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Protesting Power – War, Resistance and Law

Review of Francis A. Boyle's book

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Francis A. Boyle is a distinguished University of Illinois law professor, activist, and internationally recognized expert on international law and human rights. From 1988 to 1992, he was a board member of Amnesty International USA. He was a consultant to the American Friends Service Committee. From 1991 to 1993, he was legal advisor to the Palestinian Liberation Organization, and currently he's a leading proponent of an effort to impeach George Bush, Dick Cheney and other key administration figures for their crimes of war, against humanity and other grievous violations of domestic and international law. Boyle also lectures widely, writes extensively and authored many books, including his latest one and subject of this review: "Protesting Power – War, Resistance and Law."

Boyle's book is powerful, noble and compelling, and he states its purpose upfront: Today, a "monumental struggle (is being waged) for the heart and soul of (America) and the future of the world...." It matches peacemakers on one side, war makers on the other, and all humanity hanging in the balance. The book provides hope and ammunition. It's a urgent call to action and demonstrates that "civil resistance (is) solidly grounded in international law, human rights (efforts), and the US Constitution." It "can be used to fight back and defeat the legal, constitutional, and humanitarian nihilism of the Bush administration" neocons and their chilling Hobbesian vision – imperial dominance, homeland police state, and permanent "war that won't end in our lifetimes," according to Dick Cheney.

Boyle has the antidote: "civil resistance, international law, human rights, and the US Constitution – four quintessential principles to counter....militarism run amuk." Our choice is "stark and compelling." We must act in our own self-defense "immediately, before humankind exterminates itself in an act of nuclear omnicide." The threat today is dire and real, it demands action, and civil resistance no longer is an option. With survival at stake, it's an obligation.

The Right to Engage in Civil Resistance to Prevent State Crimes

Post-WW II, US foreign policy adopted the political "realism" and "power politics" principles that Hans Morganthau explained in his seminal work on the subject – "Politics among Nations: the Struggle for Power and Peace (1948)." For decades, it was the leading international politics text from a man eminently qualified to produce it and whose experiences under Nazism influenced him.

His cardinal tenet was darkly Hobbesian – that international law and world organizations are "irrelevant" when it comes to conflicts between nations on matters of national interest. Ignore "reality" and perish, but consider the consequences. They've has been disastrous for America, at home and abroad, in a world of our making where life is "solitary, poor, nasty,

brutish, and short." No law or justice exists, no sense of right or wrong, no morality, just illusions of what might be, and a "struggle for survival in a state of war" by every nation against all others for one unattainable aim – absolute power and national security at the expense of other states and most people everywhere.

Political "realists" believe that when nations respect international laws and norms and ignore the "iron law" of "power politics," they invite disaster at the hands of aggressors. Boyle believes otherwise and eloquently states it: "Throughout the twentieth century, the promotion of international law, organizations, human rights, and the US Constitution has consistently provided the United States with the best means for reconciling the idealism (and aspirations) of American values....with the realism of world politics and historical conditions."

It can work the way Boyle documented it in his 1999 book, Foundations of World Order: The Legalist Approach to International Relations, 1898 – 1922. In it, he offers a comprehensive analysis of US foreign policy achievements through international law and organizations to settle disputes, prevent wars and preserve peace. It included:

> — an obligatory arbitration system for settling disputes between states – the Permanent Court of Arbitration (PCA) in 1899 that's still operating at The Hague as the oldest international dispute resolution institution;
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> — the Permanent Court of International Justice (World Court) in 1922 that was replaced by the International Court of Justice in 1946 after the UN was established in 1945;
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> — the codification of important areas of international law in treaty form;
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> — promoting arms reduction after relaxing international tensions by legal techniques and institutions; and
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> — convoking periodic peace conferences for all internationally recognized states; the League of Nations was established for this purpose and later the United Nations with its functional agencies like the International Labour Organization, WHO, UNESCO, and IAEA. Other affiliated institutions included the IMF, World Bank, GATT, WTO and regional organizations like the OAS, Arab League, African Union, ASEAN, OSCE and EU. To these add NATO, the Inter-American Treaty of Reciprocal Assistance (the Rio Pact), SEATO, ANZUS and various bilateral self-defense treaties under Article 51 of the UN Charter.

