



Issued under Constitutional Authority conferred by the Scotland Act 1998 being the Right of a Member of the Scottish Parliament to introduce legislation for Consultation amongst the People of Scotland and for Voting amongst the Members of Parliament.

Mr Michael Matheson, Member Scottish Parliament:

‘Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007’

Purpose

“Convinced that the continuing existence of nuclear weapons poses a threat to all humanity and that their use would have catastrophic consequences for all life on Earth.”¹

--United Nations General Assembly

A Bill to create a statutory offence of participating in preparation to, support for or commission of acts in furtherance of threatening to use or using weapons of indiscriminate mass destruction.

A weapon of mass destruction is one whose destructive power cannot be contained within space or time. To use by firing or using to threaten others with these weapons is both immoral and criminal. By nature, nuclear weapons cannot discriminate between civilian or military targets and do not remain within the borders of the target state. The poison gas clouds generated by a modern nuclear explosion would be scattered around the world on the wind. Each warhead currently deployed by the United Kingdom has a minimum explosive power approximately 15 times larger than the bombs dropped ‘by hand’ by the United States on Hiroshima and Nagasaki. These immediately killed hundreds of thousands of people.² The use of such weapons as now deployed by the UK would inevitably result in the indiscriminate murder of

¹ United Nations General Assembly Resolution 51/45 M. Submitted on October 29, 1996.

² Japan's [Asahi Shimbun](#) estimates are 237,000 for Hiroshima, and 135,000 for Nagasaki including diseases from the aftereffects based on hospital data. (1999) *The Spirit of Hiroshima: An Introduction to the Atomic Bomb Tragedy*. Hiroshima Peace Memorial Museum.

millions of innocent people in many countries and continents and would poison their environment for dozens, if not hundreds of years.

Being aware that the Scottish Parliament has previously legislated for the prosecution of such crimes (The International Criminal Court (Scotland) Act 2001), of the urgent need for leadership on this vital issue, international legal and moral obligations, the lack of a credible nuclear threat, the obvious immorality of these weapons, the billions of pounds spent in support of these horrific weapons, and our urgent civic needs, the Bill utilises the legislative powers of the Scottish Parliament to prevent crime on an unimaginable scale or those crimes being supported in any way within Scotland. As a measure to prevent crime, the Bill is within the powers of the Scottish Parliament.

Scotland Act 1998

“There shall be a Scottish Parliament.”³ Section 1 The Scotland Act 1998

Scotland inherited the UK government decision to locate the Trident nuclear weapons fleet in the West Highlands of Scotland. The Scottish Parliament however, may legislate on the prevention of crime within Scotland. The Scotland Act of 1998 permits legislation on, among other matters, law, police and home affairs, planning and the environment.⁴ It is thus clearly within the right and purview of the Scottish Parliament to legislate against criminal offences within Scotland. The crimes which this Bill seeks to prevent are the biggest of crimes; crimes against humanity.

Schedule 5 of the Scotland Act 1998 reserves powers on matters regarding UK defence policy, national security, and foreign policy to the Westminster Parliament.⁵ In addition to those reserved powers, Schedule 5 of the Scotland Act 1998 reserves to the London Parliament “Control of nuclear, biological and chemical weapons and other weapons of mass destruction”.⁶ These reserved powers are consistent with the Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007. The Bill does not seek to assume control of the nuclear weapons stationed at the Faslane and Coulport naval bases. Rather, this Bill aims to legislate against what the people and Parliament see as a statutory offence: committing, aiding and supporting crimes against humanity by weapons of indiscriminate mass destruction.

What the UK government does with the Trident fleet after the Bill becomes law is for that legislature to decide. It would be for the Scottish Parliament and certain local authorities to decide on how best to re-form the vast infrastructure which presently supports the Trident fleet into economically productive civilian use. When the Bill becomes law the effect will be to transform a cost-drain to the economy of £2bn per year into a ‘productive-surplus’

International Criminal Court (Scotland) Act 2001

³ Scotland Act 1998. Part I, Section 1, Subsection 1.

⁴ Scottish Parliament website. <http://www.scottish.parliament.uk/vli/publicInfo/faq/QA54.htm>

⁵ Scottish Parliament website. <http://www.scottish.parliament.uk/vli/publicInfo/faq/QA54.htm>

⁶ Scotland Act 1998. Schedule 5, Section L3.

