

REVISITING THE VIETNAM WAR AND INTERNATIONAL LAW

This collection of scholarly and critical essays about the legal aspects of the Vietnam War explores various crimes committed by the United States against North Vietnam: war of aggression; war crimes in bombing civilian targets such as schools and hospitals and using napalm, cluster bombs, and Agent Orange; crimes against humanity in moving large parts of the population to so-called strategic hamlets; and alleged genocide and ecocide.

International lawyer Richard Falk, who observed these acts personally in North Vietnam in 1968, uses international law to show how they came about. This book brings together essays he has written on the Vietnam War and on its relationship to international law, American foreign policy, and the global world order. Falk argues that only a stronger adherence to international law can save the world from future such tragedies and create a sustainable world order.

STEFAN ANDERSSON studied religion and philosophy at Lund University, Harvard Divinity School, the University of California at Berkeley, the University of Toronto, and McMaster University, where the Bertrand Russell Archives are located. In 1994, he defended his doctoral thesis in the philosophy of religion at Lund University; it was published as *In Quest of Certainty: Bertrand Russell's Search for Certainty in Religion and Mathematics up to "The Principles of Mathematics"* (1903). Andersson then turned to Russell's political activism and started a project about student protests against the Vietnam War and the Russell–Sartre Tribunal on the United States War Crimes in Viet Nam.

Revisiting the Vietnam War and International Law

VIEWS AND INTERPRETATIONS OF RICHARD FALK

Edited by

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University of Lund



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Charter of the United Nations
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Foreword

The Harmful Legacy of Lawlessness in Vietnam

Richard Falk

Forty years after the defeat of the United States in Vietnam, the central lessons of that war remain unlearned. Even worse, the mistakes made and crimes committed in Vietnam have been repeated at great human, material, and strategic cost in a variety of subsequent national settings. The central unlearned lesson in Vietnam is that the collapse of the European colonial order fundamentally changed the *effective* balance of power in a variety of North/South conflict situations that reduce the agency of military superiority in a variety of ways.

What makes this change elusive is that it reflected developments that fall outside the policy parameters influential in the leadership circles of most governments for a cluster of reasons. Most fundamentally, governmental geopolitical calculations relating to world order continue to be based on attributing a decisive causal influence to relative military capabilities, an understanding at the core of “realist” thinking and behavior. Within this paradigm, military superiority is regarded as the main driver of conflict resolution, and the winners in wars are thought to reflect the advantages of hard-power differentials. The efficiency and rewards of military conquest in the colonial era vindicated this kind of realist thinking. Europe with its dominant military technology was able to control the political life and exploit the resources of populous countries throughout Asia, Africa, and Latin America with a minimum of expenditure and casualties, encountering manageable resistance, while reaping the rewards of empire. The outcomes of World War I and II further vindicated the wider orbit of the realist way of thinking and acting, with military superiority based on technological innovation, quantitative measures, and doctrinal adaptation to new circumstances of conflict receiving most of the credit for achieving political victories.

The Vietnam War was a dramatic and radical challenge to the realist consensus on how the world works, continuing a pattern already evident in nationalist victories in several earlier colonial wars, which were won – against expectations – by anti-colonial forces. Despite these illuminating results of colonial wars after World War II, the American defeat in Vietnam came as a shock. The candid acknowledgment of this defeat has been twisted out of recognition to this day by the interpretive spins placed upon the Vietnam experience by the American political establishment. The main motive of such partisan thinking was to avoid discrediting reliance on military power in the conduct of American foreign policy and to overcome political reluctance in the American public to fund high levels of military spending. Until the deceptive military victory in the First Gulf War of 1991, the policy community in the United States bemoaned what it described as “the Vietnam Syndrome,” which was a shorthand designation for the supposedly unfortunate antipathy among the American citizenry to uses of hard power by the United States to uphold American geopolitical primacy throughout the world.

The quick and decisive desert victory against the imprudently exposed Iraqi armed forces massed on the desert frontier compelled Iraq to withdraw from Kuwait, which it had recently conquered and annexed. This result of war making was construed to vindicate and thus restore realist confidence in American war making as a crucial instrument of world order. On closer examination, this enthusiasm for war generated by the almost costless victory in the desert terrain of the First Gulf War involved a category mistake on the part of American leaders, or so it seems. It confused the continuing relevance of military capabilities in conventional war encounters between sovereign states with the declining utility of military supremacy in wars of intervention or counterinsurgency wars, that is, violent conflicts between a foreign adversary and a national resistance movement. It should have been clear to expert commentators that the Vietnam War was an example of a massive foreign intervention being defeated by a skillfully mobilized and efficiently led national movement, and in this respect totally different from the First Gulf War with respect to terrain of battle and what was at stake politically for the two sides.

Comprehending why the United States not only mishandled the war in Vietnam but also misconstrued its result is associated with earlier unlearned lessons that involved a misinterpretation of the lost colonial wars, most relevantly, the French defeat in the Indochina War despite the long and deep French presence. In retrospect it was evident to all that the French had failed to grasp the extraordinary resolve that informed the nationalist motivations of the Vietnamese that more than compensated for their military weaknesses, empowering Vietnamese society to endure severe and prolonged suffering to

achieve eventual political independence and national sovereignty, and the accompanying collective sense of national pride. Under the inspirational leadership of Mohandas Gandhi, India achieved independence and recovered sovereignty through a militant nonviolent struggle that by heroic perseverance overcame the grim and unscrupulous determination of 10 Downing Street to retain “the jewel” in the crown of the British Empire whatever the costs of doing so might turn out to be. Whether articulated as the rise of “soft power” or explained by reference to the imbalance between imperial commitments and nationalist perseverance plus local knowledge, the storyline is the same. The intervening foreign or alien power has lower stakes in such struggles than does an indigenous population effectively mobilized as a movement of national resistance. Colonial powers were slow to recognize that moral and political resistance to their presence was growing more formidable as the ideology of nationalism spread around the world. Resistance became more credible and withstood a series of prodigious colonial efforts to retain control over colonized peoples, but as these struggles proceeded the former colonial overlords were at varying stages forced to recalculate their interests, and mostly decided that it was better to give up their colonial claims and withdraw militarily than further commit to what had become a lost cause.

