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# GAPS IN INTERNATIONAL LEGAL LITERATURE: A SKEPTICAL REAPPRAISAL

Lyonette Louis-Jacques

## INTRODUCTION

In Spring 2000, I wrote a piece for the first issue of the *Chicago Journal of International Law* (CJIL) on gaps in the literature of international law. The general theme of the CJIL issue was “What’s Wrong with International Law Scholarship.” Now, almost eight years later, Tom French and the *Syracuse Journal of International Law and Commerce* have responded with this Symposium on “Minding the Gaps: 21<sup>st</sup> Century International, Foreign and Comparative Legal Issues.” I am happy to contribute my additional thoughts on the topic of gaps in international legal literature. In this follow-up to my article, I will reflect on progress in filling the gaps I observed, expound upon some notable remaining gaps, and look forward to future solutions.

### I. LOOKING BACK AT FORWARD PROGRESS

“Nel mezzo del cammin di nostra vita mi ritrovai per una selva oscura ché la diritta via era smarrita.”<sup>1</sup>

Looking back, I feel much older than the young foreign and international law librarian who wrote about gaps in international legal literature. Like a wizened veteran, I am nostalgic for the past, skeptical about the present, curmudgeonly about continuing gaps, disturbed and somewhat saddened about new and emerging gaps, but still very excited about the future and the potential for international law scholarship.

In my original article, I noted three kinds of gaps or inadequacies: too few translations; problems with both content and format of international legal information resources; and a lack of scholarly research on certain topics. I emphasized that today’s international legal researchers prefer to access information in electronic format.

Since libraries have increasingly placed print resources in remote storage locations, and researchers more rarely browse the stacks, the need for online access has grown. Fortunately, the past years have seen many of the format gaps filled in. Now, publishers have digitized many of the primary sources of international law. The HeinOnline database

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1. Loose translation: “In the middle of the road of our life, I found myself in a dark wood wandering.”

now includes the full run of U.S. treaty series, *International Legal Materials* (ILM), *Reports of International Arbitral Awards* (RIAA), the Wharton, Moore, Hackworth, and Whiteman digests of U.S. practice of international law, *Foreign Relations of the United States* (FRUS), classic international law treatises, war crimes trials, and major international law yearbooks and journals.

The United Nations makes all its resolutions available online at its website. The *United Nations Treaty Series* (UNTS) and *League of Nations Treaty Series* (LNTS) are available electronically. The Official Document System (ODS) contains UN documents from 1993 to the present. Martinus Nijhoff has published a digital version of the *Recueil des cours*, the Collected Courses of the Hague Academy of International Law. Cambridge University Press and Justis have begun digitizing the International Law Reports (ILR).

The Internet Archive (the Wayback Machine) enables researchers to recover international legal information seemingly lost either through lack of access to print resources or the disappearance of cited webpages. The web-based interface of *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World* has succeeded so well, enabling researchers more user-friendly and up-to-date access to information, that the authors ceased print and CD-ROM versions in August 2007.

Some of the major reference works for international legal research should soon be available in electronic format. Publishers of the *World Treaty Index* have worked for years to develop an electronic version of the resource. The *Encyclopedia of Public International Law* is forthcoming online. Libraries of major international organizations and research institutions worldwide have made their online public access catalogs (OPACs) available via the Internet. The Peace Palace Library's catalog indexes books, chapters in books, and journal articles. The Max Planck Institute for Comparative Public Law and International Law's catalog provides similar access.

Since 2000, several international organizations have ceased print publication of their newsletters, periodicals, and, most importantly, their compilations of translations of laws and international treaties. However, some of these organizations, like the UN, EU, WIPO, WHO, FAO, ILO, WTO, etc., have replaced the print resources with electronic versions. International legal researchers have more and more access to more international documents and publications via the Internet every day.

While there have not been many citation analyses, directories, and bibliographies of recommended readings to highlight major scholars

and canonical works in the field, a few scholars have attempted to do empirical research on international law. The Empirical Legal Studies Bibliography Database helps identify that research. Electronic discussion groups and blogs such as *Opinio Juris* help identify current awareness, hot topic issues in the field and also major players in the international law field. A *Who's Who in Public International Law* was recently published.

In terms of previously under-represented topics, approaches, and viewpoints, in recent years more scholars have written on international health law, travel law, and human rights. Pundits have published critiques of international law from disparate viewpoints. Some writings question the legitimacy of customary international law and human rights. Some contain contributions by new or non-Western scholars. Some proffer new international legal theories. And some delve into historical sources of international law.

## II. PRESENT GAPS

So, why am I not happy? International legal literature has improved tremendously since 2000. Many gaps have been plugged, or so it seems. But something broke after 9/11. Traditional international law took a hit. While international law drew more attention in the United States, it also drew more criticism and rejection. Death has taken from us eminent international law scholars such as Oscar Schachter and Louis B. Sohn, and specialists in international legal literature such as Adolf Sprudz and Igor Kavass. The use of international legal literature in print form has decreased.

