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Dear Ron,

Please forgive the extended delay in replying to your letter of 25 November. It arrived here while I was away in Washington, and when I returned I had only a few days to tidy things up generally before going away on Christmas holiday. One might have thought that the break would have done me good. But rather the reverse. As soon as I came back, I fell ill, and am now told that I have hepatitis. So virtually everything has to come to a halt for a while, which is, to say the least, aggravating. However, the release from more mundane pressures has given me an opportunity to think about your questionnaire.

I have my doubts as to whether you are quite fair to those whom you question, in so far as you do not reveal the objective of your investigation. The abstract assessment of the strength of any particular country's academic community of international lawyers is impossible. The question is: strength for what purpose? Is the community strong enough to provide teaching in the quantities which it or others may determine to be necessary? Is it strong enough to do research? Is the research which it is doing of a purely "personal kind", in which an individual merely pursues his own particular interest, which may be realistic or not? Or is it the sort of research that actually moves the frontiers of international law outwards? Is the academic community sufficiently strong to provide either from its own personnel or by the stimulus it generates the number of international lawyers needed for Government service and the practising profession? Unless the purpose of the assessment is stated, I do not think that the assessment itself can really carry much force.

1. What kind of information would you require?

I think that, with the exceptions of items 8, 9, 12 and 14, all the aspects you list are relevant. As to 8, I am not quite sure what it means. But if it means that the strength of an academic community is related to its access to good libraries, then undoubtedly it is relevant. As to item 9, the question of whether international law is compulsory or not should not be thought of as affecting the strength of the international law community, but as a reflection of the outlook of the particular law school. As to items 12 and 14, they are much too subjective really to be important.

It seems to me that the true test for assessing whether an academic community is sufficiently "strong" in abstract terms is whether it possesses or generates enough men of quality to perform the task that has to be performed by international lawyers in that country, i.e. teaching, practising the professions, acting as Government lawyers, or providing personnel for international organizations.

You may like to consider the relevance of some of the following items. It is important in assessing the "quality" of research not to look at whether it is good in the sense of covering the material and presenting it usefully, but in terms of whether it is creative. Is it sterile or does it present new ideas? Is it general in its applicability, or does it tend towards the disintegration of the subject by placing too much emphasis upon national or regional approaches? (One ought to be very wary of "the Ruritania approach to international law", or "international law and the problems of Ruritania".) What is the nature and extent of the professional commitment of the academic community? How well do they stand up to the test of whether others think well enough of them to want to draw upon their talent and experience in order to deal with practical problems? How close is the relationship between the academic community and the Government? Does the one draw upon the other?

The above all seem to me to be factors material to your first heading.

2. The role of private professional organizations interested in international law.

The question here is not so much who formulates the guidelines as on whether such formulation is possible. In my view it certainly is, but it can only be done after definition of the objectives which are sought. The same is true in relation to the identification of kinds of research to be done by academic lawyers.

4. States with particularly strong international law communities

I find it impossible to answer Yes or No in relation to particular countries. Some have some features of strength; others have others. And Yes or No in relation to any particular country would be quite misleading. At the same time one is conscious that there are some countries in which there is a very strong academic contribution to international law, for example, France, Italy and Poland. If one asks oneself what are the manifestations of this strength, they are partly the sheer numbers of people involved, and partly (probably principally) the fact that there is some substantial national international law publication, e.g. the Annuaire Francais.

6. Other responsibilities of academic international lawyers

I would answer Yes to all the questions here, and would add only the general factor that it is vital that international lawyers demonstrate their commitment to the subject by full participation in all its aspects; teaching, professional activity, involvement in international organizations, performance of functions as judges and arbitrators.

7. Criteria to measure the quality of an academic community

An academic community can be no stronger than its individual members. The quality of the individual members depends upon the impression they create of being in touch with their subject and of contributing to its vitality. But even the presence within a given country of a number of highly talented individuals does not create a strong academic community unless there is a suitable mechanism for bringing these individuals together and achieving a situation in which the whole is greater than the sum of the parts. This requires a strong and active central institutional element that functions not merely to justify its institutional existence, but constantly to expand the horizons and substantive content of the subject.

