THE FUNCTION OF INTERNATIONAL AND COMPARATIVE LAW IN AUSTRALIAN LEGAL EDUCATION

Sam Blay*

INTRODUCTION

In my role as a teacher of international and comparative law, it has become quite customary for me to start off my first lecture each year by saying that the area of international and comparative law is, without doubt, one of the most exciting subject areas a student is ever likely to study in law school. It is also one of the most relevant and practical. It is not unusual for a teacher of any subject to introduce the subject by exhausting the many virtues and the relevance of his or her unit. But for the international lawyer the case for the relevance of those subjects is made more critical because of a pervasive view in many law schools that they do not deal with *real law,* they are only a branch of political science, or in any case, they are soft options that may be, with justification, consigned to a secondary place in the curriculum.

Given this perception, why do law schools teach international and comparative law? What are the objectives of these units when offered in our law schools? As Professor Ivan Shearer once questioned, when the subjects and related units are only but a few among a wide range of subjects on offer, what attracts a student to choose international or comparative law?[1] Do international and comparative law help to make a better lawyer and do law firms as prospective employers care about whether a student takes international and comparative law units? Within the Australian context, and for the purposes of this article, these questions raise a broader issue: what are the role and vocational relevance of international and comparative law in legal education in Australia today? The objective of this article, therefore, is to examine these issues and to propose a basis for reassessing the role of the discipline in modern legal education in Australia.

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* PhD; Professor of Law, University of Technology, Sydney.

1 Shearer, "The teaching of international law in Australian law schools" (1983) 9 Adelaide Law Review 61.

INTERNATIONAL AND COMPARATIVE LAW: SOME CLARIFICATIONS

International and comparative law are two distinct but related or complementary subjects. International law is the body of rules that regulate the relationship between states and other subjects of the law. In this sense, international law is a broad discipline. Indeed, for every subject area in municipal law, there would be an equivalent in international law. In spite of this, many law schools only offer Principles of Public International Law, which is a small indication of the scope and depth of the subject. Not surprisingly, many have come to interpret international law narrowly to mean the general principles of public international law.

For the purposes of this article, I will not restrict myself to this narrow definition. International law will therefore refer to the broader discipline that comprises the general principles and the "specialist" or related subjects such as International Trade and Investment Law, International Business Transactions Law, International Economic Law, Law of the Sea, Human Rights and Humanitarian Law, to mention but a few. It is only in this broader sense that one can properly assess the place of the discipline in legal education today.

Comparative law, on the other hand, is an "intellectual activity with law as its object and comparison as its objective".[2] It involves a comparison of the different legal systems of the world. It is the comparison of the spirit or style of different legal systems, of comparable legal institutions, or of the solutions of comparable legal problems in different systems.

Comparative law is closely associated with international law.[3] First, comparative law is essential to the understanding of the *corpus* of "general principles of law recognised by civilised nations", which is listed in Article 38 of the Statute of the International Court of Justice as one of the sources of international law. Secondly, in the modern global environment of economic, political and cultural cooperation and interdependence, it is clear that economic and business negotiations, diplomatic and international

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2 Zweigert K and anor, An Introduction to Comparative Law (1987, 2nd ed, Clarendon Press, Oxford) 1.

3 For a discussion on the relationship between comparative law and private and public international law, see ibid at 5-7.

relations, and indeed other forms of international activity that we pursue on a daily basis, can hardly be maintained properly if we were to remain ignorant of the laws in the context of which other countries do business, give expression to their sense of justice and regulate their state structures. In any case, to the extent that international law is made through the agreement and the practice of states, it makes good sense to understand the legal culture of the states involved if one is to understand their attitudes to international law.

INTERNATIONAL AND COMPARATIVE LAW: THE AIMS OF LEGAL EDUCATION IN THE AUSTRALIAN CONTEXT

It has been suggested that Australian law schools see their primary purpose as training lawyers for legal practice.[4] This, of course, is the narrow traditional view. The aim of modern legal education is more complex than that. The aims of legal education in any particular period are generally influenced by the wider social and economic context in which lawyers, as the end products, are meant to operate and conduct their profession.

