

FROM:-

Knighton Action for Peace and Justice,
c/o Angie Zelter, 6 Church St, Knighton,
Powys, LD7 1AG

TO:-

The Magistrates,
Law Courts, Castle St, Merthyr Tydfil, Mid
Glamorgan CF47 8BU

3rd February 2016.

Dear Magistrates,

Knighton Action for Peace and Justice are hereby formally lodging a Criminal Information against the corporation sole of the office of Her Majesty's Secretary of State for Defence for conspiring to commit a war crime.

We have included a copy of the letter and declaration sent to the Secretary of State for Defence on 1st October 2015 and of the reply from the Ministry of Defence on 3rd November 2015. You will note that the Ministry of Defence declined our invitation to make a declaration, on behalf of the Government, which is why we are now seeking permission of the court to issue a summons and start proceedings.

Attached to this letter is the Criminal Information itself which has been signed by 62 Informant Prosecutors. We could have gathered many more signatures but felt that this was enough to show the court that there is grave public concern and interest in such proceedings being started by the court.

We have included a summary of evidence and other materials including some Expert Evidence Reports that we intend to rely upon when the matter reaches the court. These materials should also provide you with information that will assure the court of the following points:-

- (a) the offence is known to the law**
- (b) the essential ingredients of a prima facie case are present**
- (c) the alleged offence is not out of time**
- (d) the court has jurisdiction.**

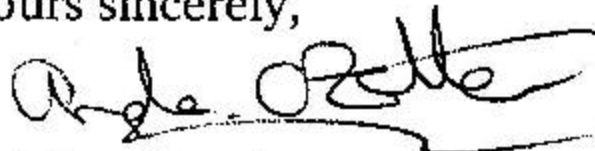
The informants understand that they do not have the necessary authority to institute the prosecution proceedings as the Attorney General's consent is required under s.53(1)(c)&(3) of the International Criminal Court Act 2001. We therefore request that, in the public interest, you forward these materials to the Attorney General and ask for this permission to be granted on our behalf. In the hope that it might be of use we have drafted such an appeal to the Attorney General that you might like to use.

We thought you might like to be aware at this stage that in the event that the Attorney General declines to consent, we intend to approach the Office of the Prosecutor of the International Criminal Court, in The Hague, to ask her to institute an investigation into this situation, pursuant to her powers

under Art.15 of the Rome Statute (1998). We are aware that it may then be important to her decision as to the technical 'admissibility' of this situation under the provisions of Art.17 of the Statute. In turn, this would require her to come to a view as to whether any failure to institute proceedings in the UK was or was not due to the "*unwillingness or inability of the State genuinely to prosecute*" as per art.17 §1(b) of that Statute.

We previously received information from the court staff to the effect that we would not be permitted to orally address the court directly with respect to our criminal information. However, our legal advice is that this is an unlawful restriction in contravention of our statutory rights. Part 7.2(1) of the current Criminal Procedure Rules (2015), expressly reserves to a would-be "prosecutor" wanting a magistrates' court to issue a summons, the option to either serve the information in writing on a court officer, "or" unless other legislation prohibits it (as to which we are aware of no such limitation) "*present the information orally in court*" instead. We are aware that any and all matters such as the hearing of a criminal information which can be lawfully conducted before a single Justice of the Peace acting alone, may also be administratively delegated to a consideration by a Justices' Clerk instead. In this instance, we are handing in these documents personally as we have been told we cannot be heard orally. If, however, you change your mind, and are willing to have us address the court directly, please let us know. Meanwhile, we await your decisions.

Yours sincerely,



Angie Zelter, on behalf of the 62 Informant Prosecutors.

Attached documents consist of the following:-

1. A Criminal Information – alleged offence Conspiracy to Commit a War Crime
2. Summary of Evidence and other Materials Prosecutor intends to rely upon
3. 6 Expert Evidence Reports of John Ainslie, Dr. Frank Boulton, Dr. Phil Webber, Dr. Nick Ritchie, and Prof. Paul Rogers.
4. Letter to Secretary of State for Defence of 1st October 2015.
5. Letter from L.Vaccarello, of the Chemical, Biological, Radiological and Nuclear Policy, Ministry of Defence, of 3rd November 2015.
6. Draft appeal to the A.G. to grant permission for the case to proceed.

