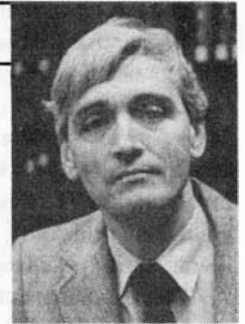

Interview: Francis A. Boyle



U.S., British Lockerbie charges against Libya 'preposterous'

The Libyan government is now suing the U.S. and British governments before the International Court of Justice in The Hague, Netherlands, concerning allegations that Libya was involved in the bombing of Pan Am Flight 103 over Lockerbie, Scotland. Prof. Francis Boyle, who is an adviser to the Libyan government, teaches at the University of Illinois at Urbana-Champaign. In this interview, Professor Boyle was speaking to EIR purely in his personal capacity as an expert in international law. The interview was conducted by Joseph Brewda on April 21.

EIR: What is the history of the case that the Libyan government now has before the International Court of Justice in the so-called Lockerbie dispute?

Boyle: When the allegations first emerged in the U.S. news media trying to implicate Libya back in June, I began serving as an adviser to Libya on the matter. It was certainly clear to me at the time that Libya was being set up by the CIA. All the evidence on the incident points in other directions than Libya.

When the accusations were made in December 1991, on the third anniversary of the bombing, the United States and U.K. formally tried to implicate Libya. Immediately after this, Libya formally offered to submit the entire dispute to the International Court of Justice, an international tribunal, an impartial international commission of investigation, or to any other type of impartial international proceeding, to resolve it. All those offers were rejected out of hand by the United States and U.K.

There matters stood until after the first of the year, when the two governments indicated that they were going to move for a resolution against Libya in the U.N. Security Council. At that point, Libya proceeded to draft and send two diplomatic notes, to Secretary of State James Baker and to British Foreign Minister Douglas Hurd, invoking Article 14 of the Montreal sabotage convention of 1971—the United States, U.K., and Libya are all parties to the convention. The destruction of the plane over Lockerbie clearly was an act of sabotage directed against civil aviation that fell directly within the meaning of the Montreal sabotage convention. Article 14 says that in the event a dispute over the interpretation or application of the Montreal sabotage convention cannot be resolved by diplomacy, then either party can demand interna-

tional arbitration, and if that does not work, they can go to the world court [the International Court of Justice].

Around Jan. 19, Libya sent these notes to the United States and U.K. formally demanding arbitration of the dispute before an international arbitration tribunal, as was Libya's right. Their position was that the United States and U.K. refused to negotiate as required by the Montreal sabotage convention, which says quite clearly that negotiations are required. The United States and U.K. have refused to negotiate, and have still refused to negotiate with Libya. So, the notes were sent. The United States and U.K. ignored them, and then convened the session of the U.N. Security Council to deal with the adoption of Resolution 731.

Originally, the United States and U.K. wanted Resolution 731 to demand that Libya turn these two individuals over to the United States and U.K. They did not get that, and indeed the western mainstream news media, true to its history, thoroughly distorted, and I think on purpose, the true meaning of 731. If you read 731, it does not demand anyone's extradition. It urges Libya to cooperate with the U.N. secretary general in resolving this dispute, which Libya has done, from day one, when the allegations emerged in December. They wanted to have a demand for extradition in there, but the Third World states would not go along with it, taking the position, and quite rightly so, that extradition is a matter that is determined in accordance with extradition treaties. The Security Council has no jurisdiction to demand anyone's extradition, and there is no extradition treaty between the United States and the U.K., and Libya.

But Bush had the votes to ram the Security Council resolution through, and the key vote was that of China. To get the Chinese vote, Bush agreed to have his famous meeting with Li Peng in New York, the butcher of Beijing, the fellow in charge of the Tiananmen Square massacre, and that was the *quid pro quo* for the Chinese vote. So Resolution 731 was adopted. Everyone at the Security Council knew it was wrong. Everyone knew that Libya has nothing to do with this bombing, that Libya has been made a scapegoat, just as it has throughout the 1980s. Whenever the U.S. government wanted some fairly defenseless Third World country to beat up on, they would beat up on Libya.

There matters stood. In the debate at the Security Council, both the United States and U.K. rejected the applicability

of the Montreal sabotage convention. At that point, it was pretty clear that they were going to move for a second resolution, to sanction Libya. So, Libya proceeded to prepare to file a lawsuit in the International Court of Justice, under the same Article 14. When it is clear that arbitration is rejected, then the third stage is to go to the world court and to sue them involuntarily. The first offer in December was to voluntarily go to the world court, the third step was to sue the two states involuntarily. The lawsuit was filed on March 3.

