



**BOLD ACTION TO ENFORCE ARTICLE VI
OF THE NON-PROLIFERATION TREATY**

A Briefing Paper for the
Third Preparatory Committee for the 2015 Review Conference of the
Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

April 28 - May 9, 2014

NUCLEAR AGE PEACE FOUNDATION
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For more information on the
Nuclear Zero Lawsuits,
including all nine applications to the
to the International Court of Justice
and the complaint filed in
U.S. Federal District Court, visit:

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NUCLEAR ZERO LAWSUITS: UNKEPT PROMISES, UNMET OBLIGATIONS

Forty-four years have passed since the Non-Proliferation Treaty entered into force, obligating its signatories in Article VI 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...” To date, there has been a disappointing lack of meaningful action taken by the nuclear-armed nations to fulfill these obligations.



That is why on April 24, 2014, the Republic of the Marshall Islands filed the Nuclear Zero Lawsuits. These landmark lawsuits were filed against all nine nuclear weapon states in the International Court of Justice (ICJ) in The Hague and on the same day against the United States in U.S. Federal District Court in San Francisco.

The Marshall Islands claims the five original nuclear weapon states – U.S., Russia, UK, France and China – have breached their legal obligations under the treaty. The lawsuits also contend that all nine nuclear-armed nations are violating customary international law.

The Nuclear Zero Lawsuits detail the continuing breaches by nuclear-armed nations in modernizing their arsenals while failing to negotiate nuclear disarmament. These states collectively are projected to spend \$1 trillion on their arsenals in the next decade. The Marshall Islands does not seek compensation with these lawsuits. Rather, it seeks declaratory and injunctive relief requiring the nine nuclear weapon states to comply with their obligations.

Three of the nine states – the UK, India and Pakistan – have accepted the compulsory jurisdiction of the International Court of Justice when the opposing state has done so, as has the Marshall Islands. As to the other six states, the Marshall Islands is calling on them to accept the jurisdiction of the Court in this case and explain to the Court their positions regarding their nuclear disarmament obligations.

THE MARSHALL ISLANDS

The Republic of the Marshall Islands is a small sovereign nation, among the smallest countries in the world. Having been a testing ground for 67 U.S. nuclear tests between 1946 and 1958, the Marshall Islanders have seen their land, sea and people poisoned by radiation. They have witnessed firsthand the horrible destruction caused by nuclear weapons and those who possess them. They are willing to stand up to the nine nuclear-armed nations and say, “Never again. We have seen the destructive impact of these horrific weapons and vow to do all we can so the world never sees such atrocities again.”

IF NOT NOW, WHEN?

Litigation filed in the women's suffrage movement, as well as the civil rights movement, was instrumental in leading to unprecedented social and political change. The issue of nuclear disarmament must also be debated in a binding, public forum with a written record. Will the six nuclear-armed nations that have not committed to compulsory jurisdiction at the ICJ agree to the legitimacy of the case against them? If not, what does this say about their commitment to nuclear disarmament?

The United States Constitution specifically provides that when the United States is a party to a treaty, that treaty is the supreme law of the land in the United States. Will the U.S. government tell the world in a public forum that its treaties are meaningless and unenforceable?

The Nuclear Zero Lawsuits call upon the nuclear-armed nations to fulfill their collective legal and moral promise of nuclear disarmament. Zero is the only safe number of nuclear weapons on the planet.

ABOUT THE NUCLEAR AGE PEACE FOUNDATION

The Nuclear Age Peace Foundation is a consultant to the Marshall Islands on these lawsuits and has successfully obtained the support of many civil society organizations on this historic initiative. These organizations share the belief that the time for bold action is now.

IN THIS BRIEFING PAPER

Nine applications were filed at the International Court of Justice on April 24, 2014. In this Briefing Paper, we have included one of the nine ICJ applications – the one against the United Kingdom – as an example.

FOR MORE INFORMATION

All nine applications, as well as the complaint filed against the United States in U.S. Federal District Court and information about the civil society campaign, can be read online at www.nuclearzero.org and www.wagingpeace.org.

APPLICATION
INSTITUTING PROCEEDINGS
AGAINST
THE UNITED KINGDOM

submitted on 24 April 2014

by

THE REPUBLIC OF THE MARSHALL ISLANDS

to

THE INTERNATIONAL COURT OF JUSTICE

re

obligation to pursue in good faith and conclude negotiations

leading to nuclear disarmament

Table of Contents

I.	INTRODUCTION AND SUMMARY	3
II.	FACTS	9
A.	The Five Nuclear Weapon States Parties to the NPT	9
B.	The Nine States Possessing Nuclear Weapons	9
C.	The UK and the Nuclear Arms Race	11
1.	Early Nuclear History	11
2.	The UK's Current Nuclear Arsenal	12
3.	Nuclear Policy, Doctrine and Expenditure	15
4.	Current Plans for Modernization and Qualitative Improvements of the UK's Nuclear Arsenal	18
D.	The UK and Nuclear Disarmament.....	23
1.	History and General Policy Regarding Negotiation of Nuclear Disarmament	23
2.	Opposition to Negotiation of a Nuclear Weapons Convention.....	25
III.	THE LAW.....	29
A.	Article VI of the NPT	29
B.	Customary International Law	30
C.	Good Faith	32
IV.	OBLIGATIONS BREACHED BY THE UK.....	35
A.	Breach of Article VI of the NPT.....	35
B.	Breach of Customary International Law.....	36
C.	Breach of the Obligation to Perform its Obligations in Good Faith	36
V.	JURISDICTION OF THE COURT.....	38
VI.	FINAL OBSERVATIONS	38
	REMEDIES.....	39

To the Registrar, International Court of Justice.