In the Australian context, unlike his or her counterparts of earlier years, the modern lawyer operates in an environment fraught with complex social and economic problems that require legal solutions. These problems are underscored by advances in technology, the sudden arrival of the information superhighway and the increasing internationalisation of economic and political relations between states. They are the result of, and have been facilitated by, the lowering of international trade barriers.

The above problems require the modern lawyer to be a highly skilled and multi-disciplinary professional who is capable of resolving complex issues for clients. The aims of legal education must therefore take account of this social and economic context because of the latter's direct relationship with the market for lawyers who are relevantly trained.

In the Australian context, then, what are the aims of legal education within the ambit of which international and comparative law play a role?[5] In the

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4 Bottomley S and ors, Law in Context (1991, Federation Press, Sydney) 118.

5 In the Australian context it is of interest to note that there had been earlier doubts as to whether Australian law schools really know their aims or indeed the aims of legal

1971 Ormrod Report (England) it was suggested that legal education must equip the lawyer with:

> a sufficiently general and broad based education to enable him [or her] to adapt...successfully to new and different situations as his or her career develops; an adequate knowledge of the more important branches of the law and its principles; the ability to handle facts, both analytically and synthetically and to apply the law to situations of fact; and the capacity to work, not only with clients, but also with experts in different disciplines... [H]e or she must also cultivate a critical approach to existing law, an appreciation of its social consequences and an interest in and positive attitude to appropriate development and change.[6]

Central to the view of the Ormrod Committee is the notion that legal education is meant to provide a package of skills to the student which would enable him or her to deal with different situations that require legal expertise.

The aims of legal education in the Australian context are no different from what was advocated in the Ormrod Report. At a very general level, legal education in Australia aims at providing the student with a critical knowledge and understanding of the nature and function of the law and its role in the ordering and functioning of the wider social and economic system of the community.

The educational process should aim at ensuring an understanding of the techniques of legal reasoning and a critical knowledge of the institutions and operation of the Australian legal system and related legal systems. The process should result in an ability to deal with the complex problems that come with changes to the social, political and economic conditions of the community. Therefore, within these broad aims, what is the function of international and comparative law in law school curricula?

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education they offer. See Luke, "University training of lawyers" (1978) 1 Legal Education in Australia 89, 98; Committee of Inquiry into Legal Education in NSW (Chairman - Sir Nigel Bowen), Report on Legal Education in New South Wales (1979, Government Printers, Sydney) para 6.7.9.

6 Committee on Legal Education (Chairman - Ormrod, J), Report of the Committee on Legal Education (1971, HMSO, London) para 100.

INTERNATIONAL AND COMPARATIVE LAW IN AUSTRALIAN LAW SCHOOLS: A BACKGROUND

International law has been offered in Australian law schools since the late 1800s.[7] The history of comparative law is rather more recent, having been first introduced in the late 1940s in the University of Melbourne as part of its Bachelor of Laws degree program at the time.[8] In the early years, the orientation of international and comparative law courses was not vocational, despite the emphasis on vocational training in law schools. The courses were mainly considered as academic and intellectual pursuits which enhanced the quality of the law degree.[9] The content of the course syllabus reflected this orientation accordingly.

7 For an account of the history of international law in Australian law schools see Shearer, note 1 at 61. The curricula of the law schools were fairly broad and included classical languages, some arts subjects and general law subjects with emphasis on public law, both constitutional law and international law.

8 For an account of the course in its earlier years at Melbourne University see Friedman, "A comparative law course at the University of Melbourne" (1947-51) 1 Journal of the Society of Public Law Teachers 274-282.

