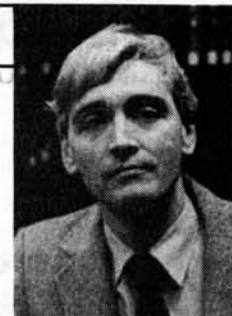


Interview: Prof. Francis A. Boyle



## Campaign launched to try Bush for Nuremberg crimes

*Francis A. Boyle is an international law specialist and Professor of International Law at the University of Illinois College of Law at Champaign. He is also Executive Committee member and Co-founder, Ethical Studies Group, University of Illinois Program in Arms Control, Disarmament and International Security. The interview, which we present in abridged form, was conducted by Dr. Debra Freeman on April 22.*

**EIR:** Let's talk for a minute about this question of war crimes. You're a well-known international law specialist. Is it your view that there is actually a case for war crimes against Bush and his command? Can we realistically charge him with war crimes, and what would the procedure for such a thing be?

**Boyle:** Yes, there's definitely been a case, and I've been documenting war crimes by U.S. government officials from the very outbreak of the war, indeed before the war. You have probably heard that the U.S. government is keeping a running account of Saddam Hussein's war crimes. Well, my job is to keep a running account of the war crimes committed by Bush, Baker, Cheney, Quayle, and the U.S. high command. I have been doing that since before the war started, dealing with the U.S. government's planning, preparation and conspiracy to commit crimes against peace, crimes against humanity, and war crimes under the Nuremberg principles, and planning, preparing, and conspiring to commit a war is a crime in its own right.

We have been documenting these crimes literally on a daily basis, from before the war began up to and including today, and I have a running file and a count on these things.

We're going to be using them both for the purpose of war crimes proceedings and also for the purpose of impeachment proceedings. I've been serving as an adviser to Congressman Henry Gonzalez's office. As you know, Congressman Gonzalez (D-Tex.) has filed an impeachment resolution against Bush and the work I've been doing has been fed into Gonzalez's office, too. I can't predict precisely what his people are going to do with that, but they're aware of it and I take it that at the appropriate time they will use it.

As you know, in the impeachment resolution, Bush is indeed charged with Nuremberg offenses—crimes against peace, crimes against humanity and war crimes—and I gave advice on the drafting of this.

We're going to be using these charges in a variety of

contexts: impeachment, international war crimes tribunals, domestic war crimes tribunals. Ultimately I'm hoping that we will be able to assemble enough evidence in a report to trigger the special prosecutor statute here in the United States, that would require a federal court, if the Attorney General does not do it, to appoint an independent counsel to investigate the commission of Nuremberg offenses by Bush, Baker, Cheney, Quayle and the U.S. high command.

So there's a whole complex of remedies that can be pursued. Right now, it looks like a lot of pressure is being put on the U.N. secretary general to set up an international criminal court. I think that's fine. Let's set up the international criminal court and, when it is set up, we will bring our evidence to the commission of international crimes by Bush, et al. with respect to Iraq. Let's try all the war criminals. I'm totally in favor of that.

**EIR:** When we talk about war crimes, what immediately pops into people's minds is U.S. liability for civilian deaths during the course of the war; but what you're saying is that the decision to go into the war may itself have been a war crime, that Bush actually conspired to wage an illegal war.

**Boyle:** That's correct. You'll note, if you have a look at the Gonzalez impeachment resolution, that I served as adviser to drafting, that's exactly what we charged him with. On the Tuesday [Jan. 15] before the war started, Congressman Henry Gonzalez, Ramsey Clark, and I launched a national campaign to impeach these guys if they went to war. We have charged them with planning, preparing, and conspiring to commit a war of aggression, which is a Nuremberg crime against peace.

One of the basic principles of the Nuremberg Tribunal was that an individual or group of individuals who commit a crime against peace—that is, launch a war of aggression or a war in violation of international treaties and agreements—are themselves personally responsible for all further crimes committed during the course of that war, that is, war crimes, crimes against humanity.

So, Bush himself is responsible for the decision to go to war, and then he is also personally responsible for all further war crimes committed during the course of the conflict.