*“In our view, legislation providing for the arrest of criminals and their surrender to the international criminal court is within the competence of the Parliament.”*⁷

--Jim Wallace, Former Deputy First Minister and Minister for Justice, January 2001

The International Criminal Court (Scotland) Act 2001 provided for prosecution of those who gradually commit crimes against humanity by wantonly and indiscriminately, but slowly, murder large groups of people and wreck their homes, villages, towns, cities and environment. The Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007 seeks to prevent those crimes, which would be instantaneous, in the first place. Thus, the Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007 is a ‘crime prevention’ Bill which morally, logically and legally follows the precedent of the International Criminal Court (Scotland) Act 2001.

The Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007 is consistent with international law. The modern international law began at Nuremberg with conviction of those who had committed crimes against humanity and statements of law for the post-war age. These ‘Nuremberg Principles’ were adopted verbatim and form the United Nations Charter. Every country in the world is bound by that Charter.

Nuremberg Principles

*“The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.”*⁸

--Justice Robert Jackson, Chief United States Prosecutor at the Nuremberg Trials, November 1945.

Following the Second World War the ‘Seven Nuremberg Principles’ were adopted by the United Nations International Law Commission and were incorporated into the United Nations charter at its inception. These ‘Seven Nuremberg Principles’ established which acts would constitute war crimes, crimes against humanity, and crimes against peace. These have been incorporated into innumerable international treaties and played an integral part in the International Criminal Court (Scotland) Act 2001.

Principle VI states that war crimes punishable under international law include the “wanton destruction of cities, towns, or villages, or devastation not justified by military necessity” and that crimes against humanity include the “murder, extermination, enslavement, deportation, and other inhumane acts done against any civilian population”.⁹ Having established the actions that constitute war crimes and crimes against humanity, the final Nuremberg Principle is that “Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set

⁷ Official Report 18 January, 2001. Col. 402.

⁸ Excerpt from Justice Jackson’s opening statement at the Nuremberg Trials. 21 November 1945.

⁹ Principle VI, The Principles of Nuremberg. 1950.

forth in Principle VI is a crime under international law”.¹⁰ The Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007 aims to eliminate complicity within Scotland for assisting in actions deemed illegal by the Nuremberg Principles and the United Nations Charter.

International Court of Justice Opinion of 1996

*“The Court notes that...it is imperative for it to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come.”*¹¹

--International Criminal Court Advisory Opinion, July 1996.

In 1994 the United Nations Secretary General asked the International Court of Justice for an advisory opinion regarding the legality of nuclear weapons. The question posed to the Court in the request was: “Is the threat or use of nuclear weapons in any circumstance permitted under international law?”¹² After two years of deliberations the Court came to the decision that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law”.¹³

In the ruling, the Court re-established the principle that states must never utilise, whether by threat of use or by detonation, weapons that are incapable of discriminating between civilians and combatants. This statement rules out the possibility of use of nuclear weapons due to their destructive capability. The Court also emphasized the principle of humanitarian law that States may not employ weapons that cause unnecessary suffering to combatants. Following from that principle, the Court held that “States do not have unlimited freedom of choice of means in the weapons they use”.¹⁴

Genocide, Crimes Against Humanity, and War Crimes

*“...as an international community we have a clear obligation to prevent genocide. I believe that collectively we also have the power to prevent it. The question is, do we have the will?”*¹⁵

--Kofi Annan, Secretary General of the United Nations, January 2004.

For the purpose of the Prevention of Crimes Committed by Weapons of Mass Destruction (Scotland) Bill 2007, the definitions of “genocide”, “crime against humanity”, and “war crime” are the same as the definitions established in the Scotland Act 1998, the International Criminal Court (Scotland) Act 2001, the Opinion of the International Court of Justice sent to the United Nations on 8th July 1996, in

¹⁰ Principle VII, The Principles of Nuremberg. 1950.

¹¹ International Court of Justice Case Summaries. Online at <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>. July 1996.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Speech to the Stockholm International Forum on Preventing Genocide in Stockholm. 26 January 2004.

particular Article 35 thereof (being any explosive device the destructive power of which cannot be contained within space or time).

