

# The Criminality of Nuclear Deterrence Today

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The Criminality of Nuclear Deterrence Today:

International Law as

Anchoring Ground

**by**

**Professor Francis A. Boyle**

**XVIIIth Conference “Mut Zur Ethic”: Direct Democracy**

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Ladies and gentlemen:

*I am very happy to be speaking with you this evening. I want to express my gratitude to Zeit-Fragen for publishing the German language edition of my book *The Criminality of Nuclear Deterrence* (Clarity Press: 2002) which comes out now on the anniversary of the end of the Second World War. At this time 65 years ago, Japan surrendered to the United States after the atomic bombings of Hiroshima and Nagasaki and the incineration of 250,000 completely innocent human beings.*

My father was a Marine who invaded Saipan, Tinian, and Okinawa, and was preparing to invade Mainland Japan. I was brought up to believe that the bombings of Hiroshima and Nagasaki had saved my father’s life and thus made mine possible, although my father never raised me to be anti-Japanese or anti-German. But when I came to study international relations, I realized: This simply was not true. Indeed it was total propaganda by the United States government to justify nuclear terrorism and the mass-extermination of a quarter of a million human beings. Even Justice Pal in his dissent to the Tokyo Judgment said that the Japanese war criminals had nothing to their discredit as the bombings of Hiroshima and Nagasaki, which you can only compare to Nazi Acts.

Today the world is at a precipice of another world war. The United States government has committed acts of aggression against Afghanistan, Iraq, Pakistan, Somalia, Yemen, and has authorized, armed, equipped, and supplied Israel to commit acts of aggression, crimes against humanity, and outright genocide against Lebanon and Palestine. Today the United States government is threatening to attack Iran under the completely bogus pretext that they might have a nuclear weapon, which the International Atomic Energy has said is simply

not true. If they attack Iran with the Israelis, a British think-tank has predicted they could exterminate 2.8 million Iranians! They are fully prepared — the Americans and the Israelis — to use tactical nuclear weapons.

Indeed today tactical nuclear weapons have been fully integrated into U.S. armed forces and tactical training and programs. I have read the manual myself. Nukes are now treated — starting with the Bush Junior administration — as if they were just another weapon.

We must remember when President Putin was in Iran and he said he did not believe the Iranians had a nuclear weapon, President Bush Jr. publicly got up and threatened World War III. Remember that threat! He threatened World War III! I cannot recall in my lifetime a threat of this nature. You would have to go back to Hitler and Mussolini and Tojo to find high level government officials threatening a world war.

What did this threat mean? It was saying to Russia: “You had better stand back if we attack Iran.” It wasn’t a threat to Iran; that would not produce a world war attacking Iran, but just a slaughter. But saying to Russia: “You had better stand back, we are prepared to risk World War III if you don’t let us get our way with Iran.” An attack on Iran would set this entire region of the world on fire, from Egypt over to India, from Uzbekistan down to Diego Garcia. And as my friend and my colleague, Hans von Sponeck pointed out yesterday with his map: We see the counter-alliance to NATO: Russia, China and the so-called Central Asia Collective Security Organization. If you read about the origins World War I or World War II an attack on Iran could clearly set off World War III – remember Bush threatened it. And it could easily become nuclear. I kid you not on the dangers we are facing us all as human beings today.

We stand on a nuclear precipice, and any attempt to dispel this ideology of nuclearism and its myth propounding the legality and morality of nuclear weapons and nuclear deterrence must come to grips with the fact that the nuclear age was conceived in the original sins of Hiroshima and Nagasaki. These weapons have always been criminal! Remember they were developed to deal with the Nazis, out of fear that the Nazis would get them first. And yet for some reason they used them on the Japanese to make a point, to terrorize the rest of the world.

The atomic bombings of Hiroshima and Nagasaki constituted war crimes and crimes against humanity as defined by the Nuremberg Charter of August 8th 1945 — right after the United States bombed Hiroshima, and the day before they bombed Nagasaki — that condemned the wanton destruction of cities, towns, and villages; and applied it to the Nazi leaders, but of course never applied it to themselves. In my book *The Criminality of Nuclear Deterrence* there is an entire chapter on the criminality of the bombings of Hiroshima and Nagasaki and I list all the legal violations there, up to and including the United States Department of War Field Manual 27-10 (1940). So these bombings, and also the firebombing of Tokyo, exterminating 100,000 civilians, were war crimes. Even as recognized officially by the United States government itself.

