

**LAW AND RESISTANCE:
THE REPUBLIC IN CRISIS AND THE PEOPLE'S RESPONSE***

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Since the impeachable installation of George Bush Jr. as President by the U.S. Supreme Court's Gang of Five, the people of the world have witnessed a government in the United States that has demonstrated little if any respect for fundamental considerations of international law, human rights, or the United States Constitution. Instead, the world has watched a comprehensive and malicious assault upon the integrity of the international and domestic legal orders by a group of men and women who are thoroughly Machiavellian and Straussian in their perception of international relations and in their conduct of both foreign affairs and American domestic policy. Even more seriously, in many instances specific components of the Bush Jr. administration's foreign policy constitute ongoing criminal activity under well recognized principles of both international law and United States domestic law, and in particular the Nuremberg Charter,² the Nuremberg Judgment,³ and the Nuremberg

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² Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1546, 82 U.N.T.S. 284 [hereinafter Nuremberg Charter].

Principles,⁴ as well as the Pentagon's own U.S. Army Field Manual 27-10 on *The Law of Land Warfare*,⁵ which applies to President Bush Jr. himself as Commander-in-Chief of United States Armed Forces under Article II, Section 2 of the United States Constitution.

Depending on the substantive issues involved, these international and domestic crimes typically include but are not limited to the Nuremberg offences of "crimes against peace"⁶-- so far Afghanistan, Iraq, Somalia, and perhaps their longstanding threatened war of aggression against Iran. Their criminal responsibility also concerns "crimes against humanity"⁷ and war crimes,⁸ as well as grave breaches of the Four Geneva Conventions of 1949⁹ and the 1907 Hague Regulations¹⁰ on land warfare: torture at Guantanamo, Bagram, Abu Ghraib, and elsewhere, enforced disappearances, assassinations, murders, kidnappings, extraordinary renditions, "shock and awe," depleted uranium, white phosphorous, cluster bombs, Fallujah, etc. Furthermore, various members of the Bush Jr. administration have committed numerous inchoate crimes incidental to these substantive offences that under the Nuremberg Charter,¹¹ Judgment,¹² and Principles¹³

³ The Nurnberg Trial of 1946, 6 F.R.D. 69 (1946) [hereinafter Nuremberg Judgment].

⁴ International Law Commission, Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal (1950), *reprinted in* THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 1265-66 (Dietrich Schindler & Jiri Toman eds., 4th ed. rev. 2004) [hereinafter Nuremberg Principles].

⁵ DEP'T OF THE ARMY, FIELD MANUAL 27-10: *The Law of Land Warfare* ¶¶ 498-501 (1956).

⁶ Nuremberg Charter, *supra* note 2, art. 6(a).

⁷ *Id.* art. 6(c).

⁸ *Id.* art. 6(b).

⁹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons In Time Of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287 [hereinafter Geneva Conventions].

¹⁰ Hague Convention (IV) Respecting The Laws And Customs Of War On Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, 1 Bevans 631; *See* Annex To The Hague Convention (IV) Respecting The Laws And Customs Of War On Land, Oct. 18, 1907, arts. 4-20, 36 Stat. 2277, T.S. No. 539, 1 Bevans 643, 644-47.

¹¹ Nuremberg Charter, *supra* note 2.

as well as U.S. Army Field Manual 27-10 (1956)¹⁴ are international crimes in their own right: planning, and preparation—which they are currently doing today against Iran—solicitation, incitement, conspiracy, complicity, attempt, aiding and abetting. Of course the terrible irony of today's situation is that six decades ago at Nuremberg the U.S. government participated in the prosecution, punishment, and execution of Nazi government officials for committing some of the same types of heinous international crimes that the Neo-Conservative Straussian members of the Bush Jr. administration currently inflict upon people all over the world. To be sure, I personally oppose the imposition of capital punishment upon any human being for any reason no matter how monstrous their crimes, whether they be Bush Jr., Tony Blair, or Saddam Hussein.

