

Troubled Asset Relief Program—who was invited by Republicans at the hearing we held earlier this month in the Housing Subcommittee, over which I serve as Ranking Member, supported shutting down any of the housing programs Republicans propose to terminate, including HAMP.

Eliminating HAMP would leave American homeowners with fewer options for coping with the worst housing crisis of our generation and would leave our fragile housing market in worse condition than when we started. I urge my colleagues to support American homeowners and vote no on this bill.

LEGALITY FOR THE USE OF
FORCE

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 30, 2011

Mr. CONYERS. Mr. Speaker, I would like to submit the following article:

IS BUSH'S WAR ILLEGAL?—LET US COUNT THE
WAYS

(By Francis Boyle)
THE "BLOWHARD ZONE"

On September 13, 2001 I got a call from FOX News asking me to go on the O'Reilly Factor program that night, two days after the tragic events of September 11, to debate O'Reilly on War v. Peace. It is pretty clear where I stood and where he stood. I had been on this program before. I knew what I was getting in to. But I felt it would be important for one lawyer to get up there in front of a national audience and argue against a war and for the application of domestic and international law enforcement, international procedures, and constitutional protections, which I did.

Unfortunately, O'Reilly has the highest ranked TV news program in the country. I thought someone should be on there on September 13. I think most people agree that I beat O'Reilly. By the end of the show he was agreeing with me. But the next night he was saying that we should bomb five different Arab countries and kill all their people. But let me review for you briefly some of the international law arguments that I have been making almost full time since September 13. They are set forth in the introduction in my new book, *The Criminality of Nuclear Deterrence*.

TERRORISM V. WAR

First, right after September 11 President Bush called these attacks an act of terrorism, which they were under the United States domestic law definition at that time. However, there is no generally accepted definition of an act of terrorism under international law, for reasons I explain in my book. Soon thereafter however and apparently after consultations with Secretary of State Powell, he proceeded to call these an act of war, ratcheting up the rhetoric and the legal and constitutional issues at stake here. They were not an act of war as traditionally defined. An act of war is a military attack by one state against another state. There is so far no evidence produced that the state of Afghanistan, at the time, either attacked the United States or authorized or approved such an attack. Indeed, just recently FBI Director Mueller and the deputy director of the CIA publicly admitted that they have found no evidence in Afghanistan linked to the September 11 attacks. If you believe the government's account of what

happened, which I think is highly questionable, 15 of these 19 people alleged to have committed these attacks were from Saudi Arabia and yet we went to war against Afghanistan. It does not really add up in my opinion.

But in any event this was not an act of war. Clearly these were acts of terrorism as defined by United States domestic law at the time, but not an act of war. Normally terrorism is dealt with as a matter of international and domestic law enforcement. Indeed there was a treaty directly on point at that time, the Montreal Sabotage Convention to which both the United States and Afghanistan were parties. It has an entire regime to deal with all issues in dispute here, including access to the International Court of Justice to resolve international disputes arising under the Treaty such as the extradition of Bin Laden. The Bush administration completely ignored this treaty, jettisoned it, set it aside, never even mentioned it. They paid no attention to this treaty or any of the other 12 international treaties dealing with acts of terrorism that could have been applied to handle this manner in a peaceful, lawful way.

WAR OF AGGRESSION AGAINST AFGHANISTAN

Bush, Jr. instead went to the United Nations Security Council to get a resolution authorizing the use of military force against Afghanistan and Al Qaeda. He failed. You have to remember that. This war has never been authorized by the United Nations Security Council. If you read the two resolutions that he got, it is very clear that what Bush, Jr. tried to do was to get the exact same type of language that Bush, Sr. got from the U.N. Security Council in the late fall of 1990 to authorize a war against Iraq to produce its expulsion from Kuwait. It is very clear if you read these resolutions, Bush, Jr. tried to get the exact same language twice and they failed. Indeed the first Security Council resolution refused to call what happened on September 11 an "armed attack"—that is by one state against another state. Rather they called it "terrorist attacks." But the critical point here is that this war has never been approved by the U.N. Security Council so technically it is illegal under international law. It constitutes an act and a war of aggression by the United States against Afghanistan.

