 indicated that ninety-eight percent of all law schools in the United States and Canada offered at least one course in international law.<sup>97</sup> This is a significant increase from the seventy-nine percent of schools in the sixties and the twenty-six percent in 1938.<sup>98</sup>

Today, most law schools offer multiple international law courses. In 1938, practically no schools offered an international law course other than a survey course in public international law.<sup>99</sup> In 1961, only forty-three law schools offered

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*curricular Activities, and Placement Programs in International Law*, 29 HARV. INT'L L.J. 299, 305 (1988) [hereinafter *ILJ Survey*] (arguing for new ideas in international legal education and discussing the role of student international law organizations in increasing awareness of international law subjects within the student body).

94. See *Schachter*, *supra* note 24, at 273; see also *Remarks of John King Gamble, Jr.*, ASIL PROC. 102, 106 (Apr. 18, 1991); *ILJ Survey*, *supra* note 93, at 305-12.

95. See *infra* notes 118-132 and accompanying text (setting forth the ABA Survey and its findings related to international legal studies).

96. See *ABA Survey*, *infra* app., at 1007-1010. However, the ABA Survey adopted a relatively broad definition of what constitutes an international law course. For example, it includes topics that some might not include in a list of international offerings such as Civil Law, Immigration, and English Legal History. See *id.* at 1007, 1008. Additionally, unlike the Edwards and Gamble surveys—which had almost 100 percent response rates—the ABA Survey had only a 40 percent response rate. See *id.* at 1001 n.2. It is nevertheless representative in terms of the responses it reflects. See *id.*

97. See *GAMBLE*, *supra* note 10, at 121 (charting international law course offerings from 1912 to 1991).

98. See *EDWARDS*, *supra* note 13, at 5; see also *GAMBLE*, *supra* note 10, at 121.

99. See *GAMBLE*, *supra* note 10, at 120 (discussing the historical absence of interna-

three or more international law courses.<sup>100</sup> In contrast, only one school responding to the ABA Survey indicated that it offered only one course in international law, and only four other schools indicated that they offered only two courses.<sup>101</sup> Additionally, ninety percent of the schools responding indicated offerings of five or more international courses.<sup>102</sup> The breadth of the courses is impressive, with schools offering almost forty international law subjects and over twenty different courses on specific country or region legal systems.<sup>103</sup>

One of the greatest areas of growth is the availability of international business law courses. At the time of the Edwards Survey, ninety-one percent of law schools offered a survey course in public international law and twenty-one percent offered an international business law course.<sup>104</sup> According to the ABA Survey, by 1996, ninety-nine percent of law schools offered a public international law course and ninety-one percent (91.43 percent) offered an international business law course.<sup>105</sup> The ABA Survey also indicates that in 1996, eighty-four percent (84.29 percent) of surveyed schools offered comparative law courses, an increase from fifty percent in 1963-64.<sup>106</sup>

Other aspects of legal education also show encouraging signs with regard to internationalization. This is demonstrated by the tremendous growth in summer abroad programs. In 1986, for example, only 40 programs existed. By 1995, there were 115.<sup>107</sup> More importantly, the number of schools with such programs increased dramatically, from twenty-four schools in 1985 to sixty-one schools in 1995.<sup>108</sup> The growth in the number of summer abroad programs indicates increased student interest. In addition, the increased number of schools hosting such programs translates into greater percentages of faculty spending time abroad.<sup>109</sup> Such

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tional law courses in law school curricula).

100. See EDWARDS, *supra* note 13, at 5 (listing law schools with international law courses).

101. See ABA Survey, *infra* app., at 1007-1010; see also *id.* at 1001 n.2 (noting that a disproportionate number of smaller schools responded to the ABA Survey which may mean that an even higher percentage of schools have multiple international offerings, given that larger schools invariably have more course offerings of almost every type).

102. See *id.* at 1007-1010.

103. See *id.*; see also John O. Haley, *Educating Lawyers for the Global Economy*, 17 MICH. J. INT'L L. 733, 736 (1996) (book review) (noting that over a dozen schools offer a course in Japanese law today, whereas only two did in 1971).

104. See EDWARDS, *supra* note 13, at 57, 153.

105. See ABA Survey, *infra* app., at 1007 (indicating that sixty-nine out of seventy schools offer public international law and sixty-four out of seventy offer international business transactions).

106. See *id.* (calculating fifty-nine out of seventy schools offer comparative law courses).

107. See Ken Myers, *World Gets Smaller as Number of International Programs Grows*, NAT'L L.J., Dec. 11, 1995, at A16; See also CONSULTANTS DIG., Nov. 1995, at 6; Bernabe-Riefkohl, *supra* note 25, at 155.

108. See Myers, *supra* note 107, at 6.

109. See ABA Survey, *infra* app., at 1005, § E(iv) & (vi) (regarding faculty teaching

experiences abroad should encourage professors to include an international element in their courses when they return.<sup>110</sup>

The percentage of post-graduate degree programs with an international element, however, remains around thirty percent.<sup>111</sup> This is unfortunate because schools with advanced degree programs in international law report significantly more international course offerings, which hopefully induces a higher percentage of law students to take at least one international law course. This correlates to a higher percentage of students graduating with at least one completed international law course.<sup>112</sup>

Other developments include the fact that eleven percent of law schools surveyed offer a concentration in international law.<sup>113</sup> Furthermore, over seventy-five percent of schools surveyed have both an international law society and Jessup International Moot Court Competition teams.<sup>114</sup> Additionally, thirty-seven percent of responding schools have an international or comparative law journal,<sup>115</sup> with seventy total international law journals being published by U.S. law schools in 1997.<sup>116</sup> Finally, over thirty percent of surveyed schools have a faculty exchange program.<sup>117</sup>

With all these international offerings and activities, one may conclude that today's law student will be well-prepared for the increasingly international nature of legal practice. Unfortunately, a more probing examination reveals a dimmer picture. According to the ABA Survey, the percentage of students graduating with at least one completed international law course is, at most, thirty-seven percent.<sup>118</sup> As this survey indicates, however, this figure is almost certainly high.<sup>119</sup> Using the maximum enrollment figures<sup>120</sup> for international law courses provided by the law

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abroad).

110. See *id.* (showing that summer abroad offerings directly correlated to the number of faculty that spent time abroad); see also Murphy, *supra* note 53, at 504 (discussing the benefits of professors spending time abroad).

