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New Legal Foundations for Global Survival: Security Through the Security Council

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BOOK REVIEWS

New Legal Foundations for Global Survival: Security Through the Security Council

REVIEWED BY SCOTT S. EVANS*

FERENCZ, BENJAMIN, *NEW LEGAL FOUNDATIONS FOR GLOBAL SURVIVAL: SECURITY THROUGH THE SECURITY COUNCIL*; Oceana Publications Inc., New York (1994); (\$45.00); ISBN 0-379-21207-2; 450 pp. (hardcover).

History teaches us that men and nations behave wisely once they have exhausted all other alternatives.

*Abba Eban*¹

INTRODUCTION

Benjamin Ferencz is an acclaimed scholar and student of international law. In his recent effort, *New Legal Foundations for Global Survival: Security Through the Security Council*, Professor Ferencz sets forth the history of the United Nations Security Council, details its shortcomings as a mechanism for international security and then offers a set of practical solutions to address the shortcomings. For the most part, Professor Ferencz's book offers an excellent overview of international security issues and provides a valuable blueprint for how the U.N. Security Council can be better utilized as a force for international peace. His attempt to offer a wide range of solutions to current problems facing collective international security, while the most useful and noble part of his book, overlooks some practical considerations of world and national politics. Overall, however, Professor Ferencz adeptly educates the reader and then opens the door for discussion by giving us his solutions to the ineffective peace mechanism known as the U.N. Security Council.

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1. Israeli diplomat.

The weakness of Professor Ferencz's book, if truly it can be called one, is that despite his abundance of creative ideas, as a practical matter, the U.N. cannot survive without backing and funding from the United States, that may be disappearing. The U.N. has a peacekeeping budget of \$3.6 billion, of which the U.S. provides \$1 billion. The new chairman of the Senate Foreign Relations Committee has described the U.N. as the "long-time nemesis of millions of Americans."² Additionally, a bill currently before the House International Relations Committee proposes to effectively sever U.S. contribution.

Other practical considerations that Professor Ferencz largely ignores, or at least does not address as powerful factors pertaining to international security, include the impact of massive regionalized population growth, religion, ethnicity, race and culture, diminishing natural resources, health disparities and the interaction between them. Rather than addressing how the U.N. should account for these changing factors, he realizes that they will create tensions in the future that the U.N. could address. For example, while Professor Ferencz realizes that the changing demographics will impact security issues, he does not address the way in which changing demographics will effect the way States will view their role in a new world order.³

Assuming, however, that the U.S. does not cut funding for the U.N. and changing demographics and supply of natural resources permits or fosters notions of collective security, scholars and statesmen should look to Professor Ferencz's book to provide a blue-print for the future of effective collective security.

A WAY OF THINKING ABOUT THE PROBLEM

While I was an undergraduate at Dartmouth College, former Colorado Governor Richard Lamm taught a course on leadership. During one lecture, he expounded on what he considered to be the process through which a meritorious idea must travel before it becomes an accepted norm. Briefly, the process is described in this manner:

<i>STAGE</i>	<i>THOUGHT</i>	<i>ACTION</i>
1	No Think	No Do
2	Think	No Do
3	Think	Do
4	No Think	Just Do

The premise behind this model is that valuable ideas go through a

2. Donald Rothberg, *Foreign Policy Battles Loom*, ROCKY MOUNTAIN NEWS, Dec. 29, 1994, at A45.

3. See Nicholas Eberstadt, *Population Change and National Security*, FOREIGN AFF., Summer 1991, at 115.

process of acceptance. At first, a valuable idea is not implemented because it has not yet been considered. At some point, the kernel of an idea presents itself to a visionary thinker who presents the idea. At that time, however, the idea is not acted upon either because it is not recognized for its value, or because the old system of ideas remains fully entrenched despite its growing antiquity. In the third step of the model, the idea becomes recognized for its merit and takes shape into action. This stage of the process is often accompanied by the growing pains that the implementation of the idea has created because implementation is often costly and risky. In the final step of the process, the idea becomes so ingrained, and the actions are so rote, that conscious thought about the merits of the idea are no longer necessary—in a sense—and the idea has become a moral imperative. In *Global Survival*, Professor Ferencz describes the whole process of thinking about international security and attempts to move his idea, collective security, from stage two to stage three.

