Professor Watson replies: July 21, 1977

With regard to Professor Paust's inability to see why purposes or principles should be ranked one over the other, I find myself explaining a rather basic issue of even the most simple normative systems. When norms are in conflict, as are Articles 1 and 2 of the Charter, it is helpful to the decision-making process to rank them in some way Since Article 1 and Article 2 contain language clarifying their relationship, I thought it would be helpful to point this out. If one chooses to ignore this, then one is left with potentially contradictory norms, which is most unhelpful.

His second point is flawed in that, while Article 2 refers to "The Organization and its Members," Article 2(4) only refers to the "Members" and consequently cannot be used to reverse the relationship established between Article 1 and Article 2 as a whole. Article 2(4) is a limited exception to the basic scheme.

The third point, as I understand it, seems to imply that separate and different legal norms may be treated as though they were the same if, on the whole, they look fairly similar. This is very curious legal reasoning indeed. As to my acknowledged inconsistency in the standards to be used in interpreting Article 2(7) as opposed to other articles, I made the reasons for doing so quite clear.

Professor Paust's fourth point indicates a complete lack of awareness of any difference between a jurisidictional rule which allocates competence as a whole and a rule which allocates competence in specific, limited situations. The fact that one can collect a list of Charter articles in which *some* power is transferred by the members to the Organization does not mean that *all* power has been so transferred. If Article 2(7) were invalid, there would be no need for the articles that he lists. The discussion of Article 56 again suggests the use of a limited exception as proof of the invalidity of the rule that necessitated the exception. Professor Paust's concept of legal reasoning gets curiouser and curiouser.

Paust wonders whether positivism is really negativism in disguise and refers to my views as "negativistic." The clear import of this is that in his view one should only say positive things about UN law even though it is obvious that the politicization of the Organization has relegated legal questions to a position of relative insignificance and that legal consistency is now only a dim memory. If one is to be confined to positive comment only, then one is playing the role, not of an academic, but of an idealist.

Paust then asks why state consent is so important. The answer is quite simple. One cannot achieve a useful, practical system of international law without state participation, since states are still the wielders of power. This participation is what "consent" ultimately means. Thus if one disregards the importance of state consent the result will be an inefficacious system. Professor Paust urges us to look at the "numerous patterns of behavior and attitude" which are inconsistent with my position. As I pointed out in my article (p. 76), attitudes are not sufficiently concrete to form a basis for international law due to the problem of states' using a double standard. Exactly how one is supposed to distinguish a genuine attitude from an insincere one is something that Professor Paust must solve. As to patterns of behavior and his point that I focus on law violators too much, he misses the point of my article completely. Consent is one of the built-in methods in international custom and treaty law whereby it is ensured that the system will tend to be efficacious. What use is there in

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deducing from Articles 25, 33(2), 34, 39, 48, 49, 92, and 94 that, for example, human rights are now subject to international jurisdiction despite Article 2(7) when the patterns of behavior include the killing of Indian populations in South America, the jailing and torture of political opponents in dozens of countries, thirty years of apartheid in South Africa, the current excesses in Ethiopia and Cambodia, and the tragicomedy of Uganda? If Professor Paust wishes to stack his list of rarely used articles against such facts and ignore the inability of the international legal system to control them, then it is he, and not I, who's approach is, in his words, "hardly realistic or useful."

J. S. WATSON

TO THE EDITOR-IN-CHIEF

In reviewing *Russian and Soviet Law: An Annotated Catalogue of Reference Works, Legislation, Court Reports, Serials, and Monographs on Russian and Soviet Law*, by William E. Butler, in the July issue of the *Journal* (71 AJIL 578 (1977)), I mistakenly gave the number of titles covered as 250; the correct figure is 1200.

JOHN N. HAZARD

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

(Act of August 12, 1970; Sec. 3685, Title 39, U.S. Code)

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