

WEDNESDAY January 24, 2007

OUTLINE OF TESTIMONY – JOHN BURROUGHS

(not the same as delivered)

State v. CarolAnn Barrows, Shirley Morrison, Brian Watson

Kitsap County District Court, Port Orchard, Washington

QUALIFICATIONS

1. I am the executive director of the Lawyers' Committee on Nuclear Policy (LCNP), a non-profit association of lawyers and professors of international law based in New York City. LCNP is a U.S. affiliate of the International Association of Lawyers Against Nuclear Arms (IALANA). LCNP engages in research and analysis on legal aspects of disarmament and security, especially with respect to nuclear weapons, and also engages in advocacy on these matters in international settings including the United Nations and the Nuclear Non-Proliferation Treaty review process as well as in national settings. I served as the non-governmental organization legal coordinator at the November 1995 hearings before the International Court of Justice (ICJ) in The Hague, Netherlands, concerning the legality of threat or use of nuclear weapons. In that capacity I advised several countries concerning their oral arguments. I subsequently authored a book about the ICJ's July 8, 1996 advisory opinion for the International Association of Lawyers Against Nuclear Arms (IALANA), *The Legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice* (Transaction Publishers, 1998). I also served as IALANA's representative at the 1998 negotiations of the Statute of the International Criminal Court in Rome, with a special focus on the Statute's implications for nuclear weapons. I am co-editor of *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties* (Apex Press, 2003), and principal author of the chapter on the Nuclear Non-Proliferation Treaty. I am an

adjunct professor of international law at Rutgers Law School - Newark. *Nuclear Obligations*, my 1991 Ph.D. dissertation in the Jurisprudence and Social Policy Program, School of Law, Boalt Hall, University of California at Berkeley, examines the international law framework for nuclear weapons policy. In addition to the Ph.D., I have a J.D. from Boalt Hall. I am admitted to the bar in the states of California and Washington.

WHY BE CONCERNED IN WA STATE COURT W/INT'L LAW?

2. Both treaty-based and custom-based international law are part of the law of the land under Article VI, clause 2 of the Constitution (treaties are included in the "supreme law of the land") and *The Paquete Habana*, 175 U.S. 677, 700 (1900) (customary international law is "part of our law"). Article VI, Clause 2 of the Constitution states: "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." Referring to customary international law, in *The Paquete Habana* the Supreme Court stated: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." Customary international law refers to universally binding law based on a general and consistent practice of states accompanied by a sense of legal obligation.

WHAT IS THE INTERNATIONAL COURT OF JUSTICE?

3. The International Court of Justice (ICJ) is the judicial branch of the United Nations, and the highest and most authoritative court in the world on questions of international law. The ICJ adjudicates disputes among nations and provides legal advice to UN bodies. Its July 8, 1996 opinion, *Legality of the Threat or Use of Nuclear Weapons*, I.C.J. Reports (1996) 226, was

issued in response to a request for an advisory opinion by the UN General Assembly. Advisory opinions are intended to provide UN bodies guidance regarding legal issues, and are not directly binding on the UN or its member states. However, the ICJ has authoritatively interpreted law which states, including the United States, acknowledge they must follow, including the Nuclear Non-Proliferation Treaty and international humanitarian law. Accordingly, the opinion stands as an authoritative statement of law with which the United States must comply.

WHAT IS THE INTERNATIONAL CRIMINAL COURT?

4. A new court, the International Criminal Court, prosecutes individuals for commission of or complicity in international crimes, war crimes, crimes against humanity, and genocide.

Negotiation of the treaty establishing the court, known as the Rome Statute, were completed in 1998, and the court became operational in 2002. Over 100 nations are parties.

The substantive provisions of the Statute were negotiated on the basis that they would reflect the present state of law binding on all states. It thus stands as a consensus-based statement of presently binding law defining war crimes. The United States was deeply engaged in the negotiation of provisions defining war crimes. The United States signed the Statute on December 31, 2000, but on May 6, 2002 formally notified the UN Secretary-General that "the United States does not intend to become a party to the treaty," and that, "[a]ccordingly, the United States has no legal obligations arising from its signature." Nonetheless, the Statute is widely regarded as an authoritative statement of law. For example, U.S. consultants drew upon it in drafting the Iraqi statute under which Saddam Hussein is being tried.

WHAT ARE THE SOURCES OF BINDING INTERNATIONAL LAW RELEVANT TO NUCLEAR WEAPONS?