9 Indeed for a while, following the tradition of Oxford and Cambridge, international law was a compulsory subject in all the early law schools: Crawford, "Teaching and research in international law in Australia" (1987) 10 Australian Year Book of International Law 177, 178. Apart from the simple fact of copying the English legal educational tradition, the rationale for teaching international law, let alone making it compulsory in Australia, is not clear particularly since there were hardly any career opportunities in international law within Australia. Before federation, issues of international law concerning Australia were dealt with by the Imperial bureaucracy in Whitehall. Despite federation in 1901, the situation did not change very much; Australia remained very much a British colony both legally and culturally, with the result that there was very little Australian involvement in international issues. Australia was of course not the only British colony that had seen it fit to make international law a prerequisite for a law degree. In Canada, international law was taught as early as 1851 in Montreal, 1858 in Toronto, and 1883 in Halifax. It was a prerequisite for the degree: see MacDonald, "An historical introduction to the teaching of inter-national law in Canada" (1976) 14 Canadian Yearbook of International Law 224, 249. Commenting on the case of colonial Canada, where the career opportunities for international lawyers were similar to that of Australia, MacDonald notes the subject was not at the outset regarded as either "too academic" or "too non-vocational"; nor was it in any way marginal to the mainstream of the curriculum. On the contrary, he suggests that "the early explorers of legal education in Canada looked far beyond the immediate concerns of settlement, agriculture, transportation, and natural resources. They took a wider view of the responsibilities of a law faculty, the practice of law, and the possible future of their young country in

Since World War II, and particularly since the 1960s, international and comparative law in Australian law schools have developed considerably. In the 1960s there was a substantial increase in the number of students seeking admission into law schools in Australia. As Professor Crawford notes:

> Whereas until the 1950's law schools had consisted of a very small number of full-time teachers assisted by substantial amounts of part-time teaching from members of the legal profession, during the 1960's with the very substantial increase in the number of students seeking...legal education, and the increasing specialisation of Australian law, the structure (and to a lesser extent) the aims of Australian law schools changed significantly. Many new members of staff were recruited, new law schools were established, and the bulk of teaching came to be carried out by full-time university teachers... Accompanying these changes has been an increase in the range of subjects offered for the law degree, and a concomitant increase in specialisation in teaching particular subjects [including international and comparative law].[10]

While there is no doubt that there are more schools today offering a greater variety of courses including international and comparative law, it is doubtful whether these changes adequately reflect the developments in the Australian economic and political landscape. For instance, of the 28 law schools in Australia today, 16 offer courses in international law while only 12 are listed as offering courses in comparative law. A close examination of the syllabus of most of the institutions also indicates that the focus of their comparative law courses in today's Australia is not very different from what it was in the

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the international community. They fully reflected in their professional domain the optimism that was characteristic and the ruling passion of Canada until the end of World War I". However, as Professor Shearer notes, while "much of what MacDonald says of Canada would appear to be true of Australia...[his] attribution of a conscious element of choice in early curricula even if true of Canada, is too high minded in the case of Australia": Shearer note 1 at 66. "The simple reality in Australia was that all the law professors from 1855-1910, having been educated in the United Kingdom and Ireland, in the fashion of Oxford and Cambridge, saw Roman law and international and comparative law as essential aspects of any respectable law degree. They therefore not only prescribed such subjects in their curricula, but also personally taught them. In this respect it is of interest to note that the first law professors in Australia were public lawyers, some of whom were later to make a name for themselves as international lawyers": ibid.

10 Crawford note 9 at 182.

earlier years, with considerable emphasis on Roman Law. International law suffers from a similar fate, but to a lesser extent. In some of the institutions, the courses are still regarded as esoteric intellectual pursuits rather than functional subjects that contribute to the intellectual as well as the vocational competence of the practitioner.

We live in an era characterised by increased internationalisation and interdependence. This is easily reflected in: (1) the transformation of GATT into the World Trade Organisation with all the promises of liberalisation in trade; (2) the creation of APEC with enormous international trade implications for Australia in South East Asia; (3) the increasing efforts to promote trade and economic cooperation between Australia and its ASEAN neighbours; and (4) the increasing volume of trade between Australia and Asia. Politically and diplomatically, Australia has also made bold initiatives regarding several important international issues that require the attention of lawyers.

