

upon setting up another Rome, and this had to be prevented at all cost, even at the cost of not winning the war. My friends, my compañeras and compañeros, we charge this Tribunal to come up with the draft of a new covenant—a covenant that will ensure, once and for all, what human beings have struggled for the past 6,000 years of human civilization—the struggle for freedom, equality and community—becomes a reality.

Opening Statement

Lead Prosecutor

• Francis A. Boyle

Francis A. Boyle: Ladies and gentleman, distinguished Members of the Tribunal. May it please the Tribunal. My name is Francis Boyle, professor of International Law at the University of Illinois in Champaign. I appear here today on behalf of the indigenous people of the US, on behalf of the New Afrikan people, on behalf of the Mexican people, and on behalf of the Puerto Rican people who are the plaintiffs in this proceeding against the federal government of the United States of America, the defendant, for the commission of international crimes, under well recognized principles of international law going back to its foundation in 1787 and continuing until this very moment.

We will establish that the Federal government is an international criminal conspiracy and a criminal organization, just like the Nazi government of World War II Germany. As far as the plaintiff is concerned there is no difference whatsoever. Indeed, we will prove our case by using the precise same law that the United States government itself applied to the defeated Nazi war criminals at the Nuremburg Tribunal in 1945. Speaking at that time, Mr. Justice Robert Jackson who was on leave from the United States Supreme Court to serve as Chief Prosecutor at Nuremburg said, and I only paraphrase, that the standard of law that the United States government was imposing at Nuremburg would be a universal standard of law, there would not be two standards — one for the victor and one for the vanquished. But rather, that it would only be fair to hold the US gov-

ernment fully accountable by the same standards that were applied by Nuremburg. Today, 47 years later, we are going to take Mr. Justice Jackson at his word and hold the federal government of the United States fully accountable for international crimes against indigenous peoples and people of color throughout its two hundred year history. You have already received a copy of the indictment that I was instructed to draw up by the plaintiffs which I represent.

Let me briefly address the question of jurisdiction, your right to consider the charges against the defendant. In the judgment of the Nuremburg Tribunal and also the judgment of the Tokyo War Crimes Tribunal of 1945 against defeated Japanese war criminals, it was made quite clear that all citizens of the world community have both the right and the duty under international law, to sit in judgment on a gross and consistent pattern of violations of international criminal law committed by any member state of the world community. Furthermore, article 38 paragraph one, sub paragraph D, provides that judicial decisions are a subsidiary means for the determination of the rules of international law. You will be called upon to render a judicial decision within the meaning of the statute of the International Court of Justice. The decision that you render will be on a par in terms of judicial precedent and significance with the judicial decision rendered by any other international tribunal or the Supreme Court of the Countries from which you come. So understand, this is not a mock trial.

— this is not a mock tribunal. We are here to do a judicial job that has been charged to us by international law and we will create legal precedent. In whatever you decide to do. Now, in this indictment you have 37 charges against the federal government of the United States of America on behalf of the five groups of peoples who are here as plaintiffs. You have read through these charges and the members of the audience have read through them. I will not go through them one at a time, but I will set out the basic thrust of our legal case under international law. The particulars of this case will then be detailed by the special prosecutors who represent each one of the five groups who are appearing today as plaintiffs.

The heart of the indictment goes back to the Nuremburg charter of 1945, which the US government itself used to prosecute defeated Nazi war criminals and later the same body of law to prosecute defeated Japanese war criminals. We have alleged that the United States government has committed Nuremburg crimes against indigenous people and people of color in North America. Crimes against peace. Planning, preparation, initiation, a waging a war of aggression or a war in violation of international treaties, agreements, or assurances. Or participation in a common plan or conspiracy for the accomplishment of these purposes. Here in particular, the Puerto Rican people, the Mexican people, the Native American peoples all have very strong claims, that you will hear, that they have been the victim of numerous

Nuremburg Crimes against peace. Nuremburg War Crimes are defined as the violations of the laws and customs of war, murder, ill-treatment, deportation to slave labor, or any other maltreatment of the civilian population. Murder or ill-treatment of prisoners of war or persons on the seas., killing of hostages. Plunder of public and private property. Wanton destruction of cities, towns, or villages. Devastation not justified by military necessity. You will hear evidence that all five groups of plaintiffs have been subjected to these practices. Finally, crimes against humanity. And here, let me recall that the notion of crime against humanity was put into the Nuremburg Charter to deal with Hitler's attempt to exterminate the Jewish people.