111. See *id.* at 1004, § E(i)-(ii); see also EDWARDS, *supra* note 13, at 23. See generally RICK L. MORGAN, ABA: A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES (1995).

112. But see ABA Survey, *infra* app., at 1003 n.4 (noting that the percentages may be inaccurate since the advanced degree students take multiple international law courses, thereby inflating enrollment figures).

113. See *id.* at 1003, § E(iii) (showing eight schools offer a concentration in international law and one school is developing such a program).

114. See *id.* at 1006, § E(vii)-(viii).

115. See *id.* at 1005 n.13 & § E(v) (identifying 13 schools with International Law Reviews/publications, but stating that this number may be low since there was no specific question about international law reviews).

116. See generally HOFFHEIMER, *supra* note 9.

117. See ABA Survey, *infra* app., at 1005, § E(vi).

118. See *id.* at 1006, § E(vii)-(viii); see also GAMBLE, *supra* note 10, at 7 (indicating that in 1992 only 30 to 50 percent of law students took international law).

119. See ABA Survey, *infra* app., at 1001 n.4.

120. See *id.* at 1007-1010 & n.18 (setting forth course enrollment figures per course listed at intervals of fifteen or fewer students, fifteen to thirty students, and over thirty stu-

schools, one discovers that the maximum total percentage of students that could, mathematically, graduate with at least one such course—ignoring the fact that some students take more than one international law course—is often lower than the percentage reported by the schools themselves.<sup>121</sup> Additionally, the broad definition of “international law” means the ABA Survey percentages<sup>122</sup> will be at the high end of the spectrum.<sup>123</sup>

Unfortunately, despite the internationalization of commerce and the practice of law, these reported percentages do not show any meaningful improvement since the Edwards Survey in the 1960s. The Edwards Survey reported that between thirty and fifty percent of students graduated from law school with at least one international law course.<sup>124</sup> Additionally, the Edwards Survey indicated that over eighty-five percent of the law schools offering international law courses reported increased enrollment in those courses over the last decade.<sup>125</sup> In 1991, Gamble reported a higher enrollment percentage than the ABA Survey—forty-five percent—but this survey included Canadian law schools, which undoubtedly increased the reported percentages.<sup>126</sup>

Equally important, a handful of schools significantly distort this percentage, such as those: (a) with large international LL.M. programs; (b) located in major international centers, such as Washington, D.C. and Miami; (c) schools with the most prestigious reputations;<sup>127</sup> and (d) that require a course in international law. Merely removing the four highest scoring schools<sup>128</sup> in the ABA Survey results in a showing of less than thirty-two percent<sup>129</sup> of students graduating with at least one course in international law.<sup>130</sup>

Unfortunately, these schools help obscure the real crisis in international legal education. At most law schools across the United States, fewer than twenty percent of graduates ever take a course in international law.<sup>131</sup> To some degree, one would

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dents).

121. See *id.* at 33 n.18.

122. See *id.* at 1003-1004, § E(1)-(7).

123. The ABA Survey includes Civil Law, Immigration Law, English Legal History, and Maritime Law in its definition of international law courses.

124. See GAMBLE, *supra* note 10, at 7 (citing the Edwards Survey).

125. See EDWARDS, *supra* note 13, at 5.

126. Although only twenty-one Canadian law schools were covered by the survey (compared with approximately one-hundred and fifty U.S. law schools), five of the fifteen schools where over two-thirds of graduates took at least one international law course were in Canada. Additionally, two more of the Canadian law schools were located in Quebec, which, given its civil law system, tends to have a higher number of students enrolling in an international law course. See GAMBLE *supra* note 10, at 125, 154-58.

127. See GAMBLE, *supra* note 10, at 105 (noting this distortion as well).

128. See ABA Survey, *infra* app., at 1003 n.4.

129. See *id.* at 1001-1004, § E(1)-(7).

130. See GAMBLE, *supra* note 10, at 125 (stating that ten United States law schools reported having two-thirds or more of their students graduate with at least one course in international law).

131. See *Profession Watch*, *supra* note 85, at 43.

expect that students at this handful of schools should have a greater anticipation of the need for a familiarity with international law in their future practices, and thus such students would tend to have a higher percentage of enrollees in international courses. Interestingly, however, only ten percent of students taking an international law course said the reason for taking the course was because the subject is important, and only another ten percent cited assistance in obtaining employment as the reason for taking such a course.<sup>132</sup> Apparently, students do not fully understand the role international law will play in their future.

Since not all learning occurs in the classroom, in order to help investigate whether students were being exposed to international law through a means other than traditional international law courses, the ABA Survey took a slightly different approach than the Edwards Survey and the Gamble Survey. Edwards and Gamble largely confined their surveys to asking about traditional international law course offerings. The ABA Survey, on the other hand, attempted to learn about a broad spectrum of places where students might be exposed to international law, including advanced degree programs, exchange and summer abroad programs, international law societies, law journals, and moot court competitions. Unfortunately, there is no way to measure whether students that are not exposed to international law in a course are learning about it through these other mechanisms. However, given that many of these activities are extra-curricular in nature, and that such activities usually attract only those students that are interested in the subject matter, one suspects that most of the participants in such activities also enroll in international law courses. In the author's experience, this hypothesis holds true. If it is correct, it means that these activities, though worthwhile, really do not solve the problem of most law students graduating without an adequate background in international law.<sup>133</sup>

Of course one other place that students could be exposed to international law is in the context of traditional domestic law courses. Thus, the ABA Survey attempted to discern the number of law professors that are incorporating an international law component into their domestic law courses. Unfortunately, the ABA Survey's results break down significantly at this point. Only twenty-seven schools offered statistics for this section. Six schools said there was no significant international content, eight said the content varied by professor, and the other schools left the section blank. In spite of the ABA Survey's limitations in this area, it appears relatively clear that most schools still do not make any significant effort to integrate international law into their domestic courses. Only one school indicated that most of its faculty include such a component, and one other school indicated that it had applied for funding to develop such a component.<sup>134</sup> Of the remaining institu-

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132. See GAMBLE, *supra* note 10, at 104.

133. See ILJ Survey, *supra* note 93, at 307-09 (discussing the inadequacies of international extracurricular activities as a means of learning about international law).