The suit points out the following matters:

1) Libya has fully complied with all the terms of the Montreal sabotage convention in the handling of this dispute.

2) There is no requirement to extradite under the Montreal sabotage convention. The requirement is extradite or prosecute, and Libya has decided to institute criminal proceedings against these two individuals and to prosecute them themselves.

3) The United States and the U.K. have themselves violated the Montreal sabotage convention, in particular Article 11, which requires them to turn over whatever evidence they have to Libya, to cooperate with Libya on the prosecution. Both states refused to do that. So how can Libya mount a prosecution of anyone if the two states involved refuse to turn over the evidence?

The reason why they don't turn over the evidence is that the evidence isn't there, it's all been concocted by the CIA, and we know it. Air Malta and the Maltese government have already issued an official statement that, based on their investigation, there was no unaccompanied baggage from Malta to Frankfurt [Germany], and they have been able to account for all the baggage from Malta to Frankfurt.

The fourth point that Libya raised in the application is that the United States and U.K. were going to go ahead and try to coerce Libya and perhaps engage in a military attack or threaten military attack against Libya over this dispute, which ultimately is a legal dispute, a question of extradition and interpretation of the treaty, and that therefore the court should act to prevent this.

So, tied into the application is what we lawyers call a request for indication of provisional measures by the court. This is the international equivalent of a temporary restraining order. Libya asked for a temporary restraining order against the United States and the U.K. to prevent them from taking measures of coercion or sanctions or military attack against Libya, pending the decision of these legal issues by the court. When the application was filed, of course, there was no guarantee that the matter would be set for a hearing by the court, especially the request for a temporary restraining order, and yet the application was accepted. So apparently it was receivable, and apparently the court concluded that there were enough grounds to schedule a hearing on Libya's request for provisional measures, and so the date was set for March 26. The hearings on March 26-28 were on the temporary restraining order; they were not on the merits of the

decision one way or the other.

Once that was set, the Bush strategy was to try to ram the sanctions resolution through the Security Council before the world court could decide on the temporary restraining order. They came out with the sanctions resolution 748. The sanctions resolution first surfaced the last week of February, and they wanted sanctions in the first week of March. The filing of the lawsuit delayed that. When the court set the hearing for March 26, it became very clear to Bush that he had to ram that thing through the Security Council before the court could prevent it. Enormous pressure was put on the members of the Security Council to go along with it. This time China was threatened by the U.S. government, overtly, by telling them that if they vetoed this resolution they would lose their Most Favored Nation trading status. With that threat, and the other votes in his pocket, Bush convened the Security Council shortly after the court had heard the temporary restraining order argued, and adopted Resolution 748 by a vote of 10 in favor, none against, and five abstentions.

Clearly, this procedure violated a basic canon of Anglo-American legal practice and procedure, that, pending resolution of a matter by a court, the litigants are not to take any action which would interfere with, prejudice, or prejudice the legal proceedings. And that is exactly what Bush did. He moved for the sanctions resolution before the court could render its decision, and the five states that abstained on Resolution 748 all pointed that out, that the matter was before the court and that they should wait for a court ruling. That didn't bother Bush, he had his 10 votes—that was only one more than he needed. It was a severe embarrassment to Bush, in my opinion; he barely scraped through. And there were five abstentions, basically in agreement with Libya's position. The Resolution 748 was passed.

The major legal defect with the resolution is the Chinese abstention. If you read the U.N. Charter, it clearly says that decisions of the Security Council require the concurring votes of all five permanent members, which would include China, which abstained. So there is a very serious legal question as to the validity of Resolution 748 in the first place, which is premised on the previous Resolution 731 being valid, which is also defective.

Once 748 was passed, and with its mandated sanctions coming into effect on April 15, the court, in order at least to assert its independence from Bush, said it would render its decision on the 14th. I know some of the judges were displeased by what Bush had done here. Their decision on the 14th was only on the temporary restraining order. It did not get into the merits of the case at all. All it said in the key provision, paragraphs 39 and 40, was that the Security Council has already adopted Resolution 748, there is nothing we can do about it at this time, however, Libya remains free to contest the validity of 748 when it gets into the merit stage of the proceedings. So the court refused to give absolute validity to 748.

