Ius Comparatum – Global Studies in Comparative Law

Christophe Jamin
William van Caenegem *Editors*

The Internationalisation of Legal Education

Springer

Ius Comparatum – Global Studies in Comparative Law

Volume 19

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Académie Internationale de Droit Comparé
International Academy of Comparative Law

Christophe Jamin • William van Caenegem
Editors

The Internationalisation of Legal Education

Springer

Editors
Christophe Jamin
Law School
Sciences Po
Paris, France

William van Caenegem
Faculty of Law
Bond University
Queensland, Australia

ISSN 2214-6881 ISSN 2214-689X (electronic)
Ius Comparatum – Global Studies in Comparative Law
ISBN 978-3-319-29123-9 ISBN 978-3-319-29125-3 (eBook)
DOI 10.1007/978-3-319-29125-3

Library of Congress Control Number: 2016934057

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer International Publishing AG Switzerland

Preface

This publication is the product of the combined efforts of editors Christophe Jamin (Sciences Po, Paris, France) and William van Caenegem (Bond University, Queensland, Australia) and contributing authors from 19 different countries.

This volume serves as a rich source of information about the state of internationalisation of legal education in a large range of jurisdictions and provides a snapshot of the debate concerning the importance and future development of internationalisation in legal education. It provides an international picture of the debate about the shape and degree of internationalisation in various national curricula and the discussions surrounding the adoption of a more international approach to legal education in the contemporary world. By comparing the Internationalisation of Legal Education ('IOLE') realities of the countries contained in this volume, one can evaluate both the advantages and disadvantages of integrating international elements into undergraduate and postgraduate curricula.

The editors were joint authors of a General Report, on the topic of IOLE, for the Vienna Congress of the International Academy of Comparative Law, in July 2014. This General Report combined information from national reporters in 38 countries, representing legal systems from every region. In order to collect relevant information to include in the General Report, national reporters were sent a questionnaire, consisting of a range of descriptive and policy questions and given the opportunity to provide examples and bibliographical details. These questionnaires then served as the National Reports, which were the basis for the General Report.

The National Reports highlighted interesting differences between countries and their relationship with, and drivers of, IOLE. At the same time, the National Reports unequivocally demonstrated that, in legal systems around the world, globalisation is increasingly resulting in a universal need for people trained in international questions. The compilation of the National Reports into a General Report provided an overview of the state of internationalisation of legal education in many civil law and common law countries. The approaches to internationalisation are many and varied,

but every jurisdiction recognises the importance of introducing aspiring lawyers to a more integrated global environment.

Upon presenting this General Report to the 2014 IACL Congress, the General Reporters received a proposal from Springer to publish a volume containing National Reports on this topic. Of the original 38 national reporters, 19 have participated as contributing authors to this publication, each provided with a general template used in transforming their National Reports into the format of their respective chapters.

In translating the initial National Reports into volume chapters, the authors were able to explore and expand upon the unique factors, attitudes and drivers that shape IOLE in their country. As a result, the approach to the topic of IOLE varies from chapter to chapter. This makes for interesting reading that enables ready comparison between countries.

The editors would like to thank the contributing authors for their time and efforts in putting together their respective chapters. Each chapter is unique in its approach and outlook and offers valuable insight into the effects of globalisation on IOLE today. As well, the editors would like to thank research assistants Violet Atkinson, Damian Charlotin, Tonya Roberts and Ella Zauner, for their editing and coordination efforts.

Paris, France — Christophe Jamin
Gold Coast, QLD, Australia — William van Caenegem

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The Internationalisation of Legal Education: General Report for the Vienna Congress of the International Academy of Comparative Law, 20–26 July 2014

Christophe Jamin and William van Caenegem

Introduction

The IACL accepted the joint recommendation of the Reporters that we produce a single General Report on the topic of Internationalisation of Legal Education ("IOLE"). We considered this appropriate given the nature of the topic, which is not one of substantive law. Despite the distinction made by Max Weber a century ago between two main systems of legal education (the English apprenticeship system and the German university model) there is today little empirical evidence to suggest that there is a remaining chasm. Any remaining differences appear to be ones more of degree and of conventional perception.

In terms of the internationalisation of legal education, there appears to be little to be gained from drawing distinctions or making comparisons along common law/civil law lines. Although in some ways there remains somewhat greater integration between the countries of the British Commonwealth as far as admission is concerned, in many ways the common law and civil law approaches, with their mix of university degrees and periods of apprenticeship are no longer really very different, and have not been so for quite a while. That is not to say that there is sufficient knowledge or understanding between the systems; failures of understanding even occur within countries, such as in Canada between the civil law province of Quebec and its common law neighbors. In some countries the "other system" elicits little interest, as for instance the National Reporter for Spain mentions, or attracts generalised criticism.

C. Jamin (✉)
Law School, Sciences Po, Paris, France
e-mail: christophe.jamin@sciencespo.fr

W. van Caenegem
Faculty of Law, Bond University, Queensland, Australia
e-mail: wvancaen@bond.edu.au

C. Jamin, W. van Caenegem (eds.), *The Internationalisation of Legal Education*,
Ius Comparatum – Global Studies in Comparative Law 19,
DOI 10.1007/978-3-319-29125-3_1

Why Address the Topic of IOLE Now?

Why is the topic of internationalization of legal education on the agenda now? Why is it a relevant subject for examination today? Does this topic generate the same level of interest everywhere in the world? Is enthusiasm for IOLE mainly driven by the academic sector, by government, or perhaps by multinational corporations? Is this interest closely linked with the globalisation of the practice of law? Or is globalisation of law itself something of a myth, or a reality reserved for only a very small percentage of practising lawyers around the world?

It is problematical to generate firm answers to these questions. But what we can report without a doubt is that there is widespread interest in IOLE, and numerous disparate initiatives around the world testify to it. Nonetheless, some National Reporters state that the topic is simply not on the agenda at all (as was reported in relation to India, for instance, and to some degree Spain).

