

Statement to the Court by Larry Kerschner (Re: Violation Number 5213177) April 12, 2017

I respectfully ask the Court to dismiss the charges on the grounds that they are preempted by the international laws and treaties cited herein which are the Supreme Law of the United States under the Supremacy Clause and to publicly define the current nuclear weapons policies of the US Government as an ongoing conspiracy to violate international law and the United States Constitution.

I not asking for this dismissal because of any concern for being convicted of this charge; my concern has never been about avoiding a fine and/or a jail sentence. I was raised to believe that the United States is a nation of law based on the Constitution. My concern is that members of the Executive Branch of the United States continue a criminal conspiracy that could lead to the death of millions if not billions of people. As a citizen who has some understanding of the overwhelming destructive power of nuclear weapons and as a combat veteran who knows how easy it is for one human being to kill another, I must do all that is in my power to call attention to the immensely evil nuclear weapons system being perpetrated in my name and with my tax dollars by the US Government.

It is clear that most elected politicians in this country are under the strong influence of the well-paid war and weapons making lobbyists. However, the United States at Nuremberg urged that individual citizens have an affirmative duty to publicly disassociate themselves from a known violation of international law. Then Chief Prosecutor for the United States, Robert H. Jackson, later United States Supreme Court Justice stated "*International law, as such, binds every citizen just as ordinary municipal law.*"

The most important international law principles related to nuclear weapons exist within the Nuremberg Principles, the Genocide Convention, the Geneva Conventions, the United Nations Charter, and the Supremacy Clause of the United State Constitution. In the Charter of the United Nations; Article 2, paragraphs 3 and 4, specifically state that all members shall settle their international disputes by peaceful means in such manner that international peace and security are not endangered - "All members shall refrain in their international relations from *the threat or use of force* against territorial integrity or political independence of any state...."

The real hope and purpose of international law is not to punish violators ex post facto but rather to prevent, forestall, and deter these crimes including the use of nuclear weapons....to stop this criminal madness before nuclear weapons are used again.

International law established by treaty, such as the conventions and charters mentioned above is the "supreme law of the land" under Article VI, Clause 2 of the United State's Constitution ("Supremacy Clause"), and therefore binding on the United States and all States therein. The use or threat of the use of nuclear weapons is a war crime or an attempted war crime because such use would violate

international law by causing unnecessary suffering, failing to distinguish between combatants and noncombatants and poisoning its targets with radiation.

Nuclear weapons are unique in their destructive power and the threat they pose to the environment and human survival. They release vast amounts of energy in the form of blast, heat and radiation. A “limited, regional” nuclear conflict could inject 5 million tons of soot into the upper atmosphere, disrupting the climate and resulting in a decline of global grain production due to: drastic drops in precipitation, reductions in sunlight, lower temperatures, and shorter growing seasons. A significant reduction in grain production (10-30%) over a 10-year period could lead to panic and hoarding on an international scale, further reducing accessible food. Higher mortality rates would first affect the poverty stricken in all countries. The United States has thousands of such nuclear weapons on ‘hair trigger’ alert. Those persons not incinerated in the vast blast radiance and surviving acute irradiation face death from chronic radiation poisoning and starvation, as well as from violence and trauma caused by the likely breakdown of law and order.

On 8 July 1996, The International Court of Justice (ICJ) handed down an Advisory Opinion on the request made by the General Assembly of the United Nations on the question concerning the Legality of the Threat or Use of Nuclear Weapons. The Court held unanimously, threat or use of force by means of nuclear weapons is contrary to Article 2, paragraph 4, of the United Nations Charter and that as it fails to meet all the requirements of Article 51, is unlawful; also 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, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons.

The Statute of the International Court of Justice is an integral part of the United Nations Charter, a treaty ratified by the US Senate. Therefore, the ICJ Statute is vested with the authority of the Supremacy Clause, and is thus binding upon any state or federal court in the US whenever questions of international law are presented. ICJ Statute 38(1) applies to the ICJ but also to any international or domestic tribunal *such as this court* seeking to determine the rules of international law.

Over the past 50 years we have seen a general US military tendency towards increasing tolerance and even preference for the supposed limited use of nuclear weapons delivered by supposed precision weapons such as drones and ‘smart’ bombs, allowing military planners to claim that their objectives are achieved with minimal loss of civilian life. This ignores the fact that the entire point of nuclear weapons is their massive, indiscriminate destructive power.