We can also interpret this historical turn as reflecting the disparities between the political will of a people fighting for self-determination and a foreign government linked to private-sector interests that are trying to retain the benefits of control over a distant country for the sake of resources, prestige, settler pressures, geopolitical rivalry, or a combination of these factors. From the end of World War II onward, this imbalance of political wills seems to offer the best explanation of the outcome of colonial wars or military interventions in counterinsurgency struggles. In this regard, the French defeat in Indochina should have delivered a cautionary message to the Americans. In fairness, it should be pointed out that the French themselves did not learn much from their Indochina defeat, going on to wage and lose an even more damaging colonial war in Algeria eight years later. The noted French journalist Bernard Fall tried hard to warn the Americans of the great difficulty of achieving a reversal of the French experience in its Indochina War.¹ The French had higher-than-normal stakes in Indochina. It was to a significant extent “a settler colonial” state, meaning that the French human and cultural presence had sunk deep roots that raised the stakes of withdrawal for France, an experience repeated on a larger scale in Algeria, but producing the same outcome but

¹ See Bernard Fall, *Street Without Joy: The French Debacle in Indochina* (Mechanicsburg, PA: Stackpole Books, 1961).

only after inflicting massive suffering on the native population. The American intervention in Vietnam was primarily motivated by the ideological rivalry of the Cold War, and did not have the high level of material and human interests that led the French to fight so hard to crush the Vietnamese and Algerian challenges to their colonial rule.

The “settler colonial” situation of Algeria and, even more so, South Africa and Israel complicate the overall analysis. In the event of settler control of the colonial state, the issue of foreign or alien rule becomes blurred, and the question of the identity of “the nation” is itself contested in ways that are very different from the situation of a colonial administration governing on behalf of a European home country or metropole without any pretension of belonging to the occupied nation as if it was one’s own. Each situation has its own originality. Jews in Israel who claim a biblical and ancestral mandate, and lack a default homeland option in a distinct territory, possess an intense political will to preserve their control of Palestine. The indigenous Arab population of Palestine also has a near-absolute will to resist dispossession from their native lands, and are unwelcome elsewhere in the region, having experienced vulnerability to changes in local circumstances and discrimination in neighboring Arab countries. For this reason, as reinforced by the special relationship of Israel with the United States, the Palestinians are waging an uphill battle in which their supposedly inalienable rights of self-determination have been for decades squeezed almost beyond recognition.²

Against this background, American reasoning about the Vietnam War displayed what later would be called “the arrogance of power,” that is, the blind faith in the efficacy of its hard-power superiority in conflict situations, whether nuclear, conventional, or counterinsurgent.³ The United States emerged from World War II as the dominant geopolitical actor in the world, having turned the tide of battle against Germany and Japan, as well as developing and using its monopoly over the ultimate weapon against Japan at the end of the Pacific war by dropping atomic bombs on Japanese cities. If Germany and Japan could not resist the American juggernaut, who could expect a country that Lyndon Johnson and Henry Kissinger called “a fourth-rate Asian power” to

² For a range of views, see Jeremy R. Hammond, *Obstacle to Peace: The US Role in the Israeli–Palestinian Conflict* (Cross Village, MI: Worldview Publications, 2016); Rashid Khalidi, *Brokers of Deceit: How the US Has Undermined Peace in the Middle East* (Boston: Beacon Press, 2013); Peter Bauck and Mohammed Omer, eds., *The Oslo Accords, 1993–2013* (Cairo: American University in Cairo Press, 2013). For the US/Israeli spin on the peace process, see Dennis Ross, *The Missing Peace: The Inside Story of the Fight for Middle East Peace* (New York: Farrar, Strauss & Giroux, 2004).

³ J. William Fulbright, *The Arrogance of Power* (New York: Random House, 1966).

resist and repel the American military machine? In the end, it was the greater Vietnamese will to persevere and their cultural resilience that overcame American firepower, as well as the unsurpassed anti-colonial *legitimacy* of the Vietnamese struggle, which contributed to the rise of a robust worldwide anti-war movement of solidarity, including within the United States. By the mid-1960s it had become increasingly evident that the side that won the legitimacy war would prevail politically, even if compelled to endure devastating losses on the battlefield and throughout the country.⁴

The most serious blind spot of the realist paradigm is its inability to take account of its weaknesses with respect to legitimacy as a dimension of political life. This became manifest in the Vietnam setting. The American claims with respect to its presence in Vietnam were essentially ideological and geopolitical: the importance of avoiding the spread of communism and thus containing the expansionist challenge being allegedly mounted by the Soviet Union and China. In opposition to such reasoning were the historically more influential claims in support of nationalism and the right of self-determination, especially in contexts involving struggles of a colonized people against their colonial masters. Vietnamese legitimacy claims with respect to the United States were further validated by the flagrant disregard of international law constraints and the impact of this disregard on world public opinion, which contributed to mounting American domestic opposition to continuing the war.⁵

