

# Teaching International Law

## Interest Group

### Message from TILIG Leadership Team

We are pleased to launch this quarterly newsletter of the Teaching International Law Interest Group (TILIG) of the American Society of International Law. Year 2021 has brought many exciting new changes to TILIG that we would like to highlight here. Md Rizwanul Islam was elected a co-chair and Khadeija E. Mahgoub became our group Secretary. Our group's bylaws were passed in April. Also, TILIG hosted an event at the annual Meeting in April titled "Teaching International Law to Non-legal Audiences." We also launched a new series for our members titled "Teaching Tools" which focuses on conversations with different experts, academicians, and professors on teaching methods etc., of international law. On September 13, 2021, we hosted our first event of the series titled "Teaching Tools: International Economic Law with Kathleen Claussen." On November 15, 2021 we hosted John Haywood from Washington College of Law for the online seminar titled: "International Legal Research Tools for Students and Scholars. Finally, this December, we hosted two additional events: 1) Teaching Tools: Alternative Assessments in International Law Teaching with Melanie O'Brien from University of Western Australia Law School and 2) Teaching Tools: Global Public Health Law with Professor David Fidler from Indiana University Maurer School of Law.

TILIG would like our members to be a part of our Newsletter moving forward. We would like this publishing to be a platform for our members where they can share their career updates, notes on their publications, sharing knowledge and pedagogical methods and/or publish short pieces on different topics of teaching international law. This can be a great way to get published! We would also greatly appreciate your suggestions/comments on making the TILIG more robust. Happy Reading!

Also, we would like to wish all of our members a Happy, Healthy, and Prosperous New Year 2022.

TILIG Leadership Team

### INSIDE THIS ISSUE

Message from TILIG  
Leadership Team

1

The Challenges of Teaching  
International Law

2

The Underlying Politics:  
A Review of The Dynamics of  
International Law

3

Members News

4

New Publications by  
TILIG Members

4

### Teaching International Law Interest Group

#### TILIG Officers

##### Co-Chairs

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Md. Rizwanul Islam

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## The Challenges of Teaching International Law

by Dr. Khadeija Elsheikh Mahgoub  
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While international law is generally divided into two main subdivisions, namely, public international law and private international law, the focus of my thoughts here is more so on the former and its composite courses such as international human rights law and international humanitarian law... etc.

Some of the challenges in teaching international law stem from the allocation of the modules within an undergraduate academic program, be it an elective or a core subject. For instance, in many American institutions public international law is an elective module, whereas in other parts of the world it is mostly a core course when studying for an undergraduate law degree. Surely, this placement of international law courses in American institutions seems shocking, considering the role and influence of the United States in the making of, and interactions within, the international community – however, such contradiction is beyond the scope of this short piece.

The challenges associated with the teaching of an elective course vary from that of a mandatory one, yet there remain some shared challenges. For instance, raising popularity for the course among students who commonly view it as less attractive and not of direct relevance to their future career. Some institutions with limited financial resources may face challenges in guaranteeing the continuing availability of such an elective course which could jeopardize some aspects of teaching and learning. All of this might lead to the scarcity of opening the course in a semester.

Another challenge transpiring from the teaching of international law is posed by the students themselves as they are an essential party to the teaching and learning process in itself. While a significant number of students might be passionate about the main or basic topics of public international law, difficulties might naturally arise with issues of identity and belonging, as well as some

misconceptions and preconceived notions, as a result of the international and intercultural themes of the course. These are arguably formulated by basic instincts and affinity influenced by one's culture, but are also exacerbated by exposure to regulated and curated information relating to the international sphere and its happenings in broadcasted media and social media. The teaching and learning environment become more inflamed when topics of the curriculum are perceived in a personalized way.

In relation to this, the teaching methodology of international law may sometimes be incongruous with, and stand in direct opposition to, the cultural understandings of students, hence interfering with the ongoing teaching and learning process. Conversely, law professors and their teaching are not immune from such cultural biases. The study of international law introduces a variety of contentious topics that may prick many cultural sensitivities, and so it is not surprising that teaching methods that do not accommodate for this in a nuanced manner, face such challenges.

Further challenges arise from the position of public international law modules within an academic program, whether positioned late in the curriculum or early. Such challenges impact students' learning since the mechanisms of any academic program work by building various blocks of knowledge, skills and values over the entire period of learning. In this context, public international law is arguably a unique module as it fits within several academic programs, requiring different entry requirements, attracting students with a wide spectrum of backgrounds and providing a range of different learning outcomes.

One challenge which the teaching of international law shares with other modules, is the issue of resources. Recent developments in the teaching of international humanitarian law, for instance, have led to the utilization of technology and gamification mimicking war zones to diversify teaching resources. Additionally, geographical access to an international or regional institution can also enrich the teaching of some public international law related modules, while the contrary

—continued on page 3

## The Underlying Politics: A Review of The Dynamics of International Law

By Adam Irish, PhD  
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Teachers of international law face a perennial dilemma: how to teach the both the legal system of international law and the politics underlying that system? This note reviews Paul Diehl and Charlotte Ku's book The Dynamics of International Law (2010) as a supplement to address this dilemma.

Diehl and Ku's book offers a theory of change in international law. Their theory subdivides international law into the operating system and the normative system. Ku and Diehl (2010, 71–73) use the metaphor of a computer to explain their model, highlighting the interplay of hardware capabilities (the operating system) and the software being run (the normative system) on a computer. This metaphor is especially helpful when explaining international law to Gen-Z students.

