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To: Members of UK and Scottish Parliaments, State Parties to the Nuclear Non-Proliferation Treaty, Civil Society Groups  
From: Lawyers' Committee on Nuclear Policy<sup>1</sup>

As a US-based organization, LCNP advocates that the US comply with the legal obligations not to threaten or use nuclear weapons and to negotiate their elimination in good faith. We make this contribution to the current UK debate because the US supplies the missiles for the UK Trident system, and because the UK now has the opportunity to set an example of compliance with those obligations.

**We urge the United Kingdom to take the lead in nuclear disarmament by concluding that:**

- **Threat or use of the UK variant of the US Trident is illegal and criminal.**
- **The UK's unequivocal undertaking to eliminate its nuclear arsenal requires that the UK not upgrade or replace the Trident system.**

**A. Threat or use of the UK variant of the US Trident is illegal and criminal because the obligations to conform to the intransgressible rules and principles of humanitarian law cannot be reconciled with Trident's known and understood indiscriminate and uncontrollable effects.**

1. The UK/US Trident nuclear weapon system is designed and intended to unleash vast heat, blast and radiation; the radiation will cause immediately lethal and long-term carcinogenic, mutagenic and teratogenic effects on human beings and other life forms that cannot be controlled in space or time.
2. The current debate in the UK is over whether to build three new Trident-armed nuclear-powered ballistic missile submarines to replace the current four, each capable of carrying up to 16 of the 58 US supplied Trident II D5 submarine-launched ballistic missiles. One UK submarine on patrol at any given time carries 48 operational 100 kiloton warheads, each of which threatens to inflict eight times the heat, blast and radiation-caused death and damage as the Hiroshima bomb.<sup>2</sup>
3. Threat or use of such a weapon of mass destruction is categorically and universally prohibited in any circumstance by peremptory rules and principles of humanitarian law and whether in offence or defence is a war crime going far beyond the bounds of lawful war. This body of positive law is summarized most authoritatively by the International Court of Justice in its 1996 advisory opinion (ICJ Op.).<sup>3</sup> The London Charter and the Nuremberg Tribunals made it clear that those rules and principles preempt contrary domestic law.
4. The recent White Paper (WP)<sup>4</sup> claims that the Trident nuclear weapon system as a deterrent is legal or justifiable because, among other reasons, "the UK would consider using nuclear weapons only in self-defence or the defence of Britain's NATO allies and then only in extreme circumstances" (2-11). The White Paper claims that the ICJ "rejected the argument that such use would necessarily be unlawful". However, the ICJ held that the requirements of necessity, proportionality, and humanitarian law must be met in all circumstances. Thus "a use of force that is proportionate under the law of self-defence, must in order to be lawful, also meet the requirements of the applicable law in armed conflict which comprise in particular the principles and rules of humanitarian law" (ICJ Op., § 42).
5. The fundamental rules and principles of humanitarian law include: a) "States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilians and military targets" (ICJ Op., § 78). A corollary is that it is

prohibited to use weapons that cause uncontrollable effects [1977 Protocol I to the Geneva Conventions, Art. 51(4)]. Use of the UK/US Trident system is unlawful per se because if targeted at military objects, the effects still are indiscriminate and uncontrollable. b) "It is prohibited to cause unnecessary suffering to combatants; it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering" [ICJ Op., § 78; 1907 Hague Convention IV, Art. 23(e)]. c) "If an envisaged use of weapons would not meet the requirements of humanitarian law, a threat to engage in such use would also be contrary to that law" (ICJ Op., § 78). Since any use of a UK Trident warhead would cause indiscriminate harm and unnecessary suffering, the threat of such use is illegal. d) Reprisal/retaliation is not a justification for use of the UK Trident system; humanitarian law applies in that circumstance as others. Thus the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia stated: "No circumstances would legitimize an attack against civilians even if it were a response proportionate to a similar violation perpetrated by the other party."<sup>5</sup>

6. Any use of the UK/US Trident system would also violate the international law of armed conflict by causing widespread, long-term and severe damage to our common environment and contaminating neutral states, and violate the right to life and other non-derogable human rights.

### **B. The UK's unequivocal undertaking to eliminate its nuclear arsenal under Article VI of the Nuclear Non-Proliferation Treaty (NPT), given at the 2000 NPT Review Conference, requires that the UK decide not to upgrade or replace the Trident system.**

1. The US/UK Mutual Defence Agreements and renewal of Ministry of Defence and Atomic Weapons Establishment Management Ltd contract are material breaches of the UK's obligation under Article VI of the NPT.<sup>6</sup>
2. The UK cannot at once adhere to its obligations under international customary and conventional law outlined above and rely on a lawless security policy employing a "credible" nuclear deterrent (WP 4-1) posing "a uniquely terrible threat" (WP 3-3) to "deter threats anywhere in the world" (WP 4-4).

### **C. Practical and lawful solutions:**

1. **All states are legally obligated "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" (ICJ Op., § 105(2)F; NPT Art. VI).** Contrary to what the White Paper states (2-10), the fulfillment of such an obligation cannot be deferred indefinitely because no timetable has been set.
2. The Model Nuclear Weapons Convention developed by civil society and circulated as a UN document provides a template for the global prohibition and verified elimination of nuclear weapons.
3. Existing Nuclear Weapon Free Zones (NWFZs) provide models for new NWFZs in Europe, the Middle East, and elsewhere.
4. Parliamentary debate on the UK Trident system replacement or upgrade and contract renewal can include testimony of undeniable effects and real costs of the Trident system from civil society, including Hibakusha, participants in the Indigenous World Uranium Summit, Navajo Nation, 30 Nov-2 Dec. 2006, and the US Alliance for Nuclear Accountability. Non-violent/symbolic citizen action to insist that the UK uphold existing law such as Faslane 365, Trident Ploughshares, and Pit Stop Ploughshares, can be supplemented by claims of breach of health, safety, welfare, and fiduciary duties of government including responsibility for costs from mining, testing, contamination, and waste.

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<sup>1</sup> The principal author of this statement is Anabel Dwyer, attorney and member of the LCNP Board of Directors.

<sup>2</sup> NRDC Nuclear Notebook, "British Nuclear Forces 2005," Bulletin of the Atomic Scientists (Nov./Dec. 2005).

<sup>3</sup> *Legality of the Threat or Use of Nuclear Weapons*, July 8, 1996, *ICJ Reports* (1996) 226.

<sup>4</sup> "The Future of the United Kingdom's Nuclear Deterrent," Secretary of State for Defence and Secretary of State for Foreign and Commonwealth Affairs (December 2006).

<sup>5</sup> *Prosecutor v. Martić*, Case No IT-95-11-1 (8 Mar. 1996).

<sup>6</sup> "UK's Nuclear Deterrent, Current and Future Issues of Legality", Philippe Sands, QC, and Helen Law, Matrix, Gray's Inn, London, 13 Nov. 2006; "Mutual Defence Agreement and the Nuclear Non-Proliferation Treaty," Rabinder Singh, QC, and Professor Christine Chinkin, Matrix, London, 20 July 2004.