There are of course some terminological issues concerning the use of the terms "international", "transnational" and "global", and their respective "-isation". Professor Chesterman (10 (2009) German Law Journal, 877) makes a useful distinction between "internationalisation" (a small number of lawyers involved in mediating disputes between jurisdictions; students within this paradigm/period rarely move and the vast majority study in the jurisdiction in which they live); transnationalisation (a word coined by Philip Jessup in the 1950s, which signals the increasing mobility of capital and people, collaborations and exchange programs in legal education, and the rise of foreign students admitted into law programs), and "globalisation" (a global elite competes in a worldwide market for talent; law schools need to educate lawyers to be "residents" rather than "tourists" in new jurisdictions, with more dual or double-degree programs across national jurisdictions, and the creation of self-proclaimed "global law schools"). In relation to "globalisation" the NR for Luxembourg (Prof Ancel) makes the point that "[...] la globalisation peut être perçue sur deux plans qu'on peut, en paraphrasant Gény, désigner comme celui du 'donné' et celui du 'construit'." By the "*globalisation du donné*", he means the growth of international relations that results in the proliferation of international contracts, of corporate groups, the development of family relations between persons of different nationalities, etc. This results in lawyers who have to deal more often with foreign legal systems. The "*globalisation du construit*", then, refers to a growing internationalisation of the law itself, not only by the development of international legal instruments largely rooted in domestic legal systems, but also "[…] *à travers une circulation accrue des idées et des concepts juridiques, entraînant une sorte de transnationalisation des droits nationaux eux-mêmes*".

In this report, whereas we used the terms "international" and "transnational" interchangeably, we chose to refer to "global" and "globalisation" as distinct concepts. The latter terms are less neutral and give rise to more debate, which we do attempt to address, based on NR's comments, at various points below. "Globalisation" in terms of legal practice tends to refer to the emergence of the so-called "global

lawyer", an ill-defined term which suggests cosmopolitan individuals familiar with different legal cultures, multilingual, at ease in the world of global trade and finance, and not concerned with national borders. However, does the "global lawyer" represent nothing more than a mythical future, or a legal practice elite which in some form has in fact existed for a long time in the higher spheres of international banking and finance, M&A transactions, multinational corporate groups and international taxation, to name a few? In addition, globalisation is sometimes seen as a cover for the overbearing influence of a single national system.

There is also a question whether, notwithstanding the reality of socio/economic globalisation and its substantive impact on the law, the essential elements of legal practice, i.e., the giving of legal advice and the representation of clients in courts, always remain national (the Scottish NR refers to the global lawyer as an "enlightened national lawyer"). Every legal question that involves a foreign or international element, except for the few being dealt with by supranational courts, remains anchored in the legal system of the relevant locus. Some still agree with Posner who once said[1]: "Legal thinking does not cross national boundaries." (see the debate referred to by the Swiss NR concerning Switzerland and globalization: "a bit of an American-style of isolationism prevails also in Switzerland"). If so, is IOLE just a marginal and transitory faze, the latest fad in legal education which will peter out to be replaced by the "next best thing"?

We think not: technology, travel, multinational business, the adoption of a few *linguae francae*, the creation of free-trade areas, instant access to law and information from around the world are all here to stay. The world has become more integrated, and the legal academic is actively responding to such a state of affairs – albeit, it would seem, at a relatively low pace. On the positive side of things, more and more students have an international dimension in their legal education, and are then imbued with the values of openness, cosmopolitanism, curiosity and engagement that come with it.

National Reports and the General Report

National Reporters have submitted reports in relation to the 38 jurisdictions. This General Report does not attempt to incorporate all data from the National Reports, but to provide an overview and identify some common themes that emerge from them. We have also selected some examples of various programs, admission rules, practice structures, etc., to illustrate elements of the General Report. We thank the National Reporters for their work and the useful material they have provided, and on which this General Report is almost exclusively based.

In many respects the contents of this General Report will not surprise those interested in the Internationalisation of Legal Education (IOLE). However, the Report

[1] See Posner, How Judges Think (Harvard UP, 2010) 368.

provides a basis for further discussions at the Congress and for future development. One of our main conclusions is that many and varied IOLE initiatives are underway in the countries reported upon, but in a largely uncoordinated and very diverse manner.

As indicated above, only very few National Reporters assert that IOLE elicits no interest, or generates no initiative, in the academic sphere of their country. We are of course conscious of the fact that National Reporters would tend to have an interest in, and enthusiasm for the subject. We therefore tried to maintain a healthy level of scepticism with regard to the phenomenon of IOLE. We also note that we did not ask National Reporters to provide systematic raw data about IOLE, but more general impressions and illustrations. Some few Reporters interviewed others within their jurisdiction, in India for instance and also in Ireland. We then primarily sought input about the nature of the domestic debate, the level of initiatives, divergences of opinion, etc., in order to give us a richer picture of where IOLE stands in the various jurisdictions.

Generally speaking the NRs did not advocate any major structural reforms or advances. Most proposals tended to reflect ideas already established in some jurisdictions, or some increase in the intensity with which the goal of internationalisation of legal education should be pursued. The National Reports tended to confirm observable patterns rather than to reveal unsuspected (future) plans and developments. There is nonetheless a considerable level of incidental flexibility, innovation and experimentation within the IOLE experience. A theme that in our view emerges clearly from the National Reports is that legal education more generally is trending towards greater diversification, in relation with the students' evolving career paths and interests – and that the international aspect of the law is one of the diverse options that must be available in today's world. Nonetheless we also see a *communis opinio*, according to which all law graduates today should have at least a decent basic knowledge of the world of the law beyond their own jurisdiction. We do conclude that it is incumbent upon law faculties to ensure that the greatest possible number of students can participate in the aforementioned internationalisation. Practical, and to the extent possible also financial constraints should be systematically addressed in a cooperative and supportive fashion amongst institutions.

Internationalisation in the Legal Academy and in the Profession

Internationalisation in the Legal Academy

The National Reporters from most jurisdictions describe a high degree of internationalisation of the legal academy itself in their country. In a normative sense, National Reporters almost universally agree that there ought to be a high degree of internationalisation, and give various reasons for this, which are addressed later in this chapter.

