

FOREWORD

Disarmament has been advocated by many persons and sporadically sought by many governments throughout this century. It was Russia under Czar Nicholas II which took the lead in advocating it at the First Hague Peace Conference of 1899; it is Russia under Premier Khrushchev whose agreement is vital to even the first steps toward disarmament today. But the agreement of the United States is just as essential. The perfection of thermonuclear weapons leads some to believe that there is reason for hope in a "balance of terror"—in the mutual capacity for annihilation. No government takes the position that we may rest assured that this is true. Even if the insistent fears of nuclear holocaust were quieted, there would still be the demand that the vast sums swallowed up annually in armaments be devoted to needs of man other than mere survival.

Of the obstacles to an accord upon disarmament, or the limitation of armaments, distrust occupies a primary place. If our future safety and very survival are to rest on trustworthy agreement that nuclear weapons will not be used, rather than on the deterrent effect of the possibility of retaliation, we must have more than a bare promise. We assume that the Soviets are equally unwilling to entrust their future to our good faith. Analysis of their slogan, "banning the bomb," leads quickly to the realization that the disarmament problem encompasses all weapons and all the armed forces available to use them.

The elimination of distrust in the relations of the Soviet Union and the United States cannot be achieved by a formula, no matter how ingenious. But in specific relation to disarmament, there is an identified counter to distrust; this counter is inspection. Inspection is the means whereby we tell whether governments, Russian or American, are actually doing or not doing what they have agreed to do or not to do. Much of the recent disarmament discussion has concentrated on the effort to reach agreement upon inspection. The latest impasse (as this is written) involved the United States proposal for international aerial inspection in the Arctic to quiet the fears of both the Soviet Union and the United

States. The United States has been more insistent upon the need for prior agreement on an inspection system, but the Soviets have not denied its importance and have advanced their counterproposals.

Of the other obstacles to disarmament agreement, some are technical. Given the best will in the world on both sides, the problems of technical detail which must be mastered are staggering. Even the perfection of a formula for limiting the number of persons in the armed forces of all the countries of the world presents enormous difficulties, but these difficulties are exceeded as one begins to deal with the vast complex of interrelationships of business and industry required for the manufacture of items which go into arsenals for war.

Curiously enough, despite the vast number of published discussions—both official and nonofficial—of inspection, no one seems to have heretofore studied the problem from the point of view of the legal and administrative problems involved in enforcing an inspection system in the United States. Perhaps the failure to look at these and other implications of disarmament for the United States is one of the reasons why the whole subject has seemed so far removed from the individual, from the community. Control of sputniks and other earth satellites and arctic patrols are remote governmental business. The right of an international inspection team to enter the factory and even the home, on the other hand, concerns every citizen. Is this what we demand as assurance that a disarmament agreement is being kept by those against whom we are on our guard? Is it worth the price? What is the price in terms of the impact on our traditional processes and institutions?

This study by Professor Louis Henkin does not try to outline the technical procedures of an international inspection plan—what can be detected by aerial photography under an “open skies” proposal, what seemingly harmless industrial or mining processes may actually represent preparation for war and how one ascertains this fact. A report just published deals with such matters: *Inspection for Disarmament*, a technical study, edited by Professor Seymour Melman for Columbia University’s Institute of War and Peace Studies, with the support of Earl D. Osborn and the Institute for International Order. Professor Henkin explores, rather, legal and practical paths even less traveled, indeed hitherto largely unsurveyed. To what extent is the treaty power under the Federal Constitution adequate to transmuting an international agreement on disarmament and inspection into effective local law? What further legislation by Congress would be needed? What legislative action

by the States of the Union? Is our whole system of law enforcement from local policemen through courts and sheriffs and marshals and state police and federal forces, created for such different ends, available to guarantee, not only to ourselves but to distrustful foreign nations, that an international inspection system will accomplish its purpose? Until we see clearly the answers to such questions as these, we cannot safely negotiate the final terms of an agreement which must function successfully here as in other countries.

This study should be of interest to every citizen. It will be of particular interest to lawyers. It has special meaning also for all those who are interested in the development of international institutions. Since the Second World War particularly, the number of such institutions has multiplied. There has, however, been no previous study of the impact of international institutions upon those of the United States. The place of international law under the Constitution, the relation of international bodies exercising a form of administrative or judicial power to federal and state institutions, the rights of American citizens when they come into contact with such international bodies, are explored here in the context of arms control but they have significance, too, in other contexts in which international organizations operate. It is high time for such a study. It is time also for this further demonstration of the necessary link between the American lawyer interested primarily in domestic law and affairs and his often distant colleague concerned with matters international. It is time that each be made to see where he meets the other. It is time also—as the American Law Institute has realized in launching its current study of the Foreign Relations Law of the United States—that someone put effort and intelligence trained in American constitutional law to work at the problems of our relations with other nations.

This study required an author with the combination of experiences and skills which Professor Henkin possesses. His years of service in the State Department's Bureau of United Nations Affairs and Office of European Regional Affairs gave him the close acquaintanceship with the practicalities of foreign policy, with the working of the United Nations and NATO, and, from 1950 to 1954 when he was assigned to problems arising from the aggression in Korea, with the trials of patience required in seeking to reach an agreement with a Communist power. To his understanding of the realities of foreign policy, Professor Henkin joins rare skills in his appreciation of the whole body of constitutional

doctrine, an appreciation developed in contact with two of the keenest American legal minds, those of Judge Learned Hand and Mr. Justice Felix Frankfurter, both of whom he served as Law Clerk. He is now Professor of Law at the University of Pennsylvania Law School. Even the layman will find the felicity of the author's English style leading him through those sections of the book which of necessity deal with legal complexities.

There may be those zealous to advance the cause of disarmament who will be apprehensive because this study calls attention to still more and largely neglected dangers and difficulties. I do not share this apprehension. The disarmament issue demands with imperative urgency that we seek a solution. No one of the possible obstacles or difficulties should be overlooked. Man has not yet found his way into all of the intricate recesses of this issue and into them should be thrown now the light not only of political wisdom, science, and technology, but also of legal knowledge and insight. This Foreword affords me a most welcome opportunity to express to a friend and former colleague in the Department of State and at Columbia University my own appreciation of a contribution courageously undertaken and masterfully rendered.

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