

BOOK REVIEWS

FOREIGN POLICY; THE NEXT PHASE. BY THOMAS K. FINLETTER. New York: Harper & Brothers, 1958. Pp. 202. \$3.50.

Joseph S. Clark †

One of the difficulties of writing books about American foreign policy these days is that by the time the book is published the world has changed enough to make the author's survey obsolete, at least in part.

Thus, the crises in Jordan, Lebanon, Iraq and Quemoy all blew up after Mr. Finletter's excellent book first became available; and as this review is written public attention is directed at still another unforeseen crisis over the status of Berlin.

Nevertheless, the conscientious student of foreign affairs will want to read, or at least to scan, the 202 pages of this volume. Its author, former law professor, practicing attorney and once Secretary of the Air Force, is as well informed as anyone can be who has no present access to secret information. He writes incisively and clearly. The book is an elaboration of the Elihu Root Lectures given at the Council on Foreign Relations in New York City in the fall of 1957 as the first two Sputniks went into orbit.

Those Russian earth satellites were the outward and visible signs that we had lost our air atomic supremacy, and that a new phase was opening in our foreign relations. What our policies should be in this new phase is the subject matter of Mr. Finletter's book. The author outlines the policies the United States has adopted as it started out on its career of intervention in 1945; describes the radical changes which have taken place in the world scene since that time; and concludes that our policy has not kept up with these changes. "From here on," he writes, "we must move to a political and economic offensive, seeking to get what we want in the world rather than just stopping the Russians and Chinese from getting what they want." (p. 6).

In general, Mr. Finletter believes we should give a first priority to maintaining an air-atomic military "force so powerful and so well defended that it can accept a surprise attack by the Russians and have enough power left over that the Russians will not dare accept its counter blow." (p. 52). This will take far more money and effort than the Eisenhower Administration has shown any willingness to expend or make, despite the clear evidence cited by the author that the country's resources are more than adequate to meet the need.

Lower, but still important, priorities are to restore our ability to fight "brush wars," strengthen our antisubmarine defenses and make a start

† *Senator Clark, Democrat of Pennsylvania, has been an insistent advocate of greater flexibility in the conduct of foreign affairs.*

towards a civil defense shelter program. Here, too, more money will be needed than the present administration will ask for.

Mr. Finletter believes a calculated policy of secrecy has kept vital information about our military position away from Americans. "Once the people of the country know the facts they will insist that whatever is necessary shall be done." (p. 70).

Even while these steps are being taken we should, the author believes, move to strengthen the "grand alliance," that group of nations of which the United States, Britain and France are the core, but which includes not only the other members of NATO but all the other countries of the West.

At the same time, we should change our Asian policy from one of unilateral action based on crude self-interest to one based on "a common devotion to individual freedom and human rights in a common abomination of war." (p. 99). This, too, will call for substantial increases in the sums devoted to economic aid for underdeveloped countries, in fact, doubling the present appropriations.

This aid, Mr. Finletter believes, should be offered on a multilateral basis either through the United Nations or through regional associations formed for purposes of planning and administration. He suggests that "the principles of the U. N. Charter be made the bridge by which Asia and the West may be brought together to work in common." (p. 116).

Finally, we should seek a new approach to disarmament and peace. "We must be stubborn about not giving up the goal of disarmament but we must be more flexible in trying to get it." (p. 185). The United States should "make up its mind as to what it really would like to have happen and then . . . propose a complete plan, not just the first stages but all the other stages down through the last, to the final result we would like to have." (p. 187). The attack on war should be the central theme of all our foreign policy.

Space does not permit a discussion of the many specific suggestions with which Mr. Finletter fills in this broad general outline. Few will disagree with his major theses, although recurring crises in Europe, the Middle and Far East naturally tend to turn attention away from Canada, Latin America and Africa, where disturbing long-range developments call for the attention of first-class minds—attention which so far as outsiders can tell is not presently being devoted by top level executives in the State Department.

If more Americans would read this book than seem likely to do so, we might, perhaps, recover that sense of urgency without which we will never make the national effort necessary to both survival and the advent of world peace through world law. But as Mr. Finletter points out: "Within the United States major responsibility is with the Executive Branch and therefore with the President . . . in our form of government there is no substitute for the leadership of the Executive in such vital matters." (p. 194).

As a tired and complacent administration enters its last two years, unwilling either to tell our people of the deadly peril in which we live or to ask us for the financial sacrifices necessary to survive in freedom, there seems little prospect that Mr. Finletter's prescription will be administered to the patient until new leadership moves into the White House. Let us hope that by then it will not be too late.

WORLD PEACE THROUGH WORLD LAW. BY GRENVILLE CLARK AND LOUIS B. SOHN. Harvard University Press, 1958. Pp. xxxvi, 540. \$7.50.

