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SPECIAL INTRODUCTION

George Bush, Jr., September 11th and the Rule of Law

by Francis A. Boyle

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from *The Criminality of Nuclear Deterrence - Could The US War On Terrorism Go Nuclear?*

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George W. Bush was never elected President by the People of the United States of America. Instead, he was anointed for that Office by five Justices of the United States Supreme Court who themselves had been appointed by Republican Presidents. Bush Jr.'s installation was an act of judicial usurpation of the American Constitution that was unprecedented in the history of the American Republic. Had it occurred in a developing country, such a subversion of democratic process would have been greeted with knowing derision throughout the West. What happened in America could only be likened to a judicial coup d'état inflicted upon the American People, Constitution, and Republic. There should now be no doubt that the United States Supreme Court is governed by raw, naked, brutal, power politics. Justice has nothing at all to do with it. This Supreme Court's constitutional sophistry proved a harbinger of the new administration's disrespect for the Rule of Law, whether domestic or international.

Machiavelli Redux

When Bush Jr. came to power in January of 2001, he proceeded to implement foreign affairs and defense policies that were every bit as radical, extreme and excessive as the Reagan/Bush administrations had starting in January of 1981. To be sure, Bush Jr. had no popular mandate to do anything. Indeed, a majority of the American electorate had voted for his corporate-cloned opponent.

Upon his installation, Bush Jr.'s "compassionate conservatism" quickly revealed itself to be nothing more than reactionary Machiavellianism -- as if there had been any real doubt about this during the presidential election campaign. Even the appointees to the Bush Jr. administration were pretty much the same as the original Reagan/Bush foreign affairs and defense "experts," many of whom were called back into service and given promotions for policies ten to twenty years ago that many might argue had been crimes under international law. [1] It was déjà vû all over again, as Yogi Berra aptly put it.

International Legal Nihilism

In quick succession the world saw the Bush Jr. administration repudiate the Kyoto Protocol on global warming, the International Criminal Court, the Comprehensive Test Ban Treaty (CTBT), an international convention to regulate the trade in small arms, a verification Protocol for the Biological Weapons Convention, an international convention to regulate and reduce smoking, the World Conference Against Racism, and the Anti-Ballistic Missile Systems Treaty, inter alia. To date the Bush Jr. Administration has not found an international convention that it likes. The only exception to this rule was its shameless exploitation of the 11 September 2001 tragedy in order to get the U.S. House of Representatives to give Bush Jr. "fast-track" trade negotiation authority so as to present the American People and Congress with yet another non-amendable fait accompli on behalf of American multinationals, corporations, banks, insurance companies, the high-tech and biotech industries, etc. The epitome of "globalization," American-style.

More ominously, once into office the Bush Jr. administration adopted an incredibly belligerent posture towards the Peoples' Republic of China (PRC), publicly identifying the PRC as America's foremost competitor/opponent into the 21st Century. Their needlessly pugnacious approach towards the downing of a U.S. spy plane in China with the death of a Chinese pilot only exacerbated already tense U.S./Chinese relations. Then the Bush Jr. administration decided to sell high-tech weapons to Taiwan in violation of the 17 August 1982 Joint Communiqué of the USA and PRC that had been negotiated and concluded earlier by the Reagan/Bush administration. Finally came Bush Jr.'s breathtaking statement that the United States would defend Taiwan in the event of an attack by the PRC irrespective of Article I, Section 8, Clause 11 of the United States Constitution expressly reserving to Congress alone the right to declare war. President Jimmy Carter had long ago terminated the U.S.-Taiwan self-defense treaty. [2]

For twelve years the Constitution and the Rule of Law -- whether domestic or international -- never deterred the Reagan/Bush administrations from pursuing their internationally lawless and criminal policies around the world. The same was true for the Clinton administration as well (such as invading Haiti; bombing Iraq, Sudan, Afghanistan, and Serbia). The Bush Jr. administration has behaved no differently from its lineal Machiavellian predecessors. Their bellicose handling of the 11 September 2001 tragedy was no exception to this general rule.

Indeed, the Bush Jr. administration proceeded to start its bombing campaign on the defenseless people of Afghanistan on Sunday, October 7 -- not allowing the Sabbath to get in their way either, despite the fact that during the presidential election campaign Bush Jr. proudly stated that his favorite philosopher was Jesus Christ. Yet, as Machiavelli taught, the Prince must appear to be "all religion," [3] especially when he goes to war.

11 September 2001

The Bush Jr. administration's war against Afghanistan cannot be justified on either the facts, a paucity of which have been offered, or the law, either domestic or international. Rather, it is an illegal armed aggression that has created a humanitarian catastrophe for the twenty-two million people of Afghanistan and is promoting terrible regional instability. The longer Bush Jr.'s war against Afghanistan goes on -- and at this writing, Secretary of Defense Rumsfeld has stated that U.S. ground troops will remain in Afghanistan until at least the summer -- the worse it is going to be not only for the millions of Afghan people but also in the estimation of the 1.2 billion Muslims of the world comprising 58 Muslim states, few of whom really believe the Bush Jr. administration's propaganda that this is not a war against Islam.

In fact, the Bush Jr. war against Afghanistan has been akin to throwing a match into an explosives factory. Among its deleterious results, India and Pakistan, which have already fought two wars before over Kashmir and today are nuclear armed, are now standing "nuclear-eyeball to nuclear-eyeball" over Kashmir. Mimicking the Bush Administration's response to September 11th, India has accused internal groups in Pakistan of the December 2001 attack on the Indian parliament, and demanded, without any offer of proof for its accusations, that Pakistan proceed against them or else face military reprisal. The continuing conflict and armed confrontation between India and Pakistan over Kashmir could readily go nuclear.

The Facts

There is not and may never be conclusive proof as to who was behind the terrible bombings in New York and Washington, D.C., on September 11, 2001. No point would be served here by making a detailed review of the facts that have so far emerged into the public record. Suffice it to say that the accounts provided by the United States government simply do not add up.

The October 3 edition of the *New York Times* recounted the definitive briefing by a U.S. ambassador to NATO officials on the alleged facts as follows:

> One Western official at NATO said the briefings, which were oral, without slides or documents, did not report any direct order from Mr. bin Laden, nor did they indicate that the Taliban knew about the attacks before they happened.
>
> A senior diplomat for one closely allied nation characterized the briefing as containing "nothing

> particularly new or surprising," adding: "It was rather descriptive and narrative rather then forensic. There was no attempt to build a legal case."

In other words, there was no real case against Al Qaeda, bin Laden, and the Taliban government of Afghanistan. Such was the conclusion of senior diplomats from friendly nations who attended the so-called briefing.

The Powell/Blair White Paper

Secretary of State Colin Powell publicly promised that they were going to produce a "White Paper" documenting their case against Osama bin Laden and the Al Qaeda organization concerning September 11. As those of us in the Peace Movement know all too well from previous international transgressions, these U.S. government "White Papers" are all too frequently laden with lies, propaganda, half-truths, dissimulation, disinformation, etc. that are usually very easily refuted after a little bit of research and analysis.

What happened here? We never received a "White Paper" produced by the United States government as publicly promised by Secretary Powell, who was later overridden by President Bush Jr. What we got instead was a so-called White Paper produced by British Prime Minister Tony Blair. Obviously, Blair was acting as Bush Jr.'s surrogate or, as the British press routinely referred to him, "Bush's pet-poodle". Tony Blair is neither an elected nor an appointed official of the U.S. government, not even an American citizen. Conveniently, no American official could be brought to task for or even questioned about whatever errors or inadequacies he might purvey.

The Powell/Blair White Paper fell into that hallowed tradition of a "White Paper" based upon insinuation, allegation, rumors, propaganda, lies, half-truths, etc. Even unnamed British government officials on an off-the-record basis admitted that the case against bin Laden and Al Qaeda would not stand up in court. As a matter of fact, the Blair/Powell White Paper was widely derided in the British news media. There was nothing there.

