

**The World.** *This week we offer a study of international law and two books on Germany and Japan under American occupation. The latter type has been all too rare, reflecting a lamentable lack of popular interest in our foreign commitments since the war. . . . While Germany and Japan grope towards new life under our care, the nationalist threat from the East makes all the more imperative a strengthening of the law of nations. Fortunately, certain agencies of the UN, like the Economic and Social Council, the Trusteeship Council, and a temporary international law commission have—by means of definition, as well as by treaties and conventions entered into—been creating, and strengthening the existing, international law. There are those, however, who argue, and with considerable force, that the making of international law is useless without a world power that is capable of enforcing it.*

## *Wanted: A Global Criminal Code*

**A MODERN LAW OF NATIONS.** By Philip C. Jessup. New York: The Macmillan Co. 1948. 236 pp. \$4.

Reviewed by ASHER BRYNES

**I**F THIS were a more reasonable world "A Modern Law of Nations" would be read as vigorously and raise even more discussion than the Smyth report on the making of the atom bomb. This is the sequel to it. Dr. Jessup's report investigates the problem of what we can do, within reason, to prevent further explosions. *Within reason* means within the fundamental framework of the United Nations.

For the sake of those who take comfort from the fact that all supplies of the weapon are labeled "made in U. S. A." and stored here it may be well to summarize the basic principle which underlies Dr. Jessup's bold report; he and his collaborators make frequent reference to it without pausing anywhere to explain in full. The full statement is, in brief, that other nations either now have or will soon get knowledge of the construction of the atomic weapon. If efforts to achieve international control keep breaking down, some of them will procure stocks of it. No matter how much more we have accumulated by that time somebody is sure to gamble again on the potential effect of a surprise blow, the conventional military method of overcoming any difference in actual strengths. Then even if we win we will find ourselves clinging to an earth so charred by the side-effects of fourth-dimensional warfare that we may find we cannot live on the surface of it. Many may survive the next war; few will survive the next peace.

Viewing this future catastrophe Dr. Jessup, Hamilton Fish professor of international law and diplomacy at Columbia University, who is currently

serving as our legal delegate (or rather law expert) to the United Nations as a whole, and who represents this country in the Interim Committee or "Little Assembly" of the General Assembly as well, daringly argues for a revolution in his special field. Article 13 of the UN Charter provides that action shall be taken for the purpose of "encouraging the progressive development of international law." "It is not, therefore," remarks Dr. Jessup, "the moment for delaying the first steps."

**THE AUTHOR:** "The whole weakness of the peace movement in the United States is that people can't get together on a program," observes Dr. Philip C. Jessup, U. S. deputy delegate to the United Nations Interim Committee. "They'll work a while together and then fly off on individual projects." He wishes all factions would, among other things, concentrate on the existing international code, an assignment handed him last May as representative on the UN Committee for Progressive Development of International Law and its Codification. He's lavishly equipped for the task—academically and practically. Now Columbia's Hamilton Fish professor of international law and diplomacy (on sabbatical), he has lectured at the Academy of International Law at The Hague; was Assistant Solicitor to the State Department in 1924, assistant to Elihu Root on the World Court, legal advisor to the American Ambassador to Cuba in 1930, and used to practise law. He is trustee of the Carnegie Endowment for International Peace, was chairman of the Pacific Council of the Institute of Pacific Relations, personnel director of the State Department's Office of Foreign Relief, assistant secretary general to the UNRRA and Bretton Woods conferences. He could write books—and has, among them, "The United States and the World Court," "International Security," and "The International Problem of Governing Mankind." His new book, "A Modern Law of Nations"—completed prior to his UN post—is, emphatically, "not an official statement." Last January the Sorbonne gave him an honorary degree. A 100-hour work-week doesn't allow Dr. Jessup—a tall, wiry man with krinkly hair and serene smile—much leisure for chopping trees, his pet diversion. But he's optimistic about the UN's future. "You never get headlines from lack of friction." Next week debate starts on modifying the veto.—R. G.



