

ICAN-UK's evidence to the BASIC Trident Commission

1. Should the UK remain a nuclear weapon state?

The UK should not remain a nuclear weapon state. The threat and use of nuclear weapons is illegal under international law and the continued possession and planned replacement of Trident is contrary to the UK's international treaty obligations.

The UK's international legal obligations

The UK's Trident nuclear weapons are subject to the requirements and provisions of international law. Currently, the UK's declared nuclear weapons policy is one of 'defensive deterrence'. The government has stated that it:

'would only consider using our nuclear weapons in extreme circumstances of self defence, including the defence of our NATO Allies'.¹

The UK has an inherent right to self defence under the UN Charter, but, as the International Court of Justice (ICJ) has pointed out, 'if it is to be lawful, the declared readiness of a State to use force must be a use of force that is in conformity with the Charter'.²

Since any use of nuclear weapons would violate the principles of justice and international law, they can never be considered a legitimate means of force, whether in 'self defence', when the 'very survival' of a state is at stake, or otherwise.

The ICJ also points out that if the use of such a force is deemed to be illegal 'the threat to use such force will likewise be illegal'. This is important because, in order to be effective, a deterrence policy, such as that of the UK, 'necessitates that the intention to use nuclear weapons be credible'.³ Since the general deployment of Trident constitutes an illegal threat it is therefore illegitimate under international law.

Moreover, in May 2010, the parties to the Nuclear Non-Proliferation Treaty (NPT), which includes the major nuclear weapon states, affirmed that any use of nuclear weapons would cause catastrophic humanitarian consequences, and that states must comply with International Humanitarian Law (IHL) 'at all times'.⁴

The cardinal principles of IHL are such that any threat or use of nuclear weapons must not be targeted at civilians, must be capable of distinguishing between civilian and military targets, and must not cause unnecessary suffering to combatants, or harm greater than that unavoidable to achieve military objectives. Given these criteria, any use of nuclear weapons would involve war crimes and, moreover, crimes against humanity, because of the fact that the effects of nuclear weapons are uncontrollable.

1 'Securing Britain in an Age of Uncertainty- the Strategic Defence and Security Review', UK Cabinet Office, p.37

2 'Legality of the Threat or Use of Nuclear Weapons', Advisory Opinion, ICJ Reports 1996, para.47

3 Ibid., para.48

4 '2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document', p.19

So because states must comply with IHL 'at all times', it is clear that the use of Trident warheads in any military situation, including *in extremis* self defence, would also contravene the requirements of the laws applicable in armed conflict.

To summarise, the UK's nuclear weapons may be intended as a means of defence, but their use would inevitably violate principles of necessity and proportionality. Any illegal use of force is also illegal if threatened. The UK's policy of nuclear deterrence, which, by its own logic, relies upon it being perceived as a 'credible' threat is therefore also illegal. To uphold international law the UK must act responsibly and commit to relinquishing and destroying its nuclear arsenal.

Trident and the Nuclear Non-Proliferation Treaty (NPT)

As a signatory to the NPT the UK has a clear legal obligation to disarm. Article VI of the NPT commits states parties 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'.

As unanimously affirmed by the International Court of Justice (ICJ) in its 1996 advisory opinion on the illegality of nuclear weapons, this means that NPT members must not only 'pursue' negotiations for disarmament- they must achieve that goal.

The UK government has acknowledged that compliance with the NPT and the promotion of nuclear non-proliferation activities are vital parts of global security.

In 2009 the Foreign and Commonwealth Office stated that the UK remains 'firmly committed to the NPT as the best vehicle for creating the conditions for a world free from nuclear weapons'.⁵

The problem is that the UK government also believes that its retention of Trident 'is fully consistent with our international legal obligations'. The government thus erroneously interprets the NPT as recognising 'the UK's status (along with that of the US, France, Russia and China) as a nuclear weapon State'.⁶

The UK's approach to the NPT here is precisely opposite to what it should be. The NPT does not confer legitimacy on the UK or any other state's nuclear arsenal. The NPT relies upon the nuclear weapon states acting in good faith, enacting policies commensurate with progress towards nuclear disarmament.

By prizing nuclear deterrence as the nation's 'ultimate insurance policy' and pursuing the replacement of Trident, the UK directly undermines the NPT.