The Cover-Ups

Despite the clear import of the matter, at Bush Jr.'s request the U.S. Congress has so far decided not to empanel a Joint Committee of the House and of the Senate with subpoena power giving them access to whatever hard evidence they want throughout any agency of the United States government -- including the National Security Council, FBI, CIA, NSA, DIA -- and also to put their respective Officials under oath to testify as to what happened and why under penalty of perjury. Obviously a cover-up is underway for the express purpose of not determining (1) who was ultimately responsible for the terrible attacks of 11 September 2001; and (2) why these extravagantly funded U.S. "intelligence" agencies were either unable or unwilling to prevent these attacks despite numerous warnings of a serious anti-American attack throughout the Summer of 2001 -- and yet, amazingly, could assert the identity of those responsible with such certainty in the space of hours thereafter so as to preclude any serious investigation of other possible perpetrators. For reasons not necessary to get into here, there is also an ongoing governmental cover-up of the obvious involvement of the Pentagon/CIA, or one of their contractors, in the attacks inflicting U.S.-produced weapons-grade anthrax upon those institutional components of American society that the American right-wing has traditionally viewed with antipathy: the Democratic Congressional leadership, and the media.

The Bin Laden Video

The so-called bin Laden Video was miraculously discovered in the rubble of a bombed-out house in the bombed-out city of Jalalabad by the CIA, who undoubtedly turned the Video over to the Pentagon's Psyops People, who were operating in Afghanistan. The Pentagon then had the tape translated by "outside" experts, one of whom works at the Johns Hopkins School for Advanced International Studies (SAIS), where Deputy Secretary of Defense Paul Wolfowitz had just been his boss as SAIS Dean. The SAIS/Wolfowitz translator has not been giving any interviews.

The text of the translation itself admits it is not a verbatim transcript, but only provides "messages and information flow," whatever that means. Admittedly the tape is disjointed and non-sequential. Since I am not a technical expert, I will not comment upon how easy it would be to falsify this video. I doubt very seriously that any fair, objective and impartial judge would admit this Video into evidence for consideration by a jury in a criminal case.

But let us put aside for the time being the long history of U.S. intelligence agencies operating both at home and abroad in order to manufacture "evidence" that suits the party line coming out of Washington, DC. [4] Let us further assume that everything in and about the bin Laden video is true and can be authenticated to the satisfaction of an impartial and objective international court of justice. Even so, the bin Laden video provided no evidence that implicated the Taliban Government of Afghanistan in the 11 September 2001 attacks upon the United States. The video provides no justification for the United States to wage war against Afghanistan, a UN Member State, in gross violation of the United Nations Charter. The fact that Afghanistan's dysfunctional former President Rabbani was left to occupy the Afghan "Seat" at the United Nations makes no legal difference here. The United Nations Charter protected the State of Afghanistan from aggression by the United States. Indeed, the Clinton administration had already negotiated with the Taliban government over letting it have the UN Seat as well as extending it bilateral de jure recognition in return, in part, for the construction of the UNOCAL pipeline across Afghanistan [5] -- a negotiation from which -- ominously, in light of the onslaught to come -- the Taliban demurred.

Framing a Response to September 11th

Terrorism and the Law

So let us now turn to the law. Immediately after the 11 September 2001 attacks President Bush's first public statement characterized these terrible attacks as an act of terrorism. Under United States domestic law there is a definition of terrorism, which clearly qualifies them as such. To be sure, under international law and practice there is no generally accepted definition of terrorism, for reasons that are too complicated to explain in detail here but basically relate to that hackneyed aphorism that "one person's terrorist is another person's freedom fighter." [6] Yet certainly under United States domestic law this qualified as an act or acts of terrorism.

What happened? It appears that President Bush consulted with Secretary Powell and all of a sudden they changed the rhetoric and characterization of these terrible attacks. They now called them an act of war -- though clearly this was not an act of war, which international law and practice define as a military attack by one nation state upon another nation state.

There are enormous differences and consequences, however, in how you treat an act of terrorism compared to how you treat an act of war. This nation and others have dealt with acts of terrorism before. Normally acts of terrorism are dealt with as a matter of international and domestic law enforcement -- which is, in my opinion, precisely how these terrible attacks should have been dealt with -- not as an act of war.

Indeed there is a treaty directly on point to which both the United States and Afghanistan are party: the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the so-called Montreal Sabotage Convention. Article 1(I)(b) thereof criminalizes the destruction of civilian aircraft while in service. It has an entire legal regime specifically designed to deal with this type of situation and all issues related to it, including reference to the International Court of Justice to resolve any disputes that could not be settled by negotiations between the United States and Afghanistan or other contracting parties. The Bush Jr. administration simply ignored the Montreal Sabotage Convention completely, as well as the 12 or so multilateral conventions already on the books that deal with various components and aspects of what people generally call international terrorism, many of which could have been used and relied upon to handle this matter in a lawful, effective, and peaceful manner.

The U.S. Policy Preference: Not Terrorism -- War

Instead, proving again the Bush Jr. administration's unwillingness to utilize international conventions which might require the submission of American power to external restraints, and thereby constrain rather than facilitate the realization of overt or covert American objectives, the Bush Jr. administration rejected this entire multilateral approach and called these terrible attacks an act of war. They deliberately invoked the rhetoric of Pearl Harbor, December 7, 1941. It was a conscious decision to escalate the emotions and perceptions of the American people generated on September 11th, and thus dramatically escalate the stakes, both internationally and domestically.

The implication was that if this is an act of war, then you do not deal with it by means of international treaties and negotiations: You deal with an act of war by means of military force. You go to war. So a decision was made remarkably early in the process to ignore and abandon the entire framework of international treaties that had been established under the auspices of the United Nations Organization for the past 25 years in order to deal with acts of international terrorism and instead go to war against Afghanistan, a UN member state. In order to prevent the momentum towards war from being impeded, Bush Jr. issued an impossible ultimatum, refusing all negotiations with the Taliban government, as well as all the extensive due process protections that are required between sovereign states related to extraditions, etc. The Taliban government's requests for proof and offers to surrender bin Laden to a third party, similar to those which ultimately brought the Libyan Lockerbie suspects to trial, were all peremptorily ignored. Why such haste?

The UN Security Council Disagrees: Terrorism, not War

An act of war has a technical legal meaning: basically, a military attack by one nation state against another nation state. While this is what happened on December 7, 1941, it is not what happened on September 11, 2001. Nonetheless, immediately after September 11th, the Bush Jr. administration went to the United Nations Security Council in order to get a resolution authorizing the use of military force against Afghanistan and Al Qaeda. They failed. Indeed, the Security Council resolution that was adopted, instead of calling this an "armed attack" by one state against another state, denominated these events "terrorist attacks." [7] And again there is a magnitude of difference between an armed attack by one state against another state, which is an act of war, and a terrorist attack, which is not. Again, terrorists are dealt with as criminals. Terrorists are not treated like nation states. Terrorists are dealt with by means of international and domestic law enforcement. Terrorists are not given the dignity of special status under international law and practice.

Bush Sr. v. Bush Jr.

What the Bush Jr. administration tried to do in the Security Council was to get a resolution similar to that obtained by the Bush Sr. administration in the run up to the Gulf War in the late Fall of 1990. Bush Sr. got a resolution from the Security Council authorizing UN member states to use "all necessary means" in order to expel Iraq from Kuwait. [8] The Bush Sr. administration originally wanted language in there expressly authorizing the use of military force *in haec verba*. The Chinese objected, so the Security Council employed the euphemism by "all necessary means," though everyone knew what that meant. Besides, even if it may have been induced to do so, Iraq had actually invaded Kuwait, which was contrary to international law -- a real act of war. [9]

The first Bush Jr. Security Council resolution, on the other hand, provided no authority to use military force at all. That language simply was not in there. A close reading of the Security Council Resolution indicates that Bush Jr. tried but failed to get the authorization to use force that Bush Sr. got. Bush Jr. was defeated at the Security Council. This failure, of course, did not make national headlines; rather, it was subsumed in commentary which dwelt on a UN supposedly galvanized behind the Bush Jr. administration to combat terrorism.

