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THE TEACHING OF PUBLIC INTERNATIONAL LAW IN AUSTRALIAN LAW SCHOOLS: 2021 AND BEYOND

I Introduction

Just over 35 years ago, this law journal published an article by a prominent Australian international lawyer on the teaching of public international law in Australian law schools.[1] Professor Ivan Shearer, author of that article, was, at the time, a Professor at the University of New South Wales ('UNSW'), having served a number of years as Dean of Law at the University of Adelaide. Just a few years later, another prominent Australian international lawyer with close connections to the Adelaide Law School, as an alumnus and former staff member, would publish another article on the teaching of public international law in Australia.[2] Professor James Crawford, whose piece appeared in the *Australian Year Book of International Law*, was, in 1987, the Challis Professor of International Law at the University of Sydney. More than 30 years later, this article seeks to revisit the issues which concerned Shearer and Crawford, and to update their account of the teaching of public international law in Australian law schools.

In their respective works, Shearer and Crawford examined the history of legal education in Australia and the place of international law in law school curricula during the first years of legal education in Australia.[3] Noted by both was the seeming fall and rise of public international law teaching in Australia — how the subject (such as it was in the late 1800s and early 1900s) was considered a necessary part of a legal education, only to fall out of favour in the post-Second World War era (coincidental to the emergence and development of Australia's full and unfettered international legal personality).[4] Both authors also noted that the majority of law schools in Australia at the time were showing distinct signs of treating international law as a *law* subject

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1 Ivan A Shearer, 'The Teaching of International Law in Australian Law Schools' (1983) 9(1) *Adelaide Law Review* 61.

2 JR Crawford, 'Teaching and Research in International Law in Australia' (1983) 10(1) *Australian Year Book of International Law* 176.

3 Shearer (n 1) 62–74; ibid 178–81.

4 Shearer (n 1) 74–8; Crawford (n 2) 181–3.

(as opposed to one that was taught as part of a more humanities-focused international relations subject), with the caveat of such units of study being offered as electives only, frequently experiencing relatively small enrolment numbers.[5]

At the time of Shearer's article, Australia was a nation with a population of around 15 million people,[6] and home to 11 law schools,[7] none of which taught public international law as a compulsory subject. Over 30 years later, the situation regarding legal education in Australia generally, and the teaching of public international law particularly, has been subject to significant changes and developments. Australia's population has risen to around 25 million people at the time of writing this article,[8] and the country is home to 39 law schools.[9] Seventeen of those 39 law schools now teach international law in some form, as a compulsory part of their curriculum.[10]

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5 Shearer (n 1) 62, 78; Crawford (n 2) 183–6.

6 See Australian Bureau of Statistics, *Australian Historical Population Statistics, 2019* (Catalogue No 3105.0.65.001, 18 April 2019) for Australia's historical population statistics.

7 In 1984, there were 11 law schools in Australia. Ten were part of established universities — the Australian National University, Macquarie University, Monash University, the New South Wales Institute of Technology (now the University of Technology Sydney), the Queensland Institute of Technology (now the Queensland University of Technology), the University of Adelaide, the University of Melbourne, the University of New South Wales, the University of Queensland, the University of Sydney, the University of Tasmania and the University of Western Australia. La Trobe University also had a 'Department of Legal Studies' within its Faculty of Social Sciences which, at the time, was not accredited as a law school proper, in that it did not 'seek to satisfy educational prerequisites for admission to the practice of law': Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987) vol 1, 6 ('*Pearce Report*').

8 Australian Bureau of Statistics, *National, State and Territory Population, December 2020* (Catalogue No 31010do001_202012, 17 June 2021).

9 See: Council of Australian Law Deans, *2018 Data regarding Law School Graduate Numbers and Outcomes* (Factsheet, 20 April 2019) 1 <https://cald.asn.au/wp-content/uploads/2019/07/Updated-Factsheet-Law_Students_in_Australia-20-04-2019.pdf>; 'Deans & Law Schools', *CALD* (Web Page, 2021) <https://cald.asn.au/contact-us/deans-law-schools/>. By comparison, Canada — another (predominantly) English-speaking Western State — has a population of around 37 million people: 'Canada's Population Estimates, First Quarter 2020', *Statistics Canada* (Web Page, 18 June 2020). However, Canada has only 24 law schools to Australia's 39: 'Canadian Law Schools', *Council of Canadian Law Deans* (Web Page) <http://www.ccld-cdfdc.ca/index.php/law-schools>.

10 Namely the Australian Catholic University, the Australian National University, Charles Sturt University, Edith Cowan University, Flinders University, Griffith University, James Cook University, Macquarie University, Newcastle University, the Royal Melbourne Institute of Technology, the University of Adelaide, the University of New South Wales, the University of Queensland, the University of Southern Queensland, the University of Sydney, the University of Tasmania, and the University of Technology Sydney.

Since the Shearer and Crawford articles, as international law continued to establish itself as a central part of the law curriculum, a number of Australian international law scholars published on the question of teaching international law, including Dianne Otto,[11] Gerry Simpson,[12] Eugene Clark and Sam Blay,[13] Anne Orford,[14] and Fleur Johns and Steven Freeland.[15] Building on the framework established by Shearer and Crawford, these authors grappled with new and different issues for international law education, such as: the need to address the hierarchical and gendered nature of how international law is positioned within the law and in legal education more generally;[16] how international law educators themselves conceptualise their place in the legal education order;[17] and how globalisation impacts on what today's lawyer must master in their studies.[18] International law education is, in Australia, now a robust field of debate and discourse.

What this article seeks to do is return to 'the beginning': to update the history of the teaching of public international law in Australia, as set out in the Shearer and Crawford articles, in light of these developments in teaching and learning.[19] Our

11 Dianne Otto, 'Integrating Questions of Gender into Discussion of "The Use of Force" in the International Law Curriculum' (1995) 6(2) *Legal Education Review* 219 ('Integrating Questions of Gender'); Dianne Otto, 'Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law' (2000) 1(1) *Melbourne Journal of International Law* 35 ('Handmaidens').

12 Gerry Simpson, 'On the Magic Mountain: Teaching Public International Law' (1999) 10(1) *European Journal of International Law* 70.

13 Eugene Clark and Sam Blay, 'The Internationalisation of Legal Practice and Education' (1999) 73(11) *Australian Law Journal* 791. See also Sam Blay, 'The Function of International and Comparative Law in Australian Legal Education' [1996] (1) *Australian International Law Journal* 80 ('The Function of International and Comparative Law').

14 Anne Orford, 'Citizenship, Sovereignty and Globalisation: Teaching International Law in the Post-Soviet Era' (1995) 6(2) *Legal Education Review* 251 ('Citizenship, Sovereignty and Globalisation'); Anne Orford, 'Embodying Internationalism: The Making of International Lawyers' (1998) 19(1) *Australian Year Book of International Law* 1 ('Embodying Internationalism').

15 Fleur Johns and Steven Freeland, 'Teaching International Law across an Urban Divide: Reflections on an Improvisation' (2007) 57(4) *Journal of Legal Education* 539. See also Steven Freeland, 'Educating Lawyers for Transnational Challenges: The Globalization of Legal Regulation' (2005) 55(4) *Journal of Legal Education* 500 ('Educating Lawyers for Transnational Challenges').

16 Otto, 'Integrating Questions of Gender' (n 11); Johns and Freeland (n 15).

17 Simpson (n 12).

18 Orford, 'Citizenship, Sovereignty and Globalisation' (n 14); Orford, 'Embodying Internationalism' (n 14); Freeland, 'Educating Lawyers for Transnational Challenges' (n 15); Clark and Blay (n 13).

19 Crawford himself, together with Rose Cameron, offered a partial update in a 2019 article in this journal: James Crawford and Rose Cameron, 'International Law in Australia Revisited' (2019) 40(1) *Adelaide Law Review* 199. However, this was only in the most general of terms, with discussion of the teaching of public international law in Australia occupying less than five pages of that article.

article explores shifts in the teaching of international law in Australia from the 1980s to the present, against the background of changes in the environment for legal education in Australia more generally. In particular, we note the move (back) towards the teaching of public international law as a compulsory subject — a move which we situate within the context of a broader push for 'internationalisation' of the law curriculum. We then consider the content of the international law curriculum in those law schools where the subject is compulsory, with a view to mapping contemporary approaches to the teaching of these subjects.

In doing so, we follow the methodology employed by Shearer and Crawford of examining the unit of study outlines and teaching rationales for the relevant international law subjects.[20] We acknowledge the shortcomings of this methodology. It reveals only the general contours of approaches to the teaching of public international law in Australia, without the detail of the content and methods of teaching which would be revealed by closer analysis of the content of lectures and seminars. It also does not account for the extent to which public international law may be taught incidentally in other units of study (such as units generally concerning public law). We also acknowledge that we do not have the stature in the field of Shearer or Crawford, which gives their pronouncements on the state of public international law in Australia particular gravitas. Nonetheless, we feel that the time is right to revisit the issues raised by Shearer and Crawford, and that following their methodology is both the best way to effect a comparison between then and now, and the best way to capture the general trends in teaching international law in Australia with which their (and our) articles are concerned.[21]

In the final part of the article, we ask what the trend towards the compulsory teaching of public international law means for the teaching of international law in Australia in 2021. We consider some of the key tensions and difficulties associated with the design of compulsory international law subjects, and drawing on literature from the fields of both international law and legal pedagogy, suggest some relevant factors to take into account when designing such subjects for 2021 and beyond.