—Richard Carver Wood.

Since any revolution is, essentially, a shift of emphasis within a given body of ideas, or, concretely, a redistribution of a given number of things, Dr. Jessup must in the first place establish the validity of what he seeks to revolutionize. Evidence is offered to prove that popular doubts as to whether international law is law are wrong. "Those who have taken the pains to become familiar with the way in which governments behave in their relationships with other governments reach no such discouraging conclusions as those which obsess the minds of the headline-readers." International lawyers affirm that international law is as well observed as national law (Dr. John Bassett Moore) and that persons who think otherwise ignore the fact that the vast majority of treaties are continuously, honestly, and regularly observed even at considerable inconvenience (Dr. Bernard Brodie); nor can such persons be aware of the clause in the Constitution of the United States which gives Congress the power to define and punish, through appropriate legislation, offenses against the law of nations; and probably they do not know the classic statement of Mr. Justice Gray to the effect that "international law is part of our law and must be administered by the courts of justice . . . as often as questions of right depending upon it are duly presented (175 U. S. 677, 700: 1900)." It is

further significant that through the past two centuries all nations have kept staffs of international lawyers to draft or take a hand in the drafting of controversial correspondence, and, as Dr. Jessup says, the question of whether the legal arguments added by these experts are hypocritical is immaterial to this discussion. The record does prove that there is a *law habit*, a propensity to do things in a legal way.

The next difficulty confronting Dr. Jessup and other international law reformers is that one cannot, by definition, revolutionize a habit, because habits are automatic reactions which grow stronger or weaker according to the frequency of the occasions which call for their repetition. The corollary to this is that habits are not reasons, but responses; and if the international law habits of the recent past are feeble the cause must be looked for outside the traditional scope of that law. Despite generations of the most subtle analysis and investigation, all Dr. Jessup can say now (and this is a repetition of what a previous expert said in 1889) is that looking back over the last couple of centuries we see international law at the close of each fifty years in a more solid position than that which it occupied at the beginning of the period; it has progressively taken firmer hold, extended its operations, ceased to involve itself in formalities, and more and more dared to grapple in detail with the fundamental facts. There has been progress all along the line except in one thing. It has not prevented war.

The reason why international law has failed in this particular is that it has been traditionally regarded as a form of tort (or civil) law. However, even minor domestic acts of violence cannot be restrained by civil suits for damages. Such violations are satisfactorily dealt with only by criminal law, and if the law of nations is to cope with them it must also become a criminal law; that is to say its jurisdiction must be extended to include persons as well as nations. Now the theory back of the distinctive element of criminal law procedure—the prosecution of breakers of the peace by the State—is that any violent act is so subversive of the social order that the society is bound to prosecute as well as punish. Dr. Jessup argues that there is a like community of interest in the maintenance of peace among the nations. They ought to enforce obedience to an international criminal code by similar measures of policing, prosecution, and punishment.

It is suggested that so far as specific international crimes are concerned the UN might make a start



by forbidding terroristic activities, the assassination of heads of States, counterfeiting of foreign currencies, the slave trade, traffic in narcotics, and unauthorized manufacture of atomic or other weapons. To catch those who are guilty under such clauses of the international criminal code as well as (and this is much more important) to apprehend individual warmongering politicians *before* they initiate a war "one must contemplate the existence of an international bureau of investigation to arrest persons who may be directing the government of any one of the States which is a member of the international organization."

The author is greatly to be commended for his courage in laying down such a definite bill of particulars. However, while this reviewer would like to pay due respect to Dr. Jessup's notable generosity in offering up as a sacrifice for peace the very law of nations which he has spent all his life to learn, one cannot help feeling that a more serious matter is involved here. The traditional law of nations was not directly concerned with the prevention of war; rather it sought the limitation of war on the basis of a universally recognized distinction between State property and private property, between combatants and non-combatants, between "saturation" weapons which cannot be aimed so as to avoid destruction of property and people, and weapons which can be pointed (at least) at soldiers.

