An Open letter to the UK Signatories to the European Leadership Network Group Statement dated 12 September 2019 calling on Leaders at the UN General Assembly to address rising nuclear risk.

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The Rt Hon. Baroness Anelay of St Johns DBE  
The Rt Hon. Lord Arbuthnot of Edrom  
Sir Tony Brenton KCMG  
The Rt Hon. Lord Browne of Ladyton  
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Lords, Ladies and Gentlemen

I am a former Royal Navy (RN) submarine officer who commanded conventional and nuclear submarines and served in the Polaris Force as 2nd in command and in command. I fully support the sentiments and recommendations in ELN’s statement calling on leaders at the UN General Assembly meeting this month to take stronger action to reduce the risk of nuclear conflict.

In recent years, alarmed by the effect that the cost of Trident and its replacement is having on the RN in both financial and operational terms, I have studied UK Government (HMG) policy closely to identify the rationale for retention of the ‘Deterrent’ so long after the Cold War ended, with the consequences that UK Trident missiles have not been targeted since 1994 and, for over 20 years, have been at “several days’ notice to fire.” In the process I have found that HMG and the Ministry of
Defence (MoD) are being less than straightforward in their response to any who question continuing with Trident for a further 40 years at a lifetime cost in excess of £150Bn.

HMG frequently refers to use of the deterrent as a ‘Last Resort’ in almost every debate on or referencing Trident. However, the meaning of ‘Last Resort’ is not defined anywhere and so the public, many politicians and the media take it to mean what it did in my Polaris days: that, should the Soviets launch a nuclear attack on UK or NATO, then the UK would be willing and able to retaliate, as a Last Resort, with a counter (second) strike of such magnitude that it would deter the Soviets from attacking in the first place – the aptly named policy of MAD - Mutual Assured Destruction. We knew our missiles were targeted to take out Moscow - the so called ‘Moscow Criterion’ - and that this would cause appallingly disproportionate and indiscriminate deaths to millions of the civilian population by blast and fire immediately and, for decades to come, through radiation. No other use for Polaris was envisaged during my service time. This meant that, when a Polaris submarine deployed on patrol, the CO and his 2nd in command knew exactly what they might be called upon to do: namely, to turn the Captain’s key and authorise the launch of their missiles. There was no need for a ‘Letter of Last Resort’, which came in in later years. We knew that a Second Strike like this would be well outside any accepted international humanitarian law but, if it prevented the end of the world as we knew it, then we had to be prepared to fire. Incidentally, we also agreed that we would not fire unless we had positive indications that UK was under attack. We would not carry out a First Strike. Neither of us wanted the responsibility of being instigators of Armageddon.

I left the Navy in 1981 to work in industry and, without further investigation I, like many people, continued to believe that this remained the meaning of Last Resort. However, when I began a search for facts in 2015 prior to the Main Gate decision to build the ‘Successor’ to the Vanguard class, I was seriously disturbed by what I found. HMG policy had unobtrusively changed a long time previously (no press release or public statement that I could find) to one of ‘Sub-Strategic Flexible Response’.

This now included an option to launch a pre-emptive strike with a single missile with a single low yield nuclear war head into a Foreign State which had not attacked the UK or NATO homelands with nuclear weapons but was threatening UK troops in the field with chemical or biological weapons, if all other conventional measures had failed. This was a big shift in policy which remains in place today. There now seemed to be a perverse circle of logic: retain Trident to protect the homeland against nuclear attack; however, as the cost of retaining it is so high that we cannot sustain adequate conventional forces to protect our homeland or our forces overseas, quietly change the rules to use nuclear weapons to offset the lack of conventional forces. In this way the nuclear threshold bar of Last Resort becomes dangerously close to Next Resort.

