

Introduction to Enforcing International Law: A Way to World Peace

A Documentary History and Analysis – Volume Two

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This is the third part of a grand trilogy. In the first two parts, Benjamin B. Ferencz presented collections of documents relating to the efforts to define aggression, the supreme international crime, and to proposals for the establishment of an international criminal court for the punishment of individuals guilty of international crimes. The new book is even more ambitious. Mr. Ferencz has attempted this time to trace, through important documents, the evolution of the idea of enforcing international law on States which have committed a gross violation of a basic principle of international law.

Many years have elapsed since Payson S. Wild wrote an excellent historical book on Sanctions and Treaty Enforcement (Cambridge, Mass.: Harvard Univ. Press, 1934). Ironically, the main international experiment with sanctions, the unsuccessful attempt of the League of Nations to stop Mussolini's attack on Ethiopia, happened one year later, in 1935. Many books have been written since then, trying to explain why this effort to enforce international law has failed, and more recently there has been another series of books on sanctions against Rhodesia and South Africa.

Mr. Ferencz provides both a history of ideas about international enforcement since ancient times and a thorough documentation of proposals on the subject since the sixteenth century to the present. He points out that already the first writers on international law have emphasized the importance of devising means for ensuring compliance by States with the rules of international law. He notes that in the nineteenth century international agreements were made which were designed to increase compliance with humanitarian rules of international law not only in times of peace but even in times of war. This lawmaking process culminated in the Hague Conventions of 1899 and 1907, and was followed by the Geneva Conventions of 1929 and

1949 and the Geneva Protocols of 1977.

In earlier centuries law enforcement depended very much on self-help, retaliation and reprisals, as well illustrated in Evelyn S. Colbert's *Retaliation in International Law* (New York: Columbia Univ. Press, 1948). Between the seventeenth and nineteenth centuries reprisals were gradually transferred from private hands to public ones and privateers were replaced by naval vessels (see A.E. Hindmarsh, *Force in Peace* 52-56 (Cambridge, Mass.: Harvard Univ. Press, 1933). Another transfer occurred in the twentieth century, when an effort was made to substitute enforcement of international law by international organizations for enforcement by individual States or groups of States. As noted before, the League of Nations – though successful in some cases – was not able to stop aggression by Axis powers in the 1930's, not only in Ethiopia, but also in China and Czechoslovakia.

The framers of the United Nations Charter were determined to avoid the mistakes of the League and the eminent French statesman, Joseph Paul-Boncour, reported with pride to the United Nations Conference at San Francisco in 1945 that "this flaw has been eliminated," as an international force will be placed at the disposal of the Security Council to ensure respect for its decisions. He cited Pascal's statement that "[s]trength without justice is tyrannical, and justice without strength is a mockery." The forces to be provided by Member States under Article 43 of the Charter will give the UN "unquestionable superiority...over an aggressor rising alone in rebellion." He concluded: "That is the great thing, the great historic act accomplished by the San Francisco conference, which gives to the world the hope, based on an obvious reality, that henceforward it may live in peace."

Unfortunately this prophecy was not fulfilled, as it was premised on the unity of the permanent members of the Security Council which disintegrated almost immediately after the Second World War was terminated. As Mr. Ferencz documents it in his book, one consequence of the disunity of the Big Powers was the inability to agree on the composition of the United Nations military force. Consequently, when the Korean crisis arose in 1950, the United Nations had to improvise and to rely on voluntary contributions by seventeen States in order to repel the North Korean and Chinese aggression. The United Nations

article in other cases has been limited to peacekeeping forces, policing a truce or an armistice line, and to economic sanctions. In some cases, such as the war between Iran and Iraq, the United Nations has not been able to stop the hostilities, and was obliged to concentrate on mediation efforts.

Mr. Ferencz found it necessary to broaden the scope of his book to include documents relating not only to the enforcement of law and maintenance of peace, but also to international law-making, peaceful settlement of disputes and the achievement of economic and social justice. As he points out in his *Afterward*, there is a close connection between all these aspects of international order. To achieve peace, progress must be made in all areas. Without such progress, international law enforcement will not become a reality. One has to agree also with his statement that it is not rational to conclude that "humankind can invent the means of destroying the world yet lacks the intelligence to prevent it from happening."

For all those who believe that our globe is not doomed to destruction and that the combined efforts of people of good will can bring about a better future, this book is an indispensable tool. It documents clearly that, step by step, humanity has made considerable progress toward building the institutions needed to achieve peace and justice, and that only a few additional steps – suggested in several documents included in this book – have to be taken to reach that goal.

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