A CRIMINAL INFORMATION

[Magistrates' Courts Act 1980, s.1 ; Criminal Procedure Rules, Part 7]

MERTHYR TYDFIL MAGISTRATES' COURT

Date : 3rd day, of February, 2016

Accused : Her Majesty's Secretary of State for Defence

Address : Ministry of Defence, Whitehall, LONDON SW1A 2HB

ALLEGED OFFENCE

Conspiracy to Commit a War Crime

Being an offence under s.52(1) of the International Criminal Court Act, 2001 (c.17—Part V) (as *amended*) and as that provision is given effect by reason of the further provisions of ss.51(1), 52(2)(a)&(4), 55(1)(c)&(4)(b) of that Act & of s.1 of the Criminal Law Act 1977.

In particular, that the various acts alleged in the attached Statement of Particulars, taken together and subject to the further conditions and stipulation as therein set out, if undertaken as alleged, would amount to and constitute, the commission of a war crime, namely the launching of a disproportionate attack;

as that is defined by Article 8(2)(b)(iv) of the Rome Statute for an International Criminal Court 1998 (the "Rome Statute") and as incorporated unaltered into the said Act of 2001 per subs.50(1) & (6) to & Schd.8 thereof.

Names and addresses of INFORMANT PROSECUTORS appear as set out in the Schedule attached hereto

Who state that the accused committed the above specified offence of which particulars are given in the Statement of Particulars appearing overleaf.

Taken before me

JUSTICE OF THE PEACE / JUSTICES' CLERK / JUSTICES' CLERK'S ASSISTANT

Signed:-

This day of February, 2016.

STATEMENT of PARTICULARS

That the accused person, being a Corporation Sole by Statute¹, in consequence and by virtue of the official acts and deeds of the natural person being the incumbent holder in title of that said corporate office, and who is clearly identifiable as the directing mind of the said Corporation, has sought;

to charge, command, order, dispose, enjoin, organise, initiate, and otherwise procure, various components of the armed forces of the Crown to engage in the pursuit of an agreement, entered into by the accused together with other persons, named or otherwise identified, comprising principally (though not exclusively) in the members of the National Security Council, and in the members of the Defence Council as established by Letters Patents signed on Wednesday 17 March 1964 and as those individual members vary from time to time (details of whom and which, for the present time, appear in the bundle attached hereto and marked 'Defence Council' and 'Membership of the National Security Council') ;

and who together, whether as principals or secondary actors, command and control the component elements of a so-called independent British nuclear deterrent force; and relying principally upon the provision, supply, maintenance, targeting and preparedness for hostile use of a number of weapons, namely a specified number of submarine-launched inter-continental ballistic nuclear missiles of the Trident II D5 variety; and,

whereby the accused and at least one or more of those said others, since at least December of 1993, being the date of the initial operational deployment of the first such submarine to carry the said weapons system, have agreed upon and intend to pursue a course of conduct, to be carried out on condition of certain anticipated and foreseen circumstances, comprising in a so-called British hostile nuclear use threshold trigger; and,

whereby the accused and said others would in such circumstances thereby launch an attack, in the knowledge² that such an attack would cause incidental loss of life, and/or injury to civilians, and/or damage to civilian objects and/or widespread, long-term and severe damage to the natural environment; and,

further, which would, in some or many instances contemplated, be clearly excessive in relation to any direct and overall military advantage alone which they could reasonably anticipate from such said use.

¹ As to which see The Defence (Transfer of Functions) Act 1964

² As this term is interpreted by s.66(3)(b) of the said Act of 2001

Full and further particulars will be provided at a later stage covering the scale of civilian deaths, damage to civilian objects and damage to the natural environment consequent upon the use of even a single missile, from the Trident II arsenal as deployed by the Navy, and as used in various targeting scenarios based on information about strategic planning already in the public domain. Information about other individuals involved lower down the nuclear command chain will also be provided as and when necessary.

However, we have provided a few signed witness statements to provide an indication of the kind of particulars we will be providing in much greater detail at that later stage.