A significant indicator of this internationalisation is the high proportion of legal academics that have degrees from a jurisdiction other than the one where they live and work - although perhaps less so in civilian jurisdictions than in the common law world. The proportion is reported to be among the lowest in the Republic Czech (10 %), and relatively low in Germany (10–30 %), and Portugal (20 %). It is higher in Tunisia, although it is reported that more academics had foreign degrees in the past than now. The proportion is high in Cameroun (which has both common and civil law traditions); Canada; Italy (much more than some years ago);[2] Greece, due to the history and the structure of Greek legal tradition, with a strong German connection; and in Japan because the fact that law is, to some extent, "imported" from the West, explains that many law professors have studied in at least one foreign jurisdiction. By contrast, the proportion is said to be high in most common law jurisdictions, with the exception of the USA; it reaches two-thirds in New Zealand where, paradoxically, the interest in IOLE is said to be low, and comparative law not well developed. The reasons for high levels of foreign qualifications in the legal academia are varied, from the fact that some countries are former colonies (like Cameroun or Tunisia, where there has been a decline in foreign degrees since independence) to their status as members of a closely integrated cultural sphere (Canada with the USA; Ireland with UK and USA; the special links between Israel and the USA; Australia/New Zealand and the UK). It may be the case that foreign degrees are more common in common law countries than in civilian jurisdictions. It appears that in the civil law tradition, when people study abroad they study in a civil law country or in the US, whose LL.M offerings have had a great impact and generate significant financial resources for faculties. However, in the common law tradition, individuals when they study abroad tend to choose a common law country and only rarely a civil law jurisdiction. In part this appears due to the relatively low number of LL.M offered in civilian universities, partly because of the language issue.

A further indicator of this internationalisation is that many Reporters stress the need to publish in another jurisdiction or in another language. In some jurisdictions (e.g., Israel) it is essential to publish in foreign journals to advance an academic career. As a general trend one can say that publishing abroad is becoming more important. Most often that means publishing in English language journals (see the NR for Belgium). Nonetheless there are also countries (such as India, the United States, Sweden) where this is not the case, and most legal academics do not have a "foreign" degree. These tend to be the larger jurisdictions (USA, India). We assume that if research is conducted and published in other jurisdictions, this will be reflected in the approach to teaching and education of the publishing academics. Research and publications are often reported to require a foreign or comparative element, or to be incomplete without references to other jurisdictions, or aspects of the global legal order.

Some law schools are reported to have foreign permanent professors (e.g., in Italy in Trento; some "tenured" chairs in foreign law in Germany in French law, Anglo-American law, Asian law; in Luxembourg all professors of the relatively new law faculty have foreign degrees), who teach in the international law field or

[2] Note: in Italy, the jury that gives access to the equivalent of "tenure" is composed of five professors of whom one is a foreigner.

about their own law of origin. Many faculties also have permanent foreign adjuncts or "Visiting Professors" who attend for regular teaching duties every year or every semester (e.g. Trento has 26 foreign visiting professors; Law Faculties at Gothenburg, Stockholm in Sweden, and Sciences Po in France similarly report such "Visiting Professors"). Courses are commonly offered in collaboration with foreign colleagues (e.g., joint seminars in Germany; frequent visitors in Israel; visiting professors collaborate with locals in Sweden; etc.).

Most Reporters also stress that not just they but also their colleagues regard internationalisation of their teaching and their research as a very important priority. It is very common to read that Reporters and their domestic colleagues endeavour to build comparative elements into their undergraduate core courses. Generally the National Reports mention that there is considerable openness to foreign laws, international debates and legal institutions, etc., amongst the legal academy. Naturally, the National Reporters are as individuals positively disposed towards internationalisation themselves, which might to a degree influence their perception in this regard. But they report many objective developments, such as the perceived importance of research periods at foreign institutions, attendance at multi-jurisdictional conferences, maintaining networks of contacts and collegial relations with colleagues overseas, familiarity with the foreign literature, growing incorporation of comparative elements in courses, etc. Only in some of the very large jurisdictions does the establishment and maintenance of foreign networks appear to play but a minor role (the US, India).

Thus with some exceptions the legal academy can be said to be almost universally international in its outlook, networks and connections. If legal academics are not international in practice, they aspire to be so but are constrained by practical factors such as language and resources for travel. However, we shall see below that although the rhetorical level of interest in IOLE is high, the practical implementation, in particular at the core undergraduate teaching level, is in reality relatively low. Mostly, only Public International Law is compulsory for undergraduates, and only in rare instances comparative law or an introduction to other legal systems. And although in the EU countries, European Law is almost universally required, this is in large part because it forms part of the domestic legal order of those jurisdictions.

Internationalisation in the Profession

By contrast, for the practitioners, internationalisation appears to be less of a priority, and its acceptance as such is more controversial. Many professionals stress the overwhelming importance of a solid knowledge of *domestic* law. At the starkest level, the contrast is between academia, which sees IOLE as a source of insight and perspective on the law, and the professional sphere, which sees it as superfluous in the education of students who are destined to a mostly domestic practice. Even the large City firms often recruit domestic students to practice law at a national level only. The question is to what extent it should remain so…

Only at the "top end" of the profession, for the large global/city law firms, is knowledge of foreign languages and laws, and knowledge of the international legal system, reported as being considered important. For example, the National Reporter for Brazil stresses that the large majority of international work is done by the top tier UK and US firms in the major cities, whereas local practitioners tend to handle all domestic matters. There thus remains a large part of the profession who see international aspects of the legal education as secondary, although a requirement that law graduates be open-minded and receptive concerning foreign and international law is commonly reported. Depending on the jurisdiction concerned, practising lawyers will also expect graduates to have some knowledge of specific supra- or transnational subjects, such as European Law, or International Human Rights law (as in Mexico), or the law of a particular foreign jurisdiction (as in Luxembourg).

The big law firms (American and British) seem to play a major role in advocating for the relevance of IOLE (as noticed by the National Reporters for Germany, the Netherlands, and Ireland). Generally these practitioners' advocacy in favour of internationalisation is more practically driven (see NRs for Japan, Portugal: because they have constantly increasing relationships and connections with international clients) than inspired by some idealised conception of the modern global lawyer. However, there are exceptions: in New Zealand, the major law firms are focused on local law, and use off-shored agents for foreign work.

In truth it is probably the case that large law firms are not really interested in the internationalisation of the curriculum of a particular University, but require associates with a foreign diploma (see Spain). Hence it is most often by way of a foreign LL.M that graduates become "global lawyers" before joining the big firms (see Germany), but this is not always so: see e.g., the more universal approach in the core degree in the Netherlands. Thus study in a foreign country is a pathway to membership of the "legal elite" (the way to be recruited by the big law firms) or "to rise to the good positions" (see the NR for Israel).