Nuremberg recognizes three different types of international crimes:

- Crimes against peace, which is waging war of aggres-

sion or war in violation of international treaties and agreements. Here our position is that this war was a war of aggression. It violated the United Nations Charter, it violated the terms of the Kellogg-Briand Pact of 1928. So it is a Nuremberg crime against peace.

- During the course of prosecuting this war, Bush also committed numerous war crimes under the Hague Regulations of 1907, the Hague Rules of Aerial Warfare of 1923, the Geneva Conventions of 1949 and additional Protocol One of 1977, the Declaration of London in 1909, and a whole series of other international treaties and agreements that it would take us all day here to go through.

- Crimes against humanity, the third type of Nuremberg offense, which will deal with the destruction of the Iraqi people, the attempt to destroy them as a people. That crime was later codified in the Genocide Convention and we have charged Bush with violation of the Genocide Convention. There is now a Genocide Act, which is part of United States domestic law and we'll be charging him with that as well.

So we'll encompass all these offenses within the proceedings that we are going to be initiating against Bush and the rest of them.

And again, for the people of European countries, I would recommend that you do the same for your own government officials. I can't say that I'm intimately familiar with all the policies undertaken by all the European states, but certainly the British, the French, and the Italians played a key role. Without their cooperation, none of this would be possible. It seems to me that the peoples of these three countries must hold their leaders fully accountable for what they did. Aiding and abetting, under the Nuremberg principles, was borrowed from Anglo-American common law and under aiding and abetting, if you are an aider and abetter, you are treated as a principal of the first degree, namely as if you had committed the offense.

The leaders of the various European states who went in with Bush on this are themselves responsible for these crimes, and they should be held accountable by their own people.

Now, I know there were varying degrees of support in one European state as opposed to another, and it's not for me to single out, or try it, but as I understand it, there was substantial support for the Dutch government, the Belgian government. The Germans didn't do too much, there was a big debate on that one. Certainly my reading is that the British, French and Italians were fully complicit.

**EIR:** What about the question of what has happened now since the so-called cease-fire? Using the pretext of the Kurdish refugee problem, it does appear that the Bush administration is now occupying, without the permission of the Iraqi government, the northern portion of that country. Would that qualify as a war crime?

**Boyle:** Sure. And as a matter of fact, we're going to be

dealing with this, too. The whole Kurdish question is a very complicated and difficult issue. I do not at all intend here to minimize the suffering of the Kurds. The Kurds have always been used and manipulated by the United States government in the Middle East. For example, Kissinger had played the Kurds off against both the Iraqis and Iranians, using them as tools. Bush has done the exact same thing here. Remember that Bush used to be Nixon's CIA director. Bush knows exactly what he's doing with respect to the Kurds. He purposely incited the Kurds to rise up against the Iraqi government, knowing full well that this would produce massive oppression against them, and oppression has occurred against the Kurds. We must understand and admit that.

Bush knew exactly what he was doing, he knew exactly what the response would be, he knew exactly that the Kurds would flee, and indeed all the reports seem to indicate that the various Kurdish guerrilla groups, if the Kurds were not fleeing, went into their homes and drove them into exile at the point of a gun. And we know for a fact that most of the Kurdish groups work hand-in-glove with the CIA.

So I believe that Bush *purposely* created the tragedy of the Kurdish people. You'll note that then they fled to the borders. The Turks refused to let them into Turkey. Bush did nothing at all about that. And now, under the guise of so-called humanitarian intervention, the British, the French, the U.S. government, and apparently the Italians, are now invading northern Iraq, under the guise of humanitarian protection of the Kurds. Well, they've never cared at all about the Kurds. They never have, they never will. They've always manipulated the Kurds. There is no legal authorization for the U.S. government to invade northern Iraq. It's another crime against peace in violation of the U.N. charter. Even the U.N. secretary general said there's no authority for this under any Security Council resolution. . . .

The whole purpose of this invasion, as we said right from the very outset, was to grab the Persian Gulf oil fields, and that's exactly what they're doing. Bush now controls all the oil of the Saudi peninsula, Kuwait, a good deal of Iraq, and now in northern Iraq, too.