LIST OF INFORMANT PROSECUTORS

NAME	ADDRESS	SIGNATURE
A.C. ZELTER	6 CHURCH ST, KNIGHTON, LD7 1AG	Angela Zelter
C. BERESFORD	4 WESTON COTTAGES, SY7 0BB	Angela Zelter
C. SAUNDERS	6 CHURCH ST, KNIGHTON LD7 1AG	Camille
M. WESTRIP	Homafield Rhos Market Garden LD7 1PD	M. Westrip
P. MARTIN	FLAT 24 STATION ROAD LD7 1DT	N. Colston
N. COLSTON	WUNSTED LD7 1HB.	N. Colston
P. GROUNDS	THE GLYN, CONJUROR'S DRIVE KNIGHTON LD7 1EP	Pamela Grounds
T. Clough	38 MARKET STREET KNIGHTON POWYS LD7 1EY	T. Clough
J.C. Baker	11 Church Road, Knighton, LD7 1EB	J.C. Baker
B. Baker BAKER	11 Church Rd, Knighton, LD7 1EB	B Baker
J. ROBERTS	29 HIGH ST. KNIGHTON LD7 1AT	J. Roberts
A.M. DAVIES	LOWER SKILBORO COTTAGE, KNIGHTON, POWYS LD7 1TW	A.M. Davies
R. LEWIS	MELIN-Y-GROGWE LLANFIRWATERWINE R. LEWIS, KNIGHTON LD7 1TU	R. Lewis
G. REW	WELLY-MILL Llanfyrddon LD7 1TU	G. Rew
H. PENDRY	CRAIG Y NOS, Ffordd y Drenewydd, MACHYNALLETH SY20 8HD	H. Pendry
M. BROWN	TYN YWERN PONTALLOFT CROESYS SY7 5NJ	M. Brown
K. REITER	Frondeg, Gorn Rd., Llanidloes SY18 6DQ	K. Reiter
C. PENFOLD	3, GLANTRANNON TREFEGLWES SY17 5PL	C. Penfold
S. LEES	Rhoshelyg, Gorn Rd. Llanidloes SY18 6DQ	S. Lees
L. CASSON	3 Wylcwm St, Knighton LD7 1AA	L. Casson
L. SURANAGE	20, Church St., Prestegne LD8 2BS.	L. Suranage
N. BENDA	Cot a Fiddle Barn, Prestegne, LD8 2HG	N. Benda
S. CLARKE	Panteg Conjuror's Drive Knighton LD7 1EP	S. Clarke
R. KORNER	Willygaust. Llanbister Rd LD15 0W	R. Korner
C. KEEFFE	CHAREL CLOSE, KNIGHTON LD7 1BL	C. Keefe
C. KIBBLEWHITE	Green Gates, Baynham's Yard, Bridge St. Knighton. HR5 3PL	C. Kibblewhite
R. BEA	WEST FLAT. BOUTIBROOKE, PRESTEGNE LD8 2EU	R. Bea
A. PECHADADEWS	1 SAINT PETER'S LODGE HEREFORD HR4 8ER	A. Pechadadeus

LIST OF INFORMANT PROSECUTORS

NAME	ADDRESS	SIGNATURE
KRISTY COLLET	23 BLANCHARD CLOSE, LUDMISTER HR6 8SH	ICA
MARIA BREWSTER	THE RAFTERS WESTHOPE LFD H448BT	MB
STEVE MORRIS	THE RAFTERS, WESTHOPE, HFD HR4 8BT	S. Morris
ADAM CRUMP	23 BLANCHARD CLOSE, LUDMISTER	AC
RICHARD COTTERILL	GREENGATES, BRIDGE ST, KINGSTON HR5 3DL	Richard Cotterill
NAOMI OCEAN	Troedy Rhin, Dolau, Handrindod Wells LD15TH	Naomi Ocean
NICOLE VARRICE	9 BROOKSIDE, KNIGHTON LD7 1DW	Nicole Varrice
CHRISTOPHER PLANT	28 The Dingle, Knighton, LD7 1LD	Cywl Plant
KAREN PLANT	28 The Dingle Knighton LD7 1LD	K Plant
Celia M. Jeffries CELIA JEFFRIES	YNYSWYE, ERWOOD, BUILTIN WELLS LD2 3YT	
Siel T. Jeffries		
RICHARD BEASLEY	PEACE HAVEN, KNIGHTON POWY LD8 2BW	Richard Beasley
NANCIE HAREST	50 ROCKS GREEN CRESCENT, LUDLOW, SALOP, SY8 2BT	Nancie Harest
SHARON HALL	2 CLATTERBRUNE, PRESTIGE, POWYS LD8 2LB	Sharon Hall
RICHARD SHIPP	2 CLATTERBRUNE, PRESTIGE, POWYS LD8 2LB	Richard Shipp
PETER LAWLEY	50 ROCKS GREEN CRESCENT, LUDLOW SY8 2BT	P. Lawley
KAT MCDERMOTT	PEACE HAVEN KNIGHTON ROAD PRESTIGE LD8 2BW	Kate McDermott
DOE MIDDLETON	THE LODGE, EYWOOD TITLEY, KINGTON, HR5 3RU	D. Middleton
Hilary Howcroft	Bycroft, Penybont Road Knighton, Powys, LD7 1HT	Hilary Howcroft