Wolfgang Friedmann †

After years of study and discussion with many interested persons and groups, Mr. Grenville Clark and Professor Sohn have now followed up their earlier document, entitled *Peace Through Disarmament and Charter Revision* (1953), with what the Introduction calls "a comprehensive and detailed plan for the maintenance of world peace in the form of a proposed revision of the United Nations Charter."

It should be said at once that the United Nations which the authors envisage and for which they submit an elaborate charter has little more in common with the present organization than the name. For theirs is a world organization to which the nations of the world will have surrendered many of the essential sovereign powers which they have hitherto jealously guarded: control over defense and, indeed, the entire principle of national armed forces is to be totally abolished; submission of disputes to a world authority which may be either the International Court of Justice, or a newly to be created World Equity Tribunal is to be compulsory; control over their finances is to be exercised to the extent that a certain proportion of national revenue will be allocated direct to the United Nations, and collected on its behalf by the national revenue authorities from the individual taxpayer. These are but some of the most salient features of a plan which is entirely inspired by and predicated upon the idea of world unity and world authority over the nations. Granted this assumption, *World Peace Through World Law* is an imposing work, a tribute not only to the idealism, but also to the comprehensive and careful research and draftsmanship of the authors.

The authors explicitly base their work on six underlying principles:

- (1) the need for an effective system of *enforceable* war prevention;
- (2) the constitutional and statutory prohibition of the use of force by any nation, except for self-defense;
- (3) the interpretation and application of world law by world judicial tribunals;

† *The reviewer, Professor at Columbia Law School, is the author of Introduction to World Politics.*

(4) the creation of a permanent world police force;

(5) the complete disarmament—as opposed to mere reduction or limitation of armaments—of all the nations;

(6) an effective world machinery to mitigate the vast disparities in the economic conditions of the various parts of the world.

To implement these sweeping principles, the present principal organs of the United Nations are retained—although for the present Security Council there is to be substituted an Executive Council, composed of seventeen representatives chosen by the General Assembly itself. The revised General Assembly will be given certain legislative powers limited to matters directly related to the maintenance of peace, while retaining the broad powers of recommendation that it now possesses. The main problem is, of course, representation, in such an Assembly, of the nations of the world—now approaching one hundred—in such a manner that a reasonable balance is attained between representation according to population and the necessary check on the giant nations in the interest of the many smaller nations. For this purpose, the authors divide the nations into seven categories, from those over 140 million to those under 0.5 million, and the number of representatives is accordingly graded from a maximum of 30 for the four largest nations with more than 140 million people, to 1 for the two smallest nations with less than half a million people. A majority of all the representatives must be present in order to constitute a quorum, and no decisions shall be made by less than a majority of the representatives present and voting, while for certain “important questions,” a special majority shall be required, and in some specially defined cases even an affirmative vote of four-fifths of all the representatives.

The United Nations Peace Force is to be a standing professional army with a strength of between 200,000 and 600,000 as determined by the General Assembly, and a somewhat larger reserve force. It is to be the only military force permitted anywhere in the world after the process of national disarmament has been completed, and it is, of course, entirely under the authority of the United Nations itself. World judicial authority is to be exercised essentially by two organs, the present International Court of Justice for legal questions—which are redefined by the authors—and a World Equity Tribunal—somewhat reminiscent of the Equity Tribunal plan proposed in the thirties by the late Lord Davies. While the plan does not deal with the problem of war criminals as such, it provides for regional courts which will try individuals and private organizations accused of offenses against the Charter, and from their decisions an appeal will, in certain cases, lie to the International Court of Justice.

An imaginative proposal is that for a World Development Authority which, through grants-in-aid and interest-free loans, is to assist in the economic and social development of the underdeveloped areas. Despite

its importance and the proposed scale of its operations, this is perhaps the least revolutionary proposal, for it can build on the combination of functions at present exercised by the World Bank, the International Finance Corporation, the proposed Inter-American Development Bank, the United States Economic Development Loan Fund, and a variety of assistance measures which have succeeded each other since the end of the war.

This brief and selective summary cannot do justice to the care and detail with which the proposals are worked out.

Annex V, for example, deals in detail with the revenue system of the revised United Nations. Not only is it designed to make the United Nations independent of the yearly ups and downs of a multitude of national allocations, which create budgetary uncertainty, but it suggests an apportionment scale based on the ability to pay of the member nations. This is based on the gross national product of each member nation less a "per capita reduction" determined by multiplying the estimated population of each nation by a sum fixed from time to time by the General Assembly, but not less than fifty per cent or more than ninety per cent of the estimated average per capita product of the people of the ten member nations with the lowest per capita national product. From this "adjusted national product," the budget share of the nation is attained by the relation between its own adjusted national product and the sum of those of all the member nations, with a maximum contribution for any one nation of two and one-half per cent of the gross national product, for the year. While, under this scheme, the wealthier nations, such as the United States, will continue to pay a major share of the budget, proportionately even greater than now, this may well be justified by the growing discrepancy of the living standards between the developed and the underdeveloped nations. The budget of the new United Nations will be immensely greater than the present one, but this will be mainly due to the cost of the United Nations force, which, it will be remembered, will be a substitute for the much more costly national armed forces, and the World Development Authority.