These organizations should have worked. In practice they don't, and Boyle explains why: compared to America's early "legalist, humanitarian, and constitutionalist approach to international relations, geopolitical (realpolitik) practioners of the Hobbesian" school prevailed – men like Johnson, Kissinger, McNamara, Nixon, Byzezinski, Carter, Reagan, GHW Bush, GW Bush, his neocon ideologues and countless others. They disdain democracy, constitutional government and their essential principles: commitment to the rule of domestic and international law, human rights, equal justice and peace.

Consider the cost. It's beyond measure and even worse looking back, in spite of all efforts toward conflict resolution. Since the nation's founding, America has been at war with one or more adversaries every year in our history (without exception), and note the consequences:

> — we glorify wars and violence in the name of peace;

— have the highest domestic homicide rate in the western world by far;

— our society is called a “rape culture” and three-fourths of all women are victims of some form of violence in their lifetimes, many repeatedly;

— millions of children are violence or abuse victims and get no help from the state;

— in a nominal democracy under constitutional law, aggressive wars and domestic violence are normal and commonplace; peace, tranquility and public safety are illusions and so are human rights, civil liberties, the rule of law, and common dignity, and the reason it’s so is simple – it benefits the privileged few at the expense of the greater good.

What can be done? Plenty, according to Boyle. “Concerned citizens” and people of conscience are obligated to use our available tools – domestic and international law and human rights as “checks and balances against” government abuses of power in the conduct of domestic and foreign policies. Otherwise, administrations can run amuck and literally get away with murder and other major crimes of war, against humanity, peace and the general welfare.

Consider the alternative and what can be gained. By respecting the law, human rights and other nations’ sovereignty, US administrations could defend the nation, conduct its foreign and domestic affairs, and achieve its goals successfully without wars, violence and disdain for the common good. At worst under an anti-Hobbesian construct, short-term objectives might be sacrificed in part for more vital ones in the long run, and isn’t that what survival is all about.

At his book’s end, Boyle quotes Hans Morgenthau’s comments in 1979, just months before his death, and it’s appropriate to mention them here. Boyle asked him “what he thought about the future of international relations” at the time Jimmy Carter was President. His response: “Future, what future?….In my opinion the world is moving ineluctably toward a third world war – a strategic nuclear war. I do not believe that anything can be done to prevent it. The international system is simply too unstable to survive for long.” Arms reduction treaties are mere stopgaps and will be unable to “stop the momentum.”

If Morganthau is right, the choice is stark and clear. Continue our present path and perish or unite at the grassroots to change an ugly, unsustainable system and let humankind survive. There’s no middle ground, time may be short, and who knows if enough still remains.

Yet Boyle eschews that notion and dedicates his book to hope through resistance. We must try and use our available tools – the Constitution; UN Charter; Nuremberg Charter, Judgment and Principles; Convention on the Prevention and Punishment of the Crime of Genocide; Universal Declaration of Human Rights; Hague Regulations; Geneva Conventions; Supreme (and lower) Court decisions; US Army Field Manual 27-10; The Law of Land Warfare (1956); and our own profound commitment to resist and prevail whatever the odds and consequences. Apathy isn’t an option.

History, moreover, shows these tactics work when enough people commit to them. They ended the Vietnam war, and, in the 1980s, anti-nuclear and anti-war resisters forced the Reagan and GHW Bush administrations to conclude the Intermediate-Range Nuclear Forces (INF) Treaty in 1987 and the Strategic Arms Reduction Treaty (START) in 1991.