Nuclear Weapon Overview

“Can there be any threat more alarming, in today’s world, than that of a nuclear or biological weapon falling into the hands of terrorists, or being used by a State, as a result of some terrible misunderstanding or miscalculation? The more States have such weapons, the greater the risk. And, the more those States that already have them increase their arsenals, or insist that such weapons are essential to their national security, the more other States feel that they too must have them, for their security.”¹⁶

--Kofi Annan, Secretary General of the United Nations, January 2006.

The effect of a nuclear strike or accident:

Nuclear weapons are the deadliest, least controllable, and longest lasting weapons ever developed. Following a nuclear explosion and the resultant heat and shock waves, people within several kilometres of the explosion people would suffer first, second, third, fourth, or even fifth degree burns.¹⁷ Burns at the higher degrees cause skin to turn into steam and severe muscular erosion as the cellular structure collapses.¹⁸ Hurricane-force winds as well as shock waves would inflict damage to buildings in the area and further spread the existing fire. Occupants would be trapped beneath tonnes of rubble suffering suffocation and asphyxiation.¹⁹

The longest lasting effect of a nuclear detonation is the nuclear fallout and radiation that blankets the surrounding environment, with effects ranging from immediate coma and death to increased risks of cancer later in life. Radioactive material contaminates the environment for many years.²⁰ As radioactive water evaporates it will travel around the globe before depositing contaminated water on non-target, and non-combatant, cities and nations. Should the decision to launch a modern nuclear weapon ever be taken the globe will be threatened by nuclear winter, starvation, decades of radioactivity, and economic collapse.

The likely civilian casualties from detonating one Trident warhead on a military target close to a town could be between 30,000 and 80,000.²¹ Detonating the same warhead in a large urban area could result in 200,000 deaths.²² Detonating all of the 48 warheads carried on one submarine at likely targets in, say, the Moscow area could result in around 3 million deaths.²³ Targeting all the 144 warheads deployed on three

¹⁶ Speech to the United Nations Association UK in London, 31 January 2006. Online at <http://www.un.org/News/Press/docs/2006/sgsm10332.doc.htm>

¹⁷ Effects of Nuclear Weapons, The Nuclear Weapon Archive, 15 May 1997. Online at www.nuclearweaponarchive.org/Nwfaq/Nfaq5.html

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Trident Britain’s Weapon of Mass Destruction, Scottish CND, March 1999 online at <http://www.banthebomb.org/archives/wmd/index.htm>

²² Ibid

²³ Ibid

submarines at separate large urban areas could result in around 30 million deaths.²⁴ These figures do not include long term casualties due to radiation and nuclear fallout.²⁵ Such catastrophic use of nuclear weapons would endanger the stability of the planet.

Present United Kingdom Nuclear Policy

“The United Kingdom intends to continue to maintain viable nuclear forces. In light of our previous close cooperation and the fact that the United Kingdom has committed its nuclear forces to the North Atlantic Treaty Organization, I have concluded that it is in our interest to continue to assist them in maintaining a credible nuclear force.”²⁶

--President George W. Bush, June 2004.

Estimates of the current British nuclear stockpile place the number of warheads at 200, deployed on four Vanguard-class Trident submarines operating out of the Faslane Naval Base on the Firth of Clyde.²⁷ Each submarine is capable of being armed with 16 US Trident II D5 missiles individually armed with three nuclear warheads. One nuclear-equipped submarine has a combined explosive force several times larger than all of the conventional bombs dropped in World War II.²⁸ These warheads are manufactured and tested in the United States and leased from a communal warhead pool based there.

The United Kingdom has rejected a ‘no-first-strike’ policy and in 2002 the British Defence Secretary Geoff Hoon indicated that Trident may be used in a pre-emptive first-strike capacity against non-nuclear states.²⁹ The current British nuclear strategy also includes the use of ‘sub-strategic’ nuclear doctrine. This form of nuclear warfare is defined in the Strategic Defence Review of 1998 as “an option for a limited strike that would not automatically lead to a full-scale nuclear exchange”.³⁰ Whether such a possibility realistically exists is questionable due to the indiscriminate and overwhelming destruction of nuclear weaponry.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Message to Congress, 14 June 2004. Online at <http://www.whitehouse.gov/news/releases/2004/06/20040614-16.html>

²⁷ Natural Resources Defense Council. Archive of nuclear data online at <http://www.nrdc.org/nuclear/nudb/datab18.asp>

²⁸ Weapons of Terror: Freeing the World or Nuclear, Chemical and Biological Arms. WMDC Commissioners. 2006. Online at:

<http://www.carnegieendowment.org/npp/weapons/index.cfm?fa=view&id=3000059>

²⁹ LWT’s John Dimpleby’s programme 24 March 2002.

