

January 1995

## New Legal Foundations for Global Survival: Security Through the Security Council by Benjamin B. Ferencz

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### Recommended Citation

Janet A. Rosen, *New Legal Foundations for Global Survival: Security Through the Security Council by Benjamin B. Ferencz*, 7 Pace Int'l L. Rev. 247 (1995)

DOI: <https://doi.org/10.58948/2331-3536.1302>

Available at: <https://digitalcommons.pace.edu/pilr/vol7/iss1/8>

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## BOOK REVIEW

**NEW LEGAL FOUNDATIONS FOR GLOBAL SURVIVAL: SECURITY THROUGH THE SECURITY COUNCIL.** By Benjamin B. Ferencz. Oceana Publications, Inc., 1994. 469 pp. ISBN: 0-379-21207-2. U.S. \$45.00.

**Reviewed by Janet A. Rosen†**

A major premise of Dr. Ferencz's book on global survival is that the United Nations, in order to be effective, must change to meet the needs of a changing world.<sup>1</sup> This premise is well-supported.<sup>2</sup> The United Nations was created at the end of the Second World War and the dawn of the Cold War.<sup>3</sup> The structure

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<sup>1</sup> See BENJAMIN B. FERENCZ, *Preface to NEW LEGAL FOUNDATIONS FOR GLOBAL SURVIVAL: SECURITY THROUGH THE SECURITY COUNCIL*, vii (1994) (stating that "[y]esterday's legal institutions can hardly cope with today's world problems; they are hopelessly inadequate for the problems of tomorrow. . . .").

<sup>2</sup> See, e.g., W. Michael Reisman, *International Law After the Cold War*, 84 AM. J. INT'L. L. 859, 862 (1990), stating that "[w]hile many now look toward the United Nations with the hope that it will play a major role in the maintenance of world order, the changes that have taken place make key parts of the UN system caduceus . . . [a]daptation of the security structure of the United Nations to contemporary realities is a necessity"; Joakim E. Parker, *Note: Electing the U.N. Secretary-General After the Cold War*, 44 HASTINGS L.J. 161, 164 (1992) (stating that "[t]he current electoral procedures [of the U.N.] were contradictorily imposed on certain provisions of the Charter at the time of its conception . . . [l]ittle justification exists for their retention in the face of a changing world"); John W. Halderman, *Book Review: The Political Role of the U.N.: Advancing the World Community*, 77 AM. J. INT'L. L. 366 (1983) (stating that "the success of the [U.N.] Charter will require changes in the identifications and demands of the peoples of the world community.").

<sup>3</sup> See John W. Head, *Supranational Law: How the Move Toward Multilateral Solutions is Changing the Character of "International" Law*, 42 KAN. L. REV. 605, 623 (1994) (discussing formation of U.N.); Elisabeth Zoller, *The "Corporate Will" of*

of the Security Council, therefore, reflects the balance of power as it existed at that time.<sup>4</sup> However, the end of the Cold War has brought about a shifting of the global power balance.<sup>5</sup> Japan, for example, having once been barred from the Security Council, is now lobbying for a new, enlarged role in the U.N.<sup>6</sup>

Moreover, with the passage of time it has become evident that, despite some successes,<sup>7</sup> the United Nations has been largely ineffective in its attempt to achieve global security.<sup>8</sup> Dr. Ferencz, in addressing this problem, has, in his book, unified both the ideal (global security) and the pragmatic (a detailed foundation for organic changes in the structure of the United Nations designed achieve this goal). The text is comprehensively and thoroughly organized into three main sections. The Preface maintains that a new way of thinking is necessary to achieve a more peaceful world.<sup>9</sup> Dr. Ferencz stresses, however, that the will of the people and their political leaders is an im-

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*the United Nations and the Rights of the Minority*, 81 AM. J. INT'L. L. 610, 626 (1987) (discussing U.N. and emerging Cold War).