If the legal academy, with only a few exceptions, sees the building and maintenance of international relations, cooperation, exchange and interaction as a vital component of professional life, in the legal profession there appears, according to Reporters, to be a distinct division between the top-end firms that are part of international networks of law offices, collegial relations, meetings, etc., and the smaller firms that tend to focus on domestic clients, and are less interested in such ongoing maintenance of international networks. Those firms see IOLE as much less important in legal education, and simply research well-trained lawyers; they see the debate about IOLE as big-firm driven. These firms focus on domestic practice and thereby more often work in areas that are traditionally not international: criminal law, family law, estates, real property, etc. In Spain, for instance, the vast majority of practitioners are reported to work in their own or in small national law firms; the NR for Ireland similarly reports such a division with local practice and individual clients less interested in the IOLE debate; in Switzerland, it takes the form of a chasm between lawyers operating in small cities and the countryside and lawyers operating in an urban environment. There is arguably a more general rift between practitioners in big law firms (or national government or big companies: see NR

for Netherlands), and the others who are more interested in a focus on domestic law (Canada, Spain, Netherlands, Ireland, Tunisia, especially the notaries). Some Reporters relate that most practitioners are not interested in comparative law (Italy). This tends to reinforce the need for variety in the options available to law students, so that they can choose to focus more on international or domestic law, depending on the career path they envisage.

Despite the interest in IOLE at the big-firm end of the profession, and taking into account the more domestic small firm category, there appears to be a serious dissonance between the legal academy and the legal profession in terms of the significance attached to IOLE. The profession as a whole is perhaps primarily interested in a wider debate about legal education, of which IOLE is certainly an element, but only among other aspects that attract more urgent attention. Law firms tend to expect more practical, skills training, and hope to hire efficient practice-ready lawyers direct out of university. Thus, although legal academics tend to prioritise the international in their work, practising professionals tend to have other priorities in terms of their expectations of the legal academy: better skills training, excellent research and writing skills, better doctrinal understanding, ethics and ethical values, social skills, etc.

There are indeed pressures on legal practice around the world that have brought debate about legal education in their wake (but with some differences in intensity: see Spain). Three main factors appear to be at work to increase competitive pressures on legal practice: internationalisation (outsourcing and new competitors like China or India); new technologies;[3] and deregulation (see the LSA in England and Wales in 2007 and its effects; see the NR for Greece). There is no longer a single and unique labour market for lawyers (diversity: see the NR for Netherlands). In this very specific and immediate context, it's not certain that the debate about internationalisation of legal education is a priority in the practice of law.

Many Reporters mention scepticism about the notion of a "global lawyer". They point out that there may be lawyers with a dual practice at times; but none offer advice on the law of multiple jurisdictions. For that, in all but the rarest case, they make use of the services of domestic lawyers within the jurisdiction concerned. The same is of course the case in relation to court appearance and litigation. Only in the most closely related jurisdictions do lawyers from other countries make court appearances: for instance between England and Hong Kong.

What Subjects Are International?

Despite the patchy interest in internationalisation in the profession, Reporters commonly refer to a long list of subject-matters that *are* considered quite international in nature, and a much shorter list of subjects that are considered not, or less, international. From that perspective, the importance of the international in legal practice seems quite high.

[3] See Suskind: The End of Lawyers? Rethinking the nature of legal services (OUP 2008).

Even in relation to the list of more domestic topics, international elements have recently been creeping in. In some jurisdictions, because of the large transient (immigrants/emigrants) elements of the population, subjects that are traditionally seen as largely domestic are now also said to require knowledge of non-domestic law. This means that practising lawyers in these fields need at least some basic understanding of the different approaches to the law in other jurisdictions. A good example of this is family or matrimonial law: traditionally considered purely national, in countries such as Turkey, Germany, it is now often found to have an international dimension because many citizens reside outside their homeland. Migration also means that individuals have assets in many countries (see NR for Greece), while emigration of the youth from certain countries also brings with it cross-border issues (see NR for Ireland). In Switzerland, 23 % of the people living in the country are foreigners; this influences the practice of lawyers who have to know foreign family laws and cultures. In countries such as Portugal, both emigration and immigration have also had an "internationalising" effect, as have the aggressive implementation of multinationals' corporate headquarters, in relation notably to accounting and fiscal policies, such as in Ireland. Even criminal law is considered more international today by most Reporters because of the international reach of organised crime, the increasing international cooperation between police forces and judicial officers, and the development of a unique international criminal law.

Areas of law commonly listed as being inherently international or cross-jurisdictional in nature are first and foremost concerned with: international trade and finance; human rights; sale of goods; arbitration; capital markets; company law; economic law; intellectual property; taxation; environmental law; banking and finance; company and commercial law; mergers and acquisitions; IT law; maritime law; law of the sea; telecoms; investment transactions law; transport law; energy law. Commercial and business law are more internationalized than the other branches of law (see the NR for Canada), in part through the global reach of big law firms (see the NR for Spain). Public law is more national than private law. M&A and corporate law are said to need "global" lawyers (Spain), and this extends more generally to economic law: see NRs for Germany, Tunisia (foreign investments, international arbitration), Greece (Maritime law is stressed as very international).

Areas reported as least international, apart from the obvious real property law (land law), are administrative law; civil and criminal procedure; trusts; civil liability (torts); family law; labour law; agrarian law; electoral law; accident compensation law; indigenous law. Others that might be added, although not specifically mentioned by the Reporters, are product liability laws; labelling and consumer information laws; etc.

In some areas of law, internationalisation has come about because of recent developments, such as the initiation and growth of an international human rights jurisprudence in Europe (NRs for Estonia, Germany, Ireland: the European Court of Human Rights) and also in South American (the Inter-American Court of Human Rights). In other areas the underlying reality is almost inevitably international, such as in aviation law; international transport and sale of goods; arbitration; mergers and acquisitions; etc.

The list of areas of law that have a strongly international aspect is thus quite long and seemingly expanding, according to most Reporters. As international interactions are growing in today's integrated global economy, corporations become more mobile, and as various new FTA's spur foreign investment, migration and trade, the areas that have an international component, or require some knowledge or sensitivity to foreign laws, will only increase. FTA's are a particularly significant factor, as they are growing in number, tend to be more prescriptive in detail than traditional treaties, and provide for enforcement and international dispute resolution mechanisms that decuple their effectiveness.