II A Note on Terminology

Following Shearer and Crawford, we use the terms 'international law' and 'public international law' interchangeably to refer to the field of law that governs the relations between nation-States — and, increasingly, the relations between States and other subjects of international law (such as non-governmental organisations, intergovernmental organisations, corporations, and other non-state actors). We acknowledge that in contemporary discourse, the term 'international law' is also

20 Our sincere thanks go to the international law academics across Australia who so generously shared their unit of study outlines and subject teaching rationales with us. The information regarding these units of study is current as of April 2021.

21 We also note that others writing on the teaching of public international law in Australia have adopted the same methodology for the same reasons: see, eg, Otto, 'Handmaidens' (n 11) 39, 65.

used to refer to other areas of law that touch on matters 'international', including: private international law (the law that relates to domestic cases with foreign law elements — sometimes called 'conflict of laws'); transnational law (which Phillip Jessup defined as 'all law which regulates actions or events that transcend national frontiers',[22] including both public and private international law, and domestic laws applicable to international transactions); and comparative law (the study of different legal systems, both international and domestic). However, where we refer to these bodies of law, we use the more specific designations of 'private international law', 'transnational law', and 'comparative law', rather than the general term 'international law', which we reserve for public international law.

It is also important to note that while we see the trend towards the compulsory teaching of international law as part of the broader push towards 'internationalisation' of the law curriculum, these two concepts are distinct. We understand 'internationalisation' of the law curriculum as the process by which law graduates are increasingly being trained to work in multi-jurisdictional legal environments, both in Australia and abroad.[23] The teaching of public international law will be one element of this process. However, 'internationalisation' may also include a broad range of other measures, including international student exchanges, overseas experiences, the use of global case studies, and increased comparative study within core units. While the teaching of international law may form part of the 'internationalisation' of the law curriculum, taken alone, it is not sufficient for this purpose.

III Teaching International Law in Australia: The Beginnings

Before considering developments in the teaching of international law in Australia from the 1980s onwards, it is necessary to have an understanding, if brief, of how international law has historically been dealt with in Australian law school curricula. As Shearer and Crawford note in their respective articles, the first Australian law schools were established in the middle and latter parts of the 1800s.[24] The University of Sydney Law School was established in 1855,[25] the University of Melbourne Law

22 Philip C Jessup, *Transnational Law* (Yale University Press, 1956) 2.

23 See generally Duncan Bentley and Joan Squelch, 'Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice' (Final Report, Australian Government Office of Learning and Teaching, 2012) 24–33 <https://cald.asn.au/itlc/wp-content/uploads/sites/3/2017/12/Internationalising_Aust_Law_Curr.pdf>.

24 Shearer (n 1) 62–5; Crawford (n 2) 178.

25 John Mackinolty, 'Before the Beginning 1850–1890' in John Mackinolty and Judy Mackinolty (eds), *A Century down Town: Sydney University Law School's First Hundred Years* (Sydney University Law School, 1999) 13, 19. Though technically the 'first' law school in Australia, Sydney Law School did not actually begin operations until 1859, two years later than the University of Melbourne Law School and indeed, was not the School of Law as it is currently understood until 1890, with the appointment of Pitt Cobbett as Dean and Professor: at 19, 21.

School in 1857,[26] and the University of Adelaide Law School in 1883.[27] These were later followed by the University of Tasmania School of Law in 1893,[28] the University of Western Australia Law School in 1927,[29] and the University of Queensland Law School in 1936.[30]

From the inauguration of these law schools, international law was a compulsory part of the law degree, along with the study of subjects such as Roman Law, English Constitutional Law, Jurisprudence, Property, Equity, and Contract.[31] However, throughout the first half of the 20th century, international law began to disappear from the curriculum, in some cases altogether. Adelaide ceased teaching international law in 1906,[32] and Melbourne moved international law to an elective in 1933.[33] Sydney continued to teach international law as a compulsory subject until 1959,[34] but by the 1960s and 70s, Australian law schools had dropped international law as a compulsory subject.[35]

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26 Ruth Campbell, *A History of the Melbourne Law School: 1857–1973* (Faculty of Law, University of Melbourne, 1977) 1–5. However, Shearer notes law was taught as part of the Faculty of Arts, and a separate Faculty of Law was not established until 1873: Shearer (n 1) 63.

27 The history of the Adelaide Law School states that it is Australia's second-oldest law school, in that it commenced operations as a teaching institute as soon as it was inaugurated, in contrast to Sydney, which only examined, rather than taught, the law until 1890: Sarah Williams, 'History of the Adelaide Law School', *The University of Adelaide* https://blogs.adelaide.edu.au/law/1985/01/19/history-of-the-adelaide-law-school/ Alex Castles, Andrew Ligertwood and Peter Kelly, *Law on North Terrace, 1883–1983* (Faculty of Law, University of Adelaide, 1983). See also Victor Allen Edgeloe, 'The Adelaide Law School 1883–1983' (1983) 9(1) *Adelaide Law Review* 1.

28 Richard Davis, *100 Years: A Centenary History of the Faculty of Law, University of Tasmania, 1893–1993* (University of Tasmania, 1993) 1.

29 Peter Handford, '75th Anniversary of the University of Western Australia Law School' (2003) 30(7) *Brief* 6, 6.

30 Although there was a Department of Law, within the Arts Faculty, prior to that time: Michael White, Ryan Gawrych and Kay Saunders, *TC Beirne School of Law: 70th Anniversary* (TC Beirne School of Law, 2006) 10–11.

31 See: Shearer (n 1) 63–4; Crawford (n 2) 178. On the University of Tasmania, see Davis (n 28) 5–6. At the University of Queensland, public international law was taught in the Department of Law, within the Arts Faculty, from the 1920s, prior to the official founding of the School of Law in 1936: ibid 4 n 9.

32 Shearer (n 1) 69.

33 Ibid 70.

34 Ibid.

35 Ibid. The history of the University of Tasmania Law School does not note when public international law was officially dropped as a compulsory subject, but does state that by 1974, only Contracts, Torts, Criminal Law and Constitutional Law were compulsory subjects: Davis (n 28) 68. The history of the Law School of the University of Western Australia does not comment on its inaugural curriculum: Marion Dixon, *Looking Back: A Short History of the UWA Law School, 1927–1992* (University of Western Australia, 1992).

Both Shearer and Crawford attribute this shift to changing understandings of legal education. In the early days of Australia's law schools, the focus was on giving lawyers general legal reasoning skills, rather than particular vocational training (which would be taught through experience as articled clerks).[36] The aim was 'to equip law students with a broad background in the humanities and in processes of reasoning, in the expectation that applied legal skills would be acquired through apprenticeship'.[37] Against this background, the study of international law formed an important part of a lawyer's general education, requiring students to consider processes of law-making and legal argument within the context of international relations. By the inter-war period, however, the 'tension arising from the competing merits of vocational and general elements in the curriculum'[38] had begun to be resolved more in favour of the vocational, that is, the teaching of specific content rather than general reasoning and legal skills. As Shearer notes, '[l]aw school curricula in this period show a marked trend towards increasing the component of vocational subjects'.[39] In this context, international law was seen as relatively unimportant and 'few intending lawyers could afford an education with such "frills" as international law seemed by then to be'.[40]

Interestingly, the relative absence of international law from law school curricula continued in spite of the 'explosion of demand for specialized international law advice' following the Second World War and the establishment of the United Nations.[41] By the 1980s, when both Shearer and Crawford were writing, international law had still not regained its status as part of the compulsory law curriculum. What had occurred, however, was a further shift towards teaching international law as a vocational 'law' subject (focusing on content rather than general legal reasoning skills) and, in what can be seen as a related development, a move towards offering more specialised international law units covering specific content, particularly at postgraduate level.[42]

IV Teaching International Law in Australia: From the 1980s to Today[43]

In the late 1980s, legal education in Australia underwent some significant changes as the result of three major developments. The first was the publication in 1987 of *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary*

36 Shearer (n 1) 64–71; Crawford (n 2) 178.

37 Shearer (n 1) 64.

38 Ibid.

39 Ibid 73.

40 Ibid 74.

41 Ibid.

42 Ibid 77–8; Crawford (n 2) 181–2.

43 For a general discussion of changes in legal education in recent decades and what they mean for the future of legal education in Australia, see Kevin Lindgren, François Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Lawbook, 2018).