THE PROBLEM

Professor Ferencz first analyzes how we got to the current state of international security and then explains why the current model does not work. Perhaps the most fascinating aspect of the book is that he explores the evolution of the concepts and ideas behind international security. Professor Ferencz has always been a visionary thinker on international organizations in much the same manner Hobbes and de Tocqueville were visionary thinkers on the modern State. His suggestion that ordered liberty can be achieved only through collective international security parallels Hobbes' analysis of the modern view of the state in *Leviathan*: In a society composed of atomistic individuals who are only minimally related to each other through markets and the State, each citizen faces the State naked.⁴ The only way to assure freedom and guard against the oppression of the State is through the maintenance of an organized intermediary. de Tocqueville agreed: "Despotism sees the isolation of men as the best guarantee of its own permanence."⁵ Likewise, Ferencz sees the isolation of States as the *raison d'être* that the world continues to be dominated by the rule of might.

Another, albeit similar, undercurrent running through his book is the notion of federalism. Many of Professor Ferencz's concerns and observations are reminiscent of this country's struggle between the notion of states' rights and federalism. Independent states may offer more flexibility, but the costs of standing alone, especially in terms of security, can be daunting. In fact, one can see the similarity between

4. THOMAS HOBBS, *LEVIATHAN*, chs. 20, 22 (1651).

5. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 509 (J. Mayer ed. 1969) (1840).

the reason the original Articles of Confederation were rejected and Professor Ferencz's explanation of why current international organizations are largely ineffective. In both instances, States must unite to pursue a common goal before true security can be achieved.

Just as many of my colleagues believe that international law is non-existent because a State with power can define international law as it deems useful at that moment, critics of the modern State and federalism also questioned whether personal freedoms could be expressed in a system where individuals were beholden to the State or unions of states. As Hobbes and de Tocqueville were not adequately understood or accepted for their views on the modern state while they were alive, current writers on international peace organizations are not fully understood today. Current and past skeptics have never adequately understood the freedoms engendered by peace and the role of law. But Professor Ferencz challenges the status quo, and sets forth the need for the organized intermediary of the United Nations to prevent each State from standing naked—especially in an age characterized by mass communication, the capability of mass destruction, and terrorism.

COLLECTIVE SECURITY

To provide the framework for his book on collective security through the Security Council, Professor Ferencz contends that there are "three foundations" upon which orderly society is based: (1) laws which define the minimum standards of behavior; (2) courts to peacefully settle disputes in accord with the rules of law; and (3) enforcement to insure that the laws are obeyed and the pronouncements of the courts have meaning. The third foundation is the aspect Professor Ferencz finds most lacking in today's international society. But he is not an advocate of the use of force for its own sake. Through all of his pronouncements regarding the need for better enforcement, Professor Ferencz demands that force be used as a last resort, in compliance with the law, and always with a humanitarian goal. He notes that the "force of law" should supplant the "law of force."

His notion of the "force of law" replacing the "law of force" represents the second stage of Governor Lamm's model: think, no do. Although we have recognized the utility of international security organizations and implemented them (stage three), actually using them as a collective security force for the purpose of replacing individual state power represents a departure from the traditional concept of security. Professor Ferencz presents this concept and argues for its implementation (stage two). No doubt many leaders will vigorously oppose the idea of collective security because it will force them to give up some control and power.

Professor Ferencz suggests that we can achieve true international

security through better use of the U.N. Security Council, as something of a global police force enforcing indiscriminately the rule of law and the pronouncements of the international judicial bodies. According to Professor Ferencz: "Laws have little significance without courts; courts have no power without enforcement." Thus, the Security Council would be the enforcers of peace.

In his model, the Security Council would operate as it did during the Gulf War, using its powers under Chapter VII of the U.N. Charter to authorize collective measures in an effort to enhance security. The Council initially authorized sanctions and then collective military force. It was because of the Council's blessing that the unilateral use of force was forsaken, and the concomitant danger of unilateral, self-serving use of force avoided.

Professor Ferencz recognized, however, that the Gulf War was an exception to the rule and merely an example of how the Security Council could function. During the Gulf War, the issues and the violations of the law were clear. Iraq invaded another sovereign with all the traditional trappings of war. However, most threats to international security are not so cut and dried and yet may be equally worthy of a collective response. One of the grave difficulties Professor Ferencz identifies that must be overcome before we can fully embrace the idea of an international organization as a global police force—moving from stage two to stage three—is the difficulty of providing definitions and norms upon which the Security Council can base its actions. It is impossible to get States to agree to the notion of collective force unless it is first possible to define when action should be taken. As with civil statutes and laws, the initial difficult requirement is to find mutually agreeable definitions. Without definitions, we cannot collectively respond.