In our opinion, the defendant has perpetrated the exact same offense against Native peoples, African people, Puerto Rican people, and the Mexican people here in the United States. There is no legal difference. It is guilty of crimes against humanity. And let me quote you this definition of a crime against humanity: "Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population or persecutions on political, racial, or religious grounds, etc." Now one point that might concern you is the fact that the Nuremburg charter was promulgated in 1945. How can we use this law to examine practices by the US government going back to 1787? First, it is our position that these offenses are still continuing today, against Native peoples and people of color, here in

North America. These are ongoing offenses that have a long history — in some cases going back 500 years. This needs to be dealt with by the Tribunal. Second, when it came to the promulgation of the Nuremburg Charter, the US government had no problem with signing a treaty in 1945, and applying it to behavior that had been committed by the Nazi government from the time of its foundation in 1933, up to and including, 1945. Well, what is sauce for the goose, is sauce for the gander.

There is no statute of limitations under international law for the commission of international crimes. We are simply going to hold the US government accountable under these same standards, but instead of going back to 1933, we will go back to 1787. But, I want to make it clear, our position is that these crimes are continuing today. Now, a crime against humanity was later codified in the Genocide Convention of 1948 that the US government is a party to. Again, remember the paradigmatic example is what Hitler did to the Jews, and we believe it is the same thing that the federal government has done to Native peoples, Mexicans, African people, *Kanaka Maoli* (indigenous Hawaiians) and the Puerto Rican people.

I will read for you the legal test for genocide from the Genocide Convention that codifies the concept of crime against humanity. Genocide means any of the following acts committed with intent to destroy, in whole or in part — we do not have to prove that the federal govern-

ment has succeeded in destroying completely any one individual group of people, although there is evidence that it has completely destroyed several groups of Native American people. Intent to destroy in whole or in part a national, ethnic, racial, or religious group as such and either one of those characteristics would qualify. In our opinion, all four groups fall into one or more of those categories, national, ethnic, racial, or religious. Some of them meet all four qualifications, and certainly the Native American people do. So the following acts are genocide: Killing members of the group, causing serious bodily, or mental harm to members of the group. This opens up the psychological trauma that these people have been subjected to for the past 205 years. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

All indigenous people and people of color living under the imperial domain of the federal government fit within that definition of genocide. Every one of them. The federal government is inflicting today, and historically has deliberately inflicted on all of them conditions of life calculated to bring about their physical destruction in whole or in part. Imposing measures intended to prevent births within the group. You will see a pattern of the federal government historically undertaking policies to prevent births of Native peoples, peoples of color, subject to their control, including wide scale sterilization of Native peoples and peoples of color, and fi-

nally, forcibly transferring children of the group to another group. And again, you will receive evidence of that reprehensible behavior.

Now, in the indictment we have also alleged numerous violations of human rights treaties. You have those in the indictment, I will not bother to repeat all of it except to point out that the special prosecutors will develop a gross and consistent pattern of violations of fundamental human rights against indigenous people and people of color by the United States government for the past 205 years.

