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The Prudent Peace: Law as Foreign Policy

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THE PRUDENT PEACE: LAW AS FOREIGN POLICY. By *John A. Perkins.* Chicago: The University of Chicago Press. 1981. Pp. xvi, 246. $22.

The peaceful resolution of international conflicts is a subject of increasing concern in this nuclear age.[1] John Perkins' *The Prudent Peace* addresses this vitally important issue by bridging the gap between international law and international politics.[2] Drawing from both international law and political realism,[3] Perkins proposes a method of conflict resolution requiring equal treatment of nations and third-party binding adjudication of intractable disputes. Perkins argues that the United States' unilateral subscription to such an international legal system would increase both the effectiveness of American foreign policy and the likelihood of obtaining peaceful settlements of international disputes.

Part one of the *Prudent Peace* examines the role of law in foreign affairs. Perkins initially sets forth three essential elements of a legal system designed to resolve international conflicts. He argues that the system must provide for binding third-party adjudication and that it must produce rules that reflect the political realities of the time[4] and that apply equally to all nations (p. 4).

With these legal requirements established, Perkins discusses the interaction of international law and "the realities of foreign policy" (p. 15). Perkins believes that international law reacts to the international behavior of nations. He maintains that actions today in disregard of international law will lead to a tightening of the rule of law that will make future infractions harder to justify. In support of this contention, he notes that the United States' repeated intervention in the internal affairs of Latin American countries led the Monroe Doctrine to evolve into a general legal principle of nonintervention (pp. 7-150).

Perkins next argues that the international law is, and should be, a major consideration of American foreign policy. American adherence to emerging principles of law will serve the United States' self-interest, whereas actions in disregard of the law will result in misfortune. Perkins claims, for example, that the illegality of the Bay of Pigs operation hampered its success; it prevented the United States from effectively defending or supporting the invasion. In contrast, Perkins asserts that the legal underpinnings of the

1. *See, e.g.,* Sorenson, *Law: The Most Powerful Alternative to War*, 4 FORDHAM INTL. L.J. 13 (1980).

2. For a discussion of the differences between international law and international politics, see Boyle, *The Irrelevance of International Law: The Schism Between International Law and International Politics*, 10 CAL. W. INTL. L.J. 193 (1980).

3. Political realists believe foreign policy should be decided on purely practical grounds, and that law has very little, if any, role in foreign policy. *See generally* G. KENNAN, AMERICAN DIPLOMACY, 1900-1950 (1951); Morgenthau, *Diplomacy,* 55 YALE L.J. 1067, 1078-80 (1946).

4. For example, this legal system when confronted with a Persian Gulf crisis would recognize the necessity of an adequate flow of oil to the West.

United States' response to the Cuban Missile Crisis added legitimacy to American actions and may have provided the margin of success (pp. 33-35).

Perkins' historical treatment of this subject is not entirely convincing. His discussion of the Bay of Pigs fiasco and the Cuban Missile Crisis in relation to the doctrine of nonintervention is narrowly focused and fails to consider the political and military realities that affected the outcome of each event. Even more telling, Perkins' argument for American adherence to the law of nonintervention fails to explain the United States' successful "illegal" intervention in the Dominican Republic in 1965.

Perkins contends that America must accept a total commitment to international law to obtain its full benefits. Perkins discusses America's half-hearted commitment to law during the Vietnam war to illustrate his point. American intervention under the guise of defending South Vietnam's right to self-determination rang hollow when accompanied with America's refusal to adjudicate the Vietnamese right of self-determination. Perkins contends that this left the United States in a vulnerable legal position and accordingly diminished support for the war effort back home (pp. 40-46).

Although Perkins' theory may have some validity, his use of Vietnam as an example weakens his case. His conclusion that America's weak legal foundation for its involvement in Vietnam was the root of discontent at home overstates his case and fails to recognize domestic sources of discontent. As with his previous use of the Cuban Missile Crisis and the Bay of Pigs fiasco, Perkins has stretched historical evidence to prove his point.

The use of a legal system to resolve international conflict is, in Perkins' view, dependent on a military balance of power. The balance of power prevents one nation from dominating another and is therefore a prerequisite to an effective system of international law. Conversely, Perkins argues the balance of power is dependent on international law; the right of self-determination justifies intervention to prevent the world's precarious power balance from being forcibly changed. If the balance of power drastically shifts and threatens a nation's survival, Perkins recognizes that that nation may and should legally act to protect its legitimate self interests.

Part one of *The Prudent Peace* concludes with the argument that an effective international legal system must recognize principles of emerging law.[5] Perkins comments that formal international legal agreements evolve slowly and often fail to reflect present concepts of justice. The recognition of emerging principles of law will narrow this gap and will insure that the law coincides with modern concepts of justice (pp. 49-54).

The second part of *The Prudent Peace* discusses these principles of emerging law; specifically Perkins considers the issues of self-determination, nonintervention, regional security zones, international rights in strategic areas, and access to resources. Perkins emphasizes that emerging law should address practical problems and propose practical solutions.

In the third and final part of the book, Perkins advocates adherence to a system of law in foreign policy that offers a strategy for the resolution of

5. Perkins defines these as "those principles commanding international respect although not yet established as binding law, that are consistent with the charter of the United Nations and are of a character, merit, and acceptability that make them appropriate for recognition as law." P. 54.

conflict. The cornerstone of this strategy is a system of impartial claims adjudication. This adjudicative process must provide nations with a reasonable alternative to the use of force. Therefore, it should seek to resolve conflicts on the basis of principles that reflect the "felt necessities of the time" and apply equally to all (p. 144). These principles would not be stagnant, but instead would be formed during the process of conflict resolution (pp. 143-44).

Perkins proposes the formation of a legal tribunal to resolve international disputes. He suggests that the International Court of Justice appoint a five-member tribunal, and argues that this tribunal should have jurisdiction over all necessary parties willing to adjudicate their claims and should be the final judge of all substantive issues; the I.C.J. should review only procedural questions. While Perkins advocates that the tribunal be provided extensive powers of equitable relief, he believes that it should not control a nation's internal affairs (pp. 149-51).

Perkins argues that the United States should offer to submit disputes to this tribunal (pp. 137-43), believing that the commitment of the United States to international law will increase support for American policies at home and abroad. In support of his position, he notes that if the other party refuses to adjudicate the dispute or to abide by the tribunal's decision, the United States would reserve the right to protect its national interest by whatever means necessary.

While this is an appealing argument, it glosses over some practical considerations. First, the tribunal would base its decision on "emerging principles of law," even though these principles have not been clearly established. By committing itself to a legal system without a declared set of laws, the United States would run a substantial risk of receiving an adverse judgment. Second, the tribunal would be unable to enforce its judgment, though presumably a party favored by the tribunal's judgment could legally resort to force to effectuate that judgment.

Despite the shortcomings of this book, it does make a useful contribution to the existing international law literature. Perkins joins others in recognizing the importance of law within the sphere of international relations and proposing the peaceful resolution of issues before an international tribunal. Perkins contributes to the existing literature in two primary ways. First, he proposes that the United States unilaterally agree to submit its intractable disputes to an impartial international judicial body. This offer is, of course, dependent on the other party consenting to the tribunal's jurisdiction and agreeing to abide by the judgment. Second, he recognizes the importance of emerging principles of law and seeks to define these principles and incorporate them within the conflict resolution process. *The Prudent Peace* seeks to open the door for further discussions of peaceful alternatives for the resolution of international disputes. It deserves serious consideration.