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THE BERTRAND RUSSELL PEACE FOUNDATION

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### FULL SPECTRUM DOMINANCE

*'Full Spectrum Dominance' is the key term in Joint Vision 2020, the blueprint the United States Department of Defence will follow in the future, from which these extracts are taken.*

'The ultimate goal of our military force is to accomplish the objectives directed by the National Command Authorities. For the joint force of the future, this goal will be achieved through full spectrum dominance – the ability of US forces, operating unilaterally or in combination with multinational and interagency partners, to defeat any adversary and control any situation across the full range of military operations.

The full range of operations includes maintaining a posture of strategic deterrence. It includes theater engagement and presence activities. It includes conflict involving employment of strategic forces and weapons of mass destruction, major theater wars, regional conflicts, and smaller-scale contingencies. It also includes those ambiguous situations residing between peace and war, such as peacekeeping and peace enforcement operations, as well as non-combat humanitarian relief operations and support to domestic authorities.

The label full spectrum dominance implies that US forces are able to conduct prompt, sustained, and synchronized operations with combinations of forces tailored to specific situations and with access to and freedom to operate in all domains – space, sea, land, air, and information. Additionally, given the global nature of our interests and obligations, the United States must maintain its overseas presence forces and the ability to rapidly project power worldwide in order to achieve full spectrum dominance.

Achieving full spectrum dominance means the joint force will fulfill its primary purpose – victory in war, as well as achieving success across the full range of operations, but it does not mean that we will win without cost or difficulty. Conflict results in casualties despite our best efforts to minimize them, and will continue to do so when the force has achieved full spectrum dominance. Additionally, friction is inherent in military operations. The joint force of 2020 will seek to create a “frictional imbalance” in its favor by using the capabilities envisioned in this document, but the fundamental sources of friction cannot be eliminated. We will win – but we should not expect war in the future to be either easy or bloodless.

**Source of Friction**

- Effects of danger and exertion
- Existence of uncertainty and chance
- Unpredictable actions of other actors
- Frailties of machines and information
- Humans

The requirement for global operations, the ability to counter adversaries who possess weapons of mass destruction, and the need to shape ambiguous situations at the low end of the range of operations will present special challenges en route to achieving full spectrum dominance. Therefore, the process of creating the joint force of the future must be flexible – to react to changes in the strategic environment and the adaptations of potential enemies, to take advantage of new technologies, and to account for variations in the pace of change. The source of that flexibility is the synergy of the core competencies of the individual Services, integrated into the joint team. These challenges will require a Total Force composed of well-educated, motivated, and competent people who can adapt to the many demands of future joint missions. The transformation of the joint force to reach full spectrum dominance rests upon information superiority as a key enabler and our capacity for innovation.’

**SON OF STAR WARS**

*This letter was published in The Times in March 2001 to coincide with the visit to Washington of British Defence Minister Geoff Hoon.*

‘During his visit to Camp David last month, Prime Minister Blair appears to have reached an accommodation with President Bush on the contentious issue of missile defence, saying that he understood and shared the US concern about the threat from weapons of mass destruction and would work closely with the US to consider the options and implications.

It is almost a year since the five largest nuclear powers gave a clear written undertaking ‘to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament’ and the world awaits an indication of how this objective is to be achieved. Many agree that the implications of missile defence include destabilising international relations, undermining existing arms control treaties and causing a new nuclear arms race. Some of the options being considered under the umbrella title of missile defence would require the use and further development of the Fylingdales radar station and Menwith Hill communications centre, both in North Yorkshire.

Defence Minister Geoff Hoon will be meeting his US counterpart Donald

Rumsfeld in Washington on 19th March for talks on key issues, including missile defence. He stated recently that: 'As its closest ally, we would, of course, want to respond helpfully should a request [to use any facilities in Britain] be made by the United States' (*Hansard* 12th February). This rather sounds like a diplomatic 'yes' to a proposal that hardly upholds the stable strategic relationships that the Prime Minister values.

We find it unacceptable to be told repeatedly that the government has no opinion on missile defence. This, for example from Foreign Office Minister Keith Vaz: 'No specific proposal is on the table but when such a proposal is available for discussion, it will be discussed in the proper way' (*Hansard* 27th February).