Conditions today are far more grave under neocon rule that disdains the law and all binding peace and international arms reduction treaties. It:

— claims the right to develop new type nuclear weapons, not eliminate the ones Morganthau believed will destroy us;

— ignores the Nuclear Non-Proliferation Treaty and intends to test new weapons developed;

— ended Anti-Ballistic Missile Treaty protection;

— rescinded and subverted the Biological and Toxic Weapons Convention;

— spends more on the military than the rest of the world combined, and it's getting worse; on February 4, the largest ever defense budget since WW II, in inflation-adjusted dollars, was proposed for fiscal 2009 at a time the nation has no adversaries, should be at peace, but chooses wars without end instead;

— disdains a Fissile Material Cutoff Treaty to prevent additional nuclear bombs to be added to present stockpiles already dangerously too high; and

— claims the right to wage preventive wars under the doctrine of "anticipatory self-defense" using first strike nuclear weapons against any other state. Morganthau would say I warned you.

Boyle says civil resisters like the ones he testifies for represent hope. They're "the archetypical American heros" whose names few people know – Richard Sauder, Jeff Paterson, David Mejia, Ehren Watada, Kathy Kelly, Daniel Berrigan, his late brother Philip and many other courageous, dedicated people for peace and equal justice. They risk their lives and freedom for the greater good, pay hugely for it, and Ramzy Clark once saluted them saying: "Our jails are filling up with saints." We have a constitutional right and personal duty to support them, join them, and resist our government's criminal acts. They must be stopped or the alternative may be WW III and the end of humanity.

Constitutional law supports resistance (not disobedience that violates the law). The First Amendment protects the right to "peaceably….assemble and to petition the Government for a redress of grievances." It doesn't have to be lawful, just peaceable, so it's incumbent to resist when governments act criminally and endanger public safety and welfare, and the law is on our side. Resisters have the same statutory and common-law defenses as criminal defendants – defense of self, others, necessity, choice of evils, prevention of crime, execution of public duty, citizen's arrest, prevention of a public catastrophe, and other defenses. If not us, who then?

Federal courts abdicated their power and defer to presidential lawlessness under doctrines of "political question, state secrets, standing, judicial restraint, (and) national security." Congress as well has power, but won't use it. If it did, imagine how constructively it could exercise its appropriation authority under Article 1, Section 9, Clause 7 of the Constitution saying: "No money shall be drawn from the treasury, but in consequence of appropriations made by law…."

Congress alone is empowered to do it. It controls the federal budget that includes defense and supplementary military spending. Foreign wars will end and new ones not begun if Congress won't fund them. It's how Vietnam ended. Congress stopped funding it under the

Church-Case June 1973 amendment that cut off appropriations after August 15. Legislative power is the same today, but post-9/11, Congress abdicated its authority and defers to Bush administration demands on nearly everything, including aggressive foreign wars.

If the courts and Congress won't act, the public must and if charged and prosecuted are protected under the Sixth and Fourteenth Amendments to the right of trial by a jury of peers. Boyle explains that the "American criminal jury system (ultimately may be) the last bastion of democracy, the rule of law, human rights and the US Constitution" against a criminal administration and whichever one succeeds it if it continues lawless policies.

From his experience, Boyle is hopeful because when American juries understand government crimes, "they usually refused to convict" civil resisters trying to stop them. Two precedent-setting 1985 cases stand out as examples: People v. Jarka and Chicago v. Streeter. In both cases, defendants used a common-law defense called "necessity" and were acquitted. They were absolved of criminal liability because their actions caused less injury than the greater one they hoped to avoid. Winning these cases makes them applicable to more serious ones like crimes of war, and against humanity and peace.

Ahead, achieving victories or hung juries is crucial to preserving our constitutional system under threat. A strong message will be sent that ordinary people can confront government crimes and prevail. As such, we have to try. Surrender or apathy aren't options. The stakes are far too great.

Defending Civil Resisters: Philosophy, Strategy, and Tactics

In an age of lawless government, resisters represent hope. They're the "sheriffs," government officials the "outlaws," and it highlights the importance of seeking counsel and who to choose. The person must believe in the accused and their cause and work cooperatively with an international law expert to introduce these principles into the proceedings as evidence.