No Declaration of War from Congress

Having failed to co-opt the UN Security Council for war as his father had, Bush Jr. then went to the United States Congress and exploited the raw emotions of this national tragedy to ram through a congressional authorization to use force. The exact nature of the Bush Jr. proposal to Congress at that time is unknown. However, reading between the lines of a public statement made by Senator Robert Byrd that was reported in the *New York Times,* it appears that Bush Jr. wanted a formal declaration of war along the lines of what President Roosevelt got from Congress after Pearl Harbor. [10] Congress failed to give Bush Jr. that -- and for a very good reason. If a formal declaration of war had been passed by Congress, it would have made Bush Jr. a "constitutional dictator" insofar as that, basically, Americans would now all be living under marshal law. [11] Congress might have just as well closed up and gone home for the rest of the duration of the Bush Jr. war against terrorism for all the difference they would have made. Bush Jr./Sr. would have known that full well. Indeed, prior to September 11th, President Bush Jr. had publicly opined about becoming a U.S. "dictator."

The Infamy of Korematsu

As a direct result of that congressional declaration of war after Pearl Harbor, America made the infamous *Korematsu* mistake, whereby about 100,000 Japanese-American citizens and Japanese immigrants were rounded up and put in concentration camps on the basis of nothing more than an Executive Order that later on turned out to be based upon a gross misrepresentation of the factual allegation that Japanese in America constituted some type of unique security threat different from Germans in America or Italians in American, inter alia. [12] Obviously, in *Korematsu* race made all the difference. Again today, race is making all the difference in the Bush Jr. administration's specific targeting of Arabs and Muslims from the Middle East and Southwest Asia.

Had Bush Jr. received a formal declaration of war from Congress, many groups of American citizens could have been on the exact same legal footing of the terrible *Korematsu* case, which has never been overturned by the United States Supreme Court. We could have witnessed the mass internment of American citizens of Arab, Muslim, Middle Eastern, Asian, and African American (many of whom are Muslims) descent. Instead, to date at least, the Bush Jr. administration has been restricting itself to detaining aliens who fit into these racial and religious categories. Of course such discrimination violates the International Convention on the Elimination of All Forms of Racial Discrimination, to which the United States is a contracting party -- yet another international convention that the Bush Jr. administration has set at naught. And we still could be seeing the mass detention and internment of American citizens of whatever ethnicity who may become engaged in civil resistance against administration policies if Bush Jr., Attorney General John Ashcroft, White House Counsel Alberto Gonzales and their reactionary coterie of Federalist Society Lawyers can ultimately get their way. They have already instigated a nation-wide campaign of illegal profiling against the racial and religious categories of U.S. citizens and aliens mentioned above.

Instead, A Blank Check to Use Military Force

Instead of a formal declaration of war, the U.S. Congress gave Bush Jr. what is called a War Powers Resolution Authorization. The War Powers Resolution of 1973 was passed over President Nixon's veto by a two-thirds majority in both Houses of Congress, and was expressly designed to prevent another Vietnam War. [13] Although the resolution that Bush Jr. did get from Congress is not a formal declaration of war, it was stronger than the Tonkin Gulf Resolution, [14] which served as the legal pretext for President Johnson's massive escalation of the Vietnam War into outright genocide against the Vietnamese People. Only one courageous Member of Congress, Barbara Lee, an African American representative from Oakland, voted against it, as a matter of principle.

This War Powers Resolution authorization basically gives Bush Jr. a blank check to use military force against any individual, organization, or state that he alleges -- by means of his own *ipse dixit* -- was somehow involved in the attacks on September 11th, or else harbored those who were. [15] To date, the number of potential targets has fluctuated from between 30 to 60 nation states, all of which are UN Members and thus protected from U.S. aggression by the UN Charter. In other words, Bush Jr. has received a blank check from the United States Congress to exert military force pretty much against any state he wants to despite the UN Charter. This was then followed by Congress granting Bush Jr. a $20 billion appropriation as a cash down payment on this blank check in order to exert military force against Afghanistan, for starters.

Bush Sr. v. Bush Jr. Redux

Let us compare and contrast this congressional resolution with the War Powers Resolution obtained by Bush Sr. in January of 1991. First, Bush Sr. got the Security Council resolution mentioned above, which he took to the U.S. Congress for authorization under the War Powers Resolution to use military force in order to carry it out. Congress then gave Bush Sr. a very precise authorization to use military force for the express purpose of carrying out the Security Council resolution, that is, only for the purpose of expelling Iraq from Kuwait. [16] And indeed that is what Bush Sr. did. He expelled Iraq from Kuwait, stopping south of Basra, saying that was all the authority he had. This is not to approve what Bush Sr. did in that war, but simply to compare it with Bush Jr.

While Bush Sr. has been criticized on the grounds that he should have marched all the way to Baghdad, he truly had no authority from either the Security Council or from the United States Congress to do so. Compare that to Bush Jr.'s War Powers Resolution that basically gave Bush Jr. a blank check to use military force against anyone he wants to, and with no more than his asserting the need to do so. It is astounding to believe. With such latitude, even more extensive than that of the Tonkin Gulf Resolution, can another Vietnam War be far behind? Has one already commenced, with direct U.S. military re-intervention into the Philippines?

"Ending States"

At this writing, the Bush Jr. administration is publicly debating the "wisdom" of launching yet another massive military attack upon Iraq -- only this time for the express purpose of deposing and replacing the Government of Iraq. Needless to say, such an unwarranted and aggressive attack on yet another sovereign state would violate the United Nations Charter, inter alia. Worse yet, Deputy Secretary of Defense Paul Wolfowitz has publicly bragged about "ending states" [17] -- a rhetorical escalation from efforts to designate some as "failed" states, whose institutional and legal structures might thereby be illegally disregarded by the United States. Terminating states, if actually carried out, would violate the 1948 Genocide Convention, to which the United States is a contracting party. Such a reprehensible statement by Wolfowitz acting within the scope of his official duties could be taken to the World Court and filed in order to prove the existence of genocidal intent by the United States government. Indeed, there is a good chance that the first victim of this Wolfowitz threat may be the Republic of Iraq, which has been continuously and illegally bombed by the United States and the United Kingdom since the end of the Gulf War eleven years ago under the pretext of enforcing unauthorized "no-fly zones." In this regard, Bush Jr.'s aggressive threat to Iraq, Iran and North Korea uttered during the course of his State of the Union Address to Congress on 29 January 2002 does not augur well. It appears from his language that the Bush

Jr. administration is deliberately preparing the ground for a bogus claim to "anticipatory self-defense" in order to justify their pre-planned aggression against Iraq.

Honest Nuclear War-Mongering

Since the events of September 11th, the American people may have been treated to more truth from their government than ever before. In the post-Vietnam era, when the notorious Phoenix program of assassinations finally came to light, public indignation was sufficient to empower investigation by the Church Committee , and a subsequent ban on foreign assassinations. Over the past decade and increasingly under the Bush Jr. administration, however, open talk of intended foreign assassinations, efforts to overthrow the leaders of other sovereign states, or invasions of an unspecified array of nations can reach the daily papers through on-record remarks by elected officials. Secretary of Defense Donald Rumsfeld can call for the apprehension of suspects "dead or alive" or even "preferably dead" -- which would happily avoid all the legal difficulties of proving bin Laden guilty in an evidentiary manner, or indeed the possibility of being confronted by a range of legal improprieties or malfeasances committed on the American side, especially by the CIA. [18] Even the *International Herald Tribune,* in its effort to convince European readerships of the longstanding struggle of the U.S. to deal with Al Qaeda, revealed how the comparatively temperate Clinton had signed three highly classified Memorandums of Notification authorizing killing instead of capturing Mr. bin Laden, then added several of Al Qaeda's senior lieutenants to the list, and finally approved the shooting down of private civilian aircraft on which they flew. [19]

It should come as no surprise therefore, in this onslaught of candid revelation of Machiavellian Realpolitik, that the historically covert intent of America's nuclear deterrence policy should come to light through almost off-the-cuff remarks such as those by the omnipresent Deputy Secretary of Defense Wolfowitz appearing in the 9 January 2002 edition of the *New York Times*:

> "We're looking at a transformation of our deterrence posture from an *almost exclusive emphasis on offensive nuclear forces* [italics added] to a force that includes defenses as well as offenses, that includes conventional strike capabilities as well as nuclear strike capabilities, and includes a much reduced level of nuclear strike capability," the deputy secretary of defense, Paul D. Wolfowitz, said.