May we suggest that 'the proper way' is to consult the British public and debate it in Parliament.'

*This letter was signed by*

Malcolm Harper, Director, United Nations Association

Dave Knight, Chair, Campaign for Nuclear Disarmament

Peter Nicholls, Chair, Abolition 2000 UK

Dan Plesch, Director, British American Security Information Council

Gill Reeve, Assistant Director, Medact

## NUCLEAR WEAPONS, UNCERTAINTY AND THE LAW

*There is good reason to believe that any threat or use of a 100 kiloton UK Trident warhead would be open to serious legal doubts. The Government responds by stating that 'the United Kingdom's minimum nuclear deterrent is entirely consistent with international law'. However, we need more information before we can assess the validity of this claim. Answers to several questions are required, as the World Court Project ([www.gn.apc.org/wcp](http://www.gn.apc.org/wcp)) spells out.*

### **The Government case**

If challenged about the legality of Trident, the Government uses the following arguments:

- The 1996 Advisory Opinion of the International Court of Justice (ICJ) did not rule that the threat or use of nuclear weapons would be illegal.
- The legality of the potential use of nuclear weapons is to be determined by the criteria which apply to any form of weapon.
- The determining factor is the specific circumstances in which they are to be used.
- Hypothetical speculation about such circumstances serves no useful benefit.

These arguments were developed in the written and oral submissions made by the United Kingdom and United States to the International Court of Justice in

1994 and 1995 when it was considering requests by the World Health Organisation (WHO) and the UN General Assembly (UNGA) for Advisory Opinions on the legal status of the threat of use or nuclear weapons.

### **Nuclear Weapons in General?**

The arguments in the submissions all refer to nuclear weapons generally, and never to specific types. This is not surprising, as the requests for Advisory Opinions were couched in general terms. Letters to the Government about Trident are therefore usually met with replies about nuclear weapons in general. However, if, as is generally accepted, nuclear weapons are subject to the same legal restraints as any form of weapon, then discussion in the United Kingdom must revolve around Trident, the only nuclear weapon system it deploys.

### **Hypothetical situations**

In spite of the Government's reluctance to entertain hypotheses, the International Court of Justice submissions contain references to possible legal use. Speaking for the United Kingdom in November 1995, Attorney General Sir Nicholas Lyell said, 'Let me take an example. A State or group of States is faced with invasion by overwhelming enemy forces. That State or that group of States is certainly entitled to defend itself. If all the other means at their disposal are insufficient, then how can it be said that the use of a nuclear weapon must be disproportionate?' The US oral statement referred to situations 'such as a small number of accurate attacks by low-yield weapons against an equally small number of military targets in non-urban areas'. The United Kingdom written statement on the World Health Organisation request claimed that 'modern nuclear weapons are capable of precise targeting, and many are designed for use against military objectives of quite small size'. The emphasis is on limited use of low-yield weapons.

On 15<sup>th</sup> November 2000, during the Lord Advocate's Reference proceedings arising out of the Greenock case, Duncan Menzies QC, Advocate Depute for the Crown, provided an interesting example of the possible legal use of UK Trident.

'...if the nuclear power aggressor was threatening the territorial integrity of a non-nuclear victim state, let's take it, the example of China being a nuclear power threatening New Zealand, a non-nuclear power, with a battle fleet armed with nuclear missiles which it was stating it was about to fire at New Zealand and which battle fleet was in the Pacific, approaching the point at which the state of New Zealand was in range of its nuclear missiles, in such a situation I submit that it would be consistent with international law, including humanitarian laws applicable to armed conflict, for another nuclear power to use nuclear force against that battle fleet...'

Already, questions arise:

- 1) **Why was the United Kingdom Trident system, with its 100 kiloton warheads, not referred to in the United Kingdom submissions to the International Court of Justice?**

## 2) Would the Ministry of Defence endorse the example provided by Duncan Menzies QC of how Trident might be used lawfully?

