

# 'Using the legal arguments better'

CND conference workshop, 18 October 2015

## **1. *Trident replacement and the Non-Proliferation Treaty***

The Non-Proliferation Treaty (NPT - <http://bit.ly/1nsiLVV>) is the main international treaty controlling the spread of nuclear weapons. It has been signed by more than 190 states, including the United Kingdom. Under Article VI of the NPT parties to the treaty undertake 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”. This commitment was reaffirmed at the 2000 and 2010 Review Conferences for the NPT.

The government claims that its Trident replacement plans are consistent with obligations under Article VI of the NPT. However, a legal opinion published in December 2005 by Rabinder Singh QC and Professor Christine Chinkin (<http://bit.ly/1PI4YSj>) argues that replacing Trident would represent a material breach of Article VI of the NPT.

## **2. *Development of new nuclear weapons & the Comprehensive Nuclear-Test-Ban Treaty***

The Comprehensive Nuclear-Test-Ban Treaty (CTBT - <http://bit.ly/1LmiK5e>) has not yet entered into force, but has been ratified by the UK and is therefore binding on the UK government. The Treaty aims to prevent the development of nuclear weapons by banning nuclear test explosions. The Preamble to the Treaty recognises that “the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects”.

Research work currently underway at the Atomic Weapons Establishment uses laser experiments, hydrodynamic testing, and computer modelling to substitute for nuclear test explosions in developing new warheads and warhead components. This is incompatible with the spirit, and possibly also the letter, of the CTBT.

## **3. *The use of armed force***

Under international law the use of armed force should be the last resort in settling international disputes. Armed force can only be legally used when a state has been attacked and must defend itself, and / or if the United Nations Security Council acts to restore international peace and security after passing an appropriate resolution.

Article 2.3 of the United Nations Charter (<http://bit.ly/1jiDnL>) states: “All members shall settle their international disputes by peaceful means in such a manner that international peace, security, and justice are not endangered”.

## **4. *The use of nuclear weapons***

Nuclear weapons are designed to cause extreme destruction and are indiscriminate in nature. Their use during war would be likely to meet the definition of a war crime or a crime against humanity.

The UK has not ruled out the use of NW against civilian targets. Targeting arrangements for UK

nuclear weapons are highly secret, but the principal targets which the weapons are designed to destroy are believed to be military command and control targets in and around Moscow. It is impossible to envisage such an attack taking place without high levels of civilian casualties, Even one Trident warhead, with an explosive power of 100 kilotons, has a destructive power around 8-10 times greater than the atomic bombs which destroyed Hiroshima and Nagasaki in 1945.

Under international laws governing the conduct of war attacks on civilians are unlawful. The 1977 Additional Protocol I to the Geneva Conventions (<http://bit.ly/1NvIG0o>) outlaws attacks which cause loss of civilian life which is “excessive in relation to the concrete and direct military advantage anticipated”. Article 48 of the Protocol states: “Parties to any conflict shall at all times distinguish between civilian populations and combatants and between civilian objects and military objectives”. The Protocol has been incorporated into UK law through the Geneva Conventions (Amendment) Act 1995.

The International Committee of the Red Cross has summarised the duty to protect civilians during war: “The basic rule of protection and distinction is the foundation on which the laws and customs of war rests: the civilian population and civilian objects must be respected and protected”.

## **5. *The International Court of Justice and the threat of use of nuclear weapons***

In 1996 the International Court of Justice (ICJ) issued an advisory opinion on the legality of the threat or use of nuclear weapons (<http://bit.ly/1hW3TeQ>). The ICJ ruled that “The threat or use of nuclear weapons would generally be contrary to the rules of international law” although “the court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a state would be at stake”. The threat or use of nuclear weapons “must be compatible with the requirements of international law. States must never use weapons that are incapable of distinguishing between civilian and military targets”.

The UK government claims to accept the ICJ's ruling but argues that use of nuclear weapons could be lawful under some circumstances. UK policy on the use of nuclear weapons, most recently outlined in the 2010 Strategic Defence and Security Review (<http://bit.ly/1teuVEQ>) states that “we would only consider using our nuclear weapons in extreme circumstances of self defence, including the defence of our NATO Allies”, but “we remain deliberately ambiguous about precisely when, how and at what scale we would contemplate their use”.

The ICJ emphasised the importance of the NPT obligation “to negotiate in good faith [on] nuclear disarmament” in its ruling.

## **6. *Trident Ploughshares: Public Interest Cases Against Trident***

This project encourages groups around England and Wales to go to their local magistrates court to try and initiate a citizen's prosecution against the Secretary of State for Defence for conspiring to commit a war crime. If this is done in many places lots of local people will hear the arguments for and against Trident and the legal system will have to deal with the multiple attempts to get the courts to examine the legality of Trident.

More information is online at <http://bit.ly/1JXRgO5>, with an excellent set of resources giving more details about the legal case against nuclear weapons at <http://bit.ly/1LuADdV>. For more information about this campaign please contact [picat@tridentploughshares.org](mailto:picat@tridentploughshares.org)

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