

SEVENOAKS ACTION FOR PEACE WITH JUSTICE

**Chamber's of H.M. Attorney-General
20 Victoria Street
London
SW1H 0NF**

**71 Pilgrims Way West
Otford
Sevenoaks
Kent TN14 5JH**

4 February 2019

Dear Attorney-General,

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

Laid by: Sevenoaks Action for Peace with Justice at Maidstone Magistrates' Court

We wrote to you on 15 June 2016 concerning the above referenced criminal information, which we laid in draft form before Maidstone Magistrates' Court on 17 May 2016. Four other groups forming part of the PICAT Project wrote to you applying for consent to prosecute for conspiracy to commit a war crime and for convenience you combined the applications into a single request. On 10 November 2017 you declined to give your consent to the proposed prosecution because you considered that the information provided by the PICAT Project was insufficient to show that any offence had been committed. A judicial review of your decision was held but it failed.

Normally that would have been the end of the matter. However, in your letter to the High Court of Justice dated 7 March 2018 you stated that our proposed prosecution appears to be based on the premise that any actual use of the UK's nuclear deterrent would necessarily be criminal regardless of the circumstances. You added that this would preclude the maintenance by the British Government of a nuclear deterrent, which is contrary to the conclusions of the International Court of Justice in its *Advisory Opinion on the Legality of the treat or Use of Nuclear Weapons (1996)* ICJ 2.

PICAT's position is definitely not based on this premise. If it were we would agree with you that our 2016 application for consent to prosecute should have failed. After the judicial review we complained about your misrepresentation of our position but throughout the complaint process you did not resile from it. Hence there can be no doubt that it formed the basis of your decision. In reality you could not reasonably have suggested the premise if you had properly understood our

position. As a consequence you can hardly argue with any credibility that your decision was in fact based on our actual position.

It is for this reason that we are asking you in this application to give your consent to a prosecution for conspiracy to commit a war crime that is based on our actual position. This is not a frivolous application but a serious one that wants to uphold the rights of the nearly 400 prosecutor informants that support the PICAT Project.

PICAT's position is based on a specific use of the UK's Trident missiles, namely the launch of a nuclear attack on targets in and around Moscow (the "Moscow Criterion"). We therefore ask you to look again at the evidence and other materials that PICAT has already provided you with bearing in mind our actual position. The nearly 90 pages of detailed legal argument and analysis that PICAT submitted in its previous application remain on the table in this application. To assist you to better understand our position we set out below the following brief comments.

Is the "Moscow Criterion" Government policy?

Yes. See Dr Ainslie's report and its Exhibits as referred to in the letter from Kirsty Brimelow QC, Megan Hirst and Professor Grief dated 1 October 2016.

Would a Nuclear Attack on Moscow be Criminal?

A war crime is defined in the *Rome Statute of the International Criminal Court* and *Schedule 8 of the International Criminal Court Act 2001*. The use of nuclear weapons would not be illegal per se but they would be if they were used in a way that violated the principles of necessity and proportionality and the rules of humanitarian law. The UK has accepted that the use of nuclear weapons is subject to the general principles of the *jus in bello*. These facts are stated in the *Advisory Opinion on the Legality of the treat or Use of Nuclear Weapons (1996) ICJ 2* that you referred to in your letter dated 7 March 2018.

Accordingly a nuclear attack on a city like Moscow would be criminal. See the Prosecution Position paper attached to PICAT's letter dated 5 December 2017 and the letter from Kirsty Brimelow QC, Megan Hirst and Professor Grief dated 1 October 2016.

Is it a War Crime to Threaten a War Crime?

Yes, See Section 1(1) of the Criminal Law Act 1977 as referred to in the letter from Kirsty Brimelow QC, Megan Hirst and Professor Grief dated 1 October 2016.

There are of course various positions concerning the above arguments and these are commented upon within the full range of materials provided by PICAT.

Is PICAT's Proposed Prosecution in the Public Interest ?