### Doubts about Certainty

The United States and United Kingdom submissions consistently presuppose that those arguing for illegality claim that all nuclear weapons have certain ‘inherent’ characteristics which inevitably make their threat or use incompatible with international humanitarian law. Thus the United Kingdom written statement on the World Health Organisation request refers to ‘those who maintain that *any* resort to nuclear weapons by a state which is attacked will *inevitably* lead to an escalation in the conflict...’ and ‘It has sometimes been argued that the use of nuclear weapons would inevitably violate this principle’ [Unnecessary Suffering]. In referring to the principle that civilian populations must not be made the object of attack, the United Kingdom claims that ‘the essence of this argument is that nuclear weapons cannot be used in a way which enables a distinction to be drawn between combatants on the one hand and civilians and civilian objects on the other. They are thus said to be *inherently* indiscriminate weapons’. [emphases added]

These are not isolated examples: the submissions are full of such language.

We can accept that nothing can be predicted with certainty. However, a successful challenge to the United Kingdom Government’s position would not have to show that any threat or use would be inherently illegal under any circumstances. It would only need to show the improbability of lawful threat or use in any plausible scenario. Although nuclear weapons are subject only to the same legal restraints as any other weapon, the International Court of Justice stated that because of the ‘unique characteristics of nuclear weapons... the use of such weapons in fact seems scarcely reconcilable with respect for [the principles and rules of law applicable in armed conflict]’. If this is true of nuclear weapons in general, it must apply all the more forcefully to a 100 kiloton Trident warhead.

### Risk assessment

From publicly available documents and correspondence with the Government, we still have little idea of how it estimates risk. Risk assessment means estimating the probability of a decision having an unintended but pernicious outcome, and multiplying it by the seriousness of that outcome. A small risk of a disaster would weigh more heavily than a moderate risk of a minor problem. With just one 100 kiloton Trident warhead, let alone the current load of three in each United Kingdom missile, the outcome could be catastrophic.

The International Court of Justice recognised that ‘The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilisation and the entire ecosystem of the planet’. However small the probability of such an outcome on a particular occasion, the enormity of a potential catastrophe produces a result beyond the limits of human calculation.

What is at issue here is the risk of contravening international humanitarian law. In her Dissenting Opinion, Judge Higgins pointed out: ‘there has been considerable debate, as yet unresolved, as to whether this principle [that civilians may not be the target of attack] refers to weapons which, because of the way they are commonly used, strike civilians and combatants indiscriminately, or whether it refers to whether a weapon, ‘having regard to (its) effects in time and space’ can ‘be employed with sufficient or with predictable accuracy against the chosen target’” Her first alternative would tend to outlaw nuclear weapons in general. Her second one requires examination of particular nuclear weapon systems.

To be convincing, the United Kingdom Government must therefore argue that the risk of law-breaking arising from the threat or use of Trident is almost zero. It must be shown that any use of Trident would carry virtually no risk of nuclear escalation, serious damage to neutral states, or disproportionate civilian casualties. There must be practically no question of missing the target due to variations in the weather, microscopic blemishes on the delivery vehicle or minor faults in the guidance system.

We must also bear in mind that our experience of nuclear detonations on civilian populations is limited. There have only been two (Hiroshima and Nagasaki), in both of which the destructive power was less than a fifth of a Trident warhead.

The same approach applies to any possibility that a Trident missile might be launched by accident or miscalculation. It is not sufficient to claim that such a possibility is very remote. It must be shown to be effectively excluded over the whole lifetime of the system. We must be convinced that there is no room for human error. Unless this is true, the deployment of Trident amounts to recklessness.

The next questions are therefore:

- 3) Without a serious and publicly available probability analysis of the potential results of a Trident strike, how can the Government assure us that no threat or use of Trident could risk violating the law?**
- 4) Is the Government confident that Trident could be used with sufficient or predictable accuracy against the chosen target?**

### **Balancing the Consequences**

Sir Nicholas Lyell told the International Court of Justice that ‘even a military target must not be attacked if to do so would cause collateral civilian casualties or damage to civilian property which is excessive in relation to the concrete and direct military advantage anticipated from the attack – an aspect of the wider principle of proportionality to which I have already referred’, but that ‘this rule requires a balance to be struck between the concrete and direct military advantage anticipated and the level of collateral civilian casualties and damage foreseen’ and ‘the greater the military advantage which can reasonably be expected to result from the use of a weapon in a particular case, the greater the risk of collateral civilian casualties which may have to be regarded as within the law’.

