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BOOK REVIEW

REVITALIZING INTERNATIONAL LAW. Richard A. Falk. Iowa, U.S.A.: Iowa State University Press, 1989. Pp. xix, 241. \$27.95.

*Reviewed by Dr. Ranee K.L. Panjabi**

This is vintage Falk, a compilation of some of his best essays, initially published mainly in leading academic journals between 1975 and 1988. For those who avidly read each new article by Falk as soon as it is published, this book is disappointing because there is no new material, except for his brief Introduction. For students of international law who might not be all that familiar with Falk's very interesting views, this book would be extremely useful in that it presents some of his leading ideas in one handy source.

While Falk wrote his brilliant assessments on the basis of world events at the time (largely during the early and mid 1980s), his conclusions remain pertinent, even if his supporting material is somewhat outdated. In view of the fact that this book is a compilation of pre-published material, this Review will focus on Falk's conclusions and suggestions—the vital contribution of his scholarship.

In 1981 Falk asserted: "Never have we needed international law so badly to deal with fundamental problems of order and justice in the world, and yet never, at least in this century, has the situation and outlook for international law seemed so bleak."¹ That assessment holds true for 1990. While a wonderful rash of democracy is erupting across the globe, uncertainty, anxiety, and mutual suspicion continue to dominate the minds of policy makers in a number of countries. If democracy is to survive, the world will have to address the problems of social injustice, economic deprivation, and racial tension. Minorities, freed from the fearful silence which accompanies oppression, are now clamoring for a right to self-determination and nationhood. Soviet President Mikhail Gorbachev's challenge in Lithuania is not so much in acceding to secessionist tendencies as in adjusting a monolithic bureaucratized Communist system to the sud-

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¹ R. FALK, *REVITALIZING INTERNATIONAL LAW* 60 (1989).

den demands for freedom and human rights. The fact that (at the time of this writing) the whole world is watching Lithuania confirms the global nature of politics today. Few nations can argue in favor of noninterference by the world in their domestic affairs. Libya's chemical plant, Iraq's nuclear facility, and Lebanon's factional groups all generate international interest and concern. In effect, while the planet still subscribes to the nation-state system, in essence, the world is being transformed into a unit which on one level of human consciousness transcends narrow national boundaries. On this level, as Falk suggests, "The dynamic of increasing interdependence associated with technologies that shrunk time and space, an uncontested reality of modern times, inevitably transnationalizes international life and strengthens bonds of reciprocity."²

It is only through the strengthening of international law and through increasing dedication and commitment to its principles that we can hope, in this age of transition from totalitarianism to freedom, to achieve the fulfillment of the ideals of the democratic revolutions of recent years. The survival of these fledgling experiments in freedom will require the vigilance and the assistance of established democratic states. If the concept of the "Free World" is soon to encompass much of the planet, effort, hard work, and a willingness to look beyond the myopia of nationalism to the clearer realities of an international outlook are required.

According to Falk,

[I]nternational law and lawyers can play a significant and beneficial role during this period of transition, but only if they become sensitive to the wider process of change under way in international society and, more controversially, if they give self-conscious support to a set of explicit world-order goals that structure both the means and the ends of transition.³

The global perspective is not merely desirable. Given world events and the rapid pace of change, it becomes imperative. As Falk bluntly asserts: "What was 'realism' a generation ago when the state system was able to deal adequately with the main problems of the day becomes 'crackpot realism' in the current world setting."⁴

The most enduring value of Falk's scholarship may well lie in his proposals and suggestions to implement the global reform program concerning which he has written extensively. For Falk, the implementation of global reform will require determined effort by international lawyers. Accordingly, he makes:

[A] direct plea to the international legal profession. . . . [A] normative plea that challenges the implicit conservatism of statism
[A] plea for international lawyers to stop acting as if their most im-

² *Id.* at xvi.

³ *Id.* at 3.