The Practicalities of Internationalisation of Legal Education

The Core Curriculum, Electives and Postgraduate Studies

National Reporters thus, for the most part, stress the importance of the international aspect for the academic sector and academic pursuits. Comparative and transnational work is very important to academic life. At the same time, IOLE gains in relevance for some parts of the profession at least, and the list of subject matters that are said to be international or have an international component is long and expanding.

In that light the core question is how these elements are being translated into practical IOLE initiatives in many jurisdictions. Generally speaking, as will be addressed below, we find in legal education a divide between the core compulsory undergraduate (or JD) curriculum, usually relevant or essential for admission to the practice of the law, and electives and post-graduate (in the sense of LL.M) degrees. The international content of the former is light, whereas internationalisation is far more present and growing in the latter, elective part of the law degree, and in further or advanced studies not required for admission.

In the core curriculum the most commonly reported international aspect is the general inclusion in core courses of references to the law in some other jurisdictions, and of some international instruments. These comparative and international elements are inserted on a case by case and voluntary basis by each lecturer (see, among others, the NR for Switzerland); there is considerable freedom of design. Further, in most countries there is also a compulsory introduction to international law, or a public international law course, whereas undergraduate law students can usually also choose *electives* from a long list of subjects that are international or comparative in nature. Thus, the focus of undergraduate degree is in truth still overwhelmingly on teaching the domestic law of the jurisdiction concerned.

For higher degrees the situation is different, as witnessed by the abundance of international and comparative topics and degrees.

Is IOLE a Priority Concern in Legal Education?

As indicated above, most legal academics are reported to see IOLE as a very significant priority. The difficulty faced in many jurisdictions, according to National Reporters, is that there are other, often more pressing such priorities. In particular, in many countries structural issues weigh on any evolution: the rapid expansion of the tertiary sector with constrained resources (Turkey), the financial crisis besetting graduates and law faculties (the United States), or the fact that other topics draw the most attention, such as the civil law/common law internal divide in Canada; the importance of indigenous law and similar legal issues; the still essential focus on professional exams, as well as on the increasingly important skills and practical training aspects of the curriculum, etc. The South African Reporter notes that the priority is much more on the pressing need to improve the quality of legal training in general in that country, within the constraints of limited resources. The New Zealand Reporter states that there is no interest in IOLE in that country, as there are other more imperative needs, such as dealing with the particularities of indigenous (Maori) law and finding an accommodation between it and the common law system. The Hong Kong NR reports that much attention is devoted to the interaction between the common law and the Chinese Basic Law.

It is thus common that academics seek to further internationalise their teaching, degrees and curricula, but have to defer such changes and developments because of more pressing concerns, and because the necessary resources are allocated elsewhere. Academics want to do more, yet are constrained and unsure what the attitude of the profession would be to such increased IOLE.

In quite a few jurisdictions, there is pressure to prioritise IOLE from quarters outside the legal academy: primarily from governments, which pursue diverse goals: internationalisation of the higher education sector as a whole (reported as a government priority in many countries); internationalisation of the legal services sector for the purpose of encouraging international business (as in Singapore); or in view of increased support for the international investment, fiscal and trade goals of the government (such as in Ireland; in China, to facilitate Chinese investment in other - notably, African - countries). Some governments simply want to open up the country to greater international exposure and interaction (as in Sweden). In other countries, IOLE is part of an international education strategy (e.g., in Ireland, mainly to attract fee-paying students). Whereas in some countries there appears to be more of a general consensus about the necessity of the internationalization of legal education (Germany, Netherlands), in others the topic is more hotly debated (see Greece).

In a few jurisdictions, pressure to internationalise comes from the legal profession, in particular where there is a significant international trade and business sector; in other words, where there are global law firms that service large multinational clients, or where the country due to its size and position is deeply enmeshed in international networks (such as in Singapore, Hong Kong, Luxembourg). Such firms sometimes directly demand lawyers with extensive international training, knowledge and exposure, or offer the conditions that motivate students to seek out such courses and training.

A leading impetus for internationalisation is of course the formation and expansion of the European Economic Community and the European Union. Although naturally regionally focussed, the reverberations of the European efforts towards the integration of disparate jurisdictions on the substantive, procedural and educational levels have been considerable. The European Union is a laboratory for internationalisation, harmonisation and collaboration.

The debate about research and teaching in European law emerged in the European Council (1968, 1971, 1974 and 1976 conferences of the Law faculties: see the NR for Italy). The idea was to build a "European lawyer", and hence to develop courses in comparative law that would assist towards achieving this goal; but this has arguably not been a real success among European countries (in Spain, for example, the subject is not even offered). The "Bologna Declaration", which led to a standardisation of educational pathways (which were often very distinct; see Germany: from the Legal State Exam to the bachelor and master degrees), did not directly generate "internationalization" of local degrees (see NRs for the Netherlands and Portugal).

Probably the most practically important step has been the introduction of the "Erasmus program" (emphasised in the Portugal report, but generally recognised as a major driver of IOLE). Many students take the opportunity to study across Europe, sometimes across the common law/civil law divide. Faculties have adapted by offering law subjects in English, which inevitably involve comparative components and approaches. Students have now the possibility to immerse themselves in foreign - including, legal - cultures. The credit portability system means that their time at other universities advances their own degrees, although it is reported that in some countries practical constraints still impedes the mobility allowed by the Erasmus option.

Responsibility for Globalising Law Graduates: Universities or Law Firms?

These demands and pressures to prioritise the international aspect in legal education then beg the question: who is responsible for the internationalisation of legal training? Who produces the "global lawyers"? In particular, is this a matter for the academic sector, the faculties, or for the firms? Here there is divided opinion, but the preponderance of Reporters note that the task of law faculties is still seen as primarily to produce graduates well versed in the principles, rules and techniques of *domestic* law. Nonetheless there is also a strong feeling that in this globally integrated world it is simply no longer *enough* to do this; as seen above, many areas of "domestic" law now have an international element. A good domestic lawyer thus requires knowledge of aspects of law that are not only found within the strict jurisdictional boundaries of national law. A further point is that at least the *opportunity* of expanding their international knowledge must be available to those students with an interest in international practice and the ambition to improve their access to such a career after their education.

