

because we would, in the course of the process you have just described, almost certainly lose our ability to produce the platform.

**Mr Kent:** In terms of the timetable, the Mayor of Hiroshima's campaign is based on the famous 2020, that it is going to take until that sort of time to bring a treaty, observable, monitored, effective, controlling fissile material, inspections and all the rest of it, so it is a long lead-time. You are pointing out that we have got a short time to make a decision. I do not know the technicalities, but I point out what I said in the beginning, that there is even a hint in this document that we could buy the submarines from somebody else.

**Q67 Linda Gilroy:** I do not think so. I think that is purely and simply saying that we may need to maintain the sovereign capability. There are only three countries in the world that can produce platforms, and I am sure we would not be buying them from Russia.

**Mr Kent:** No, but we buy them from the United States, as we buy a lot of the other equipment from the United States. I think that we should not be pushed by the technicalities of our industrial base, as it were. There are other ways of nuclear deterrents, apart from a Trident equivalent submarine, if we wanted to continue.

**Q68 Willie Rennie:** I have sympathy with what you are saying about the negotiations because I think the Government has fallen short in terms of pushing for a new round of negotiations; but do you really think, with the reputation of George Bush and Tony Blair abroad just now and international relations, that this is the right time to start those negotiations? Do you really think that Iran and North Korea would come to the table and start negotiating?

**Mr Kent:** I do not think those two gentlemen are the right people to put forward as the pioneers of negotiation, and I think that it is an open field on both sides as to who might best do it. It is not your subject, but I was quite surprised that Gordon Brown hung his hat on the

British independent nuclear deterrent post in the way that he did. He had an opportunity to wait a bit before doing something else. So, no, I do not think those two are very attractive, and they are not here forever, are they?

**Q69 Willie Rennie:** But they are the main players just now and you are talking about negotiations?

**Mr Kent:** One is going to go quite quickly, the other is going to go fairly quickly, so I think that it is a good opportunity.

**Ms McDonald:** I was going to add, this is exactly the problem that has been identified. There is a rush to make a decision whilst the present Prime Minister is in position, and so on, and yet there is the long timescale of building submarines, by which time George Bush will have gone, and so on. Some reasonable delay at this stage may clear the water for a safer world.

**Q70 Chairman:** I have a quick proposition. Would you agree that the decision by South Africa to abolish its nuclear weapons has had no observable impact on proliferation attempts by countries like North Korea?

**Mr Ainslie:** Basically, no. My understanding is that, having got rid of nuclear weapons, South Africa then played an important role in the subsequent rounds of the NPT Conference. The old South African regime could never have done that. At the end of the day, there is a primary focus for how nuclear proliferation is dealt with. I think the next one is 2010, and South Africa was able to play a more substantial role in that having made that decision.

**Q71 Chairman:** The ability of South Africa to play that role in those negotiations, though, does not seem to have had an observable impact on North Korea, does it?

**Mr Ainslie:** The 13 steps, which is what we are talking about, was the result of the NPT process - that was the 1995 thing - so it is a step forward. We then took a step back in the 2000 NPT Review Conference. That is the problem.

**Q72 Chairman:** Two thousand or 2005?

**Mr Ainslie:** Two thousand and five.

**Q73 Chairman:** Because I thought 2000 produced what for you would be the welcome news that the decision to get rid of nuclear weapons should be within a short timescale?

**Mr Ainslie:** I am sorry; I am getting the two dates mixed up.

**Mr Kent:** Two thousand is the steps.

**Q74 Chairman:** Two thousand good, 2005 bad.

**Mr Kent:** Two thousand and five is a failure.

**Q75 Mr Borrow:** Perhaps I can move on to the issue of what disarmament has already taken place. Certainly since the end of the Cold War the number of warheads that the UK has stockpiled has been reduced by about 75 per cent and, certainly if the further reduction anticipated in the White Paper goes ahead, that will be a 50 per cent reduction in the ten years since 1997. Are those reductions welcomed by yourselves?

