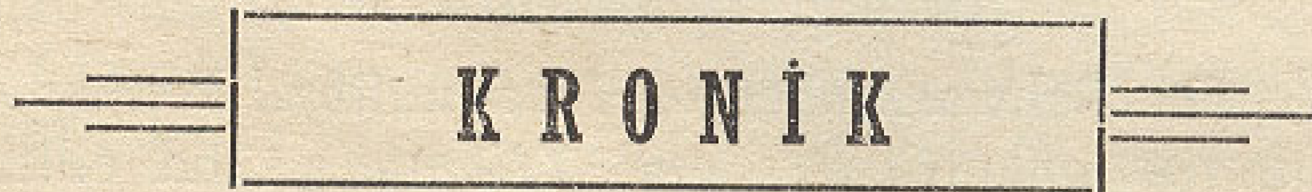

DRAFT WORKING PAPER ON TEACHING INTERNATIONAL LAW

(Singapore Roundtable on Teaching International Law) 13 - 17 January 1964 (*)

Seha L. MERAY
Professor of International Law
Faculty of Political Science
University of Ankara, Turkey

I think it desirable that scholars in every profession should pause from time to time to examine anew and with a critical eye the whole basis of their profession and their own particular place in it. I feel that this is especially true of the social sciences, which are so much a part and parcel of the variable human nature and changing human society which they investigate and which they serve.

A. M. McKenzie, «The Nature, Place and Function of International Law Today,» *Proceedings of the American Society of International Law,* Washington, D. C. 1938, p. 6.

A wise man once said that scholars would do well postpone the discussion of questions of method until they approached the end of their acedemic work. This state-

---

(*) This Working Paper has been submitted by Professor Meray to the Roundtable on Teaching International Law and International Relations organized jointly by the Carnegie Endowment for International Peace and the Law Faculty of the Singapore University, in Singapore, on 13 - 17 January 1964. Participants to the Roundtable were : Dr. Abdul Ahad Muzib (Afghanistan), Dr. J. M. Ruda (Argentine), Rr. B. S. Murty and Professor T. S. Rama Rao (India), Professor

> ment may imply that methodological problems require an amount of detachément and wisdom that is not likely to be acquired at an early stage. In any case, this judgment on youth should be headed as a warning against dealing with such questions in an exclusive spirit.
>
> G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals,* 2nd edit., London, 1949, p. xliii.

While attempting to prepare this working paper for the Singapore Roundtable, I had in mind the following objectives : (1) that the working paper should touch, as much as possible, upon most of the problems mentioned in the commentary of the first item of the Tentative Agenda; (2) that it should also be of some direct use in providing materials for a debate on problems connected with the teaching of international law in the universities of South and South-East Asia; (3) that, since so many accomplished scholars have already expressed their expert views on some of these problems in articles, at symposia, conferences and colloquia, the working paper should contain, to a reasonable extent these views which may well have a positive value for the teaching of international law in the area covered by the Roundtable and (4) that, with a simiar thought, the experience of teaching international law in Turkey should be reflected, whenever and to the extent it seems useful, in the workinng paper.

With these intentions in mind, I shall not conceal at least one of my shortcomings. Such a working paper would necessitate on the part of this writer a better knowledge of different systems of university and pre-university education in the countries of this

---

Shigijiro Tabata and Professor Shigeru Oda (Japan), Professor Kim Myong-Whai (Korea), Inche Mohamed Salleh bin Abas (Malaysia), Dr. K. Hasan and Dr. D.S. Muneem (Pakistan), Dean Vicente Abad Santos, Professor F. Feliciano and Professor Pablo Tangco (Philippines), Professor L. C. Green and Mr. F. A. Trindate (Sinapore), Professor Major - General Suk Perunavin and Dr. Sompong Sucharitul (Thailand), Professor Seha L. Meray (Turkey), Professor Boutros Boutros-Ghali (U. A. R.). Professor Myres S. McDougal (U. S. A.). Mr. L. Finkelstein and Professor Francis Deak represented the Carnegie Endowment. A Final Report, including the Agenda of the Roundtable, the papers submitted by the participants, a summary record of the debates and a report on the conclusions will be shortly published by the Carnegie Endowment.

part of the world in general, and sound information on the teaching of international law in particular - with its achievements, its possibilities and its problems. This would enable me to focus my attention more systematically on real problems of common interest, instead of limiting myself to some general questions which I suppose to be common to the teaching of international law in all our universities. I know I can only try to attempt to put forward some questions, and when I hope to be of some use, to express my own views *vis-à-vis* these problem. I know how much such an approach would leave to be desired.

With this *clausula salvatoria* I turn now to our subject-matter. It is apparent that what we expect from a student who terminates an international law course on the undergraduate level, is that he must have *some knowledge* of international relations, *an understanding* of the making and the functioning of international legal rules and institutions, *a sense* for their role, place, effectiveness and limitations in a community which is not nearly as perfect as national society. It seems, therefore, to be necessary that the student of international law have some idea of the forces underlying legal rules, that he should be conscious that legal rules do not function in a social vacuum. The student should be equipped with an approach to evaluate the structure of the international community through its process of development. He must possess, at least, a general knowledge on the components of this community, of their political, cultural and ideological philosophy (their *Weltanschauung*). The student should realize that law in general and international law in particular, is seeking to harmonize, as far as possible, all these opposing forces, in a minimum legal order, giving to all the interested parties a justified conviction that they are, at least on a juridical basis, all equal and there are none who are more equal than the others.