Many times, international law is the only defense, there's plenty to draw on, and Boyle believes when a peace-loving, law-abiding jury hears compelling evidence citing it, "there is almost no way the government will be able to convict" resisters on trial. The jury will either acquit, be hung, or charges will be dismissed before or during trial. It's thus clear that a successful defense requires a jury trial because too many judges support state authority and may deny evidence and convict. That's particularly true for federal judges who are nominated by the President, confirmed by the Senate, and over two-thirds on the bench now come from the extremist Federalist Society.

Proper representation and effective courtroom proceedings are crucial and follow from civil resistance acts that at times means spending time in jail. A good lawyer's job and Boyle's book are to prevent it, and he devotes considerable space explaining how. It begins with a good lawyer. After that comes:

— a proper defense that aims to win or at least get a hung jury;

— introducing international law as evidence and relating it to traditional common-law, statutory, procedural, and constitutional defenses that usually include one or more of the following: defense of self, others, property, necessity, prevention of a crime or public catastrophe, citizen's arrest, and other legal choices; international law is part of domestic

law under Article VI of the Constitution (the supremacy clause);

Article VI also includes treaties as the "supreme law of the land;" so are Supreme Court decisions like The Paquete Habana (1900) that stated "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction…." In United States v. Belmont (1937) and United States v. Pink (1942), the Court ruled that the supremacy clause applies to international executive agreements that don't receive formal Senate advice and consent (the Senate does not ratify treaties as such);

US presidents take an oath under Article II, Section 1, Clause 7 to "preserve, protect and defend the Constitution…." International treaties and agreements are included. In addition, Article II, Section 3 requires the president to "take Care that the Laws be faithfully exercised;"

— introducing the burden of proof in affirmative defenses to force the prosecution to prove guilt by disproving this type defense; the idea is to create a reasonable doubt about criminal intent;

— distinguishing "specific intent crimes" (that many resisters are charged with) from general intent ones;

— defending the crime of unlawful "trespass" by arguing it was done to uphold domestic and international law to prevent the commission of a crime;

— establishing a pattern of criminal government behavior to justify resistance against it; it may include but not be limited to: Nuremberg crimes against peace, humanity, war crimes, breaches of Geneva, Hague, the UN Charter, genocide, torture and other crimes including inchoate ones, such as planning, preparing or aiding and abetting them;

— using appropriate international criminal law standards in the US Army Field Manual 27-10 (that incorporates Nuremberg Principles, Judgment and the Charter) and The Law of Land Warfare (1956); the Field Manual paragraph 498 states that any person, military or civilian, who commits a crime under international law is responsible for it and may be punished; paragraph 499 defines a "war crime;" paragraph 500 refers to conspiracy, attempts to commit it and complicity with respect to international crimes; paragraph 509 denies the defense of superior orders in the commission of a crime; and paragraph 510 denies the defense of an "act of state;" and so forth;

— pro se resisters (representing themselves without counsel) must take special care to prepare a proper defense with one aim – to convince one juror of their innocence; these and other considerations are vital to an effective defense when it's you v. the state and judges may be hostile. Resistance, however, is crucial because in Boyle's words: "Today is our Nuremberg moment!"

Trident on Trial

In this and succeeding chapters, Boyle reviews cases in which he testified pro bono for the defense. In each one, he explains the issue, who was on trial, followed by a summation of the crucial portions of his testimony that are text book examples of a proper and effective defense.

The Trident II strategic nuclear missile submarine is the first example and is described as follows: it's the "most hideous and nefarious weapon of mass destruction (WMD) ever devised" because of its unimaginable destructive power. The US Navy deploys 14 Tridents, the UK four others, and just one of them has enough nuclear kilotonnage to destroy much of planet earth and maybe all of it from nuclear fallout – around 270 or more times the destructive power of the low-yield bombs that incinerated Hiroshima and Nagasaki.