For example, there has never been an adequate definition of terrorism.⁶ Each proposed definition is colored by who is proposing the definition, and drafted to achieve some specific purpose that may not have universal application. As a result, there isn't a widely accepted definition that could serve as a starting point upon which collective response could be based. We cannot effectively and globally respond to terrorist threats until we can agree on what constitutes an act of terrorism. Professor Ferencz aptly notes that the international community lacks definitions for some of the most crucial concepts, including what aggression is and when we should respond to it: "The international community has not yet been able to reach agreement on when the use of force is permissible and when it is impermissible." Generally, Professor Ferencz offers valuable definitions for aggression, terrorism, the

6. See Scott S. Evans, *The Lockerbie Incident Cases: Libyan-Sponsored Terrorism, Judicial Review and the Political Question Doctrine*, 18 MD. J. INT'L L. & TRADE 21, 24 (1994).

justifiable use of force (humanitarian intervention), and self-determination. Even if one doesn't agree with the definitions or the parameters, at least he offers an alternative and gives his readers a starting point to address the ways those definitions can be used.

Throughout his exposition on the need for definitions, Professor Ferencz never loses sight of the history of international security through international organizations. He sets out the history of collective force as the guardian of international peace in an interesting and insightful manner. Like the early observers of the modern State, Professor Ferencz suggests that true freedom and peace can only be achieved through interrelation, collective security, accepted definitions and thus law, courts and enforcement.

DRAFT RESOLUTIONS

Global Survival does not merely detail the history of international security organizations and criticize their shortcomings. Professor Ferencz also offers twelve draft United Nations resolutions to strengthen law, courts and law enforcement.

First, he sets forth five resolutions to strengthen the laws of peace. Specifically, his first resolution would require that both individuals and states utilize a process of mandatory dispute settlement and subject those who did not comply with this resolution to criminal sanctions. He also offers resolutions defining aggression, prohibiting crimes against humanity, ending the arms races, and enhancing social justice. Each resolution is designed to clarify the current rules, explain the ramifications of noncompliance, prevent individuals and states from using force as a policy instrument, and encourage respect for human rights.

Second, Professor Ferencz offers three draft resolutions to strengthen international courts. He first suggests that the power of the World Court could be enhanced by requiring states to submit their legal disputes when the Security Council determines that the dispute is likely to endanger international security. The Security Council would also be given the power to use "all necessary means" to ensure that the decisions of the Court were complied with. Professor Ferencz also proposes the creation of an international criminal court and a tribunal for social justice. The criminal court would have broad jurisdiction over violations of the five laws of peace mentioned, *infra*. The tribunal for social justice would deliberate on violations of human rights. Again, the Security Council would be authorized to both submit cases to these courts and enforce their decisions.

Finally, Professor Ferencz presents four resolutions to strengthen the weakest component of international security— enforcement. He suggests creating four agencies to provide the quick response that the U.N. now lacks: (1) a U.N. Disarmament Enforcement Agency; (2) a

U.N. Sanctions Agency; (3) a U.N. Police Agency; and (4) a U.N. Social Justice Agency. The most intriguing agency proposed is the Police Agency, a peace-keeping force at the disposal of the Security Council intended not only to restore peace, but also to maintain it. It would be composed of regular and reserve forces on call for specific military operations. In essence, the Police Agency would be what the U.N. Military Staff Committee and the U.N. Military Force were intended to be when they were envisioned in the 1940s.

With these twelve draft resolutions, Professor Ferencz attempts to provide a blueprint to solve the problems of international security by enhancing the role of the U.N. Security Council. In a very detailed manner, he gives citizens of the world community a roadmap on how to move from merely thinking about world peace to actually acting on it.

CONCLUSION

In the past, the only time that collective security through the Security Council has been truly effective has been when it has acted at the behest of powerful States and within their parameters, such as the U.N.'s response to Iraq's invasion of Kuwait. It is at these moments that we can see the power of Professor Ferencz's notions of international security and we realize that it is possible to move from the second to the third stage of Governor Lamm's model, i.e., from inaction to action. However, if the organization works within the rules but outside of the powerful States' definition of the rules, such as when the World Court sanctioned the United States for mining the harbors of Nicaragua, the international security organization is called a sham and threatened with destruction. It is no surprise, then, that Professor Ferencz will meet much resistance from the traditional state leaders who are comfortable with the status quo; those leaders of nations that have the military and economic might are comfortable retaining their own sticks and carrots and playing by the rules that they themselves define and those leaders of smaller nations that are afraid of being smothered by the larger states.

Perhaps the most important message of *Global Survival* is not explicitly stated. Professor Ferencz realizes implicitly that international legal scholars and Statesmen are increasingly required to shift their mode of thinking to adapt to changing times. The Cold War is over and the threats to world peace and security will be originating from other sources. In creating a world of global security we must focus less of our attention on preventing global nuclear war and more of our energy in addressing human rights violations, low-intensity aggression, economic coercion, terrorism, regional conflicts, and nuclear proliferation. *Global Survival: Security Through the Security Council*, begins the process through which the idea of international security through the Security Council can become a reality.

