INTERNATIONAL LAW AND THE USE OF FORCE BY STATES. By Ian Brownlie. [Oxford: Clarendon Press. 1963 xxviii + 532 pp. 75s.]

The foundation of the League of Nations introduced an era in the doctrine of international law in which there was a tendency to write down the significance of the law concerning war and the use of armed force. Practical experience with the activities of States led to a reaction, which has been intensified by the adoption of the Kellogg Pact, the Second World War, the Nuremberg Trial, Chapter VII and Article 51 of the Charter, Korea and Suez, and once again writers are facing the problems posed by *International Law and the Use of Force by States.*

Dr. Brownlie divides his survey of this subject into four parts. His historical account goes back to pre-Christian times — he points out that even in ancient Greece trials of leaders responsible for war took place (p. 4) — and finishes with co-existence. Part II deals with the delictual and criminal aspects of the illegal use of force — Dr. Brownlie accepts the contention that the Kellogg Pact outlawed and made war illegal and even criminal (p. 155), an 'emphatic prohibition' which was given effective-ness at Nuremberg and Tokyo, as well as in the Charter (pp. 91-2). In support of this contention he cites the practice of the anti-Hitlerites: "In the later stages of the war a number of countries which had remained neutral by necessity joined the United Nations in the effort against the Axis Powers. This action is *only explicable on the ground that the Axis Powers had by their unlawful acts rendered themselves*

liable to the application of a war of sanction." (pp. 109 - 10, italics added). Even the Soviet declaration of war upon Japan is viewed as a war of sanction (p. 110, n. 1). While it may be possible *ex port* to construe the situation in this way, it is submitted that such a view has little or no relation to the realities of politics at the relevant time.

Part III of *International Law and the Use of Force by States* deals with legal justifications for the use of force by States and is necessarily affected by the premises of Part II. Thus, Dr. Brownlie is of opinion that Article 51, despite its reference to an 'inherent right', means that the customary right of self-defence has disappeared (pp.273, 278), and he tends to deny the legality of anticipatory self-defence. "The Kellogg-Briand Pact did not expressly prohibit threats but a threat to resort to war for political motives would seem to be a 'recourse to war for the solution of international controversies' and 'as an instrument of national policy'" (p. 364) "[but] if an unexplained force of warships or aircraft approached a state via the high seas and the superjacent airspace, this will constitute a threat to the peace but, it is submitted, *does not of itself justify forcible measures of self-defence since there is no resort to force by the putative aggressor and there is no unequivocal intention* to attack." (p. 367, italics added). However, the launching of interceptive means against rockets would be permissible (p. 367), and it is conceded that "the difference between attack and imminent attack may now be negligible" (p. 368),

These views, which almost reflect an apolitical and 'pure' theory of international law, are in accordance with equally provocative postulates appearing in Part II. According to the learned author, "in spite of the Munich Agreement, the recognition of the conquest of Ethiopia, and other flaws in the behaviour of states there was sufficient consistency in the practice to justify the assertion that a customary rule [that the use of force as an instrument of national policy if not in self-defence] had developed by 1939, if not before that" (p. 110) "[, while] more recent developments support and maintain the customary rule" (p. 112). Further, "by reason of the universality of the [United Nations] Organization it is probable that the principles of Article 2 constitute general international law....The Charter stands with the Kellogg-Briand Pact and the two instruments though independent of each other form the essential juridicial basis of the world legal order and of world peace" (p. 113). It would be interesting to know whether the arguments of non-members of the Organization, and new states which have not acceded to the Kellogg Pact "can probably be met by assuming that it is a criterion of statehood that the putative state is to observe general international law. *and, in particular, fundamental obligations of the sort created by the Kellogg-Briand Pact* and Article 2 of the Charter" (p. 115, italics added). The latter group of states might ideologically subscribe to the suggestion that "it is probable that [the Panch Sheela] now rank with and support the United Nations Charter and the Kellogg-Briand Pact" (p. 119), but it is by no means certain that they will agree that the Five Principles amount to obligatory rules of international law.

The final section of Dr. Brownlie's study deals with a number of problems of a general nature, such as aggression, armed attack, responsibility, non-recognition and the like. Here the learned author's idealism and assertions of the supremacy of law over political reality is again clear. "Lawful belligerents should not be permitted to act *ultra vires* by acquiring territory as a result of a lawful war. This prohibition would not, however, apply to a war of sanction leading to the imposition of measures of security on the aggressor by states acting in the name of the international community. Measures of security intended to prevent future threats to the peace may include movements of populations and frontier changes." (p. 409).

Whether one accepts or questions the premises upon which Dr. Brownlie rests his interpretation of *International Law and the Use of Force by States,* it cannot be doubted that he has provided a useful and thought-provoking work on an important and complex topical issue. From the point of view of readers in Malaysia, there is perhaps one statement in the volume that is of outstanding topical significance. In discussing the problem of reparation after the First World War, Dr. Brownlie reminds us that "Mori, the Japanese delegate, speaking in the Commission on the Reparation of Damage, expressed the opinion that if there were no precedent for a claim to reparation for an aggressive act then such a precedent should be created". (p. 136).

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