Further, NAVSTAR satellite communications give Delta V multiple warhead MIRVs on board pinpoint accuracy to make Trident ideal for an offensive near-omnicidal first-strike capability. At patrol depth, the extremely low frequency (ELF) system is the only way to communicate with these submarines. For that reason, Plowshares defendant George Ostensen (in 1987) engaged in civil resistance against the Ashland, Wisconsin ELF facility and was charged with two counts of "sabotage." He faced a possible 40 year prison sentence if found guilty as charged.

Boyle testified for him and used the transcript as a text for other Plowshares resisters to contest similar charges against them. It paid off with two outright acquittals in 1996 and another in a 1999 Scotland case because juries were convinced that ELF/Trident II was as dangerous as described above and thus criminal under well-established international and domestic law principles. These verdicts led to a "stunning" victory when the Navy announced it would shutter its Wisconsin and Michigan ELF systems in September 2004. "Civil resistance had triumphed over the Trident II," but these weapons are still deployed and threaten all humanity by their existence.

Brief excerpts of Boyle's testimony in his Ostensen defense follow. The laws he cites are mentioned above so comments on them are brief and not repeated for succeeding chapters.

In Ostensen and other testimonies, Boyle explains domestic and international laws relevant to the cases:

— the US Constitution; the supremacy clause under Article VI stating that all forms of international treaties and agreements to which the US is a signatory are binding on "all American citizens, government officials, (the military and) courts of law;"

— The Paquette Habana (1900) Supreme Court decision affirming that international law is US law;

— The Law of Naval Warfare (1955) and The Law of Land Warfare (1956) both state that international laws bind all members of the US military, government officials and American citizens; they clearly say that international law limits the threat or use of nuclear weapons because these weapons are so deadly;

— the Navy, Army and Air Force manuals incorporate the Nuremberg Principles as binding US law; they include crimes of war, against peace and humanity as well as planning, preparing, or waging an aggressive war; also applicable is conspiracy, incitement, and/or aiding and abetting the commission of these crimes; Nuremberg also rejected the defense of superior orders; the UN General Assembly unanimously approved these Principles as recognized international law in Resolution 95(I) in December 1946;

— the Army, Navy and Air Force field manuals are issued to all members of the military today who are told they are fully accountable for any Nuremberg violations;

— an outstanding DOD policy states that nuclear weapons are to be developed according to international law requirements;

— Jimmy Carter's Presidential Directive 59 involves the targeting of nuclear weapons as first-strike options; at the time of the Ostensen case, no such official first-strike policy existed; that changed under the December 2001 Nuclear Policy Review; it affirmed the right to declare and wage future preventive wars using first- strike nuclear weapons; Trident II/Delta V submarines are nuclear first-stike WMDs; so is the ELF communication system;

— the first-strike option is clearly illegal under Nuremberg Principles as well as the 1907 Hague Regulations that require an ultimatum or formal declaration of war; no nation has the "right" to affirm a policy of "deterrence" to threaten or destroy another one, let alone all humanity by nuclear weapons; that's very clear under Nuremberg.

The Constitutionality of President George HW Bush's War against Iraq on Trial (The Gulf War)

Boyle testified at the trial of Marine Corps Corporal Jeffrey Paterson. Over time, his military obligations increasingly conflicted with his moral beliefs. Things came to a head when he was told he'd likely be sent to the Persian Gulf as part of the military buildup prior to the Gulf War. On grounds of conscientious objection, he applied to be discharged and was refused even though the law states:

"To qualify for discharge from military service as a conscientious objector, an applicant must establish that:

(1) he or she is opposed to war in any form – Gillette v. United States (1971);

(2) his or her objection is founded in deeply held moral, ethical, or religious beliefs – Welsh v. United States (1970); and

(3) his or her convictions are sincere – Witmer v. United States (1955)."

