1. Who needs a basic knowledge of international law and why

A basic knowledge of international law, as with any body of the law, is necessary, in the first place, for legal practitioners.

Because of its primarily international and public law configuration, one would assume that a purely domestic lawyer would be spared of the need to know international law. That is a wrong assumption, as there is hardly a domestic legal issue – be it of a commercial, criminal or labour law nature, let alone of a constitutional law character – which is not connected with a rule of international law whose interpretation is relevant to the application of a domestic rule, or the settlement of a domestic dispute in such matters.

The point has been addressed in impassionate terms by Professor Shabtai Rosenne, one of the most thorough international legal scholars and practitioners of recent times. His acceptance speech at the presentation of The Hague Prize, which he received in 2004, precisely revolved around the importance of international law for the legal practice. Professor Rosenne lamented that the average practitioner of our time is often hardly qualified to identify an international law problem when professional advice would so require. [1] He observed that:

> '[A]n attorney can[not] be fully qualified if he or she is unable to identify an international law element in a client's problem. I do not expect every attorney to be able to solve that international law prob-

[1] 'The Hague Prize for International Law 2004 Awarded to Professor Shabtai Rosenne' (2004) 51 Netherlands International Law Review 475, especially at 482-485.

> lem (…). But the least that can be expected is that the attorney will identify that the international law problem is part of the complex to be resolved (…).' [2]

Within the domestic legal community, the prominence of the judiciary should not be lost sight of, since domestic courts and tribunals play a significant role in the application, or violation, as well as in the making and changing of international law. Notice should also be taken of the increasing legal representation of the Government before international courts and tribunals by the Office of the Attorney General, due to international litigation involving sovereign parties, which is developing to an extent unknown in the past. [3]

The increasing global interdependence in time of economic growth, and, paradoxically all the more so, in time of economic and environmental crisis, has added an international dimension to the work of a wider spectrum of governmental administrations traditionally devoted to domestic affairs, such as Treasury, Health, Environment and even the Interior.

Much the same applies to members of the civil society organised within NGOs, which, as we shall also see, are taking an increasingly prominent stand in promoting the making and enforcement of international law on the domestic and transboundary levels. That is especially the case in the field of environmental and human rights law. At the same time, we are witnessing a new corporate role in the promotion of new international economic law standards through BINGOs. In both areas, lawyers who are knowledgeable of the basics of international law are in demand.

Lastly, a basic knowledge of international law is required for those who want to work in media communication and journalism, given the ever-increasing international interdependence of the great and dramatic challenges confronting our societies. From climate

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[2] *Ibidem*, 482.

[3] See Chapter 6.

change to military or digital security, access to essential natural resources, demographic growth, pandemics, finance and economics, or the use and management of artificial intelligence and neuro-sciences, all such challenges cannot be effectively tackled by individual nation-states, without internationally regulated cooperation. The related international law-making, and implementation, policies, while involving national and transnational civil societies, require highly competent media, including in the field of international law.

2. Regulating the relations between states and constraining their external sovereignty…

One can say that international law consists of a set of rules made by states in order to regulate the legal relations between them. Such rules belong to one legal order shared by each and all members of the international community of states, even if a state may differ from another with regard to the interpretation and application of these rules. That is to say that international law is not to be confused with anything to do with foreign laws, as is sometimes the case with beginners to the subject. The study of foreign laws pertains to the subject of comparative law, public or private.

Nor should international law be confused with **private international law**, more properly known as ***conflict of laws***. This body of law is to be found in each national legal system, each with its own differences, with a view to guiding the domestic judge in deciding *a*) whether it has jurisdiction, and if so, *b*) which law – domestic or foreign – to apply to any given legal case between private individuals, or companies, containing a foreign element. Such foreign element may pertain to issues of contract law, when one of the parties is a foreigner and/or the contract is to be performed abroad; to tort law, when the damage is suffered or caused by conduct carried out abroad; to marital law, when one of the spouses is a foreign national, or the marriage was celebrated abroad; or in cases of cross-border inheritance. Namely, if you have connections, in terms of nationali-

ty or residence, with more than one country, you need to know which country's law will govern who inherits your assets when you pass away.

Each national legal system, through its body of rules on conflict of laws, provides for connecting factors – *e.g.* citizenship or habitual residence of either parties, the place of conclusion, or of performance, of the contract, the place where the damage was caused, or suffered – in order for the domestic judge to choose the applicable legal order among those connected to a given case, including its national law. Given the uncertainties and complications deriving from the fact that each national law may provide different connecting patterns in relation to the same legal relationships, states and international organisations, including the EU, have promoted the adoption of international conventions on uniform domestic rules of private international law.

Defining international law – or any other legal order – as a set of rules is a useful simplification. But an incomplete one. Next to its rules, a legal system is defined by the process which produces, uses and applies such rules, as well as by the social, political, economic factors which underlie such process. That inevitably requires a degree of interdisciplinary approach to the law,[4] even by black-letter practitioners, as no persuasive legal argument may be made without

[4] The New Haven School of legal thinking, gathered around the Yale School of Law, has been a precursor to this approach, see MS McDougal, HD Lasswell and WM Reisman, 'The World Constitutive Process of Authoritative Decision' (1967) 19 Journal of Legal Education 253. For a clear illustration of international law as a process of authoritative decisions, see, by Dame Rosalyn Higgins – an epigone of the New Haven School on the British legal scene and former President of the ICJ – *Problems and Process: International Law and How We Use It* (Clarendon Press 1994). See also JL Dunoff and MA Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2013). See also, more recently, P Palchetti, 'An Interdisciplinary Approach to International Law? Some Cursory Remarks' in M Meccarelli (ed), *Reading the Crisis: Legal, Philosophical and Literary Perspectives* (Editorial Dykinson 2017), 199ff.

a sufficient grasp of the social, economic, policy, technical or scientific aspects underlying the making or application of the law.

The prevailing **inter-state nature** of international law is apparent from the diplomatic settings in which inter-state agreements are negotiated and entered into by state organs in charge of foreign relations. Its international character is evidenced by the international scope of application of most rules of international law. One may consider the rules governing the terrestrial and maritime delimitation of sovereignty between states; those on the use, management and conservation of shared natural resources, such as transboundary watercourses and aquifers, or oil and gas. The same applies to the currently much debated rule banning the use of force, or acts of aggression, 'against the territorial integrity and political independence' of other states as enshrined in Article 2(4) of the *UN Charter*.

The above may lead one to think of international law as a body of law merely confined to diplomatic and transboundary relations. Namely, one regulating only the **external sovereignty** of states. However, one ought to consider that most rules of international law are applied, misapplied, or infringed upon, within the domestic legal orders of the recipient states, hence, by state officials in charge of domestic affairs, either legislative, executive or judicial. As it will be illustrated in the next section, this naturally flows from the contents of most international rules which impinge upon domestic sovereignty, on a daily basis.

3. …And internal sovereignty

In fact, a large number of international rules provide, through their obligations, constraints over the internal sovereignty of the recipient states, whether this is in relation to the jurisdiction to prescribe, to adjudicate, or to enforce. That is corroborated by most of the bodies of international law illustrated in a summary fashion in Chapter 7.

By way of anticipation, apart from the self-evident case of the in-