

**ON THE NECESSITY AND JUSTIFICATION FOR CIVIL DISOBEDIENCE
IN OPPOSITION TO THE BUSH/CHENEY ADMINISTRATION'S
"WAR ON TERRORISM" AND ATTACKS AGAINST IRAQ**

This brief discusses legal authorities under both international and United States domestic law supporting Peoples' rights to resist the "war on terrorism" conducted by the current government of the United States of America. The U.S. government's officially announced intention to "act preemptively" against Iraq, its People, and its oil resources, provides legally sufficient justification for acts of non-violent civil disobedience in defense of peace, of Peoples' lives, of the U.S. Constitution, and of international law.

Statement of Facts

1. The "War on Terrorism" and Attacks Against Iraq

On September 11, 2001, thousands of victims and their families, along with hundreds of millions of others watching in horror, suffered crimes against humanity in New York City and Washington, D.C. The President of the United States recently stated, in a legally required, official policy document transmitted to Congress, that the events of that day "opened vast, new opportunities." (The National Security Strategy of the United States," September 20, 2002, Section VIII, Development Agendas for Cooperative Action with the Other Main Centers of Global Power)

Beginning immediately after the crimes against humanity of September 11, a relatively small group of individuals in the U.S. government – primarily President George W. Bush, Vice President Dick Cheney, Secretary of Defense Donald Rumsfeld, and his

Deputy Paul Wolfowitz – began to develop pretexts for intensified military attacks against Iraq.¹ No credible evidence connects Iraq to the crimes of September 11.

One year later, in an attempt to justify the seizure of Iraqi territory and oil, these officials formally promulgated a doctrine under which the United States will “act preemptively,” without the legally required authorization of the United Nations and the international community, or any legitimate claim of self defense or defense of others, to bomb and invade Iraq. (National Security Strategy, Section V) Ongoing unilateral military attacks by the United States against Iraq violate Article 1, Section 4 and Articles 41 and 42 of the United Nations Charter and other provisions of international law, which as ratified treaties are also part of "the supreme Law of the Land." U.S. Const., Art. VI

2. Iraq Under Sanctions of Mass Destruction

The 1991 Gulf War destroyed Iraq’s infrastructure and killed approximately 250,000 People in 42 days of bombing (according to Vietnam Veterans Against the War). Ever since then, the governments of the United States and the United Kingdom have enforced brutal economic sanctions, holding the Iraqi People hostage in order to pressure Dictator Saddam Hussein. The U.S. and U.K. governments have blocked over \$ 4 billion in humanitarian supplies from reaching the People of Iraq, causing the deaths of some 5-6,000 children per month for 11 years, mostly due to contaminated water, lack of

¹ Indeed, a secret report by the neo-conservative think tank Project for the New American Century (PNAC), entitled “Rebuilding America’s Defenses; Strategies, Forces and Resources for a New Century,” was drafted for Cheney, Rumsfeld, Wolfowitz, and other future administration officials in September 2000. It articulated their plans for attacking Iraq to achieve “regime change” long before the September 11 attacks. British Labour MP Tam Dalyell accurately characterized the PNAC report as “garbage from right wing think tanks stuffed with chicken hawks – men who have never seen the horror of war but are in love with the idea of war. Men like Cheney, who were draft-dodgers in the Vietnam war. This is a blueprint for U.S. world domination – a new world order of their making. These are the thought processes of fantasist Americans who want to control the world. I am appalled that a British Labour Prime Minister should have got into bed with a crew which has this moral standing.” Quoted in The Sunday Herald (Scotland), September 15, 2002, “Bush Planned Iraq ‘Regime Change’ Before Becoming President,” by Neil Mackay

medicines and malnutrition.² Water-borne diseases such as cholera, typhoid and polio, which had been largely eradicated before 1990, have become epidemic.³ The Wall Street Journal has deplored the sanctions' political effect of "actually tightening [Saddam Hussein's] grip on power." The sanctions have stripped the People of Iraq of economic and social rights – the rights to sufficient food, clean water, education and medical care. Universal Declaration of Human Rights, Arts. 25 and 26⁴ Like Afghanistan even before U.S. bombing began on October 7, 2001, Iraq is "a country reduced to a pre-industrial age, for a considerable period to come."⁵

The Iraqi military's ability to threaten anyone outside Iraq has been eliminated. From a qualitative standpoint, Iraq has been disarmed. The chemical, nuclear, and long-range ballistic missile programs that existed in 1991 thanks to suppliers from the U.S. and U.K., were destroyed or rendered harmless by 1998.⁶ Since withdrawal of weapons inspectors in 1998, the U.S. and U.K. have gradually intensified a bombing campaign against Iraq that involved 24,000 "combat missions" over Iraq in 1999-2000 alone, according to the Pentagon.