**Mr Kent:** Certainly they are welcomed, and, if they were pointing towards nuclear disarmament globally, even more welcome, but what we are talking about, is it not, is 48 warheads at sea at any one time, each one of which, potentially, is ten times the size of the Hiroshima bomb? I think talking about the reduction of warheads is a kind of good housekeeping. There is no point spending fortunes on thousands of violent weapons when you can do it with 50 or five. Actually one, I think, if it could be deliverable, is a sufficient deterrent, if you believe in nuclear deterrents; so it is welcome, certainly.



**Q76 Mr Borrow:** Would you accept then that of the five major nuclear powers the stockpile in the UK is the least, with perhaps one per cent of the world's stockpile, and that, despite the reductions in the UK stockpile or since the end of the Cold War, those sorts of reductions have not been seen by the other four major powers and, therefore, there has not been, if you like, a multilateral response to reductions in nuclear weapons by the UK Government which could lead to a new round of further reductions if we are seeking a multilateral nuclear disarmament as the end result? Are you as disappointed as I am that my government over the last ten years has made reductions and got rid of one whole weapons system and yet other nuclear powers have made very little progress in that direction?

**Ms McDonald:** The thing is they will not have seen them as disarmament measures because they have not been disarmament measures, they have been measures to remove old weapons that have become obsolete and they have been measures of efficiency, measures of logistical arrangements that make sense in the military. There was never any stage that we reached the original 512 capability number of warheads for Trident because it was actually impossible in the way that Aldermaston is configured. So all the reductions that there have been so far have been for logistical reasons, and I do not think they have been identified by informed observers in other countries, and certainly by NucWatch, as being disarmament. We do have to look for real disarmament measures because it has got to come with the language of disarmament. We have not used the language, we are not in negotiations, we are not working for disarmament. For politicians it is language than counts, and that is where there is a huge gap.

**Q77 Mr Borrow:** Are you saying, in fact, that reducing the number of warheads does not lead to multilateral disarmament and non-proliferation and that the only thing that the UK can do to assist the process of getting rid of nuclear weapons in the world is to unilaterally get rid of these nuclear weapons and then Trident: that there is no way in which the UK can reduce the number of weapons whilst still retaining nuclear weapons but reduce them to a minimum



amount in the hope of getting a positive response from other nuclear powers and potential nuclear powers? Are you saying there is no halfway house? We either stick with what we have got, which is a minimum amount of nuclear weapons, or we get rid of them and there may be a response? Is that the position that you take?

**Mr Kent:** I am saying that “minimum” is a completely confusing word. What does “minimum” mean with nuclear weapons? I think getting rid of nuclear weapons and making steps towards negotiation is the way forward. It is not insignificant that Britain has cut down; it is highly significant if it is pointing in that direction.

**Q78 Mr Hancock:** They are not significant, are they, to take your point, because if Britain has a nuclear submarine which has 16 silos, only one ship at sea, one boat at sea at any one time, the maximum number of missiles available to be fired would be 16 plus how many warheads? A maximum of four per missile. You have got 48 missiles actively. To service its need, Britain would need barely 100. Would you agree with that statement?

**Mr Kent:** I did not get the end of it. I agree with your numbers of warheads.

**Q79 Mr Hancock:** You would have one ship at sea with 16 silos, with a maximum of 48 warheads, sixteen missiles, four per missile. I am sorry, 64 on board. So you would have a situation where you would only need 128 warheads maximum anyway.

**Mr Kent:** Yes.

**Q80 Mr Hancock:** So the numbers are irrelevant really, it is the way you deliver them that is the issue, and we are not taking that down?

**Mr Ainslie:** If I could answer you on what disarmament has taken place or will take place, I think numbers is only one measure. The MoD will assess the effectiveness and the performance and, if they are doing an effectiveness assessment, the system that we have today

is a lot more capable than what we had in the early 1990s, without a doubt, in terms of the numbers of targets and accuracy, and so on, and that capability increase is continuing to move forward. They upgraded the system in 2002 to make it more flexible. They are going to upgrade it again. Apart from this thing, in a couple of years' time they are replacing the computer system, so that will make it more flexible again, and so there are at least qualitative improvements without the change in quantity.

