
Henkin: Arms Control and Inspection in American Law

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Recommended Citation

Mark J. Satter, *Henkin: Arms Control and Inspection in American Law*, 9 DePaul L. Rev. 313 (1960)
Available at: <https://via.library.depaul.edu/law-review/vol9/iss2/27>

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BOOK REVIEWS

Arms Control and Inspection in American Law. By LOUIS HENKIN. New York: Columbia University Press, 1958. Pp. 289. \$5.50.

Here in an unusual and extremely well written essay, Louis Henkin, now Professor of Law at the University of Pennsylvania, superimposes upon existing United States constitutional framework, a far-reaching treaty-enacted program of disarmament and inspection. The book is a critical examination of the several anticipated situations involving possible collision between treaty disarmament and inspection provisions, and federal and state law provisions. By competent study of the recent decisions and treaty enactment, the author finds a generally compatible legal relationship between existing American law and the demands made by new and different treaty concepts. Will American statutes, for example, conflict with treaty provisions authorizing international inspection teams to go upon American areas and inspect freely American factories and establishments.

The notes of the chapters provide added information and source material. These are as a "refresher" course to the study, and further expand each chapter for critical evaluation and information.

The introduction states that the author prepared this work as Associate Director of the Legislative Drafting Research Fund of Columbia University. He also served many years in the State Department's Bureau of United Nation Affairs and Office of European Regional Affairs.

An excellent and comprehensive introduction traces the maneuvering and changing of position by the great powers, particularly the United States and the Soviet Union, since World War II. cursory examination is made of several tentative disarmament proposals, and the conditions under which these proposals had failed.

In succeeding chapters, Professor Henkin studies constitutionally a Disarmament Treaty with control provisions, including an undertaking by the United States to limit possession of certain arms and munitions, and inspection provisions to insure compliance. The treaty contemplates inspection on American territory by foreign nationals responsible to an International Tribunal, or even to a foreign government, with complete freedom of access by inspectors to military, industrial and other installations, governmental or private. The treaty would further provide that inspection may be made by any known method, and that inspectors require reports from government officials, private corporations and individuals. Inspectors would have the right to examine books, records and other relevant data.

Such an agreement has basis in the inherent federal power under the constitution to agree with other nations to control arms. The treaty, "an international agreement dealing with a subject of international concern," is, according to Article VI, clause 2, together with the Constitution and all laws made in pursuance thereof, "the supreme law of the land." An arms control treaty is, therefore, the exercise of federal power. No treaty, Henkin states, has ever been declared unconstitutional by any United States court. State laws, being inferior to federal provisions, bow to the treaty provisions.

The study of investigations of compliance, Henkin believes, presents few

constitutional obstacles. For example, while a witness may not be deprived of his protections of the Fifth and Fourth amendments, he may still be compelled to testify as to presence of fissionable material known to him. Since the information is all that is sought and no provision is made for use in trial against the individual, it may be held that such a witness is not thus compelled to testify against himself.

Likewise, the prohibition against search and seizure is not violated by proviso allowing foreign inspectors to enter any factory or even home, to search for contraband material, so long as in any action against the individual, his own guarantees against search and seizure are respected.

Henkin makes a valid appraisal of safeguards by which our own criminal justice shelters Americans charged with crime. Some of these safeguards must yield to legal forms adopted by an international tribunal. American reaction is examined against the sensitivity of other countries which will be asked to submit their own nationals to trial by American judicial procedures. He reaches the honest conclusion that any individual tried by an American court is entitled to every constitutional protection our own judicial system affords.

However, a violation by any national, including a national of the United States, in another land, is a violation of the law of that land, and violation of the arms control agreement can properly be said to be violation of the law of the host country. Arms control violations may be classified as international crimes, triable by an international tribunal, even at the United Nations.

Inherent in the entire essay is the author's honest and passionate espousal of need for the armament inspection about which he speaks. The work is more than an arid examination of relevant statutes; it is a dedicated advocacy of the contemplated position he examines.

This articulate, forward looking and humanitarian study is of value beyond the continuous legal dissertation. The work is more than a scholarly examination of the philosophical concept of arms control and inspection. It is rather an original and creative incursion into a yet unknown field of constitutional law. Professor Henkin not only examines the law and the society in which such law must function; he also charts the path that a true creative and expanding body of law must take in order to fulfill its function in the society which changing forces will create in the very near future.

A study such as this, of the role of constitutional law in the society for which we must prepare, is one of the true functions of the philosopher of the law. It is not enough that students examine the developing body of law; the student must anticipate the demands which society will make upon the body of law, and show the direction required to meet these demands. Such a study as this is eloquent testimony that the law need not be "the dead hand of the past upon the present," but, as constituted, possesses the vitality to embrace conditions and circumstances unforeseen even a few years ago.

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The Elements of Law. By THOMAS E. DAVITT, S.J. Boston: Little, Brown & Co., 1959. Pp. xxi+370. \$9.00.

A treatise on jurisprudence is a formidable task, combining as it must, in one compact form, both concrete law and the non-legal premises from which the law has its origin, its development and its justification. This is the area of legal