

Book Review: Enforcing International Law: A Way to World Peace: A Documentary History and Analysis (2 Volumes), By Benjamin B. Ferencz

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Review by John F. Murphy, Villanova University

Benjamin Ferencz is a phenomenon. In addition to being the author of two-volume treatises on Defining International Aggression (1975) and An International Criminal Court (1980), [1] as well as of the much praised *Less Than Slaves* (1979), [2] he maintains a busy international law practice and engages in ceaseless efforts, at the United Nations and in other forums, to promote humanitarian norms for international law.

Now Ferencz has turned his considerable energies to an ambitious task: a review of efforts to enforce international law as a way towards world peace. In his latest work, Ferencz's focus is more narrow than that taken by Roger Fisher, who has recently written extensively on the general problem of implementing international law. [3] By contrast, Ferencz's emphasis is on a review and evaluation of efforts to implement international law and processes designed to maintain international peace and security.

Ferencz's historical survey includes chapters on, inter alia, "The Origins of International Law Enforcement" (ch. 1); "Enforcement Views of Classical Scholars" (ch. 2); "The 'Grand Designs' for International Law Enforcement" (ch. 3); "Enforcement by Codes and Courts" (ch. 4); "Enforcement Plans After World War I" (ch. 5); "Enforcement in Practice After World War I" (ch. 7); "Enforcement Proposals by Post-War Planners" (ch. 9); "Enforcement in Practice After World War II" (ch. 11); and "Enforcement by Non-Military Means" (ch. 13). Throughout these and his other chapters, there are references to documents relating to efforts to maintain international peace and security that Ferencz has collected in documentary supplements to each volume. These documents, along with the bibliographies contained at the end of both volumes of his work, should prove invaluable as a reference source for scholars.

In his survey, Ferencz covers the law and practice regarding both *jus ad bellum* and *jus in bello*. Accordingly, he discusses and summarizes the law of armed conflict as well as efforts to prevent the use of armed force to settle disputes. In both of these areas, Ferencz explores the works of classical scholars and the attempts by statesmen to put their ideas into practice.

In these writings and state practice, Ferencz has uncovered some fascinating pieces of information. For example, Ferencz reports that the Abbe de St. Pierre, writing in the early 18th century, proposed, as an enforcement measure for his plan for world peace, that "[a]ny sovereign who broke the peace of the Union could be punished, together with 200 of his principal ministers, by death or life imprisonment" (vol. I, p. 22). Over 200 years later, the Abbe's suggestion was effectively adopted by the tribunal at Nuremberg.

Similarly, Ferencz notes that David Dudley Field's book, *Draft Outlines of an International Code*, published in 1872, contained a provision that, in the case of grave crimes against international law such as piracy, extradition would be mandatory if requested by a nation "whose penal system offers guarantees of impartiality and humanity" (quoted in vol. I at p. 31). The approach of the world community in respect of hijacking, by contrast, has been to resist mandatory extradition (favored by the Soviet bloc countries) and to settle instead on an "extradite or submit to prosecution" formula.

In volume II, at page 444, Ferencz reminds us of how close the United States and the Soviet Union came to agreeing on the formation of armed forces to be placed at the disposal of the Security Council as prescribed by Article 43 of the Charter. One may speculate what use would have been made of such an armed force had it been established.

At page 447 of his second volume, Ferencz notes the success of the Security Council in helping to restore peace with a minimum of bloodshed between the Netherlands and Indonesia when their conflict broke out in 1947. He suggests that the Council achieved this success by

1) calling for an immediate cease-fire as soon as new hostilities erupted, 2) urging the parties to settle differences by peaceful means, 3) obtaining objective reports from independent consular observers, 4) offering good offices through a committee chosen by the parties themselves, 5) monitoring the situation closely and 6) by not allowing the dispute to disappear from the U.N. agenda until a peaceful settlement was reached.

Unfortunately, one or more of these factors have been missing from most recent efforts by the Security Council to maintain international peace and security.