5. The United States is party to important treaties regulating the conduct of warfare, the Hague Conventions of 1907 and the 1947 Geneva Conventions. Article 23(e) of the 1907 Hague

Regulations Respecting the Laws and Customs of War on Land, Annex to the 1907 Hague Convention, forbids the employment of "arms, projectiles, or material calculated to cause unnecessary suffering". The prohibition of inflicting indiscriminate harm underlies the Hague and Geneva Conventions, treaties to which the United States is a party, and is stated in the 1977 Protocol I to the Geneva Conventions, a widely ratified treaty which additionally is commonly regarded as stating binding customary law. The United States signed but has not yet ratified Protocol I, and has accepted the essentials of the prohibition set forth in Protocol I in a variety of forums, including in its arguments to the International Court of Justice. Also important is the London Agreement establishing the International Military Tribunal was an executive agreement among the United States, Britain, France and the Soviet Union. While not approved by the Senate, from an international perspective it is equivalent to a treaty, and within the United States it is also binding upon the states like Washington state. The Charter of the IMT annexed to the London Agreement defines war crimes, crimes against humanity, and crimes against peace. War crimes are violations of the rules of warfare, like mistreatment of prisoners of warfare; crimes against humanity are large-scale atrocities committed against civilian populations; crimes against peace are planning and waging aggressive war. The essentials of the Nuremberg Charter are found in the Statute of the International Criminal Court and, regarding aggression, the UN Charter, a treaty to which the United States is party.

6. Customary international law, binding on states whether or not they have ratified relevant treaties, is evidenced by 1) international agreements, like the Statute of the ICC and Protocol I to the Geneva Conventions; 2) manuals on the law of warfare of the U.S. military services; 3) the ICJ opinion.

HOW DOES INTERNATIONAL LAW RELATE TO THREAT OR USE OF NUCLEAR WEAPONS?

7. A wide array of rules and principles of international law bear upon the threat or use of nuclear weapons. One branch of international law, humanitarian law, protects civilians and combatants from indiscriminate, unnecessary, and disproportionate effects of warfare. It is binding whether a state is acting aggressively or in self-defense or reprisal. The United States, while maintaining that use of nuclear weapons is not prohibited *per se* by international law, acknowledges that their use is subject to its requirements. Thus Air Force Doctrine Document 2-1.5 (15 July 1998), p. 9 (emphasis in original), states: “Under international law, *the use of a nuclear weapon must be based on the same targeting rules applicable to the use of any other lawful weapon*, i.e., the counterbalancing principles of military necessity, proportionality, distinction, and unnecessary suffering.” Similarly, the ICJ unanimously concluded: “A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, and specific obligations under treaties and other undertakings which expressly deal with nuclear weapons.” (Para. 105(2)D.) As the conclusion states, threat as well as use of nuclear weapons is subject to legal requirements. The ICJ held that “[i]f an envisaged use of weapons would not meet the requirements of humanitarian law, a threat to engage in such use would also be contrary to that law”. (Para. 78.)

8. The thrust and implications of the ICJ’s opinion with respect to threat or use of nuclear weapons were well summarized by the Committee on International Security and Arms Control of the U.S. National Academy of Sciences. The Committee stated:

[T]he ICJ unanimously agreed that the threat or use of nuclear weapons is strictly limited by generally accepted laws and humanitarian principles that restrict the use of force. Accordingly, any threat or use of nuclear weapons must be limited to, and necessary for, self defense; it must not be targeted at civilians, and be capable of distinguishing between civilian and military targets; and it must not cause unnecessary suffering to combatants, or harm greater than that unavoidable to achieve military objectives. *In the committee's view, the inherent destructiveness of nuclear weapons, combined with the unavoidable risk that even*

the most restricted use of such weapons would escalate to broader attacks, makes it extremely unlikely that any contemplated threat or use of nuclear weapons would meet these criteria. (Committee on International Security and Arms Control, National Academy of Sciences, *The Future of U.S. Nuclear Weapons Policy*, National Academy Press, 1997, p. 87; emphasis supplied.)

SO WHAT ARE THE BASIC REQUIREMENTS

APPLICABLE TO THREAT OR USE?

9. For threat or use of nuclear weapons to be lawful, the requirements of discrimination, necessity, and proportionality must be met. The immunity of civilians at the core of the requirement of discrimination underlies the Hague and Geneva Conventions, treaties to which the United States is a party. The ICJ described the principle of discrimination as “fundamental,” “cardinal,” and “intransgressible,” and framed it as follows: it "is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets." (Para. 78.) The use of the term "never" is significant: under humanitarian law, in no circumstance, including reprisal against a prior nuclear, chemical or biological attack, may a state use inherently indiscriminate weapons.