134. See *id.* Since the date of the survey, the author's institution has also embarked on a program to integrate international components into a significant portion of the domestic curriculum.

tions, only one indicated that more than ten domestic law courses have international content, ten schools stated there were between six and ten such courses, six universities listed between three and five such courses, and nine schools listed only one or two courses. Thus, the current state of affairs shows that international components in domestic law courses are not adequately widespread so as to meaningfully educate those students who fail to take an international law course during law school.

Given the high percentage of law students that never take an international law course, and given that international legal education does not appear to be adequately provided for through other means, it seems evident that the vast majority of law students at most institutions are graduating without any significant training in international law. This is wholly inadequate preparation for law practice in the next millennium, particularly given the nature and scope of business today.<sup>135</sup>

#### IV. GETTING FROM WHERE WE ARE TO WHERE WE NEED TO BE

As soon as one accepts the premise that there are too many law students graduating from law school without any meaningful preparation in international law, one must ask how this situation can best be remedied. It seems clear that more international course offerings are not the solution. As has been noted, ninety-nine percent of law schools have at least one international law course, and over ninety percent have over five such courses. In spite of this growth in offerings, the percentage of students taking international law has remained relatively constant and woefully low.<sup>136</sup>

Some would argue that we should do nothing on the belief that, given that there appears to be an adequate number of international course offerings, the market will solve the problem; as students become aware of the demand for international skills, enrollment in international courses will increase correspondingly. Although this argument has a superficial appeal, it assumes law students have an informed opinion about what skills the marketplace demands. Unfortunately, many students have little idea about what skills will make them more marketable. Additionally, many firms do not base their hiring on course selection, but rather on grades and other performance criteria.<sup>137</sup> Thus, law students may find they can obtain jobs without these vital skills. Indeed, lack of exposure to international law may not be a problem for those students that find employment at firms with meaningful training programs, especially firms that already have sophisticated international practices. Many young lawyers, however, will find themselves employed in jobs increasingly demanding international skills and surrounded by mentors as ill-

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135. See Goebel, *supra* note 40, at 458.

136. See *supra* pt. III (discussing the current state of international legal education and the ABA Survey, which confirms a low percentage of students graduating with coursework completed in international legal studies).

137. See *ILJ Survey*, *supra* note 93, at 299, 313-14.

prepared to deal with international legal issues as the recent graduate.<sup>138</sup> Finally, even though the practice of law is internationalizing, the market is unlikely to place a premium on international skills because the majority of attorneys still do not deal with international legal issues on a day-to-day basis, and many attorneys making hiring decisions have little understanding of the skills necessary for an international practice.

In addition, regardless of whether the market helps promote enrollment in international law courses, many students are primarily concerned with passing the bar exam and will focus the majority of their attention on bar exam courses.<sup>139</sup> Given that these courses constitute the bulk of the number of credit hours required for graduation, students find themselves with little time for taking courses that interest them.<sup>140</sup> With little time for electives, students may be inclined to ignore international law courses in favor of other electives,<sup>141</sup> even though a basic understanding of international law will be highly relevant to the students' future practices. A simple solution to this problem would be to require international law at all law schools<sup>142</sup> or to include international law on the bar exam.<sup>143</sup> There appears to be little support for either of these ideas, however.<sup>144</sup> Additionally, requiring international law courses would generally require a reallocation of existing faculty resources or necessitate the hiring of additional faculty at a time of diminished resources for higher education generally and when law school applications are decreasing.<sup>145</sup>

A final possible approach<sup>146</sup> is to promote the inclusion of relevant aspects of

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138. See Goebel, *supra* note 40, at 458.

139. See ASIL PROC., *supra* note 24, at 107 (remarks of Edwin M. Smith).

140. At the author's institution, "bar" courses constitute sixty-three hours of the eighty-seven hours needed to graduate.

141. See ASIL PROC., *supra* note 24, at 107 (remarks of Edwin M. Smith).

142. Interestingly, in 1912, approximately 25 percent of law schools required a course in international law, whereas only one school in the ABA Survey had such a requirement. See GAMBLE, *supra* note 10; McFadden, *supra* note 61, at 63; ASIL PROC., *supra* note 24, at 110, 113 (remarks of Mary Ellen O'Connell); Schachter, *supra* note 24, at 274 (stating that a good case can be made for requiring a course in international law).

143. Both the American Bar Association and the American Society of International Law have urged this at various times without success. See Statement of Catherine Tinker, Chair of the International Legal Education Committee of the ABA Section of International Law and Practice (Mar. 31, 1993).

144. Only 23 percent of professors teaching international law indicated that a course in international law should be required. See GAMBLE, *supra* note 10, at 22.

145. See LAW SERVICES REPORT JULY/AUGUST 1997, at 4, 5.

146. Actually, numerous other approaches, including increased faculty exchanges, internships, etc. are possible, but all of these tend to require both capital and a commitment to internationalization that, if it were present, would probably support requiring students to take an international law course. For an example of one such alternative in action, see John E. Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329 (1996).



international law in traditional domestic law courses.<sup>147</sup> An immediate advantage of this approach is that all students take a core of domestic law courses, and if each of these domestic law courses has an international component, student awareness of the types of international legal issues that may arise in domestic law areas will be heightened. Thus, even if the student does not come away from the domestic course with a complete understanding of the potentially relevant international legal issues in that area of law, the student at least knows that international legal issues may be implicated in apparently wholly domestic legal transactions, and will, therefore, know that further investigation may be needed in some circumstances. Another advantage of this approach is that student curiosity about international law may be stimulated by showing students that international legal issues can arise in the domestic arena. These brief introductions may lead students to take international law courses. Finally, the cost of such an approach is minimal,<sup>148</sup> since each professor would bear the relatively insignificant burden of educating himself or herself on a class session or two's worth of international law materials.

This approach has few disadvantages. Some will argue that such an approach to international law leaves a student with an incomplete understanding of international law, since there is no course to provide a structure and context for the international materials.<sup>149</sup> Although it is clear that a day or two of international law in torts class hardly makes one an expert, this author believes that this criticism fails to take account of the fact that without this minimalist beginning, the vast majority of students will continue to graduate without any exposure to international law. Requiring international law as a course may be a better approach, but since it seems unachievable at this time, including international law in domestic courses seems a prudent alternative.