⁴ *Id.* at 7-8.

portant task were to clarify the rights and duties of the various passengers on the planetary cruiseship Titanic. It is basically a plea to join forces with an infant movement for global reform It is a plea to participate in history . . . because of personal commitment to the future of the human species and the fate of earth.⁵

The concept of global interdependence has already been widely accepted in light of the critical energy needs of the planet, the problem of creating a stable financial system in spite of appalling economic disparity, and the growing demand for an ever-shrinking supply of basic resources.⁶ The problem of endangered species, environmental pollution (particularly acid rain), and the gap in the ozone layer all demand international law solutions. The efforts of organizations like Amnesty International and the Red Cross have made human rights issues a world-wide concern.⁷ The global crises described by Falk in the 1970s continue to haunt the world in the 1990s. Falk's proposed solution is:

[T]o proceed on a *transnational basis* to seek *structural relevance* for a set of *reformist goals* that emphasize peace, the elimination of poverty, the promotion of social and political justice, and the achievement of ecological balance (i.e., both conservation of resources and enhancement of environmental quality).⁸

The task of the international lawyer in the effort to realize this solution will be to discern, evaluate, and utilize "trends toward a new system of global order"⁹

Educators also have a role to play in the process. As Falk urges, "[f]rom an educational perspective, . . . what is now needed is an approach to international legal studies that is anchored in the statist paradigm but is alert to an emergent world-order paradigm."¹⁰

It is apparent that Falk hopes that the sustained efforts of citizens around the world will fill the "normative vacuum" which prevails.¹¹ For the citizen, a mental adjustment of loyalties is in order, a commitment "that allows part of our sense of participation to be citizens of the globe as well as citizens of particular communities in the world."¹² As Falk stated in a 1982 article, "Feeling, thinking, and acting from a planetary perspective is what world order politics is increasingly about."¹³ The extent of enthusiasm in certain communities in the United States and Canada for recycling and the success

⁵ *Id.* at 21.

⁶ *Id.* at 26.

⁷ *Id.* at 45.

⁸ *Id.* at 36 (emphasis in original).

⁹ *Id.* at 36-37.

¹⁰ *Id.* at 43.

¹¹ *Id.* at 62.

¹² *Id.* at 72.

¹³ R. FALK, *Contending Approaches to World Order*, in *TOWARD A JUST WORLD ORDER* 171 (1982).

of the "Green" movement to save the environment testify to the growing popularity of the sense of global responsibility.

Unfortunately, such initiatives remain largely confined to the wealthy developed nations. For much of the poverty-stricken Third World, development at almost any environmental price is still the top priority. While the world, in Falk's thinking, may be "objectively moving toward this global phase,"¹⁴ there are many stragglers in the march, whose perceptions are statist rather than planetary.

Falk's concern with saving the environment is reflected in his 1984 article *International Law and Environmental Disruption by Military Means*, which is included in this book.¹⁵ He alerts readers to the seriousness of environmental destruction during peace time. In addition, Falk cautions that deliberate natural devastation during war is a phenomenon about which to be equally concerned. The dictates of military necessity may prevail in a period of conflict, despite the caution of the 1982 World Charter for Nature¹⁶ adopted by the General Assembly of the United Nations by a vote of 118 in favor, 1 against, and 18 abstentions, with the United States casting the sole dissenting vote.¹⁷ The Charter seeks to "minimize significant risks to nature" during a war.¹⁸ The 1977 Geneva Protocol I also calls for the protection of the environment and "prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby prejudice the health or survival of the population."¹⁹ The use of chemical weapons by Iraq in its war against Iran demonstrates the seriousness of this problem.

Falk proposes a plan for the "[f]ormulation and advocacy of a convention on ecocide,"²⁰ which would designate ecocide as a crime of state. In his draft of a proposed Convention on Ecocide, he asserts that ecocide is a crime against international law. Falk would remove leaders guilty of commission, incitement, conspiracy, or complicity as regards this crime, and charge individuals for any such action.²¹

Underlying Falk's rather strong proposals is a conviction "that governments need to be restrained from within on both pragmatic and normative grounds."²² His aim is to rely on a combination of "judicial activism" and "citizen initiative" to curb the militaristic ten-

¹⁴ R. FALK, *supra* note 1, at 80.

¹⁵ *Id.* at 167-95.

¹⁶ *Id.* at 173 (citing *World Charter for Nature*, G.A. Res. 37/7, 37 U.N. GAOR Annex (Agenda Item 21) at 1, U.N. Doc. A/37/L.4/Add.1 (1982) [hereinafter *World Charter for Nature*]).

¹⁷ *Id.*; see also 37 U.N. GAOR (48th mtg.) at 843, U.N. Doc. A/37/PV.48 (1982).

¹⁸ R. FALK, *supra* note 1, at 173 (quoting *World Charter for Nature*, *supra* note 16).