**Mr Borrow:** I need to pursue this issue in terms of whether a nuclear power that reduces the number of warheads or gets rid of a system whilst still retaining a nuclear power is a positive move and a move towards disarmament.

**Q81 Chairman:** Do you think it is a positive move?

**Mr Kent:** It can be. It depends if the actual aim is nuclear disarmament or the aim is good housekeeping and a so-called on-going minimum deterrent.

**Q82 Mr Borrow:** So if the French got rid of one of their systems, would that be a positive move in your view?

**Mr Kent:** It would be, in terms of saving money they could spend on something else, but I would not be praising the French unless they are heading towards the goal of nuclear disarmament. The Chinese should get some praise out of all this, they are the least aggressive in terms of numbers of warheads and delivery systems, but they do not get figured very much in the disarmament process, but I am saying, "Yes", to your question.

**Q83 Chairman:** Might that be because they are building more submarines than the whole of the rest of the world put together?

**Mr Kent:** It could well be.

**Q84 John Smith:** We do not know, incidentally, whether the Chinese are continuing to develop their capability. They have always been considered a regional nuclear threat and not a strategic nuclear threat. Just on the argument about reducing stockpiles, do our witnesses accept that we have not just reduced warheads, we have also reduced capability. We have removed platforms in the last eight years, we have removed the airborne capability. So it is not just how many angels on the---

**Mr Ainslie:** There is a point in Di's argument of these being logistical changes. I think in one sense the big disarmament decision was probably the scrapping of the Tactical Air to Surface Missile (TASM). The W177 had to go anyway because it was getting very old, so the decision was for that to go simply because they could not keep it going any longer, but they had made this decision a few years earlier to scrap the Tactical Air to Surface Missile. Why did they make that decision? The Americans scrapped them. It was their project. It was not an option. They looked at the possibility of doing a joint project with the French and they could not do it. It is very difficult to say are these logistical decisions or are they disarmament decisions. It is a step forward. The arms control approach is part of it. You bring the numbers down. It is what has happened between America and Russia. It is better to have lower numbers.

**Chairman:** Let us move on to the deterrent options, solutions and costs and whether we should have aircraft with cruise missiles, surface ships, land-based systems, submarines. Adam Holloway.

**Q85 Mr Holloway:** Mr Kent, I appreciate you are frightfully opposed to nuclear weapons full-stop, but you did say that there are other ways other than subs. Of the other options, have you any comments to make?

**Mr Kent:** Of deterring countries?



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**Q86 Mr Holloway:** No, the other options, the other platforms, so land, air, ship based systems.

**Mr Kent:** They have aircraft or cruise missiles on submarines. These are all options that are possible, I presume, though I do not claim to be an expert, and I have not come here to be an expert, on the different systems. Perhaps my colleagues know more about the other systems.

**Mr Ainslie:** I will maybe make two points. There is a problem in the paper. Section 3 gives you three scenarios: a re-emerging major nuclear power, an emerging nuclear state and state sponsored terrorism. I think there is a disconnect between that and the principles that they then require. The scale and the invulnerability only apply to Russia and, if you translate that into options, there is a sense in which Trident is particularly inappropriate for anything other than Russia. It is worth watching what is happening in America at the moment. General Cartwright, Head of Strategic Command, is very keen that he has Trident missiles with conventional warheads on them. Congress has been hesitant about this because they are by no means convinced that firing any type of missile anywhere is immediately perceived by Russia as an attack on them and the old system goes off, and so there is quite a strong argument for saying that, if you are concerned about these other things, Trident is not the way to do it. The second point is an option that the Committee raised - strictly it is not a CND line, but it is worth pursuing, I think - which is, yes, have submarines but take them off patrol. Why are we fixated with this thing of keeping them on patrol? They are allocated to NATO. NATO substituted nuclear forces, <sup>strategic</sup> in other words, the bombs sitting in Germany and other places, are on a state of alert measured in months. NATO has no standing nuclear plans. Why does this part of the NATO force have to be on a state of alert measured in days while the other parts of the NATO force are on a state of alert measured in months? I think it is almost the core of this mentality - "This is the way we have always done it" - and they cannot bring themselves to take it off patrol. If you take Trident off patrol, your whole urgency and everything else

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goes. However long it takes them to build a submarine, you can add another five or ten years into the process if you do not have them on patrol.