LIST OF INFORMANT PROSECUTORS

NAME

ADDRESS

SIGNATURE

Val Bailey	4, Offa's Way, Knighton, Powys. LD7 1AL	Val@Bailey
Furces Brett FRANCES BRETT	3, Bridge St. SY7 8JP	Furces Brett
Lois Evans	7 Beambridge, Aston on Clun, SY7 0HA	Lois Evans
Chris Brooks	1 Mill Gdns. The Cwm-knighton - Powys - LD7 1HF	C. J. Brooks
Melina Cope	The Vicarage, Church St., Knighton LD7 1AG	Melina Cope
Peter J. Cope PETER J. COPE	THE VICARAGE, CHURCH ST., KNIGHTON LD7 1AG	Peter J. Cope
Tom Taylor	Peldred Burdd, LD7 1DT	T.A. Taylor
Ganar Tully	Cwm Arran Mill Dolau	LIANDRINDOD wells, LD15TL
Rochelle Russell	2 Church Rd Knighton Powys LD7 1EB	Rochelle Russell
Beverley May	The Garden House, Church Rd, Knighton, Powys LD7 1EB	Beverley May

LIST OF INFORMANT PROSECUTORS

NAME

ADDRESS

SIGNATURE

JENNY MAXWELL Court Cottage, Welford, SY7 0JT

Jenny Maxwell

Carol Anson The Sun Inn, St Margarets
Herefordshire HR2 0QH

Carol Anson.

Marie Prout 46 Lichfield Ave...
Hereford HR1 2RJ

M. Prout

Kim Holroyd 15 Chapel Row, Ludlow
SY8 2NL

Kblew

Jacki Lambert Crossing Cottage, Bedstone
SY7 0BH

Lambert

Summary of Evidence and other Materials Prosecutor intends to rely on.

Expert Evidence Reports

an Expert Evidence Report is rather like a criminal Witness Statement, in that in both cases one seeks to use it to produce documentary or written evidence upon which you seek to rely in a criminal prosecution. However, the Expert Report differs in that, whilst the maker of the Witness Statement can only speak to matters within their direct knowledge and sensory appreciation, the expert can comment and speculate about any matter he stipulates to being within the area of his expert knowledge and experience, which would otherwise be inadmissible as 'hearsay' material

1. Expert Evidence Report of **John Ainslie** Scottish CND Convenor

Exhibits :

- (1) *"If Britain fired Trident"* (Feb 2013) : **(J.A.01)**
- (2) *"Unacceptable Damage"* (Feb 2013) : **(J.A.02)**

2. Expert Evidence Report of **Dr. Frank Boulton** MedAct & ICAN

Exhibits :

- (1) *"Unspeakable Suffering : the humanitarian impact of nuclear weapons"* edited by Beatrice Fihn (Reaching Critical Will), **"F.B.01"**
- (2) *Multidecadal global cooling and unprecedented ozone loss following a regional nuclear conflict* Mills, M. J., O. B. Toon, J. Lee-Taylor, and A. Robock (2014), , *Earth's Future*, 2, 161–176, doi:10.1002/2013EF000205 **"F.B.02"**
- (3) *"Blood Transfusion Services in the wake of the humanitarian and health crisis following multiple detonations of nuclear weapons"* Frank Boulton **"F.B.03"**

3. Expert Evidence Report of **Dr Phil Webber** Scientists for Global Responsibility

Exhibits :

- (1) *"UK nuclear weapons: a catastrophe in the making?"* **(PW01)**
- (2) *"Humanitarian Consequences : short case study of the direct humanitarian impacts from a single nuclear weapon detonation on Manchester, UK"* **(PW02)**

4. Expert Evidence Report of **Dr. Nick Ritchie**
5. Expert Evidence Report of **Prof. Paul Rogers**

International Statutes & Treaties

the term Treaty is generally understood very broadly and includes any species of international agreement between two or more States Party, howsoever described therein, protocol, covenant, convention, pact, memorandum of understanding international statute or exchange of letters etc. Here the treaties relied on are all multilateral, that is binding on many state parties.