The start of any progress towards resolving our nuclear predicament as human beings must come from the realization that nuclear weapons and nuclear deterrence have never been legitimate instruments of state policy, but have always constituted instrumentalities of internationally lawless and criminal behaviour. And those states that wield nuclear weapons, their government officials are criminals in accordance with the Nuremberg Charter, Judgment, and Principles, and the Tokyo Charter and Judgment that the Allies applied to the Nazi war criminals and the Japanese war criminals after World War II. So I’m not talking

here about applying any principle of law that the United States government and the other victors of World War II applied to their enemies to hold them accountable.

The use of nuclear weapons in combat is contemplated now by the United States and Israel against Iran. How many times have we heard U.S. government officials involved in the Bush Junior administration and now the Obama administration say: "All options are on the table." They mean it: not just the use the force but the use of nuclear weapons as well. These are prohibited by conventional and customary international law, including the Genocide Convention of 1948, designed to prevent a repetition of the Nazi Holocaust against the Jews, the Poles, the Russians, the Ukrainians. The use of nuclear weapons would also violate Resolutions of the U.N. General Assembly that repeatedly condemned their use as an international crime. We must understand that when dealing with nuclear weapons and nuclear deterrence: They are not simply immoral, they are not simply illegal, but they are criminal across the board!

The Swiss Foreign Ministry a commissioned a study of nuclear deterrence by three American authors, I read it, and I agree with what they said. They pointed out that the critical factor is the delegitimation of nuclear weapons in the minds of the people. Having litigated nuclear weapons protest cases in the United States, Canada, Britain, and elsewhere since 1982, for me the critical factor in winning these cases is to explain to the common, ordinary people on juries that nuclear weapons and nuclear deterrence are criminal. Not simply illegal, not simply immoral, but criminal!

Yet the government officials in all the nuclear weapon states, not just the United States — they are the worst of them — but also Russia, France, Britain, China, India, Pakistan, Israel, North Korea: They are the criminals! For threatening to exterminate all humanity! For threatening Nuremberg crimes against peace, crimes against humanity, war crimes and genocide. That's what nuclear deterrence really is: threatening mass extermination. And in the Advisory Opinion by the International Court of Justice on nuclear weapons, the World Court ruled that the threat stands or falls on the same legal grounds as the actual use. If mass extermination of human beings is a crime, the threat to commit mass extermination is also a crime.

It is as if the leaders of the nuclear weapon states have all taken out a gun, cocked the trigger, and held it at the heads of all humanity! In any system of criminal justice today that activity is criminal! In the United States it would be attempted murder, and you would be prosecuted for it. Yet today U.S. government officials threaten murder to millions of people around the world. And now especially in Iran.

According to the Nuremberg Judgment soldiers would be obliged to disobey criminal orders to launch and wage a nuclear war. And yet, how many soldiers have been educated to understand these principles? A few have educated themselves, acted on it, and have been prosecuted by the United States government. I have helped to defend them, with a good deal of success, but not complete success. You can read about this in my latest book *Protesting Power: War Resistance and Law* (Rowman & Littlefield: 2008). How we defended military resisters in our all-volunteer Armed Forces who refused to fight in illegal, criminal wars waged by the United States government, going back to Gulf War I by Bush Senior, Haiti by Clinton, Gulf War II by Bush Junior.

All government officials and military officers who might launch or wage a nuclear war would

be personally responsible for the commission of crimes against peace, crimes against humanity, war crimes and genocide. And such individuals whether statesmen or high level military personnel would not be entitled to any defenses of superior orders, act of state, tu quoque, self-defense, presidential authority, etc. All those defenses were made by lawyers for the Nazi defendants at Nuremberg and they were rejected. And yet today in the United States of America starting with the Bush Junior administration and now continuing with Obama you will hear international lawyers working for the government, and many in the private sector, making Nazi arguments to justify what the United States government is doing around the world. That's how desperate the situation is!

The whole Bush Doctrine of preventive warfare, which is yet to be officially repealed by Obama now after 18 months, was made by the Nazi lawyers for the Nazi defendants at Nuremberg, and it was rejected. And the argument by Nuremberg was: There is no such thing as preventive self-defense or things of this nature. What is self-defense can only be determined by reference to international law. And the test is clearly: the necessity of self-defense must be instant, overwhelming, leaving no choice of means, no moment for deliberation. Certainly not Afghanistan or Iraq or Lebanon or Palestine or Iran or Somalia or Yemen or Pakistan. And yet all victims of this Nazi doctrine of preventive self-defense that is now justified by all these prostituted international lawyers on the payroll of the United States government, leaving government service, now they infiltrate into American academia where they likewise try to justify these doctrines and policies that were condemned as criminal at Nuremberg.