¹⁹ *Id.* at 175.

²⁰ *Id.* at 179 (emphasis in original).

²¹ *Id.* at 187-93.

²² *Id.* at xv.

dencies of the nation state.²³ The resort to violence is one statist problem-solving device which has to be curbed and curtailed. Believing that "[w]ar has become as antiquated in the twentieth century as slavery was in the nineteenth century, and there is a great latent willingness on the part of peoples of the world to join in an abolitionist struggle of this sort,"²⁴ Falk calls for the creation of a "Magna Carta for the Nuclear Age" with greater emphasis on international law.²⁵

He challenges the traditional arguments in favor of nuclear weapons for their deterrent capability and points to the likely "dangers, risks, and costs of continuing" on the nuclear path,²⁶ with the added threat posed by "the possibility of additional political actors, including dissident armed groups, or even criminal gangs" acquiring nuclear weapons.²⁷ The recent effort by Iraq to acquire Western nuclear triggering devices is indicative of the seriousness of the global risk involved.

Falk's opposition to nuclear weapons is not merely pragmatic. He believes that such weapons should be opposed on grounds of principle. The price is too high. As he explains:

[P]eace in the First World has been achieved partly at the expense of tremendous militarization and accentuation of turmoil and conflict in the non-Western Third World. The rather disturbing pattern that has emerged in the nuclear age is that the white, prosperous part of the world has fundamentally lived at peace while the nonwhite, poorer parts of the world have done 99 percent of the fighting and dying and will continue to do so. In effect a kind of global apartheid exists when it comes to issues of war and peace, which is partly a consequence of this kind of technology.²⁸

It is this reliance on legal principle which also leads Falk to assert that "the atomic attacks against Hiroshima and Nagasaki should have been clearly repudiated."²⁹ This view is still highly controversial nearly half a century after the dropping of those atom bombs.

Falk supports the following ideas for the creation of a "beneficial international law regime for nuclear weapons":³⁰

1. [P]ublic support for the idea that any actual use of nuclear weapons would violate the international law of war and would constitute a crime against humanity;
2. public support for the rule that a first use of nuclear weapons, even in a defensive mode in response to or in reasonable anti-

²³ *Id.*

²⁴ *Id.* at 81.

²⁵ *Id.* at 80.

²⁶ *Id.* at 71.

²⁷ *Id.* at 113.

²⁸ *Id.* at 70-71.

²⁹ *Id.* at 111.

³⁰ *Id.* at 118.

pation of a prior nonnuclear armed attack, would violate international law and would constitute a crime against humanity;

3. it follows from (2) that weapons systems (even at the research and development stage), war plans, strategic doctrines, and diplomatic threats that have first-strike characteristics are per se illegal and that those political leaders, engineers, scientists, and defense workers knowingly associated with such first-strike roles are engaged in a continuing criminal enterprise;

4. a definite consensus that second or retaliatory uses of nuclear weapons against cities and primarily civilian targets violate international law and constitute a crime against humanity;

5. a clear obligation, recognized by all nuclear-weapons states and by other states as well, to pursue arms control in the direction of minimizing the role of nuclear weapons in conflict behaviour through negotiations in good faith; this obligation is a provision (Article VI) of the widely ratified Non-Proliferation Treaty and is embodied in general terms in the Charter of the United Nations and in a variety of formal resolutions adopted over the years by the General Assembly; and

6. a definite mandate directed toward citizens to take whatever steps are available to them to achieve a law-oriented foreign policy for their own country, including, as both conscience and good sense dictate, nonviolent acts of civil disobedience and efforts to persuade members of all branches of government to overcome the gap that separates the normative consensus of the public as to the illegality of the use of nuclear weapons from prevailing official policies.³¹

This is a forthright, comprehensive blueprint. Inevitably, the ideas appear idealistic and, in the context of statist politics, largely unachievable, at least in the foreseeable future. The criminalization of aspects of nuclear involvement and the emphasis on individual liability militate against the serious consideration of these approaches. However, the idealism of Falk's perspective in no way diminishes its significance or even its utility. Every civilization needs its philosophical sages to point to new directions which mankind may not in fact follow for a few centuries. Without the charted path, however, there would be no road to follow. Given the prospect of total destruction, the stakes are very high. As Falk asserts: "In this period there can be either a breakdown or a breakthrough."³²

³¹ *Id.* at 118-19.

³² *Id.* at 95.