**Q87 Chairman:** Would you then comment on the Government's point that the continuous at-sea-deterrent notion reduces the risk of increasing tension when you actually decide to send a submarine to sea?

**Mr Ainslie:** These are arguments that they are basically picking up from America. They are used in a Russian/American context, in terms of the balance between Russia and America: if America were to do this, Russia would do that. Does it really apply between Britain and Russia that this is what would happen? I find it scarcely credible that that whole scenario would happen. It basically increases the risk. Having the thing out at sea on patrol is perceived as being a potential risk. If you bring it into port, and particularly if you bring it into port and then separate the components and the other side can then see those components are not put together, you are then sending out a very clear message: "We are not threatening you." There is a slight thing about: is there a risk involved in this escalation, but the beneficial effect of not presenting that threat, you know, does that then mean the Russians can have a few fewer missiles? However dramatic that reduction is, you are removing a few targets out of their target plan.

**Q88 Linda Gilroy:** I am a bit confused and I would just like to go back and ask a question that I asked just now. This White Paper is predominantly about the need to take a decision in relation to maintaining the platform and the skills base that will otherwise, it is claimed, no longer be there to build the platform unless we make a decision in very short order. Is not the argument you have just put forward one that you could certainly go on and have, but unless we do take that decision, we will not have any options to maintain the deterrent of a future platform to carry the deterrent at all, and so you have taken a unilateral decision?

**Mr Ainslie:** I am certainly not convinced by those arguments. We are saying at the moment it is lock, stock and barrel about North Korea and Japan. The general thing is that Japan could get into the nuclear weapons business very quickly if it wanted to, and then we seem to take a very different line when it comes to Britain, that if we do not build a new submarine now we will never ever be able to have a nuclear weapons capability again.

**Q89 Linda Gilroy:** That is related to the cost of doing so and of reconstituting the base with which to do it. You obviously do not accept those arguments. Have you done any analysis of it?

**Mr Ainslie:** In terms of the skills base side?

**Q90 Linda Gilroy:** Yes, of the arguments which have been put fairly forcefully and clearly within particularly the last evidence inquiry that we did on maintaining the skills base?

**Mr Ainslie:** Not particularly. I think the only other point is the extent to which we depend on the Americans anyway. We go to the Americans for some critical skills anyway, and so, if there was that problem further down the line, it may just be an issue of how far we go to the Americans for help.

**Chairman:** Moving on to the costs, if we may, Willie Rennie.

**Q91 Willie Rennie:** You mentioned the cost of £76 billion. The White Paper states between 15 and 20 billion. What is the reason for the difference?

**Mr Ainslie:** I think there is a major problem with the White Paper in terms of trying to sell this. It does not give the full figures. Not only does it not give the full figures, I have been involved in helping to draft some of the PQs and they are not giving the replies back to questions to fill in some of the gaps that appear. So, clearly, they are not giving the total cost of the whole thing. The big gap is really the cost of Aldermaston. They are saying



Aldermaston costs this amount at particular points. There is no figure there for the total Aldermaston development plan, which is there as a plan probably from now until the early 2020s. The other thing is when they are talking about this five to six per cent in service costs, is that an average? I am sure there was a question down saying, "What is the average operating cost?" and we did not get an answer to it. That figure is two billion a year. So if you have a current expenditure of two billion a year, you are saying that when the new system is in service it is around two billion a year. During the period <sup>2012</sup> ~~2020~~, 2024 it will be higher. They are saying Aldermaston is going to be up. You have got the major costs of the submarine platform coming in there, so you have got a minimum level of two billion a year, probably more than that. Over a 50-year period, that is 100 billion.

