

Response to the rejoinder from the Defense

July 21, 2016

The prosecution takes this opportunity to respond to the additional arguments proved to the Tribunal in the document entitled Rejoinder 2 which the prosecution submitted to the Tribunal on 20 July 2016.

1. The defence argues that **'Of all the nations included in the indictment, the United Kingdom is the one where the deployment of nuclear weapons has been explicitly found by a competent court not to be unlawful, and not to constitute a threat.'**

In the first instance, the defence has misread the conclusion of Sheriff Gimblett, the judge in the case, with respect to UK policy and practice. It is true that Gimblett held that the International Court of Justice had not concluded definitively that the threat or use of nuclear weapons would necessarily be illegal in every single circumstance relating to all nuclear armed States. However, she then applied the very restrictive conclusion of the ICJ to UK policy and practice and found that:

'I have to conclude that the three accused ladies in front of me, in company with others were justified in thinking that their Britain in their use of Trident not simple possession, their use and deployment of Trident allied with that use and deployment at time of great international unrest, coupled with a first strike reservation policy and in the absence of any indication from any government official then or now that such use fell into the very strict category suggested in the International Court of Justice in their opinion then the threat or use of Trident could be construed as a threat, has indeed been construed as a threat by other states and as such is an infringement of customary international law.' See <http://tridentploughshares.org/greenock-1999-ruling-of-sheriff-m-gimblett/>.

Note that the prosecution does not rely on the Gimblett decision alone in asserting the illegality and criminality of UK nuclear weapons policy and practice. To do so would be wrong as domestic court cases are not superior to International Court of Justice cases, nor to the body of international law applicable to nuclear weapons. Domestic court cases might have superiority in the domestic jurisdiction. However, the prosecution laid the charges against the defendants on the basis of international law, not on the basis of domestic law in each of the nuclear armed States and Australia. The absurdity of basing a case on domestic law alone becomes evident if one considers the case against Kim Jong-un, the Supreme Leader of the Democratic People's Republic of Korea. The prosecution was unable to find domestic law in the DPRK against the policies of the government. However, this does not diminish the strength of international law with respect to DPRK policy and the responsibility of the Supreme Leader.

The prosecution therefore referred to a range of sources of international law all of which confirm the illegality of the UK policy **under international law**. These sources including international treaties applicable to the threat and use of nuclear weapons, customary international law, general principles of law, judicial decisions (such as the Gimblett decision and

the 1996 ICJ Advisory Opinion) and the teachings of highly qualified publicists. As indicated in our closing statement, these are the sources of international law as recognized in the Statute of the International Court of Justice and accepted by all UN member States.

2. The defence argues that **'Based on this authoritative court decision, if a leader of the UK stays within the boundaries of the UK official nuclear weapons policy, he or she is not acting unlawfully nor responsible for making illegal threats.'** Actually, both the Gimblett decision and the other sources of law cited by the prosecution indicate the opposite, i.e. that UK official nuclear weapons policy is in violation of international law.
3. The defence argues that **'A leader, whether political or military cannot be found culpable simply by virtue of their office. This was established at the Nuremberg tribunal in the acquittal of von Papen, reviewed in the Defence rejoinder. There must be evidence of specific actions or inactions.'**

The prosecution accepts this argument. However, it does not relieve Ms Theresa May of responsibility for UK policy. Since assuming office she has taken specific action to affirm the illegal policies of threat to use nuclear weapons and of planning and preparing to use nuclear weapons, and she has failed to take action to bring UK policy and practice into accordance with international law. The action she has taken to affirm UK policy has been to:

- Publicly re-affirm the UK's nuclear deterrent policy on TV saying that *'it would be sheer madness to contemplate even for a moment giving up Britain's independent nuclear deterrent.'* (BBC News)
- Write nuclear authorization letters to the commanders of the four UK nuclear submarines, to be implemented should she be incapable of giving such orders during a military crisis. This demonstrates that Ms May is not only the supreme authority with regard to the decision to use nuclear weapons, but also that she has taken steps to *ensure that nuclear weapons could be used*, in line with UK nuclear policy set by her, should she be rendered incapable of giving the specific firing order in a military conflict (Politico Magazine, July 14);
- Initiate a vote in parliament to support her policy for renewal of the UK nuclear Trident system, at a cost of nearly £200 billion, in order to indefinitely maintain continual at-sea nuclear patrol (which was affirmed by Sheriff Gimblett as a threat to use nuclear weapons), and with no change to the first-use policy.

Ms May has publicly accepted personal responsibility for the UK nuclear weapons policy, declaring in parliament her readiness to use nuclear weapons, and her understanding that such use would inevitably kill hundreds of thousands of innocent people. See [Theresa May says she would kill '100,000 men, women and children' with a nuclear bomb](#), The Independent, July 19, 2016, and [Theresa May would authorise nuclear strike causing mass loss of life](#), The Guardian July 18, 2016.

4. The defence argues that **'Given the legal context established by the Scottish court decision, to establish individual culpability the Prosecution needs to show that Ms May undertook specific actions or inactions that went beyond the bounds of existing policy.'**

This is not correct. The prosecution has demonstrated that existing UK policy is illegal, that Ms May has taken no action to rescind such illegal policy since taking office, but rather that Ms May has taken action to reaffirm such illegal policy and has accepted individual responsibility for this.

5. The defence argues that **'Not only is Ms May immune from prosecution as a result of the Scottish High Court finding, even if she was not, the prosecution evidence is not specific or strong enough to point to criminal culpability beyond reasonable doubt.'**

The defence repeats the Gimblett decision as if it supports their argument, when the reverse is true. They also ignore the specific evidence of action by Ms May to affirm this illegal policy and her public acceptance of personal responsibility. A black pot remains black, regardless of how many times the defence tries to convince the tribunal that it is white. This is especially true when the black pot proudly claims that it is black, and calls for more black paint.