

# Try George Bush for genocide against the children of Iraq

by Francis A. Boyle

*Mr. Boyle, a professor of international law at the University of Illinois, has arranged to have this Indictment, Complaint, and Petition submitted to the United Nations General Assembly.*

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## Letter of transmittal

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To: The Secretary General of the United Nations, the members of the General Assembly, the Economic and Social Council, the Commission on Human Rights, the Sub-commission on Prevention of Discrimination and Protection of Minorities, Unesco, Unicef, the heads of all NGOs, etc.

Re: Indictment, Complaint, and Petition by The 4.5 Million Children of Iraq for Relief from Genocide by President George Bush and the United States of America.

Excellency:

On behalf of *The 4.5 Million Children of Iraq*, I hereby submit to you this Indictment, Complaint, and Petition for Relief from Genocide by President George Bush and the United States of America (hereinafter referred to as the "Respondents"). This Indictment, Complaint, and Petition accuses the Respondents 1) of committing the international crime of genocide against The 4.5 Million Children of Iraq in violation of the International Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and in violation of the municipal legal systems of all civilized nations in the world; 2) of a gross and consistent pattern of violations of the most fundamental human rights of The 4.5 Million Children of Iraq as recognized and guaranteed to them by the Universal Declaration of Human Rights of 1948; 3) of the complete negation and denial of all the rights guaranteed to The 4.5 Million Children of Iraq by the 1989 Convention on the Rights of the Child; and 4) of the systematic violation of the special protections of international humanitarian law guaranteed to The 4.5 Million Children of Iraq by the Fourth Geneva Convention of 1949 and Additional Protocol I thereto of 1977.

Under the human rights provisions of the United Nations Charter, the Universal Declaration of Human Rights, the Genocide Convention, the Children's Convention, and the Fourth Geneva Convention and Protocol I, The 4.5 Million Children of Iraq are proper parties to invoke the jurisdiction of the United Nations and its various organs in requesting the following Relief in order to be relieved from the inhuman, degrading, cruel, criminal, and genocidal conditions perpetrated upon them by the Respondents: The 4.5 Million Children of Iraq demand 1) the termination of the international economic embargo and all forms of bilateral economic sanctions against Iraq; 2) the massive provision of international humanitarian relief required in order to save themselves from death, disease, malnutrition, starvation, and extermination at the hands of the Respondents; 3) monetary compensation for the harm done to them as well as all other forms of relief deemed necessary and appropriate; and 4) the institution of criminal proceedings against Respondent Bush for committing the international crime of genocide by the appropriate international organs as well as by all states of the world community under their respective municipal legal systems.

The 4.5 Million Children of Iraq have set forth in the attached Indictment, Complaint, and Petition all of the facts necessary to constitute a *prima facie* case against the Respondents for genocide; grave breaches of the Fourth Geneva Convention and Protocol I; and a gross and consistent pattern of violations of the Universal Declaration of Human Rights and the International Convention on the Rights of the Child. Wherefore, The 4.5 Million Children of Iraq demand that the United Nations and its organs immediately undertake a full investigation of the matters presented in this Indictment, Complaint, and Petition, and subsequently authorize a complete and public disclosure of all evidence and findings of fact at the conclusion of such investigation. I would appreciate receiving a formal acknowledgment of your receipt of the attached Indictment, Complaint, and Petition by The 4.5 Million Children of Iraq at the address listed above as well as all further communications related to this matter.

*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!*

Respectfully submitted on behalf of The 4.5 Million Children of Iraq,

Francis A. Boyle

Professor of International Law

Member of the Bars of the Supreme Judicial Court of the Commonwealth of Massachusetts and of the Supreme Court of the United States of America

September 18, 1991

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## **Indictment, Complaint, and Petition for Relief from Genocide**

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**The 4.5 Million Children of Iraq, Applicants,**