The Undersigned, being duly authorized by the Government of the Republic of the Marshall Islands, state as follows:

I. INTRODUCTION AND SUMMARY

1. It is a most fundamental legal and moral principle that bargains should be kept. This is embedded in international law through the principle of *pacta sunt servanda*.¹ The bargain which this Application concerns is that embodied in the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (hereafter “the Treaty” or “the NPT”),² whereby the non-nuclear-weapon States have agreed not to acquire nuclear weapons and the NPT nuclear-weapon States have agreed to negotiate their elimination.

2. This Application is not an attempt to re-open the question of the legality of nuclear weapons addressed by this Court in its Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons.³ Rather, the focus of this Application is the failure to fulfil the obligations enshrined in Article VI of the NPT and customary international law; and particularly the failure of the NPT nuclear-weapon States to keep their part of the strategic bargain and do what the Court *unanimously* called for based on its analysis of Article VI, namely “pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”.⁴

3. In its Advisory Opinion, the Court observed that “[t]he destructive power of nuclear weapons cannot be contained in either space or time” and that such weapons “have the potential to destroy all civilization and the entire ecosystem of the planet”.⁵ It acknowledged “the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come”.⁶

4. Unless the required negotiations, aimed at reaching the required conclusions, take place, we shall continue to face the very real prospect of the ‘devastation that would be visited

¹ Expressed in Article 26 of the Vienna Convention on the Law of Treaties 1969.

² 729 UNTS 161.

³ *I.C.J. Reports 1996*, p. 226.

⁴ *Id.*, para. 105, point 2F.

⁵ *Id.*, para. 35.

⁶ *Id.*, para. 36.

upon all mankind by a nuclear war'.⁷ We shall also continue to face the possibility, even the likelihood, of nuclear weapons being used by accident, miscalculation or design,⁸ and of their proliferation. As Nobel Peace Laureate Sir Joseph Rotblat pointed out: "If some nations – including the most powerful militarily – say that they need nuclear weapons for their security, then such security cannot be denied to other countries which really feel insecure. Proliferation of nuclear weapons is the logical consequence of this nuclear policy".⁹

5. In its Advisory Opinion, the Court observed: "In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons".¹⁰ A coherent legal system cannot countenance its own destruction or that of the community whose activities it seeks to regulate.¹¹ That is why fulfilment of the obligation "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" is so important.

6. Equally, a coherent and civilized legal system cannot tolerate unacceptable harm to humanity. A lawful and sustainable world order is predicated on a civilizational right to survival rooted in "the principles of humanity"¹² and "elementary considerations of humanity"¹³

⁷ NPT preamble, 2nd recital.

⁸ In 1996 Lord Carver, former UK Chief of the Defence Staff (the professional head of the UK's armed forces and the principal military adviser to the Secretary of State for Defence and to the UK Government) stated that "the indefinite deployment of nuclear weapons carries a high risk of their ultimate use - intentionally, by accident or inadvertence". See Hansard, HL Deb, 28 October 1996, vol. 575, col. 134. .

⁹ Joseph Rotblat, "Science and Nuclear Weapons: Where Do We Go From Here?" The Blackaby Papers, No. 5, December 2004, p. 7. In February 2007, Mohamed ElBaradei, then Director General of the IAEA, said that Britain cannot "modernise its Trident submarines and then tell everyone else that nuclear weapons are not needed in the future". See David Blair, 'UN nuclear watchdog: Trident is hypocritical', *Daily Telegraph*, 20 February 2007.

¹⁰ *Supra*, n. 3, para. 98.

¹¹ As B.S. Chimni has stated, "No legal system can confer on any of its members the right to annihilate the community which engenders it and whose activities it seeks to regulate". B.S. Chimni, "Nuclear Weapons and International Law: Some Reflections", in *International Law in Transition: Essays in Memory of Judge Nagendra Singh*, 1992, p. 142. Quoted by Judge Weeramantry in Section V.1 of his Dissenting Opinion in the Advisory Opinion in *Legality of the Threat or Use of Nuclear Weapons*, *supra*, n. 3, at p. 522; see also the Dissenting Opinion of Judge Shahabuddeen, *id.*, p. 393: "Thus, however far-reaching may be the rights conferred by sovereignty, those rights cannot extend beyond the framework within which sovereignty itself exists; in particular, they cannot violate the framework. The framework shuts out the right of a State to embark on a course of action which would dismantle the basis of the framework by putting an end to civilization and annihilating mankind".

