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United Nations Office



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Lawyers Against Nuclear Arms

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January 13, 2014

The Honorable Amul R. Thapar
United States District Judge
U.S. District Court
35 West Fifth Street
Covington, KY 41011

Re: Sentencing of Sr. Megan Rice, Michael Walli, and Greg Boertje-Obed

Dear Judge Thapar:

We write on behalf of the Lawyers Committee on Nuclear Policy to urge great leniency in the sentencing of Sister Megan Rice and veterans Michael Walli and Greg Boertje-Obed.

We share the concern expressed in your decision on the Rule 29 motion about inferring an intent to injure the national defense from a trespass that disrupts operations at a military facility. We respectfully suggest that defendants' statements such as "beginning the work of disarmament" referred to their actions as symbolic ones aimed at awakening the conscience of those in the executive and legislative branches of the U.S government who have the capacity and the legal obligation, under Article VI of the Nuclear Non-Proliferation Treaty (NPT), to begin negotiations in good faith toward nuclear disarmament. As you indicated in your decision, in any event the nature of defendants' actions and statements is to be taken into account in sentencing.

The actions and statements of the defendants were prompted by their desire to draw attention to the enormity of the potential humanitarian consequences of the U.S. nuclear weapons program and the imperative of undertaking disarmament. Their actions and statements are part of a growing awareness, in the United States and worldwide, of the grave humanitarian impacts of nuclear war, the ongoing risks of nuclear detonations in conflict or otherwise, and the urgent need for the global elimination of nuclear weapons.

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In the United States, there has been bipartisan support of Global Zero, an organization of world leaders devoted to the abolition of nuclear weapons, and the Nuclear Security Project, which works toward a world free of nuclear weapons.¹ Globally, a consensus on the incompatibility of nuclear weapons with humanitarian values and law is crystallizing.

In the Final Document of the quinquennial NPT Review Conference held in May 2010, the Conference “expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law.”² The Final Document was approved by all participating states parties (172), including the United States and the other NPT nuclear weapon states.

In a November 2011 resolution,³ the Council of Delegates of the International Red Cross and Red Crescent Movements:

- “1. emphasizes the incalculable human suffering that can be expected to result from any use of nuclear weapons, the lack of any adequate humanitarian response capacity and the absolute imperative to prevent such use;
2. finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law, in particular the rules of distinction, precaution and proportionality;
3. appeals to all States:
 - a. to ensure that nuclear weapons are never again used, regardless of their views on the legality of such weapons,
 - b. to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement, based on existing commitments and international obligations,”

In March 2013, the government of Norway hosted an international conference on the humanitarian impact of nuclear weapons attended by 128 governments, preceded by a civil society forum organized by the International Campaign to Abolish Nuclear Weapons. At those meetings and elsewhere, physicians and scientists have presented updated analyses of the devastating blast, heat,

¹ U.S. supporters of Global Zero among many others include General (Ret.) James E. Cartwright, former commander, U.S. Strategic Command, who served during both the George W. Bush and Obama administrations; former Senator (R-NE) Chuck Hagel, before he became the current Secretary of Defense; Frank E. Carlucci, Secretary of Defense under President Ronald Reagan; and Strobe Talbott, journalist and Deputy Secretary of State under President Bill Clinton. The Nuclear Security Project was formed by two Republicans and two Democrats, *i.e.* George Shultz, Secretary of State under President Reagan; Henry Kissinger, Secretary of State under President Richard Nixon; William Perry, Secretary of Defense under President Clinton; and former Senator (D-GA) Sam Nunn.

² <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2010/FinalDocument.pdf>, p. 19.

³ <http://www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-1-2011.htm>.

radiation, and firestorm effects of even one nuclear explosion in an urban area,⁴ as well as the global cooling effects – and accompanying very large-scale famine resulting from decreased agricultural production – of the use of numerous (*e.g.*, 100) nuclear weapons in urban areas.⁵

In the most recent of a series of joint statements, at the United Nations General Assembly in October 2013, 124 states declared in part:

“We welcome the renewed resolve of the international community, together with the ICRC [International Committee of the Red Cross] and international humanitarian organisations, to address the catastrophic humanitarian consequences of nuclear weapons. By raising awareness about this issue, civil society has a crucial role to play side-by-side with governments as we fulfil our responsibilities.”⁶

These developments indicate not only an emerging consensus about the absolutely unacceptable humanitarian impacts of nuclear weapons, but also the crucial role of civil society in raising consciousness about the dangers of these weapons to further a world free of nuclear weapons. The defendants have played their own significant role by drawing attention to the incompatibility of nuclear weapons with humanitarian and religious values and with law, a contribution that supports leniency in sentencing.