1. Convention (IV) respecting the Laws and Customs of War on Land
The Hague, 18 October 1907.
Preamble and Articles 22 & 23
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Part IV : Civilian population

#Section I -- General protection against effects of hostilities

Articles 51 & 55

3. Rome Statute for the Establishment of an International Criminal Court (1998)
esp. **Art 8 (2) (b) (iv)**
4. Vienna Convention on the Law of Treaties (1969) –
article 2 § 1(d)

Statutes Domestic

here in the UK, of course, the term statute applies generally to an Act of the UK Parliament, which can apply throughout the UK, or only in parts thereof. For instance, the ICC Act 2001 below does not apply in Scotland, which has its own alternative equivalent Scottish Act instead.

1. Geneva Conventions Act 1957 (as amended)
2. Geneva Conventions (Amendment) Act 1995

3. International Criminal Court Act 2001
esp. Part V (Offences under Domestic Law)
4. Criminal Law Act, 1977, section 1

Statutory Instruments Domestic

Secondary or Subsidiary Legislation is generally that which is authorised by a Statute, which is then known as Primary Legislation. It can have several different terms such as, Regulations, Rules, Orders, Directives or Bylaws etc., but whichever term is used, when made by a Central Government Authority nowadays they are generally always published as Statutory Instruments.

1. The Geneva Conventions Act
(First Protocol) Order 1998 [1998 No. 1754]
2. The International Criminal Court Act 2001
(Reservations and Declarations) Order 2001 (No. 2559)¹.
3. The International Criminal Court Act 2001
(Elements of Crimes) Regulations 2001 – SI 2001/2505

Diplomatic Instruments

diplomatic instrument is the general term given to the written notices whereby formal communications are sent between states, and also between states and International Organisations, etc. They include as in these instances, Declarations of Accession, Ratification and Reservation to Treaties.

1. Additional Protocol I (1977)
UK Instrument of Accession , § (i)(1977)
SOURCE : UNTS, vol.1125, 1979, pp.432-433.
2. Additional Protocol I (1977)
UK Instrument of Ratification § (a) & (e) (1998)
SOURCE: Corrected Letter of 28 January 1998 sent to the Swiss Government by Christopher Hulse, HM Ambassador of the United Kingdom
3. The Rome Statute (1998)
UK Instrument of Ratification (2001)²

¹ <http://www.legislation.gov.uk/ukxi/2001/2559/contents/made>

Declaration

Official Commentaries

Official commentaries are generally those documents created by typically an International Organisation or body which has been responsible for hosting or administering to an international gathering, conference or Parliament in which a treaty document has been produced or applied. However, it may also cover official national commentaries which are designed to further explain and expand upon the application of such treaties within specific states.

1. Customary International Humanitarian Law database -

edited by Jean-Marie Henckaerts (ICRC) and Louise Doswald-Beck
(International Commission of Jurists)

http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14#Fn_10_1

2. UK Manual of Military Law (Lauterpacht) § 43.

3. Additional Protocol I (1977)
Part IV : Civilian population

ICRC Official Commentary

§§ 1834-1859

§§ 1976-1979

Case-law

self-evidently this refers to previous decided cases and judgements which are of “precedential value” in deciding and expounding upon certain important legal terms, doctrines, conditions etc. and which may then be later relied upon by subsequent courts, when seeking to apply the same legal principles.

