

End the Crime That Is the War on Afghanistan

By [Prof. Francis A. Boyle](#)

Global Research, March 17, 2012

warisacrime.org 17 March 2012

Theme: [Crimes against Humanity](#), [Law and Justice](#), [US NATO War Agenda](#)

In-depth Report: [AFGHANISTAN](#)

Presentation to the Illinois Disciples Foundation, March 2012

Introduction

Thank you. I'm very happy to be here this evening once again at the Illinois Disciples Foundation, which has always been a center for organizing for peace, justice and human rights in this area ever since I first came to this community from Boston in July of 1978, and especially under its former minister, my friend Jim Holiman. I also want to thank Joe Miller and Jeff Machotta of the Vietnam Veterans Against the War for inviting me to speak here this evening. People of my generation still remember how important it was for the Vietnam Veterans Against the War to be organized and to speak out against the Vietnam War. They continue to serve as a voice for peace in the world for the past generation.

I want to start out with my basic thesis that the Bush administration's war against Afghanistan cannot be justified on the facts or the law. It is clearly illegal. It constitutes armed aggression. It is creating a humanitarian catastrophe for the people of Afghanistan.

It is creating terrible regional instability. Right now today we are having artillery barrages across the border between India and Pakistan, which have fought two wars before over Kashmir and yet today are nuclear armed. The longer this war goes on the worse it is going to be not only for the millions of people in Afghanistan but also in the estimation of the 1.2 billion Muslims of the world and the 58 Muslim states in the world. None of them believe the Bush administration's propaganda that this is not a war against Islam.

Facts

Now let me start first with the facts. As you recall, Secretary of State Colin Powell said publicly they were going to produce a "white paper" documenting their case against Osama bin Laden and their organization Al Qaeda. Well of course those of us in the peace movement are familiar with "white papers" from before. They're always laden with propaganda, half-truths, dissimulations, etc. that are usually very easily refuted after a little bit of analysis. What happened here? We never got a "white paper" produced by the United States government. Zip, zero, nothing.

What did we get instead? The only "statement of facts" that we got from an official of the United States government was mentioned in the October 3 edition of the New Speak Times [a.k.a.: New York Times] that described the briefings by the U.S. Ambassador who went over to brief our NATO allies about the Bush administration's case against Bin Laden and Al Qaeda 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 than forensic. There was no attempt to build a legal case.'" That's someone who was at the briefing!

What we did get was a "white paper" from Tony Blair. Did anyone in this room vote for Tony Blair? No! That "white paper" is in that hallowed tradition of a "white paper," based on insinuation, allegation, rumors, etc. Even the British government admitted Blair's case against Bin Laden and Al Qaeda would not stand up in court. As a matter of fact it was routinely derided in the British press. There was nothing there.

Now I don't know myself who was behind the terrorist attacks on September 11. It appears we are never going to find out. Why? Because Congress in its "wisdom" has decided not to empanel a joint committee of both Houses of Congress with subpoena power, giving them access to whatever documents they want throughout any agency of the United States government, including F.B.I., C.I.A., N.S.A., D.I.A.. To put these people under oath and testify as to what happened under penalty of perjury. We are not going to get that investigation.

Law

Now let's look at the law. Immediately after the attacks President Bush's first statement that he made in Florida was to call these attacks an act of terrorism. Now under United States domestic law we have a definition of terrorism and clearly this would qualify as an act or acts of terrorism. For reasons I can get into later if you want, under international law and practice there is no generally accepted definition of terrorism. But certainly under United States domestic law this qualified as an act of terrorism. What happened?

Well again according to the New York Times, President Bush consulted with Secretary Powell and all of a sudden they changed the rhetoric and characterization of what happened here. They now called it an act of war. Clearly this was not an act of war.

There are enormous differences in how you treat an act of terrorism and how you treat an act of war. We have dealt with acts of terrorism before. Normally acts of terrorism are dealt with as a matter of international and domestic law enforcement.