This law may have been pretty well shot to pieces in the last war, but enough remains, apparently, to lead Dr. Jessup to undertake the construction of a halfway-house on the ruins. That will not do; the materials are contradictory, and far from facilitating the evolution of a world government without further bloodshed, the old international law can only hamper that development. The law of nations was, and it still remains, exactly what the words mean: it was a law for the preservation of nations against the

worst effects of their own folly in going to war.

How can anything of that sort serve in the denationalization of the world? However, suppose we grant Dr. Jessup his hypothesis. Suppose the various States go on punishing persons for some crimes and the new international organization punishes the same persons for other crimes; and let us also suppose that there are two bureaus of investigation, the one national and the other international. Let us further follow Dr. Jessup's recommendation that terroristic activity, his first substantive proposal, be placed under the jurisdiction of the international bureau of investigation. Now precisely what does it have jurisdiction over? What is terroristic activity? Is it something like the Reign of Terror we read about in French and Russian history? Is it domestic political violence, the aftermath of local insurrection?

Dr. Jessup draws on a precedent from the defunct League of Nations which drafted two conventions (in plain language, intentions) to punish terroristic activity because a Yugoslav dignitary was assassinated in a French town. The precedent may imply that the international bureau of investigation should protect the executive personnel of national governments, or that the League confused "terroristic activity" with "assassination of heads of States," or that the French—who then ran the League so far as the Balkan nations were concerned—secured these conventions in order to placate the infuriated Yugoslavs. The first of these interpretations is of course the only one that is pertinent here.

We must add, therefore, to the international bureau of investigation's work the duty of preserving unwarlike but otherwise hated politicians before they are shot by revolutionaries, as well as catching warlike politicians before they make war. *These actions are to be taken before any overt act is committed.* Can courts as we know them, can any recognizable process of law handle such cases? Can any jury bring in a verdict as to the facts when in fact nothing has happened? Surely Dr. Jessup cannot mean by this an extension of the rule of law; that is self-evidently absurd. Yet the statements quoted are in the book. The atom bomb is an unsettling weapon.

Few of us would object to the sacrifice of international law if that might avert the next war. Should it be all we have to give up to get an effective UN, none of us would really boggle over the cost. However, if such an organization must evolve toward the creation of a duplex police machine its future is dark indeed.



## Pivot of Peace

GERMANY: WHAT NOW? By Joachim Joesten. Chicago: Ziff-Davis Publishing Co. 1948. 331 pp. \$3.75.

Reviewed by HENRY B. KRANZ

"HOW MUCH factual information is available to one who wishes to know how the new Germany is organized, what its political complexion is, who its new leaders are, and whence they came, what economic reforms have been carried out, etc.?" Joachim Joesten, political writer and author of three books on world events, realized that there is not a single encyclopedia or reference book on Germany that could answer these questions. In "Germany: What Now?" he offers an excellent manual on the country that is today the heart of the world's future. There will be no peace on earth until we have faced and dealt with the German problem.

Political books, in the nature of things, lag behind the events of the day. Mr. Joesten's book is not different. The Germany he writes about is the Germany of October of last year. Since then we have had the London conference; and later forty million Germans of Bizonia's eight states received a new form of economic government. But otherwise the story of the political, economic, social, and cultural developments in defeated Germany is almost up to date. The factual information is accurate, well-organized, and simply and unemotionally delivered.

After a discussion of the patterns of the four-power military government the author describes the sixteen states of the four zones, their constitutions, their political parties. This is followed by excellent portraits of the most outstanding political leaders of the country. While Wilhelm Pieck, former director of the Comintern at Moscow and undisputed boss of Germany's Communists, is well known, Dr. Karl Schumacher, one-armed fanatic Social Democrat and Nationalist, has only lately become famous. The leaders of the non-Marxist parties, Dr. Ehard Jacob Kaiser, Konrad Adenauer, Alois Hundhammer, and Alfred Loritz, adventurer and racketeer, are among many other political figures discussed.