A number of Reporters point to the importance of the internal programs in big law firms for training tailor-made global lawyers (Germany, Greece). Perhaps there is a developing split or shift in responsibilities between basic education (more local) and continuing education (global law, but within the big law firms)?

In many countries practising lawyers still assume a significant component of the legal education of young graduates, because they are required to undertake relatively long periods of "stage", internship, pupilage or clerkship. This is a relatively neglected area of legal education, because little is reported about the learning process during these periods, or about what is required from employers, or how and which international elements are addressed. In some jurisdictions clerkships, stages, etc., have been largely, but not wholly, replaced by structured, practice-oriented courses. Neither these courses nor, as far as has been reported, traineeships, include any overt or compulsory international elements. They tend to be focussed on the minutiae and practicalities of domestic legal practice and the courts.

It is also significant, as some Reports stress, that many law graduates will in fact be employed in government departments and in corporations. They signal the increased diversity in the career paths of law graduates, some of which will entail greater exposure to international legal issues and practice. Some therefore will require international training to a higher degree than others.

In that light what seems to have developed in many countries is an *ad hoc* system that is more or less responsive to the individual choices and envisaged career paths of law students: a combination of core degree aspects with an additional spectrum of elective choices to specialise in the later stages of the degree and during further studies. The Hong-Kong Reporter stresses this point when mentioning that International Law courses are offered as electives. As a result, few students take Public International Law, for there are few opportunities of practicing it someday, while WTO law or international arbitration are far more popular. This result is interesting when compared to countries were the only compulsory course offered is Public International Law (India), precisely the less susceptible of being of practical use later.

It thus makes sense, it seems, that law firms in the international sphere take responsibility, at least in part, for training recruits in international aspects of legal practice. Given the variety of jobs and career paths now open to law graduates, most jurisdictions offer individual students choices at some point of their training rather than to compel them to follow a standard educational path. International subjects and comparative studies are on offer in more and more jurisdictions as one of the available streams of specialisation, according to the National Reporters. But of course universities can only do so much: given the multiplicity of jurisdictions and legal areas that will be encountered in big firm practice, university education is by necessity at once selective and very general. The rest is up to the firms depending on their needs and practice mix.

National Reporters sometimes also drew attention to where the benefits lie: if international firms gain considerable benefits from the skills of graduates who received an internationalised legal education, and are able to trumpet their international attributes to clients, then it makes sense that they contribute more to their training. Yet, although

graduates can be internationally trained in the law firm environment, there is still value in a systematic, academically sound and certified training education.

The Debate About Internationalisation and Globalisation

Consensus About Internationalisation, Questions About Globalisation

There is little argument, as several National Reporters point out, that state borders have declined in significance. Conversely, it is well recognised that the national legal norms have long been joined by many other sources of law. Internationalisation is simply a fact. But what does "internationalisation" really mean, beyond the observed phenomenon? As we indicated at the outset of this General Report, sometimes the term is used interchangeably with "globalisation", but clearly there is a difference between "globalisation" and "internationalisation". The latter refers to "nations", "globalisation" does not. Internationalisation tends to be a more neutral, less loaded term than "globalisation". It is further not clear whether "globalisation" is merely an economic concept, related to the growth of international trade and global corporations, or whether we can we speak of a broader sense of globalization with some cultural and political aspects.

As we said at the outset, there is a consensus in favour of the internationalisation of legal education, except maybe in India, where the interest in this issue appears very modest. When the term "globalisation" is injected into the debate, we seem to be dealing with something more instrumental. The Japanese reform of its education system reflects to a certain extent such an instrumental "globalisation" in legal education: the purpose of the reform was to further take part in the internationalisation of transactions (note: the reform is a great subject of controversy among Japanese colleagues). In reality it may be that the term "globalisation" is used to address what is in essence a domestic problem: the shortage of lawyers versed in international trade and business matters.

Not everybody is convinced that a "global lawyer" will emerge (see Ireland): to a certain extent, there appears to be a divide between the "network" logic, based on the idea that law is jurisdiction-specific, and the "global" logic, based on the opposite idea that the same lawyer can work in different jurisdictions; in this respect, law students need to learn how to work with different environments (Ireland). Globalisation is also often seen as rather a process of projecting solutions, attitudes and thoughts from abroad on a given system, not always with sufficiently prior consideration, as opposed to a genuine supranational cooperative effort between nations.

Few Reporters speak of diverging "schools of thought" about IOLE; in fact most dismiss the whole notion of there being divergent schools of thought on the topic. But they do report that there are those who are in favor of internationalisation and those who are against it (see for instance Portugal; Tunisia: some criticism because there a debate about new form of colonialism; France: some concern about the

marginalisation of civilian approaches). The National Report for Uruguay is a case in point: the Reporter strongly supports internationalisation and believes that Uruguay is in need of radical change due to its domestic focus in both legal education and practice. He states that there is a 50/50 view for and against IOLE, although in his view rejecting the idea of the "global lawyer" is clinging to a more insular and nationalist way of facing and resolving the legal issues ahead.

IOLE is then inextricably linked to the debate about globalisation; in particular, it can be seen in the fact that many considered commentators are somewhat ambivalent about it. The National Reporters in many jurisdictions stress that on the one hand, globalisation is a phenomenon that can be objectively observed and cannot be reversed. In terms of the law, this means greater external influence on the shape and development of national legal systems (the Chinese Reporter stresses the perceived need to adapt traditional Chinese laws to modern needs in that country, for instance), and the development of a body of supranational law. The resulting risk identified in a number of Reports, on the other hand, is that the cultural specificity, heritage and sensitivity of domestic law are diminished, and that the theoretical integrity of domestic legal systems is subverted by the insertion of foreign elements and principles.