<sup>4</sup> See Reisman, *supra* note 2, at 862 (stating that "[o]ne should recall that the term 'United Nations' was the collective name for the Allies in World War II. The permanent members of the Security Council were the victors in that conflict and the Charter itself provided for the resumption of joint action should any of the Axis powers revive.").

<sup>5</sup> See Reisman, *supra* note 2, at 862 (stating that "the rapport de force of 1945 has changed dramatically . . . it is marked by the reascendence of a now effectively united Germany and a vigorous Japan, each of which is stronger than at least three of the Security Council's permanent members. At the same time, a number of new states may claim a power base sufficient to warrant the special prerogatives that the Charter assigned to the most powerful nations of the world.").

<sup>6</sup> See Reisman, *supra* note 2, at 862 (stating that "Japan, a leading member of this club [an economic oligarchy of states, the G-7] has already indicated that it would like to play a more overt political role. . . ."); Andrew S. Miller, *Note: Universal Soldiers: U.N. Standing Armies and the Legal Alternatives*, 81 GEO. L.J. 773, 808 (1983) (stating that "States like Germany, Japan, Brazil, Nigeria, and India are now arguing they deserve permanent seats on the Security Council. . . .").

<sup>7</sup> See BENJAMIN B. FERENCZ, *Preface to NEW LEGAL FOUNDATIONS FOR GLOBAL SURVIVAL: SECURITY THROUGH THE SECURITY COUNCIL*, 92 (1994) (stating that U.N. "did the best it could under the circumstances and often it did quite a bit").

<sup>8</sup> See *id.* at 91 (stating that "[i]n addition to built-in structural defects, the UN as an operational administrative agency falls far short of expectations"); *id.* (quoting Professor John F. Murphy of Villanova, who stated that "[t]here is no question that the United Nations has failed abysmally to cope satisfactorily with traditional international violence").

<sup>9</sup> See *id.* at xii (stating that "in the last analysis what will also be needed are new attitudes of heart and mind. . . ."); see also *id.* at 261 (stating that new way of thinking necessary to achieve more rational world).

portant factor in achieving this goal.<sup>10</sup> Part I analyzes the current world order, focusing on how international laws, courts and enforcement procedures impinge on global peace and security. Part II analyzes the U.N. Charter in light of options for making it more effective, and Part III, the conclusion, sets forth specific proposals for improving the international legal system. Following these substantive sections is an extensive Supplementary Bibliography of books on Law and International Law, and both subject and name indices.

Dr. Ferencz argues that the United Nations, an organization nearly 50 years old, is in fact the only international organization competent to address the issue of global security.<sup>11</sup> At the same time, however, the U.N. remains underfinanced and overburdened.<sup>12</sup> The U.N., lacking legislative power, an independent source of funds, a workable plan for sanctions, an equitable voting system, an independent militia, and a means of compelling compliance by powerful sovereign states, requires reorganization and revitalization in order fulfill its purpose.<sup>13</sup>

The Security Council plays a key role in global security management.<sup>14</sup> The U.N. Charter, which is both treaty and world constitution,<sup>15</sup> is not readily amendable.<sup>16</sup> A more promising alternative is therefore to alter the United Nations structure without amending of U.N. Charter.<sup>17</sup> This requires

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<sup>10</sup> See *id.* at viii (stating that "[t]he biggest obstacle to the creation of a more rational world order has been the absence of political will on the part of decisionmakers . . . [t]he public has been lulled into apathy or despair by the false impression that the problems were either insurmountable or so complicated that they had better be left to political leaders").

<sup>11</sup> See *id.* at 160-61 (stating that "[t]he United Nations . . . is the only agency of global scope that is competent to deal with world peace issues").

<sup>12</sup> *Id.* at 159.

<sup>13</sup> See *id.* at 159 (stating that U.N. is in desperate need of reorganization and revitalization); *id.* at 217-218 (discussing structural defects of U.N.).

<sup>14</sup> *Id.* at 243 (stating that "[t]he Security Council has a key role to play as the world's peace-keeper. . . .").