In my opinion that is how this bombing, these incidents, should have been dealt with: international and domestic law enforcement. Indeed there is a treaty directly on point. Although the United Nations was unable to agree on a formal definition of terrorism, they decided to break down terrorism into its constituent units and deal with them piece-wise: Let's criminalize specific aspects of criminal behavior that we want to stop.

The Montreal Sabotage Convention is directly on point. It criminalizes the destruction of civilian aircraft while in service. The United States is a party. Afghanistan is a party. It has an entire legal regime to deal with this dispute. The Bush administration just ignored the Montreal Sabotage Convention.

There was also the U.N. Terrorist Bombing Convention that is also directly on point. Eventually the Bush administration just did say, well yes our Senate should ratify this convention. It's been sitting in the Senate for quite some time, lingering because of the Senate's opposition to international cooperation by means of treaties on a whole series of issues.

Indeed, there are a good 12 to 13 treaties out there that deal with various components and aspects of what people generally call international terrorism that could have been used and relied upon by the Bush administration to deal with this issue. But they rejected that entire approach and called it an act of war. They invoked the rhetoric deliberately of Pearl Harbor — December 7, 1941. It was a conscious decision to escalate the stakes, to escalate the perception of the American people as to what is going on here.

Of course the implication here is that if this is an act of war then you don't deal with it by means of international treaties and agreements. You deal with it by means of military force. You go to war. So a decision was made very early in the process. We were going to abandon, junk, ignore the entire framework of international treaties and agreements that had been established for 25 years to deal with these types of problems and basically go to war.

An act of war has a formal meaning. It means an attack by one state against another state, which of course is what happened on December 7, 1941. But not on September 11, 2001.

The U.N. Security Council

The next day September 12, the Bush administration went into the United Nations Security Council to get a resolution authorizing the use of military force and they failed. It's very clear if you read the resolution, they tried to get the authority to use force and they failed. Indeed the September 12 resolution, instead of calling this an armed attack by one state against another state, called it a terrorist attack. And again there is a magnitude of difference between an armed attack by one state against another state — an act of war — and a terrorist attack. Terrorists are dealt with as criminals. They are not treated like nation states.

Now what the Bush administration tried to do on September 12 was to get a resolution along the lines of what Bush Sr. got in the run up to the Gulf War in late November of 1990. I think it is a fair comparison: Bush Jr. versus Bush Sr. Bush Sr. got a resolution from the Security Council authorizing member states to use "all necessary means" to expel Iraq from Kuwait. They originally wanted language in there expressly authorizing the use of military force. The Chinese objected — so they used the euphemism

"all necessary means." But everyone knew what that meant. If you take a look at the resolution of September 12 that language is not in there. There was no authority to use military force at all. They never got any.

The U.S. Congress

Having failed to do that the Bush Jr. administration then went to the United States Congress and using the emotions of the moment tried to ram through some authorization to go to war under the circumstances. We do not know exactly what their original proposal

was at that time. According to a statement made by Senator Byrd in the New York Times, however, if you read between the lines it appears that they wanted a formal declaration of war along the lines of what President Roosevelt got on December 8, 1941 after Pearl Harbor.

Congress refused to give them that, and for a very good reason. If a formal declaration of war had been given it would have made the President a constitutional dictator.^{[i][1]} We would now all be living basically under martial law. Congress might have just as well picked

up and gone home as the House did today, which, by the way, was encouraged by President Bush. It was his recommendation [in response to the anthrax attacks].[ii][2]

You'll recall as a result of that declaration of war on December 8, 1941, we had the infamous Korematsu case where Japanese American citizens were rounded up and put in concentration camps on the basis of nothing more than a military order that later on turned out to be a gross misrepresentation of the factual allegation that Japanese Americans constituted some type of security threat.[iii][3] If Bush had gotten a declaration of war, we would have been on the same footing today. The Korematsu case has never been overturned by the United States Supreme Court.

Instead Congress gave President Bush Jr. what is called a War Powers Resolution Authorization — under the War Powers Resolution of 1973 that was passed over President Nixon's veto, namely by a 2/3rds majority in both Houses of Congress, and was designed to prevent another Tonkin Gulf Resolution and another Vietnam War. Only one courageous member of Congress, Barbara Lee, an African American representative from Oakland, voted against it as a matter of principle.