So it was a very narrow, limited ruling, which basically said Bush beat Libya to the punch, he got his resolution rammed through the Security Council before the world court could act, and there was not much Libya could do at this point in time, but certainly leaving open in the future that the court would be prepared to consider 748. The vote there was 11-5. Five judges agreed with Libya, that it should be given a temporary restraining order. Five votes in the Security Council and five judges on the world court basically agreed with Libya. I think that indicates that there is substantial merit to Libya's claim. Otherwise, Libya would not have gotten those five votes on the world court or in the Security Council. Even two of the judges who voted with the majority expressed severe reservations with the procedure here, that the Security Council acted while the very issue was before the court itself, and in essence preempted the ability of the court to rule on the temporary restraining order. All this means then that Libya lost the temporary restraining order. It does not mean Libya lost the case, and the case is still going on on the merits.

Number two, Libya remains free under the rules of the court to go back into court in the event Bush threatens military force against Libya—say, puts Libya on a blockade or threatens another bombing or something like that. The rules of the court provide you can always go back in for provisional measures in the event that there is a fundamental change in circumstance. So, the western news media thoroughly distorted what happened, but there is nothing new in that, that is the way they have done it on everything. The mainstream western news media are not much better than a conveyor belt for the new world order.

EIR: Certain members of the Security Council, notably the United States and Britain, were flaunting the illegality of the proceeding, apparently to assert their power over law. For example, U.S. Ambassador Thomas Pickering, after the passage of 731, stated that no longer will countries fostering terrorism be able to hide behind international law.

Boyle: That's exactly right, and we took that statement and cited it against him in the world court. There were other statements that Pickering made and British Ambassador Hanney made that were just reprehensible and outrageous, and we cited them all to establish our claim. They are ambassadors plenipotentiary, and their statements bind their governments.

EIR: There was an unidentified diplomat cited by Reuters who said, in reference to the ongoing world court of justice and the arguments you just presented, that the decisions of the Security Council are international law, that the vote of the Security Council supersedes international treaty obligations or any other law.

Boyle: This matter will be decided by the court itself when we get to a decision on the merits. The court will look into

that doctrine. Is Resolution 748 a law unto itself or isn't it? There has been a prior history of courts looking into Security Council resolutions and their validity. If you read the terms of the U.N. Charter, it makes very clear that the Security Council, when it acts, is bound by Article 1 and Article 2 of the U.N. Charter, the purpose and principles of the U.N. Charter. That certainly allows for the doctrine of *ultra vires*, that there are certain things beyond the power of the Security Council. Also, one of the judges pointed out that 748 arguably violated the basic tenet of all legal systems, that no man shall serve as his own judge. Clearly, this is a legal dispute, and the United States and U.K. went right ahead and rammed this decision through. It is simply not the case that the Security Council can do whatever it wants to do and that makes it a valid binding law. For example, the U.N. cannot authorize violations of international humanitarian law, the Geneva Convention, The Hague regulations. The Security Council cannot authorize the commission of war crimes, we see that in respect to the war crimes against the state and people of Iraq. The court made it very clear in paragraph 40 of the ruling that Libya was free to attack the validity of the resolutions on the merits.

EIR: Isn't it true that the U.N. demands are in violation of U.S. law, not just the Montreal convention. Since there is no extradition treaty between the United States, U.K. and Libya, how can there be a legal basis for extradition?

Boyle: That is exactly correct. That's why the Third World states never went along with the demand for extradition in Resolution 731. U.S. law is the same here as Libyan law. Under the U.S. Supreme Court case *Valentine v. Neidecker*, the Supreme Court has held that it is a fundamental requirement of due process of law that no one can be extradited to another country in the absence of an extradition treaty. Libyan law is the same. This is a double standard being applied.

Indeed, let's look at the destruction of the Iran Airbus by the *USS Vincennes*. There it is clear that the captain who shot that plane down knew it was a civilian airliner when he shot it down. If you read the transcript of the interchange on the bridge, his radar person clearly identified it as a probably civilian airline, but he shot it down anyway, killed 290 innocent people. What did we do with that captain? We gave him a medal. We didn't extradite him to Iran. Number two, when the Iranians protested, Bush went to the world court, and that whole matter is now before the world court. So, if we blow up an airplane—and everyone agrees we did it, no one denies it—it's perfectly fine for us to go to the world court and not to turn over our captain to Iran. But when someone else blows up our airline—and it is a flimsy, concocted case against Libya—we're going for sanctions and this, that, and the other thing. Total hypocrisy.

The other point that needs to be kept in mind is that of course these people can't get a fair trial in the United States or the U.K. Look what happened to Gen. Manuel Noriega.