<sup>15</sup> See *id.* at 236 (stating that "Professor Sloan has . . . pointed out that the Charter is both a treaty and a world constitution. Its broad principles require interpretation. . . .").

<sup>16</sup> *Id.* at 233, 239.

<sup>17</sup> See *id.* at 239 (stating that creating new organs to perform special functions is promising possibility to promote peace).

promoting a new way of thinking so as to uproot deeply entrenched dogmas.<sup>18</sup>

Legal interpretations must be made so as to be consistent with U.N. Charter goals.<sup>19</sup> The linchpin of Dr. Ferencz' recommendations involves the reform of the Security Council so as to address the ineffectiveness of the U.N.<sup>20</sup> The Security Council can offer legal interpretations necessary to foster peace which expand the U.N. Charter to meet the world's changing needs.<sup>21</sup> Informal agreements consonant with U.N. Charter goals can also be used to achieve change, such as where a Permanent Member agrees not to vote without the approval of the new partner.<sup>22</sup> In addition, procedural changes are necessary to better satisfy the concerns of all the member nations.<sup>23</sup> The Security Council must provide the "transparency" demanded by other members, creating a system of checks and balances by involving regional organizations, the General Assembly, Secretariat, and the Court in its determinations.<sup>24</sup> Lastly, the Security Council must create new organs for peace, a function authorized by the U.N. Charter.<sup>25</sup> This is strictly a procedural matter requiring a positive vote by 9 out of 15 members, and no veto is applicable.<sup>26</sup> Creating new organs for peace requires a delegation of responsibility to qualified experts rather than diplomats, who lack the qualifications to handle the complex and specialized problems to be addressed in order to achieve global peace.<sup>27</sup>

Dr. Ferencz maintains that three basic conditions are necessary in order to achieve world peace: clear international laws, effective international courts, and an effective system for law

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<sup>18</sup> See *id.* at 245 (stating that new mode of thinking about old problems can promote change).

<sup>19</sup> See *id.* at 244 (stating that "[i]nternational law must be interpreted so that it becomes possible to *achieve*, rather than to *defeat*, the most fundamental Charter goals") (emphasis in original).

<sup>20</sup> See *id.* at 245 (stating that "[a]ction by the Security Council now offers the best hope for effective implementation of established international norms. . .").

<sup>21</sup> See *id.* at 250 (stating that Security Council may pass resolutions maintaining legal obligations and implement structural changes).

<sup>22</sup> *Id.* at 232.

<sup>23</sup> *Id.* at 257.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 239.

<sup>26</sup> *Id.* at 240.

<sup>27</sup> *Id.* at 252-53.

enforcement.<sup>28</sup> International declarations such as the U.N. Charter were intentionally drafted to be vague and contradictory, allowing the nations purporting to adhere to such declarations a means to “opt out” of restraints imposed on their actions.<sup>29</sup> For example, the word “self defense” was never clearly defined in the U.N. Charter, and thus nations used their own interpretation of “self defense” as an excuse to wage war.<sup>30</sup>

To fulfill the three basic conditions of peace, Dr. Ferencz recommends that the U.N. Security Council adopt 12 draft Resolutions for peace.<sup>31</sup> Five are designed to strengthen and clarify international laws.<sup>32</sup> Of these five, one Resolution would mandate peaceful settlement as a means to resolve disputes.<sup>33</sup> Another would clearly define the crime of “aggression” and spell out the consequences of such conduct.<sup>34</sup> Yet another would prohibit and impose sanctions for crimes against humanity.<sup>35</sup> Crimes against humanity, as distinguished from ordinary crimes, encompass those acts which are of such magnitude as to shock the human conscience.<sup>36</sup> Dr. Ferencz maintains that ending the arms race is essential for global security,<sup>37</sup> and has drafted a Resolution modeled after the McCloy/Zorin Agreement for General and Complete Disarmament, a joint plan by John J. McCloy, the Special Assistant for Disarmament under President Kennedy and Soviet Deputy Foreign Minister Zorin,<sup>38</sup> which was endorsed unanimously in 1961 by the United Nations General Assembly.<sup>39</sup> Dr. Ferencz’ disarmament plan re-

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<sup>28</sup> *Id.* at 159.