This collection of essays, written in support of the relevance of international law to the shaping of American foreign policy during the Vietnam era, remains instructive as the twenty-first century unfolds. The United States has continued to pursue a dubious diplomacy punctuated by military interventions in distant countries, fighting a series of losing counterinsurgency wars after Vietnam, remaining unresponsive to the constraints on recourse to war and war fighting embodied in international law and the UN Charter. The realist consensus, regarding law and morality as dispensable and marginal impediments to sustaining geopolitical effectiveness in world politics, continues to govern the policymaking entourage that shapes war/peace decisions, and has produced a string of costly defeats (especially, Afghanistan and Iraq) as well as badly damaging the United States' reputation as a global leader, which in the end depends far more on its legitimacy credentials than on its battlefield

⁴ As argued in Richard Falk, *Palestine: The Legitimacy of Hope* (Washington, DC: Just World Books, 2014).

⁵ Clergy and Laymen Concerned About Vietnam, *In the Name of America: The Conduct of the War in Vietnam by the Armed Forces of the United States as Shown by Published Reports: Compared with the Laws of War Binding on the United States Government and on Its Citizens*, director of research, Seymour Melman (Annandale, VA: Turnpike Press, 1968).

pro prowess, but suffers most when it both loses on the battlefield and should further lose if law and morality are taken into account. It is the contention of these essays that adherence to international law is vital for world peace and in the national interest of all countries on all occasions, and this includes the United States.

So-called American exceptionalism operates as a free pass in Washington to disregard the rules applicable to other sovereign states but, as the recent history of international conflicts reveals, it does no favors to the United States or its people, although it may further the careers of diplomats and enhance the profits of special interests. Further, it seems evident that the continuing exercise of discretion to ignore legal constraints on the use of international force will be accompanied by repeated disappointments in the conduct of foreign policy for this most mighty country in all of world history and will also continue to erode its legitimacy credentials.

The 9/11 attacks gave the United States a chance to start over, undertaking a response to mega-terrorism within the framework of the rule of law that would have been a great contribution to building up the global rule of law and charting a new path toward sustainable global governance. Instead, a “war on terror” was immediately launched, which amounted to a declaration of permanent warfare, undermining the authority of international law and the UN, and perversely leading to the spread and intensification of terrorist activities. The defaming scandals of Guantanamo, Abu Ghraib, and “enhanced interrogation” together with the failure to prosecute those responsible for authorizing and perpetrating “torture” during the presidency of George W. Bush confirm the deeply entrenched refusal of the US government to self-enforce minimum standards of international criminal accountability, and its obvious endorsement of a flawed international criminal law regime that currently rests on the major premise of *geopolitical impunity* as interpreted by way of American exceptionalism. The emergence of ISIS, as had been prefigured in Afghanistan by the rise of Al Qaeda and occasioned by American occupation policies in Iraq, is the ultimate blowback experience betokening an erroneous hard-power opportunism in Washington misleadingly chosen as the best approach to national and global security.

The essays in the volume also explore the failure to abide by the experience after World War II, which included imposing criminal accountability on those surviving German and Japanese military and political leaders responsible for the commission of state crime centering on the recourse to and prosecution of aggressive warfare, as well as the mass atrocities epitomized by the death camps. By now it is confirmed that the Nuremberg and Tokyo Judgments, although respectful of defendants’ rights and substantively justified, were in

a larger sense “victors’ justice” by exempting the crimes of the winners from legal scrutiny.⁶ The principles of law applied to the losers at Nuremberg and Tokyo were never intended to be applied to the winners, or to those who would after 1945 control the geopolitical dimensions of world politics and dominate its various episodes of warfare.⁷ Criminal accountability in relation to warfare was cynically applied to the losers and those in subordinate positions of state power throughout the world, and still is.

Into this normative vacuum stepped the rising activism of civil society, and this became initially disclosed as part of the rising opposition to the Vietnam War. The great British philosopher and political activist, Bertrand Russell, convened a tribunal of conscience composed of moral and cultural authority figures with international stature to gather the best evidence available of American criminality in the ongoing Vietnam War. This bold initiative filled the institutional vacuum created by the lack of political will among governments or at the UN to carry forward the Nuremberg impulse with respect to accountability of individuals.⁸ In effect, the project of imposing criminal accountability on the strong has become an exclusive undertaking of global civil society, although with some collaboration from moderate governments that do not enjoy the status of being geopolitical actors. It was this transnational collaboration between governments and civil society actors that generated the momentum leading to the unexpected establishment of the International Criminal Court in 2002, but as yet this institution has given little indication that it possesses the capacity or even the mandate to extend the logic of accountability to geopolitical actors, above all the United States and its closest friends.

Reviewing the international law debates that took place during the Vietnam War remains critically relevant to any reform of American foreign policy relating to these war/peace issues. As in Vietnam, adherence to international law would have been consistently beneficial normatively (upholding law, protecting the vulnerable, avoiding casualties), geopolitically (respecting support for

⁶ An important early account along these lines in the Japanese context is Richard H. Minear, *Victors’ Justice: The Tokyo War Crimes Tribunal* (Princeton: Princeton University Press, 1971).

⁷ Justice Robert Jackson, the American prosecutor, did argue to the tribunal in Nuremberg that the legitimacy of the judgment against the German defendants depended upon the victors in the future accepting the same framework of accountability, but such words fell on deaf ears in the capitals of the world powers.