Another disadvantage to this approach is faculty resistance. Most faculty members at any given law school are comfortable with the scope of coverage for their courses. Encouraging or requiring the faculty to learn about the international aspects of their disciplines is likely to face opposition. Requiring faculty to learn a new area with which they may have no training or experience may seem, to many of these professors, like a tangential matter on which to spend course time.<sup>150</sup> Professors generally bemoan the fact that there is not enough time to teach the "essentials" in their respective disciplines, and losing a class or two to international

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147. See Khan, *supra* note 16, at 8; ASIL PROC., *supra* note 24, at 112; Bernabe-Riefkohl, *supra* note 25, at 154; 29 HARV. INT'L L.J. 240, 245 (1988) (remarks of Harold J. Berman); Jay M. Vogel, *The Globalization of the American Law School*, 46 J. LEGAL EDUC. 311 (1996); see also Interview with Louis B. Sohn, 29 HARV. INT'L L.J. 240, 287 (1988); Robert C. Cumbo, *Educating the 21st Century Lawyer*, 32 IDAHO L. REV. 407 (1996). For discussion of teaching comparative law elements in domestic courses, see von Mehren, *supra* note 21, at 296.

148. See Khan, *supra* note 16, at 8 (noting the economic efficiency of internationalizing the law school curriculum).

149. See 29 HARV. INT'L L.J. *supra* note 147, at 241 (remarks of Harold J. Berman).

150. See Khan, *supra* note 16, at 8 (noting possible reluctance of faculty to integrate international law into their traditional domestic law courses).

issues may seem wasteful to a professor who does not understand the truly international nature of modern legal practice.<sup>151</sup> However, this is an essential trade-off that must be made.

Furthermore, even those willing to teach international elements in their domestic courses may be uncertain as to how to approach the topic. International law has certain elements that distinguish it from traditional law; even knowing what constitutes "international law" on a certain subject can be the subject of extensive debate. It is, therefore, imperative that information about international legal issues that may be relevant to domestic law courses be made understandable and readily available. Fortunately, a number of casebooks have already begun to include such materials. Furthermore, in an attempt to facilitate the internationalization of United States law schools by promoting this approach, the International Legal Education Committee of the Section of International Law and Practice of the American Bar Association has started a project to develop international legal materials for every traditional domestic law course. These materials will ultimately be distributed to all United States law schools in the hope that by making such materials readily available and easily understandable, professors will be inclined to include international subjects in their domestic courses.<sup>152</sup>

## CONCLUSION

There is no doubt that we are living in a shrinking world; the world is just a mouse click away. In this era of international commerce, transportation, and communication, legal service providers must be prepared to confront international legal issues, if not on a daily basis, at least on a periodic one. The lawyer of the twenty-first century will undoubtedly have an international practice, no matter where that lawyer is located or what type of law he or she practices. Given this reality, it is incumbent upon legal educators to ensure that today's students are adequately prepared to deal with the international issues that lie ahead. Unfortunately, most students graduate from law school without any real exposure to international law. This is the case in spite of the fact that virtually every United States law school has not one, but multiple courses on international law. Surprisingly, international law offerings have exploded since the 1960's, but the percentage of students taking these courses has remained relatively constant.

Faced with this reality, alternative approaches to preparing students for the international practice they will face must be devised. Since it appears international law is unlikely to become a required course or a topic for the bar exam, incorpo-

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151. *See id.*

152. There are currently about twenty professors in the process of preparing international materials (reading assignments, teachers notes, and bibliographic information) for a broad range of core curriculum and elective courses. It is hoped that eventually every domestic course will have available to it several classes worth of international course materials. Once a core group of materials has been compiled, it will be made available to every United States law school. If you are willing to help prepare materials for a course, please contact the author.

rating international legal problems into domestic law courses is a practical, cost effective way to help prepare today's law students for tomorrow's practice.

## APPENDIX

## ABA SURVEY

RESULTS OF ABA SURVEY REGARDING  
INTERNATIONALIZATION AT UNITED STATES LAW SCHOOLS<sup>1</sup>

These are the results of a survey sent out by the International Legal Education Committee of the ABA's Section of International Law and Practice at the beginning of 1996 to all accredited U.S. law schools. The purpose of the survey was to determine the level of internationalization in U.S. law schools. The committee was concerned about the possibility that many students continue to graduate from law school without any meaningful exposure to international law. Given this concern, the survey attempted to look beyond international course offerings to determine if students are being exposed to international law through other mechanisms.

A. NUMBER OF SCHOOLS RESPONDING:<sup>2</sup> 70

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1. Where responses were given as a range that did not correspond to the breakout given, the response was credited in the category representing the majority of the range. In cases where there was no clear majority fit, the response was credited in the larger category. Generally, failure to respond to a question or a portion of a question was not noted. Some questions could have multiple responses from one school (i.e., the use of both adjunct and full time professors in teaching courses) in which case both answers were noted.

2. Although this represents only about forty percent of accredited U.S. law schools, it appears to be a relatively representative cross-sample. The sample represents a disproportionate number of small schools (57% as compared with 46% on a nationwide basis), which may drive down the course offering and frequency numbers. However, the schools responding appear to be more international in outlook than those that did not respond (which could affect number of offerings, frequency, and percentage of students graduating with a course in international law). I base this statement on the facts that the schools that responded, while representing just over forty percent of U.S. accredited law schools, represent 57% of the schools with an LL.M. in international law and over 65% of the schools with summer abroad programs. LL.M.s in international law tended to correlate very closely with number and frequency of international offerings and tended to have a dramatic impact on the percentage of students graduating with at least one international course. *See infra* note 4. Summer abroad programs significantly increase faculty abroad figures and can be expected to increase the number of international offerings as well as international content in domestic courses.