**Mr Kent:** With a question mark over decommissioning.

**Mr Ainslie:** Then you have to say, if there is 100 billion, how much of that is for the existing system and how much of that is for the new one? Clearly they are saying Aldermaston is for both, so how do you divide it up? By just very roughly saying maybe 25 going into the existing system and the other 75 going into the new one?

**Q92 Willie Rennie:** What do you think the Government have included? How have they come up with the 15 to 20 billion figure?

**Mr Ainslie:** That is including the submarine and a couple of other components, and it includes the cost of building the new warheads, or refurbishing the warheads, but not the cost of the infrastructure.

**Q93 Willie Rennie:** Okay.

**Ms Jones:** If you start to look at the costs, this was something that was actually quite difficult when we began to look at the White Paper and, looking very specifically at the estimates based around the refurbishment or replacement of the warheads, you get a figure in section

5.11 which says two to three billion, but it is not actually clear how that two to three billion would differ if the decision was refurbishment or replacement. So, there is a lack of accuracy there. Also, it is not clear whether that is not only in addition to the current operating costs of Aldermaston but also the programme of investment in sustaining capabilities at Aldermaston that was announced in 2005 ostensibly as a one-off thing over three years. It is very clear, if you look at the White Paper, that there will be further year on year on investment, and they quote it as the equivalent of about of three per cent of the current defence budget. In addition to that, we also have the £5.3 billion contract which AWEML have to run Aldermaston on behalf of the Government. In addition to that we have ambiguity about whether it includes maintaining the current weapons stockpile, transporting the current warheads back and forth and, presumably at some point, decommissioning those warheads if new warheads are decided upon. So, as far as we can see from looking at the industry side of this (and I think we have only tangentially mentioned the big influence on maintaining both the capacity for building the submarines and maintaining the skills base at Aldermaston, which you mentioned earlier on), basically industry analysts have expected investment of around £12 billion over the next 12 years, so they obviously know something that we do not know from the White Paper, and, as has already been mentioned, we are not going to get any comprehensive figures until after the Comprehensive Spending Review. So, one of the things that we would encourage you to do when you speak to representatives of the Government or the companies concerned is actually to give you a much more detailed break-down of what these costs actually mean, over what period of time they will need to come on line and what the whole budgeting exercise for this is. Clearly, from section five we can see that they have gone for the cheapest option, but it would still be quite nice to see how they have done their sums.

**Q94 Willie Rennie:** Do you think that affordability alone is a basis for opposing the replacement of nuclear?

*Ms Jones:* It is irrelevant, is it not?

**Q95 Willie Rennie:** Why do you spend so much time on the costs?

*Mr Ainslie:* Clearly, from our point, if it cost nothing it would still be wrong. It is wrong to have weapons of mass destruction that kill thousands of people. When you look at world opinion and you look at the polls, it is a factor. There are obviously some people out there for which cost is a key issue, so it is a factor in the judgment.

**Q96 Willie Rennie:** Put yourself in the public shoes then. At what point would you think that the public would find it unacceptable or acceptable to have a deterrent? What cost would that figure be? I know you would not accept any cost, but at what point do you think the public would accept?

*Mr Ainslie:* <sup>Quinlan says</sup> ~~It is difficult to say that.~~ It is an insurance policy, What premium do you pay?

**Q97 Willie Rennie:** Would you take a stab at it?

*Mr Kent:* It has got to be a lot less than at the moment. We can keep the post offices going for 125 years on the money spent, and these are figures that people understand, and we can deal with global warming, plus, plus, with these figures. I do not know what the lowest figure would be that would stop disquiet, but it would have to be very much lower than this.