⁸ The proceedings of the Russell Tribunal can be found in John Duffett, ed., *Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal, Stockholm–Copenhagen*, introduction by Bertrand Russell, foreword by Ralph Schoenman (New York: Bertrand Russell Peace Foundation and O’Hare Books, 1968).

the ethos of self-determination and human rights as evidenced by the flow of history since 1945), and ideologically (recognizing that “terrorism” is a law enforcement issue, not an occasion for war making; realizing that nationalist ideology does not translate into neighbors becoming “falling dominos”).

The lesson that most needed to be learned in the Vietnam era, and remains unlearned forty years after the ending of war, is the practical and principled desirability of adherence to international law in war/peace situations. Systemic violations of international law lead to geopolitical disappointment, human suffering, societal devastation, and a nihilistic atmosphere of international lawlessness. In contrast, habits and policies of adherence to international law, especially with respect to war/peace issues and matters of national and global security, privilege an emphasis on diplomacy, international cooperation, law enforcement, and UN authority, as well as generating the self-confidence of political communities to be respectful of prudent restraint and develop greater reliance in pursuit of national goals on international procedures, norms, and institutions. Such a shift away from lawlessness is, of course, by no means a guaranty of peace and justice, but it provides the crucial foundation for creating better prospects for human wellbeing in the twenty-first century.

In my preoccupation during the years between 1963 and 1975 I became obsessed with the Vietnam War, and how I might act as a scholar and citizen to bring this imprudent, unlawful, and immoral war to an end. My writing in this period reflects a process of deepening engagement, and an evolving shift of focus and orientation. In my initial articles on the war I was seeking to demonstrate the unlawfulness of the underlying intervention in Vietnam, with a special emphasis on the American expansion of the war from a struggle for control of the state in what was then treated as “South Vietnam” to a conflict that included then “North Vietnam,” which altered the nature of the war from an internal war in the South to a war between the two political communities that comprised Vietnam after the French defeat in 1954, and persisted until the American defeat in 1975. In the early selections represented here, the international law arguments were underpinned by a realist assessment that rested on the informed belief that this was an ill-considered commitment of US military forces for the sake of a very dubious conception of national interests, which centered on an imprudent opposition to the anti-colonial and pro-nationalist flow of history.

My attitudes toward the war, while never losing the central conviction that the United States was engaged in Vietnam in a manner that violated the most fundamental norms of international law, shifted in the direction of viewing the tactical conduct of the war as increasingly raising questions of international criminal accountability. This shift is reflected in the later selections

from my writing that emphasize the relevance of the Nuremberg Principles to the American involvement in Vietnam.⁹ I became convinced that a one-sided war in which high-technology weaponry was deployed against a totally vulnerable peasant society was an intrinsically criminal enterprise, and additionally almost inevitably gave rise to battlefield atrocities as mythified through treating the My Lai massacre as a singular event.¹⁰ I was also struck by the degree to which the geopolitical status of the United States marginalized the United Nations and limited the relevance of international law to a domestic debate within the United States between the government and its critics in Congress and throughout American society.

One enduring effect of this debate was to give the American anti-war movement the confidence to challenge government policy despite the inhibitions of the Cold War that made any seeming sympathy for the communist side in the Vietnamese struggle grounds for suspicion and media hostility, particularly in the early years of the war. It is only toward the end of the Vietnam War when the government had lost the trust of a large portion of the citizenry and split the foreign policy establishment, as well as its becoming clear that the sacrifice of young American lives was not going to end in a military victory, that the prudential arguments against continuing the war began to outweigh the ideological case for its prosecution. This development also had the effect of pushing public opinion in an anti-war direction.¹¹

⁹ These issues were fully explored in Richard Falk, Gabriel Kolko, and Robert Jay Lifton, eds., *Crimes of War: A Legal, Political-Documentary, and Psychological Inquiry into the Responsibility of Leaders, Citizens, and Soldiers* (New York: Random House, 1971).

¹⁰ For the initial exposé, see Seymour M. Hersh, *My Lai 4: A Report on the Massacre and Its Aftermath* (New York: Random House, 1970). See also Kendrick Oliver, *The My Lai Massacre in American History and Memory* (Manchester, UK: Manchester University Press, 2006).

¹¹ The release of the Pentagon Papers was a milestone along the path that led from a pro-war consensus to a rising tide of opposition. See interpretation by Daniel Ellsberg, *Secrets: A Memoir of Vietnam and the Pentagon Papers* (New York: Penguin Books, 2002).

Preface

When I contacted Richard Falk six years ago regarding a collection of his writings on the Vietnam War and international law, I did not know that he had a special relationship to Sweden. He had been invited by Peter Wallensteen who – from 1985 to 2012 – was Dag Hammarskjöld Professor of Peace and Conflict Research at Uppsala University to be Visiting Olof Palme Professor¹² for the academic year 1990–91, which, according to Professor Wallensteen, turned out to be a very successful appointment, not least for the doctoral students and the young researchers.¹³

According to Said Mahmoudi, who is now Professor of International Law at Stockholm University, Falk became a good friend and participated in the academic as well as the general cultural and political discussion in Sweden. Professor Mahmoudi responded to an e-mail regarding Falk's status as an international law scholar in Sweden and wrote that Falk

held several important seminars and lectures during his stay in Stockholm. His time here coincided with the American invasion of Kuwait to push back Saddam Hussein. He gave a talk on the subject, which was very well received. I don't think he is unknown in Sweden. He published several important articles in *DN* [*Dagens Nyheter*] at that time. Among those Swedes who deal with international law, international relations and political science, he is a very well-known scholar. Even internationally, he is respected as one of the

¹² Regarding the Olof Palme Visiting Professorship: The *Swedish Research Council* visiting professor grant aims to allow universities the possibility of recruiting an internationally distinguished professor for a shorter period to develop a specific research area. The Olof Palme Visiting Professorship gives an internationally prominent foreign researcher the opportunity to spend one year at a university, higher education institute or research institute in Sweden. The Olof Palme Visiting Professorship was established in honour of Olof Palme (1927–86), Sweden's prime minister in 1969–76 and 1982–86.