This resolution, although it is not as bad as a formal declaration of war, is even worse than the Tonkin Gulf Resolution. It basically gives President Bush a blank check to use military force against any individual, organization, or state that he alleges — notice his ipse dixit — was somehow involved in the attacks on September 11 or else sheltered, harbored, or assisted individuals involved in the attacks on September 11. In other words, Bush now has a blank check pretty much to wage war against any state he wants to from the United States Congress. It was then followed up by Congress with a \$40 billion appropriation as a down payment for waging this de facto war.

Very dangerous, this War Powers Resolution Authorization. No real way it can be attacked in court at this point in time. In the heat of the moment, Congress gave him this authority. It is still there on the books.

Again let's compare and contrast this resolution with the one gotten by Bush Sr. in the Gulf Crisis. Bush Sr. got his U.N. Security Council resolution. He then took it to Congress for authorization under the War Powers Resolution and they gave him a very precise authorization to use military force for the purpose of carrying out the Security Council resolution — that was, only for the purpose of expelling Iraq from Kuwait. Indeed that is what Bush Sr. did. He expelled Iraq from Kuwait. He did not move north to Baghdad. He stopped short south of Basra, saying "that's all the authority I have." I'm not here to approve what Bush Sr. did in that war but simply to compare it to Bush Jr.

Now Bush Sr. has been criticized, with people saying that he should have marched all the way to Bagdad. But he had no authority by the U.N. Security Council to do that and he had no authority from the U.S. Congress to do that either. Again, compare that to Bush Jr.'s resolution of September 14 that basically gave him a blank check to wage war against anyone he wants to with no more than his ipse dixit. It's astounding to believe. Even worse than Tonkin Gulf.

NATO

In addition Bush Jr. then went over to NATO to get a resolution from NATO and he convinced NATO to invoke Article 5 of the NATO Pact. Article 5 of the NATO Pact

is only intended to deal with the armed attack by one state against another state. It is not, and has never been, intended to deal with a terrorist attack. The NATO Pact was supposed to deal in theory with an attack on a NATO member state by a member of the Warsaw Pact and the Soviet Union.

With the collapse of both the Warsaw Pact and the Soviet Union, there was no real justification or pretext anymore for the continued existence of NATO. Bush Sr. then in an effort to keep NATO around, tried to transform its very nature to serve two additional purposes: (1) policing Eastern Europe, and we saw that with the illegal war against Serbia by President Clinton; and (2) intervention in the Middle East to “secure” the oil fields. The NATO Council approved this proposal. The problem is that the NATO Pact, the treaty setting up NATO, provides no authorization to do this at all. Indeed the NATO Pact would have to be amended by the parliaments of the NATO member states to justify either policing Eastern Europe or as an interventionary force in the Middle East.

The invocation of NATO Article 5 then was completely bogus. The Bush Jr. administration was attempting to get some type of multilateral justification for what it was doing when it had failed at the United Nations Security Council to get authorization. The Bush Jr. administration tried again to get more authority from the Security Council, but all they got was a presidential statement that legally means nothing. They tried yet a third time, September 29, before they started the war, to get that authorization to use military

force and they got stronger language. But still they failed to get any authorization from the Security Council to use military force for any reason.

Self-judging Self-defense

Then what happened? The new U.S. Ambassador to the United Nations, John Negroponte, sent a letter to the Security Council asserting Article 51 of the United Nations Charter. Now some of us are familiar with Negroponte. He was U.S. Ambassador in Honduras during the contra war against Nicaragua. He has the blood of 35,000 Nicaraguan civilians on his hands. The only way Bush could get him confirmed by the Senate was that he rammed him through the Senate right after the 9/11 bombings. So whenever you see Negroponte on the television talking to you, remember this man has the blood of 35,000 people on his hands. That’s eleven times anything that happened in New York. Eleven times.

The letter by Negroponte was astounding. It said that the United States reserves its right to use force in self-defense against any state that we feel is necessary in order to fight our war against international terrorism. So in other words, they failed on three separate occasions to get formal authority from the Security Council and now the best they could do was fall back on some alleged right of self-defense as determined by themselves. Very consistent with the War Powers Resolution authorization that Bush did indeed get from Congress on September 14.