Clearly a balance between military advantage and collateral damage is envisaged. This is the crux. We accept that, in the nature of things, no future scenario can be foreseen precisely. However, we have been assured that 'legal advice would also be available to Ministers if circumstances were extreme enough for us ever to have to consider the use of nuclear weapons to defend ourselves from the attack. We are satisfied that our arrangements to ensure informed legal advice in such circumstances are fully adequate...' and 'legal advice from the Government's legal advisers was available to Ministers and senior officers and officials in considering the Strategic Defence Review' [Douglas Henderson, Minister of State for the Armed Forces, letter to Nigel Waterson MP, in response to a letter from Leslie Dalton, 1 June 1999].

Legal advice in a nuclear emergency would not spring from a vacuum. We can assume that criteria (as opposed to 'hypothetical speculation') do exist for balancing military advantage with collateral civilian casualties in the event of a nuclear strike. We need to know more about these criteria. Simply to say that legality depends on the balance between military advantage and civilian suffering is not enough. There is the problem of comparing different orders of criteria. The military advantage of destroying a particular target can, in principle, be assessed. In a utilitarian world we can, with great difficulty, imagine how values could be attached to the lives and wellbeing of a specified number of civilians. What seems incomprehensible is how anyone could make the comparison between the value of a very large number of lives and a specific military advantage. We therefore need to understand the United Kingdom Government's procedures and principles for making these assessments. These basic criteria can hardly qualify as state secrets. We therefore need to know:

- 5) What are the general criteria for determining the balance between military necessity and suffering to civilians arising from the use of Trident?**
- 6) What are the general theoretical sources of these criteria?**
- 7) Is the Government confident that, even if these criteria were well understood by lawyers and decision makers well beforehand, they could be relied upon to provide secure practical, moral and legal guidance during a nuclear emergency?**

### **Effects on people**

These criteria must surely include the effect of a 100 kiloton Trident warhead on any civilian population living at or near likely nuclear targets. On 10 January, 2000, Jeremy Corbyn MP raised this issue in a question to the Secretary of State for Defence. The answer yielded the information that computer modelling had taken place 'which enables us to assess the effects of nuclear detonations'. The factors taken into account included 'the yield and design of the weapon used; the accuracy of the delivery system employed; the nature and construction of the target; the characteristics of the surrounding terrain; the height of the detonation; and geological and weather conditions'. The factors listed do not include the

crucial one – the likely effects on the civilian population. Without this, neither the public at large nor the lawyers advising the government can make an informed legal assessment. So we have another question:

**8) Has any assessment been carried out by the United Kingdom Government of the effects of a 100 kiloton Trident warhead detonation on a civilian population living near a nuclear target? If so, is there any good reason why the results should not be made public?**

#### **Nuclear secrecy**

A Ministry of Defence letter has stated: ‘nor does the Government believe that any conceptual planning on potential use of nuclear weapons carried out by the Ministry of Defence can reasonably be made open to public scrutiny. Secrecy in this area plays an important part in enabling the United Kingdom to maintain a credible minimum deterrent capability at the lowest possible level’. [Stephen Willmer to Angie Zelter, 2 March, 2000]. It is one thing to invoke the need for secrecy in matters of military capabilities and planning. It is quite another to claim it for the legal thinking governing these vital issues. This should be open to democratic accountability. So we need to know:

- 9) Why does the Government decline to disclose the legal criteria governing the possible use of Trident?**
- 10) If these criteria are treated as secret, how can the courts operate effectively in cases involving citizen disarmament of Trident?**
- 11) How can ordinary citizens, who honestly doubt the legality of the threat or use of Trident, hope to act with probity without access to the Government’s legal criteria?**

#### **Reprisals**

One aspect of the legal criteria for the threat or use of Trident gives rise to special cause for concern. The United States stated orally to the International Court of Justice that ‘the customary law of reprisal permits a belligerent to respond to another party’s violation of the law of armed conflict by itself resorting to what otherwise would be unlawful conduct’. The US written statement referred to Additional Protocol 1 to the 1949 Geneva Conventions which contains prohibitions on reprisals against civilian populations. ‘These are among the new rules established by the Protocol that... do not apply to nuclear weapons’. This view was echoed in the United Kingdom oral statement. It is to be hoped that this interpretation does not imply a view that a nuclear reprisal directed towards the civilian population as such could ever be lawful.