¹² From the Martens Clause as expressed in Article 1, paragraph 2 of Protocol I 1977 Additional to the Geneva Conventions 1949: "In cases not covered by this Protocol or by other international agreements,

which help to shape an emerging “law of humanity”,¹⁴ the international law for humankind of which the nuclear disarmament obligation is a key element. Yet it is now 68 years since the very first United Nations General Assembly Resolution sought to put in motion the elimination from national arsenals of nuclear weapons and other weapons of mass destruction,¹⁵ almost 45 years since the NPT entered into force and nearly 20 years since the Court delivered its Advisory Opinion. The long delay in fulfilling the obligations enshrined in Article VI of the NPT constitutes a flagrant denial of human justice.¹⁶

7. Inspired and guided by these principles and values, this is an Application instituting proceedings against the United Kingdom (“UK”), an NPT nuclear-weapon State. The underlying claims, described in more detail herein, are that the UK is: (i) in continuing breach of its obligations under Article VI of the NPT, including specifically its obligation to pursue in good faith negotiations to cease the nuclear arms race at an early date, as well as to pursue in good faith negotiations leading to nuclear disarmament in all its aspects under strict and effective international control; (ii) in continuing breach of customary international law with respect to the same obligations; and (iii) in continuing breach of its obligation to perform its international legal obligations in good faith.

8. The Applicant herein is The Republic of the Marshall Islands (the “Marshall Islands”, “RMI” or “Applicant”). The Applicant is a non-nuclear-weapon State Party to the NPT. The Marshall Islands acceded to the Treaty on 30 January 1995 and has continued to be a Party to it since that time.

civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience”.

¹³ *Corfu Channel case, Judgment of April 9th, 1949, I.C.J. Reports 1949*, p. 22.

¹⁴ See e.g. the Opinion of the Tribunal in the *Einsatzgruppen case* (1948): “[An] evaluation of international right and wrong, which heretofore existed only in the heart of mankind, has now been written into the books of men as the law of humanity. This law is not restricted to events of war. It envisages the protection of humanity at all times”. *United States of America v. Otto Ohlendorf, et al*, Military Tribunal II, Case No. 9 (1948), in *Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10*, Vol. IV, Nuernberg, October 1946 – April 1940 (U.S. Government Printing Office, 1950-872486), p. 497, available at http://www.loc.gov/rr/frd/Military_Law/pdf/NT_war-criminals_Vol-IV.pdf.

¹⁵ A/RES/1(1), 24 January 1946.

¹⁶ Cf. Judge Cançado Trindade’s remarks in Section XIII of his Separate Opinion in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *I.C.J. Reports 2012*, pp. 544-548; especially at para. 145 where he contrasts “the brief time of human beings (*vita brevis*) and the often prolonged time of human justice”.

9. While cessation of the nuclear arms race and nuclear disarmament are vitally important objectives for the entire international community, the Marshall Islands has a particular awareness of the dire consequences of nuclear weapons. The Marshall Islands was the location of repeated nuclear weapons testing from 1946 to 1958, during the time that the international community had placed it under the trusteeship of the United States (“U.S”).¹⁷ During those 12 years, 67 nuclear weapons of varying explosive power were detonated in the Marshall Islands, at varying distances from human population.¹⁸ According to the 3 September 2012 Report of Calin Georgescu, a Special Rapporteur to the UN Human Rights Council, the devastating adverse impact on the Marshall Islands of those nuclear substances and wastes continues to this day.¹⁹ The Special Rapporteur concludes that “the harm suffered by the Marshallese people has resulted in an increased global understanding of the movement of radionuclides through marine and terrestrial environments,” and urges the international community to “learn from the Marshallese experience with nuclear contamination, particularly the... understanding of the relationship between radioiodine and thyroid cancer”.²⁰

10. With regard to the RMI’s interest in bringing this Application to the Court, the following should be added. It is well known that over recent years the RMI has been preoccupied with combating the extremely harmful consequences that the effects of climate change have for its very survival. While focusing on the problem of climate change, the RMI has come to realize that it cannot ignore the other major threat to its survival: the ongoing threat posed by the existence of large arsenals of nuclear weapons the use of which, according to the Court, “seems scarcely reconcilable with respect for [...] requirements [of the principles and rules of law applicable in armed conflict]”.²¹ It is obvious that the RMI’s participation in the common struggle against climate change needs to lead to firm commitments by all States, which commitments must include not only moral, but also legal obligations aimed at realizing concrete, clear-cut goals in order to remove the threat of devastation caused by continued reliance on the use of fossil fuel energy sources. It is from this perspective of striving to reach agreement on such commitments in the struggle against climate change that the RMI has concluded that it is no longer acceptable simply to be a party to the NPT while total nuclear disarmament pursuant to Article VI and customary international law remains at best a distant prospect. This Application

¹⁷ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Calin Georgescu; Addendum, Mission to the Marshall Islands (27-30 March 2012) and the United States of America (24-27 April 2012): 3 September 2012, Doc. A/HRC/21/48/Add.1.

¹⁸ *Id.*, paras. 1-18.

¹⁹ *Id.*, para. 19.

²⁰ *Id.*, para. 66(b).