If the UK decides to remain a nuclear weapons state, it will therefore weaken initiatives to limit the spread of nuclear weapons and diminish efforts to build confidence and trust between states. This will, in turn, make the world more unstable and insecure and prevent the realisation of a world without nuclear weapons and the negotiation of a global nuclear abolition treaty.

5 'Global Security: Non-Proliferation, Response of the Secretary of State for Foreign and Commonwealth Affairs', p.13

6 'The Future of the United Kingdom's Deterrent', UK Ministry of Defence, p.14

Scrap Trident, invest in human security

General Lee Butler once remarked that, 'we escaped the Cold War without a nuclear holocaust by some combination of skill, luck and divine intervention, and I suspect the latter in greatest proportion'.⁷ Nuclear weapons have not and do not 'keep the peace' or prevent conflict- quite the opposite- they ensure ever increasing insecurity for the world. Yet despite the end of the Cold War, the threat of nuclear devastation remains.

The real security challenges the UK needs to address concern climate change, resource depletion, poverty and migration. Nuclear weapons are not only useless when it comes to dealing with these issues- they cast a long shadow over all efforts to achieve human security globally.

The significant amount of resources and expertise that go into building and maintaining nuclear weapons should therefore be diverted towards development aid, conflict resolution, green technology and renewable energy.

Recent polls show that a clear majority of UK voters would support moves to scrap nuclear weapons rather than put money into a new generation of Trident submarines and warheads.⁸ The government should take advantage of this opportunity to adopt domestic and foreign policies which fulfil the needs of human security and respect the UK's international treaty obligations.

2. If it should, is Trident renewal the only or best option that the U.K. can and should pursue?

As outlined above, the UK should not replace Trident and should instead immediately begin the process of disarming its nuclear weapons and signal its support for a global treaty banning nuclear weapons. It is also important to recognise, however, that there is no significant qualitative difference- under international law and the NPT- between the alternate options currently being discussed for replacing Trident.

One may debate the relative economic and strategic merits of replacing Trident with a different system, but ultimately the only legitimate and responsible option for the UK is disarmament. Ending Continuous At Sea Deterrence (by reducing the UK's SSBN fleet from 4 to 3), would indicate that the UK is stepping down the nuclear ladder, but, if the UK's approach is to be credible in the long-term, it should form part of a commitment to complete disarmament.

Similarly, the UK may in future reduce the explosive power of its nuclear arsenal, but, as Professor Nick Grief points out, the use of even a single warhead with a lower yield would still 'surely violate the requirements of international law applicable in armed conflict, particularly the intransgressible principles of IHL'.⁹ For example, compliance with IHL's rule of proportionality requires the ability to control the weapon or method of warfare used. This is not possible with nuclear weapons, principally because of the radiation effects.

According to Dr Frank Barnaby, the UK can vary the yield of its nuclear warheads "between about 1kt (achieved by removing the tritium bottle), 10kt (by 'switching out' the thermonuclear stage),

7 General George Lee Butler, Montreal, March 11, 1999, speech to the Canadian Network Against Nuclear Weapons

8 http://www.icmresearch.com/pdfs/2009_july_guardian_poll.pdf and <http://www.dailymail.co.uk/news/article-1286199/David-Cameron-told-Heres-37bn-cuts-started.html>

9 'Trident and International Law', Rebecca Johnson and Angie Zelter, pp.174-5

and 100kt (using the total fission plus fusion yield)."¹⁰ The devastating effects of a 1 kiloton airburst explosion would cause virtually everyone within a 600m radius to be killed within a few seconds. Within 200m there will be 100% mortality from the heat alone, and everyone within 800m who is directly exposed to the blast will be killed. Within a radius of 1km there will be almost 100% fatality among those directly exposed to the acute effects of radiation.

As the yields available to the UK increase so the indiscriminate suffering caused worsens. Any use of nuclear weapons within the range of yields available to the UK would therefore be illegal under international law.¹¹ The likelihood of a 'limited' use of lower-yield weapons escalating into an all-out use of high-yield nuclear weapons must also be recognised.

3. What more can and should the UK do to more effectively promote global nuclear disarmament, non-proliferation and nuclear security?