In September, 2002, a paper concerning the National Security Strategy of the United States of America, marked the adoption of a **pre-emptive strike doctrine**: *‘While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country.’*

A second paper, the National Strategy to Combat Weapons of Mass Destruction (December 2002), referred to the *eventual recourse to a nuclear strategy*: ‘The United States will continue to make clear that it reserves the right to respond with overwhelming force – including through resort to all our options – to the use of WMD against the United States, our forces abroad, and friends and allies’.

The positions presented in both these papers condone and support the policies of continued criminal activity including first-strike threats by the US Government clearly illegal under international law. Individual citizens have an obligation and duty under international law to prevent war crimes, crimes against peace and crimes against humanity.

The willingness to inflict massive destruction on civilian populations and on future generations undermines our deepest human and ethical values. Massive nuclear retaliation is a form of *genocide* that should be completely unacceptable from any legal or sane point of view. It violates not only the principles of international law, common decency and common sense, but also the ethical principles of every major religion.

Even a cursory application of the *jus in bellum* criteria (that is *justice in war*) of the just war theory to the use of nuclear weapons - for example, - *wars must be fought with right intention* – (i.e. to restore peace or to defend violated rights and must be fought with a view to negotiated peace, not unconditional surrender); - *there must be a strong probability of success*; - (i.e. conduct in war must be just and civilians cannot be deliberately targeted); - *proportionality* – (i.e. the good accomplished must outweigh the evil)- leads to the inexorable conclusion that the criteria cannot be met in any nuclear war.

At around 3:30 pm on Mother’s Day Saturday, May 7, 2016, as part of a peaceful non-violent protest of the monstrous and illegal weapons kept on the base, I entered the main highway and briefly blocked traffic on the federal side of the Main gate at Naval Base Kitsap-Bangor. I helped carry an illustration of Fr. Daniel Berrigan, revered anti-war and anti-nuclear weapons priest with a statement by Fr. Berrigan, “*Know where you stand and stand there.*” I also helped carry a bright red banner with symbols showing a link between nuclear weapons and climate change. I will not, however, accept that my actions are in any way unethical, illegal or unjustified. These actions are required of each and every person with any compassion for all human beings and the other creatures on this planet.

Mother’s Day in the United States was first suggested in 1872 by Julia Ward Howe as a day dedicated to peace. Howe saw the effects on both sides of the Civil War and realized destruction from warfare goes beyond the killing of soldiers in battle. Nuclear weapons also go far beyond the threat of war to the threat of the destruction of all of humanity.

I, as an individual, can really do little to make the changes that are needed in our country. However, as the survival of my children and my grandchildren and the rest of the human race is a stake, I have no other option except to raise my voice in any way I can. If that requires me to commit acts of civil resistance so be it. I accept that there will be consequences of my actions. I believe that these actions are also required by international and domestic law.

US citizens, under the decisions of the Nuremberg Tribunal, which Article VI makes the Supreme Law of the United States, have a legal duty and obligation to prevent the commission of and to remove themselves from any participation in or collusion with the illegal nuclear policies of the United States, to avoid criminal responsibility under international law. General common law defense allows individuals, who are aware of the fact that crimes are ongoing, to undertake reasonable actions to stop that crime and to bring it to the attention of the proper authorities.

International law is binding on the United States and all states therein. The use or threat of the use of nuclear weapons is a war crime or an attempted war crime because such use would violate international law by causing unnecessary suffering, failing to distinguish between combatants and noncombatants and poisoning its targets with radiation. Individual citizens have *an obligation and duty* under international law to prevent war crimes, crimes against peace and crimes against humanity. Such duty imposed by the United States Constitution and treaties that are the Supreme Law of the United States preempts any lesser duties imposed by federal, state or local law.

The collective criminal collaboration between most judges and security-state managers needs to be identified for what it is and publicly identified. The fundamental constitutional commitment to the separation of powers has seldom if ever been carried out by the judicial system with regard to US foreign policy, and instead the Executive Branch has been given a virtual blank check to continue their criminal activity with impunity. The judiciary needs to be reminded that their overwhelming duty is to maintain an independent judicial construction of legal rights and duties, including where arguments arise from international law.

Every American citizen has the right and the duty to insist upon a lawful foreign policy. A resolution concerning the relationship between citizens and the State was introduced *by the United States* in the UN General Assembly and unanimously approved. In post-Nuremberg settings, a government that flagrantly violates international law is engaged in criminal activity, and as far as related law is concerned, its policies are not entitled to respect or compliance.