Marine Corps Order 1306.16E requires that reasonable efforts be made to assign minimally-conflicting duties while an application is being processed. Nonetheless, Paterson was ordered to deploy to Saudi Arabia on August 29, 1990. He refused to go, was arrested, incarcerated, then freed pending court-martial.

Paterson has an honored distinction. He was the first military or civil resister to GHW Bush's "unconstitutional and criminal" Gulf War. He was charged under article 86 of the Uniform Code of Military Justice (UCMJ) alleging his refusal to muster to deploy to the Gulf. On November 1, his lawyer filed a motion to dismiss three charges on grounds they were illegal. A special hearing was then held on November 19 before a Marine Corps judge. He ruled for Paterson by concluding that the government bore the burden of proof that must be beyond a reasonable doubt.

It was "a great victory for peace, justice, international law, the US Constitution, and civil resistance." On December 5, 1990, Paterson was administratively released from the Marine Corps with an "other than honorable discharge." His case was precedent-setting, "of great historic significance," and it's applicable to all cases of military and civil resistance against government crimes, including waging wars of aggression.

The US is a signatory to the UN Charter, it's the law of the land under the supremacy clause,

and its Chapter VII empowers the Security Council alone to “determine the existence of any threat to the peace, breach of the peace, or act of aggression,” and, if necessary, take military or other action to “restore international peace and stability.” It lets a nation use force only under two conditions:

— under authorization by the Security Council; or

— under Article 51 that permits the “right of individual or collective self-defense if an armed attack occurs against a Member….until the Security Council has taken measures to maintain international peace and security.”

In addition, both houses of Congress, not the president, have exclusive power to declare war under Article I, Section 8, Clause 11 of the Constitution that’s known as the war powers clause. Nonetheless, that procedure was followed only five times in our history, it was last used for WW II in 1941, and Congress addressed the issue in 1973 when it passed the War Powers Resolution.

It requires the president to get congressional authorization for war or a resolution passed within 60 days of initiating hostilities. It also states in Section 4(a)(3): “In the absence of a declaration of war, in any case in which United States Armed Forces are introduced — (3) in numbers which substantially enlarge the United States Armed Forces equipped for combat already located in a foreign nation; the president shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, setting forth” necessitating circumstances, a request for “constitutional and legislative authority,” and the “estimated scope and duration of the hostilities or involvement.”

Congress gave GHW Bush this authority on January 14, 1991. It did not give it to George W. Bush, yet he went to war anyway in violation of a host of laws, domestic and international. On January 15, 1991, Congressman Henry Gonzales, Ramsey Clark and Francis Boyle launched a national campaign to impeach GHW Bush. Five articles of impeachment were prepared.

They apply as well today to GW Bush’s illegal wars against Iraq and Afghanistan, and Boyle states why as follows: “the House can, should, and must impeach President Bush for commencing this war, lying about this war, and threatening more wars. All that is needed is one member of the House of Representatives with courage, integrity, principles, and a safe seat” to do it. If not, the alternative is dire – wars without end, a homeland police state and the end of the republic that’s already on life support.

In testifying for Corporal Paterson, Boyle reviewed the relevant laws already covered above. He also cited pertinent Supreme Court decisions going back to Little v. Barreme (1804) and Mitchell v. Harmony (1851) as well as Colonel William Winthrop’s Military Law and Precedents (1880, 1886 and revised and enlarged in 1920).

Winthrop specifically states that soldiers are obligated to disobey illegal orders defined as follows: ones unauthorized by law or that are clearly illegal acts. In the Paterson case, there was no authorized law, and he had no duty to obey a clearly unlawful order.

President Clinton’s Invasion of Haiti and the Laws of War

Noam Chomsky believes that every US president since WW II could be impeached because

“they’ve all been either outright war criminals or involved in serious war crimes.” Bill Clinton was one of them. In November 1993, he sent troops to Somalia, supposedly for humanitarian intervention, got no congressional authorization, and killed about 10,000 Somalis. He was then complicit in the 1994 Rwandan massacres (involving no US troops), and on September 19, 1994 again acted illegally – he invaded Haiti without congressional authority and violated the Constitution’s war powers clause.