**vs.**

**George Bush, President of the United States of America,  
in both his official and personal capacities,**

**and**

**the United States of America,  
Respondents.**

### **I. Introduction**

1. The Applicants herein, *The 4.5 Million Children of Iraq*, invoke the jurisdiction of the United Nations and its organs by virtue of the provisions of the United Nations Charter, the Universal Declaration of Human Rights, and the International Convention on the Prevention and Punishment of the Crime of Genocide, and file this Indictment, Complaint, and Petition on their own behalf. The Applicants charge the Respondents with committing the international crime of genocide against The 4.5 Million Children of Iraq. Applicants pray for the termination of the international economic embargo and all forms of bilateral economic sanctions against Iraq, and to secure the massive provision of international humanitarian relief required in order to save themselves from death, disease, malnutrition, starvation, and extermination at the hands of the Respondents. Applicants also pray for monetary compensation for the harm done to them and all other forms of relief deemed necessary and appropriate. Finally, Applicants request the institution of criminal proceedings against the Respondent George Bush for committing the international crime of genocide by the appropriate international organs and by all states of the world community under their respective municipal legal systems.

### **II. The Facts**

2. The Applicants are The 4.5 Million Children of Iraq.
3. The Respondents are 1) George Bush, President of the

United States of America, in both his official and personal capacities, and 2) the United States of America, a Permanent Member of the United Nations Security Council.

4. The Respondents are the Person and State primarily responsible for the imposition of the now year-long international economic embargo and bilateral economic sanctions against Iraq.

5. Reports from the United Nations, the Physicians for Human Rights, the International Red Cross, a Harvard Study Team, other independent organizations, and private U.S. citizens have documented the fact that unless the economic sanctions imposed against Iraq are immediately lifted and Iraq is allowed to buy and import food, medicine, and equipment, especially for power generation, hundreds of thousands of innocent Iraqi civilians will die in the upcoming months.

6. A Harvard Study Team estimates that at least 170,000 Iraqi children under the age of five will die within the next year from the delayed effects of the war in the Persian Gulf if the imposition of the sanctions continues.

7. This is a conservative estimate and does not include tens of thousands of Iraqi children above the age of five who are expected to die from similar causes.

8. The Catholic Relief Service estimates that more than 100,000 Iraqi children will die from malnutrition and disease in the upcoming months due to the economic embargo and destruction of the war, and the United Nations Children's Fund estimates that 80,000 Iraqi children may die from these causes.

9. Malnutrition has become severe and widespread in Iraq since imposition of food prices of up to 1,000%, which has effectively priced many Iraqis, especially the poor and disadvantaged, out of the food market.

10. Cholera, typhoid, and gastroenteritis have become epidemic throughout Iraq since the war due to the critical scarcity of medicine and the inability of Iraq to process sewage and purify the water supply.

11. The system of medical care has broken down in Iraq, resulting in the closure of up to 50% of Iraq's medical facilities due to acute shortages of medicines, equipment, and staff.

12. The incapacitation of 18 of Iraq's 20 power plants during the war is a principal cause of the deterioration in public health due to the resultant inability of Iraq to process sewage, purify its water supply, and supply electricity to health facilities.

13. The health care crisis cannot be addressed without the reconstruction of electrical facilities that enable the purification of water and treatment of sewage.

14. Before the economic embargo of Iraq, three-quarters of the total caloric intake in Iraq was imported and, moreover, 96% of Iraqi revenue to pay for imports, namely food and medicine, was derived from the exportation of oil now prohibited under the embargo.

15. The summer heat in Iraq has both accelerated the spread of disease and impeded its treatment due to the lack of refrigeration facilities even in hospitals.

16. The acute shortages of food in Iraq, the inflation of up to 1,000% in food prices caused by these shortages, the critical scarcity of medicine, and the essential need to reconstruct Iraq's capacity to generate electricity to enable sewage treatment and water purification, cannot be addressed or rectified without Iraq's re-entry into global commerce, at present effectively prohibited by the economic sanctions.

17. The immediate lifting of the sanctions would drastically reduce the number of Iraqi children who will die in the upcoming months from malnutrition and disease and would relieve the suffering of the innocent Iraqi population which is now bearing the burden of the embargo.

18. Approximately 500 Iraqi children are dying each day from disease, malnutrition, and lack of proper medical treatment due to the continuation of the international economic embargo and bilateral economic sanctions upon Iraq that have been organized and imposed by the Respondents.

### III. Contentions

19. The Harvard Study Team Report, "Public Health in Iraq After the Gulf War," estimated that as of May 1991, 55,000 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."