¹³ Personal communication (e-mail), December 22, 2016.

most leading living American international lawyers. He was a student and friend of the famous Yale international law professor Myers S. McDougal, but one of the very few who took a critical approach to the dominant power-inspired American policy in the world.¹⁴

A testimony of the appreciation of Falk's merits is that he was awarded an honorary doctorate from the Faculty of Law at Stockholm University in 2006.

However, Falk's contacts with Sweden go further back. Already in 1985 he had been consulted and thanked by Ann-Sofie Nilsson, who spent that year as a Visiting Fellow at the Center of International Studies at Princeton University, for his "valuable suggestions" to her doctoral thesis "Political Uses of International Law" in political science at the University of Lund in 1987.

The year after, in 1986, Falk attended a conference in Ronneby, Sweden. It was a so-called Yes-conference to follow up on the positive answers of the Great Peace Journey 1985–87, where Elisabeth Gerle was one of the main organizers. Elisabeth became Visiting Scholar at the Center of International Studies at Princeton University and a life companion to Richard Falk for many years. Elisabeth Gerle presented her doctoral thesis in ethics at the Theological Faculty in Lund in 1995. The title is "In Search of a Global Ethics: Theological, Political, and Feminist Perspectives Based on a Critical Analysis of JPIC and WOMP." The second acronym stands for World Order Models Project, which has engaged Professor Falk since its beginning in the 1960s; he has published a number of important books in what Gerle calls a "transnational, humanistic, scholarly project to study 'preferred worlds' with a basically academic framework."¹⁵ In her Preface, she writes, "His involvement with the Great Peace Journey built the bridge to Princeton and New York and to many other parts of the world. His encouragement of new visions in relation to politics and his continuous inspiration during classes in World Order Studies, seminars and endless discussions and shared explorations about the prospects for global ethics and its relationship to spiritual and religious imagery [have] been invaluable."¹⁶

The motivating force behind Falk's activities both as an academic and as a political activist is the deep conviction that a just world order can be achieved only if nation-states respect international laws. This includes environmental laws, and he never tires of pointing out that the use of nuclear weapons, which he considers unlawful, threatens life on this planet and must

¹⁴ Personal communication (e-mail), December 17, 2016.

¹⁵ See chapter III of Gerle's thesis, 128–97.

¹⁶ *Ibid.*, 8.

be prevented. This warning has gained extra relevance since both Vladimir Putin and Donald Trump have announced their plans to update their nuclear capabilities.

There is a strong normative and philosophical dimension to all of Falk's writings, which is pointed out in the Introduction to *The Philosophy of International Law* by its editors Samantha Besson and John Tasioulas, who write: "it is possible to adopt a self-critical normative approach to international law without drawing on anything recognizable as a tradition of *philosophical* thought. The writings of the New Haven School, and especially those of its most influential contemporary representative, Richard Falk, offer ample testimony of the potential value of such an approach."¹⁷

Richard Falk is primarily known as an international law scholar and lawyer, particularly in the field of humanitarian law, but his writings are relevant to several other topics in the social sciences, such as international relations, human rights and – not least – peace and conflict studies. His wide range of knowledge and interests reflects his broad educational and professional background. He obtained a Bachelor of Science in Economics from the Wharton School, University of Pennsylvania, in 1952 before completing a Bachelor of Laws degree at Yale University. He received his Doctorate in Law (SJD) from Harvard University in 1962. His early thinking was influenced by readings of Albert Camus, Jean-Paul Sartre and C. Wright Mills, and he developed an overriding concern with projects to abolish war and aggression as social institutions, but also, in coordination, to address problems of social injustice, and later ecological sustainability. Falk began his teaching career at Ohio State University, during which time he completed his doctoral studies in law and philosophy at Harvard, providing occasion for the expression of his progressive beliefs in the late 1950s. He moved to Princeton University in 1961, which became his academic home. He is the Albert G. Milbank Professor of International Law and Practice Emeritus at Princeton University where he taught for forty years.¹⁸ He is the Senior Vice President of the Nuclear Age Peace Foundation and a member of the board of the Just World Education Foundation. Since 2002 he has been a research professor at the Orfalea Center for Global International Studies at the University of California, Santa Barbara.

¹⁷ (Oxford: Oxford University Press, 2010), 4.

¹⁸ See Martin Griffiths, *Fifty Key Thinkers in International Relations* (London: Routledge, 1999), 119–24. For some hard-to-understand reason the entry on Richard Falk was removed by the editors of the second edition, published ten years later. This is surprising given the relevance of international law to the study of international relations, the volume and quality of Falk's writings and the importance of his message regarding respect for international law and the establishment of a stable world order.

