

UK Nuclear Deterrence Policy

and

The Trident Nuclear Weapon System

Postscript to Parts 1- 3

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During the period of publication of the three articles I received a number of feedbacks – interestingly, rather more in support than against - but one in particular led to an extensive exchange of views on a public website with a former Assistant Chief of Defence Staff (Nuclear, Chemical & Biological). We disagreed in several areas (well we would, wouldn't we!) but we did both object to first use and ambiguity of use and agreed that the sole purpose of nuclear weapons should be to deter/counter the use of nuclear weapons. However, we then disagreed on how to change UK Government (HMG) policy. I would like to see HMG unilaterally set aside its ambiguity and adopt a policy of 'no first use' as, say, China has and also 'sole use'. Whereas he believes this should all be part of multi-lateral negotiations between the nuclear powers.

He also supplied an answer to the question I posed in Part III of my series – how can a Trident CO know that he is not in breach of the laws of armed conflict or international humanitarian law when he does not know the facts? His very clear response was: "...it has long been recognised that the SSBN CO on distant patrol cannot under any circumstances have access to the range of factors necessary in determining either the necessity or the legality of a launch of his missiles. That the decision to launch is taken by the highest political leadership, with the advice of the broad church of political and legal bodies fully cognisant of their legal responsibilities has removed, uniquely in military commands, this responsibility from his shoulders."

If he is correct (Mod has declined to comment) this raises fundamental questions:

- If HMG sees a need to absolve COs from responsibility, does this acknowledge that they could be in legal and moral jeopardy?
- Military Law states that a military commander with the ability to withhold fire, as a Trident CO does, has to make a decision as to whether an order to fire complies with international law. Can a Government unilaterally relieve a Military Commander of this responsibility? Many international jurors would argue that Article 33 of the Rome Statute of the International Criminal Court, coupled with two of the Nuremberg Principles, places direct responsibility on the CO not to obey an order which is manifestly unlawful.

Nuremberg Principle IV

"The fact that a person acted pursuant to (an) order of his government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him".

Nuremberg Principle VII

"Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

Rome Statute

Article 33(1) states that superior orders 'shall not relieve [the CO] of criminal responsibility unless:

- (a) The person was under a legal obligation to obey...
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

Article 33(2) states that for the purposes of this article, 'orders to commit genocide or crimes against humanity are manifestly unlawful'.

The CO therefore needs to know the facts and, unless he does, he may be unwittingly party to and liable for an unlawful action arising from a policy of deliberate uncertainty which does not rule out first use and may not be sole use.

Whilst I recognise that whether nuclear deterrence works or not, and whether the UK needs or can afford Trident, are matters of opinion, there is no doubt in my mind that HMG's current nuclear weapons policy places Trident COs in an impossible position. They may be damned if they obey a firing order without knowing the facts and will be damned if they don't.

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