

LEGAL ASPECTS OF ARMS CONTROL VERIFICATION IN THE UNITED STATES.  
By Dennis S. Aronowitz. [Dobbs Ferry: Oceana. 1965. 222 pp.  
\$6.50].

In his study of *Legal Aspects of Arms Control Verification in the United States* Professor Aronowitz reminds us that public discussion has tended to be centred on the problem of Soviet compliance with any form of control or inspection. "But any agreement on arms control, including any agreement in regard to verification measures, will operate equally in the United States. It is necessary then to be confident also that verification measures that may penetrate into the lives and institutions of the American people will be acceptable to the United States. . . [for] what the United States will not tolerate whether as a matter of constitutional limitation or domestic political consideration, it cannot ask of other governments" (pp. 11-12).

The learned author suggests that the method of arms control and inspection will be by way of treaty and considers that the inclusion of inspection provisions with control at all stages from the manufacture to the use of arms "is clearly a proper exercise of the treaty power", despite doubts sometimes appearing in the speeches of delegates at disarmament conferences, although it would be necessary to ensure that any limitations in the treaty were not inconsistent with the Bill of Rights (p. 18). While it is true that "no treaty provision could remove the power of Congress or other branches of the United States to breach an arms control agreement" (p. 22), this is merely, to put in American terms, the power — though not necessarily the right — of any State to break its international obligations. One other point is relevant in this connection. While the learned author believes that a treaty made with the consent of the Senate is the most likely method to be used, he indicates that it would still be law if made by executive agreement or a joint resolution of Congress (p. 23).

Too often, those who believe in international regulation of this or that overlook that when it comes to enforcing such an agreement within a State's territory municipal legislation becomes important. Thus, "the status of the Inspectorate in the United States will be determined, generally, by the provisions of the arms control agreement [*and any implementing legislation enacted by Congress*] (p. 36, italics added), and insofar as the inspectors are foreign or international officials they must enjoy such rights, etc., as would enable them to fulfil their functions satisfactorily. The realism with which Dr. Aronowitz approaches his problem is clear from statements like the following: "The arms control agreement will undoubtedly represent a compromise between the broad inspection governments desire in other countries and the limitations they would impose on the Inspectorate in their own countries. The point of compromise, one may guess, will differ from issue to issue. It will depend, *inter alia*, on which nations are party to the agreement, how comprehensive are the arms control arrangements, the kinds of inspection contemplated, the number of inspectors involved. It may be influenced too by whether the inspection system is 'reciprocal' or 'neutral'" (p. 38). The actual rights of the inspectors, and their liability to local law and to deportation processes, would be matters for settlement in any treaty and would require supplementary legislation to make them effective, bearing in mind that local jurisdiction, like the right of arrest, "could be used by a host country to frustrate inspection" (p. 47), so that legislation might well be necessary making it a crime to interfere with the inspection system or harass the inspectors (p. 56). In so far as owners of facilities might attempt to prevent inspection alleging unconstitutionally, Dr. Aronowitz replies that "nothing in the Constitution limits the power of the United States to permit other 'sovereignities' to exercise such functions in the United States. If inspection in regard to inhabitants of the United States be deemed a governmental function lodged exclusively in the United States, nothing in the Constitution bars its delegation, even to foreign or international personnel" (pp. 101-2), and he feels that, since an arms control agreement would be supreme law for the United States, it would not be possible for the states to plead their sovereign immunities to frustrate the Inspectorate (p. 104). In so far as private individuals are concerned, problems might arise with regard to the right of privacy guaranteed by the Fourth Amendment, and the learned author would be prepared to see the Constitution amended to prevent any such interpretation from invalidating the full effect of the agreement (p. 114).

As has been pointed out, the learned author considers that inspectors must have the rights and status consistent with the proper operation of their task. This means that they will enjoy judicial immunity, so that if an American citizen suffers loss as a result of their activities he would be without a remedy, but such injuries "might properly be shared by the entire community as part of the cost of the nation's arms control policy" (p. 150).

While the problems discussed by Dr. Aronowitz are directed to the United States, they are not peculiar to that country. Any state contemplating participation in an arms control programme will be faced with similar questions, although it might be saved some of the federal/state issues under the Constitution. For this reason, this book on *Arms Control* should be carefully considered by foreign offices and ministries of defence, while those concerned with minimising the incidence of litigation might consult it in application of the maxim that to be fore-warned is to be fore-armed.