He has been an influential international law expert since the late 1950s. As editor and one of the main contributors (twelve articles) to the four volumes of *The Vietnam War and International Law* (Princeton: Princeton University Press, 1968, 1969, 1972, 1976), he became a principal advocate of applying international law to American foreign policy. Much of his scholarly career was devoted to the promotion of a just and peaceful world order. He was among the most influential critics of United States warfare in Indochina. He has written extensively about the Vietnam War from legal, moral and political points of view.

The four volumes of *The Vietnam War and International Law* mainly consist of articles by and for specialists in the international law of war and international humanitarian law, the branch of international law that governs armed conflict between nation-states (law of armed conflict, LOAC). The purpose of LOAC is to prohibit and punish certain categories of conduct commonly viewed as gross and systematic violations and to make perpetrators of such conduct criminally accountable for their perpetration. The core crimes in international law are war crimes, crimes against humanity, genocide, and the crime of aggression, which still has not produced a legal definition acceptable to the International Criminal Court, which is situated in The Hague and began operation in July 2002.

Another book, *Crimes of War: A Legal, Political-Documentary, and Psychological Inquiry into the Responsibility of Leaders, Citizens, and Soldiers for Criminal Acts in Wars* (New York: Random House, 1971), which Falk edited with Gabriel Kolko and Robert Jay Lifton, had a broader audience in mind, but it contains most of the relevant legal documents.

Falk recognized from an early stage the importance of the Russell Tribunal as an attempt to uphold the Nuremberg Principles,¹⁹ when very few international law experts were willing to give such a juridical innovation any credibility, and when international institutions had turned their backs on the criminality of the war.²⁰ He worked closely with a member of the Italian

¹⁹ The Nuremberg Principles are a set of guidelines for determining what constitutes a war crime. The document was created by the International Law Commission of the United Nations to codify the legal principles underlying the Nuremberg Trials (1945–46) of Nazi Party members following World War II.

²⁰ There were other Commissions of Inquiry with which Falk cooperated. See the Prefaces to the first and second editions of Consultative Council Lawyers Committee on American Policy Towards Vietnam, John H. E. Fried, rapporteur, *Vietnam and International Law: The Illegality of United States Military Involvement* (Flanders, NJ: O'Hare Books, 1967), 7–9, 11–13. Falk wrote the preface to the 1990 edition: “Vietnam and International Law: The Past Recalled and the Future Challenged” (ix–xvii); and for Clergy and Laymen Concerned About Vietnam, *In the Name of America: The Conduct of the War in Vietnam by the Armed Forces of the United States as Shown by Published Reports Compared with the Laws of War Binding on the United*

parliament and leading lawyer, Lelio Basso, who himself was a member of the International War Crimes Tribunal and the principal founder of the Permanent Peoples' Tribunal.²¹ Falk also had an important role in the War Crimes Tribunal on Iraq (2005).²² He recently completed a six-year term as UN Special Rapporteur on Human Rights in Occupied Palestine.

The idea for a book with Professor Falk's writings on the Vietnam War grew naturally out of my work on the Russell Tribunal.²³ I found the four volumes of *The Vietnam War and International Law* in Mills Memorial Library at McMaster University in Hamilton in Canada, where the Bertrand Russell Archives are located, on one of my first searches for references to the Russell Tribunal. I looked in the index of volume I and found one. I looked up the page and read:

Also for the first time since World War II there has been proposed a war crime tribunal to pass judgment on the United States role in Viet Nam and on the criminal responsibility of its President. Of course, Bertrand Russell's tribunal is a juridical farce, but the fact that it is plausible to contemplate such a proceeding and to obtain for its tribunal several celebrated individuals bears witness to the general perception of the war.²⁴

States Government and on Its Citizens (Annandale, VA: Turnpike Press, 1968), he supplied an essay, "International Law and the Conduct of the Vietnam War" (22–27). He also wrote the introduction to *The Wasted Nations*, report of the International Commission of Enquiry into United States Crimes in Indochina, June 20–25, 1971, edited by Frank Browning [and] Dorothy Forman (New York: Harper Colophon Books, 1972), xi–xx. As a major critic of the United States war in Indochina, he became the target of those who supported it and thought it was conducted according to the rules of international law. See e.g. Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (New York: Bantam Books, 1971), Guenter Lewy, *America in Vietnam* (New York: Oxford University Press, 1978), and Norman Podhoretz, *Why We Were in Vietnam* (New York: Simon & Schuster, 1982).

²¹ See Richard Falk, "Keeping Nuremberg Alive," in Giuliano Amato, et al., eds., *Homage to Lelio Basso* (Milan: Franco Angeli Editore, 1979), 811–20 (reprinted in *Human Rights and State Sovereignty* [New York: Holmes & Meier, 1981], ch. 8, 195–201, and in Richard Falk, Friedrich Kratochwil and Saul H. Mendlovitz, eds., *International Law: A Contemporary Perspective* [Boulder and London: Westview Press, 1985], 494–501).

²² See Richard Falk, "The Role of Global Civil Society Tribunals," in Richard Falk, Irene Gendzier, and Robert Jay Lifton, eds., *Crimes of War – Iraq* (New York: Nation Books, 2006), 153–54.

²³ See Stefan Andersson, "A Secondary Bibliography of the International War Crimes Tribunal," *russell: The Journal of Bertrand Russell Studies*, NS 31, 2 (Winter 2011–12), 167–87, and Review Essay, "Behind the Scenes at the BRPF (Bertrand Russell Peace Foundation), the Vietnam Solidarity Campaign, and the Russell Tribunal" (a review of Ernest Tate, *Revolutionary Activism in the 1950s and 60s: A Memoir*), *russell: The Journal of Bertrand Russell Studies*, NS 34, 2 (Winter 2014–15), 75–83.