The basic source for these human rights is the Universal Declaration of Human Rights of 1948, which you have already looked at. The US government considers the Universal Declaration of Human Rights to be binding, as a matter of customary international law. We intend to take the United States at its word. Compare its behavior with the provisions of this document, and you will see that the United States government has violated each and every one of these provisions when it comes to indigenous people and people of color subject to its control. The Universal Declaration was then codified in two United Nations human rights covenants in 1966. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The United States government has recently ratified the International Covenant on Civil and Political rights. So again, it is only fair for you to evalu-

ate their behavior under that treaty. The Economic, Social, and Cultural Convention has not yet been ratified by the United States government, but it has been signed. Under the Vienna Convention on the law of treaties, the US government is obliged to act in a manner so as not to defeat the object and purpose of the Economic, Social, and Cultural Convention until it has given an indication whether or not it will ratify. Again, it is fair to compare its behavior under this treaty and you will find it severely lacking, not only for indigenous people and people of color in America, but for all people in North America. The indictment also refers to the Racial Discrimination Convention, we all know what racial discrimination is about. Our position is that the US government is the paradigmatic example of a racist state in international relations today. It is even worse than South Africa.

Indeed, the United States of America is the grossest violator of human rights of any state in the world today. Although this is not subject to your jurisdiction, look at the quarter of a million people that the US government exterminated in Iraq, in 100 days. If you allow the US government to get away with it, this is what they are going to do to indigenous people and people of color here on the North American continent. Iraq is the future, unless you do something about it. I also refer to the Apartheid Convention, the US government has signed but again, not yet ratified the racial discrimination convention so it is bound generally to adhere to its

terms to the racial discrimination convention. It has not signed the Convention Against Apartheid. Why? Because the US government practices a system of Apartheid against people of color and indigenous people here in the United States, just as reprehensible and heinous as what the South African government has done to its Black people in South Africa. That is why it has refused to sign the Apartheid convention, but that should not deter you because this is a reflection of the Nuremburg concept of crime against humanity, which the US is bound to. Apartheid is defined as a variant of crime against humanity. I submit that you can only conclude that the United States practices apartheid, as defined by this convention, against indigenous people and people of color in North America.

The final area that the special prosecutors will examine today after genocide and human rights violations, will be treatment of freedom fighters from the different groups of people who have been captured by the federal government of the United States of America and are entitled to be treated as prisoners of war under the Geneva Conventions of 1949 and the Geneva Protocol One of 1977. Now, drawing an analogy to the Nazi treatment of the Jews, those people certainly had a right under international law to rise up and resist and defend themselves. Nothing could be clearer as a matter of law and we would all agree in retrospect. Indeed, there were many courageous people in Germany who rose up to resist the Nazis and Hitler, who were tried in Nazi

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courts, were punished by Nazi judges, and put in Nazi jails and tortured and then killed by Nazis. We believe this is exactly what is going on in the United States of America today. The federal judiciary is a Nazi court system, with hand picked judges for political, social, economic reasons designed to enforce the policy of the US government. They take people who engage in resistance to these criminal policies, give them show trials, put them away in prisons and there they are tortured by psychological, and physical means.

The appropriate treatment for these people can be found in the 3rd Geneva Convention of 1949 on prisoners of war. They are entitled to all the protections and certainly cannot be put in prisons and treated as terrorists and criminals. They are not. They are soldiers fighting in international armed conflict against a hostile enemy that is ruthless and will resort to any type of criminal behavior to suppress these struggles by indigenous people and people of color to preserve their own existence. The relevant test for prisoner of war status can be found in article 1, paragraph 4 of additional protocol 1. Again I quote it in short, these people would be entitled to be treated as POWs if you find that they are engaged in "armed conflicts in which peoples are fighting against colonial domination" and clearly the US government is a colonial dominator. "and alien occupation." The US government is alien to indigenous people and people of color in North America. "and against racist regimes." Clearly the federal government is a racist

regime, in the exercise of their right of self determination as enshrined in the charter of the United Nations. All five of these peoples have a right to self determination under international law and especially the United Nations Charter. And the freedom fighters that have been captured, prosecuted and imprisoned by this Nazi regime are entitled to be treated as prisoners of war, within the meaning of the Geneva Conventions.