Education Commission ('*Pearce Report*').[44] The *Pearce Report* was 'the first important review, and comprehensive compilation of data on, Australian legal education'.[45] This study made numerous recommendations to law schools regarding legal education and research, best practice in teaching and curriculum, and related matters including, inter alia, school administration and law libraries.[46] The *Pearce Report* was soon followed by the so-called Dawkins reforms, a series of reforms introduced by the then-Labor Government to modernise and streamline Australian universities and Colleges of Advanced Education ('CAEs'),[47] resulting in the conversion of CAEs to universities, voluntary and forced mergers of CAEs and universities, and changes to the ways in which universities were funded by the government.[48] For law education in Australia, the Dawkins reforms led to an avalanche of law schools[49] — creating the so-called 'Third Wave' of Australian law schools — those schools founded after 1989.[50]

The last major development in legal education at the time was the adoption of national unified requirements for admission to legal practice, which came about as a result of the work undertaken by the Consultative Committee of State and Territorial Law Admitting Authorities.[51] Chaired by Justice Priestley, the report recommended that all Australian law schools teach, as compulsory subjects, 11 subject areas — a list which would come to be known as the 'Priestley 11'.[52]

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44 *Pearce Report* (n 7).

45 David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 129, quoted in Eugene Clark, 'Report: Australian Legal Education a Decade after the Pearce Report' (1997) 8(2) *Legal Education Review* 213, 214.

46 See generally *Pearce Report* (n 7). See also Craig McInnis, Simon Marginson and Alison Morris, *Australian Law Schools after the 1987 Pearce Report* (Australian Government Publishing Service, 1994).

47 Department of Employment, Education and Training, Parliament of Australia, *Higher Education: A Policy Statement* (Parliamentary Paper No 202, July 1988).

48 Australian Government Department of Education and Training, *Higher Education in Australia: A Review of Reviews from Dawkins to Today* (Report, 2015) 12–13 <http://hdl.voced.edu.au/10707/384852>.

49 David Barker, 'An Avalanche of Law Schools: 1989–2013' (2013) 6(1–2) *Journal of the Australasian Law Teachers Association* 1.

50 The 'First Wave' schools were those founded after European settlement up until the Second World War, and the 'Second Wave' schools were those founded after the Second World War and prior to the publication of the *Pearce Report*: ibid 2.

51 Consultative Committee of State and Territorial Law Admitting Authorities, 'Uniform Admission Requirements: Discussion Paper and Recommendations' (Discussion Paper, April 1992) <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/UniformAdmissionrequirementsDiscussionPaper1992.pdf>.

52 Those subject areas, knowledge of which is required for admission to legal practice, are: Criminal Law and Procedure; Torts; Contracts; Property (including Torrens System Land); Equity (including Trust); Administrative Law; Federal and State Constitutional Law; Civil Procedure; Evidence; Company Law; Professional Conduct (including basic trust accounting): ibid 24–5.

Since international law was not included in the Priestley 11, it would be reasonable to expect that the decline of teaching of international law in Australian law schools which was evident at the start of the 1980s would have continued after the introduction of the Priestley requirements for admission to legal practice. In fact, however, the opposite is true. The number of law schools requiring that students undertake a compulsory international law unit of study now stands at 17 (of 39 schools). It seems therefore that despite international law's absence from the Priestley 11, there is a trend towards ensuring some form of compulsory international law study for all Australian law students.

This trend towards compulsory teaching of international law seems to be driven, at least in part, by recognition that globalisation will increasingly require lawyers to have knowledge of international law, regardless of whether they practise in Australia or overseas. As noted by Michael Waxman in 2001, increasing globalisation and growth in world trade and international transactions means that lawyers engage in a system inhabited by a growing number of transnational, comparative, and international legal systems and that knowledge of how these systems operate is increasingly important.[53] This was echoed in statements by Australian law deans in the 2003 survey of legal education undertaken by Richard Johnstone and Sumitra Vignaendra for the Australian Universities Teaching Committee, entitled 'Learning Outcomes and Curriculum Development in Law',[54] where one law dean noted:

> The world in which our graduates will be spending their professional lives is one where the boundaries between national and provincial jurisdictions will be less relevant. … Not many [of] our students go into small to medium suburban or rural practice. It is essentially a CBD destination. A lot of that will be global. For most, therefore, [we] need to prepare them for a world outside [this state].[55]

Indeed, the Australian government has emphasised the importance of international training in Australian law degrees. In 2004, the Attorney-General's Department released a report from its International Legal Education and Training Committee ('*ILETC Report*'), arguing that all Australian law schools should internationalise their degrees. This would be achieved through a four-fold approach:

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53 Michael P Waxman, 'Teaching Comparative Law in the 21st Century: Beyond the Civil/Common Law Dichotomy' (2001) 51(2) *Journal of Legal Education* 305, 305–6. See also Freeland, 'Educating Lawyers for Transnational Challenges' (n 15) 504.

54 Richard Johnstone and Sumitra Vignaendra, 'Learning Outcomes and Curriculum Development in Law' (Report, Australian Universities Teaching Committee, January 2003) <https://cald.asn.au/wp-content/uploads/2017/11/AUTC-Threshold-Learning-Outcomes-Report_2003_Johnstone-Vignaendra1.pdf>.

55 Ibid 198. See also Clark and Blay (n 13) 791:

> For legal educators at all levels there is a corresponding need to do some long-term, conceptual and strategic planning which examines the extent to which legal education reflects this international context. Such planning is crucial if we are to prepare law students and lawyers to live and work in a far different world than existed prior to the emergence of a global economy and all that it entails.

- [T]he curriculum and pedagogy should prepare students to apply legal skills in trans-national and international transactions;
- students should be able to understand and apply fundamental principles of law and legal reasoning in all international, regional and trans-national contexts. With these skills students can act as facilitators in international transactions, liaising between differing legal systems and practices;
- international materials should be integrated into the whole legal curriculum, fundamentally extending the reach of legal study and analysis (the aim of internationalisation is not necessarily met, for example, by adding new international or comparative subjects to the range of options); and
- students from other countries with different legal systems and cultures should be able to gain a law degree from an Australian University that is genuinely internationally focussed, rather than parochial or domestic in approach.[56]

This position was reaffirmed in a 2012 report to the Australian Government Office for Learning and Teaching, entitled 'Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice',[57] which confirmed that:

> Internationally there is broad consensus among legal academics and practitioners that law schools need to deliver law programs that take cognisance of global developments and the increasing emphasis on internationalisation.[58]

Since then, it has become increasingly clear that 'almost every lawyer must be prepared to face some transnational issues, regardless of that lawyer's field of practice'.[59]

Although, as noted in Part II above, the internationalisation of the law curriculum is not synonymous with the teaching of international law, some knowledge of the legal

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56 International Legal Education and Training Committee, *Internationalisation of the Australian Law Degree* (Report, June 2004) ('*ILETC Report*') 5 <http://docshare01.docshare.tips/files/5312/53122428.pdf>. See also Vai Io Lo, 'Before Competition and beyond Complacency: The Internationalisation of Legal Education in Australia' (2012) 22(1) *Legal Education Review* 3, 11.

57 Bentley and Squelch (n 23).

58 Ibid 13. See also Freeland, 'Educating Lawyers for Transnational Challenges' (n 15) 503–4.

59 Michael Bogdan, 'Is There a Curricular Core for the Transnational Lawyer?' (2005) 55(4) *Journal of Legal Education* 484, 484. See also: Adam Czarnota and Scott Veitch, 'Globalisation and Challenges for Legal Education' (1996) 14(2) *Journal of Professional Legal Education* 159; Justin Gleeson, 'The Increasing Internationalisation of Australian Law' (2017) 28(1) *Public Law Review* 25, where Gleeson notes the increasing presence of international law issues in Australian domestic courts, and the need for Australian lawyers to become more 'internationally law minded in their practices': at 40.

principles which shape inter-State relations is essential for 'internationalisation' in the sense of preparing graduates for legal practice in a world where jurisdictional borders are becoming increasingly eroded. This is because the rules of public international law: provide the background against which domestic legal systems interact; shape the environment within which national regulators operate; and, increasingly, directly address legal questions ranging from human rights to standards for commercial transactions.[60] As a result, there is significant support for teaching international law in some form as part of the internationalisation of law curricula, with knowledge of international law increasingly seen as critical to properly educating any Australian law graduate.[61]

However, in the absence of any national measures to make the teaching of international law compulsory (and in light of the Priestley 11 requirements for admission to legal practice not including international law as a required knowledge area), it has been individual law schools who have led the push (concerted or otherwise) to include the study of international law within their compulsory subjects. The next part of this article will examine which of the 39 Australian law schools prescribe the study of international law, consider the curriculum for the associated units of study as set out in their course outlines, and offer some preliminary conclusions about how international law is taught in Australia.

