

# Saving the children of Iraq from genocide

by Francis A. Boyle

*The author is a professor of International Law at the University of Illinois at Urbana-Champaign.*

The Harvard Study Team Report, "Public Health in Iraq After the Gulf War," provides chilling reading for those willing to make their way through its clinically precise findings and conclusions. The Team estimated that as of May 1991, fifty-five thousand additional deaths of Iraqi children under five had already occurred because of the Gulf crisis, and projected that at least 170,000 Iraqi children under five will die in the coming year from the delayed effects of the Gulf crisis. The study also emphasized that these projections are conservative: "In all probability, the actual number of deaths of children under five will be much higher."

The continuation of economic sanctions against Iraq prevents the massive infusion of international humanitarian assistance necessary to prevent these mortality projections from becoming a reality. The Harvard Report directly raises the question whether Bush administration officials are responsible for the commission of the crime of genocide against the children of Iraq, because of their obstinate insistence that economic sanctions be maintained in order to produce the deposition of Saddam Hussein, despite the fact that the original purpose for their imposition was achieved with the so-called "liberation" of Kuwait. The United States government is a contracting party to the International Convention on the Prevention and Punishment of the Crime of Genocide of 1948. Forty years later, the United States Congress adopted what is called implementing legislation for the Genocide Convention that makes genocide a crime under federal criminal law.

Basically following the terms of the Genocide Convention, this Genocide Convention Implementation Act, found in Title 18 of the United States Code, defines the crime of "genocide" as follows:

## § 1901. Genocide

(a) **Basic offense**—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

- 1) kills members of that group;
- 2) causes serious bodily injury to members of that

group;

3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

5) imposes measures intended to prevent births within the group; . . .

Under the definitional provisions of this Act, 225,000 Iraqi children clearly constitute a "substantial part" of "a national, ethnic, racial, or religious group as such." The continuation of economic sanctions against Iraq will 1) kill at least 170,000 more Iraqi children by the end of the year; 2) "cause serious bodily injury to" Iraqi children; 3) "cause the permanent impairment of the mental faculties of" Iraqi children; and 4) subject Iraqi children "to conditions of life that are intended to cause the physical destruction of the group in whole or in part. . . ."

Article 4 of the Genocide Convention provides that persons committing genocide "shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Only the "specific intent" of Bush administration officials to commit genocide against Iraqi children would remain to be proven beyond a reasonable doubt. The open publication and widespread dissemination of the Harvard Report on May 22, 1991 would make that task manageable. Arguably, any Bush administration official responsible for implementing the sanctions policy who has knowledge of the conclusions of the Harvard Report would possess the "specific intent" required to serve as the mental element of the crime of genocide against Iraqi children.

. . . All 99 states parties to the Genocide Convention have both the right and duty under international law to bring the genocidal situation in Iraq to the attention of the entire United Nations Organization. Moreover, the Genocide Convention expressly confers international legal competence upon all organs of the U.N.—including the Security Council, the General Assembly, the International Court of Justice, and the U.N. Commission on Human Rights, etc.—to do something about the genocidal situation in Iraq. But so far, such individual steps and collective actions by states have not been taken for fear of running afoul of the all-powerful Bush administration.

Yet, under the current desperate circumstances, permitting the continuation of economic sanctions against Iraq would constitute the separate crime of "complicity" in the international crime of genocide that is today being inflicted upon the innocent children of Iraq. The peoples and countries of the world must not turn their eyes away in shame from Iraq as humankind approaches the dawn of the next millennium of its parlous existence. As Iraq's children go, so goes the entire world.