The 10th US Army Mountain Division from Fort Drum, New York was part of the force sent. Capt. Lawrence P. Rockwood II was a fourth generation soldier and career military officer with 15 years service. Yet he jeopardized his safety, career and personal liberty to aid incarcerated Haitians.

He learned about horrific human rights violations inside Haiti’s prisons under its military dictator. They were especially bad at the National Penitentiary in Port-au-Prince, he informed his superiors, and then pressured them to take control and stop the abuses. Nothing was done, so Rockwell acted on his own as the US Army Field Manual 27-10 and international law require.

On September 30, he went to the prison alone, inspected conditions inside, saw firsthand how bad they were, and compiled a list of prisoners’ names to deter their deaths or “disappearance.” Subsequently, he was court-martialed in May 1995 and faced up to 10 years in prison if found guilty of multiple charges.

In fact, he was convicted of five specifications on three charges under the UCMJ, including:

— failure to report for duty under article 86;

— disrespect for a superior officer under article 89;

— willful disobedience of superior orders under article 90; and

— conduct unbecoming an officer under article 133.

— He was acquitted of two specifications of an additional charge of failing to obey an order and dereliction of duties under article 92.

The court abstained from imposing a prison sentence and instead dismissed Rockwood from the army with forfeiture of pay. In so doing, the military jury affirmed his defense that he acted properly under international law to stop grievous abuses inside Haiti’s prison. He left the army “an acknowledged and eternal hero to the worldwide human rights movement.”

Appearing for the defense at his trial was an expert witness, an authentic human rights hero in his own right – Hugh Thompson. As a Vietnam helicopter pilot, he saved lives at the infamous My Lai massacre by threatening to kill Lt. Calley and his soldiers if they didn’t cease slaughtering innocent civilians. Thirty years later, he won a medal for it, and he told the court that Rockwood also deserved one as for his heroic act. He fought for human rights and won, and Boyle relates his testimony for him to laws of war and human rights violations applicable to the Bush administration’s Iraq war, its oppressive occupation, and the actions of its puppet government in Baghdad for which Washington is fully accountable under international law.

It began with an illegal March 19, 2003 “decapitation strike” against Saddam Hussein in violation of a 48 hour ultimatum he’d been given to leave the country with his sons. That crime and trying to assassinate a country’s leader are also illegal under earlier cited international laws.

Next came “shock and awe,” Baghdad was targeted, and Article 6(b) of the Nuremberg Charter was grievously violated. It defines war crimes to include the “wanton destruction of cities, towns or villages, or devastation not justified by military necessity.” Fallujah and other Iraqi cities were similarly victimized (as were Afghan targets) in spite of a May 8, 2003 joint US-UK pledge to the president of the Security Council: that Coalition states “will strictly abide by their obligations under international law, including those relating to the essential humanitarian needs of the people of Iraq.” Instead, laws are ignored and Iraqis continue to suffer grievously under an illegal, brutish occupation.

It includes the widespread use of torture that became de facto US policy after George Bush’s September 17, 2001 “finding” authorizing CIA to kill, capture and detain “Al Qaeda” members anywhere in the world and rendition them to secret black site prisons for interrogation, presumed to include torture. Soon after on January 25, 2002, White House Counsel, Alberto Gonzales called the Geneva Conventions “quaint and obsolete,” and it was all downhill from there to Abu Ghraib, Guantanamo, Bagram in Afghanistan and countless other torture prison sites. Included also is a newly revealed secret Guantanamo one called “Camp 7” for “high-value” detainees. It’s gruesome to imagine the barbarity inside under a president claiming “Unitary Executive” powers to do as he pleases outside the law.

In his testimony, Boyle again explained relevant laws that were covered above. US governments and the Pentagon willfully ignore them, George Bush flaunts them, and accountable civilian and military officials to the highest levels are guilty under domestic and international laws of crimes of war and against humanity and peace.