Of course, the teaching of international law electives is also an important part of how international law is currently taught in Australia. For the purposes of this article, however, we are particularly concerned with the trend towards teaching international law as a compulsory subject. As a result, a review of the many international law elective units currently taught in Australia's 39 law schools is beyond the scope of this article. In this sense, our study, like those of Shearer and Crawford, is not comprehensive but is limited in key respects. To adapt Shearer's words: '[a] more adequate outline may, it is to be hoped, be written one day that would also take account of'[62] the content of elective units of study.

V An Assessment of the International Law Compulsory Units of Study at Australian Law Schools

As noted above, of the 39 law schools currently in operation in Australia, 17 include an international law subject as part of the compulsory program of study for students. These include First, Second, and Third Wave law schools, indicating that the move towards the compulsory teaching of international law is occurring throughout the legal education system. However, there is significant diversity in the way in which international law as a compulsory subject is taught across the different universities.

60 Donald R Rothwell et al, *International Law: Cases and Materials with Australian Perspectives* (Cambridge University Press, 2010) 2–5.

61 See Afshin A-Khavari, 'The Opportunities and Possibilities for Internationalising the Curriculum of Law Schools in Australia' (2006) 16(1) *Legal Education Review* 75, 89–90, 94–5.

62 Shearer (n 1) 62.

International law is taught at different stages of the degree program, ranging from first to final year, and the content covered in these compulsory subjects is far from uniform.

This Part considers the relevant international law units at each of the 17 universities at which international law is compulsory. Our method has been to examine the unit of study outlines and teaching rationales for international law as a compulsory subject in each of these 17 law schools, based on the 2021 unit of study offerings. In doing this, we follow the general approach taken by Shearer and Crawford. There are, obviously, inherent limitations in examining only these materials, without deeper analysis of the curriculum — one does not get a deep sense of how the unit is taught by simply looking at a broad description of topics. However, this method does lend itself to identifying general trends in the teaching of international law in Australian law schools and to capturing information on the general approach taken to the teaching of these units, which might be lost in the detail of analysis of weekly lesson plans and readings. It also provides a clear basis for comparing approaches across the 17 law schools which teach international law as a compulsory subject. In what follows, we will review the 17 law schools in alphabetical order and provide a brief overview of the compulsory international law unit of study which they offer, before drawing some general conclusions about similarities and differences in approach across these units of study.[63]

At the Australian Catholic University, *International Law* is studied in fourth year, and covers both public and private international law.[64] At the Australian National University ('ANU'), *International Law* is a second-year subject, and covers: the law of treaties; sources of international law; the interaction between international law and domestic law; an overview of the specialised bodies of international law; and developments in international law.[65] Charles Sturt University requires students to take the unit *International Public and Private Law*, with an expansive curriculum including: state responsibility; conflict of laws; sources of public international law; the structure and role of the United Nations; international dispute settlement; the International Court of Justice; international trade law; international human rights law; international humanitarian law; international criminal law and the International Criminal Court; and international maritime law and the law of the sea.[66]

63 Note that the year levels specified by the Universities to take certain courses are suggestions, and that students may take them in different years depending on the circumstances of their study.

64 'LAWS404: International Law', *Australian Catholic University* (Web Page) <https://www.acu.edu.au/handbook/handbook-2021/unit/laws404>.

65 'International Law: LAWS2250', *Australian National University* (Web Page) <https://programsandcourses.anu.edu.au/course/LAWS2250> ('ANU').

66 'LAW313 International Public and Private Law (8)', *Charles Sturt University* (Web Page, August 2018) <http://www.csu.edu.au/handbook/handbook18/subjects/LAW313.html>.

Edith Cowan University does not include a general public international law unit as a compulsory subject, but instead requires students to study human rights law.[67] The unit is, however, heavily based in international law, and includes study of: terrorism; human trafficking; the *Convention against Torture*;[68] the rights of women and children; the role of international organisations; international humanitarian law; international criminal law and international tribunals (including the Nuremberg Tribunal); and international refugee law. At Flinders University, first-year students study *International Law and Global Perspectives*,[69] where the syllabus comprises of: public international law; private international law; and comparative law. Griffith University students study *Global Law*[70] in their first year, a unit which includes the study of both public and private international law (as well as the study of other domestic legal systems, such as civil law systems, and the Chinese legal system). Students at James Cook University are required to take either *Human Rights Law*[71] or *Public International Law*.[72] In the former, students study domestic and international human rights instruments and their implementation. In the latter, students study: the sources of international law; the relationship between international law and domestic law; international personality; the right to self-determination; state responsibility; state jurisdiction; the law of treaties; peaceful settlement of disputes; the use of force and collective security; international humanitarian law; and international criminal responsibility and the law of the sea.

Macquarie University requires students to take *International Law*,[73] a unit that explores: rights and responsibilities of States towards other States, their own nationals and foreign nationals; state jurisdiction; state and diplomatic immunity; international dispute settlement; and the law on the use of force. The Royal Melbourne Institute of Technology includes *International Law* in their second year of law studies,[74] and includes study of: treaties; customary international law; and the role, powers and functions of the United Nations Security Council as well as other international courts

67 'Human Rights Law [LAW3855]', *Edith Cowan University* (Web Page) <https://www.ecu.edu.au/handbook/unit?id=LAW3855&year=2020>.

68 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('*Convention against Torture*').

69 'LLAW1322 International Law and Global Perspectives', *Flinders University* (Web Page, 16 July 2020) <https://www.flinders.edu.au/webapps/stusys/index.cfm/topic/main?numb=1322&subj=LLAW&year=2020&fees=Y> ('Flinders University').

70 'Global Law', *Griffith University* (Web Page) <https://www.griffith.edu.au/study/courses/1028LAW> ('Griffith University').

71 'LA1027: Human Rights Law', *James Cook University* (Web Page, 8 September 2021) <https://secure.jcu.edu.au/app/studyfinder/?subject=LA1027>.

72 'LA1022: Public International Law', *James Cook University* (Web Page, 8 September 2021) <https://secure.jcu.edu.au/app/studyfinder/?subject=LA1022>.

73 'LAWS2000: International Law', *Macquarie University* (Web Page) <https://unitguides.mq.edu.au/unit_offerings/124113/unit_guide>.

74 'Course Title: International Law', *RMIT University* (Web Page, 2019) <http://www1.rmit.edu.au/courses/040025>.

and tribunals. The University of Adelaide requires students to take *International Law* in their first year of study, which includes an expansive program of study covering: the sources of international law (with emphasis on customary international law and the law of treaties); international fact finding; the structure of the international community and participants in the international legal system; the peaceful settlement of international disputes; state responsibility; jurisdiction and immunity; international maritime law and the law of the sea; the use of force; international human rights; the law of armed conflict; and international space law.[75]

Public International Law at the University of Newcastle includes study of: statehood and international legal personality; title to territory; sources of international law (including treaty law); the interaction between international law and domestic law; the law of the sea; state responsibility; the law on the use of force; dispute settlement; aviation law; international criminal law; and international human rights law.[76] UNSW provides a compulsory subject entitled *Law in the Global Context*,[77] which encompasses the study of: public international law; private international law; comparative law; and transnational law. At the University of Queensland, the unit of study *Public International Law*[78] is a third-year compulsory subject, which covers: the nature and sources of international law; treaty law; the relationship between international law and Australian law and other municipal systems of law; international personality and statehood; international economic law; international law and the protection of the natural environment; the international law of sea, air, and outer space; and the law on the use of force and armed conflict.

Public International and Human Rights Law is the compulsory subject offered at the University of Southern Queensland,[79] in which students study: the nature and sources of international law; the relationship between international and domestic law; statehood; jurisdiction; state responsibility; the use of force; international human rights law; the law of the sea; and international environmental law. At the University of Sydney, *Public International Law*[80] includes: the study of the sources of public international law; the law of treaties; the relationship between public international law and municipal law; the extent of civil and criminal state

75 'LAW1508: International Law', *The University of Adelaide* (Web Page) <https://www.adelaide.edu.au/course-outlines/106871/1/sem-2/> ('The University of Adelaide').

76 'LAWS4012: Public International Law', *The University of Newcastle* (Web Page, 2021) <https://www.newcastle.edu.au/course/LAWS4012>.

77 'Law in the Global Context: LAWS2270', *UNSW Sydney* (Web Page) <https://www.handbook.unsw.edu.au/undergraduate/courses/2022/LAWS2270/> ('UNSW Sydney').

78 'LAWS3705: Public International Law', *The University of Queensland* (Web Page) <https://course-profiles.uq.edu.au/student_section_loader/section_1/98705> ('The University of Queensland').

79 'LAW2222: Public International and Human Rights Law', *University of Southern Queensland* (Web Page, 2017) <https://www.usq.edu.au/course/synopses/2018/LAW2222.html>.