<http://www.cndyorks.gn.apc.org/news/articles/uknukpolicy.htm>

³⁰ Ministry of Defence Strategic Defence Review 1998.

It is increasingly said that weapons of mass destruction no longer form part of Britain's military strategy but rather are now used as political weapons which give the UK a seat at the 'top negotiating table'. That must mean that Britain's negotiating position is that should trade, diplomatic or political negotiations not go to her advantage then weapons of mass destruction may be used. That is preposterous.

United Kingdom Trident Replacement Policy

*"I am extremely sceptical. Trident was an expensive weapons system developed in the Cold War to meet the conditions of the Cold War, which ended 17 years ago...I think we have to take our security decisions on the basis of what are likely to be the main security threats in the future, rather than building weapons to fight the last war"*³¹

--Former Home Secretary Charles Clarke, November 2006.

With the end of the Cold War, experts agree that there are no credible nuclear threats to the United Kingdom.³² Despite these statements, the Blair Government has decided to replace the Trident nuclear system. In a White Paper published in December 2006 the UK Government set out its proposal for the overhaul of the Trident fleet. The Government's document advocates maintaining the present nuclear deterrent with marginally fewer warheads.³³ Under the Government proposal, the nuclear weapons would still be stationed on Vanguard submarines in the Firth of Clyde in Scotland. These submarines would continue to patrol the oceans of the world and the active-duty submarine would carry enough explosive power to annihilate a population the size of the United Kingdom. Despite Government claims that it is taking active steps towards disarmament, the White Paper makes it clear that the London Parliament is committed to maintaining, updating, and replacing the nuclear weapons stationed in Scotland.

Costs of the United Kingdom Nuclear Program

*"...unacceptably expensive, economically wasteful, and militarily unsound"*³⁴

--Chancellor Gordon Brown on Trident, 1984.

Present Costs

Upon taking office, the New Labour government published the Strategic Defence Review of 1998 in which the Ministry of Defence placed the initial costs of the Trident nuclear system at £12.5 billion.³⁵ In 2003 new computer systems were installed on the Trident submarines to allow rapid re-targeting, and a £28.4 million fire-control system will soon be deployed to improve their targeting capabilities.³⁶ In

³¹ Interview on BBC Radio 4's Today program. November 30, 2006.

³² Former Secretary of State for Defence Michael Portillo. Online at www.timesonline.co.uk. 19 June 2005.

³³ Ministry of Defence White Paper: The Future of the United Kingdom's Nuclear Deterrent. December 2006.

³⁴ Official Report, 19 June 1984; Vol. 62, c. 188.

³⁵ Ministry of Defence, *The Strategic Defence Review* 1998.

³⁶ House of Commons, Written Answers, *Trident*, Column 184W, 9 May 2006.

addition to these costs, each individual missile costs £16.8 million to lease from the United States government. The annual cost of operating the naval bases as well as maintaining the nuclear stockpile of the Trident system is estimated at £1 billion.³⁷

Cost of Replacement

Notwithstanding Gordon Brown's statement on the 'unacceptably expensive' Trident system, and eighteen years after the end of the Cold War, the Labour government has indicated a commitment to replacing the current Trident system with a new nuclear system. In his Mansion House speech in June 2006, Chancellor Gordon Brown stated that government must be "strong in defence in fighting terrorism, upholding NATO, supporting our armed forces at home and abroad, and retaining our independent nuclear deterrent".³⁸ The UK government has already allocated £10 million for the fiscal years 2006-2008 on preparatory work for 'future deterrent' capabilities.³⁹ The annual cost of nuclear weapons in recent years has been between £1 billion and £2 billion.⁴⁰ Therefore, it will cost between £50 billion and £100 billion to keep the Trident system from 2007 until 2055. The White Paper is deliberately vague, but the total is likely to be nearer to £100 billion.⁴¹ Although the long-term costs remain closely guarded secrets, recent estimates have placed the cost of replacement at a minimum of £25 billion with maintenance costs of £76 billion over the program's lifetime.⁴² This cost would come on top of the ongoing £1 billion per year already being spent.