²⁴ Richard Falk, *The Vietnam War and International Law*, Vol. I (Princeton: Princeton University Press, 1968), 451, n. 12.

What especially caught my attention was that Falk referred to the Russell Tribunal as “a juridical farce,” although the passage as a whole is quite positive. The article was written in 1966 and I later realized that Falk could have read some of the rumors that the Tribunal would condemn President Lyndon Johnson, Secretary of Defense Robert McNamara, Secretary of State Dean Rusk and General William Westmoreland as war criminals. These rumors were based on statements emanating from Russell himself, his secretary Ralph Schoenman and some individuals who had been asked to be members of the Tribunal.

By the time the Tribunal held its founding session in London from November 13 to 16, 1966, it had officially dropped the idea of prosecuting individuals and preferred to be treated as a Commission of Inquiry investigating possible war crimes committed by the United States in Vietnam. This shift of emphasis was mainly the result of ideas by the French branch of the Tribunal with Jean-Paul Sartre, Simone de Beauvoir, Vladimir Dedijer and Laurent Schwarz as the dominant figures. It could, of course, still be considered a “juridical farce” for several formal reasons, not least because it lacked the power and authority to punish anyone. Such enforcement was never a major goal of the undertaking; the most important purpose of the Tribunal was to “prevent the crime of silence” by showing the world what the United States was doing in Vietnam and letting its citizens respond as the ultimate judges of right and wrong in world politics.

In 2002 Arthur and Judith Klinghoffer published *International Citizens’ Tribunals: Mobilizing Public Opinion to Advance Human Rights*²⁵ in which they quoted Falk’s phrase “a juridical farce” out of context. This was disturbing as it gave a distorted picture of Falk’s opinion. The Klinghoffers say:

Richard Falk was at the time the chairman of the Consultative Council of the Lawyers’ Committee on American Policy Toward Vietnam, an organization that denounced the United States for legal violations. However, his two-volume study of International Law and the Vietnam War labelled the hearings “a juridical farce.”²⁶

The Klinghoffers should have referred to Falk’s views in their proper context, which would have given a quite different impression of his views.

I contacted Professor Falk and suggested my idea of publishing a book of his writings on the Vietnam War and international law. He reacted very positively.

²⁵ See my review in *russell: The Journal of Bertrand Russell Studies*, NS 22, 1 (Summer 2002), 83–89.

²⁶ (New York: Palgrave, 2002), 134.

Not long after that I met him, when he came to McMaster University to deliver the 2011 Gandhi Lecture, and we found out that we had more in common than just a great respect for Russell's commitment to peace and a just world order.

In one of his articles from 1975 Falk puts the Russell Tribunal into its historical context:

In the years since the Nuremberg judgment of 1945, no official attempt has been made to apply the Nuremberg Principles to the concrete circumstances of violent conflict. An unofficial and symbolic application of the Nuremberg idea underlay the proceedings of the Bertrand Russell War Crimes Tribunal held in 1967 in two Scandinavian countries. The proceedings of the tribunal depict accurately the basic pattern of combat violations of the laws of war characteristic of the early years of heavy American involvement in Vietnam. Aside from this single controversial incident, there has been no effort by governments, international institutions, or public opinion to take seriously the justly celebrated American pledge at Nuremberg of the chief prosecutor for the United States, Justice Robert H. Jackson: "If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us."²⁷

Falk was also one of the first to depict the crime of "ecocide." He says that he was influenced by the research of Arthur Westing and E. W. Pfeiffer, published in *Scientific American*, which described the tactics and effects of this highly destructive recourse to environmental warfare. The extensive use of Agent Orange by the United States caused much human suffering, and Vietnamese children continue to be born with genetic defects that can be traced back to this toxic herbicide. In spite of the promises given by President Nixon and the US government in the Paris Peace Accords of January 27, 1973, to compensate the Vietnamese for the suffering caused by the poison, not a penny was delivered during Nixon's administration or by subsequent US governments.²⁸

²⁷ See Richard Falk, "A Nuremberg Perspective on the Trial of Karl Armstrong," in Richard Falk, *A Global Approach to National Policy* (Cambridge, MA: Harvard University Press, 1975), 133. The whole article is reproduced in this book as Chapter 10.

²⁸ See VAORRC (Vietnam Agent Orange Relief & Responsibility Campaign), Vietnam, www.vn-agentorange.org. Strangely enough, Vietnam Veterans have been more successful in receiving financial compensation for their suffering caused by Agent Orange. See www.benefits.va.gov/compensation/claims-postservice-agent_orange-settlement-settlementFund.asp.

It was at the Russell Tribunal that the crime of genocide²⁹ was brought up for the first time and its commission alleged and controversially documented. In 1946, the first session of the United Nations General Assembly adopted a resolution that “affirmed” that genocide was a crime under international law, but did not provide a legal definition of the crime. In 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), which defined the crime of genocide for the first time. Jean-Paul Sartre brought up the question of genocide at the second session of the Russell Tribunal: “Is the United States Government guilty of genocide against the people of Vietnam?” The question was unanimously answered with a “Yes” by the Russell Tribunal members.³⁰

But why a book now with Falk’s writings about the Vietnam War, more than forty years after the end of the war and despite the occurrence of several other similar counterinsurgency wars in between in which the United States has participated? One reason is that the American government in 2012 launched the commemoration of the fiftieth anniversary of the Vietnam War (the war started in 1965 according to the US government), the purpose of which is to try to control the historical narrative of the war and portray this failed military undertaking as a noble cause. President Barack Obama’s inaugural speech in 2012, delivered at the Memorial Wall in Washington on Memorial Day to a small gathering of war veterans and their families, was an attempt to engage in such unfortunate revisionism, which needs to be revealed as deceitful rhetoric that distorts a historical and human tragedy, as well as a geopolitical disaster.