Well at least he was honest about it.

Wolfowitz admitted that the current U.S. practice of so-called nuclear "deterrence" is in fact really based upon "an almost exclusive emphasis on offensive nuclear forces." To reiterate, since this deserves emphasis: The U.S. Deputy Secretary of Defense has publicly admitted and conceded that "almost" all U.S. nuclear forces are really "offensive" and not really "defenses." Once again, that Statement could be taken to the International Court of Justice and filed against the United States government as an Admission against Interest, Wolfowitz acting within the scope of his official duties. Of course the Peace Movement and informed American public knew this was true all along. Nonetheless, it should be regarded as an ominous sign of the times that the Pentagon has become so brazen that it is publicly admitting U.S. nuclear criminality to the entire world.

The Prostitution of NATO

In furtherance of its quest for war-making pseudo-legitimacy, the Bush Jr. administration also went to NATO headquarters in Brussels to get a resolution of support for the use of force. NATO proceeded to invoke Article 5 of the NATO Pact. [20] Article 5 of the NATO Pact is only intended to deal with an armed attack by a nation state or states against a NATO member state or states. It is not, and has never been, intended to deal with a terrorist attack.

NATO was originally organized as a collective self-defense pact pursuant to Article 51 of the UN Charter, recognizing the right of individual and collective self-defense in the event of an armed attack by one nation state against another nation state. In theory, the NATO Pact was supposed to deal with an armed attack upon a NATO member state or states by a member or members of the Warsaw Pact, especially the Soviet Union. But with the collapse of the Warsaw Pact and the disintegration of the Soviet Union, there was no real justification or excuse anymore for the continued existence of NATO. NATO had lost its supposed raison d'être.

In an effort to keep NATO alive, Bush Sr. then tried to transmute its very nature in order to serve two additional purposes: (1) policing Eastern Europe; and (2) military intervention into the Middle East in order to secure the oil and gas fields. The NATO Council basically approved Bush Sr.'s transmutation of NATO from a lawful collective self-defense agreement into an illegal, offensive interventionary pact. [21] Shades of the 1939 Ribbentrop-Molotov Pact that was the necessary precursor to Hitler's invasion of Poland, thus leading to the commencement of World War II!

A generation later, Bush Sr. would set the political predicate for NATO's illegal war against Serbia over Kosovo in 1999 under the criminal leadership of President Bill Clinton. Serbia never attacked a NATO member state; rather, the reverse was true. The NATO Alliance attacked Serbia with no authorization from the UN Security Council. [22] But this was what "policing" Eastern Europe was supposed to be all about in the estimation of Bush Sr. and Clinton. As I always asked my law students from 1991 to 2001: Please explain to me the basic difference between Clinton and Bush Sr.?

The main legal problem here is that the NATO Pact provides no authorization to do this at all and indeed should have to be amended by the parliaments of the NATO member states to justify either policing Eastern Europe or as an interventionary force against the Middle East. Furthermore, any such offensive mission for NATO would also have required the express authorization of the UN Security Council on a case-by-case basis as clearly required by UN Charter Article 53 (1). Bush Sr. and Clinton simply wanted a useful tool for collective, offensive military intervention under the predominant control of the United States that would provide a thin veneer of multilateralism for domestic and international propaganda purposes, while at the same time avoiding the supervisory jurisdiction of the UN Security Council in accordance with the requirements of the UN Charter. The same was true for the Bush Jr. Leaguers in their prostitution of NATO after 11 September 2001.

Immediately thereafter, Bush Jr. simply followed in the illegal pathway that had already been carved out for him by Bush Sr. and Clinton. The Bush Jr. invocation of NATO Article 5 was completely bogus. It is a matter of some irony but little surprise that the United States, which allegedly set up NATO in order to "protect" Europe from an armed attack by the Soviet Union, has become the very first beneficiary of NATO's invocation of Article 5. He who pays the piper calls the tune. Or as Clinton officials readily admitted during their illegal NATO war against Serbia over Kosovo: The U.S. is NATO! This seeming paradox can be resolved by understanding that the real reason why the United States set up NATO in the first place was to secure American control and domination of the European Continent. [23] That still is NATO's primary purpose, even as Europe struggles to bring into being its own military force for collective self-defense.

Bush Jr.'s Crusade

Today the NATO Member States are readily enlisting in the Bush Jr. holy war against international terrorism in Afghanistan, Somalia, and other Arab and Muslim countries. We are witnessing another medieval Crusade by the White, European, Christian colonial powers against the 1.2 billion Muslims of the world organized into about 58 countries, most of whom are or are regarded as People of Color in the racist European mindset, and who happen to legally own the massive oil and natural gas resources of the Middle East, Central Asia, and Southeast Asia that the West so desperately craves. That is what is really going on here. And if you have any doubt, remember that it was Bush Jr. himself who publicly called his holy war against international terrorism a "Crusade."

Of course the Muslim World knows all about Western Crusades and Western Crusaders. The "Clash of Civilizations" forecast by my fellow Harvard Ph.D. graduate Samuel Huntington has received intensive discussion in the West, [24] while the Iranian riposte calling for "a Dialogue between Civilizations" has gone unnoticed. The Muslim World has recently witnessed widespread extermination of Muslim Peoples by Western Crusaders and their surrogates in Bosnia, Chechnya, Iraq, Palestine, Lebanon, and now Afghanistan. It is almost as if the script for the Bush Sr./Jr. New World Order had been lifted from Huntington's Clash of Civilizations. Ominously, that ponderous tome ends with a prognosticated catastrophic war between the United States and China -- bringing to mind again the Bush Jr. administration's reckless hostility towards the PRC in its earliest days.

The U.S./UN Ambassador of Death

By going to NATO, the Bush Jr. administration was attempting to get some type of multilateral endorsement for a war against Afghanistan after it had failed to achieve the same at the United Nations Security Council. The Bush Jr. administration then tried once again to get authority for war from the Security Council, but all they got was a Presidential Statement, which legally meant nothing. They then tried yet a third time to get some type of authorization to use military force from the Security Council. This time they did get stronger language but -- and it is necessary to emphasize this, since the UN stand has not been clearly impressed upon the American public -- they still failed to get any authorization from the Security Council to use military force for any reason, let alone a full scale war against Afghanistan, a UN Member state. [25]

Then the new U.S. Ambassador to the United Nations, John Negroponte, sent a letter to the UN Security Council asserting Article 51 of the United Nations Charter. [26] Some of us in the Peace Movement are familiar with Negroponte, who was the U.S. Ambassador in Honduras during the Reagan/Bush Contra Terror War against Nicaragua, and has the blood of about 35,000 Nicaraguan civilians on his hands -- about ten times the number of victims from the terrorist attacks on 11 September 2001. Indeed, because of this, the only way Bush Jr. could get him confirmed by the Senate was to ram Negroponte's name through the Senate "confirmation" process right after the 11 September 2001 attacks. Yet another Machiavellian exploitation of this terrible national tragedy by George W. Bush. In an unwitting tribute to Orwell, the Bush Jr. administration selected Negroponte to lecture the entire world at the UN about international terrorism -- a subject upon which he is an acknowledged expert by dint of vast personal experience.