<sup>29</sup> *See id.* at 263 (stating that “[w]e noted ambiguities and loopholes deliberately written into all of the international laws of peace in order to free the hands of signatories”).

<sup>30</sup> *See id.* at 34 (stating that “skillful lawyers, not wishing to appear as obvious lawbreakers, could interpret them [laws] in ways that best served the national interests of their own country”); *id.* at 187 (stating that “all wars of aggression—according to the aggressors—are now fought only in ‘self-defence’”).

<sup>31</sup> *See id.* at 261-354 (discussing twelve resolutions for peace).

<sup>32</sup> *Id.* at 262.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 266.

<sup>35</sup> *Id.* at 268.

<sup>36</sup> *Id.* at 270-71.

<sup>37</sup> *See id.* at 278-279 (stating that “. . . to maintain peace, it is incumbent upon the Security Council to . . . end the arms race”).

<sup>38</sup> *Id.* at 104.

<sup>39</sup> *Id.* at 279.

quires gradual and verified reductions in armaments, minimization of economic dislocation caused by massive disarmament, improved methods of dispute settlement, imposition of a credible system for imposing sanctions, and the formation of a U.N. military force.<sup>40</sup> Dr. Ferencz proposes a fifth draft Resolution to enhance social justice by focusing on eliminating world hunger, improving worldwide standards of living, promoting human rights, protecting the environment and insuring minimum standards of human dignity.<sup>41</sup>

Dr. Ferencz recommends three draft Resolutions for strengthening the international Court system.<sup>42</sup> At present, the International Court of Justice (the "World Court" or "ICJ") has no compulsory jurisdiction over parties even where disputes threaten global peace, a major flaw in the international legal system.<sup>43</sup> The ICJ's authority must be reinforced so that parties whose actions are a threat to global security must submit to the court's jurisdiction if other dispute resolution mechanisms have failed.<sup>44</sup> This can be accomplished if the U.N. Security Council exercises its extensive authority to maintain peace under the U.N. Charter by expanding the authority of the World Court so that it may give advisory opinions,<sup>45</sup> guarantee the enforcement of its decisions,<sup>46</sup> and direct parties to settle dispute by peaceful, lawful means.<sup>47</sup> In addition, the Security Council will need to establish an International Criminal Court to deal with war crimes by holding those individuals who

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<sup>40</sup> *Id.* at 278-79.

<sup>41</sup> *Id.* at 286.

<sup>42</sup> *Id.* at 288.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See *id.* at 288 (stating that "[w]e have suggested . . . that the Security Council turn to the World Court for advisory opinions whenever apparent breaches of international law pose a threat to peace").

<sup>46</sup> *Id.* at 293 (stating that "[i]f any party fails to perform its obligations under a judgment rendered by the Court, the other party may have recourse to the Security Council which—under the Charter—may decide upon measures to be taken to give effect to the Court's judgment").

<sup>47</sup> *Id.* at 291 (stating that "[i]t must become a binding obligation that all legal disputes which the Security Council decides constitute a threat to peace *must* be submitted to the Court for final decisions if other means of peaceful settlement fail").

commit crimes against humanity personally responsible for their acts.<sup>48</sup>

As part of a system to enhance the effectiveness of international courts, the Security Council would also need to create a new tribunal of Social Justice to hear complaints alleging violations of human rights, environmental or economic disputes.<sup>49</sup> This tribunal would strengthen regional human rights tribunals now existing<sup>50</sup> and adjudicate those environmental disputes which could not be adjudicated by the ICJ or resolved by national governments.<sup>51</sup>

Enforcement is presently the weakest portion of the three components required for peace.<sup>52</sup> Dr. Ferencz recommends four draft Resolutions to create subsidiary organs addressing the problems of enforcement.<sup>53</sup> First, the Security Council has yet to fulfill its obligation under the U.N. Charter to formulate a system for arms control regulations.<sup>54</sup> Disarmament must therefore be a fundamental objective and can be brought about if the Security Council creates a U.N. Disarmament Enforcement Agency staffed by independent experts.<sup>55</sup>

Secondly, economic and blockade sanctions have throughout history been utilized as an effective means of ending wars.<sup>56</sup> Economic sanctions, however, will not work where nations refuse to go along with them for political reasons.<sup>57</sup> The Security Council has the power to call for comprehensive sanctions where necessary to prevent hostilities.<sup>58</sup> Sanctions must be or-

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<sup>48</sup> *Id.* at 295.