To teach, therefore, international law in isolation from the so-called extra-legal factors, and to present it as a complex of strictly dogmatic principles would perhaps lead scholars to sterile *querelles d'écoles*, but would also be tantamount to disregard not only social and political realities, to misrepresent the true nature and true function of international law. It is common knowledge that one of the feeding sources of criticism against international law, was due to a large extent to the fact that international lawyers could not, for a very long time, decide whether international law should be considered as a system of law understood as a so-

cial science discipline with a specific purpose and a method, or as a philosophical system nourished by doctrinal antagonisms and tested, more often than not to its disadvantage, in the international political arena. [1] «One does not, after all, get to understand earthquakes, by passing resolutions against volcanoes.» [2] It is, perhaps, with tongue in cheek that have been remembered «these gentle and affectionate expressions of personal disagreements which we have learneded to regard as one of the chief functions of the teacher of international law.» [3]

It may be interesting to point out that the reaction to this kind of «custom» of teaching or treating international law is not as new as one may be inclined to think. Indeed, even in 1916, in the United States, Resolution No. 4 of the Conference of International Law Teachers tried to show a new way in teaching international law. [4] It is only natural that, forty years later, in 1956, in Geneva, at the Conference on the Teaching of International Law sponsored by the Carnegie Endowment and held with the participation of distinguished international lawyers, the recommendation of the 1916 Conference were, in an indirect way, brought to their true dimension, with all the necessary developments and desirable improvements. [5] As Professor Paul de Visscher, the Reporter of the

---

(1) To say that the existence of a rule of international law is proved by the number of the time when it is broken, is, in the words of Professor G. W. Keeton, to resort to sophistry. See his «The Influence of International Law on International Conduct,» 37 *Transactions of the Grotius Society* 11 (1947).

(2) George W. Ball, «The Atlantic Community and the New Nations», *Proceedings of the American Society of International Law* (1961) (Hereinafter will be referred as *Proceedings.)*

(3) As quoted from Dr. James Scott by Professor Robert R. Wilson, «The Teaching of International Law in the Undergraduate and Graduate Course in Political Science,» *Proceedings* 80 (1947).

(4) For the full text of the Resolution Nr. 4 see *Proceedings* 112 - 113 (1916).

(5) Participants to the Geneva Conference of 1956 were, under the Chairmanship of Professor Charles de Visscher, former judge of the International Court of Justice, Professors Rousseau and S. Bastid from France, Professor Schwarzenberger from United Kingdom, Professor Fenwick from the United States, Professor Guggenheim from Switzerland and Professor P. de Visscher from Belgium. See Professor P. de Visscher's «Conference on the Teaching of International Law. Geneva, August 1956» 11 *The Year Book of World Affairs* 257 - 272 (1957) and «Colloque sur l'enseignement du Droit international. Geneve, Août 1956,» 1 *Journal de Droit International* 106 - 132 (1957).

1956 Conference points out, «the events of the last forty years have, indeed, forced international society to undergo a series of upheavels which, while they swept away the doctrines and methods patiently built up over the years, have (after having spread confusion and doubt) definitely convinced the large majority of scholars of the need of a more objective and more realistic study of the international environment.» The 1956 Conference, after this first observation, reached «without reserve» the first conclusion concerning the general trend of the teaching of international law, and noted this, «as a fact worth stressing» :

> This is in itself proof that a view which only a few years ago was highly controversial has finally been widely accepted. After the dogmatic approach of the advocates of legal formalism, who described international society according to a pattern they had themselves elaborated from a purely deductive system of norms, and after the reaction following the Second World War of those authors who considered international law as a merely the hypocritical veneer of a purely anachronistic social state, the time now seems to have come when the internationalists are ready to associate themselves with a more moderate and more scientific approach which will bring them to judge objectively and with an open mind the respective roles played by social realities and law in the various phases of international life. This strictly scientific frame of references will compel the student of international law to devote time to a careful study of the multiple political, economic, and psychological facts which he formerly believed possible to bypass, but whose influence must today be recognized as basic to the formation, the interpretation, or the disappearance of the norm of law. To express their common views on this point, the participants adopted their first conclusion, stating that the teaching of international law must necessarily, under whatever form it may be presented, «give adequate consideration to the analyses of the social realities underlying the norms of positive law.» [6]

With such an understanding, Professor Brierly's happily apt description that international law is neither a myth nor a panacea

should and can be a warning beacon to international lawyers, both students and teachers. «Strict intellectual honesty would seem to preclude the teaching of one's own optimistic views as the *lex lata*, or the assignment to rules applied only sporadically the force of universally binding obligations. The imperfections and shortcomings of the body of law should not be blurred in the course of emphasizing, as Professor Brierly puts it, that international law is not only a subject on which books are written, but a system which is practiced.» [7]