80 'Bachelor of Laws: LAWS1023 Public International Law', *Sydney Law School Handbook 2021* (Web Page, 3 December 2020) <https://www.sydney.edu.au/handbooks/law/undergraduate/compulsory_descriptions.shtml>.

jurisdiction and immunities from state jurisdiction, including diplomatic privileges and immunities; state responsibility, including diplomatic protection, nationality of claims and exhaustion of local remedies; the use of force; and dispute settlement. Students must also undertake a separate compulsory subject, *Private International Law A*.[81]

The University of Tasmania requires students to take *International Law*,[82] in which they study: the sources of international law; dispute settlement; treaty making; international humanitarian law; human rights law; international environmental law; the use of force; and the relationship between domestic law and international law. Finally, the University of Technology Sydney ('UTS') includes *Public International Law* as a second-year compulsory subject,[83] where students study: the sources of international law; the relationship between international law and domestic law; international personality and recognition; jurisdiction and immunities; the law of treaties; state responsibility; the settlement of international disputes; and the law on the use of force.

What is common to all these units of study is a shared understanding of the centrality of international law knowledge to all prospective lawyers. This sentiment appears repeatedly in the descriptions and rationales of units of study: at the University of Queensland, it is noted that '[w]e live in an era of ever increasing interdependence of entities that are separated by national borders. International law has long been used to ensure coexistence and cooperation amongst States separated by such borders.'[84] The unit of study rationale at the University of Tasmania notes that 'international law permeates most areas of Australian law and it is therefore essential for law graduates to have a solid grounding in the sources and methodology of international law'.[85] ANU states that:

> The impact of international law on the Australian legal system and the globalised nature of many governmental, judicial and social activities means that a basic knowledge of the terminology, institutions, and substance of international law is not only worthwhile acquiring in its own right, but is also a necessary part of the knowledge and skills of any law graduate.[86]

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81 'Bachelor of Laws: LAWS2018 Private International Law A', *Sydney Law School Handbook 2021* (Web Page, 3 December 2020) <https://www.sydney.edu.au/handbooks/law/undergraduate/compulsory_descriptions.shtml>.

82 'International Law LAW254', *University of Tasmania* (Web Page, 12 July 2021) <https://www.utas.edu.au/courses/cale/units/law102-international-law> ('University of Tasmania').

83 '70108 Public International Law', *UTS* (Web Page, 12 September 2021) <https://handbook.uts.edu.au/subjects/details/70108.html> ('UTS').

84 The University of Queensland (n 78).

85 University of Tasmania (n 82).

86 ANU (n 65).

Similar sentiments can be seen in nearly all other unit of study rationales, including at Adelaide,[87] UNSW,[88] UTS,[89] and Flinders.[90]

Beyond this, there is significant diversity in the teaching of international law as a compulsory subject. In general terms, however, surveying the various compulsory international law offerings from Australian law schools, it is possible to note something of a trifurcated approach to international law. One approach, evidenced in the offerings from Sydney, UTS, and Macquarie, takes what could be called a 'black-letter' approach to international law, focusing on doctrinal examination of subjects such as the law of treaties, state responsibility, and jurisdiction and immunity. Another approach, evidenced at UNSW and Flinders, highlights the role of international law in a plural legal system involving public and private international law, as well as transnational and comparative law.[91] A third approach, seen at Adelaide, Newcastle, Tasmania, and Queensland, divides study between the more traditional subjects of international law (sources, treaties, use of force, etc) with broad introductions to distinct areas of international law, such as environmental law, human rights, international criminal law, the law of the sea, trade and economic law, and international humanitarian law.

Overall, it would seem that beyond certain key areas — such as sources of international law, and the interaction of Australian law and international law — there is no consensus on the content to be covered in compulsory international law units, with significant differences between universities. The reasons behind such differences may be, in some instances, easy to guess — for example, the inclusion of the international law of outer space, and the law of the use of force and armed conflict, in the international law unit of study at the Adelaide Law School is likely attributable to the presence of a research centre for military and outer space law at the school.[92] Likewise, the focus on international environmental law and the law of the sea at the University of Tasmania could be attributable to the strong focus on environmental law research at the Faculty of Law.[93] For other offerings, it is not clear why certain

87 The University of Adelaide (n 75).

88 UNSW Sydney (n 77).

89 UTS (n 83).

90 Flinders University (n 69).

91 This in itself is an interesting development. Dianne Otto's review of the international law offerings of Australian universities in 2000 revealed 'deepening division between public and private international law in legal education': Otto, 'Handmaidens' (n 11) 63. Otto found that '[w]ith few exceptions, public and private areas of law have been taught in separate courses': at 38. The number of units discussed above which adopt an approach of combining private and public international law suggests that this trend has been reversed, at least in part, in the 20 years since publication of Otto's article.

92 See: 'Research Unit on Military Law and Ethics', *The University of Adelaide* (Web Page, 3 December 2019) <https://law.adelaide.edu.au/military-law-ethics/>.

93 See: 'Climate Justice Network', *University of Tasmania* (Web Page, 6 March 2020) <https://www.utas.edu.au/law/research/climate-justice-network>; 'Australian Forum for Climate Intervention Governance', *University of Tasmania* (Web Page, 17 February 2021) <https://www.utas.edu.au/climate-intervention-governance>.

approaches have been adopted, or certain topics included or excluded. In light of this, it would seem useful to explore the pedagogical issues associated with each of the three general approaches to the teaching of international law identified above, in order to highlight the issues at stake and the advantages and disadvantages of different methods of teaching international law as a compulsory subject.

VI Approaches to the Teaching of Compulsory International Law Curricula: Pedagogical Issues

A review of the international law curricula discussed above reveals a number of tensions associated with the teaching of public international law as a compulsory subject, resulting in the different approaches to teaching outlined above. These tensions are not unique to the Australian experience of teaching public international law. There is a substantial body of international literature addressing questions of teaching and curriculum design in international law which touches on these issues in various ways.[94] The discussion which follows draws on the insights from this literature to explore the particular tensions associated with the teaching of compulsory international law units in Australia, as highlighted by our assessment of the international law compulsory subjects in Australian law schools, above.

In the first place, the analysis above reveals a tension between teaching international law in terms of general principles, on the one hand, and teaching specific content, on the other. A number of the compulsory subjects outlined above, particularly those that teach public international law together with comparative law and private international law, would appear to focus more on international law as a means of teaching general principles of law and legal reasoning.[95] The Griffith University *Global Law* unit,[96] which combines the study of both public and private international law with the study of different domestic legal systems, including civil law and Chinese legal systems, is a good example of this approach, which is also

94 For an overview and bibliography of this literature, see Christine Schwöbel-Patel, 'Teaching International Law', *Oxford Bibliographies* (Web Page, 27 June 2018) <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0166.xml>. For a bibliography up to 2010, see also John Gamble and Neville Botha, *The Hague Conference (2010): Committee on the Teaching of International Law* (Final Report, International Law Association, 2010) 10–11 <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1249&StorageFileGuid=65bb8557-ba11-49f3-acf2-79aff22a759f>.

95 This reflects Sam Blay's argument that international law can 'bring into play basic issues of jurisprudence which are of general relevance to the study of law', such that international law can be used to enable 'a close examination of philosophical issues relating to the basis of law': Blay, 'The Function of International and Comparative Law' (n 13) 86. See also Mary Ellen O'Connell's argument that 'international law offers an important jurisprudential orientation to all law, and it should be taught that way': Mary Ellen O'Connell, 'Roundtable on the Teaching of International Law' (Commentary, Annual Meeting of the American Society of International Law, 18 April 1991) 112.

96 Griffith University (n 70).

reflected in units such as those offered by UNSW.[97] On the other hand, those universities that take a more 'black-letter' approach, focusing on doctrinal examination of key subject areas, would appear to prioritise the teaching of specific content, in a way Shearer would associate with more 'vocational' teaching.[98]

As noted earlier in this article, and as described by Shearer and Crawford, this tension has been a feature of legal education in Australia (and the teaching of public international law in Australia) from the beginning. The shift towards vocational legal training in the first half of the 20th century prompted a move towards focusing on the content of the law rather than general legal principles and techniques. The Priestley 11 codification of particular 'knowledge areas' required for admission to legal practice can be seen as both reflecting and driving this approach.[99] However, there is now a substantial body of pedagogical literature which runs in the other direction, emphasising process and the acquisition of skills over the delivery of content,[100] requiring a shift 'from purely doctrinal content to the teaching of authentic skills and attitudes relevant to the practice of law'.[101] This principle is not only well-established in the legal education literature in Australia[102] and elsewhere,[103] it is also reflected in the Threshold Learning Outcomes for Law ('TLOs'),[104] which were

97 UNSW Sydney (n 77).

98 Shearer (n 1) 64. This dichotomy between 'liberal' and 'vocational' approaches to the teaching of public international law is also reflected at the international level: see especially Hans Corell, 'International Law and the Law School Curriculum' [2002] (4) *International Law FORUM Du Droit International* 195, in which Corell argues in favour of the compulsory teaching of international law 'provided always that the education concerned is a liberal one and does not approach the learning of law as if it were simply some kind of technical vocational training': at 198.