The schools were: Albany Law School, American University, University of Arkansas-Fayetteville, University of Arkansas-Little Rock, University of Baltimore, University of California-Hastings, Campbell University, Capital University, Chicago-Kent College of Law, University of Cincinnati, University of Colorado, Columbia University, Cornell Law School, Creighton University, University of Dayton, DePaul University, District of Columbia School of Law, Drake University, University of Florida, Florida State University, Fordham University, George Washington University, University of Georgia, Georgia State University, Golden Gate University, University of Houston, University of Idaho,

**B. SIZE OF SCHOOLS:**

*Large* (>901 students) 15; *Medium* (650-900) 15; *Small* (<649) 40

*Total number of foreign students:*

Under 10: 23; 10-20: 5; 21-30: 5; over 30: 9

**C. DEGREE REQUIREMENTS**

*Total credits (hours) required for degree:*<sup>3</sup> 78-82: 2; 83-87: 19; 88-92: 38; >93: 2

*Total credits (hours) spent in required and heavily recommended courses:*

<40: 21; 40-50: 16; 51-60: 15; >61: 9

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Indiana University-Bloomington, Indiana University-Indianapolis, University of Kentucky, University of Maine, McGeorge School of Law, Mercer University, University of Miami, University of Minnesota, Mississippi College, University of Missouri-Kansas City, University of Montana, University of New Mexico, New York University, North Carolina Central University, University of North Dakota, Northeastern University, Northern Illinois University, Notre Dame Law School, Nova Southeastern University, University of Oklahoma, Oklahoma City University, University of Oregon, Pepperdine University, University of Puerto Rico, Rutgers-The States University of New Jersey-Newark, Saint Mary's University-San Antonio, University of South Dakota, South Texas College of Law, Stetson University, Temple University, University of Texas, University of Toledo, University of Tulsa, Valparaiso University, Vanderbilt University, Vermont Law School, Washburn University, Washington University at St. Louis, Whittier, Willamette University, College of William & Mary, University of Wyoming, and Yale Law School.

3. Eight LL.M. programs indicated requirements of 23-27 credit hours.

**D. PERCENTAGE OF STUDENTS GRADUATING WITH AT LEAST ONE INTERNATIONAL LAW COURSE:<sup>4</sup>**

1. *As reported by the schools:*  
<5%: 1; 8-12%: 5; 13-17%: 6; 18-22%: 7; 23-27%: 4; 28-33%: 4;  
+40%: 1; +50%: 6; +60%: 1; +70%: 2; +90%: 2; 100%: 1;  
Unknown: 28
2. *Average Reported Average:* 33.17% (27.32%)
3. *Average Reported Average with Unknown Filled in Where Possible:<sup>5</sup>*  
32.61% (28.25%)

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4. A number of things need to be said about these percentages because they are almost certainly higher than is accurate. First, many schools clearly overstated the maximum percentages given their stated enrollments in relevant courses. Second, attempts at correcting these figures were limited by the following facts: (1) some schools failed to give enrollment data for their classes; (2) when a range for enrollment was given, a figure from the upper end was used (although not always the highest number); (3) using enrollment figures does not account for multiple courses taken by the same student, which happens with significant frequency, especially at schools that offer concentrations in international law; and (4) reported enrollments were not always clear in indicating whether the number was on a yearly or per offering basis, so the figure was generally assumed to be a per offering number. *See infra* note 18. Adding to the overstatement is the fact that the definition of international law classes used by this survey is extraordinarily broad (it includes maritime and admiralty law, immigration law, and legal history courses that many would exclude from such a survey). Finally, a handful of schools skew the results toward a much higher figure. Puerto Rico requires an international law course, and three other schools claimed rates of up to ninety percent. Two more schools were in the seventies, one in the sixties, and up to six could be in the fifties. Several common denominators existed between these schools (other than Puerto Rico, which has an obvious reason for its high number): they have significant LL.M. programs and numbers of international students, and they are either top ten national law schools or they are located in Washington, D.C. or Florida. The success of these schools may be based on the international climate at the school—lots of offerings and foreign students—or on a perception that the need for international skills is greater for graduates from these schools. However, the high numbers from these few schools obscures the crisis that at most law schools under twenty percent of students ever take an international law course. To help highlight the dramatic effect a few schools can have, each statistic is recalculated in parentheses without the four highest scoring schools for that category.

5. At schools indicating that the percentage of students graduating with at least one international course was unknown for those that supplied enrollment figures, a maximum possible percentage was obtained using enrollment figures at the high end of any range given for each course offered. For courses offered less than once per year, the figure was divided by the frequency of the offering. Since most students have only two years to take electives, if a course is offered only every other year, its enrollment covers two graduating classes. Therefore, part-time law programs may have a slightly higher percentage than indicated because they have more years for taking electives. Obviously, with some students taking multiple international law courses, this percentage probably remains at the high end of any range given.

4. *Average of Maximum Percentages:*<sup>6</sup> 29.22% (24.98%)
5. *Percentage of Students Based on Reported Average:*<sup>7</sup> 37.05% (30.55%)
6. *Percentage of Students Based on Reported Average with Unknowns Filled in Where Possible:*<sup>8</sup> 36.11% (31.38%)
7. *Percentage of Students Based on Maximum Possible Percentages:*<sup>9</sup> 32.42% (29.6%)

#### E. INTERNATIONAL COURSES/SPECIALTIES OFFERED

- i. *Is an LL.M. in international law offered:* Yes: 16; In Development: 1  
Number of students currently enrolled: <10: 3; 11-30: 2; 31-40: 5;  
 >41: 4  
Number of foreign students enrolled: <10: 4; 16-20: 2; >20: 8

*Describe any other programs designed to bring foreign students to your school:*

Exchange Programs: 10; LL.M.s in U.S. Law: 4; Various LL.M. Offerings: 7;

Joint Law Degree Program between U.S. and Foreign Schools: 1;

MCL or MCJ: 3;

Muskie or other program to bring students from particular countries: 2;

NAFTA Program: 1; Individual Recruitment: 1; Summer Abroad Program: 1

- ii. *Is an SJD with international law dissertation offered:*

Yes: 7; Under Consideration: 1

Number of students currently enrolled: <5: 9; 6-10: 2; >15: 1

Number of foreign students enrolled: <5: 4; 6-10: 1; 10-15: 1

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6. As noted above, many schools reported percentages that were clearly too high given their reported enrollments. Therefore, this number was calculated using the lesser of the reported percentage and the maximum possible percentage obtained using course enrollment figures. However, not all schools supplied enrollment figures, so the reported percentage for some schools could not be checked. Given the general tendency to report an inflated percentage (not to mention the other items discussed in footnote 4), this percentage still is likely to be too high.

7. This number calculates the percentage based on total number of students in the survey. The prior method treated all schools equally, regardless of class size, giving a picture of the average percentage of students that graduate with an international law course. This method gives a more accurate assessment of the true percentage of students that graduate with at least one such course.