This policy places the CO of a Trident submarine in an impossible position. HMG and Mod state that it is the Prime Minister (PM) who makes the final decision to fire. A former Assistant Chief
of Defence Staff (Nuclear, Chemical & Biological) in MoD writing on the Nautilus.org website states that “…the military has no formal role in the advice or decision upon whether to launch UK SLBM” Both of these statements imply that the CO merely has to authenticate that the order has emanated from the PM. However, Nuremberg Principle IV states “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law…” i.e. unquestioning obedience to a superior’s order is not enough. Furthermore, The UK Joint Service Manual of the Law of Armed Conflict states that military commanders “… have a responsibility to cancel or suspend the attack if it turns out that the object to be attacked is going to be such that the proportionality rule would be breached.”. So it is the CO himself who must make a considered and informed decision as to whether he should obey the order. The process of authenticating that the order to fire genuinely comes from the Prime Minister is undoubtedly very important, but an even more important question for the CO is whether he is in a position to make that judgement? On patrol he may have no details of targets of which he may even be unaware of nor will know whether his nuclear warhead(s) will have a disproportionate effect on their civilian populations. What is sure is that the effect will be indiscriminate between military and civilians.

In a presumed attempt to relieve the CO of legal responsibility, the same military law manual states “…the rules (Additional Protocol 1 to the Geneva Conventions contains specific provisions for protection of civilians from disproportionate and indiscriminate attacks) do not have any effect on and do not regulate or prohibit the use of nuclear weapons” Elsewhere it also states “…There is no specific rule of international law, express or implied, which prohibits the use of nuclear weapons.”

I asked the MoD how they justified these statements. The MoD responded that the Convention that led to AP1 did not proscribe nuclear weapons. This is correct but the Geneva Conventions do not proscribe any weapons by name; they only establish the rules that must be complied with by all weapons. HMG lawyers are therefore relying upon a very contentious interpretation which eminent humanitarian lawyers challenge. Nor does the military law manual refer to the 1996 Advisory Opinion given by the International Court of Justice (ICJ) that the threat or use of nuclear weapons in any circumstances other than an existential nuclear threat to the homeland (not troops overseas) would generally be unlawful. Even then the ICJ stated that any such response should comply with international law. The legal justification for a First Strike is therefore highly contentious and very dependent on a complex set of considerations and opinions which would not be available to an SSBN CO on patrol who is, nonetheless, required to make a personal legal and moral judgement before authorising launch.

UK Trident missiles have not been targeted and have been at several days’ notice to fire for over 20 years. This begs the question as to whether Parliament should be consulted if it is ever decided to re-target the missiles. It is now the convention, learned from mistakes in the lead-up to the 2003 US-UK Iraq invasion, to seek prior authorisation from the House of Commons before
taking military action, subject to certain exceptions where public debate before military action would not be possible or appropriate. A position that a recent inquiry conducted by the Public Administration and Constitutional Affairs Committee (PACAC) endorsed in its 20th Report on *The Role of Parliament in Authorising the use of Military Force*. It is unlikely that Parliament would countenance a First Nuclear Strike with a single warhead to protect UK Forces operating overseas because of the indiscriminate, disproportionate and uncontrollable (radiation) effect this would have on civilians.

In summary, there are many aspects of the Trident nuclear weapon system that are a cause for concern stemming from HMG policy countenancing First Use. Most worryingly for the RN Submarine Service is that this policy could well place the command team of the deployed Trident submarine in legal jeopardy.

In the run up to the 2020 Review of the 1968 Non-Proliferation Treaty by the United Nations I would strongly commend all of you who signed the ELN Open Letter to the UN General Assembly to press the Government to redefine its nuclear weapon policy to exclude First Strike; such a strike would be contra to International Law and place COs of Trident Submarines – who must decide if such an order from the PM is justified and lawful - in an impossible legal and moral position.

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**Note:** This open letter draws on my research as recorded in three extensive articles currently being published sequentially by *The Naval Review*. Copies (not for publication) can be obtained by email to myself at robert.s.forsyth@gmail.com