Therefore, for courses in international and comparative law to be relevant in the Australian context, it is necessary for law schools to take into account all of the above developments when defining the scope of their courses. It is by so doing that international and comparative law can play a meaningful role in modern legal education in Australia.

THE ROLE OF INTERNATIONAL AND COMPARATIVE LAW

The Traditional Academic/Intellectual Role

As noted elsewhere in this article, the early approach to international law in legal scholarship was essentially academic rather than vocational. The role of international law in this respect was to enhance the proper understanding of the study of law. This traditional function remains valid today.

In all jurisdictions where international law is taught, the general course invariably deals with complex issues on the nature of law and the basis of obligation in law. The very nature of international law and the controversy about its legal character bring into play basic issues of jurisprudence which are of general relevance to the study of law. Indeed, international law offers an excellent opportunity for a close examination of philosophical issues relating to the basis of law.

Comparative law plays an equally important intellectual role in legal education. The essence of the subject is well summed up in this passage:

> [Comparative law] introduces us to societies where the Western notion of law is altogether unknown, or where law is synonymous with force and is sometimes even a symbol of injustice, or again where law is intimately linked to religion and takes on its sacred character. A history of the philosophy of law could undoubtedly be limited to a description of the nature of law in some defined part of humanity. But since philosophy itself is a science of general ideas, it need hardly be emphasised how narrow and barren a philosophy of law would be if it merely took one national law into account.
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> The historical origins of the classifications known to any system, the relative character of its institutions, all these are really understood only when the observer places him/herself outside his/her own legal system, that is to say when he adopts the perspective of comparative law.[11]

For instance, a student studying Australian laws and legal system may take as natural the distinctions between private and public law, civil law, criminal law and the simple operations of the common law adversarial system. But a study of comparative law may easily reveal that the notions we consider natural are not known or acceptable everywhere or may even be rejected in other legal systems that work perfectly well. This helps to bring into focus the national character of laws and the essence of legal arrangements in society.

The Role in a Multicultural Australia

In a multicultural environment such as Australia, international and comparative law play a special role in legal education. A significant part of the Australian population has ethnic affiliations and they continue to maintain close ties with their countries of origin. Their relationships tend to raise complex issues of conflict of laws. For the practitioner dealing with clients with ethnic backgrounds, a comparative familiarity with the legal

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[11] David R and anor, Major Legal System in the World Today: An Introduction to the Comparative Study of Law (1985, 3rd ed, Stevens, London) 5.

culture of the client's country of origin can be more than useful if he or she is to serve the client more competently or adequately.

International and comparative law have relevance in the relationship between Aboriginal Australia and the rest of the Australian community. On a general level, the recognition of Aboriginal customary laws, for instance, calls for a comparative study and an evaluation of the cultural practices which are to be recognised. In Australia's effort at reconciliation with Aborigines, a comparative understanding of Aboriginal customary law is not only useful, but necessary.

The Role in Australia's Relationship with Asia: the Commercial Context

As noted earlier, the essence of comparative law is that it provides an opportunity for a comparative understanding of foreign legal cultures and the laws regulating various state structures in other countries. Through international law, practitioners gain an insight and familiarity with the international legal system. All these factors assist in their understanding of foreign institutions and the agents they have to deal with.

In the specific context of Australia's relationship with Asia, international and comparative law therefore play a very important role. A comparative understanding of Chinese corporate law, for instance, would greatly assist practitioners and business persons in their negotiations with their Chinese counterparts. Given the increasing cooperation between Australia and the West on the one hand, and civil law countries such as Vietnam, Korea, Cambodia and Laos on the other hand, a good understanding of the latter's civil law traditions, in their national context, would help promote understanding and have important implications for trade relations.

