Doc 4 - Alternative letter to the Attorney General for the Group to send

**Chamber’s of H.M. Attorney-General** Email : [correspondence@attorneygeneral.gsi.gov.uk](mailto:correspondence@attorneygeneral.gsi.gov.uk)

**20 Victoria Street** Telephone : 020 7271 2492

**London SW1H 0NF**

Dear Attorney-General,

**Re. Laying of an Information alleging a Conspiracy to Commit a War Crime**

**Laid by …………………………………………………………….**

**At …………………………………………………………….**

**On ……………………………………….…………………….**

We write concerning the above referenced criminal information, a copy of which is appended for your perusal, which we laid before the above mentioned Magistrates’ Court at the time and place as above. As you will appreciate rapidly from the nature of both the class of the offence alleged, and indeed from the character of the accused person, being that of the corporation sole of the office of Her Majesty’s Secretary of State for Defence, this matter is of an unusual, if not extraordinary, character.

We were informed, however, that unless and until such time as you are willing to issue a notice, under and pursuant to your powers granted by virtue of s.53(3) of the International Criminal Court Act, 2001, granting your consent to institute such a prosecution, our information would not be further considered, let alone proceeded with, by the said court. Accordingly, we now write seeking your said consent in that respect.

We have sought to inform ourselves regarding your stated position with respect to those matters which you will, and those which you will not, take into account when considering the exercise of a power such as this. In particular, we note with a special importance the following statement as appears in the document you published titled “*Protocol between the Attorney General and the Prosecuting Departments”* (dated July 2009) – at § 4(a)2, as follows:

*“it is a constitutional principle that when taking a decision whether to consent to a prosecution, the Attorney-General acts independently of government, applying well established prosecution principles of evidential sufficiency and public interest. “*

and we therefore assume, taking you at your word, that you will adhere to the following two basic points of procedural principle in determining this request :

a) that you will apply your mind to the same issues and to the same degree, as is applied under the established “two-stage” or “two-part” procedural prosecutorial test, as we are aware is also applied by the Director of Public Prosecutions, in those instances where statute requires that the consent to the institution of a prosecution, is required of that Office instead. Namely, i) a “*sufficiency of evidence test*”, followed by a “*public interest test*”, as applied according to the exposition and explanation offered in the “Code for Crime Prosecutors” as produced by the Director, pursuant to his duty under s.10 of the Prosecution of Offences Act, 1985.

b) further, that you will not also seek, as a matter of judgement to determine and then apply your own view, as to whether as a matter of law the alleged conduct does, or does not, comprise in the criminal offence alleged, accepting that, as a matter of constitutional principle, that is a role for the judiciary alone to perform.

If it should be the case that we are incorrect or insufficiently informed in any respect regarding these matters, we should be most grateful if you would correct our mis-apprehension, and allow us to address any points not covered in this letter, before you make any final decision on our request.

**Is there sufficient evidence ?**

Beginning then with the “*sufficiency of evidence test*”, as set out at §4.6 in the DPP’s Code for Crown Prosecutors (“the Code”), as follows:

**Can the evidence be used in court?**

*Prosecutors should consider whether there is any question over the admissibility of certain evidence.*

Response – we refer you now to the “**Summary of Evidence**” document appended hereto, in which you will see that of all the evidentiary materials to which we propose at the present time to refer in pursuit of this putative prosecution, subject naturally to subsequent amendment as required, notwithstanding the sensitive and potentially secretive nature of some aspects of the subject matter, nonetheless all of the materials we propose to rely on are “open source” and fully in the “public domain”. Accordingly, there is no question of our needing to seek discovery of “privileged”, “restricted” still less “secret” materials in order to make good our prosecution case.

**Is the evidence reliable?**

*Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.*

Response – since it is the case that the overwhelming preponderance of documentary evidence upon which we rely is principally sourced from materials as published by HMG itself, we assume that this question will not be an issue for serious doubt in your considerations. Insofar as we purport to rely in addition on “expert witness statements”, from other sources with respect to in particular the lethal and harmful effects of the detonation of nuclear weapons upon civilians, civilian objects and the natural environment – the professional qualifications and *bona fides* of those experts will be included in their statements in the usual and customary manner.

**Is the evidence credible?**

*Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.*

Response – the above considerations given in relation to “*the reliability of evidence*” we submit will be equally and fully applicable in relation also to its “credibility”.

**Conclusion on evidentiary basis test.**

Accordingly, we therefore respectfully submit that given the overwhelming, enormous and almost inestimable degree of criminal damage, death, destruction and persistent environmental harm wrought by the use of the weapon system in question, if used in the manner and circumstances as we allege the accused has planned contingently to make of it ; and further given that the accused himself is on record as asserting that he would not thereby seek any “military advantage” (strictly defined) whatever, but rather only political, strategic or coercive effect, then it follows that we are sure you will be left in no doubt, as are we, but that any

*“… objective, impartial and reasonable jury … , properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.”*

(as per § 4.5 of the Code).

**Is it in the Public Interest ?**

Next, and lastly, considering the so-called “Public Interest” test, as dealt with in the Code, and in particular addressing below the sequential tests, as set out at § 4.12 in the following alphabetical headings, where relevant to the circumstances of the instant case, as follows :

**a) How serious is the offence committed?**

*The more serious the offence, the more likely it is that a prosecution is required.*

Response –

Respectfully, this question really answers itself. We are talking here about a conspiracy to commit a war crime, which is obviously extremely serious. It is recognised by the international community of nation states comprising the civilised world as a grave breach of the most fundamental and basic norms of conduct required of nations, to be adhered to and respected, even and especially in times of international tension and armed conflict.

