

1. The Prosecution asks ‘the tribunal to find the defendants guilty of war crimes, crimes against humanity, crimes against peace, and crimes of threatening, planning and preparing acts which could constitute genocide, ecocide and omnicide.’ Specifically the defendants are charged with ‘planning and preparing for the use of nuclear weapons’. This planning and preparation, the prosecution charge alleges, would constitute a crime. They are also charged with ‘making illegal threats to use nuclear weapons’. The defendants are the heads of government or heads of state of each of the nine nations that are known to have nuclear weapons, plus Australia which it is said is complicit in the US policy. **The Prosecution has requested to amend the charges to replace the head of government of the United Kingdom with the name of Theresa May. The Defence accepts this change, and provides a rejoinder as requested by the Tribunal in relation to the new defendant.**

2. **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:** ‘the general deployment of Trident was not illegal as a matter of customary international law’ (paragraph 99). Also: ‘The deployment of Trident II, however far one goes in adding hypotheses as to the immediacy with which it could be used against some potential and arguably identifiable target State, in our opinion in general lacks the links between threat and use, and an immediate target, which are essential to a “threat” of the kind dealt with by customary international law or in particular international humanitarian law.’ (paragraph 97) This was the finding of the Scottish High Court of the Justiciary in the case outlined in the defence rejoinder – a case at first instance in the Sheriff Court raised by the Prosecution. ‘Deployment’ can be understood to be planning for possible use of weapons by making them ready, so directly relevant to the current indictment.

3. 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.** Ms May has done no more than reaffirm the policy position of the Conservative Party about nuclear weapons, a position that has represented a bipartisan stance for over 50 years.

4. **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 has not established which specific actions or inactions Ms May took that point to high levels of criminal culpability.

5. 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** in a way that increased the chances of nuclear weapons being

used or directly threatened another country. **The evidence produced by the Prosecution established that Ms May was merely reaffirming existing nuclear weapons policy. They produced no evidence that she had gone beyond the policy.**

6. Although the Tribunal might be encouraged by the Prosecution to reject the clear findings of the Scottish High Court of the Justiciary, this would be inconsistent with the generally accepted principle in international law (and because the UK is a member of the Council of Europe) European human rights law. The principle is known as the **margin of appreciation**. Jurisdictions are given a certain latitude of interpretation, such that international bodies will generally defer to local interpretations. In this case, the Defence argues that the Scottish High Court provided one of the most extensive and careful reading of the 1996 ECJ ruling, weighing up the dissenting judgments used by the Prosecution in this case, as well as those that favoured the arguments made by the Defence. The decision was thus one that reflected both domestic law within the Scottish legal system and also the jurisprudence developed by the ECJ. The decision of the Scottish courts should be regarded as legally binding within the UK until it is overturned, either within the Scottish legal system or by the UK Supreme Court. **Ms May is therefore legally protected against charges of illegality of her nuclear weapons policy, as a result of a decision made by a competent court within the UK.**

7. The Prosecution notes that a punitive approach is not requested, the defendants will not be arrested, and the solution would involved a restorative justice approach. The implication is that it is open to the Tribunal to find Ms May has committed a crime without the detailed evidence of individual culpability the Defence says is required. This position cannot withstand scrutiny. International criminal law allows only one standard of proof – beyond reasonable doubt. The Prosecution has an even higher burden of proof than in domestic forums. As discussed in the defence rejoinder, explicit orders, serious failure to stop or discipline illegal behaviour would need to be established – wilful blindness in fact. There is no evidence produced to support such a proposition. Further, as outlined by a former chief prosecutor of the ICC, the misbehaviour would need to be clearly ‘excessive’ for it to warrant coming under the purview of international criminal law. **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.**

8. **The Defence requests that all charges against Ms May be dismissed.**