Dispute Resolution and Avoidance

International and comparative law have an important function in transnational dispute resolution and avoidance. A comparative understanding of the legal structures and cultures of Australia's Asian neighbours is central in the avoidance and management of disputes particularly in the commercial field. Whereas Australia and other common law countries see the court as the institutions of immediate resort for dispute resolution, a comparative study of the institutions of Australia's Asian neighbours reveals

that their judicial structures are not necessarily the institutions of immediate resort.[12] A comparative evaluation of the strategies for dispute resolution and avoidance in the cultures of our immediate neighbours can provide a basis for improving our own dispute management systems and better equip us in dispute management and avoidance involving them.

The Nationalist Role

Comparative law allows the lawyer to develop a better understanding of the law and legal phenomena in his or her own jurisdiction through a comparative study of other legal systems. In Australia, as elsewhere, it is quite common for legislators and Law Reform Commissions to make use of comparative law as a technique in the framing of new laws or recommendations for reform. On the other hand, by its very nature, international law concerns the study of the role, rights and duties of states. The subject therefore allows the student to gain an insight into the international legal system and how it relates to specific states.

In this respect, international law plays a nationalist role in legal education. This subject, more than any other, can help to develop the concept of the place of a state in world affairs. In the Australian context, this has been proven to be very much the case with several law schools as they have been willing to develop thematic approaches to the units taught. In addition, a generation of wide-ranging literature on aspects of international law of specific relevance to Australia has been developed.

I have chosen to call this the nationalist role of international law because the nature of the subject permits its study from the perspective of one country and from that of an ideology, if need be. As Professor Shearer notes, the roots of international law run deep into history and legal theory. It requires an interest in history and current affairs and, in the process, a genuine interest in the conception of Australia's place in the world.[13]

In the last decade alone Australia has been an active, and indeed, a leading participant in the formulation or negotiation of international trade

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[12] For an interesting account of mediation structures in China today, see Bagshaw, "A different kind of mediation" [April 1995] Australian Lawyer 26.

[13] Shearer note 1 at 78.

arrangements through APEC and GATT, as well as the international regulation of chemical and nuclear weapons. It has made important initiatives in international environmental law. It has also secured important trading and bilateral relations with its Asian neighbours and maintained a very high profile as an important critic of human rights in the South East Asian region. All these activities and developments require a substantial input of international lawyers to secure for Australia its specific foreign relations and trade policy. A study of international law from the Australian perspective in relation to these activities is therefore essential if one is to understand the legal foundations of Australian foreign and trade policies.

As complementary disciplines, international and comparative law play very important roles in the development of Australia's foreign and international trade policies and initiatives. Comparative law provides the avenue for Australian negotiators in international arrangements to develop a better understanding of the legal culture of their foreign counterparts.

The need to understand the legal foundations of Australia's foreign and trade policies, the prospect of a career in the Department of Foreign Affairs and Trade, and the activities of that Department, all establish the relevance of international and comparative law in a student's legal education. However, on their own, they suggest a fairly limited role for the discipline in legal education. In spite of this observation, the principal contention in this article is that international and comparative law have roles that go beyond the traditional and nationalist roles. As a consequence, the discipline has a wider and more practical vocational and institutional relevance in modern Australian legal education.

VOCATIONAL RELEVANCE

The aim of legal education is to equip the lawyer with a package of skills that is both intellectually useful and vocationally relevant. We have already discussed the intellectual relevance of international and comparative law in this context. But what is their vocational relevance beyond government employment?

Vocational relevance is determined by the character of the economic and social problems that law firms are called upon to help resolve or litigate. In a survey of major law firms in New South Wales and Victoria, they all

indicated that when hiring clerks for articles, what they generally looked for was intellectual capacity as evidenced by the level of grades obtained by the student. All indicated that the vocational orientation of the subjects taken by the student in law school was given minimal consideration, if at all. When asked specifically about the weight given to international and comparative law in their hiring programs, all except one indicated that the subjects did not give an applicant any special advantage. It is of interest to note that the firms that responded this way included some that have international and comparative law or international trade and investment sections in their practice, or have clients who have transnational business interests.