The degree and quality of the preparation of the students *before* they take international law course is therefore of crucial importance to the problem of the content of the general course, and might create acute problems for the teacher responsible of such a course. Professors Lasswell and McDougal have, in an enlightening article demonstrated what and how should be the professional training of the lawyer for public interest. [8] Mr. Jenks, on the other hand, in a now classic article, has so convincingly embarassed the aspiring international lawyer, making imperative for him, a wealth of knowledge in many fields other than international law. [9] These are, perhaps, ideal requirements which shed light on the direction to be followed, the level to be attained. As with all ideals, they will continue to keep their value and beauty, as long as they remain unattainable. Perhaps it is true, after all, that *le beau c'est ce qui desepère.*

Thus, the teacher of international law may be faced with a jungle of problems most of which would be outside his responsibilities, while thinking on the content of his general course : What is the pre-legal training of the student who comes to a university to expose himself to the teaching of law in general, and of international law in particular? Does this pre-legal training enable him, and therefore the teacher, to deal with international law in its proper perspective? How are the curriculum and the facilities of the university (special courses, seminars, discussion groups, tu-

---

(7) Wilson, *op. cit.*, 79.

(8) Harold D. Lasswell and Myres S. McDougal, «Legal Training and Public Policy : Professional Training in the Public Interest,» in Myres S. McDougal and Associates, *Studies in World Public Order*, New Haven, Yale University Press (1960) pp. 42 - 154.

(9) C. Wilfred Jenks, «Craftsmanship in International Law,» *The Common Law of Mankind*, London (1958) pp. 408 - 442.

torship, etc.) to provide the student with additional extra- legal training which is so fundamental to teach international law? How good, in full earnest, is the preparation of the teacher himself in these fields other than international law? How can the international law teacher, within the limited hours generally assigned to him, could deal with all these problems without making his course a superficial verbal novelty, without turning it into a piecemeal incoherent *exposé*, without unduly sacrificing of the requirements of *teaching international law?*

No doubt, the answers to these questions may differ widely from one country to another. In some countries, law schools tend to be mainly profession-oriented. They keep a very close eye on the necessities of Bar examinations, immediate government or busines services. Or they suffer from curricular difficulties created by an increase both in the number of new courses and in the content of already existing courses. As a result, the possibilities for filling the gaps in pre-legal education are highly limited if not non-existent. Some other counries, on the other hand, have already accepted, to a varying degree, the view that without some prior education in social sciences, legal education cannot be given adequately. Although it may be a some what controversial statement, one may think that in the American system of university education, colleges are expected to provide this kind of basic knowledge. [10] In some

---

(10) «The rather strictly professional character of the American [law] curriculum rests upon the assumption that the students prelegal college study will normally have included some exposure to economics, sociology, political science, and psychology.» Judson Falknor, «Content of Legal Education,» in *Comparative Legal Education. The Papers of the Ankara Conference on Comparative Legal Education*, (edit. Joesph W. Hawley) Ankara : 1958, pp. 82-83 (Hereinafter will be referred as *Papers of Ankara Conference.)* But *contra* : «Dean Harno of Illionis, in his *Legal Education in U. S.,* has said : «Prelegal and legal education are in fact divorced from each other ... There is no attempt to synthesis ... The student is left to his own devices in the selection of his prelegal work. Anyone familiar in the huge offerings of fragmentized courses of a university must realize that the student is likely to come through this ordeal with an education that is little more than patchwork.» (Cited by E. C. King, «Prelegal Education,» *Papers of Ankara Conference*, 118.) Professor King adds : «In the United States most beginning law students are not ready to study law.» He cites also Dean Warren of Columbia University Law School who makes the following comment in his report for 1955 : «Indeed, the enlargement of understanding of the society in and upon which the law operates has become, at Columbia at least, a pedegogical objective hardly less important than the training of the student's legal skills. It is fundamental ingredient of our legal of a well-ro-

other countries, the first years of legal schools are mostly devoted to general culture as well as to some fundamental notions on law, while the later years aim at specialization. The example of *la réforme de 1954* in France is well known. [11]

The Turiksh system, while open to criticism on other grounds, presents a rather favorable outlook as an educational approach. Undergraduate students in the law Faculties as well as in the Faculty of Political Science are exposed, during the programmes of the first years to other courses which may contribute to a better understanding of international law. In addition to courses such as Roman Law, Constitutional Law, Civil Law, there are courses on Economics, Sociology and Political History in the curriculum of the Ankara Law Faculty. Although the programme of Istanbul Law Faculty is quite similar to that of Ankara University, it does not offer a course on political or diplomatic history, a fact deeply regretted by international law teachers of this Faculty. As Professor Çelik puts it : «The teaching of international law in our [İstanbul] Law Faculty suffers from the lack of a course on political history. In general, the training of our students in history is not sufficient. We were compelled to devote at least two or three months to dealing with political history and the history of [legal] doctrines. This, of course, imposed a cutback in the programme of international law. However, we devote now little time to historical subjects. We have even chosen a shortcut : We assume that the student who comes to the international law course has a background in history. Naturally, the result is far from satisfactory.» [12] It is interesting to note that, recently, at the 1961 Conference of the Teachers of International Law in Washington, D. C., Professor Svarlien «was of the opinion that international law is too often taught apart from history; that if it were taught in conjunction with other subjects as a facet of the diamond of international relations and related to history and other subjects, its usefulness would be discerned.» [13]

---

unded legal education. In all candor, we have encountered difficulty in effectively executing our objectives, due largely to the insecurity of the intellectual foundation on which we have to built ...» (ibid., 117).