²¹ *Supra*, n. 3, para. 95

seeks to ensure that the legal obligations undertaken 44 years ago by the UK in the context of the NPT do indeed deliver the promised result.

11. One of the reasons why the RMI became a Party to the NPT is that this Treaty is the key instrument of the international community for ridding the world of nuclear weapons.²² The Treaty contains the solemn promise and legal obligation of the nuclear weapon States to sit down and negotiate towards total nuclear disarmament. That promise has been broken and that obligation has not been met.

12. Article VI of the Treaty states, in its entirety, as follows:

Each of the Parties to the Treaty undertakes 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.

13. As previously stated, the Court concluded its Advisory Opinion of 8 July 1996 by *unanimously* holding that “[t]here exists an obligation 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”.²³

14. More than four decades after signing and ratifying the NPT, the UK maintains and continuously modernizes its nuclear arsenal.

15. The UK has not pursued in good faith negotiations to cease the nuclear arms race at an early date through comprehensive nuclear disarmament or other measures, and instead is taking actions to improve its nuclear weapons system and to maintain it for the indefinite future.

16. Similarly, the UK has not fulfilled its obligation to pursue in good faith negotiations leading to nuclear disarmament in all its aspects under strict and effective international control and instead has opposed the efforts of the great majority of States to initiate such negotiations.

17. These obligations are not limited to the States Parties to the Treaty, but also apply to all States as a matter of customary international law.

²² At the UN High-Level Meeting on Nuclear Disarmament, 26 September 2013, Hon. Mr. Phillip Muller, Minister of Foreign Affairs, Republic of the Marshall Islands, stated that the RMI’s “deeper purpose” is “that no nation and people should ever have to bear witness to the burden of exposure to the devastating impacts of nuclear weapons”, http://www.un.org/en/ga/68/meetings/nucleardisarmament/pdf/MH_en.pdf.

²³ *Supra*, n. 3, para. 105, point 2F.

18. Further, the obligation of a State to perform its legal obligations in good faith, whether arising under a treaty or pursuant to customary international law, is itself a legal obligation which the UK has breached.

II. FACTS

A. The Five Nuclear Weapon States Parties to the NPT

19. The U.S. was the first country in the world to develop and test nuclear weapons. The U.S. used nuclear weapons in warfare on the Japanese cities of Hiroshima and Nagasaki on 6 August 1945 and 9 August 1945 respectively.²⁴ The U.S. was the sole possessor of nuclear weapons in the world until the Soviet Union tested its first nuclear weapon on 29 August 1949. In 1952, the UK tested its first nuclear weapon. In 1960, France tested its first nuclear weapon. In 1964, China tested its first nuclear weapon.

20. In the 1960s, the UK negotiated with other countries, including the U.S. and the Soviet Union, both possessors of nuclear weapons, and States not possessing nuclear weapons, to reach agreement on what became the Nuclear Non-Proliferation Treaty. The U.S., Russia, the UK, France and China, all Parties to the NPT, are the only States meeting the Treaty's definition of a "nuclear-weapon State" for "the purposes of this Treaty".²⁵

21. The Treaty was opened for signature on 1 July 1968, and entered into force on 5 March 1970. The UK signed the NPT on 1 July 1968 in London, Moscow and Washington and ratified it on 27 November 1968 in London and Washington and on 29 November 1968 in Moscow. The UK is one of the Treaty's three Depositary Governments.²⁶

B. The Nine States Possessing Nuclear Weapons

22. In addition to the five NPT nuclear-weapon States, four non-NPT States are known to possess nuclear weapons: India, Pakistan, Israel and Democratic People's Republic of Korea ("DPRK").²⁷

23. According to the Stockholm International Peace Research Institute ("SIPRI"), the individual and collective world nuclear forces as of January, 2013, were as follows:

²⁴ On 1 July 1945, Prime Minister Winston Churchill gave the UK's approval for atomic bombs to be dropped on Japan. See Peter Hennessy, *Cabinets and the Bomb* (The British Academy, 2007), p. 8.

²⁵ Article IX.3 of the NPT provides: "For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967".

²⁶ The others are the Russian Federation and the U.S. See <http://disarmament.un.org/treaties/t/npt>.

²⁷ Regarding the DPRK, see *infra*, n. 126.

World nuclear forces, January 2013²⁸

(All figures are approximate)

Country	Year of first nuclear test	Deployed Warheads ^a	Other Warheads ^b	Total Inventory
United States	1945	2,150 ^c	5,550	~7 700 ^d
Russia	1949	~1,800	6,700 ^e	~8 500 ^f
United Kingdom	1952	160	65	225
France	1960	~290	~10	~300
China	1964		~250	~250
India	1974		90-110	90-110
Pakistan	1998		100-120	100-120
Israel			~80	~80
North Korea	2006			6-8?
Total		~4,400	~12,865	~17,270

^a 'Deployed' means warheads placed on missiles or located on bases with operational forces.

^b These are warheads in reserve, awaiting dismantlement or that require some preparation (*e.g.* assembly or loading on launchers) before they become fully operationally available.

^c In addition to strategic warheads, this figure includes nearly 200 non-strategic (tactical) nuclear weapons deployed in Europe.