The general response was that new clerks acquire the skills relevant to the practice of each firm through in-house training programs and actual hands-on practice. I should point out here that the attitude to international and comparative law is in fact no different to the general attitude of the firms to other subjects offered in law schools. In other words, the firms appear to take the view that, vocationally, all elective subjects simply help to give the student the basis for the qualification. None has any more specific role in legal education beyond this general function.

I would like to make a number of points about this state of affairs. First, if firms which have clients with transnational interests take the view that, at the university level, the subjects have no special vocational role in the legal education of the clerks they hire, then perhaps universities in general, and international lawyers in particular, have failed to market or explain the role of the subjects to the firms. Secondly, if law firms use in-house training programs to help equip their practitioners for operations involving the transnational interests of their clients, then they obviously see the role and relevance of the subjects in the continuing education of their personnel. And thirdly, if they use in-house trainers, surely the trainers must have been trained in international and comparative law at some stage, which then defeats the suggestion that no relevance or weight is given to the subjects when employing staff!

The vocational role and relevance of international and comparative law in Australian legal education are now more significant than they have ever been, and they are likely to continue as such for some time. With the booming economies of South East Asia, the opening up of Vietnam and Cambodia, the increasing acceptance of foreign investment and joint

ventures in China, and the increasing volume of trade between Australia and countries such as Japan, Korea and Taiwan, business opportunities in the Asian region have become more manifest. It is estimated that in the next five years the dollar value of investments from the West in the Asian region will exceed one trillion US dollars. As the major Western power geographically closest to the South East Asian region, and given the recent political effort of Australia to be integrated in the region, Australia, and for that matter, Australian business houses, are very well placed to take advantage of these developments.

This general state of affairs requires practitioners to actively cultivate an interest in international and comparative law, and to demonstrate a respectable knowledge in the subject areas, at least in so far as they concern the regions of commercial interest to their clients, if they are to serve their clients well. It will also require law schools to tailor their courses beyond the general international and comparative law units to meet those specific needs if they are to be relevant to the vocation.

The "crowded" law school curricula and the relatively short time students spend in law school mean that there is little room for tailored specialist courses in international and comparative law, even if such courses would be vocationally very relevant. The matter is thus left to firms to initiate in-house programs or to practitioners to pursue Continuing Legal Education (CLE) or Professional and Postgraduate Education (PAGE) in the specialist areas.

THE INSTITUTIONAL RELEVANCE OF INTERNATIONAL AND COMPARATIVE LAW

Given the inability of Australian law schools to meet the demand for specific specialist courses at the undergraduate level, it has now become common for them to offer a large variety of courses on a CLE or PAGE basis. The supply of CLE and PAGE programs has of course been prompted by the high demand for such programs. Today, most law firms, particularly in the major cities, routinely encourage their personnel to pursue some form of CLE program. These programs now constitute a multi-million dollar industry. Commercial, international and comparative law related programs have been shown to be the most popular, with the obvious result that institutions willing to offer courses in the area stand to benefit greatly.

In the programs, the vocational role and relevance of international and comparative law become most obvious. The subjects in the programs are tailored to provide specialist knowledge so that practitioners are equipped to deal with the legal problems of their clients in particular sectors of the economy or community.

For the student-customer, CLE in international and comparative law presents an opportunity to tap into the resources and expertise of the law schools after graduation on a more flexible basis. For the law schools, CLE opportunities are virtually limitless and they are constrained only by their expertise. Indeed, even where a law school does not have the expertise in a program it wishes to conduct on a CLE seminar basis, nothing prevents it from hiring the experts from industry or other institutions to help it offer the program.

For the law school, several incentives and benefits are generated by CLE programs in international and comparative law. Apart from helping to lift the profile of the law school, CLE programs are excellent avenues for extra revenue, revenue that can usually be generated with a minimum of extra resources or infrastructure. This is particularly so in institutions such as the University of Technology, Sydney which has existing centres like the International and Commercial Law Centre and the Centre for Dispute Resolution.