(11) J. de Soto, «Methods of Legal Education,» *Papers of Ankara Conference* 71.

(12) *Devletler Hukuku Öğretimi Symposiumu (Ankara, 8-9 Mayıs 1959* [Symposium on Teaching of International Law (Ankara, 8-9 May, 1959], Ankara (1959) p. 113 (hereinafter will be referred as *Ankara Symposium of 1959.)*

(13) *Proceedings* 221 (1961).

The situation seems, to be more promising in the Faculty of Political Science of the University of Ankara. In this Faculty the undergraduate programme is divided into two periods, In what we call «years of general culture», i. e., the first two years, the students have to take courses in Sociology, Diplomatic History, Political and Economic Geography, Introduction to Political Science, Methodology of Political Science, Economics, Constitutional Law and Civil Law is given during the second year of this first period. Thus, a student of international law can fairly be expected to have enough knowledge to look upon international law within a broader perspective. The second period, i. e., the last two years of the undergraduate programme is what we call «years of specialisation.» This second period is divided in three branches : International Relations and Diplomacy Section, Administrative Section, and Economics and Public Finance Section In the International Relations and Diplomacy Section special courses are offered on International Organization, International Politics, Diplomatic History, Current International Problems; other courses are : Comparative Government, Public Opinion, History of Economic Doctrines, Comparative Diplomatic Organization, Commercial Law, Public Liberties, Social Policy and Law, Political Parties, Social and Ethnical Structure of Turkey. Foreign languages (English or French or German) are among required courses during the whole extent of the undergraduate programme. It seems, therefore, possible for the teacher in the Faculty of Political Science, to draw the attention of the students to extra - legal factors and social forces while teaching international law, and expect a broader understanding.

In the universities where such a broader approach is the accepted educational philosophy and where facilities exist, the need for correlating international relations, diplomatic history and the other subjects with international law should be recognized. Professor Clute warns us «that we must, to a large extent, rely on a well coordinated departmental curriculum and advisory programs to ensure that students will have been exposed to such subjects.» [14] Justice Frankfurter has touched, in this respect, upon an important point, when he said : «The chief source of [the universities']

---

(14) *Ibid.*, 219. It is of outmost importance to remember that «exposure to knowledge and opportunity to learn too often are deemed the equivalent of learning.» King, *op. cit.*, 119.

inadequacies is probably the curse of departmentalization. Among students, as well as among teachers, there has been a tendency to regard courses as something which exist in nature, instead of artificial simplifications for the mastery of what are complicated organisms, whether of nature or reason or society.» [15]

In those universities, on the other hand, which are not imbued with such a broader approach or where facilities do not exist, or they do not attain the desired level, where the international law teacher is - so to say - left alone, without much help from a pre-international-law training, or from profession-oriented courses, the suggestion of the 1956 Geneva Conference may be discussed as a valid alternative :

> In the case ... where financial, programme, or personnel difficulties prevent an increase in the number of formal lectures offered, the group expressed the opinion that the new orientation in the teaching of international law could be implemented by giving one special course.
>
> The group unanimousely agreed that to give such a course, at an early stage in the programme, would not over-tax the energies of one professor. The basic teaching of international law should in no way to aspire to provide students with an extensive scientific knowledge of all the phases of international law or of all the aspects (historical, political, economic) of law and legal institutions. It is of the utmost importance that this teaching, at the same time that it provides the students with a certain minimum of basic knowledge, should succeed in giving them a more realistic way of thinking by drawing their attention to the social phenomena which play a role in the creation, the interpretation, and the disappearance of legal norms. Such a legal training, «coloured and enhanced» by even occasional glimpses into social, political, or economic principles, is the only way to revive an interest in international problems among the student body, and to arouse in a select few the desire to specialize and to carry on personal research, The art of the teacher will lie in his

(15) Felix Frankfurter, «Alfred North Whitebeard,» reprinted from the *N. Y. Times* of January 8, 1948, in Alfred North Whitebeard, *The Aims of Education*, New York, New American Library (llth printing, 1961) p. 7,

> ability to combine the amount of legal and extra - legal material offered in his courses in such a way as to preserve the coherence and the original characteristic of law. [16].