² "The Hostage Nation," by Hans Von Sponeck and Denis Halliday, *The Guardian* (UK), November 29, 2001. See also Report of the UN Secretary General, October 2001. Hans Von Sponeck and Denis Halliday were the UN Humanitarian Coordinators for Iraq from 1997 to 2000. Both resigned from their long careers at the UN because of the sanctions policy, which they have called "genocide."

³ UNICEF Report, *The State of the World's Children* (2001), cited by Felicity Arbuthnot in *The Sunday Herald* (Scotland), September 1, 2002.

⁴ See Testimony prepared for hearings on Iraq policy of the Senate Foreign Relations Committee by Phyllis Bennis of the Institute for Policy Studies, July 31- August 1, 2002. Although Ms. Bennis was not called to testify at the Senate Committee hearing, Senator Paul Wellstone introduced her written statement as part of the official record.

⁵ Former UN Special Rapporteur Maarti Ahtisaari, quoted by Felicity Arbuthnot in *The Sunday Herald* (Scotland), September 1, 2002.

⁶ Boston Globe op-ed by Scott Ritter, March 6, 2000. The author was a U.S. Marine and a UN weapons inspector for Iraq. Former UN humanitarian coordinator Hans Von Sponeck stated, on May 29, 2001: "Iraq today is no longer a military threat to anyone. Intelligence agencies know this. All the conjectures about weapons of mass destruction in Iraq lack evidence."

More recently, after September 11 the U.S. government commenced a major military buildup of bases, troops, war ships and planes, including larger air strikes against Iraqi anti-aircraft and command facilities. Iraq's government has unconditionally agreed to re-admit UN weapons inspectors. The recent construction of U.S. military air bases in Qatar, in northern Iraq's "no-fly zone," and in Kuwait, the presence of hundreds of thousands of soldiers, hundreds of war planes, and an undisclosed number of war ships in the region, and the recent relocation of the U.S. Central Command military headquarters from Florida to Qatar, together with the policy statements of Bush, Cheney, Rumsfeld, Wolfowitz, and other top U.S. government officials, have announced to the world that an even larger illegal U.S. attack is imminent.⁷

3. The "War on Terrorism" and the United States of America

Since September 11, 2001, the U.S. government has implemented a series of policies that acutely inflame the conditions giving rise to terrorism. After the Taliban's sudden implosion in mid-November of 2001, the U.S. military attacks on Afghanistan that began on October 7, 2001 were declared a success. There had previously been widespread speculation about "a Vietnam-style quagmire." Expressions of doubt about the effectiveness of the government's military strategy quickly gave way in the U.S. corporate mass media. President Bush's State of the Union speech to Congress in late January, targeting an "Axis of Evil," marked the beginning of a so-called "second phase" of the "war against terrorism." Iraq clearly emerged as the leading candidate for the next

⁷ See. e.g., "Plans Advance for War Against Iraq," by Niles Lathem, New York Post, August 6, 2002; "Iraq: In all but name, the war's on," by Marc Erikson, Asia Times, August 17, 2002; "U.S. Military Builds Up Huge Attack Force," by Julian Borger and Richard Norton-Taylor, The Guardian (UK), September 13, 2002.

slightly less powerless country after Afghanistan to be destroyed by the United States' supreme military machine.

The picture of American killing power marching triumphantly from evildoer to evildoer that is peddled to the American People by the U.S. government and corporate media is wildly inaccurate. Merely scratching the surface of the world reality shaped by the horrors of September 11 and their aftermath raises serious doubts. By early March of 2002 U.S. ground troops and their Afghan allies were already involved in intense fighting in eastern Afghanistan around Tora Bora with Taliban/al- Quida guerillas. Assassinations and terrorist/warlord violence have continually plagued the new U.S.- installed government of Afghanistan, whose titular leader requires round-the-clock U.S. military bodyguards for his physical survival.