THE INTERNATIONALISATION OF LEGAL EDUCATION AND THE LEGAL PROFESSION

The Legal Profession

International and comparative law contribute significantly to the internationalisation of legal education and indeed the legal profession. For the practitioner, a basic understanding of the international legal environment and familiarity with the legal cultures of our immediate neighbours and trading partners would help to promote closer relations with them. In addition, it would enhance Australia's profile in the region, as well as worldwide, with ensuing economic benefits. In major commercial centres such as Sydney and Melbourne, the emphasis on the internationalisation of the legal profession is vital, given the complex international aspects of

commercial transactions in the field of banking, taxation securities regulation and international trade, in general.

Legal Education

Full-fee paying overseas students have now become a very significant feature of Australia's tertiary education landscape. International student enrolments increased from 34,408 in 1991 to 46,441 in 1994.[14] The export of education has now grown to be the fourth largest export service in Australia worth some $1.5 billion in 1993-1994. It has a projected growth to $2.3 billion by the year 2000.[15] For our purposes, what is significant about these statistics is that there were only 622 undergraduate law students out of 34,000 undergraduate international students in 1991. In 1994 there was only a modest increase which brought the figure to 817. These figures are even more disappointing if one excludes students who are sponsored by AusAid.[16]

I emphasise the undergraduate market for good reason. Over the past ten years, Australian law schools have been extremely active in the recruitment of overseas full-fee paying students. Indeed, the recruitment situation is now very competitive, with at least one law school repeatedly offering discounts. The current situation poses a number of problems for the future. For one thing, there are indications that as the economies in the traditional markets of Hong Kong, Malaysia and Singapore become more developed, we are likely to see a sharp decrease in the number of full-fee paying undergraduate students coming from these countries for law studies in Australia, as those countries are likely to establish or develop their own law programs. Secondly, undergraduate law degrees by their nature are very "jurisdiction specific" and are therefore not attractive to students from non common law countries. Even in the case of common law countries, changes to government policy or recognition rules could easily render undergraduate law degrees from Australia unaccredited with very little notice.[17]

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[14] International Legal Services Advisory Council, Australian International Legal Education and Training, Directions Issues and Opportunities, December 1995 (ILSAC 1995) 21.

[15] Ibid.

[16] Ibid 22.

[17] In 1993 for instance, Singapore announced the withdrawal of recognition of Australian law degrees for local admission purposes.

To meet these problems, a significant number of Australian law schools have started foundation years or established "twinning" and credit transfer arrangements with overseas institutions, particularly in Malaysia. While these may be attractive solutions in the immediate future, they are not necessarily the best long term solutions. For example, and as mentioned above, new restrictions on admission to practice in the home market may be introduced at short notice. When this happens, it would undermine the value of any investment in a "twinning" arrangement.

Given its funding implications, the recruitment of overseas students will continue to remain an important part of the operations of most, if not all, Australian law schools. The problems associated with recruitment must therefore be tackled efficiently if law schools are to meet future challenges.

Unlike undergraduate degrees, postgraduate degrees tend to be "non-jurisdiction specific". As a result, they are sufficiently versatile to weather changes made to foreign governmental regulation of the recognition of overseas qualifications. More importantly, because postgraduate qualifications are not jurisdiction specific, they have a wider appeal, especially in relation to target groups from non-traditional markets. International and comparative law related subjects therefore become their more favoured choices because of the subjects' immediate relevance to foreign conditions and demands. In this context, international and comparative law offer a long term solution to problems associated with the recruitment of international students from both the traditional markets (Malaysia, Singapore, Hong Kong and the South Pacific) and the non-traditional markets.