Your letter of 7 March 2018 states that it has been the continuous policy of successive Governments for many years to maintain a nuclear deterrent. This is correct but it does not mean that the use of nuclear weapons would be legal in all circumstances. It is clearly in the public (and MPs) interest for a legal ruling on this matter to be obtained.

As stated in our 2016 application it is important that you stand entirely apart from government and your role in it. Most especially in the sense of your political loyalty to support the defence policy of the governing party to which you belong. It was not evident to us that your predecessor upheld this obligation when dealing with our 2016 application. We also request that you give sufficient reasons for your decision with regard to this application so that we can properly understand it. It was accepted in previous correspondence that you are required to provide brief reasons for your decisions.

We have discussed this letter with the other PICAT groups and they support this application.

We are confident that we have provided you with sufficient information to make an arguable case and all we need to make it is your consent to prosecute, which we trust will now be forthcoming. We look forward to receiving your response to this application at your earliest convenience.

Yours sincerely,

Jim Pragnell

for Sevenoaks Action for Peace with Justice .



Attorney
General's
Office

Attorney General's Office
5-8 The Sanctuary
London
SW1P 3JS

Tel: 0207 271 2492

www.gov.uk/agg

Mr Jim Pragnell

By email only to jim.beryl@virgin.net

1 March 2019

Dear Mr Pragnell

Subject: Sevenoaks Action for Peace with Justice

Thank you for your letter dated 4 February 2019 addressed to the Attorney General.

We do not accept your analysis and, as we have explained in previous correspondence, there is no basis on which to put your application before the Attorney General again.

You have already exhausted the various stages of our complaints procedure.

Therefore, any further correspondence from you will remain unanswered unless it raises issues which have not already been addressed during the course of our correspondence or your application for judicial review.

Yours sincerely

Robert Earl
Senior Legal Adviser
Attorney General's Office

3- Emailed Reply to the AG on 7 March 2019

Dear Attorney General,

We refer to your letter dated 1 March 2019. Once again you have answered a detailed letter from PICAT with a bland statement, namely that you do not accept our analysis of your position

Before receiving your letter we presumed that your position could only have been guided by two scenarios. Either you misunderstood our position and gave a decision based on that misunderstanding. If that was the case then you would have been honour bound to give another decision. Or alternatively you may have understood our position but deliberately misrepresented it in order to give a negative decision based on that misrepresentation. If that was the case then you would have abused your legal duty to act impartially. It would also have meant that you submitted a misrepresentation to the High Court of Justice, or to be blunt that you lied to the High Court. This would have been a disgraceful thing to do and we preferred to believe that you did not act in this way.

To avoid any misunderstanding our actual position was summarised in our letter dated 4 February 2019. It is also made clear in the draft Indictment submitted to you on 3 February 2017, which states that the proposed defendants conspired "*to commit the war crime of excessive incidental death, injury, or damage by continuing and/or agreeing a policy to maintain the capability to launch a nuclear attack on targets in and around Moscow*". Clearly the Indictment does not refer to any nuclear attack regardless of the circumstances, as you have alleged is our position.

The form of your letter has caused us to conclude that you probably did misrepresent our position in order to give the decision that you wanted to give. Although it seems likely that you based your original decision on a false interpretation of our position you have stated in your letter that you are not willing to enter into any further correspondence about it. This is not satisfactory and our only option therefore is to bring your conduct to the attention of the media in the hope that you will explain to the media what you are not willing to explain to us. Please be advised that this is what we now intend to do.

Yours faithfully,

Jim Pragnell
Sevenoaks Action for Peace with Security

4 - The following release was issued to the Press Association, Guardian and Observer, Times, Sunday Times, Daily Telegraph, Mirror, Mail, BBC and Private Eye on 11 March 2019:

On 3 February 2019 I sent you the press release copied at the foot of this email. It advised that when the Attorney General responds to a further application by PICAT for his consent to a prosecution of Government ministers, a copy would be made available to you. The AG has now responded and once again he has decided to ignore the issues put to him. A copy of his letter is attached.