Warmest greetings,

Yours ever,

Dh



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4 December 1981.

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Dear Ronald,

I enclose my attempt to reply to your questionnaire,
which you have formulated with such skill.

Allow me to add a few comments.

Question 1.

Nearly all the items are relevant, some more so of course than others. I would stress in many cases quality rather than quantity. That is why I have not placed a tick in item 5. As regards questions 9 and 10, after much experience I have come to the view that it is more important to have a few people who are interested in international law studying it than to have everybody compelled to do so. The corollary of that of course is that there must be very good postgraduate courses. I hold this view partly because I am against a large number of compulsory courses anyhow. (The University of Sydney, for instance, has far too many). Also it must be financially possible for the best students to take postgraduate courses. (In Australia the Government of the Commonwealth is attempting to reintroduce fees for postgraduate courses. The Senate has voted this down, and there could even be a constitutional crisis over the issue).

Question 2.

My "yes" here is qualified, in the sense that guidelines suggested by private organizations can be helpful provided that this does not lead to too much influence by vested interests.

Question 3.

Because I fear pressure by vested interests, I have placed my tick in the "No" column here.

Question 4.

I find this very difficult. I am probably not sufficiently in touch to answer it properly. I have placed a tick against every country except Belgium which I regard as probably more interested in EEC law than international law. I may be doing them an injustice. I know they have been handicapped by the severe language difficulties at Leuven (Louvain). I think the Netherlands deserve a tick because inter alia they are so superb at languages and a lot of their University courses are conducted in English. France always throws up a lot of good people, and the Germans have got back to their old position, helped partly of course by the Max Planck Institute. I do not know much about Mexico except for Castaneda, who undoubtedly is a powerful figure. On the other hand, Padilla Nervo was a poor judge on the International Court.

As regards Australia, it is an interesting fact that many of the textbooks used in Britain emanate from Australia (e.g. Starke, Greig, O'Connell), but of these only Starke was Australian-born. The University of Sydney has had four professors of international law (Pitt Cobbett, Charteris, Stone and myself), none of whom were Australian-born. On the other hand, I think Sir Kenneth Bailey was a first-class international lawyer, and Australia has certainly produced an international star in James Crawford. Also, despite great difficulties, the Australian teams have done amazingly well in the Jessup moot competition.

Incidentally, I have formed a very favourable impression of the students here. They get a raw deal from the Government, but nevertheless are cheerful and industrious, and some of my international law students have been first class. This impression is confirmed by visitors we have had from Britain (e.g. Ivo Lapenna from London and Neil MacCormick from Edinburgh. The latter, whose visit was recently concluded, was a great success, both in the Law School and at the high table in St. Andrew's College. I have no doubt he would be just as successful, perhaps even more so, in Nova Scotia!).

Question 5(2).

Not quite, because the countries themselves are so very different, not least in size and wealth. For instance, no one would dispute the right of the United States to be in this list, partly for the wonderful service which the

American Society of International Law provides to international lawyers all over the world. But, as the late Judge Baxter never hesitated to point out, there are many weaknesses in the international law community in the United States. Also, it is significant that in the recent attempt of Malta to intervene in the Libya/Tunisia case, the parties chose predominantly English Q.C.'s. This suggests that English international lawyers are considered to be better advocates. Although I have not studied the South-West Africa cases in enormous detail, I have the impression that the American lawyers concerned handled them rather badly.

Question 7.

I would place great emphasis on integrity and objectivity. I would discount academic writing which is either avowedly or clandestinely produced in order to bolster up vested interests. There is too much of that around. An academic lawyer, however, should not live in an ivory tower. He must be fully aware of all the tensions that exist in international society. He should honestly attempt to state the international law as it is - an extremely difficult task. There is no reason why he should not put forward suggestions for improvements in international law, provided he distinguishes as far as possible between lex ferenda and lex lata.

Yours sincerely,



D.H.N. Johnson,
Professor of International Law.