8. This number was obtained by combining the techniques set forth in footnotes 5 and 7 *infra*.

9. This number was obtained by combining the techniques set forth in footnotes 6 and 7 *infra*.

iii. *Is a concentration in international law offered:*

Yes<sup>10</sup>: 8; In Development: 1

When was the program initiated: 50's: 1; 80's: 1; 90's: 5

Number of students completing concentration per year: <10: 1; 11-15: 1; >20: 3

iv. *Does your school offer a semester or summer abroad program:*

Yes:<sup>11</sup> 39; Sometimes: 1; In Development: 1

How many of your students participate: <10: 5; 11-20: 14; 21-30: 7; >31: 8

How many students from other schools participate:

<10: 9; 11-20: 4; 21-30: 9; >31: 8; Unknown: 1

How many of your faculty participate: 0: 2; 1-2: 18; 3-5: 13; >5: 3

How many faculty from other U.S. schools participate:

0: 2; 1-2: 10; 3-5: 2; > 5: 2; Unknown: 2

How many of your students participate in programs at another school:

1-4: 3; 5-10: 6; >10: 2; Unknown: 5

Do they receive academic credit for such participation: Yes: 21

v. *Does your school offer any other specialized program in international law:*<sup>12</sup>

International Law Reviews/Publications:<sup>13</sup> 13;

Joint Degrees with Area Studies or International Affairs M.A.: 4;

Joint JD/LLM Program: 1; Human Rights Centers: 5;

Area/Other Specialized Centers:<sup>14</sup> 2; International/Comparative Law Centers: 3;

Postgraduate Foreign Court Clerkship Program: 1;

Pairing of Exchange Students from Foreign School with Domestic Students: 1

vi. *How many faculty members have studied abroad:*

1-3: 28; 4-6: 10; 7-9: 4; >10: 3

*How many faculty members have taught abroad:*

1-3: 14; 4-6: 16; 7-9: 3; >10: 16

10. Three additional schools indicated a concentration in International Law was offered only for LL.M. programs.

11. Includes three schools that co-sponsor programs with other schools (not each other).

12. The author consolidated the various types of responses into general categories. For a more specific breakdown, please contact the author.

13. The author suspects that this number may be low because there was no specific question about international law reviews. Some schools listed this as an activity of their respective international law societies, but all related responses have been consolidated here.

14. Subjects included were: Mexico; Energy; Great Lakes.



*Describe any programs at your school designed to send your faculty abroad or to attract faculty members from abroad:*

Exchange Programs: 23; Visiting Chair/Program/Fellowships: 4;

Periodic Invitations to Specific Individuals: 4; International Speakers

Series: 2; CEELI/Rule of Law Project/Fulbright: 2

vii. *Does your school participate in the Jessup International Moot Court Competition:*

Yes: 50; Sometimes: 4

Number of participants: 2-3: 3; 4: 12; 5: 13; 6-15: 8; >16: 4; Varies: 3

viii. *Does your school have an active student international law society:*

Yes: 54; Sometimes: 2

How many members does it have:

<10: 11; 11-20: 10; 21-30: 16; 31-40: 1; >41: 13

What are its typical annual activities:

Speakers: 37; Symposia/Round tables: 23; Social Events: 5; Fundraising: 2; Films: 3; Awards: 1; Career Opportunity Information: 11; Other Information Dissemination: 3; Community Service: 1; Student Exchanges: 2; Non-Jessup Moot Court: 2; ILSA Conference: 1; Publications: See note 13.

ix. *Assess the interest (high, medium, or low) and trend in recent years (increasing, decreasing, or stable) in international law courses among the following groups:*<sup>15</sup>

- |                      |                |            |               |
|----------------------|----------------|------------|---------------|
| a. <u>Faculty</u> :  | High 15;       | Medium 29; | Low 12        |
|                      | Increasing 35; | Stable 19; | Decreasing: 0 |
| b. <u>Students</u> : | High 18;       | Medium 30; | Low 8         |
|                      | Increasing 39; | Stable 16; | Decreasing: 1 |

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15. The author finds the answers given here particularly interesting. Some schools with lots of offerings and activities and high enrollment figures reported low or medium interest while many schools with high interest had few offerings and activities. Empirically, however, interest is high, therefore hopefully more internationalization will follow.

- x. For each of the following international law courses, provide the following information: frequency of offering; average enrollment; whether it is a required or recommended course; and whether it is taught by a full time faculty member or an adjunct.<sup>16</sup>

COURSE NAME	FREQUENCY <sup>17</sup>	ENROLLMENT <sup>18</sup>	REQUIRED/ RECOMMENDED <sup>19</sup>	FT/ADJ/ VISITOR/GUEST <sup>20</sup>
Public Int'l Law	S= 16; Y= 46 B= 3; ?= 4	P= 8; Q= 22 R= 27	Z= 1; X= 3 W= 18	F= 50; A= 3 V= 1
Int'l Bus. Trans.	S= 9; Y= 45 B= 6; ?= 4	P= 12; Q= 18 R= 22	Y= 1; X= 1 W= 17	F= 47; A= 11 V= 3
Comparative Law	S= 6; Y= 35 B= 6; ?= 12	P= 15; Q= 18 R= 11	Y= 1; X= 3 W= 17	F= 44; A= 6 V= 2
Civil Law	S= 1; Y= 4	R= 2	Z= 1	F= 3; V= 1
Comp. Const. Law	S= 2; Y= 10 B= 2; ?= 7	P= 8; Q= 5 R= 3	X= 2; W= 1	F= 15; A= 2 V= 2
English Legal History	S= 1; Y= 15 B= 3; ?= 10	P= 7; Q= 8 R= 4	Y= 2; X= 1 W= 3	F= 18; A= 3 V= 1
Maritime/ Admiralty Law of the Sea	S= 2; Y= 16 B= 13; ?= 5	P= 7; Q= 18 R= 4	W= 18	F= 21; A= 13

16. The results in this section are obviously heavily influenced by the size of the schools with regard to enrollment size and frequency of offerings. Courses focusing on a country or a region are listed under Part E(xi) *infra*. Some schools reported summer abroad offerings, but it is not clear that all schools did. All reported offerings are included.

17. S= more often than once a year; Y= once a year; B= once every two years; ?= less often than once every two years or frequency not reported. Additionally, one school included the offerings at two other schools that its students are allowed to attend. Neither of those two schools responded to the survey

18. P= 15 or fewer; Q= 15-30; R= over 30. Some schools responded with yearly enrollments, and others responded on a per offering basis. In calculating maximum percentages of students graduating with at least one international law course, see Part D(v) *supra*, the response was assumed to be on a per offering basis unless it could be determined otherwise. This may have raised the percentages reported under Part D(v).