Indeed one should never overlook the fact that, under the pressure of the curricular or other difficulties, if the necessity of introduction of such a special course imposes itself, it should not turn into a «survey course» which, if not handled very carefully, may provide much knowledge but little understanding. [17] The teacher of international law, under these conditions, should remember that «if international law is not to degenerate into an amalgam of jurisprudence and political science, it must be taught and examined, as a technical law subject.» [18] The Conference of 1956 has seen such a risk and gives the following warning :

> A more complete and realistic study of the fundamental aspects of international law should not turn this topic into an encyclopedic science, a result which, as far as the teaching is concerned, could only be superficial and subjective. All the members of the group stressed the necessity of avoiding the distortion of law by confusing it with sociology or political science. Law is a science with its own characteristics, its own particular requirements relative to method and argumentation, which must not, under any circumstances, be abandoned. It is rather a matter of «carefully sifting out» by means of a more broadly oriented examination, the rules and the practices of international law as taken in the course of their actual application. [19].

In connection with the actual content of the subject - matter of international law general course, the following broad questions might deserve consideration : (1) Does the teacher insist unduly on questions and topics which, viewed from the actual setup of international life, are only of historical importance? (2) Does the teacher deal insufficiently with subjects of increasing importance?

---

(16) P. de Visscher, *op. cit.*, 266 - 267.

(17) J. W. Hawley, «Content of Legal Education. Increased Emphasis on Professional Responsibility,» *Papers of Ankara Conference*, 103.

(18) Georg Schwarzenberger, «On Teaching International Law,» 4 *The International Law Quarterly* 303 (July 1951).

(19) P. de Visscher, *op. cit.*, 261.

(3) Does the teacher overlook entirely potential subjects or questions? Another general question for discussion would be about the place of the law of war and neutrality in a general course of international law.

It might, perhaps, be of some importance to point out that, the time - warn division of international law in more or less equal two major parts, i. e., (1) the law of peace, and (2) the law of war and neutrality has, generally, been abandoned. [20] According to one point of view such a division is now obsolete not only because measures short of war suggest a third status, a *status mixtus*, or overweights the subject of the law or war and neutrality, [21] but also, in some respect, most of the legal rules concerning the conduct of war have but a mere historical value. [22] Perhaps, in such a line of thinking, Professor Lütem, at the Ankara Symposium of 1959, said realistically : «Who, for instance, will be the criminal of the next war? ... What kind of war will be the wars of tomorrow? Who is going to write international law afterwards? Who will teach it? What kind of rules will be restated? Those are really great question marks.» [23].

Whatever truth these views may reflect, one cannot help but share the much deeper, more difficult but, on the long run, more realistic approach to this question as expressed by Professors McDougal and Feliciano :

---

(20) At the Lwow conference on teaching international law and international relations in 1935, «La Conférence ... rejette la division traditionnelle des manuels du droit des gens en droit de la paix en en droit de la guerre et considère que les règles devant régir une action armée éventuelle doivent être enseignées sur la base des règles traditionelles adaptées aux conditions juridiques actuelles de la vie internationale.» *Conférence sur l'Enseignement du Droit International et des Relations Internationales*, Lwow (1935) p. 208.

(21) See Schwarzenberger, *op cit.*, (I. L. Q.), 301. See also Philip C. Jessup, «Should International Law Recognize an Intermediate Status between Peace and War,» 48 *The American Journal of International Law* 98 (1954). A Turkish scholar, Dr. Metin Tomkoç discusses this problem he calls «the global armistice» in his recent publication : *Political and Legal Aspects of Armistice Status*, Ankara (1963), especially pp. 119 - 156.

(22) See statements of both Professor Charles de Visscher and Professor Fenwick as cited in Myres S. McDougal and Florentino P. Feliciano, «International Coercion and World Public Order : The General Principles of the Law of War,» in McDougal and Associates, *op. cit.*, 239, 240.

(23) *Ankara Symposium of 1959*, 59.

> The most obvious inadequacies in this attitude is that, because of its comprehensive depreciation of the role of the authority, it offers no real alternative to naked force in an era in which unrestrained exercise of such force against peoples threatens the very continuance of the human species. It is, of course, possible that the future may, as the world explodes in the holocaust of unlimited nuclear war, prove these writers to have been correct. Such pyrrhic vindication will, however, appeal to few, and for the scholar who cherishes both human life and human dignity, such a possibility can scarcely be permitted to deter renewed efforts to clarify the principles and precedures of a world order in which human life and dignity may be made more secure. [24].

In the Ankara Symposium of 1959 on Teaching International Law, similar, if not so eloquent and convincing views were expressed. [25] Professor Gönlübol, furthermore, draw the attention to the importance of a distinction between legal rules which prohibit recourse to war and the rules which concern the conduct of war. In his opinion, it was much more appropriate, in the teaching of international law on the undergraduate level, to deal with legal rules such as contained in the Briand - Kellogg Pact of 1928, in the Charter of the United Nations and in the decisions of the Nuremberg Tribunal. It was also necessary to teach the measures short of war, which are dealt with even in the text - books which do not devote special sections to war and neutrality. If, on the other hand, it can be done without any sacrifice of the teaching of international

---

(24 McDougal and Feliciano, *op. cit.*, 240.