I was giving an interview the other day to the San Francisco Chronicle and the

reporter asked if there was any precedent for the position here being asserted by Negroponte that we are reserving the right to go to war in self-defense against a large number of other states as determined by ourselves. I said yes, there is one very unfortunate precedent: That’s the Nuremberg Tribunal of 1946. There the lawyers for the Nazi defendants took the position that they had reserved the right of self-defense under the

Kellogg-Briand Peace Pact of 1928 [a predecessor to the U.N. Charter]; and self-defense as determined by themselves. In other words, no one could tell them to the contrary.

So at Nuremberg they had the chutzpah to argue that the entire Second World War was a war of self-defense as determined by themselves, and no one had standing to disagree with that self-judging provision. Well of course the Nuremberg Tribunal rejected that argument and said no, what is self-defense can only be determined by reference to international law; and that has to be determined by an international tribunal. No state has a right to decide this for themselves.

Aggression

Clearly what is going on now in Afghanistan is not self-defense. Let's be honest. We all know it. At best this is reprisal, retaliation, vengeance, catharsis. Call it what you want, but it is not self-defense. And retaliation is never self-defense.

Indeed that was the official position of the United States government even during the darkest days of the Vietnam War. Then former Undersecretary of State Eugene V. Rostow tried to get the State Department to switch their position. They refused and continued to maintain their position that retaliation is not self-defense. This is not self-defense what we are doing in Afghanistan.

Since none of these justifications and pretexts hold up as a matter of law, then what the United States government today is doing against Afghanistan constitutes armed aggression. It is illegal. There is no authority for this. Indeed if you read on the internet, certainly not in the mainstream U.S. news media, you will see that is the position being taken by almost every Islamic country in the world.

Where are the facts? Where is the law? They aren't there. This is apparent to the entire world. It's apparent in Europe. It's apparent in the Middle East. It is obvious to the 1.2 billion Muslims of the world. Are any Muslim leaders involved in military action against Afghanistan? Unlike what happened with Iraq? No! Have any of them volunteered military forces to get involved here? A deafening silence. They all know it is wrong.

[See more recently Richard A. Clark, *Against All Enemies* 24 (2004): "When, later in the discussion {on the evening of Sept. 11, with Bush and his crisis advisors}, Secretary Rumsfeld noted that international law allowed the use of force only to prevent future attacks and not for retribution, Bush nearly bit his head off. 'No,' the President yelled in the narrow conference room, 'I don't care what the international lawyers say, we are going to kick some ass.'" F.A.B.]

Violent Settlement Of International Disputes

Now the government of Afghanistan made repeated offers even as of yesterday to negotiate a solution to this dispute. Even before the events of September 11, negotiations were going on between the United States and the government of Afghanistan over the disposition of Bin Laden. They had offered to have him tried in a neutral Islamic court by Muslim judges applying the law of Sharia. This was before the latest incidents. We rejected that proposal. After September 11 they renewed the offer.

What did President Bush say? No negotiations! There's nothing to negotiate! Here is my ultimatum! Well the problem is again the United Nations Charter, which requires the

peaceful resolution of disputes. It requires expressly by name “negotiation.”

Likewise that Kellogg-Briand Peace Pact I mentioned, under which Nazis were prosecuted at Nuremberg, to which Afghanistan and the United States are both parties, requires peaceful resolution of all disputes and prohibits war as an instrument of national policy. Yet that’s exactly what we are doing today, waging war as an instrument of national policy.

Then again on Sunday as he came back from Camp David with the latest offer again by the government of Afghanistan – they were willing to negotiate over the disposition of Mr. Bin Laden. I don’t know how many of you saw the President get off the helicopter. It was surreal. He went ballistic: There’ll be no negotiations! I told them what to do! They better do it! Again, those are not the requirements of the United Nations Charter and the Kellogg-Briand Peace Pact.

