

THE POLITICAL FOUNDATIONS OF INTERNATIONAL LAW. By Morton A. Kaplan and Nicholas de B. Katzenbach. [New York: John Wiley & Sons. 1961. xi + 372 pp.]

THE ROLE OF INTERNATIONAL LAW IN THE ELIMINATION OF WAR. By Quincy Wright. [Manchester: Manchester University Press. 1962. vii + 119 pp. 18s.]

THE FRONTIERS OF INTERNATIONAL LAW. By G. Schwarzenberger. The Library of World Affairs. [London: Stevens & Sons. 1962. xxii + 320 pp. 4gns.]

A fact common to the minds of the authors of the three books under review is the impact of international politics upon international law and its observance, an issue clearly brought out by Dr. Schwarzenberger in chapter 7 of his *Frontiers of International Law*, which is a reprint of his Grotius Society lecture in 1950 on 'The Impact of the East-West Rift on International Law'.

The authors of *The Political Foundations of International Law* start from the premise that 'law exists, and legal institutions operate, only in particular political contexts. ... It is [the] flow of effective decisions by officials invoking international norms that is the substance of international law. We cannot categorically state its content. Like all legal systems it is in a process of change'.

It is perhaps unfortunate that they have allowed their own political predilections to overrun their objective view of the law. This is particularly the case when they assess the relative attitudes of the Soviet Union and the United States, so much so that we are informed that the 'iron-curtain countries'—presumably including the Soviet Union—are not major maritime nations, and are quite willing to support twelve-mile claims [to the territorial sea] if for no other reason than the divisive effect such claims have on the Western bloc'. Unfortunately, at the Geneva Conference the Western group of States could hardly be called a bloc, and even the United States came round to the twelve-mile view. It is also difficult to see the basis for the assertion, in the light of the evidence cited from both world wars and the Korean operations, 'that the *Soviets* and Chinese, *on past performance*, would pay little attention to the niceties of Prisoners of War Conventions' (italics added).

The anti-Soviet bias of the work is perhaps brought out most clearly by the statement that 'an offer by the Soviet Union to mediate [in 1958] between France and Tunis would be regarded—and rightly so—as an effort further to injure relations rather than to ease them. The United States' offer of good offices (although made inadvertently) was acceptable to both sides because the United States had a real interest in finding some way to ease the problem'. Although there is an underlying hint throughout the book that the United States is probably the most law-abiding of all States, and a tendency to measure rules of international law by the extent to which they support the 'Western' view of life, the learned authors, one of whom is now Assistant Attorney-General of the United States, do recognise that 'often in cases where international law is invoked, American courts, at least, have tended to test the contention as much against foreign policy objectives—the norms the United States would like to see universally established—as against anything that could fairly be said to be derived wholly from any universal practice'.

The reality of political influences upon international law is indicated by the comment that 'Nasser, with considerable Afro-Asian support, contended it [the seizure of the Suez Canal Company] to be a legitimate exercise of national authority. The latter contention prevailed and effectively disposed of the dispute; the company has remained Egyptian. But those unwilling to accept the rule applied were unwilling to concede the legality of Nasser's decision'. It is doubtful whether the fact that Nasser's nationalisation eventually proved effective in any way supports the contention that his act was legitimate, just as it is equally doubtful, in view of the difficulties experienced by Britain and France with regard to compensation and of the United Nations in connection with the financing of the clearance of the Canal, whether it may be said that the dispute has been 'effectively disposed of'. The learned authors seem to be in constant difficulties when dealing with the Middle East. On the one hand we are informed that 'Egypt is relying on traditional doctrine [with regard to belligerent rights] in her attempted embargo of the Suez Canal to Israeli shipping and to contraband cargoes destined for Israel on neutral flags', yet only a little later it is asserted that 'the Egyptian interpretation of the Convention of 1888 concerning its right to halt Israeli shipping through the Canal is so thin that one has difficulty in taking it seriously'. The reviewer tends to agree with the latter view, but a student reading these two statements would find it difficult to know what the legal position is.

