

Closing Argument – Defendant Pete Bianco (thanks to John Hamilton)

Article 6 Section 2 commands that Duly-signed Treaties be enforced by all judges of the land.

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be 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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

This article not only gives judges jurisdiction in cases involving treaties, it demands that every judge takes such jurisdiction.

From early in U.S. history, the Supreme Court (Marbury, 1803) was determined to ignore this constitutional requirement.

We are proposing that the longstanding tradition of the “political doctrine,” as first outlined in Marbury and clarified in Baker vs. Carr, 1962, is in itself unconstitutional, in particular as it applied to certain treaties.

(Indeed, the first of the six tests outlined by Justice Brennan in Baker, actually confirms the wisdom of Article 6, Section 2. Brennan claims that executive war-making powers are not justifiable. It is, indeed, exactly this that the writers of the Constitution were concerned about, and for this reason, gave further check, in the form of demanding judicial review, to prevent such abuses. See below.) We understand the longstanding tradition and precedents of “the political question.” We go further to accept that not all treaties necessarily require domestic judicial review. We are not asking the courts to determine whether, for instance, Chile has violated its sardine quotas under the Law of the Sea.

Most treaties have means of enforcement built into them.

The Treaty we draw your attention to is the United Nations Charter.

The UN Charter was written in San Francisco, ratified by the U.S. Senate by a vote of 89 to 2, and signed by the President, all within several months in 1945. The Treaty binds all member nations to refrain from the use of force against other nations, unless specifically authorized by the Security Council. Under the UN Charter, every unilateral use of force against another nation that results in death is illegal. These extra-judicial killings can properly be named international lynchings.

Judge Gideon, we emphasize we have heard testimony from Ramsey Clark, an international law expert, that the drone attacks are in direct violation of existing and operative international law, both customary and contractual. This point is central to our case. No one in the U.S. government can legally authorize their use. Not the base commander. Not the president.

When and if the U.S. feels threatened by a group or an individual, there is a perfectly legal way to deal with this. It is the UN Security Council, unilateral action by the U.S. is always a violation

of international and domestic law, no matter how often or routinely it is done.

The U.S. is in daily violation of its commitments under the UN Charter. Violations of the Charter are war crimes. Many people are being killed illegally – lynched – by the U.S. government.

We use the term lynchings intentionally, to remind you of that long chapter in U.S. history where domestic lynching was tolerated, and also, equally important, that in the past longstanding traditions of law have been drastically changed. For generations within the U.S., lynchings were carried out, every one illegal, every one an extra-judicial murder, with the knowledge, and often silence, of the legal system whose greatest task was to protect the lives of all citizens. During these long generations, the courts failed to uphold their basic function. They, in effect, declared they did not have jurisdiction to protect the lives of certain citizens, which of course they explicitly always had.

We make this analogy, for several reasons. One, to remember that traditions change. (Domestic lynching was never legal. The laws didn't change, only the understanding and application of the laws.) The political question doctrine – that removes executive war-making powers from judicial review – today allows international lynching. Under the UN Charter (to which the U.S. is committed Constitutionally as a duly signed treaty), every use of force against another nation that results in death is extra-judicial murder. Today on a global scale, as before on a domestic level, the U.S. legal system is standing silent as international lynchings occur daily, when they clearly have jurisdiction to intervene.

Your jurisdiction in the case of the UN Charter is based on the following principles:

1. The Charter is by far the most important agreement among human beings. It effectively creates legal equality among humans, indeed, it creates human beings as a legal entity, out of the many nations and cultures of the world. It offers legal protection to every human from arbitrary violence from another nation.

The Charter ends war of aggression among humans, a deeply held goal among religions, and philosophies, and ordinary people, for many centuries.

While the Charter's intent is “to end the scourge of war,” it has within it no means of enforcing its provisions on powerful nations, in particular the five nations given the veto in the Security Council.

The authors and signers of the UN Charter gave humans a legal basis for ending war. From that moment forward, anyone who authorized force against another nation is acting illegally, and is a war criminal.

The only way to enforce this agreement among powerful nations, however, as history has shown us, is by war.

The UN Charter was an important step toward ending war without making war, through peaceful, legal means.

Their generations gave humanity a vision and a powerful first step. They left up to following generations the actual means of enforcing this law, especially on powerful nations, without using greater force.

This is the task of our generation. We ask you to help end international lynching, even and especially, when those doing the lynching are members of a powerful nation, U.S. officials.

2. The Charter is written in simple language. Many treaties require volumes. The Charter is short and simple. It is clearly meant to be read and understood by average people. It has been translated into nearly all human languages.

We maintain there is an essential legal reasoning behind this simplicity, and universality.

3. At the time of the Charter, the Nuremberg Tribunals and the Principles arising out of them, also address this important question: how to prevent war of aggression among powerful nations, without the use of greater force? The answer from history is that only war can stop war. But the Charter is designed to prevent war, so another enforcement mechanism must be discovered, and built.

The answer they gave is clear: all citizens – which includes judges as citizens – are not only empowered, but obligated, to prevent their nation from committing war crimes.

4. The 1947 Nuremberg Judges' Trial further built on this principle. The court convicted German judges of war crimes in cases solely involving domestic laws and jurisdiction. This is a clear legal precedent for your claiming jurisdiction.

5. Any reading of the intent of the authors of the Constitution – Madison, Jefferson, etc. – as well as familiarity of the history of their time, shows an overriding concern for the abuse of executive warmaking power. They place the requirement that all judges must review treaties in the same clause (the Supremacy Clause) that creates the U.S. It is clear they combined the advantages of a federal state, with an equally clear concern about its dangers, especially executive abandonment of treaty requirements. It is especially in cases addressing issues of executive warmaking powers, that the Constitution, through Article 6 Section 2, requires judicial review.

6. We understand to shift so far from longstanding judicial tradition is a big step for any judge, and not to be taken lightly. We make the analogy with domestic lynching to ease this transition, for what was judicially acceptable just one long generation ago, is now a cause for outrage among all of society.

7. Based on recent, and accumulating, international precedents, there is no question that international lynching will soon become as unacceptable as domestic lynching is today. We ask that you stand with us, as a part of this historic movement, to end international lynching, to honor the UN Charter, and to uphold the U.S. Constitution in its clear intent.