First, he shouldn't have been on trial, he was a prisoner of war and his trial was prohibited. And second, the whole trial was a show trial, a kangaroo court proceeding up and down, as your magazine has covered it. It was a setup, a political trial. And these two Libyans, if they're ever sent over to the United States, the same thing will happen to them. They will never get a fair trial in this country, or in the U.K. Look at all the Irish people who were convicted and spent years in prison on trumped-up charges and concocted evidence put together by British police. That's why Libya has offered to have them tried in some neutral country, because they have nothing to hide. You don't go to court, especially the world court, if you have anything to hide. They're willing to have a trial in some country that is neutral. The United States and U.K. are free to bring in their evidence there. Well, it's clear why the United States and U.K. have rejected that option, because they have no evidence that would stand up in a court of law. Indeed, the United States and U.K. are free to bring their evidence to the world court if that is what they want to do.

Right now they have nothing. They have concocted allegations out of Malta. They have concocted evidence by the CIA out of Senegal. You'll note that when all these allegations began to emerge out of Senegal, the exact same week the *Financial Times* of London reported that Senegal's public debts had been miraculously rescheduled by the Paris Club at a highly preferential rate that Senegal was not entitled to.

The story first broke in the *Wall Street Journal*, which is very close to the CIA. If you read the story, it is completely preposterous. All of a sudden, some CIA agent, out of nowhere, reviews all the evidence that they used to have blaming Iran and Syria and a Palestinian group—I'm not saying that they did it or not, I don't know, but the CIA had been blaming them all along. But then, when it becomes politically convenient for Bush not to blame Iran and Syria, they blame Libya. Bush needed Iran and Syria's cooperation on two things: the war against Iraq, and to get the U.S. hostages out of Lebanon. So, Bush decided not to blame Iran and Syria. I'm not saying they did it, but all of sudden there is a shift, and the accounts are completely unbelievable.

All of them go back to two sources, Senegal and Malta. The same week all this came out, Senegal's public debt was rescheduled by the Paris Club. I think it's pretty clear someone was bought. As for Malta, all the evidence of Libya's involvement goes to two fellows who were working for Libyan airlines over in Malta. But the Maltese government has undertaken a very extensive investigation, and their conclusion was that there was no unaccompanied baggage, and they have been able to account for all the baggage. Those two things take care of what flimsy evidence there is. Remember the burden of proof is on the United States and U.K., not Libya. What little evidence they claim they have would not stand up in any fair, impartial tribunal. That is why Libya is more than happy to turn them over to a fair and impartial tribunal.

Vatican moves to lift embargo of Iraq

by Muriel Mirak-Weissbach

If anyone can prevail upon the U.S. and British governments to lift their United Nations embargo of Iraq, which is killing the civilian population, perhaps it is Pope John Paul II. Important steps are being taken by the Vatican, and by the pontiff personally, which seem to be a prelude to an international mobilization against the U.N. sanctions. Although the initiative has been launched by the highest authority of Christendom, the press has been stingy in its comment, relegating coverage to brief mention in small articles. Press blackout notwithstanding, this is the weightiest institution yet to take up the fight to halt the genocide against the Iraqi people.

The first significant step was taken in January. Timed to coincide with the anniversary of the outbreak of the Gulf war, the Vatican commissioned an English-language version of a volume already circulating in Italian, containing the pope's views on the war. The book, *John Paul II For Peace in the Middle East: War in the Gulf: Gleaning through the Pages of "L'Osservatore Romano"*, was presented on Jan. 15 by the Permanent Observer of the Holy See to the United Nations, Archbishop Renato R. Martino. As he explained in his foreword, the book contains "in chronological sequence, the profound concern of Pope John Paul II for peace in the Gulf region. All his words are recorded, whenever and to whomever addressed, from 26 August 1990 to 6 March 1991: speeches, homilies, messages and prayers."

The book also includes "a collection, from the Vatican daily *L'Osservatore Romano*, of editorial comments and of articles by various authors, aimed at contributing to the discovery of the authentic meaning of peace." The de facto Vatican ambassador to the U.N. made clear in his remarks that the book was no academic matter, but an intervention into the political situation: "At one year since its inception, the events and the consequences of the Gulf crisis continue to distress the conscience of mankind and to demand careful analysis and farsighted remedies. May this small volume help guide and strengthen everyone's steps on the path of peace."

Curiously, though the book was presented by Archbishop Martini himself at the United Nations, the press considered the event "not newsworthy."

In March, a further step was taken, this time by His Beatitude Raphael I Bidawid, Patriarch of the Chaldean