(25) See Meray, *Ankara Symposium of 1959*, 54. Professor A. de La Pradelle, has written, in 1933, as follows : «Il est bien, sans doute, de multiplier les efforts en vue de rendre, de plus en plus rare, la guerre. Mais, si ces efforts ne devaient pas aboutir, si, par malheur, le retour à la guerre devrait se produire, ne conviendrait - il pas que dans cette hypothèse l'équipement juridique ait fait, au préalable, l'objet d'une préparation attentive? Est - ce que du simple fait que la politique prétend, désormais, faire disparaitre la guerre, les préparations militaires, navales, aériennes da la guerre ont cessé? Et dès lors, comment la préparation juridique des régles destinées à la discipline des différents modes de guerre, soit entre combattants, soit entre combattants et non combattants, seraient - elles plus en contradiction avec les perspectives de paix que ces dispositions guerrières. «(Utopie ou Calcul? Négligera -t - on longtemps encore l'étude des lois de la guerre,» 12 *Revue de Droit International* 512 (1933).

law of peace, some notions of the laws of the conduct of war as defined in The Hague Conventions of 1899 and 1907, and Geneva Conventions of 1949 may be given. [26]

Taking into considerarion the fact that the so-called «local wars» or «brush fires» do happen, and that even United Nations Emergency Forces may have to enter into operations which might necessitate the application of the laws o war, rules of war which still might have a practical value may have their place in a general course of international law. But the crucial problem, again, will be surely whether the teacher of international law is in a happy position of finding enough time to deal with all these subjects. Many teachers, in this respect, may rightly envy the possibilities of St. John University of New York. [27]

Another important question connected with the content of the international law general course is this : to what extent new and dynamic developments within the already established subject-matter is reflected in such a course? Is it, for instance, possible to treat the law of the sea without dealing with the legal problems and with their underlying extra-legal factors, created by the nuclear bomb tests on the high seas? To treat international organizations (especially the U.N.O.) in a mere descriptive way under the light of their basic documents only, may give, if not a wrong, but surely an incomplete picture. Current efforts for integration on continental or regional level cannot be outside of the scope of interest of the teacher of international law. The status and functions of the United Nations Emergency Forces, with all their legal and political problems cannot escape his attention. In some countries, the status of foreign armed forces may create special problems of current interest. Legal deveopments in the economic field which have justified a special course on International Economic Law [28], must find some place in a general course. To take as an example Mr. Jenks book, subjects such as «International Law and Coloniol

---

(26) *Ankara Symposium of 1959*, 50, 54-55, 57.

(27) According to Professor William, L. Tung, St. John's curriculum contains the law of peace (one year), the law of war and neutrality (one year), the law of treaties (one semester), and the theory and practice of international diplomacy (one semester). Dr. Tung considered it unfortunate that in recent years interest in the law of war and neutrality had declined. *Proceedings*, 220 (1961).

(28) Schwarzenberger, *op. cit.* (I. L. Q.), 305-306.

Policy,» «Employment Policy and International Law,» «Atom for Peace and International Law,» «International Regime for Antartica,» «International Law and Activities in Space,» will definitely put some pressure upon the teacher of international law to deal with these new developments in his course.

With all these arguments, one cannot underestimate a real dilemma touched upon occasionlly in this paper : The question whether the teacher of international law will find sufficient time within the curriculum of his university. The ideal answer is again the one offered by the 1956 Geneva Conference :

> It is essential that this extended programme of teaching international law should coincide with an increase in the number of hours generally falling to this subject. It is obvious that in the majority of law faculties, international law has not yet acquired the share of prestige in the university programme which in importance of international life, the development of international relations, and the increase in the number of international institutions should have bestowed upon it. Since this problem cannot be settled without previous consideration of the particular needs of all the university departments, the group refrained from any kind of precise recommendation, confining itself to drawing the attention of university circles to the question. [29]

However, to deal with equity *vis-à-vis* colleageus in other fields, it is of of some help to remember with Lord McNair that «every teacher who is keen on his subject thinks that his pupils cannot have too much of a good thing and is anxious *ampliare jurisdictionem..,»* and that «in the short period of time which in England a law student is prepared to devote to his preclinical education, he cannot learn much of any subject, but he can learn something of the principles and something of the sources where he can find more when it is needed.» [30] It must, indeed, be true that the aim is not to teach the student to know all the answers, but to enable him to develop an approach of his own. [31]

---

(29) P. de Visccher, *op. cit.*, 267.

(30) Arnold D. McNair, «The Need for the Wider Teaching of International Law,» 29 *Transactions of the Grotius Society* 96 (1943).

(31) O. H. Hoffmann, *Proceedings*, 103 (1947).