NO DECLARATION OF WAR

Now in addition Bush, Jr. then went to Congress to get authorization to go to war. It appears that Bush, Jr. tried to get a formal declaration of war along the lines of December 8, 1941 after the Day of Infamy like FDR got on Pearl Harbor. Bush then began to use the rhetoric of Pearl Harbor. If he had gotten this declaration of war Bush and his lawyers knew full well he would have been a Constitutional Dictator. And I refer you here to the book by my late friend Professor Miller of George Washington University Law School, *Presidential Power*, that with a formal declaration of war the president becomes a Constitutional Dictator. He failed to get a declaration of war. Despite all the rhetoric we have heard by the Bush, Jr. administration Congress never declared war against Afghanistan or against anyone. There is technically no state of war today against anyone as a matter of constitutional law as formally declared.

BUSH, SR. V. BUSH, JR.

Now what Bush, Jr. did get was a War Powers Resolution authorization. Very similar to what Bush, Sr. got. Again the game plan was the same here. Follow the path already pioneered by Bush, Sr. in his war against Iraq. So he did get from Congress a War Powers Resolution authorization. This is what law professors call an imperfect declaration

of war. It does not have the constitutional significance of a formal declaration of war. It authorizes the use of military force in specified, limited circumstances.

That is what Bush, Sr. got in 1991. It was to carry out the Security Council resolution that he had gotten a month and one-half before to expel Iraq from Kuwait. But that is all the authority he had—either from the Security Council or from Congress. And that is what he did. I am not here to approve of what Bush, Sr. did. I do not and I did not at the time. But just to compare Bush, Jr. with Bush, Sr. So Bush, Jr. got a War Powers Resolution, which is not a declaration of war.

Indeed, Senator Byrd, the Dean of the Senate, clearly said this is only a War Powers authorization and we will give authority to the president to use military force subject to the requirements of the War Powers Resolution, which means they must inform us, there is Congressional oversight, in theory, (I do not think they are doing much of it), controlled funding, and ultimately we decide, not the Executive branch of the government—we are the ones who gave the authorization to use force.

Again very similar to what Bush, Sr. got except the Bush, Jr. War Powers Resolution is far more dangerous because it basically gives him a blank check to use military force against any state that he says was somehow involved in the attack on September 11. And as you know that list has now gone up to 60 states. So it is quite dangerous, which led me to say in interviews I gave at the time this is worse than the Tonkin Gulf Resolution. Better from our perspective than a formal Declaration of War, but worse constitutionally and politically than the Tonkin Gulf resolution. But still subject to the control of Congress and the terms of the War Powers Resolution. Indeed you might be able to use that War Powers Resolution and the authorization in litigation that might come up. Keep that in mind.

NO WAR AGAINST IRAQ!

For example, on Iraq. Right now they cannot use that War Powers Resolution to justify a war against Iraq. There is no evidence that Iraq was involved in the events on September 11. So they are fishing around for some other justification to go to war with Iraq. They have come up now with this doctrine of preemptive attack. Quite interesting that argument, doctrine was rejected by the Nuremberg Tribunal when the lawyers for the Nazi defendants made it at Nuremberg. They rejected any doctrine of preemptive attack.

NAZI SELF-DEFENSE

Then what happened after failing to get any formal authorization from the Security Council, the U.S. Ambassador Negroponte—who has the blood of about 35,000 people in Nicaragua on his hands when he was U.S. Ambassador down in Honduras—sent a letter to the Security Council asserting Article 51 of the U.N. Charter to justify the war against Afghanistan. And basically saying that we reserve the right to use force in self-defense against any state we say is somehow involved in the events of September 11. Well, the San Francisco Chronicle interviewed me on that and asked what is the precedent for this? I said that the precedent again goes back to the Nuremberg Judgment of 1946 when the lawyers for the Nazi defendants argued that we, the Nazi government had a right to go to war in self-defense as we saw it, and no one could tell us any differently. Of course that preposterous argument was rejected by Nuremberg. It is very distressing to see some of the highest level of officials of our country making legal arguments that were rejected by the Nuremberg Tribunal.