International

1. International Court of Justice

Advisory Opinion of 8 July 1996 - General List No. 95 (1995-1998) . I

*“Legality of the threat or use of nuclear weapons”*³

§§ 84-87

<http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=95&code=unan&p3=4>

2

<https://www.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=34213524F9312D84412566D600587078>

3

<http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=95&code=unan&p3=4>

4

Domestic

1. *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116,
pp.143-144 per Diplock L.J.
2. *Regina v Saik* [2006] 2 W.L.R. 993
Per Lord Nicholls of Birkenhead at §5
Per Lord Brown of Eaton-under-Haywood, at §120
3. *R v O'Hadhmaill* [1996] Crim LR 509
Per Lord Taylor LCJ

Public Domain Documentation

Finally, this term applies to any source of documentary, as in written, information which is available without restriction or legal condition and is available to be inspected and copied by the public generally.

Official Government Publications

1. HMG : Trident Alternatives Review :16 July 2013
§5, p.3 ;
§1.3, p.13
§§ 3.5 - 3.9

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212745/20130716_Trident_Alternatives_Study.pdf
2. House of Commons Defence Committee -
“Deterrence in the twenty-first century” -
Eleventh Report of Session 2013–14 (Published on 27 March 2014)
§3, p.1
§8, pp.1-2
§12, §18, § 24

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmdfence/1066/1066vw.pdf>
3. Briefing New Ministers, Strategic and Theatre Nuclear Forces,
ME Quinlan, 2 May 1979,
DEFE 25-335 E58 (i)

4. Securing Britain in an Age of Uncertainty –
The Strategic Defence and Security Review (2010)
see esp. @ **para. 3.11**
<https://www.gov.uk/government/news/strategic-defence-and-security-review--3>

Academic and ‘open’ source materials

1. **POLICY BRIEFING** : December 2010 – Applying the Principle of Proportionality in Combat Operations
JANINA DILL : Research Fellow in Socio-legal Studies, University of Oxford
http://www.elac.ox.ac.uk/downloads/proportionality_policybrief_%20dec_2010.pdf
2. **Tim Hare**, “What next for Trident ?”,
RUSI Journal, April 2005
3. “on Nuclear Deterrence : *the correspondence of Sir Michael Quinlan*”
(at p.221)
4. “*If Britain fired Trident*” (by John Ainslie Convener of Scottish CND)
<http://www.icanw.org/wp-content/uploads/2013/02/ifbritainfiredtrident.pdf>
5. “*Unacceptable Damage : Damage criteria in British nuclear planning*”
by John Ainslie Convener of Scottish CND (February 2013)
<http://www.swordofdamocles.org/pdf/UnacceptableDamage.pdf>
6. Prof. Michael Clarke’s “*Britain’s Strategic Vision of its Security Environment: de-alerting and the nuclear deterrent*”
Centre for Defence Studies Bulletin,
King’s College London, October 1998, **p.8**.
7. Article in the Financial Times, 17th May 2012
by Sir Menzies Campbell MP (Lib Dem):
8. Deputy-Prime Minister Mr Nick Clegg MP to conference
29 October 2012
<http://www.bbc.co.uk/news/uk-politics-20116648>

9. Lockheed-Martin Space Systems
Corporate website data on the Trident II D5 Fleet Ballistic Missile
<http://www.lockheedmartin.com/us/products/trident-ii-d5-fleet-ballistic-missile--fbm-.html>
10. Global Security website source for information on the
Trident II D-5 Fleet Ballistic Missile
<http://www.globalsecurity.org/wmd/systems/d-5-features.htm>
- 11 Atomic Weapons Establishment (Aldermaston) website information
on its role in the production and maintenance of UK Trident warheads
<http://www.awe.co.uk/what-we-do/supporting-the-uks-deterrent/>
12. Article posted by Hans M. Kristensen on US Federation of American
Scientists website titled : "*British Submarines to Receive Upgraded US
Nuclear Warhead*" April 01, 2011
<http://fas.org/blogs/security/2011/04/britishw76-1/>
13. Information on Designation-Systems.Net re specifications for the
Lockheed Martin UGM-133 *Trident II* Missile
<http://www.designation-systems.net/dusrm/m-133.html>

Knighton Action for Peace and Justice. 3Rd February 2016.

Dear Attorney-General,

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

Laid by Knighton Action for Peace and Justice

I write concerning the above referenced criminal information, a copy of which is appended for your information, and which was handed into the Merthyr Tydfil Law Courts on 3rd February, 2016. 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.

