

From: Correspondence
Sent: 03 August 2016 11:48
To: Robert Manson
Cc: Correspondence
Subject: RE: RE: Reply to Letter re Applications for Consent to prosecute

Dear Mr Manson

Application for consent to prosecute for conspiracy to commit a war crime

We write in response to five requests for the Attorney General's consent to prosecute all of which appear to have been co-ordinated by you, if not sent directly from you. Each request seeks consent to institute proceedings against the Secretary of State for Defence for conspiracy to commit a war crime. Plainly a defendant could not be tried for the same offence simultaneously in different courts and it follows that the Attorney would not give consent to a series of simultaneous prosecutions against the same defendant for the same offence. Given that the applications are all made on the same basis, we intend to handle them as a single request for consent received from multiple groups.

When deciding whether or not to grant consent, the Attorney General acts independently of government. In the circumstances of the prosecutions proposed, the Attorney considers first whether there is sufficient evidence to provide a realistic prospect of conviction and then whether a prosecution is required in the public interest. Consent requirements exist in statute where parliament has determined that a decision by the Attorney General is required as a condition precedent to the institution of proceedings for a particular offence.

For the Attorney to be able reach any view about the sufficiency of evidence, he must be provided with a clear and comprehensive explanation by the prosecutor of what their case is. The Attorney General's Office does not have the facilities or powers to conduct criminal investigations and it is not part of our role to provide legal advice to the public. Any request for consent is considered on the basis of the evidence provided by the prospective prosecutor.

As we noted in earlier correspondence, initially your explanation for the basis on which it is contended that there is sufficient evidence for the Attorney General to consent to a prosecution was a little over three paragraphs long. On 26th July you provided two further documents, described as 'Extracts' of other legal advice documents. These fail comprehensively to explain: the elements of the offence that you wish to pursue; how those elements can be proved by the evidence provided; and, how, where is it not obvious, that evidence will be admissible in a domestic criminal court. They are plainly inadequate given the nature and complexity of the prosecution that you seek to pursue.

Furthermore, the statement of offence and statement of particulars raise a number of initial legal issues which, without further explanation, immediately raise cause for concern. For example, you assert that you intend to bring the prosecution against the corporate sole of the office of the Secretary of State for Defence. This appears to be on the basis of corporate liability given that in your applications you refer to the individual office holder as the "directing mind of the said corporation". However, it is asserted on your website that:

"we don't have to produce evidence about the specific state of mind of a natural human being, but instead can rely entirely on evidence written about the 'official' policies and strategies as stated as having been adopted by the Government at one time or another, during the relevant period, and in relation to our nuclear defence position, as being those of this office"

<http://tridentploughshares.org/naming-secretary-of-state-for-defence-not-prime-minister/>

To prove a criminal allegation against a corporation on the basis of the identification principle, if that is what you are purporting to do, you do have to prove the relevant acts and state of mind of an identified individual who is sufficiently senior to be identified as the "directing mind". It appears, without further explanation, that the basis on which you seek to pursue the proposed defendant is misconceived.

Furthermore, if, as appears to be the case, the basis of the prosecution case is a conspiracy in which the substantive offence is a war crime committed by a UK national, resident or a person subject to UK service jurisdiction, it is not clear why your draft charge is a conspiracy to commit an offence under section 52(1) and not a conspiracy to commit an offence under section 51(1). Section 51(1) has extra-territorial effect where the war crime is committed by a UK national, resident or a person subject to UK service jurisdiction. For section 52 to apply the act, i.e. the alleged war crime, must have been committed outside England and Wales and must not constitute an offence under section 51 (see section 52(2)). The explanatory notes to the legislation give the following examples in relation to section 52:

"For example, it is an offence under this section to incite, in England and Wales, the commission of genocide overseas even if the perpetrators have no connection with the UK. It would also be an offence if such incitement took place overseas but was committed by a UK national, UK resident or a person subject to UK Service jurisdiction."

If you wish to proceed with your application for consent, please ensure that you address the issues raised above.

In addition, as we highlighted in prior correspondence, your applications made the assertion that "Full and further particulars will be provided at a later stage". It also stated that other "Information... will also be provided as and when necessary" and "we have provided a few signed witness statements to provide an indication of the kinds of particulars we will be providing in much greater detail at that later stage". Please confirm in your response what, if any, further material you intend to submit and when you intend to submit it.

When giving our prior estimated period for a response we made it clear that if you send further information or evidence there is likely to be further delay. Plainly, you have already provided a number of further documents and we have suggested that you may wish to provide further information. The time it will take to provide a response, and ultimately a decision by the Attorney General on whether or not to grant consent, will depend upon the time it takes for you to respond and the nature and extent of any further material that you provide.

Yours sincerely

Craig Hollands

Correspondence Unit
Attorney General's Office
correspondence@attorneygeneral.gsi.gov.uk 020 7271 2492
20 Victoria Street, London SW1H 0NF