The final count of the indictment states that the US government is an international criminal conspiracy and a criminal organization in accordance with the Nuremburg Charter, Judgment, and Principles. This is exactly what happened at Nuremburg, where the judgment determined, the Tribunal determined that various organs of the Nazi state were criminal organizations and that mere membership in any of these organizations, such as the SS, the Gestapo, etc., was a criminal act.

Again, our position is the federal government of the United States is legally identical to the Nazi government. Indeed, the crimes of the Nazi government were so enormous under international criminal law that it was dissolved as a legal and political entity. It no longer exists today. The current government of Germany, the Federal Republic of Germany is not a successor in law to the Nazi government. It no longer exists. We are asking you to do the exact same thing to the United States federal government. We are asking you to issue and or-

der determining that the United States federal government is an international criminal conspiracy and a criminal organization. We are asking you to issue an order dissolving the United States federal government as a legal and political entity. Just as happened to the Nazi government at Nuremburg. And finally, we are asking you to recognize that the sovereignty — international legal sovereignty over the lands inhabited by Native peoples, Mexicans, the New African Black people, and the Puerto Rican people resides in the hands of the people themselves and not in the hands of the federal government, which is a criminal organization. Again, this is pursuant to their right of self determination under international law.

We believe that a judgment by this Tribunal along these lines will then prepare the way for these peoples to apply for membership as independent states in the United Nations organization. Just recently, the world witnessed the collapse of the Soviet Union, an empire in its own right. Lenin had once called the Czarist empire "the slave house of nationalities." Well, we have another slave house of nationalities and that is the United States of America federal government. We are asking you to dissolve this enormous slave house of nationalities, that has repressed, terrorized, intimidated, and exterminated indigenous people and people of color in North America. As the Soviet Union, an empire, collapsed and freed these peoples, so to the American empire must collapse as well. The collapse of the American empire is

the only way to save the existence of indigenous people and people of color living subject to its jurisdiction. It is up to you to produce that result. The beginning of the end of the American empire starts here and today and is in your hands. Thank you.

Alejandro Molina: At this point, I would like to ask if there is an official representative of the US government or the office of the Attorney General of the US to come forward. If not I would ask attorney Boyle to return to the stand.

Francis Boyle: Again, is there anyone here to represent the defendant — the federal government of the United States of America? I wish to inform the Tribunal of the following. That the defendant was served with the indictment in three formats, starting September 23, 1992, with what is called a summons to appear and answer. There was hand delivery of service of process by Native Americans — it would only be appropriate for Native Americans to serve the US government with this indictment. One Native American in Washington DC served the office of Attorney General William Barr, and another in San Francisco served the office of Mr. John Méndez, United States Attorney. This commenced on September 23. They were also served by Federal Express and they were served by fax transmission. I have the receipts here. We will introduce them into the record. They were summoned to appear and answer on behalf of the United States government and given the

time of 11:00 am for the presentation of their defense of the federal government. That is their job, what they get paid to do. Apparently they decided not to do it.

Now I wish to inform you of the legal significance of their failure to appear. Under international proceedings, a foreign sovereign cannot be forced to appear before an International Tribunal. For example, when the US sued Iran before the World Court, (in the Iranian hostages case), Iran did not appear. But the non appearance of a foreign sovereign cannot be allowed to frustrate the proceedings of an International Tribunal. The Tribunal can proceed *in absentia*, just like the World Court did in that case. When the Reagan administration did not like a preliminary ruling of the World Court in the Nicaragua case it walked out. But the court proceeded in any event in the absence of the United States government. So you can proceed *in absentia*. However, you can not find a default judgment against the US government. Default judgments are not permitted in international judicial proceedings. You must reach a judgment on the merits in accordance with the law and the facts just as if the US government had been here and argued its case. I would say that you should not draw any adverse inferences from the fact that the United States government has refused to appear. If you have any questions on that non appearance by the US government, I will be happy to answer them. Thank you.