Alternative Spending of the Trident Money

The decision to replace Trident comes with a heavy 'opportunity cost'. Assuming replacement cost to be at the 'minimum of £25 billion' the pro-rata share of that paid by the Scottish taxpayer will be £2.125 billion.⁴³ That money could be spent in Scotland to pay for a combined package of:

- 10 new secondary schools;
- 5 new hospitals;
- 30 new community sports centres;
- 100 new dentists;
- 100 new doctors;
- 200 new teachers;
- Hosting the commonwealth games in Glasgow;
- Dualling the A96 from Aberdeen to Inverness or the A9 from Inverness to Perth⁴⁴

Assuming that the maintenance money spent over the lifetime of the replacement program is £76 billion, Scotland's share of that expenditure is £6.46 billion. The

³⁷ 3-4.5% of the annual defence budget: House of Commons, Written Answers, *Nuclear Weapons*, Column 714W, 3 July 2006.

³⁸ Chancellor Gordon Brown, Mansion House Speech, 21 June 2006.

³⁹ House of Commons, Written Answers, *Trident*, 22 May 2006 Column 1323W.

⁴⁰ The annual costs from 1994 to 2006 were between 3 and 5 % of the Defence budget, currently £38 billion.

⁴¹ The White Paper says that annual costs in 2006 and in 2024 will be between 5 and 6 % of the Defence budget.

⁴² Alternative White Paper: Safer Britain, Safer World. The Campaign for Nuclear Disarmament. November 2006.

⁴³ SNP press release online at www.snp.org. 20 July 2006.

⁴⁴ SNP press release online at www.snp.org. 4 December 2006.

opportunity costs of replacement are dramatic and clear: the effect of a renewed Trident program would be a rejection of pressing civic issues that matter to the people of Scotland.

Public Opinion Regarding Trident

*"I do not think that anyone pretends that the independent nuclear deterrent is a defence against terrorism."*⁴⁵

--Tony Blair, Prime Minister

The public opinion polls regarding the Trident program give a clear message that the people of Scotland find the continued reliance upon a nuclear force to be anachronistic, morally questionable, and wrong. According to a September 2005 MORI poll that asked identical questions to one held by Gallup in 1955:

- 87% of the public (up from 77% in 1955) oppose 'using the nuclear bomb against an enemy that does not possess it themselves'
- 77% of the public (up from 64% in 1955) oppose 'using the nuclear bomb against an enemy that does possess it but is not using it'

In a poll taken in 2006 by ICM, when respondents were given the information about the opportunity costs of Trident, 59% opposed the replacement of Trident. In another poll from November 2006, 61% of Scots agreed with the statement "The Scottish Parliament should have the ability to remove nuclear missiles from the Clyde."⁴⁶

Questions for Consultation

- 1) Do you support the United Kingdom Government's policy of holding a nuclear weapons system in Scotland?
- 2) Do you believe Scotland should have a weapons system that would cause genocide, crimes against humanity, and war crimes?
- 3) Should Scotland continue to host the United Kingdom's Trident program?
- 4) Should the Scottish Parliament have an active role in deciding whether Scotland continues to host the United Kingdom Trident program?
- 5) Does Scotland have the moral and legal duty to prevent indiscriminate mass destruction from being prepared within its borders?
- 6) Do you think there should be a debate in the Scottish Parliament before replacement of Trident?
- 7) Do you think it should be within the competence of the Scottish Parliament to legislate on crimes against humanity and do you think that maintaining weapons of indiscriminate mass destruction is a crime against humanity?
- 8) Should Scotland uphold international humanitarian and criminal law consistent with the International Criminal Court (Scotland) Act 2001?
- 9) Could the billions of pounds that will be spent on Trident be put to better use?
- 10) Are there pressing civic needs within Scotland that would benefit from millions of pounds per year?
- 11) Is Scotland being fairly compensated for hosting the Trident program?
- 12) Do you support this Bill?

⁴⁵ Prime Minister's Questions, 19 October 2005.

⁴⁶ SNP poll commissioned by YouGov. 23/11/2006

In responding, do not feel limited to the above questions, if you have other comments you would like to make please feel free to do so.

The closing date for submission to the consultation is **Friday 30th March 2007**

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The paper can also be downloaded from the following web sites:

Scottish CND: www.banthebomb.org

Scottish National Party: www.snp.org