

Richard Falk:

The costs of War: International Law, the UN, and World Order After Iraq,
Routledge, Taylor & Francis Group, New York, 2007, 216 p.

Being a part of the social world, international law is not closed, nor isolated system, but on the contrary, it is in intimate interaction with international relations and politics. According to many lawyers, this struggle between law and politics has traditionally been considered successful (e.g. Henkin, Slaughter). The optimism of classical concepts of international law has been even strengthened after the end of the Cold War. According to many expert opinions, international law and international institutions it has created were able to gain significant importance, up to, some sixty years ago, unthinkable extent. However, this opinion wasn't shared by everyone. Some International Relations experts, such as realists, among others, see international law solely as a foreign policy tool in the hands of sovereign international actors who try to secure their own survival and prosperity in a dangerous environment. The law known and described in the realm of nation states has according to the realists, no place in international arena without transnational authority. What is then the role of international law in relations among states? How does the international law work?

New concepts of international law were created during the 1990s. They were, in opposition to the classical international law scholarship, more focused on the functioning of the international law and they explored epistemological questions associated with its study (e.g. Goldsmith, Posner, 2005).

Strictly normative approach to law and politics

The book of Richard Falk *The Costs of War: International Law, the UN, and World Order After Iraq* is not interested in above mentioned developments in the scholarship of international law and uses strictly normative approach instead. The goal of the book is to address the effects of the war in Iraq for the UN and for international law as well "in highly critical terms". Nevertheless, the variety of topics in the book is much wider and includes views on humanitarian intervention, war in Kosovo, war in Vietnam, the role of civil society in international relations and in the international law, role of the UN in Iraq and the trial of Saddam Hussein. The author is interested in all of these topics (among others), he nonetheless does not focus on them in more detail. The goal of the book is the critique of the U.S. politics and George W. Bush administration in particular.

Richard Falk is Professor of international law, who taught for example at the Princeton University and presently at the University of California, Santa Barbara. Since 1960s, he has been interested in and published about connections between law and politics. Falk was well known for his critique of American intervention in Vietnam and during the 1990s he strongly condemned the Israeli policy towards

Palestinians. He worked for the UN on senior positions¹ and was even expelled from Israel in 2008 due to his critique of the country when he compared Israeli steps to the Nazis.

The book *The Costs of War* is divided into thirteen chapters which look at the Iraq war from various perspectives. The text consists of chapters on just war, politics of the USA towards Iraq during the 1990s, democratization of the Middle East, role of the UN in Iraq, “demystification” of the war in Iraq, trial and execution of Saddam Hussein, relationship between legality and legitimacy of the use of force, humanitarian intervention, criminal liability of politicians and the role of “global” civil society in the struggle for better world. The book was probably written during 2006 when the U.S. government tried to stop sectarian violence in Iraq with the change of tactics and addition of troops (so-called “Surge”). This year was probably the worst for the country if we take the both stabilization of the country and casualties of violence into account.

In the first chapter of the book Falk presented the main goal of the text.

[...] there exist rising costs associated with the disregard of international law and the authority of the United Nations. These rising costs diminish the quality of world order from the perspective of stability and sustainability, and to the extent incurred by a global leader diminish respect for and deference to its leadership. (Falk, 2007, p. 7)

From first pages, Falk mentions his aversion to an unfair struggle between logic of equality included in the international law and the logic of power which dominates to relations among states. Falk is fed up with the weakness of law and its inability to overcome the power. As early as in the first chapter the book fights against the power politics, criticizes the only superpower of our age, the USA, and searches for any opportunity to disgrace the administration of former U.S. president G. W. Bush.

The critique of Falk’s normativeness

As we mentioned above, the author had presented a lot of arguments in the book and synthesized them into one big critique of the war in Iraq, the American foreign policy and the power politics in whole. The division of the text into chapters is more or less a formality, as all of the three main “dimensions” are the main interest of the author. Moreover, this structure doesn’t make reading of the book any easier. Sometimes it seems that the book holds together just by the underlying critique of the war.