Meanwhile, broader regions surrounding Iraq are on the brink of a potential holocaust that will likely follow intensified U.S. attacks on Iraq. In Israel and the occupied Palestinian territories of the West Bank and Gaza, the violence of the Israeli/Palestinian conflict has spiraled completely out of control, while the U.S. government offers no diplomatic intervention to relieve the suffering. Border skirmishes over disputed Kashmir between military forces of Pakistan and India, both equipped with nuclear weapons, have repeatedly threatened a wider war. The stability of authoritarian governments in Egypt and Saudi Arabia is threatened.

The motivation of the U.S. government in extending its "war on terrorism" from Afghanistan to Iraq is further control over strategic energy resources. Although Afghanistan itself has few known energy resources, it is the ideal geographic location for pipelines transporting oil and natural gas from Central Asia to the Arabian Sea.

Afghanistan is also strategically located near Russia, China, Pakistan, India, and Iran, potential rivals of American domination. The “war on terrorism” has already established a series of new U.S. military bases throughout this sensitive region that are ideally located to protect projected pipeline routes. Iraq is next up for bombing and invasion because its proven oil resources, second only to those of Saudi Arabia, are currently not under U.S. control. All this has nothing whatsoever to do with securing justice for the victims of September 11. It is about policing an oil, military, and financial empire. The “war against terrorism” is a convenient pretext for securing U.S. control over many corporate and military objectives, especially the vital strategic energy resources of the Middle East and the Caspian basin.

At home in the U.S. economic recession, corporate corruption scandals, environmental problems, budget and trade deficits, inadequate health care, violations of civil liberties attributable to the “war on terrorism,” and other major issues of government credibility have threatened the current administration’s political support. The government’s public drive for war on Iraq began two months before Congressional elections. If the debate over attacking Iraq were not so conveniently timed for partisan political advantage, such issues would be the subject of intense publicity and debate. The domestic political motivations for scheduling the latest diplomatic, political, and military offensive are utterly transparent. The current U.S. government is starting a war of aggression, at least partly to achieve electoral victory of its political party.

More fundamentally, the U.S. government is pursuing an illusory military “solution” to political and economic problems that have racial, ethnic, and religious dimensions. The brutal kidnapping and murder of Wall Street Journal reporter Daniel

Pearl in Pakistan was only the first of such terrorist crimes growing out of this war. Blind U.S. militarism, especially in light of worldwide opposition to U.S. attacks against Iraq, has produced even greater terrorism disasters. Covert U.S. military support for Afghan resistance to the Soviet Union eventually produced the Taliban and al-Quaida. U.S. support for Saddam Hussein's war against Iran included supplying him with biological agents for use in weapons of mass destruction. The forthcoming air attacks and invasion of Iraq, home of the world's most traumatized children for over 12 years since "Operation Desert Storm," will yield an unimaginably horrible backlash. Under well accepted general principles of criminal law applicable in every U.S. jurisdiction, otherwise technically illegal acts may be justified by the necessity of preventing a greater wrong or danger – a form of self-defense or defense of others. In this case there is ample legal necessity and justification for non-violent resistance to these illegal and immensely destructive, murderous actions by the top officials of the U.S. government.

Legal Authorities

I. THE "BUSH DOCTRINE" OF PREEMPTIVE WAR TO ACHIEVE "REGIME CHANGE" IN IRAQ IS A FLAGRANT AND UNCONSCIONABLE VIOLATION OF INTERNATIONAL LAW AND UNITED STATES DOMESTIC LAW. IT MUST BE OPPOSED IN ORDER TO AVOID INDIVIDUALS' GUILT FOR THE GOVERNMENT'S AGGRESSION AND OTHER WAR CRIMES.

The current U.S. government's drive to attack Iraq is illegal under the well-established principles of international law governing the use of force in international relations, which have been incorporated into U.S. law by ratification of the relevant treaties. Applicable legal principles include:

- Article 1, Section 4 of the United Nations Charter, which states that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . ."

- Articles 41 and 42 of the United Nations Charter, which prohibit member states from enforcing any UN resolutions militarily, unless the UN Security Council determines that there has been a material breach, that all nonmilitary means of enforcement have been exhausted, and specifically authorizes the use of force.
- Article 2, Section 4 and Article 51 of the United Nations Charter, which permit individual or collective self defense against armed attack that is ongoing or imminent, only until the Security Council has taken the measures necessary to maintain international peace and security.
- The Principles of the Nuremberg Tribunal, formulated by the International Law Commission in 1950, including:
 - Principle VI(a): Crimes against peace are punishable under international law, including planning, preparation, or waging a war of aggression or a war in violation of international treaties;
 - Principle VI(b): War crimes are punishable under international law, including wanton destruction of cities or devastation not justified by military necessity;
 - Principle VI(c): Crimes against humanity are punishable under international law, including murder and other inhuman acts done against any civilian population; and
 - Principle VII: Complicity in the commission of a crime against peace, a war crime, or a crime against humanity is a crime under international law.
- Article I, Section 8 of the U.S. Constitution vests the power to declare war in the Congress; and
- Article VI of the U.S. Constitution provides that all Treaties made under the Authority of the United States shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby.