In *People v. Jarka*, No.002170 in the Circuit Court of Lake County, Waukegan, Illinois, Judge Alphonse F. Witt instructed the jury that the threat of use of or the use of nuclear weapons violates international law. He said “The use of or threat of use of nuclear weapons is a war crime or an attempted war crime because such use would violate international law by causing unnecessary suffering, failing to distinguish between combatants and noncombatants and poisoning its targets by radiation”.

US domestic law has expressly incorporated international law by means of article 6 of the US Constitution with respect to treaties, as well as by the decision of the US Supreme Court in *Paquete v. Habana*, 175 US 677 (1900) with respect to customary international law. Since customary

international law is a part of both federal and state common law, federal or state criminal statutes must be construed in a manner that would be consistent with the requirements of international law.

Article 6(a) of the 1945 Charter of the International Military Tribunal established to prosecute and punish Nazi war criminals defined the term “crime against peace” to mean “*planning, preparation, initiation or waging of 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 any of the foregoing*”.

The Nuremberg Charter article 6(b) defines the term “war crime” to include “murder, ill-treatment or deportation of slave labor or any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, *wanton destruction of cities, towns or villages, or devastation not justified by military necessity.*” Article 6 also provides that *leaders, organizers, instigators, and accomplices* participating in the formulation or execution of a common plan or conspiracy to commit crimes against peace, crimes against humanity, and war crimes are responsible for all acts performed by any persons in execution of such a plan.

It is required by the Geneva Conventions of 1949 that all US military personnel be educated as to the international laws of humanitarian armed conflict. According to the Nuremberg Principles all US military personnel assigned to a nuclear weapons mission are obligated to refuse to perform any such illegal orders for waging strategic nuclear warfare upon pain of suffering personal criminal responsibility, punishment and possibly execution as war criminals. All US government officials and members of the US military who might order or participate in a nuclear attack should be lawfully tried by any government of the world community.

Every President of the United States has taken an oath required by article 2, section 1, clause 7 of the US Constitution to “preserve, protect and defend the constitution of the United States” *which expressly includes international treaties and agreements by virtue of article 6.* Similarly article 2, section 3 of the US Constitution requires the President to “take care that the laws be faithfully executed”.

The US Government has a 30-year program to “modernize” the US nuclear arsenal and production facilities. The plan is to build a new generation of US nuclear weapons and nuclear production facilities to last the nation well into the second half of the 21st century. This plan, which has received almost no attention by the mass media, includes redesigned nuclear warheads, as well as new nuclear bombers, submarines, land-based missiles, weapons labs and production plants at a cost of \$1 trillion. This plan also includes developing “tactical” nuclear weapons which will be much more likely to be used because they are “small”. This plan is clear evidence of a continuing criminal conspiracy at the highest levels of the US Government.

Article 2(4) of the United Nations Charter prohibits both the threat of and the use of force except in cases of legitimate self-defense under article 51. It is clear that the actual use of nuclear weapons would grossly violate the international laws of humanitarian armed conflict under any conceivable circumstances. How can the US threaten the use of nuclear weapons without violating international law? The Nuremberg Principles absolutely proscribe crimes against peace, crimes against humanity, and war crimes. How can the US Government lawfully establish a threat to commit such heinous offenses?

A citizen has the right to petition the government for a redress of grievances being committed by the President and the Executive branch of the federal government. In this case, these grievances consist of the latter's ongoing violation of the basic rules of international law, US domestic law (both civil and criminal) and the President's recognized obligations under the terms of the US Constitution. These crimes against international law would include but not be limited to crimes against peace, crimes against humanity, war crimes, and grave breaches of the Geneva Conventions. Under the Separation of Power Doctrine, the Court must compel the President and other members of the Executive Branch to cease and desist from the continuing criminal activity related to US nuclear weapons policies.

This not a civil disobedience case but a case of civil resistance. In civil resistance cases, individuals are attempting to *prevent the ongoing commission of crimes* under well-recognized principles of international and domestic law. To resist reasonably a violation of international law is a matter of legal right, possibly even legal duty if knowledge and capacity for action exists.

I respectfully ask the Court to dismiss the charges against us on the grounds that they are preempted by the international laws and treaties cited herein which are the Supreme Law of the United States under the Supremacy Clause and to publicly define the current nuclear weapons policies of the US Government as an ongoing conspiracy to violate international law and the United States Constitution.