Nazi "Self-defense" Resurfaces

Given his "priors", the letter by Negroponte to the Security Council was not surprising. It basically said that the United States reserved its right to use force in self-defense against any state that the Bush Jr. administration felt the need to victimize in order to fight their holy war against international terrorism as determined by themselves. Soon thereafter a reporter from the *San Francisco Chronicle* asked me if there was any precedent for the sweeping position being asserted by Negroponte that the United States is reserving the right to go to war in self-defense against 30 to 60 other states as determined solely by the United States. I responded that there is indeed one very unfortunate precedent, recorded in the Nuremberg Judgment of 1946.

It was striking but not surprising that this mass murderer Negroponte was making an argument similar to that put forth in defense of the Nazi war criminals before the Nuremberg Tribunal with respect to the non-applicability of the Kellogg-Briand Pact of 1928. This "Paris Peace Pact" had formally renounced war as an instrument of national policy. Article 1 provided: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." However, when signing the Pact, Germany entered a reservation to the effect that it reserved the right to go to war in self-defense as determined by itself.

So when in 1945 the Nazi war criminals were prosecuted for crimes against peace on the basis of the Kellogg-Briand Pact, they basically argued that the Second World War was a war of self-defense as determined by the Nazi government, and therefore that the Nuremberg Tribunal had no competence to determine otherwise because of Germany's self-judging reservation. Needless to say, the Tribunal summarily rejected this preposterous argument and later convicted and sentenced to death several Nazi war criminals for the commission of crimes against peace, among other international crimes. [27] Both the United States and Afghanistan are contracting parties to the Kellogg-Briand Pact. Article 6(a) of the 1945 Nuremberg Charter defines "crimes against peace" as follows:

> (a) CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing; . . .

The Bush Jr. war against Afghanistan in violation of the Kellogg-Briand Pact of 1928 and the UN Charter of 1945 constitutes a Nuremberg Crime Against Peace. This provides yet another glaring example of precisely why the Pentagon and Bush Jr. have so vigorously opposed the establishment of an International Criminal Court.

Retaliation Is Not Self-Defense

Clearly the Bush Jr. war against Afghanistan is not self-defense. Let us be honest about it. The entire world knows it. At best it may be vengeance, catharsis, or scapegoating. Call it what you want, but it is not self-defense. Retaliation is never self-defense.

Indeed, this truth had always been the official position of the United States government, even during the darkest days of the Vietnam War. In 1973-74, Eugene V. Rostow -- who had been Undersecretary of State in the genocidal Johnson administration, and was later to serve as the Director of the Arms Control and Disarmament Agency (ACDA) in the Reagan/Bush administration (truly Orwellian!) -- requested that the Department of State change its policy on retaliation and reprisal. Pursuant to Rostow's request, the State Department did look into the matter. But the State Department concluded that there were no good grounds for the United States government to change its longstanding policy that retaliation and reprisal were not legitimate exercises of the right of self-defense and, therefore, were prohibited by international law. [28]

Choosing Violent Resolutions for International Disputes

The Taliban government of Afghanistan had made repeated offers to negotiate a solution to the dispute over bin Laden with the United States. Even before the tragic events of September 11th, negotiations were going on between the United States and the Taliban government over the disposition of bin Laden -- as well as over the UNOCAL oil pipeline. The Taliban government had offered to have bin Laden tried in a neutral Islamic court by Muslim judges applying the laws of Sharia. Later on, their proposal was modified to simply have him tried before some type of neutral court, which would exclude handing him over to the United States government. Finally, the Taliban government even offered to try bin Laden themselves provided the United States gave them some credible evidence of his involvement in the 11 September attacks, which was never done.

Bush Jr. responded to their overtures in his 20 September 2001 Address before the U.S. Congress by ruling out any type of negotiations and instead issuing the Taliban government an impossible ultimatum. However, Article II of the above-mentioned Kellogg-Briand Pact requires the peaceful resolution of international disputes between contracting parties such as the United States and Afghanistan, as follows:

> Article II
>
> The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

To the same effect are article 2(3) and article 33(1) of the United Nations Charter:

> Article 2
> The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.
> . . . .
> 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
> . . . .
> CHAPTER VI
> PACIFIC SETTLEMENT OF DISPUTES
> Article 33
> 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. . . .

Indeed, if you read the ultimatum that President Bush Jr. publicly gave to the Taliban government of Afghanistan, no self-respecting government in the world could have complied with that ultimatum. Quite obviously the Bush Jr. ultimatum was specifically drafted and publicly uttered so that it could not be complied with by the Taliban government of Afghanistan.

Indeed, there are striking similarities between the Bush Jr. public ultimatum to Afghanistan and the ultimatum given in private by U.S. Secretary of State Jim Baker on behalf of Bush Sr. to Tariq Aziz on the eve of the Bush Sr. war against Iraq. That Bush Sr. ultimatum was deliberately designed so as not to be acceptable, which it was not. Why? Because the Bush Sr. administration had already made the decision to go to war against Iraq no matter what. A similar ultimatum had been delivered to Milosevic at Rambouillet prior to the NATO war against Serbia. Bush Jr. thus once again, following his predecessors, trod the path of Machiavelli when he issued his public ultimatum to the Taliban government of Afghanistan.

It appears that the Bush Jr. administration is basically following the same script and scenario that had already been written and successfully carried out over a decade ago by the Bush Sr. Leaguers when they went to war against Iraq for the primary purpose of establishing direct American military control and domination over the Persian Gulf oil and gas fields. Only this time the Bushes were putting a move on the vast energy resources of Central Asia. As is well known, the Bush Family has extensive investments in the Oil and Gas Business, as does Vice President Cheney, who earlier served as Bush Sr.'s Minister of War. The same is true for other prominent Bush Jr./Sr. officials. Two major grabs for world hegemony and family fortunes.

Humanitarian Catastrophe

Now, all that being said, what then is really going on here? If there is no basis in fact and no basis in law for this war against Afghanistan, why are we doing this? Why are we creating this humanitarian catastrophe for the Afghan people? After all, it was Bush Jr.'s threat to bomb Afghanistan that put millions of Afghans on the move without food, clothing, housing, water, or medical facilities. The result has been a humanitarian catastrophe for anywhere from 5 to 7 million Afghans, particularly as the winter approached in Afghanistan. U.S.

responsibility cannot be cloaked by the American media's incessant references to the ravages of Afghanistan's decades-long conflicts.

Indeed, the Bush Jr. administration ordered Pakistan to close the border with Afghanistan so that humanitarian relief supplies could not be shipped by land to its long-suffering people. The starvation of civilians as a method of warfare is prohibited by Article 54(I) of Geneva Protocol I of 1977, and thus a war crime. The so-called U.S. airlifts of food packets -- dropped at first in yellow packets similar in color to unexploded bomblets from the cluster bombs it also dropped -- was nothing more than an international propaganda campaign, receiving extensive criticism from international NGOs already working on site. The same was true of Bush Jr.'s personal appeal to the Children of America to send in $1 to help the Children of Afghanistan. It would have been better to auction off the payload of one B2 Bomber.

Why War?

Why did we really bomb, attack, and invade Afghanistan? Could one truly say it was even so human a motivation as retaliation -- or vengeance -- or even atavistic bloodlust? No! The Bush Jr./Sr. Leaguers are cold, calculating, and shrewd Machiavellians. They know exactly what they are doing and why they are doing it. And during the first two weeks of the war it became crystal clear what their ultimate objective really was.

Secretary of Defense Rumsfeld flew over to Uzbekistan and concluded an agreement with their well-known dictator Karimov to the effect that the United States government will protect Uzbekistan -- irrespective of the fact that the Secretary of Defense has no constitutional authority to conclude such an agreement. Constitutional authority aside, the Pentagon is now in the process of establishing a long-term military base in Uzbekistan. That base and this war have been in the works for quite some time. U.S. Special Forces have been over there for several years training the Uzbekistan military.

Uzbekistan now wants a Status of Forces Agreement (SOFA) with the United States. A SOFA permits the long-term deployment of significant numbers of U.S. armed forces in another state. The U.S. has SOFAs with Germany, Japan, and South Korea, inter alia, and has had troops in all three of those countries since 1945 in order to control them. When the U.S. gets its military base in Uzbekistan, it will clearly not be leaving anytime soon.