President George W. Bush’s War against Iraq on Trial

US Army Reserve Staff Sergeant Camilo Mejia was the first Iraq War veteran to refuse further involvement in the war as a matter of conscience after serving in it from April to October 2003. Following leave on return, he failed to rejoin his National Guard unit and filed for discharge as a conscientious objector on grounds that the invasion and occupation were illegal and immoral. The army, in turn, deliberately overcharged him with desertion to send a strong message to other military personnel that they, too, would be severely punished if they acted similarly.

Mejia’s May 2004 court-martial was a kangaroo-court show trial to drive home the point. It was widely broadcast and reported to all military personnel worldwide on internal Pentagon television, radio and newspaper outlets. Acting improperly, the military judge disallowed prepared defense testimony under the army’s Field Manual 27-10, the Constitution and established international law.

Mejia was found guilty, a year in prison was imposed, and Amnesty International declared him a prisoner of conscience, its highest honor. Only after the verdict was Boyle allowed to testify during the sentencing phase – but under strict limitations imposed by the (hanging) judge. Again, he cited relevant domestic, international and military law, reviewed crimes of war and against humanity under them, and explained the culpability of commanders and government officials at the highest levels for abusing and torturing prisoners.

Other military resisters came after Mejia. One was First Lt. Ehren Watada in June 2006 when he refused to deploy to Iraq and publicly stated why – "as an officer of honor and integrity, (he could not participate in a war that was) "manifestly illegal….morally wrong (and) a horrible breach of American law." By his courageous act, Watada became the first US military officer to face court-martial for refusing to deploy to Iraq. He was charged with:

> — one specification under UCMJ article 87 – missing movement;
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> — two specifications under article 99 – contempt toward officials (for making public comments about George Bush); and
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> — three specifications under article 133 – conduct unbecoming an officer.

If convicted on all charges, Watada faced possible dishonorable discharge, forfeiture of all pay and allowances, and seven years in prison. A military equivalent of a grand jury convened on August 17, 2006 to inquire into charges and decide if they were justified. Watada called three expert witnesses in his defense, and chose them well:

> — former UN Iraq Humanitarian Coordinator (1997 – 1998) Denis Halliday who resigned under protest because he was "instructed to implement a policy that satisfies the definition of genocide (and already) killed well over one million individuals, children and adults;"
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> — US Army Colonel Ann Wright who resigned her commission as a foreign service officer in the State Department in March 2003 to protest a "war of aggression (in) violat(ion) of international law;" and
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> — distinguished Professor Francis Boyle, international law and human rights expert, activist and author of this and many other books on these topics.

On August 22, the Army reported on the proceding and recommended all charges be referred to a general court-martial. It began in February under very constricted rules – denying a First Amendment defense and disallowing one questioning the legality of the war. However, legality issues were impossible to exclude, they directly related to charges brought, and the prosecution introduced them at trial. In addition, Watada firmly stated before testifying that he refused to deploy because of the war's illegality.

Unable to pressure him not to so testify, the presiding judge declared a mistrial. He'd lost control of the proceeding, knew Watada was on solid ground, and had to prevent his evidence from being introduced to avoid the embarrassing possibility of an acquittal on one or all charges. If it happened, the war's illegality would have been exposed and its continuation jeopardized.

Under the Fifth Amendment "double jeopardy" clause, Watada cannot be retried on the same charges. It states that no person shall be "subject for the same offense to be twice put in jeopardy of life or limb." Watada's triumph by mistrial was a powerful tribute to his convictions and redoubtable spirit. It's also an inspiration to civil resisters and all members of the military to follow in his courageous footsteps.

Boyle explains the urgency in his final paragraph that's a powerful message for everyone: The causes of both world wars "hover like the sword of Damocles over the heads of all

humanity.” Civil resistance is our only hope “to prevent WW III and an (inevitable) nuclear holocaust….Toward that end this book has been written.” Read it and act. Apathy isn’t an option.

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