Mr. Joesten tells us he has Junker blood in his veins—his mother was a baroness by birth. His study of the elimination of the Junkers from the German scene, especially in the Soviet zone where land reform has been radical, is no doubt authoritative. The German industrial recovery, the implementation of the Potsdam agreement on industrial production, is carefully analyzed. Germany's steel capac-

ity, her coal output, the end of cartels and trusts, the expropriation of Nazi industrialists, are factually described. The result is: State capitalism in the Soviet zone, Socialism in the British zone (although some German monopolists are occupying important positions), and conservatism in the American zone. Surveying the reparations problem, Mr. Joesten finds that the only way to get effective reparations is to put Germany economically back on her feet.

How about the struggle of ideas in Germany? The second part of the book tries to answer this question. But Mr. Joesten speaks much too briefly about the "battle of seduction" fought by the four powers, about Germany's new nationalism, the Edelweiss movement, and the possible comeback of the Fehme. Anti-Semitism, he states, is as strong today as it was in 1945, but not much evidence is given. Germany's cultural renaissance (publishing houses, the stage, screen, and journalism) is too briefly discussed. Hardly any figures are given. Although the Christian churches probably occupy today a more decisive position in the social and cultural life of Germany than at any time since the eighteenth century, there is only scant reference to post-war religious trends. The role played by Pastors Niemoeller and Barth, Bishop Wurm, and Professor Thielicke is not mentioned nor the influence of the philosopher Karl Jasper and the writer Ernst Wiechert. More information on education, especially in the Soviet zone, should have been obtained. An analysis of the various intellectual magazines of all four zones (*Die Wandlung*, *Deutsche Rundschau*, *Frankfurter Hefte*, *Aufbau*, etc.)



—Busch in Chicago Sun-Times.

"A Knotty Problem."

would perhaps have completed the cultural picture, and so would have information on the radio stations and the newspapers and magazines used by the four powers to reeducate the German people—with various aims and results.

But Mr. Joesten's popular manual on Germany is nevertheless more than the usual collection of names, dates, and facts. It will enlarge the experience of any reader, even one well-versed in the recent history of the country.

## Occupied Nippon

FALLEN SUN. By Noel F. Busch. New York: D. Appleton-Century Co. 1948. 258 pp. \$2.50.

Reviewed by STUART LILICO

AMERICAN troops have been in Japan nearly two years and a half, yet you can count the worthwhile books on the occupation on your thumbs. The scarcity is understandable: newcomers (even after a couple of years) find it difficult to write convincingly about Nippon; the old-timers—the men who lived in and wrote about Japan before the war—generally are too confused by post-Hiroshima developments to trust their own conclusions.

That Noel F. Busch, a senior writer for *Life* magazine, has been able to overcome this handicap reflects favorably on his experience as a reporter of world affairs. "Fallen Sun," although apparently based on only moderate actual contact with Japan itself, is a surprisingly well-grounded and thoughtful study of a situation that previously has not been handled well. In fact, Mr. Busch has produced a sort of double feature, since he discusses both the Allied occupation and the Japanese character—two highly controversial subjects. In neither section are his conclusions the easy ones. It is a safe bet they will arouse vigorous comment and a few hoots.

It is possible to accept most of Mr. Busch's conclusions, as this reviewer does, without necessarily agreeing with all the arguments he offers to support them—for example, his thesis that many adult Japanese reactions are basically childish, which is demonstrable. However, quite a bit of thought will be necessary to absorb his proposition that "some of the mass peculiarities shared by all Japanese, which distinguish them from other peoples, nations or races [are] derived from Japanese peculiarities in upbringing." Adult reactions are childish, he says in effect, because the Japanese look back to their child-