^d This figure includes the U.S. Department of Defense nuclear stockpile of c. 4650 warheads and another c. 3000 retired warheads that are awaiting dismantlement.

^e This figure includes c. 700 warheads for nuclear-powered ballistic missile submarines (SSBNs) in overhaul and bombers, 2000 non-strategic nuclear weapons for use by short-range naval, air force and air defense forces, and c. 4000 retired warheads awaiting dismantlement.

^f This includes a military stockpile of c. 4500 nuclear warheads and another c. 4000 retired warheads await dismantlement.

²⁸ See Shannon N. Kile, "World Nuclear Forces", SIPRI Yearbook 2013 (Oxford University Press: Oxford, 2013). The question mark (?) against North Korea's total inventory is in the original.

C. The UK and the Nuclear Arms Race

1. Early Nuclear History²⁹

24. On 3 October 1952, the first British atomic device was detonated in the Monte Bello Islands off north-western Australia. On 7 November 1953, the UK's first operational atomic bomb, the Blue Danube, arrived at RAF Wittering from AWE Aldermaston.³⁰

25. On 26 July 1954 the Cabinet agreed to the manufacture of a much more powerful British hydrogen bomb and on 15 May 1957 the UK tested a thermonuclear device at Christmas Island in the Pacific.³¹

26. On 4 August 1958, the U.S. and UK governments concluded the Agreement for Co-operation on the Uses of Atomic Energy for Mutual Defence Purposes (the "Mutual Defence Agreement" or "MDA").³²

27. On 3 January 1963, the Cabinet authorized the purchase of Polaris C3 submarine-launched ballistic missiles and re-entry vehicles from the U.S. Government. On January 25, 1965, the decision was taken to build four Resolution-class submarines to carry the Polaris missiles, partly to ensure that one boat would always be on station when the Royal Navy assumed the main nuclear weapons system role in the late 1960s. HMS Resolution, the first of the four Polaris missile-carrying submarines, was commissioned on 30 October 1967³³ and on June 14, 1969, Polaris submarines formally took over the primary strategic nuclear weapons deployment role from the RAF's 'V' bomber force.³⁴

28. The development of the Super Antelope (later known as Chevaline) re-entry body for the UK's Polaris warheads was approved on 30 October 1973. This was because the UK

²⁹ See Hennessy, *supra*, n. 24, pp. 7-20.

³⁰ 58 Blue Danube bombs were produced. They were in service with the RAF until 1961.

³¹ The device yielded 300 kilotons, 30% of the megaton target. On 8 November 1957 Britain's first megaton hydrogen bomb exploded off Christmas Island, yielding 1.8 megatons. See Hennessy, *supra*, n. 24, p. 10.

³² Treaty Series No.41 (1958) Cmnd 537. See Hennessy, *id.*, p. 11. The MDA has been renewed from time to time, most recently in 2004.

³³ The other three Polaris submarines were HMS Repulse, HMS Renown and HMS Revenge.

³⁴ See Hennessy, *supra*, n. 24, p. 14. The four nuclear-powered submarines were each equipped with 16 Polaris missiles, with three 200-kiloton warheads on each missile. Polaris was modernized with the Chevaline upgrade to have a number of dummy or decoy warheads on each missile as well, but each missile could only be used against one target.

could no longer be certain that a sufficient number of Polaris warheads would penetrate Soviet ABM defences to cause the damage required to exert a credible deterrent effect. In November 1982 the Ministry of Defence announced that Chevaline-equipped missiles were operational at sea.³⁵

29. In July 1980, the UK government announced the decision to buy the U.S. Trident C4 missile system as a replacement for the Polaris system, which was due to reach the end of its service life in the early 1990s. In March 1982, however, the order was changed to the Trident II D5, a new missile announced by the U.S. in October 1981. This ensured missile commonality between the U.S. Navy and the Royal Navy. The UK defence establishment wanted to ensure that any future UK nuclear system remained in step with U.S. nuclear hardware and weapon programmes after the difficult experience with the indigenous Chevaline upgrade. Former Permanent Under Secretary at the Ministry of Defence, Sir Michael Quinlan, stated in 2004 that “Purely in weight of strike potential the United Kingdom could have been content with less than Trident could offer, even in the C4 version originally chosen (let alone D5 version to which the United Kingdom switched in early 1982, when it had become clear that the United States was committed to proceed with its acquisition and deployment). The original choice and the switch were driven in large measure by the long-term financial and logistic benefits of commonality with the United States”.³⁶

2. The UK’s Current Nuclear Arsenal³⁷

30. The UK’s nuclear weapons system is based upon the submarine-launched Trident D5 missile. It is the UK’s third-generation strategic nuclear weapon system. Trident was procured during the final decade of the Cold War and was brought into service to replace Polaris over a six-year period beginning in December 1994.³⁸ It is now the UK’s only nuclear weapons system, the UK having retired its air-launched WE177 free-fall nuclear bombs and repatriated

³⁵ *Id.*

³⁶ Michael Quinlan, “The British Experience”, in Henry Sokolski (ed.), *Getting MAD: mutual assured destruction, its origins and practice* (Strategic Studies Institute, Army War College: Carlisle, PA, November 2004), p. 271.