The concern is perhaps most often expressed in terms of the civil/common law debate, in particular focussing on the overweening influence of the common law. The civilians tend to worry more about the influence of the common law and its impact on their own legal systems, whereas common lawyers tend to have less interest in the civil law countries' legal traditions and solutions (see e.g., Canada, where the common lawyers are said to have no interest in the law of Quebec). Civilians tend to emphasise systemic integrity more than common lawyers, and therefore tend to be more concerned about the disruptive influence of foreign law and foreign lawyers, in particular from common law countries whose systems are perceived to be very different. Civilians tend to be uneasy about the focus of common lawyers on process, argumentation and lawyering skills, rather than on "legal science". As the Dutch Reporter points out, however, knowledge of the legal fields where national and international/regional norms meet is very important: transport, energy, telecoms, competition, finance and investment, etc. This broader contextual knowledge results in a less bookish, "scientific" or academic way of thinking - which is arguably a more radical departure from tradition for civilian than common law jurisdictions.

Here some elements of the debate does fall into the so-called common law/civil law divide, in particular the pressure exerted on the civilian traditions by a shifting balance in global trade and power. Illustrative is the response of the *Association Henri Capitant des Amis de la Culture Juridique Française* to the World Bank's Doing Business Report of 2004, which gave voice to the sentiment that the Reports were intended to promote the common law over the civil law (see *Les droits de tradition civiliste en question*, Société de législation comparée (Paris, 2006)). The common law's influence, perhaps predominance, has come about through the hegemony of the United States in international matters, and the expansion of English as the *lingua franca* of the law. To put it simply, quite a number of National Reporters express a resulting concern that globalisation is a different word for Americanisation, and that the latter is not necessarily desirable, nor a positive development for a particular

jurisdiction. While globalisation is sometimes contrasted with a certain nationalism, there are in many jurisdictions specific reasons, of a practical or symbolic kind, to resist the former.

Post-Colonial Dominance?

An interconnected concern is that globalisation is post-colonialism in disguised form – i.e., the imposition of legal regimes and solutions that are essentially foreign but whose supposed advantages over domestic and sometimes customary law are loudly trumpeted by their protagonists. It is said that sometimes the real advantages of this process of adopting foreign legal solutions accrue to foreign companies, investors and interests, rather than to local citizens. The debate about the dominating influence of foreign jurisdictions is not only concerned with post-colonialism (as it is in Tunisia, for instance: to be be closer to French law or not?): it also arises between such countries as Estonia and Germany, the former wanting to carve out its own path at a relative distance from German law; Canada and the United States; Scotland and England; and Australia and New Zealand. But the debate is very nuanced: in some countries external influences or historical connections are seen as beneficial: in Singapore for instance, or Hong Kong which consciously maintains a strong common law tradition.

The difficulty then becomes how to deal with the phenomenon of globalisation in a manner that is sensitive to local traditions, culture, legal regimes and development. While recognising that shared solutions may be to everybody's advantage, it is clear that those shared solutions will be particularly advantageous in areas of international trade, commerce and finance, where they are less controversial. But in other areas, these concerns translate into a desire to push back against the global influences. The question also arises as to who benefits, and on whose terms harmonisation or approximation of legal systems should occur? (see e.g., the Report for Finland).

At the level of education, it is here that IOLE is inextricably linked with questions of high policy, cultural dominance, post-colonialism, historical justice and injustice, and peace and prosperity. It is apparent, and this is a matter actively pursued in some jurisdictions like the Netherlands, that there is a close connection between IOLE and cross-disciplinary research and student engagement. In other words, IOLE opens up a world of broader questions for students, which legal academics by themselves do not necessarily have the skills to address. Yet, that they are addressed is important, for commentators and reporters all agree that teaching law is not simply about producing technicians (as strikingly emphasised in the Argentinian Report, for instance).

In the same sphere a debate is reported about law and legal reforms across boundaries, and the adoption or introduction of foreign "solutions". The difficulty with the latter is often that they are ill-adapted to the broader legal structure of the adopting jurisdiction, but also to its broader characteristics in terms of community,

history and culture. There is regularly expressed cultural concern that western ideas, practices and institutions dominate in the internationalisation of legal education. Again broad questions arise that are challenging and interesting teaching material, but where lawyers might have to draw on the skills of specialists from other disciplines to ensure rigorous debates.

Globalization as Americanization of the law seems on the whole not to be a dominant issue (except for the Indian reporter; and in a different way Israel, where much attention is paid to the American system, American scholarship and the US legal education)… The progression of the English language seems to be more significant in practical ways (see Germany where the proceedings in some special divisions of courts are set up in English; see also Japan). There is also the phenomenon of a shift in the civil law tradition to the common law (see Tunisia: some faculties want to focus their attention on their relations with France, as the former colony, and some others want to deepen their knowledge in the Anglo-American traditions). To a certain extent, for some civil law countries internationalization means "*common-lawization*"; by contrast it is rare if not unknown for any common law country to move towards the civil law.

Internal Multiplicity of Legal Systems

A further aspect of the debate about IOLE and globalisation that emerges from the Reports, is that in fact the openness (open-mindedness, a "cosmopolitan attitude", etc.) towards different legal systems, cultures and norms is often required *internally*, within the borders of a particular nation state. It is not just necessarily an issue transcending borders: the open and inquisitive attitude sought to be engendered in students does not necessarily entail *internationalisation*. Many nations are characterised by an *internal* multiplicity of the legal system.

For instance, in Canada civil law and common law coexist; in Malaysia the common law and Islamic law; in New Zealand customary law and common law; in Cameroon elements of civil law and common law; in Hong Kong the common law and the Chinese Basic Law must coexist; etc. Therefore many students come across different legal systems within the remit of their domestic studies, although sometimes unevenly: more in Quebec than in the common law parts of Canada, for instance. In some jurisdictions, law students are also expected to master more than one language. In many others, the sources of domestic law also routinely include foreign decisions and statutes. In an increasing number of jurisdictions international instruments are recognised sources of domestic law. In other jurisdictions, historically extraneous sources of law are significant: Roman law in Scotland for instance, and Roman/Dutch law in South Africa. Legal systems often have a mixed history of common law and civil law elements. Thus students are exposed to these sources and often contrasting ways of reflecting upon and organising the law as a routine component of their studies. This opens their minds and they are accustomed to approach the law as an open system with many and varied influences. To put it differently, the study of national law is in many jurisdictions inherently comparative in nature.

It engenders the kind of openness that is one of the main goals of IOLE. To a minor extent this can also still be said about the study of law in countries such as New Zealand, Hong Kong and Australia, where comparison with English law is still a significant instrument of domestic subjects.