The first central characteristic of the text which can be noticed by potential reader is a frequent use of moral arguments. Although the author is international law Professor, clear and palpable legal arguments are very rarely present in the book. We can find a lot of claims stating that the war in Iraq was illegal; that so called “no fly zones” in Iraq during 1990s were illegal; that trial of Saddam Hussein was

¹ In 2001 Falk worked for the Inquiry Commission for the Palestinian territories and since 2008 he has been the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

illegal; and so on, but any deeper legal argumentation or a disproof of contradictory opinions are almost completely missing in the book. Furthermore, the use of moral arguments is not truly convincing. There are a lot of moral claims and vague concepts in the book which are not properly explained, for example “the future of humanity”, “world public opinion”, “civilizational decadence” or “the interest of the mankind”. Even when the author’s goal is to present “normative costs of the war in Iraq”, the style of the argumentation is unconvincing. The general critique of the international politics is not based on a distinct approach or factual basis and author’s idealistic visions seem like out of reality. Falk proposed the “nuclear free Middle East”, “move towards *post-westphalian order*”, or the creation of the “global democracy”. This idealistic framework of the book resembles work of philosophers like David Held and is full of naive recommendations. In addition, Falk uses too many ideological “blame America” arguments resembling books of Noam Chomsky and others which turn Falk’s book into a pamphlet.

The second main characteristic of the text is Falk’s general critique of the American foreign policy. Everything, everywhere, [...] all was wrong. For example, Falk claims that the occupation of Kuwait by the Iraqi army in 1990 wasn’t serious enough to be solved by the force. In this case, the USA were too militaristic, impatient and influenced by the desire to destroy or weaken Iraq as a regional power according to Falk (p. 44). However, international use of force against Iraq in 1991 is broadly considered as an example of the successful collective action in defense of attacked UN member state. After six months of discussions and negotiations the use of force was authorized by the UN Security Council and supported by all important states in the region such as Saudi Arabia, Egypt, Syria and Iran. Nevertheless, Falk doesn’t consider these circumstances (as well as in other cases) and unconvincingly blame the USA for every badness in the Middle East.

Interesting thoughts and unexploited opportunities

Normative approach of Falk is not supported by strong factual basis and according to my opinion is unconvincing. However, the book *Costs of War* contains also some interesting parts and inspiring thoughts. These appealing topics of the book are not fully developed but they are interestingly opened and discussed on several pages.

One of these points is for example the relationship between democracy and capitalism; another is the question of the reliability of nuclear deterrence in the 21st century; while another being the question of international legal responsibility of states for terrorist groups harbored by them. It is not surprising that Falk criticizes Israel and the USA for fighting terrorist organizations like Hamas or Hezbollah but doesn’t question support of Syria and Iran to these groups. It is important to consider not just the responsibility of states fighting the terrorism but also states supporting it. There is no questioning of this kind in the book. Author doesn’t bother with important questions connected to the interpretation of the “military attack”, which

is of great importance for the rules contained in the UN Charter. Falk doesn't try to answer these fundamental questions and even doesn't mention them.

The most interesting and original part of the book is the tenth chapter where Falk contemplates difficult questions on the edge of legality and legitimacy. Falk is inspired by thoughts of Carl Schmitt, Giorgio Agamben (Università Iuav di Venezia) or David Dyzenhaus (University of Toronto) and writes about problems associated with the "state of emergency" and border cases between law and politics. Is it better to use broad interpretation of border cases and "save the legality", or is it better to acknowledge the existence of exception and illegality? Is quasi-legalistic way of dealing with border cases better, or is it better to let the interests clash and allow the regulation by power politics? Falk writes interestingly about these problems but deeper consideration of them would lead to brand new book.

Unconvincing and too normative

The book *The Costs of War* contains too little law and too much politics. Falk writes about too many things and problems but doesn't connect them in a meaningful way. As a result, his conclusions are not convincing. For example, Falk seeks the end of the "American project of global empire" and expects the "establishment of global democracy". However, the 9/11 terrorist attacks showed relative strength of unipolar power of the USA and neither of the two problematic wars and long stabilization of Iraq and Afghanistan could change that. Even eight years' period of globally unpopular US president did not bring the rise of other powerful states and their balancing against the supreme position of the USA (Hoder, 2010). Falk would be probably disappointed, but the fall of the USA and the emergence of global democracy is not happening.

Falk doesn't bother to present his idea of the alternative to the current world order in more detail which I consider problematic as well. Would the "global democracy" really be an ideal setting? Is it even possible to think about any global political system in terms of democratic governance? I don't think so and Falk's book didn't change my mind. *The costs of War: International Law, the UN, and World Order After Iraq* is really the "normative inquiry into the larger intentions and consequences of the Iraq War" and is written in "highly critical terms" as is written on the cover of the book. Other promised qualities of the book such as an inquiry into the contemporary international law or change of the UN system nonetheless remained unfulfilled.

Literature Cited

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