The AG has acted disreputably in dealing with the PICAT project over the past 3 years for the following reasons:

1) In 2016 nearly 400 citizens acting under five local groups that form the PICAT project asked the AG to give his consent to a prosecution of the Prime Minister and Defence Secretary for conspiring to commit a war crime. He delayed making a decision for nearly 21 months then refused to give his consent without providing any reasons for his decision, other than to say that the evidence provided by PICAT was insufficient. In reality PICAT had provided nearly 90 pages of detailed legal argument and analysis prepared by senior legal counsel.

2) PICAT then applied to the High Court of Justice for a judicial review of the AG's decision. In its submission to the High Court the AG's legal team gave a false description of PICAT's position. To be blunt the AG lied to the High Court. Consequently the judge refused permission for the judicial review.

3) I complained to the AG about his conduct saying that it brought his office into disrepute. I asked the AG to provide just one letter from PICAT that supported his false description and to place my letters of complaint before the new AG (Geoffrey Cox) for his consideration. No such PICAT letter was provided (because there is none) and the AG said that my letters of complaint would not be placed before Geoffrey Cox.

4) Having thus established that the AG's original decision was based on a false premise PICAT submitted a new application to the AG on 4 February 2019 for consent to prosecute based on PICAT's actual position. His reply is attached. You can see that he has refused to address the issues raised with him, going so far as to state that any future correspondence from PICAT will go unanswered. The truth is that the AG cannot answer the issues honestly without his falsehood being revealed.

It is indisputable that the AG has abused his duty as guardian of the public interest. Lord Denning said in 1977 "*If there is a public interest which is sufficiently serious as to need protection, the AG should give his consent*" because "*it is not his interests which are in question, but those of the public at large*". Lord Denning added that the AG "*must rigorously exclude any advantage or disadvantage that may assist or beset his own political party as a result of his decision*". Clearly the AG's conduct has breached these requirements. I believe this is symptomatic of the "deep state" at work for the reasons given in my first press release copied below.

It is well known that the duty of the media is to speak truth to power. The AG's abuse of power in this case is disgraceful and it should not go unanswered. I request that you challenge the AG over his conduct and endeavour to put this story into the public domain. You may check the facts stated in this press release by reviewing PICAT's correspondence with the AG on PICAT's website <http://picat.online>.

It would be helpful if you let me know whether you intend to investigate this story.

Yours faithfully,

Jim Pragnell

Copy of Press Release issued on 3 February 2019:

THE ATTORNEY GENERAL IS NOT ACTING IN THE PUBLIC INTEREST

In 2016 nearly 400 citizens acting under a campaign called the Public Interest Case Against Trident (PICAT) asked the Attorney General (AG) to give his consent to a prosecution of the Prime Minister and Defence Secretary for conspiring to commit a war crime. Namely the deployment at sea of Trident missiles that can launch a nuclear attack on a city like Moscow. The AG refused to give his consent to the prosecution.

However, the AG acted improperly when he refused his consent. Firstly he gave no reasons for his refusal. Then in a judicial review of his decision he gave a fabricated account of PICAT's position, which indicates that his decision was probably based on a false premise.

In PICAT's opinion the AG has acted in the interests of his own political party. If he had allowed the case to proceed it could have established that the Government's nuclear defence policy is illegal, requiring the policy to be changed.

Another application has now been submitted to the AG asking him to give his consent to a prosecution based on PICAT's actual position. Given his conduct to date it is doubtful that the AG will give a different decision. When he responds PICAT will make a copy of his letter available to you.

The purpose of this release is to request that you publicise what the AG is doing "behind the scenes" against the public's interests. If not now then when he gives his second decision.

Further information about the PICAT project can be found on its website. You may also contact Angie Zelter on 01547 520920 or reforest@gn.ape.org, or Jim Pragnell on 07788 740510 or jfp.consultant@virgin.net.