



Ministry  
of Defence

Chemical, Biological, Radiological & Nuclear Policy  
Ministry of Defence  
Main Building  
Whitehall  
London SW1A 2HB

Jim Pragnell  
jim.beryl@virgin.net

Telephone [MOD]: +44 (0)20 7218 9000  
Facsimile [MOD]: +44 (0)20 7218 2342  
E-mail: [CBRNPOL-Office@mod.uk](mailto:CBRNPOL-Office@mod.uk)

Ref: CBRN2016JM2

07 September 2016

Dear Mr Pragnell,

Thank you for your further correspondence regarding the UK's nuclear deterrent. You addressed your previous letter to my colleague, Chris Clapham. In Mr Clapham's absence I have been asked to respond.

While your reference to paragraph 94 of the International Court of Justice's Advisory Opinion on the Legality of the threat or use of Nuclear Weapons is noted, I would also refer you to the quotation from the UK's written statement at paragraph 91 of the Opinion. This refers to the effect of the use of low yield nuclear weapons against warships on the High Seas or troops in sparsely populated areas which would cause comparatively few civilian casualties.

In relation to your question as to whether nuclear weapons can be legally fired at centres of civilian population or which would cause widespread damage to the natural environment, we are in agreement that the key principles under the *jus in bello* are discrimination (or distinction) and proportionality. The requirement of distinction means that only military objectives can be targeted and proportionality requires that a balancing exercise must be undertaken in which the military advantage anticipated from the attack is set against the expected civilian casualties and damage to civilian objects. Such a balancing exercise can only be undertaken in the light of the circumstances pertaining at the time. As the UK stated in paragraph 3.71 of its written statement in the Nuclear Weapons case:

"Since no nuclear-weapon State is likely to resort to the use of nuclear weapons, it is unlikely that a nuclear weapon would be used unless its use was expected to produce a very substantial military advantage. That

expected advantage would have to be weighed against the likely civilian losses to determine whether the use of the weapon would violate the principle of proportionality. It cannot, however, be right to assume, as an abstract proposition, that those losses would always outweigh that advantage especially where the destruction of a particular military objective was essential to the survival of a State which was under attack (and, perhaps, to the lives of millions of members of that State's civilian population) and the use of a nuclear weapon offered the only means of destroying that objective.”

As for damage to the natural environment, we agree with paragraph 33 of the Advisory Opinion which indicates that environmental factors would need to be taken into account when implementing the law of armed conflict. This would form part of the proportionality assessment referred to above.

Finally, I would refer you to the UK's position on belligerent reprisals in paragraphs 3.79 to 3.82 of the written statement which remains the UK Government's position today.

I hope this answers your questions and clarifies the UK Government position on the issues you have raised.

Yours sincerely,

James Manning  
CBRN Deterrence and Disarmament 3