20. The continuation of multilateral and bilateral 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 Respondents are responsible for the commission of the international crime of genocide against the Applicants, The 4.5 Million Children of Iraq, because of their obstinate insistence that economic sanctions be maintained in order to produce the deposition of the President of Iraq despite the fact that the original purpose for their imposition was achieved with the so-called "liberation" of Kuwait.

21. Respondent United States of America is a Contracting Party to the International Convention on the Prevention and Punishment of the Crime of Genocide of 1949, which will hereinafter be referred to as "the Genocide Convention" for sake of convenience.

22. Article I of the Genocide Convention provides that the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law, which they undertake to prevent and to punish.

23. Article II of the Genocide Convention defines the

international crime of "genocide" as follows:

Article II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

24. Article III of the Geneva Convention provides that the following acts shall likewise all be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide.

25. According to Article IV of the Genocide Convention, persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals. The basic requirement of the Genocide Convention is fully applicable to Respondent George Bush.

26. According to Article V of the Genocide Convention, the Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the Genocide Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III.

27. Pursuant to Article V, the Congress of the United States of America adopted what is called implementing legislation for the Genocide Convention that makes genocide a crime under U.S. federal criminal law. Basically following the terms of the Genocide Convention, this Genocide Convention Implementation Act of 1987 (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; or

(6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b).

28. According to subsection (d), the basic offense must be committed either within the United States, or by a national of the United States. The penalty for violating subsection (a)(1) is a fine of not more than \$1 million and imprisonment for life. The penalty for violating subsections (a)(2) to (a)(6) is a fine of not more than \$1 million or imprisonment for not more than twenty years, or both.

29. Under the definitional provisions of this Act, 225,000 dead 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" Applicants, The 4.5 Million Children of Iraq; 3) "cause the permanent impairment of the mental faculties of" Applicants; and 4) subject Applicants "to conditions of life that are intended to cause the physical destruction of the group in whole or in part. . . ."

30. Only the "specific intent" of Respondent George Bush to commit genocide against Applicants remains to be proven beyond a reasonable doubt to establish his criminal responsibility under United States municipal law and international criminal law. The open publication and widespread dissemination of the Harvard Report on May 22, 1991 makes that task possible. Any Bush administration official responsible for implementing the economic sanctions policy against Iraq who has knowledge of the conclusions of the Harvard Report would possess the "specific intent" required to serve as the mental element or *mens rea* of the international and municipal crime of genocide against Applicants, The 4.5 Million Children of Iraq. Applicants assert that Respondent George Bush has full knowledge of the genocidal consequences of the continuation of economic sanctions against Iraq and therefore has the *mens rea* necessary for committing the crime of genocide as recognized by the Genocide Convention and the Genocide Implementation Act.

31. The same principles of international criminal law have been incorporated into the municipal legal systems of almost all states in the world community today. Wherefore, there is universality of jurisdiction for any state to prosecute Respondent George Bush for committing genocide against the Applicants, The 4.5 Million Children of Iraq. Like unto a pirate, the Respondent George Bush is *hostis humani*



Committee to Save the Children in Iraq

*An Iraqi child, wounded during the Gulf war, is brought to Germany for medical treatment by the Committee to Save the Children in Iraq. Iraq's 4.5 million children are at risk because of the genocide policy of George Bush.*

*generis*—the enemy of all humankind.

#### IV. Competence

32. Article I of the Genocide Convention makes it quite clear that all 99 states that are Contracting Parties have an international legal obligation "to prevent" the commission of genocide against Applicants, The 4.5 Million Children of Iraq.

33. Article VIII of the Genocide Convention provides that any Contracting Party "may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide. . . ."

34. Thus, all 99 states parties to the Genocide Convention have both the right and the duty under international law to bring the genocidal situation in Iraq to the attention of the entire United Nations organization, as well as its affiliated organizations such as Unesco, Unicef, etc.

35. The Genocide Convention expressly confers international legal competence upon all organs of the United Nations—including the Security Council, the Economic and Social Council, the General Assembly, the Secretary General, the International Court of Justice, the U.N. Commission on Human Rights, the Sub-commission on Prevention of Discrimination and Protection of Minorities, Unesco, Unicef, etc.—to do something about the genocidal situation in Iraq. But so far, such individual steps and collective actions by Member States have not been taken for fear of running afoul of the all-powerful Respondents, who represent and constitute the only self-styled "superpower" sitting as one of the five Permanent Members of the Security Council.