Instead of presenting international law as a loose set of structural elements followed by a deeper dive into issues (typically of most textbooks), Diehl and Ku group those elements in the above subsystems. Using the concept of punctuated equilibrium, they argue that, despite periods of stasis, one subsystem of international law can abruptly, create pressure on the other subsystem. For example, a newly formed human right (the normative system) generates questions about assessing and enforcing the right (the operating system).

How do these moments of evolutionary pressure emerge? Diehl and Ku draw on research in international relations that points toward systemic shocks (e.g., major wars, economic events, environmental catastrophes) as well as major states as drivers of systemic change (2010, 68). Their theory encourages students to analyze international law as a dynamic system, responsive to global shocks and the actions (or inactions) of major powers.

Unlike closed systems, in Diehl and Ku's theory evolutionary pressure can escape international law. Consider again that newly formed human right that creates an imbalance between what the law obligates and what the operating system can deliver. Provided the evolutionary pressure is great and the operating system is resistant to change, Diehl and Ku's theory expects that the imbalance may "prompt extra-systemic adaptations," i.e. actors beyond the legal system stepping into redress the issue (2010, Chapter 4). This adaptation provides another method of confronting the sub-optimal aspects of international law.

Diehl and Ku's book is not without its limitations for teaching international law. First, their intent is to explain change in the international legal system. Not all classes or student research projects are focused on time or change. Second, by adopting a systems approach, Diehl and Ku's theory privileges major powers, large states most able to affect international law's subsystems. This choice risks overlooking legal activity by middle power

—continued on page 4

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## The Challenges of Teaching International Law —continued from page 2

may possibly deprive students of experiential learning opportunities.

Finally, another significant challenge lies in the availability of suitable textbooks and references, especially with the emerging arguments that there is scarcity of non-English language books, and the fact that many of these texts lack comprehensive and inclusive representations of our current multicultural international community.

However, despite such challenges, and observed skepticism amongst students, public international law and its related modules remain popular. Undoubtedly, intimately understanding the structure and nature of our current international community, and the way it functions, greatly enhances the teaching of international law and can mitigate the effects of its more challenging aspects. ■



## The Underlying Politics: A Review of The Dynamics of International Law

**International Law** —continued from page 3

and weaker states. Third, the use of a punctuated equilibrium rather than a gradualist orientation to evolution underemphasizes the many small changes that often presage and lay the groundwork for major changes to the international legal system.

Despite these limitations, The Dynamics of International Law delivers on its central promise: a simple, usable theory of change in the international legal system. For teachers it provides a set of consistent, well-defined concepts for tethering the varied material of international law. More importantly, for students Diehl and Ku provide a method for assessing the politics of international legal system change. This theory brings to life the history of international law by forcing teachers and students to consider the evolutionary pressures and political limitations that resulted in the overbuilt, fractured, or sub-optimal workings of international law today.

Lastly, for student researchers, Diehl and Ku's theory lays out a set of testable expectations about imbalances between subsystems. My experience using this book is that these expectations encourage students to move beyond argumentation or normative analysis toward empirical assessment of interplay between subsystems as well as shocks and political decisions that transformed international law. Whether or not students find support for Diehl and Ku's theory, testing these expectations builds experiential bridges between students' understanding of international law and the shifting politics beneath. ■

## Members News

**Prof. Craig Martin** of Washburn University School of Law this summer launched JIB/JAB-*The Laws of War Podcast*, which aims to explore debates and hot issues in the various legal regimes that govern the use of force and armed conflict, through interviews with experts in the various fields and from around the world, discussing their recent work and how it applies to recent issues in the public discourse. The first epi-

sode gives an overview of the various regimes, and a number of faculty have reported finding the podcast in general helpful for their students. The website, which has links to the underlying and recommended readings, is here: <http://jibjabpodcast.com>. The podcast can be found on most popular podcast platforms."

**Andreas R Ziegler** (Professor and Director of the LLM Program in International Business Law at the University of Lausanne) was appointed President of the Swiss Society of International Law.

## New Publications by TILIG Members

**Maria Laura Marceddu, Pietro Ortolani**, What Is Wrong with Investment Arbitration? Evidence from a Set of Behavioural Experiments, *European Journal of International Law*, Volume 31, Issue 2, September 2020, Pages 405–428  
<https://academic.oup.com/ejil/article/31/2/405/5909412?guestAccessKey=39bbc03e-41b6-41b6-ac0f-d4a63471db5c>

**Ziegler Andreas R.**, How global should legal education be? Recommendations based on the compulsory teaching in international aspects taught at Swiss law schools, 2020/05/18. *European Journal of Legal Education*, 1 (1) pp. 49-82. Peer-reviewed.

**Dr. Khadeija E. Mahgoub**  
Cultural Interaction with the Pedagogy of International Law. (Forthcoming 2022). In an edited collection connected to the British Institute of International and Comparative Law's (BIICL) *Teaching International Law* webinar series.

**Dr. Khadeija E. Mahgoub** Remote Learning: Redefining the Role of Program Leadership in Preserving the ILOs during COVID Crisis in Jamil, M. G. & Morley, D. (Forthcoming 2021). *Agile Learning Environments amid Disruption* (Edited Collection). Palgrave Macmillan.

**Md. Rizwanul Islam**, 'Promptly Notifying Infectious Diseases Likely to Cause Pandemics: Individual State Responsibility, Shared Collective Burden', 56(1) *Texas International Law Journal* 35-57 (2021)