

THE LEGALITY OF NUCLEAR WEAPONS. By Georg Schwarzenberger. [1958, London: Stevens & Sons Ltd. Paper Covers, 3s. 6d.; Cloth 10s. i + 61 pp.]

NUCLEAR WEAPONS AND INTERNATIONAL LAW. By Nagendra Singh. [1958, London: Stevens & Sons Ltd. £1 15s. xix + 267 pp. inc. index; bibl. etc. 10 pp.]

Neither Dr. Schwarzenberger nor Dr. Singh has any illusions as to the task he has undertaken. Dr. Schwarzenberger is fully aware that even the most authoritative pronouncement on the legality of nuclear weapons "would not put a stop to the world's most expensive and pointless armament race," and admits that "if it should ever come to an all-out contest by force between the super-Powers of our age, it would be sheer day-dreaming to expect that in their fight for survival...they would refrain from the use of any weapon in their arsenal" (pp. 57, 58). Dr. Singh states at the beginning of his examination that "the *raison d'être* of this work is to attempt an examination of a subject which is at least of great theoretical importance and of academic interest from the point of view of all those interested in international law or in achieving the rule of law" (p. 13) and closes with the words, "As all international rules can be enforced effectively only in accordance with the ability and willingness of the member States to respect them, the multifarious prohibitions of special conventions which are capable of further multiplication can never present a proper solution to a problem which requires a change of heart for the effective introduction of the rule of law in the international community." (p. 254). Both authors, as is to be expected of them, provide expositions which can not fairly be described as anything less than competent and hence, more convincing than some, (for example, McDougal and Schlei, "The Hydrogen Bomb Tests in Perspective" (1955) 64 *Yale Law Journal* 648), that have gone before. Both, furthermore, come down, though not entirely without misgivings or exceptions, in favour of the illegality of nuclear weapons, Dr. Schwarzenberger mainly by virtue of the prohibition of poisoned weapons and Dr. Singh on this and other grounds, though such use may be justified as reprisals or self-defence, against nuclear aggression.

There remain, however, many differences in 'incidental' conclusions between the two, the most significant of which is Dr. Schwarzenberger's rejection of arguments from 'humanity' and Dr. Singh's wide use of them, a fundamental divergence. When it is remembered that these two authors stand much closer together in their conclusions than do many others the opinion is perhaps not unwarranted that either the sources or the methodology of international law fall short of what is required for a satisfactory determination of the problem under examination.

It is trite to observe that difficulty will always be encountered in solving new conflicts by resort to old concepts—the problem of the Continental Shelf and 'Occupation' provides a good recent example of this. It is also trite, no doubt, to observe that law in the municipal sphere is made more workable by virtue of the moulding influence which may be exerted on the old concepts by courts and legislatures. But though these observations may be trite, they are nevertheless true, and should serve to remind us that they function at one and the same time to make undertakings as those of Dr. Schwarzenberger and Dr. Singh not only more difficult and unsatisfactory than might otherwise be, but also more necessary.

It may be said, by way of criticism, that Dr. Singh's approach is sometimes rather more painstaking than is necessary. Indeed, although his book is four times the length of Dr. Schwarzenberger's he says very little more than the latter apropos the subject of the two books. It may perhaps be doubted whether it was necessary to devote more than thirty pages of his book to enumeration and discussion of the sources of the laws of war in addition to twenty on the nature of the laws of

war, for Dr. Singh has little to add to other established treatises on these topics. It may further be said of both books that neither provides a satisfactory answer to the challenge thrown out by Professor Levontain in *The Myth of International Security* in that neither demonstrates that the habitual practice of nations is other than that on the security level *pacta non sunt servanda*. And it may finally be said that if it is to be assumed that international law exists at all, it is more than a matter of personal prejudice to argue that no legal system can logically characterize as licit the commission of acts which have the potential of destroying the very basis of that system. For the brutal facts are, as Dr. Singh points out, that the potency of modern weapons is now such that the destruction of humanity is well within their scope. Dr. Singh reaches the point of stating that "whatever a nation may do in war or in peace, it has to confine itself within certain limits which are imposed by the inescapable fact that it has to exist physically as a member of the society of nations." (p. 227). If nuclear weapons are not to be condemned as illegal on the ground alone that international law in its very being presupposes the continued existence of at least two nations, compelling proof must be adduced that resort to their use would not result in incompatibility with his *sine qua non*.

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