CHAPTER FIFTEEN

THE INTERNATIONAL LEGAL CONSULTANCY OF
GOVERNMENTS FROM THE OUTSIDE

Antonio Remiro Brotóns

I. Introduction.

II. International Lawyers and International Law Professors.
   1. Is it possible to be an international lawyer without being a professor?
   2. Is it possible to be a professor without being an international lawyer?

III. The multiple dimensions of external counsel.
   1. The preparation of legal opinions and draft bills.
   2. Participation in diplomatic negotiations and international conferences.
   3. A professional work before international jurisdictions.

IV. Legal Counsels and Lawyers before the International Court of Justice (and other Courts).
   1. A professional activity that is not regulated in a limited market.
   2. An oligopolistic professional circuit.
   3. The making of a team: national lawyers and foreign lawyers.
   4. Counsels and lawyers in action.
   5. A long lasting relationship.
   6. Spanish Lawyers: as nationals and as foreigners.

V. Is academic and scientific analysis contaminated by professional activity?

VI. Conclusions: every government has the right to legal defence; but not every professor is obliged to be its lawyer.

I. INTRODUCTION

Whilst the International Legal Advisers of Governments from the inside, normally included in the different Ministries of Foreign Affairs, have been the object of a recurring—and well deserved—doctrinal attention,¹ this same Consultancy

practised from the outside by independent professionals has been generally ignored, except for the relative interest awakened by counsels and lawyers of the States parties in cases before the ICJ.

An explanation for this can be surmised. Firstly, the external consultancy lacks the institutional profile of the internal consultancy. This latter profile generally allows a discourse about professional activity while keeping a certain personal distance; also there exists an objective interest in finding out the way in which the different State organs in charge of external affairs illuminate their decision-making process with legal considerations in order to determine the effectiveness of IL.

In second place, professors, who usually play a leading part in external counsel, prefer talking about their scientific work rather than giving clues as to the influence their consultant and extra-academic activity has had on it. Moreover, reservation, discretion, the lack of time to do something that is not of prime importance, or all of these factors together, have often become the cause for these professors not articulating their life stories that otherwise are the spice of a more sociological approach.

Apart from the rare exceptions that confirm the rule, those who have dedicated their energies to studying the illustrious iusinternationalists through the analysis of their doctrinal publications have not done so either. We know the extraordinary case of Friedrich von Martens, an Estonian with German origins and Russian loyalty, lucky enough to see his existence extended as the subject of a historical novel; but all the others must wait for a mention in an obituary notice or biographical Article in their Jubilee book.

This is why I face this task with curiosity. I understand it consists of offering a personal experience that is parallel and complementary to an academic one, providing a proper context for it both from a deontological and from a legal point of view. Doing this will not only serve the practical formation of the interested reader but also the memory of Spanish iusinternationalists that can only be complete when works like this one become more frequent.

—


2 J. Kross, Professor Martensi Ärasöit (Tallin, Eesti Raamat, 1984).