According to basic principles of international criminal law set forth in paragraph 501 of U.S. Army Field Manual 27-10,¹⁵ all high-level civilian officials and military officers in the U.S. government who either knew or should have known that soldiers or civilians under their control (such as the C.I.A. or mercenary contractors), committed or were about to commit international crimes and failed to take the measures necessary to stop them, or to punish them, or both, are likewise personally responsible for the commission of international crimes. This category of officialdom who actually knew or should have known of the commission of these international crimes under their jurisdiction and failed to do anything about them include at the very top of America's criminal chain-of-command President Bush Jr. and Vice-President Cheney; former U.S. Secretary of Defense Rumsfeld; Secretary of State Rice; Director of National Intelligence Negroponte, who was previously in charge of the *contra* terror war against the people of Nicaragua that murdered 35,000 civilians; National Security Advisor Hadley; his Deputy Elliot Abrams, who was also criminally responsible for murdering 35,000 people in Nicaragua; former U.S. Attorney General Gonzales, criminally responsible for the torture campaign launched by the Bush Jr. administration; and the Pentagon's Joint Chiefs of Staff along with the appropriate Regional Commanders-in-Chief, especially for Central Command (CENTCOM).

¹² Nuremberg Judgment, *supra* note 3.

¹³ Nuremberg Principles, *supra* note 4.

¹⁴ DEP'T OF THE ARMY, *supra* note 5.

¹⁵ *Id.* ¶ 501.

These U.S. government officials and their immediate subordinates are responsible for the commission of crimes against peace, crimes against humanity, and war crimes as specified by the Nuremberg Charter, Judgment, and Principles as well as by U.S. Army Field Manual 27-10 of 1956.¹⁶ Today in international legal terms, the Bush Jr. administration itself should now be viewed as constituting an ongoing criminal conspiracy under international criminal law in violation of the Nuremberg Charter,¹⁷ the Nuremberg Judgment,¹⁸ and the Nuremberg Principles¹⁹ because of its formulation and undertaking of serial wars of aggression, crimes against peace,²⁰ crimes against humanity,²¹ and war crimes²² that are legally akin to those perpetrated by the former Nazi regime in Germany. As a consequence, American citizens possess the basic right under international law and the United States domestic law, including the U.S. Constitution, to engage in acts of civil resistance designed to prevent, impede, thwart, or terminate ongoing criminal activities perpetrated by Bush Jr. administration officials in their conduct of foreign affairs policies and military operations purported to relate to defense and counter-terrorism.

For that very reason, large numbers of American citizens have decided to act on their own cognizance by means of civil resistance in order to demand that the Bush Jr. administration adhere to basic principles of international law, of U.S. domestic law, and of our own Constitution in its conduct of foreign affairs and military operations. Mistakenly, however, such actions have been defined to constitute classic instances of “civil disobedience” as historically practiced in the United States. And, the conventional status quo admonition by the U.S. power elite and its sycophantic news media for those who knowingly engage in “civil disobedience” has always been that they must meekly accept their punishment for having performed a *prima facie* breach of the positive laws as a demonstration of their good faith and moral commitment. Nothing could be further from the truth! Today’s civil resisters are the sheriffs! The Bush Jr. administration officials are the outlaws!

¹⁶ DEP’T OF THE ARMY, *supra* note 5.

¹⁷ Nuremberg Charter, *supra* note 2.

¹⁸ Nuremberg Judgment, *supra* note 3.

¹⁹ Nuremberg Principles, *supra* note 4.

²⁰ Nuremberg Charter, *supra* note 2, art. 6(a).

²¹ *Id.* art. 6(c).

²² *Id.* art. 6(b).

Here, I would like to suggest a different way of thinking about civil resistance activities that are specifically designed to thwart, prevent, or impede ongoing criminal activity by members of the Bush Jr. administration under well recognized principles of international and U.S. domestic law. Such civil resistance activities represent the last constitutional avenue open to the American people to preserve their democratic form of government with its historical commitment to the rule of law and human rights. Civil resistance is the last hope America has to prevent the Bush Jr. administration from moving even farther down the path of lawless violence in Southwest Asia, military interventionism in Latin America and Africa, and nuclear confrontation with Iran, North Korea, Russia, and China.

Such measures of “civil resistance” must not be confused with, and indeed must be carefully distinguished from, acts of “civil disobedience” as traditionally defined. In today’s civil resistance cases, what we witness are U.S. citizens attempting to prevent the ongoing commission of international and domestic crimes under well-recognized principles of international law and U.S. domestic law. This is a phenomenon essentially different from the classic civil disobedience cases of the 1950s and 1960s where incredibly courageous African Americans and their supporters were conscientiously violating domestic laws for the express purpose of changing them. By contrast, today’s civil resisters are acting for the express purpose of upholding the rule of law, the U.S. Constitution, human rights, and international law. Applying the term “civil disobedience” to such civil resisters mistakenly presumes their guilt and thus perversely exonerates the Bush Jr. administration criminals.