19. Only one school required any of these courses; both Public International Law and Civil Law. Generally, this data seems of little value since many schools indicated that all of their offerings are recommended. The point of the question was to try to determine which, if any, international courses were stressed as something that everyone should take even though the course is not required (like constitutional law and corporations are treated at some schools). Z= required; Y= required for LL.M.; X= one option available to fulfill required perspectives course requirement; W= recommended

20. A school may be credited with more than one response in this category.

COURSE NAME	FREQUENCY	ENROLLMENT	REQUIRED/ RECOMMENDED	FT/ADI/ VISITOR/GUEST
Int'l Finance/ Int'l Monetary Systems <sup>21</sup>	S= 1; Y= 10 ?= 5	P= 3; Q= 7 R= 4	W=4	F= 9; A= 4 V= 1
Int'l Trade/ Invest. <sup>22</sup>	S= 3; Y= 26 B= 2; ?= 6	P= 6; Q= 17 R= 4	W= 10	F= 28; A= 3
Int'l Litigation and Arbitration	S= 2; Y= 19 B= 3; ?= 3	P= 4; Q= 7 R= 8	Y= 1; W= 8	F= 19; A= 6 V= 1
Int'l Dispute Resolution/Int'l Use of Force	Y= 11; ?= 6	P= 5; Q= 6 R= 1	W= 7	F= 9; A= 5 V= 1
Int'l Tax	Y= 24; B= 7 ?= 9	P= 10; Q= 13 R= 4	Y= 2; W= 10	F= 29; A= 5
Immigration Law	S= 3; Y= 41 B= 5; ?= 7	P= 3; Q= 22 R= 14	W= 15	F= 29; A= 22 V= 1
Int'l Human Rights/Refugee Law	S= 9; Y= 24 B= 5; ?= 11	P= 15; Q= 10 R= 10	W= 10	F= 34; A= 6 V= 4
International Communications	B= 1; ?= 1	Q= 1	W= 1	F= 1
Int'l Organizations	Y= 8; ?= 9	P= 3; Q= 6	W= 3	F= 10; A= 2 R= 1
Int'l Intellectual Prop.	S= 3; Y= 11 B= 2; ?= 6	P= 8; Q= 5 R= 4	W= 4	F= 13; A= 5 V= 2
Int'l Environ. Law	S= 3; Y= 27 B= 5; ?= 6	P= 15; Q= 11 R= 5	X= 1 W= 10	F= 26; A= 8 V= 3
EC/EU Law	S= 1; Y= 25 B= 6; ?= 6	P= 9; Q= 16 R= 5	W= 10	F= 24; A= 9 V= 2
Clinic (i.e. immigration/ human rights)	S= 3; Y= 5	P= 3; Q= 2	W= 2	F= 5; A= 1
OTHER. <sup>23</sup>				
Int'l Research Techniques <sup>24</sup>	S= 1; Y= 1 ?= 3	P= 1; Q= 1		F= 1; V= 1

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21. Includes International Banking Classes and International Commercial Law.

22. I have some doubts about the accuracy of this number. Some schools appeared to include International Business Transactions for a second time on this line.

23. These were all offerings not listed in the survey.

COURSE NAME	FREQUENCY	ENROLLMENT	REQUIRED/ RECOMMENDED	FT/ADJ/ VISITOR/GUEST
Int'l Courts	Y= 1	Q= 1		A= 1
Int'l/Comparative Criminal Law	Y= 2; ?= 1	P= 2; Q= 1		F= 2; A= 1
Comp. Employment Rights/Int'l Labor	?= 2	Q= 1		F= 1
Comparative Judicial Systems	Y= 1; B= 1 ?= 1	Q= 1; R= 1	W= 1	F= 1; V= 1
Comp. Family Law	?= 1		P= 1	V= 1
Int'l/Comp. Art Law	B= 1; ?= 1	Q= 1		F= 1
Comp. Admin. Law	Y= 1			
Int'l Energy <sup>25</sup>	Y= 2; ?= 1	P= 1; Q= 1		F= 3
Air & Space	Y= 1; B= 1	Q= 2	W= 1	F= 1; A= 2
Ocean Resources	?= 1			F= 1
Sustainable Development	?= 1			F= 1
Women's Int'l Rights	Y= 1; ?= 1	P= 2		F= 2; A= 1
Foreign Relations	Y= 2	P= 1		F= 1
National Security	Y= 1	Q= 1		V= 1
Multilateral Corps	Y= 1	R= 1		A= 1
Socialist Law	?= 1			
Roman Law	Y= 1; ?= 1	Q= 1		V= 1
Law & Social Sciences	Y= 1	R= 1	W= 1	F= 1

24. Includes advanced legal research courses with significant international components.

25. Includes courses on Comparative Oil & Mineral Laws, Global Energy Use, and International Energy Transactions.

xi. *List and describe any law courses focusing on particular countries or regions:*<sup>26</sup>

COUNTRY/REGION	FREQUENCY	ENROLLMENT	REQUIRED/ RECOMMENDED	FT/ADJ./ VISITOR/GUEST
NAFTA	Y= 2; ?= 1	P= 2; Q= 1		F= 3
Canada/Great Lakes	Y= 1; ?= 1	P= 1; Q= 1	X= 1	F= 2
3rd World/ Developing Countries	Y=1; B= 2	P= 1; Q= 1	W= 1	F= 2
Latin America	Y= 3; B= 1 ?= 6	P= 1; Q= 1 R= 2	W= 2	F=5; A= 1 V= 1
Mexico	Y= 2; ?= 4	Q= 5; R= 1		F= 2; A= 2 V= 2
Ecuador	Y= 1			F= 1
Caribbean	Y= 1	P= 1		F= 1
Asia/Pacific	S= 1; Y= 4 B= 1; ?= 1	P= 1; R= 1	W= 1	F= 2
China	S= 1; Y= 3 B= 2; ?= 4	P= 4; Q= 1 R= 1	W= 4	F= 3; A= 3 V= 2
Japan	Y= 6; B= 1 ?= 4	P= 4; Q= 4	W= 5	F= 6; A= 3 V= 1
Korea	Y= 1			
Africa	?= 1			
South Africa	Y= 1			
Middle East <sup>27</sup>	Y= 1; ?= 1	P= 1		V= 1
Russia <sup>28</sup>	S= 2; Y= 1 ?= 3	Q= 1		F= 2
France	?= 1			
Germany	Y= 1; ?= 1	Q= 1		F= 2
Greece <sup>29</sup>	Y= 1; ?= 1	Q= 1		V= 1
Italy	Y= 1			
Norway	Y= 1	Q= 1		F= 1; A= 1

26. Includes specialized courses within the subject heading (e.g., Japanese Law would include any courses on Japanese Business Law). However, regional studies do not include country specific studies, which are listed separately.