It is obvious that this unconstitutional agreement between Rumsfeld and Karimov is to set the legal predicate for America to stay in Uzbekistan for the next 20 years or so for the alleged purpose of defending this country from Afghanistan, where the U.S. has deliberately created total chaos in the first place. This is exactly the same rationale that has been made for keeping the United States military forces deployed in the Persian Gulf for over eleven years after the Gulf War. Indeed, planning for the Gulf War went all the way back to the Carter administration with its so-called Rapid Deployment Force, [29] later renamed the U.S. Central Command that carried out the war against Iraq and still *de facto* occupies these Persian Gulf countries and their oil fields. The U.S. still retained about 20,000 troops sitting on top of the oil and gas fields in all these countries. It even established a separate naval fleet in Bahrain to police the Persian Gulf oil fields. It never had any intention of leaving the

Persian Gulf. It went there to stay.

It's Still the Oil, Stupid!

Today the U.S. Central Command is executing the Pentagon's outstanding war plan against Afghanistan and deploying U.S. military forces to build U.S. military bases in Uzbekistan, Afghanistan, Pakistan, Kyrghyzstan, and Tajikistan. There is more than enough evidence in the public record that the U.S. war against Afghanistan had been planned and prepared well before 11 September 2001. [30] Clearly since at least 11 September 2001, the world has been witnessing the formal execution of a Pentagon war plan that had been in the works for about four years.

Why do we want military bases in Uzbekistan, Kyrghyzstan, Tajikistan, Pakistan, and Afghanistan? Very simple: The oil and natural gas resources of Central Asia, reported to be the second largest deposits in the world after the Persian Gulf. Shortly after the collapse of the Soviet Union and the ascent to independence of its constituent states in 1991, U.S. think-tanks and their respective "thinkers" produced all sorts of studies about how a U.S. presence in Central Asia had suddenly become a "vital national security interest" of the United States because of its vast energy resources. Yet another "vital national interest" the American public had never heard of or even dreamed about before.

Since Central Asia is landlocked, the United States government wanted to find a way to get the oil and natural gas out, while avoiding Iran, Russia, and China. The easiest way to do that was to construct a pipeline south through Afghanistan, into Pakistan and right out to the Arabian Sea. UNOCAL had been negotiating to do this with the Taliban government of Afghanistan for quite some time, still with the full support of the United States government into the summer of 2001, but their negotiations had failed. The U.S. government then tendered a proverbial offer that could not be refused to the Taliban government.

Just as the Persian Gulf War against Iraq was all about oil and natural gas, this war against Afghanistan too is all about oil and natural gas -- as well as about strategically outflanking Russia, China, Iran, and India by establishing U.S. military bases throughout Central Asia. The United States is going to be there for quite some time -- at least until all that oil and natural gas have been sucked out of Central Asia. This move into Central Asia under the rubric of waging a non-delimited holy war against international terrorism represents yet another major expansion of the American Empire, deep into the sphere of influence of a former superpower, and shoving up against distant emerging world powers such as China and India, none of which can be counted on as friendly to America. Imposing Pax Americana upon Central Asia may, in the end, exemplify the limits of America's power, rather than its range. Not only foreign populations, but the American people themselves, will suffer from this imperial overstretch.

How Empires Rule at Home

Undoubtedly, the further expansion of the American Empire and Pax Americana abroad will require the further imposition of an American police state here at home. As the Romans discovered, an Empire is incompatible with a Republic. No point would be served here by reviewing the extensive literature that was generated during the Vietnam War comparing the United States with the demise of the Imperial Athenian Democracy during what Thucydides first denominated as the "Peloponnesian War" that really extended over 27 years. Yet the Bush Jr. administration is publicly and shamelessly promising us a war against terrorism without a conceivable end in sight. Not even the proverbial light at the end of the tunnel.

Bush Jr.'s Constitutional Coup D'Êtat

From the Supreme Court's installation of Bush Jr. as President to the Ashcroft/Federalist Society post-September 11th regime of police state "laws," the politico-legal functioning of America is increasingly resembling that of a Banana Republic. Since September 11th, we have seen one blow against the U.S. Constitution after another. For example, Attorney General John Ashcroft unilaterally instituted the monitoring of attorney-client communications despite the Fourth Amendment ban on unreasonable searches and seizures and the Sixth Amendment right to representation by Counsel in criminal cases. He just went ahead and did it, without even bothering to inform anyone.

Over 1100 aliens have been picked up and "disappeared" by Ashcroft and his Department of Injustice. The American People have no idea where most of these people are. They are being held on the basis of immigration law, not criminal law, for a period of detention which has not been defined. Ashcroft proclaimed another ukaze that these immigration proceedings must be held in secret. The phenomenon of "enforced disappearances" is considered to be a crime against humanity by Article 7(I)(i) of the Rome Statute for the International Criminal Court.

It appears that many of these aliens have been deprived of their basic human rights to consular notification and access as set forth in the 1963 Vienna Convention on Consular Relations, to which the United States is a contracting party and which even the U.S. State Department concedes constitutes binding customary international law. Apparently Bush Jr.'s left hand does not care about what his right hand does. Yet another international convention set at naught.

The one characteristic these detained foreigners have in common is that they are mostly Muslims, Arabs, and Asians. Everyone needs a scapegoat for the 11 September tragedy, and it looks like we have one, both at home and abroad. Thousands more such aliens are being moved into the pipeline for the Ashcroft gulag by the FBI.

Ashcroft is now planning to reinstate the infamous COINTELPRO Program, whose atrocities against the civil rights and civil liberties of the American People have been amply documented elsewhere. [31]

It is just a matter of time before the Bush Jr. Leaguers unleash the newly-augmented powers of the FBI, CIA and NSA directly against the American People. And we already have 2 million Americans rotting away in prison -- the highest rate of incarceration in the world, a disproportionate majority of whom are Americans of Color, victims of the Nixon/Ford, Reagan/Bush, and Clinton administrations' racist "war on drugs," which is really a war against people of color. [32] The American Police State has already arrived for people of color!

Ashcroft's Police State

This brings the analysis to the Ashcroft Police State Act. There are no other words to describe it. While Bush failed to get a formal declaration of war that would have rendered him a constitutional dictator, clearly Attorney General John Ashcroft and his right-wing Federalist Society lawyers took every piece of regressive legislation off the shelf, tied it all into what they called an anti-terrorism bill, and then rammed it through Congress, giving it the appropriately Orwellian name of the U.S.A. Patriot Act. [33] According to one report, Ashcroft's first draft would have had Congress suspend the ancient Writ of Habeas Corpus -- the necessary prerequisite for imposing a police state in the United States of America. Many Members of Congress publicly admitted that they did not even bother to read the Ashcroft Police State Act. Another Congressman said basically: "Right, but there's nothing new about that." Interestingly enough the so-called liberal Democrats in the House and the Senate were willing to give Bush Jr. and Ashcroft more police state powers than the conservative Republicans in the House. But there are no real differences that matter between Republicans and Democrats when it comes to promoting America's self-proclaimed "Manifest Destiny" to control the World and now Outer Space too.

Bush's Kangaroo Courts

It would take an entire law review article for me to analyze all the legal and human rights problems with Bush Jr.'s proposed military commissions. Here a cabal of Federalist Society Lawyers in the White House got President Bush to sign a Presidential Order on 13 November 2001 which, when implemented, will be widely recognized to constitute a grave breach of the Geneva Conventions and establish a prima facie case of criminal accountability against the President himself. It is emblematic of this particular war that right towards its very outset President George W. Bush personally incriminated himself under both international criminal law and United States domestic criminal law. The Bush Jr. administration has severely undermined the integrity of the Four Geneva Conventions of 1949. By doing this, the Bush Jr. administration has opened up U.S. Armed Forces and civilians around the world to similar reprisals, which has already happened.