The American standpoint of the books affects the authors' view of the relations among the members of Nato, and this is brought out, for example, in connection with representation in the Security Council. It is stated that 'there is considerable pressure, with the admission of large numbers of African states to the U.N., to enlarge the Security Council or to give the African nations representation on the Security Council at the expense of European and Latin American states [— the latter are considered by many to be over-represented anyway]. The West favours expansion of the Security Council but is unwilling to agree that Communist China

take the Chinese seat on the Security Council. The Soviet Union insists that it will veto any expansion of the Security Council unless Communist China is given the Chinese seat'. If this were the only reason for Soviet unwillingness to accept amendments to the relevant Articles of the Charter it would constitute further ground for criticising American intransigence here disguised as Western unwillingness. This American view of Chinese representation in the Security Council leads to the statement later that 'a member of NATO might support a Soviet resolution advocating the seating of the Chinese Communist delegates as the representatives of China in the U.N., although even this kind of support for the leading member of the opposed bloc is unlikely in view of NATO membership'. It would be interesting to know what the authors think of Professor Wright who, in his *Role of International Law*, describes the present representation of China in the United Nations by Formosa as an 'anomaly'.

The underlying theme of Professor Wright's Melland Schill lectures at Manchester University is that 'international order is in large measure synonymous with the abolition of war, and rules of order are mainly concerned with the control of war. This in fact has been the main concern of both international law and the United Nations'. In his search for international order, Professor Wright favours precision of definition, and calls for a careful definition of *x*, 'for example, aggression, so that states will not commit it through inadvertence or through ignorance of what aggression is, as may have been the case in the Suez (1956) and Cuban (April 1961) incidents'. He ignores the possibility that every definition has loopholes and every Foreign Office can find a way of making itself appear the victim of aggression. Similarly, he does not attempt to indicate who committed aggression in 1956 or 1961. In fact, since the Charter puts a 'threat' in the same category as 'use of force', Professor Wright is among those who consider that 'armed attack' must include an immediate threat, and that the latter, therefore, justifies self-defence.

There is a current tendency to regard the United Nations as the protector of international law, but Professor Wright emphasises that 'if international law is to occupy a large role in human affairs, its first task is to establish rules of order to prevent war, and its second is to develop principles of international justice and procedures both for keeping them up to date and for assuring their application in international disputes'. Therefore, 'the major coercive authority of the United Nations is not to enforce international law, but to maintain peace'. This view of the role of the United Nations leads him to part company with those who believe that the Charter constitutes a new basis for the concept of the *bellum justum*: 'The effort to identify aggression with "unjust war" in the medieval sense, which regarded war as just if designed to remedy injustice, is quite contrary to the conception of aggression used in League of Nations and United Nations discussions. It would mark an abandonment of the efforts to prevent hostilities by law, although that effort is certainly more necessary in the atomic age than ever before'.

Even if the Charter does not recognise the waging of a just war, it does provide for impartial neutrality, and the State which indulges in this can hardly be said to be in a condition of traditional war or peace with the party against whom its benevolent neutrality is directed. The nature of this *status mixtus* is well described in chapter 10 of Dr. Schwarzenberger's *Frontiers of International Law* which reproduces his paper in the *American Journal of International Law* on 'Jus Pacis ac Belli?'. It is one of the merits of Dr. Schwarzenberger's contribution to international law that he has consistently adopted and applied a sociological approach seeking to ascertain the true function of any so-called rule whether it be in the development of 'International Law in Early English Practice', or relates to 'The Problem of an International Criminal Law', or deals with the meaning of civilisation under the rubric of 'International Law in Ethical Perspective', or contemplates the 'Functions and Foundations of the Laws of War', or indulges in 'Reflections on the Law of

International Institutions', or prognosticates on 'The Prospects for International Law'.

*The Frontiers of International Law* consists of some fourteen essays published by him during the last twenty-three years or so, and even though they are here printed more or less as they were written and are, for the main part, not brought up to date in any way, they remain of topical interest and constitute a veritable treasure trove for research students seeking subjects on which to devote their energies in the field of international law.

Whatever criticisms one may have of any of the three books under review, each is provocative, each is thoughtful and even controversial, but taken together they constitute a trio that casts light upon some of the more complex issues of international law in the modern world, emphasising the absolute necessity to realise that in a bipolarised world only a blind idealist will preach the rule of law without regard to the political environment in which it is called upon to operate.

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