This entire plan is not designed by the authors as a utopia; it is considered by them—as Mr. Clark points out in his Introduction—as a realistic practical prospect, attainable within a few years. The sole justification for this almost incredibly optimistic estimate is the magnitude of the destructive power of modern nuclear weapons, coupled with the balance of pressures which the major antagonistic powers can and do exercise upon each other. This assumption is to some extent shared by many leading military and political writers, though very few of them draw the same conclusions as the authors. They regard, on the contrary, the maintenance of a balance of terror as a second best, but the only attainable means of preserving a precarious peace.

It would be an insufficient answer to say that this plan is not "realistic," that it is too bold and revolutionary in its sweep. It can be quite true at times that, as the authors believe, only a radically new and bold approach

offers a solution, where more modest proposals fail to cope with the magnitude of the emergency. The real criticism—and it is, in this writer's opinion, a decisive one—must go deeper. At no point do the authors even attempt to challenge the assumption that our world is, in fact, based on a unitary concept of world order, however imperfectly realized. Nations, such as the United States, the U.S.S.R., China, India, Israel or Brazil, are compared in numbers, but not in terms of political values or interests. Out of the universal interest in peace, there is supposed to spring a community of interests which will overcome all the immense obstacles to world order through world law. The problems which occupy most of us—the relation of new partial supra-national organizations of the type of the European Communities or the Soviet political and economic bloc, or NATO, to wider international organizations; the political and legal tensions between socialist and free-trading systems; the relative weight of the intense though often irrational nationalist aspirations of the many new small nations, and the overwhelming power preponderance of the few big nations which may, however, act with more restraint than many small States; the possibilities of nations with widely divergent political and constitutional structures and habits working together in an organization with vastly increased powers—these and many other questions of this kind are solved by ignoring them completely. To be aware of their existence, and, indeed, of their overwhelming importance in our contemporary international society, is not to be lacking in idealism or boldness. There are alternatives to the lack of imagination, which simply stands by the established order, and a plan which robustly ignores the basic political and social factors that move nations and people, or regards them as totally irrelevant as compared with the interest in the maintenance of peace. This is not the place to elaborate alternative, and much more modest, concepts of world order in our time. But to one reader at least of this high-minded and, in many ways, admirable effort, it seems that it will not relieve us from the painful, plodding, and so much more complex task of laboriously and precariously climbing, like the mountaineer on a steep ice wall, from one step to the next, hoping that we will not slip and fall into the abyss, but eventually and after innumerable efforts reach the peak.

THE LAW OF WATER ALLOCATION IN THE EASTERN UNITED STATES. EDITED BY DAVID HABER AND STEPHEN W. BERGEN. New York: The Ronald Press Company, 1958. Pp. xxxviii, 643. \$7.50.

Corwin W. Johnson †

The subject of water rights has long been a matter of great concern in the arid and semi-arid western United States, where elaborate and com-

† *Mr. Johnson, Professor of Law at the University of Texas, has written widely on the law governing the development and use of natural resources.*

plicated systems of water rights, involving in most states a large measure of administrative control, have been developed during the past century. A much different situation has prevailed in the humid region lying eastward from the Dakotas, Nebraska, Oklahoma and Texas. There a relatively simple system of water rights, administered by the courts with a minimum of administrative action, has developed slowly. Until a decade ago, it seems to have been generally assumed that this passive, case-by-case approach to the allocation of water was sufficient for an area where there seemed to be water aplenty for all and where conflicting claims to water seldom occurred. But in recent years this assumption has been challenged, there having been legislative proposals in several eastern states which strike at fundamental aspects of the existing system and are patterned after western measures. Probable causes of the dissatisfaction: alarming predictions of phenomenal increases in demands for water during the next quarter-century and recent droughts in some eastern areas, exposing the inadequacy of a number of water supply facilities and causing farmers to take a greater interest in supplemental irrigation.

It seemed to the Conservation Foundation that these conditions called for a searching analysis of the law of water rights in the eastern states. Aided by grants from the Rockefeller Foundation, The Conservation Foundation arranged for the writing of a dozen papers, followed by a three-day discussion involving thirty-nine participants. *The Law of Water Allocation* consists of these essays and an edited transcript of the discussion.