Civil resisters disobeyed nothing, but to the contrary obeyed international law and the United States Constitution. By contrast, Bush Jr. administration officials disobeyed fundamental principles of international law as well as U.S. criminal law and thus committed international crimes and U.S. domestic crimes as well as impeachable violations of the United States Constitution. The civil resisters are the sheriffs enforcing international law, U.S. criminal law and the U.S. Constitution against the criminals working for the Bush Jr. administration!

Today the American people must reaffirm our commitment to the Nuremberg Charter,²³ Judgment,²⁴ and Principles²⁵ by holding our government officials fully accountable under international law and U.S. domestic law for the commission of such grievous international and domestic crimes. We must not permit any aspect of our foreign affairs and defense policies to be conducted by acknowledged “war criminals” according to the U.S. government’s own official definition of that term as set forth in U.S. Army Field Manual 27-10 (1956),²⁶ the U.S. War Crimes Act,²⁷ and the Geneva Conventions.²⁸ The American people must insist upon the impeachment, dismissal, resignation, indictment, conviction, and long-term incarceration of all U.S. government officials guilty of such heinous international and domestic crimes. That is precisely what American civil resisters are doing today!

This same right of civil resistance extends *pari passu* to all citizens of the world community of states. Everyone around the world has both the right and the duty under international law to resist ongoing criminal activities perpetrated by the Bush Jr. administration and its nefarious foreign accomplices in allied governments such as in Britain, Australia, Japan, South Korea, Georgia, etc. If not so restrained, the Bush Jr. administration could very well precipitate a Third World War.

In this regard, during the course of an October 17, 2007 press conference,²⁹ President Bush Jr. terrorized the entire world with the threat of World War III if he could not work his illegal will upon Iran. Then, Russian President Vladimir Putin responded in kind by likewise terrorizing the entire world with the prospect of yet another Cuban Missile Crisis if he did not get his way on the needlessly provocative anti-ballistic missile systems that the Bush Jr. administration plans to locate in Poland and the Czech Republic. The publicly threatened U.S./Israeli attack upon

²³ Nuremberg Charter, *supra* note 2.

²⁴ Nuremberg Judgment, *supra* note 3.

²⁵ Nuremberg Principles, *supra* note 4.

²⁶ DEP’T OF THE ARMY, *supra* note 5.

²⁷ 18 U.S.C. § 2441 (1996).

²⁸ Geneva Conventions, *supra* note 9.

²⁹ George Walker Bush, Press Conference at the White House (Oct. 17, 2007) (for video of this press conference, *see* <http://www.youtube.com/watch?v=9IMH71UNh88> 3:00-3:15); (for a transcript of the quotation, *see* http://www.huffingtonpost.com/bob-cesca/world-war-iii-is-going-to_b_68914.html).

Iran could readily set off a chain of events that would culminate in World War III, and could easily go nuclear. It is my opinion that the Bush Jr. administration would welcome the outbreak of a Third World War, and in any event is fully prepared to use tactical nuclear weapons against Muslim and Arab states and peoples.

After September 11, 2001 the United States of America has vilified and demonized Muslims and Arabs almost to the same extent that America inflicted upon the Japanese and Japanese Americans after Pearl Harbor. As the Nazis had previously demonstrated with respect to the Jews, a government must first dehumanize and scapegoat a race of people before its citizens will tolerate if not approve their elimination: Hiroshima and Nagasaki. In post-9/11 America we are directly confronted with the prospect of a nuclear war of extermination conducted by our White Racist Judeo-Christian Power Elite against People of Color in the Muslim and Arab worlds in order to steal their oil and gas. The Crusades all over again. But this time nuclear Armageddon stares all of humankind right in the face!

We American lawyers must be inspired by the stunning example set by those heroic Pakistani lawyers now leading the struggle against the brutal Bush-supported Musharraf military dictatorship. We American lawyers must now lead the fight against the Bush Jr. dictatorship! This is *our* Nuremberg Moment!

Thank you.