KANGAROO COURTS

Now let me say a few words about the so-called military commissions. I have a little handout out there called "Kangaroo Courts." It would take me a whole law review article to go through all the problems with military commissions. I have been interviewed quite extensively. I have some comments on it in my book. Professor Jordan Paust, a friend and colleague of mine at the University of Houston, just published an article in the Michigan Journal of International Law which I would encourage you to read. It goes through the major problems. But basically there are two treaties on point here that are being violated at a minimum.

First, the Third Geneva Convention of 1949. I will not go through all of the arguments here but it is clear that just about everyone down in Guantanamo (not counting the guys who were picked up in Bosnia and basically kidnapped) but all those apprehended over in Afghanistan and Pakistan would qualify as prisoners of war within the meaning of the Third Geneva Convention of 1949, and therefore have all the rights of prisoners of war within the meaning of that convention. Right now however, as you know, all those rights are being denied. This is a serious war crime. And unfortunately President Bush, Jr. himself has incriminated himself under the Third Geneva Convention by signing the order setting up these military commissions. Not only has he incriminated himself under the Third Geneva Convention, but he has incriminated himself under the U.S. War Crimes Act of 1996 or so, signed into law by President Clinton and making it a serious felony for any United States citizen either to violate or order the violation of the Four Geneva Conventions of 1949.

THE FEDERALIST SOCIETY CABAL

I am not personally criticizing President Bush. He is not a lawyer. He was terribly advised, criminally mis-advised, by the cabal of Federalist Society lawyers that the Bush administration has assembled at the White House and the Department of Injustice under Ashcroft. President Bush, Jr., by signing this order, has opened himself up to prosecution anywhere in the world for violating the Third Geneva Convention, and certainly if there is evidence to believe that any of these individuals have been tortured, which is grave breach, let alone at the end of the day executed. So this is a very serious matter.

I did not vote for President Bush, Jr. But I certainly think it is a tragedy that these Federalist Society lawyers got the President of the United States of America, who is not a lawyer, to sign the order that would incriminate him under the Geneva Conventions and United States Domestic Criminal Law. This is what happened.

JEOPARDIZING U.S. ARMED FORCES

Moreover, by us stating we will not apply the Third Geneva Convention to these people we opened up United States armed forces to be denied protection under the Third Geneva Convention. And as you know, we now have U.S. armed forces in operation in Afghanistan, Georgia, the Philippines, in Yemen and perhaps in Iraq. Basically Bush's position will be jeopardizing their ability to claim prisoner of war status. All that has to happen is our adversaries say they are unlawful combatants and we will not give you prisoner of war status. The Third Geneva Convention is one of the few protections U.S. armed forces have when they go into battle. Bush, Jr. and his Federalist Society lawyers just pulled the rug out from under them.

U.S. POLICE STATE

In addition the International Covenant on Civil and Political Rights clearly applies down in Guantanamo. It applies any time in-

dividuals are under the jurisdiction of the United States of America. Guantanamo is a colonial enclave, I will not go through its status any further. But clearly those individuals are subject to our jurisdiction and have the rights set forth therein—which are currently being denied.

If and when many of these Bush, Ashcroft, Gonzalez police state practices make their way to the U.S. Supreme Court, we have to consider that a five to four majority of the Supreme Court gave the presidency to Bush, Jr. What is going to stop that same five to four majority from giving Bush, Jr. a police state? The only thing that is going to stop it is the people in this room.