II. UNITED NATIONS SECURITY COUNCIL RESOLUTION NO. 1441 DOES NOT AUTHORIZE THE UNITED STATES TO USE FORCE AGAINST IRAQ.

On November 8, 2002, the United Nations security council passed resolution no. 1441, 15-0, requiring UN weapons inspections in Iraq. By its terms, the council “decides to remain seized of the matter.” In other words, it technically retains the jurisdiction to determine what actions are necessary regarding the subject of the resolution, weapons inspections in Iraq. The continuing (and periodically intensifying) U.S. and U.K. air

strikes against Iraqi air defense targets, and the expected unilateral attack whenever U.S. officials decide Iraq is in “material breach” are still illegal forms of aggression, which People have the right to oppose under the most basic principles of the U.S. Constitution and the UN Charter.

UN security council resolution 1441 is merely the UN’s institutional response to U.S. blackmail. George Bush told them in September 2002 that he would ignore the international community, and the UN would be made “irrelevant,” if they opposed the U.S. attacks against Iraq. The unanimous security council vote does not reflect the UN’s legal consent to war. Rather, it is the compromise among the council members who signed on to the written instrument. Three of the voting members with veto power – China, France, and Russia – added a special proviso to the resolution, stating that they do not understand it to authorize “automaticity in the use of force.” The original U.S. proposal had insisted on the right of any member state to unilaterally attack Iraq if it unilaterally determined that Iraq was in violation of the new requirements, but the security council rejected that provision. Resolution 1441 requires the inspection teams to bring alleged violations to the council, which will “convene immediately” to consider the situation. As they did in Afghanistan, the U.S. may well attack Iraq, while it convenes the required meeting, where it can, in effect, announce its attacks and threaten the UN with “irrelevance.” That course of action would be illegal.

Resolution 1441 was also based on explicit (albeit unenforceable) oral assurances by Ambassador John Negroponte that the U.S. would not unilaterally attack. This U.S. fig-leaf resolution does not prohibit acts of non-violent civil disobedience that are reasonably directed to enforcing the basic purposes of the UN Charter: stopping war. By

United Nations security council resolution 1441, in light of the U.S. declared intention to attack Iraq and the ongoing air strikes and sanctions regime, the U.S. and the UN have abandoned the UN Charter's core legal restraints against any one nation unilaterally deciding which regime will be removed by force. Non-violent civil disobedience is justified in part to restore that core principle of international legal expectations.

Conclusion

CBS Correspondent Lesley Stahl: We have heard that a half a million children have died [because of sanctions against Iraq]. I mean that's more than died in Hiroshima. And – you know, is the price worth it?

Former U.S. Secretary of State Madeleine Albright: I think this is a very hard choice, but the price – we think the price is worth it.

- *60 Minutes Television News Magazine*
May 12, 1996

The basic question raised by continuing and intensifying U.S. aggression against Iraq is moral: whether U.S. government officials are authorized to decide that “the price is worth it,” for millions of People whose lives will be shaped – and in many cases destroyed - by the criminal actions of a handful of U.S. leaders who hold themselves above the law. The fundamental principles of international law and democracy empower individuals to make this moral decision for themselves, regardless of the contrary actions of their leaders, and even regardless of the sole superpower's *de facto* interpretation of United Nations security council resolutions.. U.S. government officials forfeit legitimacy and the power to enforce laws against non-violent trespass and “disorder” when they pursue policies that result in war crimes. As a candidate for the presidency, George W. Bush said he would pursue a “humble foreign policy.” As President, he has cynically exploited what his administration now admits it sees as “vast, new opportunities” opened up by the mass murders of September 11, to pursue an empire based on control of international oil resources through apparently limitless criminal wars of aggression. Non-

violent civil disobedience in opposition to the U.S. government's illegal preemptive wars is justified by the necessity of self-defense and defense of others.