The use of international legal literature in electronic format has increased. However, the electronic landscape for international legal literature remains unstable and uncertain. Not every core international research resource is available online or in an acceptable format. No centralized repository preserves electronic sources of international law. International legal information is scattered, some in print libraries, some in off-site storage, and some in various electronic formats. Publishers, wary of the market, dare not invest in costly digitization for some valuable resources. Those who make digital versions of international legal materials available on the Internet can also remove or modify those resources.<sup>2</sup> The researcher cannot rely on permanent electronic

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2. For example, the collection of recent U.S. treaties at the Department of State's Freedom of Information Act (FOIA) disappeared back in July 2007. Researchers were told the collection would be back "in a couple of weeks." The treaties have recently reappeared at the FOIA page, but with a different URL, ten months later. See

access to international legal information.

Also, it is not enough that an international legal resource is available in electronic format. The electronic version must also be easily accessible, easily navigable and searchable, and the resulting documents available in PDF format. For primary sources of international law, they must be authoritative, official, and authenticated e-resources. E-versions of international legal literature today do not always fit these criteria.

I am further saddened that the content gaps I identified several years ago have remained the same or widened. The *Index to Foreign Legal Periodicals* (IFLP) is still only online from 1985 to present even though it began publication in 1960. LexisNexis and Westlaw continue to contain very little foreign law. Both LexisNexis and Westlaw have spun off separate databases of foreign law materials requiring separate subscriptions for academic subscribers.

We see a semblance of more comprehensive access to international law in electronic format, yet, upon closer inspection, we find that the e-version can be incomplete. The researcher has to really review the details of online availability. For instance, HeinOnline makes the *British Yearbook of International Law* available, but only from v.1–v.46 (1920–1973). Sometimes Internet access does not include certain volumes or issues within sets.

Online international documents are not always made available in the PDF format preferred for citation purposes. Documents in text or HTML format raise questions of authenticity and possibility of alteration over time. International Court of Justice decisions on the Westlaw database are not in PDF, but the decisions at the ICJ website are. European Court of Justice decisions are only available at its website in HTML from 1997 to date. Moreover, the Court added this note regarding the authenticity of the electronic versions:

For the benefit of the public, the electronic version of the texts of the three Community courts is available free of charge on Internet for information purposes. This version is subject to amendment. The definitive version of these texts will be published in the "Reports of Cases before the Court of Justice and the Court of First Instance", the "Reports of European Community Staff Cases" or the "Official Journal of the European Union" which alone are authentic and, in the event of their differing from the electronic version, are alone to be regarded as authoritative. Reproduction of the texts supplied on this site is authorised provided that their source and non-authentic

character are acknowledged and it is mentioned that they have been provided free of charge.<sup>3</sup>

Researchers must be vigilant to differences in depth of coverage and authoritativeness of international legal materials.

Variations in language availability and slow speed of translations affect international legal research adversely. Some international bodies issue documents in multiple languages. Yet not all decisions, reports, etc., are published in those languages simultaneously. For instance, one may find a European Court of Human Rights decision or judgment initially published in French, but not available in English. We find another gap left unfilled.

We have lost researchers with knowledge of how to use and cite international legal resources in print format. Today's researchers might not know that the Official Records of the General Assembly (GAOR) compiles UN General Assembly resolutions. And the *Bluebook* might not provide them with enough guidance for proper citation to a print version of an international legal document or publication. A uniform system of citation gives everyone the same basic shorthand ways of referencing materials. Proper citation form is elegant, familiar, and a basic benchmark of scholarship.

Today's international legal researcher, relying on Internet resources, faces the persistent problem of disappearing URLs. The Wayback Machine helps, but it does not recapture everything where there is a broken URL. Owners of the documents can request their removal from the Wayback Machine. Also, the researcher may find international legal research awkward, uncomfortable and slow to perform because of the varied formats, lack of familiarity with resources, and the increasing dispersal and quantity of resources. The bibliography of international law is less centralized than it used to be, and, in some cases, not as up-to-date with new and recommended resources. Fewer experts can help navigate the literature of international law.

Finally, I am most unhappy at the potential politicization of access to international legal information in the United States. In an environment where previously freely accessible documents are being reclassified or removed from websites or have ceased publication, I am skeptical about continued present and future access to international legal information.

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3. European Court of Justice, Numerical Access to Case-Law, *available at* <http://curia.europa.eu/en/content/juris/index.htm> (last visited Apr. 7, 2008).

## LOOKING AHEAD: A CALL TO ARMS

Plugging in gaps in the international legal literature in the future requires work on several fronts. On the one hand, we need to identify core international law collections and major international legal resources, and work towards the digitization of these resources. We need to partner with publishers and vendors to foster digitization initiatives. We also need to work on standards for electronic resources that promote ease of searching, multi-lingual interfaces, ease of access, PDF format, and authentication. We need to advocate with governments and international organizations for free, permanent public access to authentic international legal information. We need assurance that publishers will keep core sources of international law accessible both in print and in electronic format.

We need to promote, publicize, and teach international legal research to ensure that researchers use and cite print and electronic resources appropriately and efficiently. We need to work toward standardization of citation formats for international legal materials. Finally, we need to remember that the sources of international law are changing. The literature of international law will change along with them. We live in a Web 2.0 world. How is international law scholarship affected by blogs and wikis? How can social networking technologies enhance international legal research? We not only need electronic access to international legal literature, we need the means to interact with the information in ways we did not think of in 2000. We need to remain flexible to possible futures, but steadfast in our resolve to continue identifying gaps today and striving to fill in the coming gaps in international legal literature tomorrow.