99 See, eg, Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Realty, and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537, noting how the Priestley 11 has led to 'concentration on content': at 555.

100 See, eg: Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1) *Legal Education Review* 1; ibid; Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Law Book Co, 1994).

101 Rachael Field and Alpana Roy, 'A Compulsory Dispute Resolution Capstone Subject: An Important Inclusion in a 21st Century Australian Law Curriculum' (2017) 27(1) *Legal Education Review* 73, 73–4.

102 See: Kift (n 100); Keyes and Johnstone (n 99).

103 See, eg, Stephen Gerst and Gerald Hess, 'Professional Skills and Values in Legal Education: The GPS Model' (2009) 43(2) *Valparaiso University Law Review* 513 on the situation in the United States.

104 These were developed as part of the Australian Learning and Teaching Council's 2010 project on Learning and Teaching Academic Standards: Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws* (Report, 2010). See also Anna Huggins, 'Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law' (2015) 38(1) *University of New South Wales Law Journal* 264.

endorsed by the Council of Australian Law Deans in 2010.[105] Knowledge is only one of the six TLOs, the others being ethics and professional responsibility, thinking skills, research skills, communication and collaboration, and self-management.[106] This development in legal education theory would support an approach to teaching international law which focuses more on general principles and legal reasoning, such as the Griffith University unit. This does not mean, of course, that the 'black-letter' units of public international law described above are less sound from the perspective of learning outcomes.[107] However, it does mean that care has to be taken to ensure that the way in which they are taught focuses not only on content, but also on the development of more general skills, and that other units within the overall degree ensure that law students meet any TLOs not met through teaching international law in this way. Possible techniques which could be used to teach more general skills within a compulsory international law unit include: the incorporation of moots to develop reasoning and oral presentation skills, as recommended by the International Law Association ('ILA') Committee on the Teaching of International Law;[108] use of case studies for students to immerse themselves in a particular set of facts and apply 'a wide range of international law techniques and methods to these facts in order to bring out certain fundamental legal problems';[109] offering clinical programmes[110] and work placements;[111] and using communications technology to offer students access to innovative learning materials that challenge traditional approaches and 'legal ethno-centricity'.[112]

A second, related tension that is apparent from a review of the compulsory international law units discussed above is whether public international law should

105 Field and Roy (n 101) 73.

106 Kift, Israel and Field (n 104) 10.

107 Certainly, there is much support, both within Australia and internationally, for a compulsory course in international law covering certain key content. For a notable articulation of this idea see John King Gamble, 'An Introductory Course: Clear/er Solutions; The Case for a Bare-Bones Course in International Law' [2002] (4) *International Law FORUM Du Droit International* 208. See also Gamble and Botha (n 94) 6–7.

108 Gamble and Botha (n 94) 7.

109 Simpson (n 12) 90. Simpson suggests this as a solution to the related problem on which his article focuses, namely the tendency of international law teachers to oscillate between legalism and realism, which results in largely superficial and incoherent teaching of international law. He suggests case studies as a way of covering 'the basic doctrinal categories and textual landmarks of … international law' (legalism) while also teaching students to 'employ and manipulate these rules and doctrines in meaningful contexts' (taking account of the insights of realism): at 89. This would seem to offer a solution to the related problem discussed here of how to cover content while also developing legal reasoning and other skills through an understanding of the broader context within which laws take effect. See also Otto, 'Handmaidens' (n 11) 51.

110 Simpson (n 12) 90. See also the comment regarding the context of Simpson's suggestion in above n 109.

111 Blay, 'The Function of International and Comparative Law' (n 13) 98.

112 Corell (n 98) 197.

be taught separately, as a subject in its own right, or together with private international law. This has been a live question from the earliest days of international law teaching in Australia: Shearer noted that up to 1914, public international law 'was, at different times, combined with the teaching of other subjects, especially conflict of laws'.[113] For Shearer, this raised concerns that teaching private international law as well would 'be at the expense of public international law', although he noted that 'there is evidence that a nice balance could be maintained between the discrete subjects of private and public international law'.[114]

The concern that combining public and private international law into one unit requires too much content to be covered, thus leading to a superficial, content-based approach to both, remains valid today. As John King Gamble succinctly put it, 'less may be better'.[115] Combining the two subjects also seems to be resisted by teachers of both areas of law, who worry that such an approach will diminish the extent to which students can gain a solid foundation of knowledge in each.[116] In addition, some teachers of private international law, in particular, do not see their subject as naturally aligning with the teaching of public international law. In his article arguing for the inclusion of private international law in the Australian law curriculum, Michael Douglas acknowledges that integrating the teaching of private international law within other units, rather than teaching it as a standalone unit, is 'pragmatic'.[117] However, while he suggests a number of units into which the study of private international law could be integrated, public international law is not one of them.[118]

On the other hand, as Crawford noted in the 1980s, 'the links between private international law and public international law are in some respects closer now than they ever were'.[119] In the 21st century this is increasingly the case in light of the growing number of international treaties addressing private international law issues and private law matters, particularly in the field of trade. As scholars such as Alex Mills have demonstrated, there is an 'essential confluence in the two branches of international law', which can be seen as together constituting the international legal system.[120]

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113 Shearer (n 1) 68–9.

114 Ibid 68.

115 Gamble (n 107) 211. This is particularly the case in light of the International Law Association's finding that 'the corpus of [public] international law increases yearly while the space allotted in the curriculum is unchanged': Gamble and Botha (n 94) 3.

116 Edwin M Smith has observed how 'faculty members favor narrow-scope courses': Edwin M Smith, 'Roundtable on the Teaching of International Law' (Commentary, Annual Meeting of the American Society of International Law, 18 April 1991) 108.

117 Michael Douglas, 'Integrating Private International Law into the Australian Law Curriculum' (2020) 44(1) *Melbourne University Law Review* 98, 124.

118 Those subjects being civil procedure courses, contracts, and torts: ibid 125.

119 Crawford (n 2) 178.

120 Alex Mills, *The Confluence of Public and Private International Law* (Cambridge University Press, 2009) 298.

Dianne Otto's seminal article, 'Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law' also raises concerns about teaching public and private international law separately, such that 'the borders between the public and the private appear increasingly fortified'.[121] This is both because teaching in this way neglects 'the many interdependencies and hybridities'[122] between the two areas of law and because it reinforces the 'public-private divide' and the hierarchies associated with it. In particular, such an approach tends to reinforce the 'prioritisation of private (economic) market values over the civic and redistributive (political) values of public international law'.[123] For Otto, this is problematic because it limits the 'progressive possibilities' of international law which 'arise from the recognition of the complex interactions between the two discourses in their shifting boundaries and multiple ideological purposes'.[124]

The tension between spending more time on public international law, to develop a deeper knowledge of its principles, and combining its study with that of private international law, in order to highlight general issues and interconnectedness, remains difficult to resolve. Ultimately, decisions will need to take account of practical considerations as well, including expertise of teaching staff and what other units are taught in the degree.[125] Regardless of which general approach is adopted, teachers will need to take care in planning the content of the unit, to ensure that a course solely on public international law also highlights the connections between public and private, and that a course covering both public and private does indeed achieve the 'nice balance' Shearer thought possible.[126] In both cases, techniques such as using case studies which involve questions of both public and private international law can be used to deepen understanding of each area of law while also highlighting the connections between them.[127]

The third tension, which is evident from a review of the international law curricula discussed above, is that between the desire to give a general introduction to public international law sources, principles and doctrines, and the desire to introduce

121 Otto, 'Handmaidens' (n 11) 53.

122 Ibid 38.

123 Ibid 37.

124 Ibid.

125 In this respect, Gamble has noted, at the international level, a clear difference between the European and American approaches, with Europeans maintaining a 'sharp distinction' between public and private international law, while Americans 'are more likely to blur the distinction': Gamble (n 107) 212.

126 Shearer (n 1) 68.

127 This is one of the measures proposed by Otto to address her concerns about teaching public and private international law separately: see Otto, 'Handmaidens' (n 11) 52–3. However, it would seem that this technique would also work well in units combining the teaching of public and private international law, as it would mean that each case study allowed for both areas of law to be considered, thus avoiding the perceived problem of dividing the teaching time between each area, with neither area receiving proper attention.

students to specialised areas of international law, such as human rights, international trade law, or international environmental law. This tension was noted by both Shearer and Crawford, both of whom warned against the dangers of specialisation.[128] According to Shearer:

> There is a common danger … in the trend towards specialization within the general field of international law … Unless students taking these courses are also offered (or have already taken) a thorough course in general principles of international law, specialized studies are likely to produce only superficial results. The roots of international law run deep into history and legal theory; time is needed to acquire a feel for it, and even to become adept at mining the resources of a library for its substance.[129]

Crawford also noted the increasing specialisation of international law units at Australian universities by the 1980s,[130] concluding that '[t]he overall picture is one of diversification and increase in choice, but with the risk of fragmentation, leading to the loss of coherence that a full year international law course can achieve'.[131] Crawford was speaking of fragmentation of knowledge in terms of the individual student. However, since the 1980s, the issue of fragmentation has become a concern for the body of international law itself, with fears that different specialised areas of international law are developing in ways that are not consistent with each other. The issue has become such a concern that it has been the subject of a detailed study and report by the United Nations International Law Commission,[132] as well as extensive scholarship.[133] This suggests that too much specialisation presents dangers not just from the perspective of student learning, but for the coherence of international law itself. On the other hand, however, the phenomenon of fragmentation of international law means that the need for specialised knowledge for those who wish to practise in specific areas of international law is real — and all the more pressing given the possible contradictions and inconsistencies between different fields of international

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128 They were not alone in doing so. See, eg, Ian Brownlie, 'Problems of Specialization' in Bin Cheng (ed), *International Law: Teaching and Practice* (Stevens, 1982) 109.