²⁹ The Bosnian International Court of Justice case addresses the genocide issue more authoritatively than other tribunals. The ad hoc international criminal tribunals for both the former Yugoslavia and Rwanda have extended discussions of genocide.

³⁰ John Duffett, ed., *Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal, Stockholm–Copenhagen*, introduction by Bertrand Russell, foreword by Ralph Schoenman (New York: Bertrand Russell Peace Foundation and O’Hare Books, 1968); John Duffett, ed., *Against the Crime of Silence: Proceedings of the International War Crimes Tribunal, Stockholm, Copenhagen*, introduction by Bertrand Russell, preface by Noam Chomsky, expanded foreword by Ralph Schoenman (New York: Simon & Schuster, 1970); and *Prevent the Crime of Silence: Reports from the Sessions of the International War Crimes Tribunal founded by Bertrand Russell*, selected and edited by Peter Limquico and Peter Weiss (London: Allen Lane, Penguin Press, 1971), with a Foreword and essay “After Pinkville” by Noam Chomsky. See also Anthony D’Amato, *International Law and Political Reality* (The Hague: Kluwer Law International, 1995), ch. 1, “The War-Crimes Defense,” where he brings up both Falk’s views and the Russell Tribunal.

It was not a lengthy speech, but it reveals the president's attempts to hide the truth about the first major war that the United States has lost. Here is only one example:³¹

one of the most painful chapters in our history was Vietnam – most particularly, how we treated our troops who served there. You were often blamed for a war you didn't start, when you should have been commended for serving your country with valor. (Applause.) You were sometimes blamed for misdeeds of a few, when the honorable service of the many should have been praised. You came home and sometimes were denigrated, when you should have been celebrated. It was a national shame, a disgrace that should have never happened. And that's why here today we resolve that it will not happen again. (Applause.)

In the light of this misleading reconstruction of our sense of the Vietnam War by President Obama, it is important that we consider the views of others who were more in touch with the reality of what took place in Vietnam. President Obama says nothing about the criminal character of the American aggression and all the unjustified suffering it caused the Vietnamese people both in the North as well as in the South, and the peoples of Cambodia and Laos.

Falk, however, was prepared to speak truth to power at the time of the war. The wars in Afghanistan and Iraq indicate that the United States government has failed to heed the lessons of the Vietnam War; that its current behavior in the Middle East and elsewhere has produced several tragic repetitions of Vietnam; and that its militarist policies seem likely to lead to further disastrous wars, imposing terrible burdens on the victim societies and gravely damaging the United States' reputation as a constitutional democracy.

Falk argues in these selections that the only safe and reliable way to avoid future foreign policy disasters is through a consistent and principled adherence to international law in the conduct of American foreign policy. Such a

³¹ The whole speech is available at www.whitehouse.gov/the-press-office/2012/05/28/remarks-president-commemoration-ceremony-50th-anniversary-vietnam-war. For a critical assessment of the project, see Bernard L. Stein, "How Pentagon Plans to Whitewash 50th Anniversary of Vietnam," forward.com/opinion/307223/how-pentagon-plans-to-whitewash-. See also Marvin Kalb and Deborah Kalb, *Haunting Legacy: Vietnam and the American Presidency from Ford to Obama* (Washington, DC: Brookings Institution Press, 2011), and Tom Hayden, *Hell No: The Forgotten Power of the Vietnam Peace Movement* (New Haven and London: Yale University Press, 2017), in which he talks about the "celebration" and particularly the content of the timeline that the organizers presented, which did not reflect what really happened particularly not with regard to all the different expressions of protests against the war. See Introduction, *ibid.*, pp. 1–17.

framework of legality is what the UN Charter tried to impose on the sovereign states of the world in 1945, but that framework has often been evaded and ignored and, if it is ever to be implemented, needs the strong support of public opinion.

The thirteen previously published writings included in this selection have been chosen from more than seventy published articles and chapters of books about the Vietnam War by Professor Falk from overlapping legal, moral and political perspectives.³² The book's four parts parallel Falk's preoccupations with the Vietnam experience: first, the relevance of international law to foreign military intervention; secondly, examples of war crimes; thirdly, the bearing of the Nuremberg precedent on accountability for crimes of war; and, fourthly, the legacy and unlearned lessons of the Vietnam War. This final section bears most on current concerns of world order.

Considering the present situation in the world, the need for compassionate public intellectuals such as Bertrand Russell, Noam Chomsky and Richard Falk, who dare and care to speak truth to power, and not to be guilty of the crime of silence, is greater than ever. All three of them have been deeply involved in protesting American war crimes committed in Southeast Asia. As long as there are people like them, who care about the importance and upholding of international law and international morality, there is hope for establishing a more just world order and for bringing the war criminals to justice.

³² The writings have been reproduced in a form as close as possible to their original publication, including language conventions that would be avoided today. Exceptions have been made to correct the small handful of minor errors that crept into the originals, and to provide full details for works in the footnotes, to enable readers to seek out sources should they choose to.