That said, those who laid handed in the said information did so accompanied with extensive and comprehensive explanatory documentation and materials, aimed at informing and indeed reassuring this Court that the said information, and the criminal process thereby sought, was fully within our jurisdiction, and competent for us to act upon.

In a matter such as this I consider that the general scope of my role remains essentially as governed by the considerations laid down by Lord Widgery C.J. in the matter of *R. v. West London Justices, ex p. Klahn* in 1979¹, as follows:

(a) Offence known to the law

whether the allegation is of an offence known to the law and if so whether the essential ingredients are prima facie present.

I have broken this consideration down into its two natural elements, viz: '*an offence known to the law*' and then secondly the presence of *prima facie ingredients*. As to the first I am entirely satisfied, principally by the terms of the criminal information (as attached) that indeed such an offence is so known to our law.

Secondly, as to the presence of *prima facie* ingredients, I have taken due and proper account of the documentary materials which the Informants appended and submitted together with the said information. However, in this regard, it is especially important to observe that:

¹ [1979] 2 All ER 221 (see esp. @ 223A *et seq.*)

(i) whilst I took due note of the factual assertions made in the expert witness statements, as supplied by the informants, and testifying as to the enormous destructive power and the widespread and harmful effects of the detonation of a Trident SLBM (D5) in and over a populated area; I remain aware that such material is potentially open to factual challenge by others. Furthermore, that in any event, at this stage in the proceedings, there can be no question of any scrutiny of the evidence which is a matter only for consideration by any future trial court.

In this regard, I take particular note of Lord Widgery C.J.'s further observations in *ex p. Klahn*, as follows²:

“There can be no question, however, of conducting a preliminary hearing. Until a summons has been issued there is no allegation to meet, no charge has been made. A proposed defendant has no locus standi and no right at this stage to be heard. ...”

(ii) Equally, it is important to note, that whilst I took due account of the content of the letter dated 3rd of November, 2015 and signed by L.Vaccarello answering on behalf of the Government to the earlier communication sent by the Informants, and declining the invitation of the Informants to the Secretary of State to make a declaration, on behalf of the Government, as sought, nevertheless I regard that as being only of circumstantial relevance of any particular agreement, inconsistent with the terms of such a said declaration, let alone of a criminal conspiracy to do any particular future act.

That said, I am, however, satisfied that there is evidence going to the *prima facie* ingredients of the offence, which if it were to be found reliable upon future judicial examination could be a sufficient basis for making out the charge alleged.

(b) Within time limits

Accordingly, I moved to apply the next of Lord Widgery C.J.'s considerations, namely that the alleged offence is not out of time.

The informants supplied materials to the effect telling me that the initial operational deployment of the Trident II D5 SLBM system, as carried aboard HM Submarine Vanguard (and the three subsequent vessels also members of her class), which is the weapon delivery system upon whose

² Ibid @ p.236C

future use their case principally relies, dates from the initial operational deployment of that vessel in December 1993³.

The missile system itself underwent an initial operational capability assessment with the U.S. Navy earlier in March 1990⁴, whereby following launch and commissioning the initial American vessels were deployed on Demonstration and Shakedown Operations (DASOs), which included test firing of Trident II missiles at the United States' SLBM Launch Area, Eastern Test Range, Cape Canaveral, off the coast of Florida. HMS Vanguard itself received its full naval commission on 14 August 1993.

However, it is the Informants' case that it is only since that first operational deployment of HMS Vanguard, in December 1993, that the alleged defendant, the corporate office of the Secretary of State for Defence, which itself has been in existence since created by Letters Patent issued on Wednesday 17 March 1964, has possessed the technical capacity to carry out the specific agreement, comprising the offence alleged, albeit that inevitably and progressively some measure of planning, design, preparation, and simulation for the command, communication and control of the same must have at least begun at an earlier point in time.

In this regard, it is important to note that I was informed that, whilst the statutory section establishing the criminal offence cited under the ICC Act 2001, namely the commission of an offence ancillary to the commission of a war crime, only came into force, as of September 1, 2001⁵; nonetheless, the retrospective effect of the subsequent amending provisions of S.65A thereof '*Retrospective application of certain offences*'⁶, and in particular the effect which that provision has on subsection 52(2) of that Act, by reason of subsection (3) thereof, means that the court has temporal jurisdiction with regard to the offence if and when committed at any time since 1 January 1991. Accordingly, that temporal jurisdiction for this offence, being an indictable only offence⁷, has existed and continues since at least the said initial operational deployment aboard HMS Vanguard, in December of 1993.