Bush does not plan to leave. The British and French have gone along, because it's their oil that's at stake here. The French used to get all their oil from Iraq and the British North Sea oil is running out and they know it. So you have the three, and adding the Italians in there, four European colonial powers going in to grab their own oil, secure their own oil supplies for the next 100 years. . . .

**EIR:** Certainly the terms of this cease-fire agreement would not only indicate that, but would indicate that in fact the *policy* that's being imposed is a policy of retribution and what has been termed "technological apartheid." If anything, conditions for the majority of Iraqi citizens will get worse before they get better.

**Boyle:** This gets back to our charge against Bush, et al. for

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***We're going to take the judgment of this international tribunal, and use it here to impeach Bush, Baker, Cheney, Quayle and the rest of them. Once they're removed from office, we plan to prosecute them for these crimes.***

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crimes against humanity. What he has done to the people of Iraq, including the Kurds, is a crime against humanity. Even Jim Baker used that term when he was talking about what was going on to the Kurds. They have condemned themselves with their own words.

Bush has wantonly devastated all of Iraqi civilian population centers, and Nuremberg makes it very clear that wanton devastation of cities is a war crime. It says so, very clearly, right in there. And a crime against humanity. What he has done to all the people of Iraq, not just the Kurds. And they are dying now, every day, day in and day out, by disease, dysentery, lack of food, lack of water. Children are dying. It's a whole nation, a whole race of people, who are being exterminated one way or the other. And Bush knows full well exactly what he's doing.

This is a crime against humanity. This is genocide under the Genocide Convention, and we plan to charge him with that. Indeed, we have already charged him with that in the Gonzalez impeachment resolution.

**EIR:** Bush, of course, and the administration claim that the loss of civilian life was "collateral damage."

**Boyle:** That's ridiculous. The rules for the conduct of aerial warfare, which are binding as a matter of customary and international law on the U.S. government, can be found in the Hague Rules of Aerial Warfare of 1923. The U.S. government fully subscribed to those rules, even at the outbreak of the Second World War, and those rules were later enshrined and codified in the U.S. War Department Field Manual of 1940.

Those are the rules that we are going to be holding Bush accountable to, when it comes to aerial bombardment of cities. It's made very clear that you simply cannot be targeting cities. Also the Geneva Additional Protocol One of 1977 makes it clear that there must be discrimination and proportionality in attacks on military targets, and you cannot justify blowing up an entire city by saying, "Well, there was a tank convoy over here."

We're going to be holding Bush accountable to the standards that have been subscribed to by the United States government itself. Also the Hague Regulations of 1907 make it very clear that aerial bombardment of civilian population centers is prohibited.

Bush has violated every known principle of international law, when it comes to blowing up Iraqi cities, and we'll be

able to prove it.

**EIR:** You have actually formed a commission of inquiry for the international war crimes tribunal. Can you tell me a little bit about that and what the plans are for the months immediately ahead?

**Boyle:** An international commission of inquiry was established. This is going to be a monumental job, not only by the people of the United States, but also by the people of Europe. We need committees in every city in America and every city in Europe to establish themselves to inquire into the commission of war crimes by the U.S. government officials and also the officials of their own governments against the people and state of Iraq.

There is an enormous amount of evidence out there in the news media, alternative sources of news media. People know certain things. I read five or six newspapers a day, but I certainly don't know all the facts as to what the U.S. government and foreign governments have done that would implicate them in the commission of international crimes.

So what we would like is that in each country, possibly in each major city, is for the people there to set themselves up their own commission of inquiry, to assemble the facts and evidence, during the course roughly of the next year. They can have hearings. They can try to accumulate whatever evidence they can come up with for U.S. war crimes and crimes committed by their own leaders and put this evidence in the form of a written report, and with the report to have footnotes, where they document their case.