If you read the ultimatum that President Bush gave to the government of Afghanistan in his speech before Congress you will see it was clearly designed so that it could not be complied with by the government of Afghanistan. No government in the world could have complied with that ultimatum. Indeed, there were striking similarities with the ultimatum given by the Bush Sr. administration to Tariq Aziz in Geneva on the eve of the Gulf War that was deliberately designed so as not to be accepted, which it was not. Why? The decision had already been made to go to war.

Humanitarian Catastrophe

Now that being said, what then really is going on here? If there is no basis in fact and there is 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? Recall it was Bush’s threat to bomb Afghanistan that put millions of people on the move without food, clothing, housing, water, or medical facilities and that has created this humanitarian catastrophe now for anywhere from 5 to 7 million Afghans. All the humanitarian relief organizations have said quite clearly that the so-called humanitarian “food drop” — as Doctors Without Borders a Nobel Peace Prize organization put it — is a military propaganda operation. which it clearly is.

Bush calling for the children of America to send \$1 to the White House for the Afghani children is also propaganda. This is not serious. And the winter is coming in Afghanistan. Latest estimate that I’ve seen is that maybe 100,000 or more are going to die if we don’t stop this war.

U.S. Military Bases in Central Asia

So what’s really going on here? Why are we bombing Afghanistan? Why are we doing this? Is it retaliation? Is it vengeance? Is it bloodlust? No, it isn’t!

The people who run this country are cold, calculating people. They know exactly what they’re doing and why they’re doing it. And now since the bombing started in the last twelve days, it’s become very clear what the agenda is: Secretary of Defense Rumsfeld flew to Uzbekistan and concluded an agreement with the dictator who runs that country, Karimov, accused of massive violations of human rights, that the United States government will “protect” Uzbekistan.

Now first, the Secretary of Defense has no constitutional authority to conclude such an

agreement in the first place. Putting that issue aside, however, it's very clear what's going on here. The Pentagon is now in the process of establishing a military base in Uzbekistan.

It's been in the works for quite some time. They admit, yes, U.S. Special Forces have been over there for several years training their people under "Partnership for Peace" with NATO. Now it's becoming apparent what is happening. We are making a long-term military arrangement with Uzbekistan. Indeed it has been reported, and you can get press from that region on the internet, that Uzbekistan now wants a status of forces agreement with the United States.

What's a status of forces agreement? It's an agreement that permits the long-term

deployment of significant numbers of armed forces in another state. We have status of forces agreements with Germany, Japan, and South Korea. We have had troops in all three of those countries since 1945. And when we get our military presence, our base, that is right now being set up in Uzbekistan, it's clear we're not going to leave. It's clear that this unconstitutional agreement between Rumsfeld and Karimov is to set the basis to stay in Uzbekistan for the next 10-15-20 years, saying we have to defend it against Afghanistan, where we've created total chaos.

This is exactly the same argument that has been made to keep the United States military forces deployed in the Persian Gulf now for ten years after the Gulf War. We are still there. We still have 20,000 troops sitting on top of the oil in all these countries. We even established the Fifth Fleet in Bahrain to police this region. We never had any intention of leaving the Persian Gulf. We are there to stay.

Stealing Oil and Gas

Indeed planning for that goes back to the Carter administration — the so-called Rapid Deployment Force, renamed the U.S. Central Command that carried out the war against Iraq and occupied and still occupies these Persian Gulf countries and their oil fields

and is today now executing the war against Afghanistan and deploying U.S. military forces to build this base in Uzbekistan. Why do we want to get in Uzbekistan? Very simple. The oil and natural gas resources of Central Asia, reported to be the second largest in the world after the Persian Gulf.

There has been an enormous amount of coverage of this in the pages of the Wall Street Journal, not the New Speak Times. The movers and shakers. They paid enormous attention to Central Asia and the oil resources there. Shortly after the collapse of the Soviet Union and the ascent to independence of those states in 1991, you saw all sorts of articles in the Wall Street Journal about how Central Asia and our presence in Central Asia have become a vital national security interest of the United States. We proceeded to establish relations with these states of Central Asia. We sent over Special Forces. We were even parachuting the 82nd Airborne into Kazakhstan. All reported in the Wall Street Journal.