129 Shearer (n 1) 78. Mary Ellen O'Connell echoes this when she argues that international law is difficult for students to learn and 'they should have the introductory course to it': O'Connell (n 95) 112.

130 Crawford (n 2) 181–6.

131 Ibid 185.

132 International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 58th sess, UN Doc A/CN.4/L.682 (13 April 2006).

133 See, eg: Pierre-Marie Dupuy, 'A Doctrinal Debate in the Globalisation Era: On the "Fragmentation" of International Law' (2007) 1(1) *European Journal of Legal Studies* 25; Joost Pauwelyn, 'Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands' (2004) 25(4) *Michigan Journal of International Law* 903; Eyal Benvenisti and George W Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60(2) *Stanford Law Review* 595.

law, such that a knowledge of general principles alone will not be sufficient to allow students to approach these specialised subjects by themselves.[134]

Again, perhaps, the solution here is to achieve a 'nice balance' between introducing students to general principles and making them aware of the particularities of more specialised areas of international law. To the extent subjects cover particular specialised content, care should be taken in choosing which areas of international law are to be focused on in this way, so that students do not lose sight of the connections between the specialised subject matter and broader questions of international and domestic law.[135] Seen in this light, there are good arguments in favour of focusing on specialised areas of international law of particular domestic interest, or with significant domestic ramifications. As Crawford noted,[136] and as remains the case today, human rights law is a good example of this.[137]

The three tensions associated with the teaching of international law identified above emerge from an examination of the curricula of the compulsory international law subjects currently taught in Australian universities. However, a further tension exists in relation to the teaching of international law which directly concerns the compulsory nature of these international law subjects, namely: is international law best taught as a compulsory subject or as an elective? There is a body of literature which argues categorically that international law should be a compulsory unit of study.[138] International lawyers would, by and large, welcome the teaching of international law as a compulsory subject, on the basis that this ensures that all students have exposure to this area of law which is increasingly important to the future of legal practice.[139] Certainly this is consistent with the *ILETC Report*, noted above,

134 For one exploration of this issue, see Martti Koskenniemi, 'International Law: Constitutionalism, Managerialism and the Ethos of Legal Education' (2007) 1(1) *European Journal of Legal Studies* 8. Koskenniemi views these developments as undermining legal training itself, replacing the development of skills in legal reasoning and argument with the acquisition of narrow technical expertise and managerial techniques.

135 This is a risk with focusing on specialised subject matter: as Pierre d'Argent has noted, the teaching of specialist areas of international law inevitably follows a more 'black-letter law' approach, avoiding the consideration of broader jurisprudential questions: see Pierre d'Argent, 'Teachers of International Law' in Jean d'Aspremont et al (eds), *International Law as a Profession* (Cambridge University Press, 2017) 412, 421.

136 Crawford (n 2) 185.

137 See Gillian Triggs, 'The Internationalisation of Legal Education: An Opportunity for Human Rights?' in William van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education: The Future Practice of Law* (Edward Elgar, 2014) 209.

138 See, eg, Freeland, 'Educating Lawyers for Transnational Challenges' (n 15) 505. Outside the Australian context see, eg: Corell (n 98) 195–6; O'Connell (n 95) 113.

139 Although note the results of a survey for the American Society of International Law Roundtable on Teaching International Law in 1991, in which 80% of faculty surveyed felt that public international law should not be compulsory, including because 'academics do not want students who are uninterested in taking their courses': O'Connell (n 95) 112–13.

which argued that all law students should develop knowledge and skills in the area of international law.[140] Put simply, making international law compulsory is the easiest and most effective way to achieve such an outcome.

On the other hand, there is evidence to suggest that the very act of teaching something as a compulsory subject (rather than as an elective) has a deleterious effect on the learning outcomes and student experience of the subject. There is a significant body of research that has demonstrated that student evaluations of both the teachers and the unit of study are uniformly better for electives than for compulsory courses.[141] This is the case even where variables (such as class size, assessment regime, and instructor) are accounted for: indeed, in one study, a unit of study was taught as both an elective and a compulsory subject, and was taught by the same instructor, with similar class sizes, and identical content. Students surveyed at the end of both units of study consistently rated the unit of study when taught as an elective more favourably than when the same unit was taught as a compulsory subject.[142] This was the case in relation to all areas surveyed, including the quality of the presentation, the 'enjoyability' and 'useful[ness]' of the unit of study, the quality of the teaching materials such as audio-visual aids and handouts, and the quality of the administration of the unit.[143] Such studies demonstrate that 'the content [of a unit of study] would be more appealing to students if a course was an elective rather than a required one'.[144] Choosing to study a subject, rather than being 'compelled' to study the subject, clearly impacts on student experience.[145] To that end, requiring students to undertake study in international law may have adverse impacts on how

140 *ILETC Report* (n 56).

141 See, eg: NL Gage, 'The Appraisal of College Teaching: An Analysis of Ends and Means' (1961) 32(1) *Journal of Higher Education* 17, 18; Jenny A Darby, 'The Effects of the Elective or Required Status of Courses on Student Evaluations' (2006) 58(1) *Journal of Vocational Education and Training* 19; George D Lovell and Charles F Haner, 'Forced-Choice Applied to College Faculty Rating' (1955) 15(3) *Educational and Psychological Measurement* 291, 301–3; John T Pohlmann, 'A Multivariate Analysis of Selected Class Characteristic and Student Ratings of Instruction' (1975) 10(4) *Multivariate Behavioral Research* 81, 82.

142 Darby (n 141) 23–5.

143 Ibid.

144 Ibid 26.

145 Of course, student evaluations, on their own, should not be determinative of the value of a unit of study: see, eg: Jennifer Rowley, 'Student Feedback: A Shaky Foundation for Quality Assurance' (1995) 1(3) *Innovation and Learning in Education* 14; Keyth E Richardson, 'Quantifiable Feedback: Can It Really Measure Quality?' (1998) 6(4) *Quality Assurance in Education* 212. However, there is extensive literature to suggest that student evaluations *are* pivotal to determinations regarding the student experience of a unit of study, and the success of its learning outcomes. See, eg: Janet Leckey and Neville Neill, 'Quantifying Quality: The Importance of Student Feedback' (2001) 7(1) *Quality in Higher Education* 19; Chenicheri Sid Nair and Patricie Mertova (eds), *Student Feedback: The Cornerstone to an Effective Quality Assurance System in Higher Education* (Chandos Publishing, 2011).

they perceive the subject, and whether they consider international law as being useful and relevant to their studies, and their future career.

This represents something of a dilemma for those seeking to internationalise the law curriculum. If international law is not compulsory, some students will not choose to study it and so will leave law school with no knowledge of this increasingly important area of law. On the other hand, making international law compulsory may have an adverse impact on the quality of learning in that unit.

There are a number of possible responses to this dilemma, including adopting other pedagogical techniques to mitigate the adverse impact on student learning of making the subject compulsory. One possibility would involve offering students choices within the subject, for example, as to which case studies they wished to focus on, to mitigate students' sense of being 'compelled' to study particular material. Another approach, suggested in the *ILETC Report*, would be to incorporate some teaching of international law across other compulsory subjects, rather than as a standalone compulsory, while also offering international law electives.[146] This approach, however, would require substantial rewriting of the law curriculum as a whole, and would also pose problems in terms of developing the knowledge of specialists in other areas of law, to allow them to teach international law effectively in their units.[147]

Ultimately, there is no one 'right answer' to resolving each of these four tensions associated with the teaching of international law. Different law schools will resolve them in different ways and in light of other factors, including the expertise of their teaching staff. Focusing on areas of specialisation in which academics have expertise, as noted above in relation to Adelaide Law School, for example, makes sense in light of the importance of research led teaching.[148] As the ILA Committee on the Teaching of International Law noted in its 2010 final report, it is impossible

> to produce definitive findings of 'how to teach' or 'what to teach'. 'Rules' are clearly an anathema, while even the ubiquitous 'best practices' or 'guidelines' run into epistemological and ideological problems. We can therefore offer no definitive 'rules' or 'findings' on these issues.[149]

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146 *ILETC Report* (n 56) 5, 11, 13.