RECOGNIZING WATERFORD OUR
LADY OF THE LAKES HIGH
SCHOOL

HON. THADDEUS G. MCCOTTER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 30, 2011

Mr. MCCOTTER. Mr. Speaker, today I rise to acknowledge the Michigan Class D State Champion Girls' Basketball team from Waterford Our Lady of the Lakes High School. On March 19, 2011, the Lakers sealed a 53–35 victory over the Bark-River Harris Broncos, clinching their second consecutive Class D State Championship under Head Coach Steve Robak.

After winning the East Division of the Detroit Catholic High School League and claiming their third consecutive CHSL C–D Division Championship, the Lakers began district play by crushing West Bloomfield Frankel Jewish Academy's Jaguars 72–4. Our Lady of the Lakes rolled over the Clarkston Everest Collegiate Lady Mountaineers in the district final, 64–20.

Moving on to regional match-ups, Our Lady of the Lakes slipped by Marine City Cardinal Mooney by a score of 43–41. The Lakers shut down Southfield Christian, 51–43 in the regional final to move on to state quarterfinals where they defeated the Bay City All Saints Cougars 61–36. The Trojans of Central Lake fell to the Blue and White 52–41 on March 17 to clear the Lakers path to the Class D Final. Facing Bark-Harris in the final game of the season, the Our Lady of the Lakes press held the Broncos in check giving the Lakers the right to raise high the Class D State Championship trophy.

Mr. Speaker, with a season record of 23–5–0, the 2011 Waterford Our Lady of the Lakes Girls' Basketball team deserves to be recognized for their determination, achievement, spirit and effort. I ask my colleagues to join me in congratulating the Lakers for obtaining this spectacular title and in honoring their devotion to our community and country.

HONORING COUNCIL MEMBER HAL
MALKIN

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 30, 2011

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise today to recognize Hal Malkin and his 17 years of public service to the peo-

ple of La Mirada, California. Hal and his wife Barbara have called La Mirada home since 1972. Hal began the first of his five terms on the La Mirada City Council in 1994.

Since taking office in 1994, Hal has worked tirelessly to ensure La Mirada remains safe for its residents and economically vibrant for its business community. Under his tenure, La Mirada has seen the creation of various city resources such as the Frontier Community Building, the La Mirada Resource Center, and the widely popular SPLASH! Complex. While many cities throughout Southern California have felt the impact of a struggling economy, La Mirada has remained fiscally sound without sacrificing important community services, due in large part to Hal's foresight. It's frankly no surprise La Mirada was listed by CNN and others as one of the "Best Place to Live" in 2007.

Over the years, Hal's civic involvement has extended into his community where he proudly served as Chairman of the Board of Directors of the Rio Hondo Chapter of the American Red Cross and as a member of the Executive Committee for 9 years.

As an active leader in his community, Hal has received several awards including Outstanding Faculty Member, Cerritos College 2002–2003; Member of the Year, La Mirada Chamber of Commerce; and the Parent-Teacher Association Honorary Service Award.

Hal has continuously demonstrated his dedication to his profession, community, and family. Today, Hal continues to open the doors of the educational opportunity to local youth as an Associate Professor and Department Chair of the Pharmacy Technology Program at Cerritos College.

Mr. Speaker and distinguished colleagues, please join me in honoring Councilmember Hal Malkin for his many years of service and dedication to the City of La Mirada and the community. Let us wish him and his family the very best in retirement.

PERSONAL EXPLANATION

HON. FREDERICA S. WILSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 30, 2011

Ms. WILSON of Florida. Mr. Speaker, on rollcall No. 194, had I been present, I would have voted "no."

IN RECOGNITION OF THE 2011 BLUE
AND GOLD BANQUET FOR CUB
SCOUT PACK 976

HON. GERALD E. CONNOLLY

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 30, 2011

Mr. CONNOLLY of Virginia. Mr. Speaker, I rise today to recognize the 2011 Blue and Gold Banquet for Cub Scout Pack 976.

The Boy Scouts were founded in the United States on February 8, 1910 by William D. Boyce when he incorporated the Boy Scouts of America. The following year, the BSA adopted the Scout Oath and the Scout Law. After over one hundred years of scouting, these founding principles have guided over