In light of the current situation in Central America, Ferencz's brief discussion of the 1965 U.S. intervention in the Dominican Republic is of interest. Roundly criticized by international law scholars as an illegal unilateral use of armed force by the United States, the long-term effect of the intervention in the Dominican Republic appears to be favorable, as democracy is in place in that country, and a Communist regime has not taken power. With regard to the legal aspects, Ferencz notes that in response to Soviet contentions that only the Security Council could authorize enforcement action, an analysis prepared by Malaysia at the time argued that regional intervention was justified as a humanitarian act to give the parties time for peaceful reconciliation through democratic institutions (vol. II, p. 458).

In his comment on the dispute over the Falkland (Malvinas) Islands, Ferencz points out that the issue of sovereignty over the islands "remains on the agenda of the United Nations as a continuing challenge to the peaceful enforcement of international law" (vol. II, p. 461). Contributing to the challenge is the current adamant refusal of the British Government to submit that issue to third-party dispute settlement and its insistence instead that British sovereignty over the islands cannot be questioned.

At page 463 of his second volume, Ferencz notes, with respect to the war in Vietnam, that "[a]s for the punishment of aggression and crimes against humanity, the world forgot the lessons of Nuremberg." Sadly, from the end of the Vietnam War to the present time, the

Nuremberg principles have been more honored in the breach than in the observance.

In a relatively brief section (ch. 14 and an afterword, vol. I, pp. 479-94), Ferencz sets forth his suggestions for "Making Enforcement More Enforceable." Reasonable persons can differ over these. For example, at pages 479-81, Ferencz appears to place a great deal of faith in the drafting of new declarations or the conclusion of new treaties and conventions designed to maintain international peace and security. He cites, as an example of past success, the definition of aggression reached by consensus of the General Assembly in 1974. For his part, this reviewer agrees with the prediction of President Truman that attempting to define aggression would be "a trap for the innocent and an invitation to the guilty." [4] Unfortunately, despite the relative success of the drafting effort on the Friendly Relations Declaration, attempts at this time to revise the UN Charter or to conclude new codes against aggression or the threat or use of armed force are more likely to create loopholes for those inclined to settle disputes through the use of armed force than they are to close them.

Ferencz also calls for the strengthening of third-party dispute settlement, most particularly, greater use of the International Court of Justice, as a step towards world peace. There is little doubt that greater use of third-party settlement, including the World Court, would be desirable. However, one should not place too much reliance on international judicial settlement as a means of maintaining international peace and security. The Security Council of the United Nations, the Secretary-General, and mediation efforts inside and outside international institutions are likely to be more effective instruments for keeping the peace than international courts.

More generally, Ferencz places too much emphasis on the enforcement of international law in respect to the maintenance of international peace and security. As Inis Claude has pointed out, collective security as an approach to peace is difficult to carry out in practice even among allies. Claude has questioned the general desirability of collective security on the ground that it ignores "the infinite variety of circumstances, the flux of contingency, the mutability of situations," and that it constitutes an abdication of "the function of applying

statesmanlike rationality to problems as they arise." [5] The wisdom of these remarks is demonstrated by the current world situation where confrontation between states is rampant and the application of "statesmanlike rationality to problems" is rare.

In conclusion, although Ferencz's emphasis on coercive measures for the implementation of international law relating to the maintenance of international peace and security may not be wholly convincing, his two-volume work is a valuable and timely addition to the literature in the field. At a time when international lawyers have largely turned their attention away from the critical issue of world peace towards more technical matters, these two volumes, with their wealth of historical documentary material, serve to remind us that the maintenance of international peace and security is still the paramount challenge facing international law today.

[1] Reviewed in 76 AJIL 211-12 (1982).

[2] Reviewed in 75 AJIL 702-04 (1981).

[3] See, e.g., R. FISHERR, IMPROVING COMPLIANCE WITH INTERNATIONAL LAW (1981). Reviewed in 76 AJIL 870-71 (1982).

[4] Quoted in J. F. MURPHY, THE UNITED NATIONS AND THE CONTROL OF INTERNATIONAL VIOLENCE 85 (1982). Reviewed in this issue, at p. 267.

[5] Quoted in *id.* at 123-24.