We emphasize that it is not only humanitarian and religious values that come into play in assessing the actions of defendants. International humanitarian law, also known as the law of armed conflict, is highly relevant, as the 2010 NPT Review Conference outcome and the Red Cross/Red Crescent resolution indicate, as is the nuclear disarmament obligation under NPT Article VI.

In June 2013, the Department of Defense released a Report to Congress on U.S. Nuclear Employment Strategy.⁷ It says: “The new guidance makes clear that all plans must also be consistent with the fundamental principles of the Law of Armed Conflict. Accordingly, plans will, for example, apply the principles of distinction and proportionality and seek to minimize collateral damage to civilian populations and civilian objects.” Defendants’ view is that use of nuclear weapons in compliance with such fundamental principles is impossible. That view at a minimum is entirely reasonable; in the view of the Lawyers Committee on Nuclear Policy it is correct. Defendants’ view is also in accord with the thrust of the 1996 Advisory Opinion of the International Court of Justice, in which the Court stated that use of nuclear weapons is “scarcely reconcilable”

⁴ See Dr. Tillman Ruff, “The health consequences of nuclear explosions,” in Beatrice Fihn, ed., *Unspeakable Suffering – the humanitarian impact of nuclear weapons*, Reaching Critical Will, 2013, available online at <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/7422-unspeakable-suffering-the-humanitarian-impact-of-nuclear-weapons>.

⁵ See Dr. Ira Helfand, “The Humanitarian Consequences of Nuclear War,” *Arms Control Today*, November 2013, online at http://armscontrol.org/act/2013_11/The-Humanitarian-Consequences-Of-Nuclear-War.

⁶ http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/21Oct_Joint.pdf.

⁷ http://www.defense.gov/pubs/ReporttoCongressonUSNuclearEmploymentStrategy_Section491.pdf.

with the “principles and rules of law applicable in armed conflict – at the heart of which is the overriding consideration of humanity”.⁸

The United States also claims to be in compliance with NPT Article VI. The International Court of Justice construed Article VI in unanimously concluding: “There 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.”⁹ Again, defendants’ view that the United States is not in compliance with Article VI is entirely reasonable, and in our view correct. Among other things, the plans to maintain and modernize nuclear forces for decades to come, plans in motion at the Y-12 complex, evidence a lack of good faith in meeting the obligation.

It is now well established under international law that individuals are accountable for the commission of or complicity in war crimes, crimes against humanity, and genocide. The principle of individual responsibility animated the Nuremberg trials and judgments, and is fully set forth in the Rome Statute of the International Criminal Court. Defendants in effect seek to extend and build upon the principle of individual responsibility to hold that citizens have the right and the duty to act reasonably to prevent the commission of international crimes and to extinguish their own at least political complicity in such crimes. This extension at this time may be viewed as more a moral argument than a legal one cognizable in U.S. courts. But its moral seriousness and reasonableness should be taken into account in sentencing, as should the reasonableness of defendants’ views regarding the incompatibility of the U.S. nuclear weapons program with international legal obligations whose bindingness the United States accepts.

Also to be taken into account, as you indicated in your Rule 29 decision, is the nonviolent approach of defendants. A spirit of nonviolence infuses the statement that defendants prepared and read when arrested. It declares: “Brothers and Sisters, powers that be, we come to you today as friends in love.”

In a recent speech to the Ploughshares Fund, an organization advocating for a nuclear weapons free world, Secretary of State John Kerry said that when he was in the Navy he was sent to Nuclear, Chemical and Biological Warfare school and there he learned enough about “throw weights and circles of damage and radiation and the consequences” to say to himself, “This is insanity.” He also said: “Realizing a world that is free from the threat of weapons too terrible for any of us to comprehend is really hard for some people to grab onto. It’s a big concept. But ... I think it’s so essential that we do grab onto it ...”¹⁰ These three defendants should be thanked for doing their part to help the public and the government grab onto the concept of the prompt realization of a nuclear

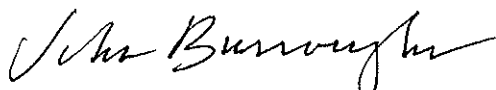
⁸ Para. 95.

⁹ Para. 105(2)F.

¹⁰ <http://www.state.gov/secretary/remarks/2013/10/215951.htm>.

weapons free world. But if they must be sentenced we respectfully urge that they receive the absolute minimum.

Sincerely,

A handwritten signature in black ink, appearing to read "John Burroughs". The signature is fluid and cursive, with a prominent initial "J".

John Burroughs, Executive Director

Elizabeth Shafer, Vice-President

Peter Weiss, President Emeritus

Anabel Dwyer, Board of Directors

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