36. The Respondents bear ultimate legal responsibility for the imposition of economic sanctions upon Iraq and therefore for the international crime of genocide against Appli-

cants, The 4.5 Million Children of Iraq.

37. Under the current desperate circumstances, responsible officials of Member States permitting the continuation of economic sanctions against Iraq could commit the separate international crime of "complicity" in the crime of genocide that is today being inflicted upon the Applicants by the Respondents, in violation of Article II(e) of the Genocide Convention.

## V. Jurisdiction

38. That the organs and agencies of the United Nations, including the Secretary General, the Economic and Social Council, the General Assembly, the Human Rights Commission, the Sub-commission on Prevention of Discrimination and Protection of Minorities, Unesco, and Unicef, *inter alia*, have the jurisdiction to receive and hear this Indictment, Complaint, and Petition, and to provide the Relief requested herein.

39. That the organs of the United Nations are endowed with explicit and inherent powers to assume jurisdiction of cases of the kind presented in this Indictment, Complaint, and Petition is reflected in the Charter of the United Nations. Chapter I, Article 1(1) of the Charter obligates the United Nations and its members to "maintain international peace and security." Such peace and security are threatened by many acts short of open interstate warfare. Genocide by the Respondents against the Applicants, The 4.5 Million Children of Iraq, threatens international peace and security.

40. As the situation described above constitutes a constant threat to the maintenance of international peace and security, the Secretary General, under the authority conferred upon him by Article 99 of the Charter, is entitled to bring this matter to the attention of the Security Council. He is also authorized by Rule 13(g) of the Rules of Procedure of the General Assembly to include in the Assembly's agenda any items which he deems it necessary to put before the Assembly. Applicants hereby request the Secretary General to include their Indictment, Complaint, and Petition on the agenda of the 46th General Assembly, and to bring it to the attention of the Security Council.

41. The General Assembly is authorized to act under Chapter IV, Article 22 of the United Nations Charter to establish an *ad hoc* Tribunal empowered to grant the Relief requested herein. For instance, in 1950, the General Assembly established a special tribunal to deal with various claims arising in the former Italian colony of Libya. Given the circumstances detailed in this Indictment, Complaint, and Petition, the creation of such a Tribunal would be justified and necessary to carry out the very Purposes and Principles for which the United Nations was established: to ensure peace and security and to guarantee the protection of fundamental human rights. Applicants request the 46th General Assembly to establish such a Tribunal as a subsidiary organ and to charge it with the responsibility to investigate and adjudicate

their Indictment, Complaint, and Petition, as well as to order all forms of Relief requested in Section VI herein.

42. That all Members of the United Nations have pledged themselves under U.N. Charter Chapter IX Articles 55 and 56 to take action to ensure respect for human rights. Article 55 states in part:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 states:

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

43. Such a pledge indicates that under the Charter, Member States must be prepared to take action to assist in enforcing and protecting human rights. Should an organ of the United Nations determine that the rights of Applicants were violated by Respondents and recommend action, Member States have pledged themselves to cooperate with the United Nations in taking necessary steps under the Charter to promote "universal respect for, and observance of, human rights."

44. These human rights provisions of the United Nations Charter were further elaborated upon and specified by the Universal Declaration of Human Rights, which was adopted by consensus by the United Nations General Assembly in 1948. The Universal Declaration of Human Rights enunciates the basic standards of international human rights law to which all individuals around the world are entitled. Indeed, it is the official position of the United Nations Organization and of the Respondent United States of America that the Universal Declaration of Human Rights is binding upon all states and for the benefit of all people around the world as a matter of customary international law.

45. Among the plethora of rights guaranteed to the Applicants by the Universal Declaration of Human Rights that are currently being systematically violated by the Respondents, the most sacred and most fundamental right of all is their very right to life itself, as recognized by Article 3 thereof: "Everyone has the right to life, liberty, and security of person." Respondents act as if the "everyone" referred to in Article 3 does not include the Applicants, the 4.5 Million Children of Iraq.