³⁷ See House of Commons Defence Committee, ‘The Future of the UK’s Nuclear Deterrent: the White Paper’ (HC 225-1), Vol. 1, ch. 2.

³⁸ HMS Vanguard, the first Trident missile-carrying submarine, was commissioned on 14 August 1993 and sailed on the first Trident operational patrol in December 1994. HMS Repulse returned to Faslane on 13 May 1996 at the end of the final Polaris operational patrol, marking the end of Polaris’ 27 years of continuous patrols. See Hennessy, *supra*, n. 24, p. 18.

forward-deployed US tactical nuclear weapons operated by UK forces under dual-key arrangements in the 1990s.³⁹

31. The Trident nuclear weapons system has three technical components:⁴⁰

- a) The Vanguard-class nuclear-powered ballistic submarines (SSBN), of which the UK has four: HMS Vanguard, HMS Victorious, HMS Vigilant and HMS Vengeance, designed and built in the UK by Vickers Shipbuilding and Engineering Ltd (VSEL), now BAE Systems, in Barrow-in-Furness, Cumbria. Refit and maintenance are carried out by Devonport Management Limited in Devonport, Plymouth, UK.
- b) The Trident D5 submarine-launched intercontinental ballistic missile (ICBM), manufactured in the US by Lockheed Martin. Under the Polaris Sales Agreement as modified for Trident,⁴¹ the UK has title to 58 missiles.⁴² Aside from those currently deployed, the missiles are held in a communal pool at the US Strategic Weapons facility at King's Bay, Georgia, US. Each submarine is capable of carrying up to 16 Trident D5 missiles.
- c) The components for the nuclear warheads, including qualitative improvements to them, are made in the UK at the Atomic Weapons Establishment (AWE) Aldermaston, Berkshire, and assembled at nearby AWE Burghfield. There is extensive collaboration between the UK and the US on the production of the UK's warheads under the Mutual Defence Agreement, "which provides for extensive cooperation on nuclear warhead and reactor technologies, in particular the exchange of classified information concerning nuclear weapons to improve 'design, development and fabrication' capability and the transfer of nuclear warhead-related

³⁹ See *supra*, n. 37, Vol.1, para. 8.

⁴⁰ *Id.*, paras. 9-10.

⁴¹ The Polaris Sales Agreement was signed in Washington DC on 6 April 1963. On 30 September 1980 an exchange of diplomatic notes incorporated the Trident sale into the Polaris Sales Agreement.

⁴² House of Commons Defence Committee, Session 2005-06, Eighth Report, para. 21.

materials”.⁴³ As a result, some components of the UK warheads are manufactured, and undergo qualitative improvements, in the U.S.⁴⁴

32. The submarine fleet is supported by an extensive onshore infrastructure. The Vanguard submarines are based at HM Naval Base Clyde, Faslane, Scotland. Nuclear warheads are fitted to the D5 missiles at the Royal Naval Armaments Depot Coulport (part of HM Naval Base Clyde). The warheads are transported by road from AWE Burghfield to Coulport, where they are placed in underground bunkers in the Trident Area. When required they are taken to the Explosive Handling Jetty where they are fitted onto the missiles on the Trident submarines.

33. The Strategic Defence Review, published on 8 July 1998,⁴⁵ affirmed the Government’s commitment to maintaining a nuclear weapons system but made a number of changes to it. The warhead stockpile was to be cut from the ceiling of up to 300 warheads maintained by the previous government to fewer than 200 operationally available warheads. The patrol cycle of the Trident submarines was also relaxed with normally only one submarine on patrol at any one time. As with pre-Chevaline Polaris,⁴⁶ each submarine would now carry a maximum of 48 warheads, rather than the ceiling of up to 96. The Trident submarine’s alert status was also to be reduced. Missiles had not been targeted for some years but, in addition, submarines would normally now be at several days’ rather than 15 minutes’ notice to fire.⁴⁷ A requirement for an additional seven Trident missile bodies was cancelled, leaving a new total of 58.

34. The Strategic Defence and Security Review, published on 19 October 2010,⁴⁸ reaffirmed the UK’s commitment to a submarine-launched nuclear weapons system on

⁴³ N. Ritchie, “A Nuclear Weapons-Free World? Britain, Trident and the Challenges Ahead”, Palgrave Macmillan 2012, p. 92. Ritchie goes on to state that “Britain remains highly dependent on the US for nuclear weapon systems, technology, and support”: *id.*, p. 95.

⁴⁴ John Ainslie, “United Kingdom”, in Ray Acheson, ed., *Assuring Destruction Forever: Nuclear Weapon Modernization Around the World (Reaching Critical Will – a project of the Women’s International League for Peace and Freedom, 2012)*, pp. 68-71, <http://www.reachingcriticalwill.org/images/documents/Publications/modernization/assuring-destruction-forever.pdf>.

⁴⁵ Strategic Defence Review 1998 (Cm 3999), *available at* http://webarchive.nationalarchives.gov.uk/20121026065214/www.mod.uk/NR/rdonlyres/65F3D7AC-4340-4119-93A2-20825848E50E/0/sdr1998_complete.pdf.