**12) Can the Government confirm that under no circumstances would Trident ever be even threatened, let alone used, against a civilian population as such?**

#### **Legal scrutiny of trident needed**

The very least that can be concluded from this assessment is that the legality of



Britain's nuclear policy is open to question. However, on 23 August 1999, George Robertson, then Secretary of State for Defence, wrote to Austin Mitchell MP, 'Thank you for your letter of 22 July 1999 requesting a meeting to discuss the legality of Trident. I am afraid that such a meeting would serve little purpose. We have repeatedly made our position clear. We do not consider the possession or use of nuclear weapons as such to be illegal'. The delegation would have consisted of three MPs and Lord Murray, a former Lord Advocate of Scotland. They had asked for discussion about UK Trident in particular, not nuclear weapons *as such*. There was a complete refusal to discuss the matter, even with very well-informed and distinguished people, and with no real reason given – merely an unsupported assertion. This is only one of several examples of attempts to raise the issue which have been rejected without proper explanation – which is why we need to ask one more question;

**13) Will the Government recognise that the legality of the threat or use of Trident is open to serious doubt and therefore deserves the fullest public scrutiny?**

## HIROSHIMA CONFERENCE

The 2001 World Conference against Atomic and Hydrogen Bombs will take place from August 3rd to 9th in Hiroshima and Nagasaki. Its theme is 'Nuclear Weapons States Must Make Good on Their Promise to Abolish Nuclear Weapons'.

More than sixty million people in Japan have signed the 'Appeal from Hiroshima and Nagasaki' for the elimination of nuclear weapons. The signature campaign has spread to many parts of the world. However, the leaders of the United States and other nuclear weapons states will not voluntarily eliminate their nuclear weapons. Despite the official promise to 'eliminate their nuclear arsenals,' the United States Government continues its Missile 'Defence' Plan, fuelling the nuclear arms race, and its tests and development of nuclear weapons. The Japanese Government, despite being the only country to have suffered attacks with atomic bombs, and having a peaceful constitution, supports United States nuclear weapons, saying that Japan is under the US nuclear 'umbrella.' The Japanese Government concluded secret agreements with the United States to bring nuclear weapons into Japan and make Japan a foothold for a nuclear war, which would be initiated by the United States. An increasing number of United States warships call at Japanese civilian ports. Frequent ultra-low flight training and night-landing practice and the planned construction of a new base in Okinawa inflict serious damage on the people, and are met with growing opposition and protests by citizens and local councils.

The Organising Committee of the World Conference against A & H Bombs has called for common actions across the world in support of the abolition of nuclear weapons. They can be contacted by e-mail ([antiatom@twics.com](mailto:antiatom@twics.com)).

## STOP BOMBING VIEQUES!

In April 2001, the Governor of New York, Republican George Pataki, is visiting Puerto Rico. He will see for himself the situation on the island of Vieques, where more than 9,000 people live. The US Navy has used Vieques for military exercises and as a bombing range for more than 60 years. Depleted uranium munitions are thought to have been fired there.

Governor Pataki stated that 'we are happy with the President's suspension of bombing in March, but we want the immediate and permanent cessation of bombing, not in three years; we want the Navy to leave Vieques now.'

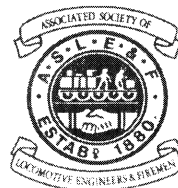
The announcement of the visit by New York's Governor is in response to the unanimous approval by the Puerto Rico State Legislature on the 26th of March of a resolution calling for the 'immediate and permanent cessation of all activity by the US military on the Island of Vieques.'

Nilda Medina, spokeswoman for the Committee for the Rescue and Development of Vieques, commented that 'the visit by Pataki adds to a list of other prominent figures in public life who support the movement to get the Navy out of Vieques.' She added that Pataki's visit takes on extra importance since he is a powerful member of the Republican Party and is close to President George Bush.

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**World Peace Remains our Goal**

**The Campaign to Scrap Nuclear  
Weapons Must Continue**

**We Must Oppose Bush's  
Star Wars Programme**