The UK can best contribute to nuclear non-proliferation, disarmament and multilateral diplomacy by committing itself to scrapping the Trident nuclear weapons system entirely. The government should also express its support for immediate negotiations to begin on a Nuclear Weapons Convention.

No to Trident, Yes to a Nuclear Weapons Convention

In its 2006 White Paper 'The Future of the United Kingdom's Nuclear Deterrent', and on several occasions since, the government has sought to present itself as a responsible nuclear weapon state by highlighting the measures it has taken to 'reduce the scale and readiness of our nuclear forces to ensure they are the minimum necessary to achieve our deterrent objectives'.¹²

The recent announcement of nuclear warhead and missile reductions are to be welcomed. However, the UK's overall record of disarmament is inadequate, consisting as it does of reductions and closures of nuclear facilities largely undertaken in response to the end of the cold war twenty years ago.

Moreover, it is vital to recognise, as the Irish government has done, that 'reductions in nuclear weapons...do not necessarily equate to a commitment to the complete elimination of nuclear weapons'. Thus, whilst nuclear weapons reductions are desirable, they 'may be undertaken for a wide variety of reasons', including 'financial considerations, safety and security, preventing weapons from falling into the hands of terrorists, environmental reasons and so on'.¹³

The government's argument that it is making progress towards nuclear disarmament, 'has an excellent track record' and is 'fully compliant with all our NPT obligations' is further undermined by the new Teutates deal.¹⁴ Under the terms of this agreement, the UK and France have announced that they intend to collaborate on nuclear warhead technology for the next 50 years.

This initiative strikes at the heart of the specific requirement in Article VI of the NPT for states to act in 'good faith' to achieve disarmament and the general need for states to work sincerely and

10 'The Future of Britain's Nuclear Weapons', Oxford Research Group, p.9

11 'Britain's New Nuclear Weapons', Medact, pp.2-5

12 Ibid., p.12

13 The Acronym Institute, 'Day 9 at NPT', <http://acronyminstitute.wordpress.com/>

14 'The Future of the United Kingdom's Deterrent', UK Ministry of Defence, p.14, 20

cooperatively to attain the treaty's agreed objectives. The Teutates deal is thus an act of pure 'bad faith'. It sends a clear message that the UK and France intend to maintain, replace and modernize their nuclear arsenals for decades to come. If non-nuclear weapon states perceive that nuclear weapon states (such as the UK) continue to give nuclear weapons high salience in their national security policies the incentive for further states to acquire nuclear weapons will surely rise and the NPT may crumble away.

The simplest and most effective way the UK can help prevent proliferation and promote disarmament would be for the government to announce that Trident will be disarmed and dismantled- not replaced. Furthermore, the UK should support a Nuclear Weapons Convention- an international, legally binding agreement outlawing and eliminating nuclear weapons.

Such an agreement is supported by 140 states and countless civil society groups. The reason why so many nations and people from around the world back a Nuclear Weapons Convention is because they realise the need to, as Mexican Ambassador Claude Heller puts it, 'prohibit these weapons with a timeframe that provides certainty to the international community'.¹⁵

Such calls are imbued with a notable sense of urgency. This stems from long-standing frustration amongst many of the non-nuclear-weapon states at the lack of progress on disarmament by the nuclear-weapon states and the failure to establish a Middle East WMD-Free Zone, measures which were central to the NPT's indefinite extension in 1995.

To this end the UK should renew its support for the 2012 Conference on establishing a Middle East WMD-Free Zone and support other existing and proposed WMD and Nuclear Weapon Free Zones. In particular, the UK should accept that Diego Garcia be included in the African NWFZ so that the US cannot keep nuclear weapons in its military base there.

If the majority of the 184 non-nuclear weapon states parties to the NPT, who want a legally-binding timeframe for disarmament, do not see sufficient progress towards this goal, the current window of opportunity for nuclear abolition may not only close, but a new era of nuclear proliferation and terror may be opened.

The beginning of negotiations now on a Nuclear Weapons Convention with aspirational and practical steps for the short and long term would finally provide the political momentum to reach the summit of abolition and realise the legal obligations for nuclear disarmament enshrined by the NPT. The UK must act on its obligations and responsibilities and puts its weight behind a global ban on nuclear weapons now.

15 The Acronym Institute, 'Day 9 at NPT', <http://acronyminstitute.wordpress.com/>