The question of the material used in the international law general course on the undergraduate level, may have different aspects in different countries with different systems of teaching, different traditions of education. It may depend on whether the traditional system of education, including the university, is based on *ex cathedra* lecturing only, or whether the active participation of the student is required for his learning; whether the teaching system consist of telling the student rather than encouraging him to think; whether the student comes to a university to learn or to be taught. In extreme cases where the whole educational system restricts itself to memorizing what the teacher has lectured during the course with the ultimate prupose on the part of the students to throw the ball back to the teacher during the examinations, the problem of the material may take the form of the problem of materials used *by the teacher* when he prepares his lectures, as for the student, a text-book (generally written or advised by his teacher) or the mimiographed notes of the lectures is accepted as material enough for his learning. Whatever is the system of education adopted, it is important that the materials to be used in international law courses be rich, sound and up to date.

At this stage of my presentation I hope that I have been able to indicate, if not directly but at least indirectly, what should be the requirements for the completion of an international law course on the undergraduate level. May I add two more points. First, it is of paramount importance that the student when he terminates his undergraduate programme acquire a problem-solving approach and an intellectual curiosity for new situations. What I mean, within the context of this paper, by problem-solving apporach is, briefly, this : A *solution* may be defined as some balance or harmony between opposing, conflicting elements or factors. A *problem* evolves when one or more elements or factors is missing or suffers a decrease in initial importance, or a substantial change in original quality or new foctors intervene, in such a way as to affect the previous balance or harmony. *Problem-solving approach* consists in trying and in being ready to try a new balance, a new harmony which can endure until a new problem, as defined, erupts and, thus, a new solution is necessary. As Professor Von Caemmerer puts it : «We have to expect that the lawyers which we educate shall, during their life-time, meet always new legal situations, unfamiliar legal material, and frequently changing circumstances. That

what they take with them from their studies in the way of short-lived specialized konwledge would be mostly outdated in a decade anyway.» [32].

Secondly, in addition to all these scientific and academic criteria, I cannot restrain from expressing another requirement for the completion of an undergraduate programme in international law, indeed in any university programme. This is an understanding of the wisdom best described by a great statesman, Kemal Atatürk, the founder of modern Turkey :

> One must consider humanity as an indivisible whole and a nation its component part. Just like pain at a finger's tip affects the whole body, a malady at any corner of the world should not fail to attract our attention. In case of such a malady, we should deal with it as if it were in our midst. No matter how distant the catastrophe may be, one should not fail to consider it close. Such an approach to international affairs will save the human beings, nations and governments from selfishness ... If we desire a lasting peace, we should take fundamental precautions at an international level. The prosperity of the whole of humanity should replace hunger and oppression. The citizens of the world should be educated in such a way as to root out fellings of envy, covetousness and revenge. [33]

Now, in connection with the question whether international law should be an elective or required course, I must point out, first, that such a problem does not exist in Turkey. Indeed, for a very long time, international law courses have been required courses in all the law faculties and in the Faculty of Political Science of this country. The situation in continental european countries seems to be, to a large extent similar to that of Turkey. Unless a radical change or a sensible development occurred in the United Kingdom and the United States, the question there is would not simply whether or not international law should be an elective or

---

(32) Ernest von Caemmererer, «Methods of Legal Education, «*Papers of Ankara Conference*, 65.

(3)) Enver Ziya Karal, *Atatürk'ten Düşünceler* [Thoughts from Atatürk], Ankara : 1955, pp. 130 - (as translated in M. Gönlübol and T. Ataöv's *Turkey in the Unidet Nations. A Legal and Political Appraisal*, Ankara : 1960, p. 5.)

required course, but wheter or not all the law faculties should offer international law courses (elective or required). [34]

An additional problem seems to be some lack of interest on the part of the students in international law courses. «Many students have the preconception that international law is an esoteric, irrelevant course that does not meet the needs of our age.» [35] One of the reasons for such an attitude may be a possible preconception about universities as institutions which train students for a given profession in the shortest and the best way. Of course, for the mainly profession - oriented universities which put the emphasis on training the students for marketing [36], a change in the interest of the students towards international law will depend, largely, on a change in the requirements of Bar examinations or on an increase of the pressure of the concrete and immediate needs of the social life. [37] But such a change depends, also, on something else : That universities should stop considering themselves primarly as training centers which prepare the students to master technical

---

(34) At the 1961 Conference of International Law Teachers in Wshington, D. C., Professor Johnson noted that, according to a report published by the Committee on World Peace Through Law of the American Bar Association, 75 out of 123 law schools in the United States are offering courses in international law. Professor Johnson added that his own survey revealed a number of schools offering special programs in international law, such as Southern Methodist and Tulane with programs regarding South America, Stanford which places stress on India and South Asia, and the University of Washington with its Asian program. *Proceedings*, 224 (1961). For a pre - war description of the situation in the United Kingdom (in 1939) see : McNair, *op. cit.*, 87 - 88.

(35) Oscar Svarlien, *Proceedings*, 220 (1961). Professor King made this remark: «The fact is,.. that there is too much materialism in the students' attitude. In the United States, law students are inclined to shun all elective courses which cannot be valued in terms of bar examinations or bread and butter. Jurisprudence, legal history, comparative law, public international law usually are not popular.» *Papers of Ankara Conference*, 118.