27. Includes courses on Islamic Law and Israeli Law.

28. Includes the former Soviet Union and CIS.

29. Includes both ancient and modern law courses.

- xii. *For each of the following domestic law courses, please describe any international component that is included; whether such inclusion is at the discretion of the professor or is mandated by the curriculum; and whether such component is covered by reading assignments, classroom discussion, or taught by a guest lecturer.*<sup>30</sup>

COURSE	INTERNATIONAL COMPONENT(S) <sup>31</sup>	REQUIRED	MANNER COVERED <sup>32</sup>
ADR/Arbitration	Int'l Dispute Resolution-1 Int'l Mediation-1		L-1; G-1; P-1
Administrative Law	INS Procedure-1		L-1
Agency/Partnership	1		
Antitrust	1		
Bankruptcy	0		
Civil Procedure	3; Conventions of Service-2 Comparative-3; Comity-1 Evidence-1; Forum-1 Jurisdiction-2	3	L-5; R-4; D-4
Clinic	0		
Commercial Paper <sup>33</sup>	3; Int'l Letters of Credit/Sales-2		

30. The author had hoped for a much better response to this section because it is, in many ways, the most novel and important section of the survey. Unfortunately, it is also the most burdensome. Of the seventy schools responding to the survey, only twenty-seven marked courses in this section. Another six said they had no such content or such content was too small to comment on. Of the remaining thirty-seven schools, eight said the content varied by professor and the remainder of the schools failed to respond. Although someone somewhere appears to have an international component for virtually every subject matter, only one school indicated most of its faculty incorporate such a component. That university had conducted a seminar for the faculty on opportunities to do so. One other university indicated that it had applied for funding to develop international components for some of its courses. For the remainder of the schools that responded, only one listed more than ten courses with such content, ten schools listed between six and ten such courses, six listed between three and five courses, and nine listed only one or two courses. Even with this limited data, it appears that there remains a substantial number of law students graduating with little or no exposure to international law, even with the broadest possible definition of that term.

31. Multiple entries from one school are common in this category. The first entry is the number of generic responses and is followed by any particular subject matters that were described.

32. L = Lecture; D = Classroom Discussion; R = Reading Assignment; W = Weaved in Throughout Term; G = Guest Lecturer; P = Problem Sets

33. Responses include commercial transactions courses.

COURSE	INTERNATIONAL COMPONENT(S)	REQUIRED	MANNER COVERED
Communications Law	Treaties-2; Comparative-1		R-2; D-2
Conflict of Laws	2; US Cases-3; Private Int'l Law-1; Int'l; Conflicts-4		L-3; R-5; D-4
Constitutional Law	2; Comparative-1; Treaties-2 Foreign Affairs-3; American Antecedents-2	1	R-3; D-4; W-1
Contracts	1; CISG-4	1	R-4; D-1
Corporate Finance	0 (but see Commercial Paper and Banking)		
Corporations	4		
Environmental Law	4; Treaties/Custom-5; Transboundary Issues-4		L-4; R-4; D-3 W-1
Family Law	1; Comparative- 1; Treaties-1 Adoption of Foreigners-1	1	R-4; D-4
Federal Jurisdiction	1		R-1; D-1
Intellectual Property	6; Conventions-4; Extraterritoriality-1		L-1; R-6; D-6 W-1; G-1
Labor/Employment Law	1; Comparative-1		L-1
Legal Ethics	0		
Natural Resources	2; Int'l Transactions-1; Transboundary Issues-1		L-1; R-3; D-2
Property	Comparative-1	1	L-1
Real Estate Development/Land Use Planning	1		
Securities Regulation	Offshore Offerings-1		L-1; R-1
Tax	2; Int'l Aspects-1		W-1
Torts	2; Cross Border Toxics-1 Comparative-3	1	L-2; R-1; D-3
Trust & Estates/ Estate Planning	Comparative-1; Foreign Assets-1; Non-Citizens-1		L-2; R-2; D-1
UCC 2/Sales	1; CISG-7; Letters of Credit-2		L-1; R-2; D-3
UCC 9/Secured Transactions	1; CISG-1		

OTHER.<sup>34</sup>

Anthropology of Law	1	
Banking	1; Int'l Finance-2	R-1; D-1
Battered Women & the Law	Women's Int'l Rights-1	R-1; D-1
Criminal Law	1; Comparative-3, Jurisdiction-1	L-3; R-3; D-1
FDA/Drug Regulation	Comparative-1	R-1; D-1
Health Law	2; WHO-1; Comparative-1	L-1; R-1; D-1; P-1
Jurisprudence	1	
National Security Law	1	
Native American Law	3; Conventions-1	R-2; D-2
Population Law	1	
Products Liability	Comparative-1; Int'l Trade & Tort Liability-1	L-1; R-1; D-1
Sports Law	Canadian Labor Law-1	D-1

**F. PLEASE ADD ANY SUGGESTIONS ON WAYS TO INCREASE AWARENESS OF INTERNATIONAL LEGAL ISSUES IN LAW SCHOOL, INCLUDING INFORMATION, MATERIALS OR PROGRAMS THAT WOULD BE DESIRABLE TO HELP PROFESSORS INTEGRATE SUCH ISSUES INTO DOMESTIC LAW COURSES, WHERE APPROPRIATE.**

Things already heading that way:	1
Create modules suggested by cover letter:	5
Include section in domestic law casebooks:	1
Provide materials or programs to inform professors of non-domestic sources of law:	1
Have accrediting body mandate it:	1
Put it on the Multistate Bar Exam:	1
Make funding available for exchanges:	1
Create a curriculum committee subcommittee on globalization:	1
Educate students about related job opportunities:	1
Introduce it as a topic at orientation:	1

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34. These courses were not listed in the survey.