Article 2, paragraph 4 of the United Nations Charter prohibits both the threat and the use of force except in cases of legitimate self-defense. And there *is* a standard for self-defense. Article 51 of the U.N. Charter, and as supplemented by Nuremberg, that clearly rejects the wars against Afghanistan as aggression - explained in my book in greater detail - against Iraq, against Pakistan, which by the way has nuclear arms. The Obama administration has now escalated to a war against Pakistan, trying to set off civil war and destabilize Pakistan, just as they did in Yugoslavia, just as they did in Iraq, just as they did in Afghanistan. As we lawyers say: "The modus operandi is the same."

The Empire does not change from one administration to the next! In America the government is run by elites who are either liberal imperialists, conservative imperialists, or reactionary imperialists, like the Neocons. But they are all imperialists! And they believe in the god-given right to the American Empire. That's the way America started. Remember, how did the United States of America start? White European settlers coming over to North America, exterminating millions of indigenous people, and robbing their land, and building an Empire. The process just continues today as we speak.

The threat to use nuclear weapons, what we call "nuclear deterrence" - I would call "nuclear terrorism" - constitutes ongoing international criminal activity: planning, preparation, solicitation, and conspiracy to commit Nuremberg crimes against peace, crimes against humanity, war crimes, and genocide. These are what we lawyers call inchoate crimes, not the substantive offences themselves, but crimes leading up to the commission of the substantive offences. They were made criminal at Nuremberg in order to establish a bright line and that we would punish even walking up to that bright line as criminal.

In the case of nuclear weapons once a nuclear war starts I doubt very seriously we are going to be having another war crimes tribunal for anyone. So what that means then is that it is up to us citizens of the world to stop and prevent a nuclear war, and to stop and prevent the

threat, conspiracy, solicitation of the use of nuclear weapons. “Everything is on the table” — clearly a threat to use nuclear weapons, clearly a criminal threat under the World Court Advisory Opinion, against Iran.

As I explain in more detail in my book, the design, research, testing, production, manufacture, fabrication, transportation, deployment, installation, storing, stockpile, sale, and purchase and the threat to use nuclear weapons are criminal under well-recognized principles of international law. And I know the German government has finally asked the United States, NATO, to take its nukes out of Germany. And Mrs. Clinton has said: “We don’t support it.” Well is the German government going to cave in? Or will it use law and international law and the Nuremberg Charter, Judgment and Principles to get American criminal nukes out of Germany? I guess we will find out this Fall.

Those government decision-makers in all nuclear weapon states with command responsibility for nuclear weapons are responsible today for personal criminal activity under the Nuremberg Principles for this practice of nuclear deterrence/nuclear terrorism, that they inflict on all states and peoples in the world today. And in particular counter-ethnic targeting for the United States, destroying Russians just because they are Russian.

Also counter city-targeting! When I worked on the case of the U.K. nuclear weapons in Scotland we established that the entire purpose of the U.K. nuclear weapons force, under the control and allocated to NATO, was to destroy the city of Moscow, seven million human beings! It had no other purpose. Needless to say, once we did that we got all of our defendants off for four counts each of malicious destruction of property when they destroyed a tender servicing the U.K. Trident II nuclear weapons submarines with these weapons of mass extermination. They might have destroyed the tender, but they did not act maliciously. They acted for the perfectly lawful reason to stop the nuclear extermination of seven million human beings.

So, I argue in my book, the simple idea of the criminality of nuclear weapons and deterrence can be used to pierce through the ideology of nuclearism, to which so many citizens in the nuclear weapon states and around the world have succumbed — by means of propaganda techniques, propagated by the governments, going back to the bombings of Hiroshima and Nagasaki. At the time of the bombings of Hiroshima and Nagasaki the U.S. government tried to present this as positive to the American people and in particular that it was necessary to end a war to avoid an invasion of Japan, which of course was not going to happen, because the Japanese were already defeated and were trying desperately to negotiate a surrender.

It is with this simple idea of the criminality of nuclear weapons that people can easily comprehend the illegitimacy and fundamental lawlessness of these policies that their governments pursue in their names — or allied governments as well. And to those living in the NATO states today: Their leaders are all accomplices, they go along with nuclear policies as well. They send their generals over to NATO headquarters to be integrated into NATO’s strategy.

I remember after the Berlin Wall fell, the German Branch of International Association of Lawyers Against Nuclear Arms had a big conference in Berlin and I gave the keynote address along these lines. And they asked the German General of the Bundeswehr in charge of liaison with NATO on nuclear weapons to respond to me. And he got up and he said: “Well, we all know that Nuremberg is soft law.”

I had two reactions to that. One: “Mister General, we hanged your predecessors at Nuremberg, under the Nuremberg laws. How can you say it is soft law?” Not that I support the death penalty even for major war criminals like Bush Junior and Tony Blair.