⁴⁶ *See supra*, para. 27.

⁴⁷ Strategic Defence Review, *supra*, n. 45, para. 68.

⁴⁸ *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review, October 2010 (Cm 7948)*, *available at* http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_191634.pdf.

continuous alert based on the Trident missile delivery system, and announced that: the number of warheads on board each deployed submarine would be reduced from 48 to 40; the requirement for operationally available warheads would be reduced from fewer than 160 to no more than 120; the number of operational missiles on the Vanguard class submarines would be reduced to no more than 8; and the UK's overall nuclear weapons stockpile would be reduced from not more than 225 to no more than 180 by the mid-2020s.⁴⁹

3. Nuclear Policy, Doctrine and Expenditure

35. The Royal Navy has maintained unbroken nuclear weapon patrols since 1968. The 1998 Strategic Defence Review stated that the UK would continue to maintain these continuous-at-sea nuclear armed patrols. This means that one of the four Vanguard-class submarines is on patrol at any given time.⁵⁰

36. Trident is the UK's most advanced nuclear weapon system to date. With a range of between 6,500 kilometres and 12,000 kilometres, depending on payload, Trident's greater speed, accuracy and multiple independently targetable warheads distinguish it from, and enable it to reach more targets than, its predecessor, Polaris Chevaline.

37. As the Defence Select Committee noted in 1994:

Trident's accuracy and sophistication in other respects does - and was always intended to - represent a significant enhancement of the UK's nuclear capability. We have invested a great deal of money to make it possible to attack more targets with greater effectiveness using nominally equivalent explosive power.⁵¹

38. Trident was originally designed as a strategic nuclear system with respect to threats posed by the Soviet Union. In 1993, however, following the end of the Cold War, the then Secretary of State for Defence announced that in future Trident's role would be to deter "potential aggressors" from threatening UK "vital interests". In order to do this, Trident was assigned an additional "sub-strategic" role.⁵²

The ability to undertake a massive strike with strategic systems is not enough to ensure deterrence. An aggressor might, in certain circumstances, gamble on a lack

⁴⁹ *Id.*, para. 3.11.

⁵⁰ Strategic Defence Review, *supra*, n. 45, para. 66.

⁵¹ HC 297 of Session 1993-94, p. xiv.

⁵² Hansard, HC Deb, 18 October 1993, col. 34. The UK's sub-strategic capability was at that time provided by the soon to be retired WE177 bomb carried on Tornado aircraft.

of will ultimately to resort to such dire action. It is therefore important for the credibility of our deterrent that the United Kingdom also possesses the capability to undertake a more limited nuclear strike in order to induce a political decision to halt aggression by delivering an unmistakable message of our willingness to defend our vital interests to the utmost.⁵³

39. As part of the agreement under which the UK procured Polaris and subsequently Trident missiles from the US, UK Trident forces are assigned to NATO to be used for the defence of the Alliance “except where the UK government may decide that supreme national interests are at stake”.⁵⁴ The UK is therefore committed to NATO’s nuclear policy, which since the mid-1960s has been based on a doctrine of “flexible response”.⁵⁵ One of the key elements of NATO’s nuclear doctrine is that the Alliance refuses to rule out the first use of NATO nuclear weapons, thereby allowing its nuclear planners to prepare for that option.⁵⁶

40. Similarly, the UK has always refused to rule out the first use of its nuclear weapons, especially in cases where biological or chemical weapons may have been used. For example, shortly after the 1997 general election, the then Minister of State Dr John Reid stated:

The role of deterrence...must not be overlooked. Even if a potential aggressor has developed missiles with the range to strike at the United Kingdom, and nuclear, biological or chemical warheads to be delivered by those means, he would have to consider – he would do well to consider – the possible consequences of such an attack...It seems unlikely that a dictator who was willing to strike another country with weapons of mass destruction would be so trusting as to feel entirely sure that that country would not respond with the power at its disposal.⁵⁷

⁵³ Malcolm Rifkind, ‘UK Defence Strategy; A Continuing Role for Nuclear Weapons’, 16 November 1993, Centre for Defence Studies, King’s College London; *see* also the Strategic Defence Review 1998, para. 63: “The credibility of deterrence also depends on retaining an option for a limited strike that would not automatically lead to a full scale nuclear exchange. Unlike Polaris and Chevaline, Trident must also be capable of performing this ‘sub-strategic’ role”.

⁵⁴ The British Strategic Nuclear Force: Text of Letters exchanged between the Prime Minister and the President of the United States and between the Secretary of State for Defence and the US Secretary of Defense. The letters are reproduced in ‘Polaris Sales Agreement between the United States and the United Kingdom’ signed in Washington on 6 April 1963.

⁵⁵ “The Alliance’s Strategic Concept”, NATO Press Release NAC-S(99)65, 24 April 1999.

⁵⁶ In 2006 the then Defence Secretary, Des Browne, stated: “A policy of no first use of nuclear weapons would be incompatible with our and NATO’s doctrine of deterrence”, Hansard, HC, 22 May 2006, col. 1331 W.