10. The ICJ's formulation of the requirement of discrimination as a principle of customary, indeed “intransgressible,” international law is supported by the comprehensive set of rules prohibiting the infliction of indiscriminate harm codified in the 1977 Protocol I to the Geneva Conventions. More than 160 states, including major powers, are parties to Protocol I; the United States has signed but not ratified. Article 51, “Protection of the Civilian Population,” contains a provision particularly pertinent to assessing the legality of nuclear weapons:

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
 - (a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective;

(c) *those which employ a method or means of combat the effects of which cannot be limited as required by the Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.* (Emphasis added.)

11. U.S. military manuals on the law of armed conflict set forth the requirement of discrimination. U.S. Army Field Manual 27-10 on the Law of Land Warfare (1956, with changes in 1976), at § 41, states regarding the immunity of civilians: “*Attacks Against the Civilian Population as Such Prohibited.* Customary international law prohibits the launching of attacks (including bombardment) against either the civilian population as such or individual civilians as such.” A Navy handbook states that while employment of nuclear weapons is not expressly prohibited, it is subject to the following principles:

the right of the parties to the conflict to adopt means of injuring the enemy is not unlimited; it is prohibited to launch attacks against the civilian population as such; and distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible. (U.S. Navy Annotated Supplement to the Commander’s Handbook on the Law of Naval Operations, 1997, at 10-2.)

An Air Force publication on the law of armed conflict states in part:

Weapons are not unlawful simply because their use may cause incidental casualties to civilians and destruction of civilian objects. Nevertheless, particular weapons or methods of warfare may be prohibited because of their indiscriminate effects.... [*S]ome weapons, though capable of being directed only at military objectives, may have otherwise uncontrollable effects so as to cause disproportionate civilian injuries or damage.* Biological warfare is a universally agreed illustration of such an indiscriminate weapon. (International Law – The Conduct of Armed Conflict and Air Operations, U.S. Air Force Pamphlet 110-31, 1976, § 6-3(c); emphasis added.)

12. The prohibition of inflicting indiscriminate harm is also reflected in the Statute of the International Criminal Court. It includes the following "serious violations of the laws and customs applicable in international armed conflict, within the established framework of

international law" (Art. 8(b)): "Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities" (Art. 8(b)(i)); "Intentionally directing attacks against civilian objects, that is, objects which are not military objectives" (Art. 8(b)(ii)); and "Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" (Art. 8(b)(iv)). The latter provision stating the rule of proportionality is an aspect of the prohibition of inflicting indiscriminate harm. In addition, in the view of the International Committee of the Red Cross, Article 5(b)(2)(i) regarding attacks on civilians covers the use of indiscriminate weapons. As noted above, the International Court of Justice identified as customary the following rule: "States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets". The ICRC has pointed out: "The Court thus equated the use of indiscriminate weapons with a deliberate attack upon civilians". Paper prepared by the International Committee of the Red Cross relating to the crimes listed in article 8, paragraph 2(b)(xvii), (xviii), (xix), (xx), (xxiii), (xxiv) and (xxv) of the Rome Statute of the International Criminal Court, submitted by the governments of Belgium, Costa Rica, Finland, Hungary, the Republic of Korea, and Switzerland to the Preparatory Commission for the ICC, PCNICC/1999/WGEC/INF2/Add.2 (4 August 1999), p. 25. The ICC Statute also defines the following as a crime against humanity (Article 7): murder, extermination, other inhumane acts of a similar character, when committed as part of a widespread or systematic attack directed against any civilian population. This is the modern version of the crime against humanity prosecuted at Nuremberg.

YOU HAVE TALKED ABOUT THE REQUIREMENT OF DISCRIMINATION. WHAT ABOUT NECESSITY AND PROPORTIONALITY?

13. As the ICJ observed, for self-defense to be lawful, it must meet the requirements of necessity and proportionality. (Para. 41.) Both requirements weigh against the legality of use of a nuclear weapon against a buried target. Necessity limits the use of force to that required to achieve a legitimate military objective. As explained by U.S. Army Field Manual 27-10, § 3, military necessity “has been defined as that principle which justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible.” Assuming that the United States was using force in individual or collective self-defense, or that force was being used under Security Council authorization or directive, the use of any particular method or means of combat must still be necessary. Accordingly, if a weapon or tactic, like use of special forces, is available which causes less damage and suffering than a nuclear weapon to carry out a legitimate military mission, use of a nuclear weapon is barred.

14. Proportionality forbids the use of measures in response to an attack that, even if necessary to achieve a military objective, are nonetheless excessive in relation to the scope of the attack and, in some formulations, to the requirements of repelling the attack and ending the conflict on favorable terms. The ICJ stated that “self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it” (para. 41) and that whether a measure is disproportionate includes consideration of effects on the environment and prospects for nuclear escalation. (Paras. 30, 43.)