(6) Dr. Ivan. Soubbatitich, at the 1961 Conference of Teachers of International Law, pointed out that law schools are not interested in international law as a science or a political problem, but as practicing lawyer. He said that, in the medium sized law schools, not Harvard or Columbia, a student is busy studying torts, civil procedure, etc., for Bar Examinations and that what such a student needs is Brierly's *Law of Nations*, but the latter book presents a problem when you attempt to use it in America, as it is an English book. *Proceedings*, 223 (1961).

(37) Cf. Richard Gardner, «International Law Faces International Economics,» *Papers of Ankara Conference*, 133 - 142.

skills to be used immediately in a rewarding way in a given profession. As professor Jessup so aptly said :

> In general ... it seems to me that one needs to da two things in developing the teaching of international law in the law schools. One is to say frankly, «Yes, you are probably going to be a practioner of law, but you ought to have appreciation of the way in which international law enters into law practice. Secondly, and more important, you are going to be a citizen and, presumably, a leading citizen in your community, and you need to have an understanding of the general international focus in which so many problems today are placed.»
>
> ... In view of the breadth of the international implications in all current activities today, I think that law schools will be seriously derelict in their duty if they do not turn out law students hereafter who have an appreciation of the international scene. If that instruction is not given, it seems to me that we must inevitably look forward to continuing to have a great deficiency, which we have have had in the past, of members of the Congress, even members of our executive departments, who have not the fundamental outlook upon international problems which it seems to me is essential if the United States is successfully to discharge the role which is forced upon it today, whether it likes it or not. [38]

It looks as though, in some countries, universities volunteer themselves to satisfy this legitimate request on the part of the students (or their families), rather than to meet the expectations of the national and international communities. It has been said that «a university is an institution which applies systematic research to almost everything under the sun - except itself.» [39] If this is not a completely inaccurate observation, then it seems to be high time to do some soul searching, high time for some change of educational philosophy. A university can not fail, therefore, to see the truth in what Lord McNair says :

---

(38) Philip C. Jessup, «The Teaching of International Law in Law Schools,» *Proceedings*, 74 (1947).

(39) T. H. Caplon and R. L. McGee, *The Academic Marketing*, New York (1958).

> «Every university which aims at giving legal education that is liberal education and not merely a professional training should make Public International Law a compulsory subject at some stage in its curriculum. In view of the large part which our country is destined to play in the development of sound internationalship in the post war world, it is of the greatest importance to increase the number of men and women who have it in power to give intelligent guidance to public opinion in international affairs. I consider that the country has right to expect that the members of the legal profession should play an important part in supplying leadership of this kind.» [40]

Last but not least, I turn now to the question whether international law should be taught in the law school or in some other school of a university. I do not think however, that there is much to be said, at this stage of my paper. It is, I hope, clear that international law should be taught (and taught as a required course) in all the law schools. A seemingly more controversial question might be whether, *in addition* to law schools, international law should *also* be taught in some other school of a university. Although an answer to this question would depend, again, on many factors in different countries, my general answer, based mostly on Turkish experience, will be «Yes». Indeed, in Turkey, international law is offered, at the Faculty of Political Science, in the Academies of Economics and Commerce, at the Military College, and at the Police College, as well as the Schools of Law.

If we agree that political science deal with «political phenomena», i. e., with social facts having some relation to the process of «power», there should be no doubt that law is a political phenomenon, because it either determines the forms of organization of power, or as compulsory rules of conduct concerns the exercise of power. Law being a political phenomenon, it is only normal that it take its proper place within political science. Legal disciplines which have a direct bearing on the political life, i. e., on the organization and exercise of power, such as international law, may and should find a place in the curriculum of other faculties than

(40) McNair, *op. cit.*, 97.

law schools, dealing with political sciences. [41] «Considered from the point of view of its essential nature and social utility, international law, comprising the legal aspects of interstate relations, cannot logically be the exclusive domain of juristic science. It is not extraneous to political science, nor an appendage thereto, but an integral part thereof. Indeed a leading American authority [Manley O. Hudson] who speaks on the basis of a long experience in teaching in a law school, has said that he could not teach international law without teaching political science in some degree.» [42].

In preparing this working paper I knew, as I made clear from the outset, my shortcomings in providing more answers than questions to specific needs of the teaching of international law in this part of the world; shortcomings mostly due, on my part, to an insufficient knowledge of situations, needs, educational systems, curricular, financial and personnel possibilities of each of the countries of the region. It seemed, therefore, to be advisable to risk my developments on some problems of a general nature which may have some relevance to other countries as well.

A Turkish proverb says : «A fool throws a stone in a well and forty wise men cennot take it out.» What would make me less foolish, at least in my own eyes, is the conviction that the wisdom of the distinguished scholars around this Roundtable exceeds by far the wisdom of forty wise men. My hope is that some of these stones will be worthy of their consideration.

---

(41) Ilhan Unat, «The Relationship Between Law and Political Sciences, and the Nature, Content and Method of the Legal Education in the Curriculum of a Faculty of Political Sciences,» *Papers of Ankara Conference*, 143 - 148.

(42) Wilson, *op. cit.*, 78.