The entire project was planned, supervised and edited by David Haber (Professor of Law at Rutgers) and Stephen W. Bergen (Assistant Director of Research, The Conservation Foundation). Four of the essays are analyses of the water law of selected states—Massachusetts (by law professor Charles M. Haar and lawyer Barbara Gordon), Michigan (separate papers by law professors Richard Arens and David Haber), and North Carolina (by lawyer-economist Harold H. Ellis). Clyde O. Fisher, Jr., lawyer, is the author of two essays on the broad subjects of “Western Experience and Eastern Appropriation Proposals” and “Due Process and the Effect of Eastern Appropriation Proposals on Existing Rights, With Special Emphasis on the Michigan Proposal.” The contributions of disciplines other than law are also included here. Economists S. V. Ciriacy-Wantrup and Nathaniel Wollman have submitted separate papers dealing generally with the relationships between water allocation and economic theory. There is also a presentation of the views of an hydrologist by Harold E. Thomas. Three papers focus upon the problems of local geographic areas: “Water Allocation Under the Appropriation Doctrine in the Lea County Underground Basin of New Mexico” (by lawyer Charles D. Harris); “Some Economic and Policy Aspects of the Water Use Problem in the Paw Paw Basin” (by economist Raleigh Barlowe); and “Technical Aspects of Water Management Practices for the Paw Paw Basin” (by hydrologist Norman F. Billings).

Although the states of Massachusetts, Michigan and North Carolina were singled out for detailed study, and the residents of those states accordingly would be especially interested in this volume, the problems discussed in the papers on those states are common to many eastern states. Many of the papers were not tied to a single state.

The important questions probed in this undertaking have been stated by Professor Haber:

"This study attempted to investigate to what extent a change to western water allocation law would be desirable. Among the questions considered were: Is any change in water allocation law necessary? Are there alternatives to western law better suited to eastern conditions? Would a change to western law or similar changes violate constitutional guarantees of due process? Is a change in the law really a solution or partial solution for scarcity conditions in the East, or should the eastern states preferably focus their attention on the development of usable water supplies through dams and other public projects?" (p. xxviii).

Professor Haber does not claim that final answers to these questions were produced by this study. One could say with justification, however, that this study will be helpful in finding the answers sought.

On the whole, the material in this volume is characterized by a careful avoidance of exaggerated claims. The obvious faults of the riparian system—especially its lack of substantial protection of investment and its wasteful confinement of water use to "riparian land"—are pointed out, and it is generally concluded that the riparian system is inferior to prior appropriation, but attention is also called to some good features of riparianism. Moreover, it is recognized that the seriousness of these faults depends upon their impact upon the behavior of water users and that this cannot be determined without field investigation. The importance of this observation is emphasized by Professor Haber's confession that he is unable to understand why water rights litigation in the eastern states has not increased during recent years, in the face of mounting demands for water and periodic droughts (p. xxvii).

Similarly, the prior appropriation system of the West is not presented as a panacea. Its defects—especially its tendency to deny water to newcomers regardless of the utility of the proposed uses—are given due consideration along with its virtues. Important among the latter are protection of investment, absence of restriction of water use to land contiguous to the source of supply, and the existence in most western states of administrative machinery allowing for policy-making in the public interest and providing for effective enforcement. Fisher is rather critical (too critical, according to economist Ciriacy-Wantrup) of the imperfect handling of waste problems in the West (pp. 95-139). Haar and Gordon suggest that western administrative devices are not inextricably tied to prior appropriation and

that the former might be adopted without the latter (p. 47). There also seems to be general awareness that "the prior appropriation system" really consists of many variant systems in the western states and that development of those systems is a continuing process.

Due consideration is given the constitutional problems created by curtailment of riparian rights to make room for prior appropriation or some other system. This reviewer would not quarrel with the conclusion that the "due process objections to the adoption of western law in the East" are "not insurmountable, provided sufficient need could be shown." (p. xxxiv). Perhaps more serious than the risk of invalidation of such legislation on the due process ground are the difficulties involved in an attempt to combine the riparian and appropriation systems in a manner which will overcome the constitutional hurdles and at the same time be workable. It being too late for the eastern states to reject riparianism in its entirety, some form of combination would be needed if appropriation is to find a place in the East. The experiences of western states which have tried to ride both of these horses are not reassuring.

While dealing with the central problem of this study, the writers and discussants have made important contributions to the understanding of water problems everywhere. This is particularly true of the treatment of the fundamental subjects of the economics of water allocation, the extent to which the market should be allowed to allocate water, and relationships between development and water rights.

As is true of most collections of contributions from various authors, this volume is marked by uneven quality. Some of the material included here seems to have little bearing upon the questions which the study was supposed to answer. See, for example, the essay by Harris involving a New Mexico physical situation not likely to be duplicated in the East. A few contributions to this volume add little, if anything, to the existing literature. These shortcomings, however, are far outweighed by the merits of the volume, which is one of the best studies of water law policy yet produced.