Jurisdiction

Accordingly, I moved to then apply the next of Lord Widgery C.J.'s considerations, namely to determine whether the '*the Court has jurisdiction*'.

³ <http://www.globalsecurity.org/wmd/world/uk/vanguard.htm>

⁴ <http://www.designation-systems.net/dusrm/m-133.html>

⁵ As to which see the terms of Art 2. SI 2001/2161

⁶ Added by Coroners and Justice Act 2009 c. 25 Pt 2 c.3 s.70(3) (April 6, 2010)

⁷ As to which see s.53(2) of the 2001 Act

In this regard it seemed to me that the principal issue to be addressed was with regard to the position whereby the Informants, seek to invoke the criminal jurisdiction of the courts of this country, as regards a prosecution for the commission of an alleged offence, as committed by a Minister of the Crown, where the entire factual premise for the allegation relates to and would require investigation of the Crown's declared on-going policies for securing the defence of the Realm and the national security interests of the United Kingdom.

The Informants accept that were they to rely instead upon the exercise by this court of its jurisdiction at common law, in order to be satisfied that we have the necessary jurisdiction to issue the criminal process sought; the well-known line of authorities, holding that matters relating to the "defence of the realm" and the "disposition and armament of the Royal forces" are non-justiciable would be a serious impediment. However, given that they rely entirely upon the statutory authority of the offence created by the ICC Act, 2001, they maintain, with good cause, that so long as it can be shown beyond question that the Crown, its servants and agents etc., are bound by that statute, any common law impediments are irrelevant.

To be clear, this Court is fully aware that even where clear and unambiguous statutory provisions exist, as a general proposition that will not be deemed binding upon and operate to the detriment of the Crown, its authorised servants and agents, unless the same be made plain in the language of the statute concerned.

However, as the Informants have been at pains to point out, the relevant section of the International Criminal Court Act 2001 is clear as to its plain and natural meaning.

“78 Crown application

This Act binds the Crown and applies to persons in the public service of the Crown, and property held for the purposes of the public service of the Crown, as it applies to other persons and property.”

Necessary Authority

Accordingly, having found that this Court possesses the requisite jurisdiction, I moved to apply the next and last of Lord Widgery C.J.'s considerations, namely, whether these informants have the necessary authority to institute the prosecution proceedings. The answer to which, as they themselves willingly concede, is that they do not. Under s.53(1)(c)&(3) of the International Criminal

Court Act 2001 your consent is expressly required for the institution of proceedings under the Act, including proceedings such as these.

Accordingly, we arrive at the purpose of this letter, namely to ask you to reach a determination as to whether, in your view, it is in the '*public interest*' that the process sought by these informants should issue, and whether or not you are willing to grant your consent to prosecute.

I conclude by taking the opportunity to explain that we have thought it appropriate to ask you directly to decide on your consent, rather than leaving it up to the Informants to do so separately as a preliminary matter, because I felt it important that (a) you should be fully aware of our own understandings and determinations in relation to those other matters to which, in its turn, this Court is separately bound to have due and proper regard; and (b) that we should take this opportunity to explain fully why it is that, in the event you are willing to so consent, I will then proceed to issue the process by way of summons as sought forthwith.

Finally, we are advised by the Informants that, in the event that you decline to consent, they intend to pursue the opportunity to approach the Office of the Prosecutor of the International Criminal Court, in The Hague, to ask her to consider whether it may be appropriate for her to institute an investigation into this situation, pursuant to her powers under Art.15 of the Rome Statute (1998). Further, that in that regard we have been satisfied that it may then become especially important to her decision as to whether to institute such proceedings for her to take a preliminary view, as per Art.53(1)(b) of that Statute, at least, as to the technical '*admissibility*' of this situation under the provisions of Art.17 of the Statute. In turn, this would require her to come to a view as to whether, consistent with the principle of complementarity, any failure to institute proceedings in the UK was or was not due to the "*unwillingness or inability of the State genuinely to prosecute*" as per art.17 §1(b) of that Statute. Accordingly, to that end our/my* reasoning as now set out might be useful.

Yours sincerely,