<sup>49</sup> *Id.* at 300-306.

<sup>50</sup> *See id.* at 303 (stating that "it could reconcile discrepancies in decisions of regional human rights tribunals or agencies and serve as an appellate body from national or regional human rights bodies").

<sup>51</sup> *See id.* at 304 (stating that "environmental problems, beyond the reach of national governments, are so important that they must be handled by an overarching UN body—a new Security Council for the Environment").

<sup>52</sup> *Id.* at ix.

<sup>53</sup> *Id.* at 308.

<sup>54</sup> *Id.* at 276.

<sup>55</sup> *Id.* at 309, 317.

<sup>56</sup> *See id.* at 115-116 (discussing historic use of blockade and economic sanctions).

<sup>57</sup> *See id.* at 120 (discussing non-enforcement of embargo plan against Hitler's Germany and disastrous results).

<sup>58</sup> *See id.* at 121 (discussing sanctions authorized under UN Charter).



ganized and comprehensive, however, in order to be effective.<sup>59</sup> Dr. Ferencz recommends creating a U.N. Sanctions Agency with a staff of professional experts to effectively implement sanctions imposed by the Security Council.<sup>60</sup>

Since the use of force by lawbreakers threatens every society, it is necessary to safeguard peace by using an international peacekeeping body.<sup>61</sup> However, unilateral military action by nations which taking it upon themselves to police the world creates too great a risk of abuse of power.<sup>62</sup> A viable alternative is to create an international peace-keeping force, a "U.N. Police Agency", as prescribed under the U.N. Charter, which is overseen by the U.N. Security Council.<sup>63</sup> The new agency must have at its disposal rapid-deployment troops, primarily loyal to the United Nations, which can react quickly before tense situations spin out of control.<sup>64</sup> The U.N. must institute checks and balances, however, to prevent an abuse of this police power.<sup>65</sup>

Lastly, the enforcement component can be strengthened by creating a U.N. Social Justice Agency staffed by professional experts and designed to adjudicate those violations of human rights so egregious that they are a threat to world peace.<sup>66</sup>

Dr. Ferencz concludes his book by stressing the role that education, the media, and public opinion must play in his blueprint for change.<sup>67</sup> He correctly points out that the Security Council can be made more responsible if this is what the public demands, since peace is good for business and it is self-interest which drives human behavior.<sup>68</sup>

The end of the Cold War has resulted in enormous political upheaval. The United Nations, now in a position to have a

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<sup>59</sup> See *id.* at 120, 125 (discussing problems associated with imposing sanctions).

<sup>60</sup> *Id.* at 323-24.

<sup>61</sup> *Id.* at 129.

<sup>62</sup> *Id.*

<sup>63</sup> See *id.* at 333 (stating that "[w]hat is required is a new organ of the Security Council that can handle all peace-maintenance problems in an orderly, planned, dispassionate and professional way—free of the shackles of national, regional or UN politics").

<sup>64</sup> *Id.* at 328-29.

<sup>65</sup> *Id.* at 331.

<sup>66</sup> *Id.* at 335.

<sup>67</sup> *Id.* at 362-371 (discussing strategies for making the system work).

<sup>68</sup> See *id.* at 377-78.

meaningful role in the new world order, is hampered in its ability to do so by outdated organizational constraints under which it functions. Dr. Ferencz' book provides a forward-thinking, positive approach toward helping the U.N. meet the goals underlying its Charter.