YOU HAVE MENTIONED THE ENVIRONMENT.

WHAT ABOUT INTERNATIONAL ENVIRONMENTAL LAW?

15. International law relating to protection of the environment also bears on threat or use of nuclear weapons. In this regard the ICJ stated:

The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment. (Para. 29.)

While noting that environmental law does not "deprive a State of the exercise of its right of self-defense under international law because of its obligations to protect the environment," the ICJ stated: "Nonetheless, States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives." (Para. 30.)

16. The ICJ also observed

that Articles 35, paragraph 3, and 55 of Additional Protocol I [to the Geneva Conventions] provide additional protection for the environment. Taken together, these provisions embody a general obligation to protect the natural environment against widespread, long-term and severe environmental damage; the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals. [§] These are powerful constraints for all the States having subscribed to these provisions. (Para. 31.)

While the United States, as noted earlier, has signed but not ratified Protocol I, specific rules on wartime protection of the environment are entering customary international law, binding on all states, as shown by a provision in the Rome Statute of the International Criminal Court. The Rome Statute includes the following among the "serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law" set forth in Article 8:

(b)(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

HOW DOES THE LAW APPLY TO THE TRIDENT SYSTEM?

17. BANGOR TRIDENT BASE INFO

Nine Trident submarines

Each can carry 24 Trident II D5 missiles – long-range

Each missile can carry reentry vehicle with up to six warheads

So each submarine could have 144 warheads

using W76s, this would be 14.4 MT – 14 million tons of explosive power – 14 thousand kilotons – about 1000 times Hiroshima bomb

1100 W76 warheads – 100 KT – 7 times more than Hiroshima bomb

264 W88 warheads – 455 KT – 30 times Hiroshima bomb

deployment increased vis a vis China: The buildup of the more capable Trident II D5s in the Pacific additionally "enhances system accuracy, payload, and hard-target capability, thus improving [U.S.] available responses to existing and emerging Pacific theater threats," Rear Adm. Charles B. Young, director of the navy's Strategic Systems Program, said in an August 2002 speech at the Strategic Weapons Facility Pacific.

Each Trident warhead is a potential holocaust.

Taking into account the blast, heat, and radioactive effects of a detonation of a 100 kiloton warhead, especially in view of the fact that radioactive effects cannot be contained in either space or time, the use of even a single Trident warhead in any circumstance, whether a first or second use and whether targeted against civilian populations or military objectives, would inevitably violate the requirements of discrimination, proportionality, and necessity. It would inflict indiscriminate harm and unnecessary suffering; cause disproportionate damage to the environment; and harm neutral states. Further, since the United States deploys Trident missiles at sea in a high state of readiness for use pursuant to a declared policy contemplating use of nuclear weapons in a variety of circumstances, including first use, the deployment of Trident warheads is a threat in violation of humanitarian and other international law.

WHAT ARE SOME OF THE CIRCUMSTANCES IN WHICH THE UNITED STATES SAYS

IT MIGHT USE NUCLEAR WEAPONS? [no text here]

DOES THE ICJ OPINION SUPPORT YOUR CONCLUSION

THAT THREAT OR USE OF TRIDENT IS UNLAWFUL?

18. The ICJ's opinion supports this conclusion. The ICJ found that the nuclear weapon states had failed to make the case that even a "limited" use of nuclear weapons could comply with humanitarian law or avoid catastrophic escalation, and further found that "the use of such weapons in fact seems scarcely reconcilable with respect for [humanitarian] requirements".

(Paras. 94, 95.) In a formal conclusion (adopted by a vote of 7-7 with the president casting the deciding vote; three dissenting judges favored illegality in all circumstances), the Court stated:

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake. (Para. 105(2)E.)

In the "extreme circumstance" the Court refers to, it remains the case that the requirements of humanitarian law apply, as the Court itself held in stating that states must "never" use weapons incapable of distinguishing between civilians and military targets (Para. 78.) and must always meet the requirement of proportionality including compliance with humanitarian law.

OTHER INTERNATIONAL LAW BEARING ON TRIDENT SYSTEM?

19. Nuclear Non-Proliferation Treaty: One hundred and eighty-eight states are members. Only four countries are outside the regime, all nuclear-armed, India, Pakistan, Israel, and North Korea. The NPT strikes a bargain between non-nuclear weapon states, which are prohibited from acquiring nuclear arms and are guaranteed access to peaceful nuclear technology, and nuclear weapons states, which are committed to the goal of disarmament. The International Atomic Energy Agency (IAEA) monitors operation of nuclear reactors and other facilities by non-

nuclear weapon states with the aim of detecting and thereby preventing diversion of fissile materials (plutonium and highly enriched uranium) for use in weapons.