In addition then, since Central Asia is landlocked you have to get the oil and natural gas out, how do you do that? Well one way is to send it west, but we wish to avoid Iran and Russia — thus a highly circuitous route, costs a lot of money, very insecure. The easiest way to do it is construct pipelines south through Afghanistan, into Pakistan and right out to the Arabian Sea. UNOCAL was negotiating to do this with the government of Afghanistan. That's all in

the public record.

Just as the Persian Gulf War against Iraq was about oil and natural gas, I'm submitting this war is about oil and natural gas and also about outflanking China and getting a military base south of Russia. We are going to be there for a long time. At least until all that oil and gas has been sucked out and it's of no more use to us.

Regional War

In my opinion that's really what is going on here. We should not be spending a lot of time about who did what to whom on September 11. We need to be focusing on this war, on stopping this war. We need to be focusing on stopping the humanitarian tragedy against the millions of people of Afghanistan right now, today. And third, we need to be focusing on what could very easily become a regional war.

The Pentagon launched this thing. Obviously they felt they could keep it under control. That's what the leaders in August of 1914 thought too, when you read Barbara Tuchman's *The Guns of August*. Everyone figured the situation could be kept under control and it wasn't, and there was a world war. Ten million people died.

We're already seeing after President Bush started this war artillery duels between India and Pakistan. Massive unrest in all of these Muslim countries. The longer the

war goes on I submit the worse it is going to become, the more dangerous it is going to become, the more unstable it is going to become.

American Police State

In addition, finally comes the Ashcroft Police State Bill [a.k.a.: USA Patriot Act]. No other words to describe it. Bush failed to get that declaration of war which would have rendered him a constitutional dictator. But it's clear that Ashcroft and his Federalist Society lawyers took every piece of regressive legislation off the shelf, tied it all into this antiterrorism bill, and rammed it through Congress.

If you're reading any of the papers yesterday and the day before, members of Congress admit, yes, we didn't even read this thing. Another Congressman said, right, but there's nothing new with that. Except on this one they're infringing the civil rights and civil liberties of all of us, moving us that much closer to a police state in the name of fighting a war on terrorism. Security, this, that, and the other thing.

Notice the overwhelming message from the mainstream news media: we all have to be prepared to give up our civil rights and civil liberties. Even so-called liberals like Alan Dershowitz: Oh, let's now go along with the national identity card. Outrageous! Larry Tribe, writing in the *Wall Street Journal*: well we're all going to have to start making compromises on our civil rights and civil liberties. That's what's in store in the future for us here at home the longer this war against Afghanistan goes on.

And Bush has threatened that it will expand to other countries. We don't know how many countries they have in mind. At one point they're saying Malaysia, Indonesia, Somalia, Iraq, Libya. Deputy Secretary Paul Wolfowitz talked about "ending states," which is clearly genocidal. I could take that statement to the World Court and file it and prove it as genocidal intent by the United States government.

Scapegoats

So the longer we let this go on the more we are going to see our own civil rights and civil liberties taken away from us. As you know aliens, foreigners, their rights are already gone. We now have 700 aliens who've just been picked up and disappeared by Ashcroft and the Department of Justice. We have no idea where these people are. They're being held on the basis of immigration law, not criminal law. Indefinite detention.

What's the one characteristic they all have in common, these foreigners? They're Muslims and Arabs, the scapegoats for 9/11. Everyone needs a scapegoat and it looks like we have one.

Conclusion

Let me conclude by saying that we still have our First Amendment rights despite Ashcroft's best efforts. Despite the cowardice of both Houses of Congress where, interestingly enough, the so-called liberal Democrats were willing to give Bush and Ashcroft more than the conservative Republicans in the House. We still have our First

Amendment rights, freedom of speech, freedom of association, freedom of assembly, freedom to petition our government for redress of grievances.

We are going to need to start to exercise those First Amendment rights now. For the good of the people of Afghanistan, for the good of the people of that region of the world, and for the future of ourselves and our nature as a democratic society with a commitment to the Rule of Law and the Constitution. Thank you.

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