147 Some of these problems are canvassed by Michael Douglas in relation to his suggestion to adopt a similar approach with respect to the teaching of private international law: see Douglas (n 117) 125.

148 See, eg: Eve Mägi and Maarja Beerkens, 'Linking Research and Teaching: Are Research-Active Staff Members Different Teachers?' (2016) 72(2) *Higher Education* 241; Mark Deakin, 'Research Led Teaching: A Review of Two Initiatives in Valuing the Link between Teaching and Research' (2006) 1(1) *Journal for Education in the Built Environment* 73.

149 Gamble and Botha (n 94) 5. Indeed, the impossibility of prescribing a particular way of teaching international law was one of the reasons that led the Committee to conclude that it could not continue to perform its mandate and should be wound up: at 11–12.

However, the discussion above does highlight some of the issues to be considered when structuring international law units and making decisions as to how to resolve each of these tensions.

There is one further question regarding the teaching of international law in Australian law schools which is raised by the above analysis. At the international level, the question has been asked: 'How do we assure adequate attention to international law in university curricula that have ever more intense competition from many different subjects[?]'[150] In the Australian context, this translates into the question of whether international law should be included in the Priestley 11 requirements for admission to legal practice. The discussion above indicates that a range of stakeholders agree that, in the context of increasing globalisation, law students need to be equipped with knowledge and skills to respond to international legal issues. Further, it is clear that a large number of law schools view making international law compulsory the best way to achieve this. So, should the Priestley 11 be expanded to include international law?

Calls to amend the Priestley 11 are not new. Fairly soon after the requirements were prescribed, they came in for criticism. By the end of the 1990s, law academics were dismissing the Priestley 11 as 'outmoded … hav[ing] severely and unnecessarily constrained the capacity of Australian law schools to engage in innovative curriculum development',[151] and the Australian Law Reform Commission was calling for a 'move away from a solitary preoccupation with the detailed content of numerous bodies of substantive law, which is essentially the position taken by the "Priestley 11" requirements'.[152] As noted by Desmond Manderson,

> [t]he strictures … enshrined [in the Priestley 11] provide little room for experimental or challenging courses, except in elective courses. Financial constraints are being experienced by every Law school in the country, and the result is a clear trend towards fewer teachers and larger classes; the attempt to shoe-horn the doctrinal demands of the Priestley [11] into the shortest time possible; and a smaller number of electives. … There is less and less time in which to teach Law students anything more than the basics.[153]

This sentiment was echoed in the *ILETC Report*,[154] and by law deans and teachers in the Australian Universities Teaching Committee study,[155] where it was repeatedly

150 Ibid 2.

151 Andrew Stewart, then of Flinders University, quoted in Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, February 2000) 142 [2.65].

152 Ibid 149–50 [2.82].

153 Desmond Manderson, 'Law: The Search for Community' (2002) 26(74) *Journal of Australian Studies* 147, 153.

154 *ILETC Report* (n 56) 7.

155 Johnstone and Vignaendra (n 54).

stated that the Priestley 11 served to constrain curriculum design and inhibit creative critical thinking.[156]

This has posed particular problems for the teaching of international law, as noted by Vai Io Lo,

> [w]here law schools are committed to internationalisation, the Priestley 11 subjects and the concomitant admission criteria not only limit the number of electives that students can take … but also deplete the time available for incorporation of international, comparative, or foreign law into core subjects and diminish students' interest in pursuing legal knowledge beyond domestic law. Over the years, core courses have been covered in breadth rather than in depth, even without incorporating international, comparative, or foreign law materials. Thus, it is unrealistic to expect instructors in core courses to teach international or comparative law in addition to the broad range of issues to be covered under domestic law.[157]

As far back as 2000, the Australian Law Reform Commission noted that '[g]lobalisation suggests that public international law and conflicts of law (private international law) could be seen as within the modern "core"'.[158] However, when the academic requirements for admission underwent reconsideration in 2019,[159] only one submission, made by the University of Western Australia Law School, went as far as to suggest international law be considered as part of the core knowledge required for graduating lawyers in Australia,[160] with the Law Admissions Consultative Committee not embracing such a change themselves.

Including international law as an additional compulsory subject necessarily means that it takes up space in the curriculum that otherwise would have been available for an elective subject. As Douglas notes, considering the question of whether private international law should be compulsory, '[l]aw school curricula are already crowded

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156 Ibid 89–92.

157 Lo (n 56) 28 (citations omitted).

158 Australian Law Reform Commission (n 151) 150 [2.82].

159 See Law Admissions Consultative Committee, 'Redrafting the Academic Requirements for Admission' (Draft Paper, 2019) <https://www.legalservicescouncil.org.au/Documents/Redrafting%20the%20Academic%20Requirements%20for%20Admission.pdf>.

160 See University of Western Australia Law School, Submission to the Law Admissions Consultative Committee, *Redrafting the Academic Requirements for Admission* (2019) 1:

> Increasingly there is an interconnectedness in the world environment as a result of global events, developments in international travel and communication technologies, and the internationalisation of legal work and the profession. We would therefore recommend that at some point in their law studies, in core or option units, students undertake a unit that includes global, international or transnational perspectives.

with compulsory subjects'.[161] This would exacerbate the existing problems with the Priestley 11 scheme constraining innovative curriculum development, by requiring yet another body of knowledge to be taught in the compulsory law curriculum.

Ultimately, then, simply adding international law to the Priestley 11 seems both unlikely to occur in practice and possibly counterproductive (if the goal is to encourage internationalisation of the law curriculum, including the teaching of international law, through innovative teaching and inspiring student interest in the field). In addition, the problems with the Priestley 11 extend further than its failure to include international law in the list of required knowledge for admission to practice. A more productive approach, then, may be to question more generally the role of the Priestley 11 in the shaping of law curricula, with a view to a more significant overhaul of the requirements for admission to legal practice in the 21st century.

VII Conclusion

Much has changed in the more than 30 years since Shearer and Crawford surveyed the teaching of public international law in Australian law schools. Globalisation has continued at a rapid pace. Australia's population has increased by more than 50%. And, against the background of pressure to 'internationalise' the Australian law curriculum, an increasing number of Australian law schools have (re)commenced the teaching of international law as a compulsory subject.

While there is now increasing acceptance of the importance of teaching international law as a compulsory subject, there is also significant diversity in the way in which such units of study are taught in Australian law schools. This article has reviewed the unit of study outlines and teaching rationales for compulsory international law subjects at the 17 Australian law schools where such subjects are now compulsory. This has revealed that there is no one approach to the teaching of international law in Australian law schools. Rather, there are significant differences in both the content of compulsory international law subjects and the place of those subjects within the law degree more generally. These differences in approach seem to result from a number of tensions associated with the teaching of international law: the tension between teaching international law in terms of general principles and teaching specific content; the tension between focusing on public international law alone, to develop a deeper knowledge of its principles, and combining its study with that of private international law, in order to highlight the relationship between the two; and the tension between teaching a general international law course and introducing students to specialised areas of international law such as human rights. Drawing on insights from both international law and legal pedagogy, this article has suggested a number of matters to be considered when resolving these tensions and developing international law curricula. In particular, we have emphasised the importance of ensuring that international law studies allow students to develop a

[161] Douglas (n 117) 123. Although Douglas was not specifically considering the question of whether private international law should be included in the Priestley 11, his general comment is also relevant to the specific question of expanding the Priestley 11.

deeper understanding of law in general; the value of helping students to refine their legal reasoning and argument skills, rather than focusing purely on the delivery of content; and the need to explore foundational concepts in sufficient depth to allow students to learn further on their own. We have also suggested that particular teaching methods and learning activities may be especially useful in balancing the tensions we have identified in ways which enhance student learning. These include the use of detailed case studies and practical activities such as mooting.

We have also explored the implications of teaching international law as a compulsory, rather than elective, subject, and asked whether the increasing teaching of international law as a compulsory subject means that it should be included in the Priestley 11 requirements for admission to legal practice. While teaching international law as a compulsory subject does require steps to be taken to address student resistance to a subject they are 'compelled' to take, in the 21st century this is outweighed by the benefits of making international law compulsory. However, changing the Priestley 11 to include international law seems unlikely to be successful in practice. We have therefore suggested that international law teachers focus on questioning the foundations and future of the Priestley 11 more generally, while continuing the push for individual law schools to make international law a compulsory part of their curriculum.

Ultimately, there are no clear answers to the question of how international law 'should' be taught, and how its significance should be reflected in requirements for admission to practice. In this respect, little has changed since the Shearer and Crawford articles. Many of the issues this article has identified regarding the teaching of international law today were also canvassed by Shearer and Crawford over 30 years ago. The significance of these issues, however, and the importance of addressing them in a principled way, will only grow as international law is recognised as an increasingly important element of Australian legal education.