In Article VI, states parties, including nuclear-armed Britain, China, France, Russia, and the United States, agree to “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”

The International Court of Justice interpreted Article VI in its 1996 opinion. The Court unanimously held that “[t]here exists an obligation to pursue in good faith and *bring to a conclusion* negotiations leading to nuclear disarmament *in all its aspects* under strict and effective international control.”

The 2000 NPT Review Conference specified what the Article VI disarmament obligation requires. Its Final Document was approved by the United States and all other participating states. It sets forth 13 “practical steps for the systematic and progressive efforts to achieve nuclear disarmament.” It’s an agenda for the achievement of a nuclear-weapon free world.

Reinforcing the holding of the International Court of Justice, a key element is “an unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals.”

- entry into force of the CTBT and a moratorium on nuclear explosive testing in the meantime;
- negotiating a treaty banning production of fissile materials for weapons;
- applying the principle of irreversibility to nuclear weapons reductions and elimination;
- further developing of verification capabilities;
- measures to further reduce the operational status of nuclear weapons;

- a diminishing role for nuclear weapons in security policies to minimize the risk of their use and to facilitate their elimination.

In subsequent UN General Assembly resolutions, the world's governments – but not including the United States and India - have overwhelmingly approved the 2000 NPT agenda. Nearly all governments in the world are now on record as favoring application of the principles of transparency, irreversibility, and verification “in the process of working towards the elimination of nuclear weapons” and other commitments made in 2000.

20. The build-up of Trident submarines at Bangor is not consistent with the commitments to a diminishing role for nuclear weapons, and reduction of their operational status. The United States remains capable of firing more than 1500 warheads, including those on patrolling Trident submarines, on a half hour notice. Russia has a capability to fire several hundred warheads on short notice. There are no negotiations going on concerning reductions of U.S., Russian, and other states' nuclear forces. The 2002 Moscow Treaty contained no requirements for the verified dismantling of delivery systems like Trident or warheads. The United States has not ratified the CTBT. No negotiations are underway on a treaty to control fissile materials – highly enriched uranium and plutonium – used for weapons.

21. In sum, U.S. actions, from the continued deployment of Trident to the lack of any negotiations on further reductions to the rejection of the CTBT, demonstrate that the United States is not in compliance with its NPT disarmament obligation.

HOW DOES INTERNATIONAL LAW APPLY TO THESE DEFENDANTS?

22. Human rights law – defendants by opposing Trident are promoting and protecting the human rights to life and peace.

Article 3 states: Everyone has the right to life, liberty and the security of person.

The International Court of Justice held that the right to life, recognized in Article 6(1) of the International Covenant on Civil and Political Rights, a treaty to which the United States is a party, must be respected in time of war, and that in that context humanitarian and other law governing the conduct of warfare determines whether deprivation of the right to life is arbitrary in violation of Article 6(1). Opinion, para. 25.

Article 28 states:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

This is sometimes known as the right to peace.

Harm to civilian populations by use of nuclear weapons is inconsistent with the principle that "human rights should be protected by the rule of law..." (preambular paragraph three of the Universal Declaration) and the right to life (Article 3, Universal Declaration; Article 6(1), Covenant on Civil and Political Rights).

Non-violent opposition to threatened harm of nuclear warfare supports the rule of law and promotes respect for the right to life and the right to peace.

WHAT ABOUT NUREMBERG LAW?

Principles of international law – International Law Commission –

esp. principle VII on complicity

23. As the International Military Tribunal famously observed, "the very essence of the [Nuremberg] Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state." *United States et al. v. Goering et al. (Judgment of the International Military Tribunal)*, 6 Federal Rules of Decision 69, 110 (1946). Under the Nuremberg principle of individual responsibility, regardless of a superior's orders or national law, all persons, military and civilian, whatever their rank or

position, are obligated to terminate their commission of, or complicity with, acts connected to the use of a nuclear weapon in violation of humanitarian and other law proscribing international crimes. This is only a statement of the principle's minimal consequences in the context of nuclear weapons. In light of present circumstances, including the threat of global catastrophe posed by the Trident system, the principle of individual responsibility supports reasonable, non-violent affirmative acts by citizens and taxpayers of nuclear-armed states, not personally otherwise involved in deployment or use of nuclear weapons, directly to confront and oppose the potential commission of atrocities by use of those weapons.