CONCLUSIONS: DIRECTIONS FOR THE FUTURE

As suggested in this article, international and comparative law play an important, though sometimes an underestimated role in modern legal education in Australia. Indeed the issue is not whether it plays a role, but rather, knowing that it has a role, how best law schools can incorporate this subject area into their courses to help them take advantage of the many potential benefits for their institutions and the wider community.

In 1990, there were 48 million students around the world. Of this, 17 million were in Asia. The total figure is estimated to grow to 97 million by

the year 2010, with the number of students from Asia increasing to some 45 million.[18] The number of international students from Asia is expected to increase to 800,000 by the year 2010.[19] There are two significant points about these statistics. One is that, without doubt, Asia represents the greatest potential market for international education. The second is that in spite of Australia's proximity to Asia, Europe and the United States remain the top host destinations for international students from Asia.[20] Even though there are projections for increases in Australia's market share, Australia's position in fifth place is not likely to change much unless energetic marketing and institutional arrangements are put in place to meet the competition from North America and Europe.

A number of strategies can be implemented to make Australian law schools more competitive. They include those which are described below.

Innovation in Course Design

To attract international students it is crucial to introduce courses that appeal to the market group. Innovative improvements in curricula that take into account the international students' home environments would be most useful. By their very nature, international and comparative law lend themselves very easily to such innovation in the curricula. In fact, both Monash University and the University of New South Wales, two of the institutions with the highest number of enrolled international students, report that they have had to introduce more international and comparative law units in their curricula as part of their strategy for international students. The introduction of the LLB/BA (International Studies) program at the University of Technology, Sydney is another example of such innovation.

Active Internationalisation of the Law School Curricula

The LLB/BA (International Studies) program at the University of Technology, Sydney is an excellent example of the internationalisation of

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18 IDP Education Australia, "International education: Australia's potential demand and supply, October 1995", cited in ILSAC 1995 at 48.

19 Ibid.

20 The United States was host to nearly 50% of the students in 1992. Germany had 8.5%, Japan 6%, United Kingdom 5% and Australia 4.6%.

curricula and innovation in course design. It allows participants in the program to undertake prescribed study for a year in another country which relates to that country's cultural and language specialisation. The internationalisation of curricula could of course be achieved in other ways as well. A basic avenue for internationalisation, without the radical introduction of a new degree structure, is the introduction of courses in areas of law of international interest or relevance. This could include specific courses in comparative and international law units relating to the environment, trade, commerce, banking, arbitration, dispute resolution and so forth. Other initiatives are the following:

- The introduction of postgraduate (coursework) programs particularly in the fields of international and comparative law with a twelve month duration, as opposed to the traditional two year Masters by thesis programs.

- The introduction of non-degree courses (for example, generic skills for lawyers and judicial administrators) which are not jurisdiction specific.

- Concrete initiatives to market legal education particularly at the post-graduate or non-degree level in non-traditional markets like India, Vietnam, Laos, Cambodia and China.

  While this may be of relevance to the marketing of legal education generally, it needs to be noted that with the exception of India, these non-traditional markets are civil law oriented. They therefore lend themselves more easily to the marketing of international and comparative law courses.

- Staff and student exchange programs with institutions in the target markets.

  Exchange programs are an important part of any internationalisation program and they help to lift the profile of Australian law schools. Culturally, it also makes a great deal of sense. They expose staff and students from the institutions involved to the life styles and the cultural environment of the countries they go to. Such programs have the excellent advantage of bringing staff to Australian law schools

from the foreign institutions to present courses from their own countries' perspectives.

- Summer school programs in the foreign state to be taught by staff from Australia and the foreign institutions.

- The provision and acquisition of adequate library resources to ensure a credible internationalised program.

- Development of ties with the legal profession to establish work experience programs for students in a foreign or international environment.

Law office secondments at the international level and Australian students working in overseas law offices are not a new phenomenon in Australia. Most of the major law firms with international connections routinely sponsor secondments each year. However, most of such activities are restricted to the European market. Given the increasing importance of the relationship with Asia, Australian law firms and law schools would need to encourage an Asian orientation in such relationships.