46. Applicants also assert that the Respondents have

grossly, consistently, and systematically violated the fundamental right that has been guaranteed to them by Article 5 of the Universal Declaration of Human Rights: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

47. Applicants, The 4.5 Million Children of Iraq, also assert that the Respondents have violated *all* of the rights guaranteed to them by the International Convention on the Rights of the Child of 1989.

48. Applicants also assert that the Respondents have violated the special protections of international humanitarian law guaranteed to children by the Fourth Geneva Convention of 1949 and the Additional Protocol I thereto of 1977.

49. Under the human rights provisions of the United Nations Charter, the Universal Declaration of Human Rights, the Genocide Convention, the Children's Convention, and the Fourth Geneva Convention and Protocol I, Applicants are proper parties to invoke the jurisdiction of the United Nations in requesting Relief on their own behalf in order to be relieved from the inhuman, degrading, cruel, criminal, and genocidal conditions perpetrated upon them by the Respondents.

50. Due to the fact that the Respondents represent and constitute the only self-styled "superpower" sitting as one of the five Permanent Members of the Security Council, the Respondents have repeatedly and abusively used and threatened to use their voting power and their so-called "veto power" to continue the international economic embargo upon Iraq in a manner that is *ultra vires* the "primary responsibility" for the maintenance of international peace and security that has been conferred upon the Security Council by Article 24(1) and (2) of the United Nations Charter: "2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations." According to Article 1(3) of the Charter, one of the foremost Purposes of the United Nations is proclaimed to be ". . . promoting and encouraging respect for human rights and for fundamental freedoms for all. . . ."

51. That as a direct result of the illegal and *ultra vires* conduct by the Respondents at the Security Council, the Applicants have nowhere else to turn for Relief except to the General Assembly, the Secretary General, the Economic and Social Council, the Human Rights Commission, the Sub-commission on Prevention of Discrimination and Protection of Minorities, Unesco, and Unicef, etc. in order to save themselves from the death, disease, malnutrition, starvation, and genocide that is currently being inflicted upon them by the Respondents.

52. That the General Assembly has the inherent power to create methods and instrumentalities to carry out the Purposes and Principles of the United Nations Charter, the Universal Declaration of Human Rights, the Genocide Convention, and the other aforementioned instruments of international law. The Secretary General also possesses in-

herent powers to carry out these Purposes and Principles. The same is true for the Human Rights Commission, the Sub-commission on Prevention of Discrimination and Protection of Minorities, as well as for Unesco and Unicef, etc.

53. That the Respondents represent and constitute a Member State of the United Nations and therefore would be obligated to act in compliance with any determination by any United Nations organ concerning this matter.

## VI. Prayer for relief

54. Applicants pray for the issuance of a Directive by the Secretariat, or the General Assembly, or the Economic and Social Council, or the Human Rights Commission, or the Sub-commission on Prevention of Discrimination and Protection of Minorities, or Unesco, or Unicef or any other competent organ or agency of the United Nations to hear this Indictment, Complaint, and Petition; to investigate and adjudicate the allegations of genocide by Respondents against Applicants; and to order the termination of all forms of multilateral and bilateral economic sanctions against Iraq.

55. Applicants also pray for the massive provision of international humanitarian relief to Iraq by the United Nations Organization as a whole, its specialized agencies and affiliated organizations, as well as by all Member States thereof, in order to save them from death, disease, malnutrition, starvation, genocide, and extermination at the hands of the Respondents.

56. Applicants also pray for due compensation to be paid by Respondents to Applicants and their families for the deaths as well as physical and mental injury caused by Respondents' actions in violation of the Genocide Convention and the Universal Declaration of Human Rights, *inter alia*.

57. Applicants pray that proper sanctions be taken against Respondents for any refusal to comply with any of the orders or decisions that the United Nations or any international organ makes in relation to this matter.

58. Applicants pray that the United Nations authorize a full investigation of the matters presented in this Indictment, Complaint, and Petition and subsequently authorize a complete and public disclosure of all evidence and findings of fact at the conclusion of such investigation.

59. Applicants further pray that the appropriate organs of the United Nations Organization—as well as of all the Member States thereof—institute criminal proceedings against Respondent George Bush for committing the international crime of genocide against the Applicants, as required by the Genocide Convention and the municipal legal systems of all civilized nations, including his own.

## VII. Conclusion

*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!*