Then, what we would like is all these reports from all over the world of U.S. war crimes and war crimes committed by foreign government officials, these reports to come into this international tribunal, that will be held approximately a year from now, maybe around the anniversary of the start of the war. Right now we're thinking of The Hague, or at the International Court of Justice, for an international tribunal of eminent jurists to consider all these reports with all this evidence accumulated from all around the world and for hearings to be held, in accordance with recognized statutes and procedures, and the tribunal to issue a judgment, exactly along the lines of the Nuremberg Tribunal after the Second World War.

As I said, this will be an enormous task. I personally am not charged or do not have cognizance of all the evidence that is out there. There are enormous amounts of evidence

available in news media, and even in the possession of each individual. Particular individuals know various portions of the story.

So what we're asking for is each country and each city to unite, put together this commission, hold the hearings, to expose the crimes committed by their own leaders and by U.S. government officials, to their own people living in the cities and the country, put these reports together in a professional manner. We don't want propaganda and rhetoric. We want statements of facts, documentation, whatever documentation, reports, sources they have, and to put it together in a fashion that it then can be examined by this international tribunal.

**EIR:** What address should people use for the international war crimes group?

**Boyle:** There is a central coordinating office that will be pulling all this together: Just address it to Attn: International War Crimes Tribunal Commission, 36 East 12th St., New York, N.Y. 10003. The fax number is (212) 979-1583. Telephone number is (212) 777-1246. They will get out whatever needs to be gotten out at that time, and they're attempting to coordinate these efforts all over the world. Right now, as I understand it, we have about 30 different cities around the world that have agreed to participate in this effort and are now in the process of getting themselves organized.

**EIR:** Do you have anything more to add?

**Boyle:** Yes. I think people have to understand that this is a serious legal effort. This is not propaganda, this is not public relations, this is not consciousness-raising. That is not what we're doing here. I'm an international lawyer. I do some of that other stuff. But this is a legal matter, and what we intend with this is as follows.

What we want to do, as soon as we have the decision by the tribunal, we're going to take the judgment of this international tribunal, and we're going to use it in a variety of ways. First, we do intend to use it here in the Gonzalez impeachment hearings in the United States, to impeach Bush, Baker, Cheney, Quayle and the rest of them and get them removed from office. Once they're removed from office, we plan to prosecute them for these crimes.

This report will be used, we hope, to trigger the special prosecutor law here in the United States, to have an independent counsel appointed. The standard under the law is that you need credible evidence that high-level government officials have committed serious crimes. At that point, the law gets triggered, a special prosecutor should be appointed. We would hope that the tribunal, the judgment of the tribunal and these reports feeding into it would create enough credible evidence to trigger the special prosecutor statute and would allow the prosecution of U.S. government officials for war crimes and other international crimes in United States courts.

I take it there are probably similar procedures in all other

states in Europe. I'm not an expert in comparative law. I guess European lawyers would have to look into this for themselves and decide how they're going to proceed. But we would like to have a judgment that came to the same thing in other European states where governmental leaders aided and abetted or directly participated in international crimes. . . .

The other remedy as I see it is to produce a judgment with credible evidence and a report. What we will do then is take that report and circulate it to all 169 states that are parties to the Geneva Conventions and we will say that this judgment has a *prima facie* case, that the following individuals listed in this judgment have committed international crimes under the Geneva Conventions, and that in the event any of these individuals show up in your states, your state is under an obligation to apprehend them and to prosecute them for the commission of international crimes.

What we will do then, you see, is put all states on notice that the individuals who are found to be guilty in accordance with the tribunal are war criminals, and that if they show up at any time for the rest of their lives in these states, they must be prosecuted. And again, there's no statute of limitations for the commission of international crimes. . . .

**EIR:** Can we give your address and phone number, in case there are people with questions that need to speak with you about the substance?

**Boyle:** University of Illinois College of Law, 209 Law Building, 504 E. Pennsylvania Ave., Champaign, Ill. 61820; Phone: (217) 333-7954.

Anything on organizational aspects should go to New York; I'm only here to deal with legal theories. If there are people with questions about theories of accountability contact me. I don't have time to deal with a lot of organizational stuff, but if there are people wrestling with a particular question of accountability and things of that nature, contact me.

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