⁵⁷ Hansard, HC Deb, 4 December 1997, cols. 576-577.

41. Following the terrorist attacks on the U.S. in September 2001, a new chapter of the Strategic Defence Review extended the role of nuclear weapons further to include allegedly deterring terrorist organisations:

The UK's nuclear weapons have a continuing use as a means of deterring major strategic military threats, and they have a continuing role in guaranteeing the ultimate security of the UK. But we also want it to be clear, particularly to the leaders of states of concern and terrorist organisations, that all our forces play a part in deterrence, and that we have a broad range of responses available.⁵⁸

42. The implication is that the UK is willing, if deemed to be necessary, to use its nuclear weapons against States of concern and terrorist organisations.⁵⁹

43. The 2010 Strategic Defence and Security Review states that the UK “would only consider using nuclear weapons in extreme circumstances of self-defence, including the defence of our NATO allies”, adding: “we remain deliberately ambiguous about precisely when, how and at what scale we would contemplate their use”.⁶⁰

44. The Strategic Defence and Security Review reaffirms in modified form existing assurances to non-nuclear-weapon States Parties to the NPT. It states “that the UK will not use or threaten to use nuclear weapons against non-nuclear weapon states parties to the NPT” but notes that “this assurance would not apply to any state in material breach of those non-proliferation obligations”. It also notes that “while there is currently no direct threat to the UK or its vital interests from states developing capabilities in other weapons of mass destruction, for example chemical and biological, we reserve the right to review this assurance if the future threat, development and proliferation of these weapons make it necessary”.⁶¹

45. The UK has continued to maintain and modernize its nuclear forces with annual expenditure on capital and running costs at around 5 to 6 per cent of the UK defence budget.⁶²

⁵⁸ Strategic Defence Review, New Chapter, 18 July 2002, Vol.1, para. 21, available at http://indianstrategicknowledgeonline.com/web/sdr_a_new_chapter_cm5566_vol1.pdf.

⁵⁹ The 2006 White Paper on *The Future of the United Kingdom's Nuclear Deterrent* stated, at 3-11: “We know that international terrorists are trying to acquire radiological weapons. In future, there are risks that they may try to acquire nuclear weapons. While our nuclear deterrent is not designed to deter non-state actors, it should influence the decision-making of any state that might consider transferring nuclear weapons or nuclear technology to terrorists”.

⁶⁰ Strategic Defence and Security Review, *supra*, n. 48, para. 3.5.

⁶¹ *Id.*, 3.7.

⁶² House of Commons Defence Committee, *The Future of the UK's Nuclear Deterrent: the White Paper*, Ninth Report of Session 2006-07, paras. 149, 152; see also Hansard, HL, 7 June 2010, col. WA28; HC,

This does not include costs for recapitalising the Trident system estimated to be £25 billion at outturn prices.⁶³

4. Current Plans for Modernization and Qualitative Improvements of the UK's Nuclear Arsenal

46. In December 2006 the UK Government published a White Paper which formally opened the process to replace the UK's Trident nuclear weapons system.⁶⁴ The White Paper was endorsed by the House of Commons on 14 March 2007 when the following motion was carried by 409 votes to 161:

That this House supports the Government's decisions, as set out in the White Paper *The Future of the United Kingdom's Nuclear Deterrent* (Cm 6994), to take the steps necessary to maintain the UK's minimum strategic nuclear deterrent beyond the life of the existing system and to take further steps towards meeting the UK's disarmament responsibilities under Article VI of the Non-Proliferation Treaty.⁶⁵

47. According to British Pugwash, the effect of that vote and its present and future consequences are as follows:

Parliament voted to authorize the initial 'Concept' phase of the Trident replacement system. The next major milestone, known as the 'Initial Gate' decision, was to move to the 'Assessment' phase, involving further detailed refinement of a set of design options to enable selection of a preferred solution. The government announced the Initial Gate decision on May 18, 2011. The next big decision to move to the 'Demonstration and Manufacture' phase is the 'Main Gate' decision, now scheduled for 2016 (delayed from 2014 in October 2010). That is supposed to be the key decision-point when the finalized submarine design is adopted; contracts

20 December 2012, col. 908W. In 2010-11 the defence resource budget was c £28bn: Public Expenditure Statistical Analysis 2011, Departmental Budgets, HM Treasury, table 1.3a, available at http://www.hm-treasury.gov.uk/d/pesa_2011_chapter1.pdf. A recent analysis by Scientists for Global Responsibility has revealed that the UK Government spent an average of £327 million per year on nuclear weapons research and development over the three years from 2008 to 2011. See *UK nuclear weapons R&D spending: Addendum A1 to Offensive Insecurity*, February 2014, available at <http://www.sgr.org.uk/publications/uk-nuclear-weapons-rd-spending>.

⁶³ Ministry of Defence (2011) *Initial Gate Parliamentary Report* (London: Ministry of Defence), p. 10.

⁶⁴ Ministry of Defence and Foreign and Commonwealth Office, *The Future of the United Kingdom's Nuclear Deterrent*, Cm 6994.

⁶⁵ Hansard, HC Deb, 14 March 2007, cols. 298-407.