

## **Trident SSBN Commanding Officers - Discharge of Responsibility Need for re-assurance that Parliament has been involved**

### **A Supplement to 'Re-Targeting Trident – Parliament should be involved'**

#### **Introduction**

1. The referenced paper and this supplement to it have both been written in the light of my personal experiences as a former nuclear submarine Commanding Officer (CO) at sea in the 1970s when the Cold War was at its height . This included two years as Executive Officer (and in Command for part of one patrol) of *HMS Repulse* a Polaris missile equipped submarine. During this period UK policy for the Polaris Force was very straightforward; if the Soviets launched an attack on the West with nuclear weapons we would retaliate by firing our Polaris missiles – known as Second Strike.

2. The US policy was also allegedly Second Strike - more popularly known as **Mutually Assured Destruction (MAD)**. However, recent revelations by General George Lee Butler USAF (Ret'd) in his memoirs *Uncommon Cause: A Life at Odds with Convention* and Daniel Ellsberg in his book *The Doomsday Machine: Confessions of a Nuclear War Planner* have revealed that there were secret plans at the first sign of hostile intent to launch a massive pre-emptive First Strike, on military complexes and centres of population in the Soviet Union and China together; even if nuclear weapons were not involved. The intention was to destroy both States' infrastructure and populations so completely that they could not launch a First Strike. Furthermore, Ellsberg reveals a frightening lack of control of local commanders of nuclear weapon forces, such that it was entirely possible they might order an attack on their own initiative, so heightening the prospect of a launch on false warning similar to the recent one in Hawaii.

3. While the control of RN Polaris was nowhere near as lax as the US seems to have been, had the US initiated a First Strike, it is almost certain that the UK would have joined with them; thereby undermining, in hindsight, my confidence that UK Polaris Force was solely posing a Second Strike deterrent threat. This has made me realise that the horrifically disproportionate and indiscriminate nature of nuclear weapons must involve Parliament firstly in agreeing overall policy for the use of Trident, secondly in approving re-targeting (as postulated in the reference paper) and thirdly, in agreeing the justification for attacking those targets. This involvement would provide COs of Trident SSBNs, who have the ultimate responsibility, with a greater measure of confidence in the discharge of their responsibilities. This is now discussed in more detail.

#### **Responsibilities of Trident SSBN Commanding Officers if ordered to launch missiles**

4. This discussion now focuses on the advice contained in *The Joint Services Manual of The Law of Armed Conflict* - JSP 383 (2004) specifically as it applies to Trident SSBN COs. The circumstances in which they might be ordered to fire are immeasurably more complex than in my day. International Law governing the threat or use of nuclear weapons has become much more, if not totally in some minds, restrictive while, at the same time, UK Government has changed its policy from the single circumstance leading to a Second Strike to a much

more complex set of circumstances covered by 'Sub-strategic response'. This would allow, for instance, for a First Strike using low yield nuclear warheads in support of troops in the field when nuclear weapons have not been fired. Whether this would be considered as use of a 'Weapon of Last Resort' would be highly problematic to say the very least. There is also talk of a very low yield 'warning shot' to indicate intent. While the effects might be relatively limited – relatively used in an extremely loose sense - the implications would be so complex and so serious that an SSBN CO at sea on patrol could not be expected to assess the effects. He would therefore need assurance outside of the military and the PM. If he knew Parliament also supported the order to launch this might provide him with some re-assurance in deciding how to use his discretion in discharging his responsibility. The relevant extracts from JSP 383 defining his actions are reproduced below.

### **Level of responsibility**

#### **Paragraph 5.32.9**

"The level at which the legal responsibility to take precautions in attack rests is not specified in Additional Protocol I<sup>1</sup> Those who plan or decide upon attacks are the planners and commanders and they have a duty to verify targets, take precautions to reduce incidental damage, and refrain from attacks that offend the proportionality principle. Whether a person will have this responsibility will depend on whether he has any discretion in the way the attack is carried out and so the responsibility will range from commanders-in-chief and their planning staff to single soldiers opening fire on their own initiative. Those who do not have this discretion but merely carry out orders for an attack also have a responsibility: to cancel or suspend the attack if it turns out that the object to be attacked is going to be such that the proportionality rule would be breached."<sup>2</sup>

### **Assessing discharge of responsibility**

#### **Paragraph 5.32.10**

"In considering whether commanders and others responsible for planning, deciding upon, or executing attacks have fulfilled their responsibilities, it must be borne in mind that they have to make their decisions on the basis of their assessment of the information from all sources which is available to them at the relevant time. This means looking at the situation as it appeared to the individual at the time when he made his decision. The obligation to cancel or suspend attacks only extends to those who have the authority and the practical possibility<sup>2</sup> to do so as laid down in national laws, regulations, or instructions or agreed rules for NATO or other joint operations."

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<sup>1</sup> Protocol 1 Additional to the Geneva Conventions of 1949 (AP1) and Relating to the Protection of Victims of International Armed Conflicts 1977. An HMG Reservation attached to it states that this protocol does not apply to nuclear weapons. As the Protocol does not discuss types of weapons, only the effects to be avoided, the basis for this statement is unclear.

<sup>2</sup> The CO has this responsibility and has the discretion to cancel or suspend attacks.

5. From Paragraph 5.32.10 one can see that, in order to discharge his responsibilities, an SSBN CO will therefore need sufficient information to be satisfied that the effects of the attack will be consistent with the fundamental principles of humanitarian law as set out, in particular, in Part IV of Additional Protocol 1 (Civilian population); bearing in mind that the principle of proportionality ‘cannot ... destroy the structure of the system, nor cast doubt upon the fundamental principles of humanitarian law...’ Thus an attack cannot be justified only on grounds of proportionality if it contravenes the above-mentioned principles<sup>3</sup>

### Conclusions

6. In simple terms, the CO cannot just fire ‘blind’ solely because the order has been verified as emanating from the Prime Minister; to do this would place him in legal jeopardy both by JSP 383 and under Nuremberg Principle IV as it relates to individual responsibility for war crimes.<sup>4</sup> At the very least he would need to know:

- the target(s)
- the justification for firing
- that the Attorney General had categorically stated that the firing would be legal under International Law.

7. However, bearing in mind the extreme devastation that a nuclear weapon will cause – they were, after all, designed specifically to kill very large numbers of a population indiscriminately under the policy of MAD - the CO will also need to have the knowledge and re-assurance that Parliament has been involved in the process of approving the targets and launch of nuclear weapon(s) as well as the PM and Military.

8. The so called ‘letter of last resort’ should be treated in a similar manner. At present it is a private communication between the Prime Minister and COs of the SSBNs. It is entirely consistent and reasonable to say that its contents, although almost certainly related to extreme existential circumstances, should also be pre-approved by Parliament for the PM to write in a similar manner to targeting and firing .

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<sup>3</sup>ICRC Commentary on Article 57 of AP1, Precautions in attack, para 2207.

<sup>4</sup>Nuremberg Principle IV relates to superior orders and command responsibility and states: *‘The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.’*