In truth very few countries have a monolithic domestic law. We already pointed out that the law of Scotland absorbed Roman law to a very important extent, for instance. In the EU, through the development of EU Law, many countries have learned to speak another legal language than their own. A telling example is the European Court of Justice: a mix of civil law and common law. The application of the European Convention of Human Rights arguably introduces a civil law way of thinking into the English law tradition. On the other hand the Swedish National Report notes that because the Court is making the law, this arguably introduces a common law element in civil law thinking. The European Law is a kind of "regional globalisation of law" with uniform effects (to a certain extent: all the EU countries are originally from the "western tradition"). But in many jurisdictions the very idea of law itself is seen as a foreign import – the Japanese report for instance refers to this fact, and the importance therefore of studying foreign law, mostly in Germany. In many ex-colonies as well the law is in essence foreign, having partially or completely displaced existing law, now often referred to as "customary law". This is a significant issue in many countries such as Canada, New Zealand, Australia, the US and South American jurisdictions.

Who Drives and Who Benefits from the Internationalisation of Legal Education?

As mentioned above, many legal academics inherently value internationalisation in their work (all our National Reporters are of course supporters of comparative law). A substantial driver of IOLE is thus the inherent priorities and attitudes of the legal academy. However, also significant are other factors that many National Reports mention, and most important amongst these is perhaps the drive of many universities to "internationalise". Some newer universities adopt a vigorous international approach so as to carve out a niche in a competitive market for higher education (e.g., Maynooth and UCD Sutherland in Ireland; Örebro in Sweden). Other existing universities choose to profile themselves as "international" across the board – international means "quality" here, or reflects a longstanding strategic choice, or geographic position (such as Luxemburg; Maastricht and Tilburg in Holland have a long such tradition now). International connections, courses and programs are seen to bring prestige to institutions, as well as adding value to the education dispensed there.

Government policy in relation to higher education is often the underlying driver, as for instance in China, where internationalisation is a national objective and the Chinese government introduced a grants program for Law Schools to adopt IOLE. In countries such as Sweden there has been an express government policy to encourage

or compel universities to internationalise their programs and academic networks. Funding is sometimes made especially available for it. Research support from governments is sometimes made dependent upon the international nature of research: internationalisation is set as a criterion for funding or approvals in Germany (the Research Fund), or in the Czech Republic. Governments voice an economic argument in favour of internationalisation, for instance within the European Union where economic integration is articulated by the National Reporters for Spain and Estonia.

Deliberate internationalisation strategies tends to be found with the metropolitan, larger and more prestigious universities, partly because these universities also command the resources required to internationalise their programs. Usually such programs come at a considerable cost because they are more resource intensive and concern smaller numbers of students. Internationalisation is therefore a greater priority at the "high end" of the market than in smaller, regional institutions, except for those who make it their main point of distinction. Internationalisation is used as a means to attract the most capable and best financed students. And it is those more prestigious universities that tend to supply graduates to the large international law firms.

From a university management perspective, law faculties are expected to participate in internationalisation, and given the inherent interest in such developments amongst legal academics, they need little convincing. However, there are structural difficulties that are unique to law and some other professional degrees: there is no a universal science of law. Language constraints are also a difficulty. Thus internationalisation is in some ways more problematical for law than for other university disciplines.

Also driving internationalisation of legal education are government policies and the departments and institutions that implement them. Here there is a wide spectrum going from total political indifference (such as reported in India, Spain, the United States), to active government policy to increase the international content of legal degrees, and the opportunities to study international and foreign law. Interesting examples of the latter are provided by Singapore and Taiwan. Other examples are the Irish Government Action Plan for Jobs 2013, and the policy of the Malaysian government to see that country develop as a legal-services hub for the region.

Internationalisation of legal education is seen in many countries as essential to developing these countries' international trading capacity, but in other cases the tendency is less the result of deliberate policy than of the factual situation: the South African reporter mentions that that country has become a legal hub for the African region because of relatively short court delays and a perception of incorruptibility. Of course Africa also presents an interesting example of how increased regional cooperation has resulted in IOLE and IOLP: the SADC and the African Union play an important part.

A third driver is the corporate world and the generally large and often closely enmeshed multinational law offices that service them. Although, as seen above, amongst the practising profession there is a divergence of opinion about the *degree* of IOLE that should occur in law schools, there is a consensus that some amount of

international, comparative and foreign law should be incorporated in academic law studies. In some countries the profession is actively engaged with IOLE in the universities, but this is not the norm. Alternatively one can say that IOLE is driven by student interest in career opportunities in the mostly large and international law firms that service multinational business and finance. However, irrespective of these subtleties there is one clear fact: the global law firm sector of the profession has grown substantially over the years, and drives the demand for graduates with more global experience and knowledge.

A driver also mentioned by a number of National Reporters, is the personnel requirements of government: foreign affairs and associated departments and agencies require lawyers with some international legal training, exposure and openness. Governments need to engage more frequently with other states and with supranational organisations on many fronts, and lawyers are required with the capacity to undertake these tasks effectively. Lawyers are often critical intermediaries in these international connections.

It should be noted that apart from the Universities and faculties themselves, and the occasional government department, there is on the whole very little *institutional* engagement with internationalisation. That is in particular the case with the judges/courts, and professional bodies, although there are interesting exceptions: for instance Australia. There is no special institution that examines the need for internationalization of legal education, even where reform of legal education has been examined (Canada, Spain even if they have recently reformed their programs, Estonia, India, Ireland, Italy).

What Forms Does IOLE Take?

Philosophical vs Instrumental Support for Internationalisation

To some degree the practical manifestations of IOLE are determined by the attitudes taken with regard to it: one important distinction in this regard is between a more instrumental and a more philosophical approach to IOLE. Many Reports identify two principal but distinct advantages of IOLE. First, they recognise that the study of foreign law or comparative law is a useful source of reflection and deeper understanding of domestic laws, legal institutions and practices. IOLE provides a useful perspective on one's domestic legal approaches and suggests possible critiques and paths for reforms. As the Mexican Reporter states, IOLE can enable legal criticism, not just legal indoctrination.

A second approach we call "instrumental": it holds that IOLE is important because it provides graduates with a better competitive profile when they enter the profession. In these high-pressure days this is seen as very important. Graduates who have studied abroad, been exposed to foreign professors, have undertaken