As a licensed attorney for 25 years, a law professor for 23 years and someone who has done a good deal of criminal defense work in U.S. Federal Courts, I am opposed to the insinuation of these Federalist Society Lawyers that America's Federal Courts established by Article III of the U.S. Constitution cannot hold accountable those responsible for the crimes of 11 September 2001. This is an insult to all Federal Judges, Federal Prosecutors, Federal Public Defenders and all the Lawyers who are Officers of these Courts.

In one fell stroke these Federalist Society lawyers have besmirched and undermined the integrity of two Branches of the United States Federal Government established by the Constitution -- the Presidency and the Judiciary. So far the U.S. Congress has supinely gone along with the Bush Jr. police state agenda. If and when these Bush/Ashcroft police state practices make their way to the U.S. Supreme Court, many of them will probably be upheld. After all, a 5 to 4 majority of the Supreme Court already gave the Presidency to Bush Jr. We need to seriously consider whether they would strike down laws and practices that would give Bush Jr. a Police State as well.

Philosophers have taught that a People get the type of government they deserve. If the American People permit the Bush Jr. Leaguers to impose a Police State at home in the name of furthering Pax Americana abroad , we will have deserved it by abnegating our responsibilities as Citizens living in what is supposed to be a constitutional Republic with a commitment to the Rule of Law. The same thing happened to the Romans and to the Athenians. The United States of America is not immune to the laws of history. Sic transit gloria mundi!

The Bush Jr. Withdrawal from the ABM Treaty

Then, as had been foreshadowed, whispered, hinted at and finally broadcast over a period of months, came the monumentally insane, horrendous, and tragic announcement on 13 December 2001 by the Bush Jr. administration to withdraw from the ABM Treaty, effective within six months. Of course it was sheer coincidence that the Pentagon released the bin Laden Video just as Bush Jr. himself publicly announced his indefensible decision to withdraw from the ABM Treaty in order to pursue his phantasmagorical National Missile Defense (NMD) Program, the lineal successor to the Reagan/Bush Star Wars dream. Predictably, the bin Laden video back-staged this major, pro-nuclear announcement. Once again the terrible national tragedy of 11 September was shamelessly exploited in order to justify a reckless decision that had already been made for other reasons long before then. Then on 25 January 2002, the Pentagon promptly conducted a sea-based NMD test in gross violation of Article 5(I) of the ABM Treaty without waiting for the required six months to expire, thus driving a proverbial nail into the coffin of the ABM Treaty before its body was legally dead.

The Bush Jr. withdrawal from the ABM Treaty, which was originally negotiated by those well-known Realpolitikers Richard Nixon and Henry Kissinger, [34] threatens the very existence of other seminal arms control treaties and regimes such as the Nuclear Non-Proliferation Treaty (NPT) and the Biological Weapons Convention, which have similar withdrawal clauses. The prospect of yet another round of the multilateral and destabilizing nuclear arms race now stares humanity directly in the face, even as the Bush Jr. administration today prepares for the quick resumption of nuclear testing at the Nevada test site in outright defiance of the Comprehensive Test Ban Treaty CTBT regime and NPT Article VI . The entire edifice of international agreements regulating, reducing, and eliminating weapons of mass extermination (WME) has been shaken to its very core. Now the Pentagon and the CIA are back into the dirty business of researching, developing and testing biological weapons and biological agents that are clearly prohibited by the Biological Weapons Convention and its U.S. domestic implementing legislation, the Biological Weapons Anti-Terrorism Act of 1989. [35]

Conclusion/Prologue

This book comes at a critical time in American history: when an expansionist American administration not only endangers the past century's momentous achievements in international treaty law by crashing through them, but also threatens the very fabric of domestic rights and freedoms cherished by American citizens enshrined in the Rule of Law and the U.S. Constitution itself. [36]

Despite the best efforts by the Bush Jr. Leaguers to the contrary, we American Citizens still have our First Amendment Rights: Freedom of Speech, Freedom of Association, Freedom of Assembly, Freedom to Petition our Government for the Redress of these massive Grievances, Civil Resistance, etc. We are going to have to start vigorously exercising all of our First Amendment Rights right now; we must use them or indeed, as the saying goes, we will lose them. We must act -- not only for the good of the People of Afghanistan, for the good of the Peoples of Southwest Asia -- but for our own future, that of our children, that of our nation as a democratic society committed to the Rule of Law and the U.S. Constitution, and for all Humanity.

This book is written for the members of the global anti-nuclear movement: concerned members of the public from all walks of life who want to eliminate the accelerating danger nuclear weapons pose to humanity's physical existence, as well as the challenge their threatened use poses to the political freedom of all peoples worldwide. It was also written for the NGO community, especially those NGOs working against nuclear weapons and nuclear power, against weapons in space, and for nuclear disarmament, large numbers of which I have advised, counseled, represented and worked with over the years -- including and especially the Plowshares Movement.

This book will give the reader the intellectual tools necessary to battle the nuclear nihilism of the Bush Jr. administration, the U.S. Nuclear Power Elite, and the U.S. Nuclear Empire -- hopefully before they run completely amok. It sets forth a comprehensive analysis of nuclear weapons and nuclear deterrence from an international law perspective. The basic argument is that nuclear weapons and nuclear deterrence are criminal under well-recognized principles of international law. Generally speaking, this author has been recognized as the foremost proponent of this position in the legal profession. Moreover, I have successfully established the criminality of nuclear weapons and nuclear deterrence during the past 20 years that I have been engaged in defending anti-nuclear resisters around the world.

Just recently, this argument was validated by the Scottish Sheriff Margaret Gimblett at Greenock, Scotland who directed a verdict in favor of the Trident Plowshares 2000 Anti-Nuclear Resisters who were facing charges of criminal damage to Britain's Trident II nuclear weapons fleet, stating when she ruled: "I listened very carefully to Professor Boyle and have taken into account all the evidence in this case from him." This author has achieved the best track record in the world on getting such anti-nuclear acquittals by applying my analysis concerning the criminality of nuclear weapons and nuclear deterrence that is set forth herein. The Greenock directed-verdict was a monumental ruling in the battle against nuclear weapons and nuclear deterrence. This book provides the reader with an extensive analysis of the legal theories that enabled us to win such a significant victory against nuclear deterrence and nuclear weapons. Indeed, portions of this book were read by the Greenock protesters before they acted, and the manuscript for this book was used to put together the Greenock defense. Large numbers of Plowshares anti-nuclear resisters and their lawyers have also drawn upon it.

In light of the Bush Jr. administration's proven nuclear nihilism and its global military adventurism, humanity needs to galvanize such anti-nuclear activism all around the world, and especially within the nuclear weapons states themselves. This book has been written and published for precisely this purpose.