Our Government, acting in the name of the British people as a whole, has solemnly affirmed and ratified (without reservation) and even internally implemented the provisions of the 1998 Rome Statute for the Establishment of an International Criminal Court, within which the definition of this most grave of international crimes is set out. Relevant sentencing provision permits for imprisonment for life where the offence, or ancillary offence as the case may be, involves murder or for up to 30 years in any other instance.

*When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect’s culpability and the harm to the victim by asking themselves the questions at b) and c).*

**b) What is the level of culpability of the suspect?**

*The greater the suspect’s level of culpability, the more likely it is that a prosecution is required.*

Response –

As the corporate Crown entity, created by statute in 1964[[1]](#footnote-2), for the specific statutory purpose of permitting one of Her Majesty’s Principal Secretaries of State “*to be charged with general responsibility for defence*”[[2]](#footnote-3); and having then been the single Office of the Crown most intimately concerned and connected with the institution and subsequent maintenance of a British Nuclear Deterrence Defence Policy & Programme since that time, it is manifest that the accused party bears the greatest culpability of all state offices, with respect to the asserted criminality of that policy & programme, inherent in the prosecution case, throughout the period relevant to the facts disclosed in the information, which concern the period December 1993 to the present time.

**c) What are the circumstances of and the harm caused to the victim?**

*The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required.*

Response –

It is of elemental relevance to the definition of the offence as charged that, were the alleged conspiracy to “*be carried out in accordance with the accused intentions*”, the anticipated collateral victims thereof who would be killed, condemned to suffer lethal conditions, or gross and severe injury and harm, and the property comprising “civilian objects” and/or the “natural environment” thereby damaged or destroyed, are categories of protected persons and property, precisely so protected by the provisions of international humanitarian law, because of their particular and peculiar vulnerability, and their vital importance to the continued survival of civilian society.

Accordingly, we submit that it is obvious that the circumstances of the present prosecution case merits pursuit in the public interest precisely because of the extreme and egregious circumstances of “*the harm caused to the victims*”.

**e) What is the impact on the community?**

*The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.*

Response –

In our submission here the “community” in issue, is indeed the wider community of all nation states, who in furtherance of their sense of international “comity”, have seen fit to agree upon, institute and codify the agreed common basic norms of international humanitarian law, including in this instance the definition of war crimes, for the very purpose of defending the continued survival of the most vulnerable and vital aspects of that community, in the face of the illegal and wanton criminal ravages and degradations capable of being inflicted upon it by international offenders.

Once again, in these special and extraordinary circumstances, we maintain that the present prosecution case merits whole-hearted pursuit in the public interest precisely because of the need to respect and cherish that purpose of international communal protection and because of the potential “impact upon that community” were this legal protection instead to be ignored.

**g) Do sources of information require protecting?**

*In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.*

Response –

We refer to the response previously given in relation to the question “*can the evidence be used in court*”, and in which the point is made that, notwithstanding the sensitive and potentially secretive nature of some aspects of the allied subject matter, nonetheless all of the materials we propose to rely on are “open source” and fully in the “public domain”. Accordingly, there is no question of our needing to seek discovery of “privileged”, “restricted” still less “secret” materials in order to make good our prosecution case.

Accordingly, whilst a successful outcome to such a prosecution would undoubtedly have potential implications for and indeed ramifications on both international relations and national security, with respect to the precise issue raised in relation to the Code paragraph here in question, there are no “sources of information” which will be relied upon and which therefore will need “protection”. In short, there are no “government whistle-blowers”, upon whom we will purport to rely.

**Conclusion on ‘public interest’ basis test.**

Ultimately it comes to this, is it in “*the public interest*”, not merely that the legality but more especially the alleged criminality, of the nuclear armed defence policy which has lain at the core of British strategic national security policy for more than half a century, should be examined forensically in the careful and solemn environment of a British criminal court proceeding, ultimately for determination by a British Crown Court jury. How could it arguably ever be asserted that it is possibly *not* in the “public interest” to establish whether the Government, who takes public taxes to fund this policy, and who expects and demands unconditional public loyalty in time of war, has determined to defend that public, if deemed necessary in the ultimate extreme, by means which are not merely illegal but, when judged by our own domestic laws, albeit sourced from our voluntary accession to international legal norms, are actually criminal ?

As a matter of purely political consideration, one might question whether it is for or against the public interest to maintain the political hypocrisy, whereby we continue to perpetrate a pretence of preaching to the world about the importance of respecting the rule of international law, whilst in reality standing ready to defend ourselves by the most obviously internationally criminal means imaginable.

Fortunately, however, as we understand and interpret your stated position, as previously quoted at the outset from the “*Protocol between the Attorney General and the Prosecuting Departments”* (dated July 2009) – at § 4(a)2, when in exercise of your ‘*quasi-judicial’* function for deciding upon the grant or refusal of consents to prosecute, as is here in issue, you stand entirely apart from government and your role in government. Most especially in the sense of your political loyalty to support the strategic defence policy of the governing party to which you belong. Instead, you solemnly undertake and pledge to apply the above specified two-stage procedural prosecutorial test, entirely independent of and uninfluenced by, such party political considerations.

We take you at your word, which is naturally why we have chosen to address you strictly on that basis, and not with respect to any allied political, moral or indeed religious basis instead. We trust that we are not mistaken in this appreciation of your role in this matter.

In the meanwhile we look forward to your response,

Yours sincerely, etc. etc.

1. Defence (Transfer of Functions) Act 1964 [↑](#footnote-ref-2)
2. See s.1(1)(a) of that Act [↑](#footnote-ref-3)