But the second reaction I had to this notion of soft law like Joe Nye’s “soft power”: “Soft law”, I said, “you know, he got that from us.” So we Americans have convinced German generals that Nuremberg is soft law in order to pursue our nuclear policies with the cooperation of the next generation of German generals whose predecessors we hanged at Nuremberg.

After the public speech I discussed this matter with him, and he agreed with me but he said: “Look, we have no alternative but to do what the Americans tell us to do.” And I quoted to him a passage from the Bible saying: “Yes, and the blind shall lead the blind.” And the German General said: “We have to trust that the Americans are doing the right thing.” Right over the nuclear precipice! The German people have to stand up here and say: “Enough! We want your nukes out of Germany for sure and we are no longer going to cooperate with you on nuclear weapons policies.”

Humankind must abolish nuclear weapons before nuclear weapons abolish humankind! Nevertheless there are a small number of governments in the world that continue to maintain their nuclear weapons systems despite the rules of international criminal law to the contrary. I would respond in a very simple way: Since when has a small gang of criminals — the leaders of the nuclear weapons states — been able to determine what is illegal or legal for the rest of the world by means of their own criminal behaviour? What right do nuclear weapons states have to argue that by means of their own criminal behaviour — nuclear deterrence/nuclear terrorism — they have made criminal acts legitimate? No civilized state would permit a small gang of criminal conspirators to pervert its domestic legal order in this way. Indeed both the Nuremberg Tribunal and the Tokyo Tribunal made it clear that a conspiratorial band of criminal states has no right to opt-out of the international legal order by means of invoking their own criminal behaviour as the least common denominator of international deportment. It’s a basic rule of international law: Right cannot arise out of injustice! *Ex iniuria ius non oritur!*

The entire human race has been victimized by an international conspiracy of ongoing criminal activity carried out by the nuclear weapons states and their leaders under this doctrine of nuclear deterrence which is really a euphemism for nuclear terrorism. And the expansion of NATO has now drawn in almost all of Europe. They have broken down - the United States and NATO - even the traditionally neutral states. Sweden today acts as if it were a de facto but not yet de jure member of NATO. Finland has basically abandoned its neutrality. Austria, with a constitutional obligation to be neutral, has basically abandoned its neutrality. Even Ireland, little bitty Ireland - I have dual nationality with Ireland. The Americans have forced and compelled Ireland to join up to the Partnership for Peace (PFP) which is one step away from NATO membership, and have forced Ireland then under PFP to put some troops in Afghanistan to help them wage an illegal and criminal war of aggression against Afghanistan.

The only state in Europe still holding out is Switzerland. Yes, it signed up for Partnership for Peace which it should never have done. But at least Switzerland is holding out, it has no troops in Afghanistan or Iraq. And Switzerland must continue to hold out. And that is exactly why it is been subjected to so much pressure! Including an attack on its banking and financial system to bring Switzerland into line with NATO and the United States, exactly as

every other country in Europe has done and succumbed. That is really what's at stake here. Are you, the Swiss, going to join up – either de facto or de jure – with NATO and the Americans, so that if and when they attack Iran and perhaps set off a new world war, you and your children will get sucked into it? Switzerland avoided the last two world wars. I certainly hope Switzerland will avoid the next one by having nothing to do with the United States and NATO. And somehow working your way out of Partnership for Peace.

This international criminal conspiracy of nuclear deterrence/nuclear terrorism, is no different from any other conspiracy by a criminal gang or band. They are the outlaws. We are the sheriffs – the citizens of the world. So it is up to us to repress and dissolve this international criminal conspiracy by whatever non-violent means are at our disposal and as soon as possible. As I said: If we all don't act now, Obama and his people could very well set off a Third World War over Iran, that has already been threatened publicly by Bush Junior.

Every person around the world has a basic human right to be free from the criminal practice of nuclear deterrence/nuclear terrorism, and its specter of nuclear extinction. All human beings in our capacities as creatures of God possess the basic right under international law to engage in civil resistance for the purpose of preventing, impeding or terminating the ongoing commission of these international crimes.

And this is not civil disobedience. It's civil resistance! We have disobeyed nothing! We are obeying the dictates of international law! It is the government officials in the nuclear weapons states and their allied states that are disobeying international law. *They* are the criminals! We are the sheriffs! And it is up to us to stop them!

Every citizen of the world community has the right and the duty to oppose the existence of nuclear weapons systems by whatever non-violent means are at his or her disposal. Otherwise the human race will suffer the same fate as the dinosaurs. And the planet earth will become a radioactive waste-land. And it very well could happen in our life-time.

The time for preventive action is now! And civil resistance by all of us human beings is the way to go.

Thank you.

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