1 February, 2002

Notes

1. *See* Francis A. Boyle, *Defending Civil Resistance Under International Law* (1987). *Goldwater v. Carter*, 444 U.S. 996 (1979).
2. *See* Nicolo Machiavelli, *The Prince* 149 (Mark Musa trans. & ed. 1964): " . . . all religion. And nothing is more essential than to appear to have this last quality."
3. *See, e.g.*, William Blum, *Killing Hope* (1995). *See also* William Blum, *Rogue State* (2000). (www.killinghope.org and http://members.aol.com/superogue/homepage.htm)
4. *See* Ahmed Rashid, *Taliban: Militant Islam, Oil, and Fundamentalism in Central Asia* (2000).
5. *See* Francis A. Boyle, *World Politics and International Law* 75-167 (1985); Francis A. Boyle, *The Future of International Law and American Foreign Policy* 79-112 (1989).
6. U.N. Security Council Resolution 1368 (12 Sept. 2001), Threats to international peace and security caused by terrorist acts.
7. U.N. Security Council Resolution 678 (29 Nov. 1990), Iraq-Kuwait.
8. *See* Ramsey Clark, *The Fire This Time* (1992).
9. *See* Adam Clymer, "Senator Byrd Scolds Colleagues for Lack of Debate After Attack", *N.Y. Times*, Oct. 2, 2001.
10. *See* Arthur S. Miller, *Presidential Power in a Nutshell* (1977).
11. *See Korematsu v. United States*, 323 U.S. 214 (1944).
12. The War Powers Resolution, 50 U.S.C.A. §§ 1541-1548 (1973).
13. H.J. Res. 1145 (7 Aug. 1964).
14. Public Law No. 107-40 (18 Sept. 2001).
15. Public Law No. 102-1 (14 Jan. 1991).
16. *See, e.g.*, Bill Keller, "The World According to Powell", *N.Y. Times*, Nov. 25, 2001.
17. *See* John K. Cooley, *Unholy Wars* (2d ed. 2000, 3d ed. 2002).
18. *International Herald Tribune*, Online Edition, Dec. 9, 2001.
19. Statement by the North Atlantic Council, Press Release (2001) 124 (12 Sept. 2001).
20. *See* NATO Press Communiqué S-1(91) 86, Rome Declaration on Peace and Cooperation (8 Nov. 1991).
21. *See* Noam Chomsky, *The New Military Humanism* (1999); Noam Chomsky, *Rogue States* (2000).
22. *See* Noam Chomsky, *What Uncle Sam Really Wants* (1992).
23. *See* Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (1996).
24. U.N. Security Council Resolution 1373 (28 Sept. 2001), Threats to international peace and security caused by terrorist acts .
25. S/2001/946 (7 Oct. 2001), 40 I.L.M. 1281 (2001).
26. *See* Boyle, *Future of International Law and American Foreign Policy, supra,* at 87-88.
27. *Id.* at 240-42.
28. *See* Boyle, *World Politics and International Law, supra,* at 215-17.
29. *See, e.g.*, *BBC* Online Edition, Sept. 18, 2001.
30. *See* M. Wesley Swearingen, *FBI Secrets* (1995).
31. *See* Alexander Cockburn & Jeffrey St. Clair, *Whiteout* (1998).
32. Public Law No. 107-56.
33. *See* Gerard Smith, *Doubletalk* (1980).
34. *See* Judith Miller, Stephen Engelberg & William Broad, *Germs* (2001).
35. *See* Francis A. Boyle, *Foundations of World Order* (1999).

References:

- **Author Biography - Francis A.Boyle**
As a leading American professor, practitioner and advocate of international law, Francis A. Boyle is uniquely qualified to address the issue of nuclear deterrence. Twenty years of anti-nuclear advocacy have earned him what may be the world's best track record for anti-nuclear acquittals. Recently, his testimony persuaded a Scottish Judge in the UK to direct a verdict against the UK Trident 2. Through his exacting international legal analysis, prolific writings and tireless advocacy, he has succeeded in establishing the illegality of nuclear weapons and nuclear deterrence, reflected in the recent World Court Advisory Opinion of 1996.

  Francis A. Boyle's long, distinguished and multi-faceted career has included: responsibility for drafting the Biological Weapons Anti-Terrorism Act of 1989, the American implementing legislation for the 1972 Biological Weapons Convention; lecturing on nuclear weapons and international law to the U.S. military at West Point and to Soviet and foreign lawyers through two lecture tours sponsored by the Lawyers' Committee on Nuclear Policy and the Association of Soviet Lawyers; and representing the Republic of Bosnia and Herzegovina before the International Court of Justice (1993-94), where he won two World Court Orders against Yugoslavia to cease and desist from committing all acts of genocide.

  Boyle has also served on the Board of Directors of Amnesty International (1988-1992); as Legal Advisor to the Palestine Liberation Organization on the Creation of the State of Palestine (1987-89) and to the Palestinian Delegation to the Middle East Peace Negotiations (1991-93), and as a Consultant to the American Friends Service Committee.

  Professor Boyle teaches International Law at the University of Illinois, Champaign, and is author, inter alia, of *Foundations of World Order: The Legalist Approach to International Relations 1898-1921* (Duke Univ. Press, 1999), *The Bosnian People Charge Genocide: Proceedings at The International Court of Justice Concerning Bosnia v. Serbia On The Prevention and Punishment of The Crime Of Genocide* (Northampton, MA: Aletheia, 1996), *Nuclear Proliferation and The Legality of Nuclear Weapons*, edited by William M. Evan, (Lanham, MD: University Press of America, 1995), *Ideas & Ideals: Essays on Politics In Honor of Stanley Hoffmann*, edited by Linda B. Miller & Michael Joseph Smith (Boulder, CO: Westview Press, 1993), *More Than 50,000 Nuclear Weapons: Analyses Of The Illegality Of Nuclear Weapons Under International Law* (Francis A. Boyle *et al*., Northampton, MA: Aletheia Press, 1991), *The Future of International Law and American Foreign Policy* (Transnational Publishers, 1989), *Defending Civil Resistance Under International Law* (Dobbs Ferry, NY: Transnational Publishers, 1987), and *World Politics and International Law* (Duke Press Policy Studies, 1985). He holds a Doctor of Law Magna Cum Laude as well as a Ph.D. in Political Science from Harvard University.

- **Book Summary**: *The Criminality of Nuclear Deterrence - Could The US War On Terrorism Go Nuclear?*, by Francis A. Boyle, ISBN: 0-932863-33-7, US$14.95.

  Following U.S. unilateral abrogation of the ABM Treaty, the entire edifice of international agreements regulating, reducing, and eliminating weapons of mass extermination has been shaken to its very core. The prospect of yet another round of the multilateral and destabilizing nuclear arms race now stares humanity directly in the face. The resumption of nuclear testing in outright defiance of the Comprehensive Test Ban Treaty regime and the Nuclear Non-Proliferation Treaty, Article VI might soon begin.

  As the U.S. War on Terrorism hurtles into uncharted waters, challenging accepted norms of international law and setting a pattern for peremptory state behavior, could a nuclear strike against a non-nuclear "rogue state" become an American option? Could conflicts between other nuclear states such as India and Pakistan go nuclear?

  The Clinton Administration's Presidential Decision Directive 60 asserted a U.S. right to target non-nuclear states with nuclear weapons in 1997. But PDD60, as well as nuclear deterrence as a whole -- both the use and threatened use of nuclear weapons -- is illegal under the international law of warfare.

  In fact, Francis A. Boyle argues in *The Criminality of Nuclear Deterrence,* the Bush administration's toying with the use of tactical nuclear weapons in Afghanistan, its intent to proceed with National Missile Defense, to renew nuclear testing and develop "bunker-busting" nuclear weapons will have a disastrous impact on existing international efforts to rein in the global nuclear arms race through the Comprehensive Test Ban Treaty, and the Nuclear Non-proliferation Treaty. Already, the Anti-Ballistic Missile Treaty has fallen before its scythe.

  This book provides a succinct and detailed guide to understanding the arms race from Hiroshima/Nagasaki through the SALT I, SALT II, ABM and START efforts at arms control, to Star Wars/National Missile Defense, U.S. unilateral abrogation of the ABM Treaty, and events in Afghanistan and beyond.

  It clarifies the relevant international law, from the Hague Conventions through the Nuremberg Principles to the recent World Court Advisory Opinion, as well as tracing contradictions in and contraventions of domestic guidelines established in the U.S. Army Field Manual of 1956 on The Law of Land Warfare, which remains the official primer for U.S. military personnel concerning the laws of war to which they must regard themselves as subject.

  More disturbingly, Boyle reviews the intricacies of the foreign policy controversies and objectives which mark the development of American nuclear policy, often pressed forward by civilian administrations seeking to promote their geopolitical agenda over the advice and desires of the American military itself.

This book is an effective tool and a "must read" for the burgeoning anti-nuclear and peace movements, church groups, and lawyers defending anti-nuclear resisters. It should also prove instructive for the diplomatic community, and for civilian and military personnel who frame and carry out America's nuclear policies, who more than any must weigh the possibility of being summoned one day before an international war crimes tribunal. *The Criminality of Nuclear Deterrence* by Francis A. Boyle, foreword by Philip Berrigan, will give the reader the intellectual tools necessary to battle the U.S. nuclear empire. A special introduction, "George Bush, Jr., September 11th and the Rule of Law" clarifies the illegal and dangerous trajectory of the present Bush, Jr. administration.

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