**Q98 Linda Gilroy:** Do you think it would be reasonable, before working out what else it might be spent on, to consider the costs of three things in particular: one would be the decommissioning costs, the second, and you might take a different view from others, but I am sure people would wish to consider having a look at the programme of maintaining nuclear powered submarines not carrying nuclear weapons, and there would be a cost to maintain the skills base for that purpose; and, in addition to that, you would have to look at the impact on the local economies, particularly, if not in the fast-lane most certainly in Barrow in Cumbria,



an area where I would hazard a guess that it would be very substantial, and in Plymouth, where it would have a devastating effect on the local economy, not just in the city of Plymouth but on the neighbouring objective-one area where about a third of the dockyard workers are coming from in Cornwall. If you are going to start saying this is an amount that we can spend on post offices and health, the simple question I am asking you is would you agree that it would be reasonable to factor in all of those significant costs?

**Mr Kent:** Absolutely. Decommissioning we are into anyway, are we not, because we already have the submarines. We are going to decommission them sooner or later, so that is not an extra expense.

**Q99 Linda Gilroy:** It would be a very substantial extra expense, I would suggest, to decommission the entire strategic facility at Davenport dockyard. It is not the same thing to talk about the decommissioning of the submarines.

**Mr Kent:** Granted, but surely part of the process of moving to nuclear disarmament is actually looking at the present workforce and how they can be used and deployed, and that is one of the factors that is lacking. You could actually see a deeded brief for Barrow called *Oceans at Work* some time ago in 1985. I think it was the first study that anybody had presented.

**Ms McDonald:** I am sure you will correct me, Ms Gilroy, but, as I understand it, the numbers of jobs involved in refitting Trident is in the region of 300. Other submarine work goes on there, and, as you know, a great deal of it now is to do with decommissioning and laid up submarines. When DML were here giving evidence I heard their managing director say they were already working with the NDA in terms of looking for contacts for decommissioning, so I think there will be plenty of work in Davenport for a long time. On the question of Barrow, it is a different matter. I think that if this £76 billion, or whatever, could be saved, then certainly putting money into Barrow in terms of investment for new jobs, because certainly

the Cumbrian isolation and the need for jobs there is very clear, people need support there. I do not think they should be confined and constricted for ever to be building nuclear submarines, there should be something else there for them, and that is government business.

**Q100 Chairman:** Let us move on. I think you agree that that sort of cost should be factored in but it is not something you would say would lead to a deficit. It could be beneficial.

**Mr Kent:** Yes.

**Chairman:** I want to move on to the legalities of it. By the way, we did promise Kate Hudson she could have the opportunity to talk about international treaty obligations and legalities. So that is why we are getting into this now, and it is going to be our final area of questioning.

**Q101 Mr Jenkin:** The burden of legal opinion against the replacement of Trident - and I use that shorthand expression whether it has been replaced or not - is first that the possession of nuclear weapons is intrinsically illegal because obviously possession conveys an intent that the host nation is prepared to use them; and, secondly, possession of nuclear weapons or the replacement of Trident represents a failure to disarm which is in breach of the Nuclear Proliferation Treaty. Do you agree with that?

**Mr Kent:** Failure to negotiate in good faith. It really does not qualify any individual country to disarm *per se* but it calls upon them to negotiate in good faith, and that is what the ICJ held up in 1996.

**Q102 Mr Jenkin:** Returning to the question of possession and preparedness to use, what is the legal basis or legal authority on which your opinion rests?

**Mr Kent:** The International Court of Justice 1996, to which the only exception was that they could not make up their minds about the issue of use where the actual survival of a state is in

question, the only exception that was allowed at that time. They said, “We do not have the facts”, and probably the facts relate to the amount of contamination from even a low-yield nuclear weapon that would affect civilian populations. That is probably the reason why they did not come to a conclusion on that point, but everything else, they said, was bound by humanitarian law and that possession and use was illegal, and that was their advice.

**Q103 Mr Jenkin:** They did not exactly say that, did they? I am quoting from the judgment: “In view of the current state of international law and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence which is the basis of the survival of the state”?

**Mr Kent:** That is just what I have been quoting. That is the one exception.

**Q104 Mr Jenkin:** Exactly. You said they would be illegal, but that is not correct, is it?

**Mr Kent:** I said “with the one exception that Court ruled”, and that is the one exception that you have just read out. They could not make up their minds.

**Q105 Mr Jenkin:** So, it is possible that the use of nuclear weapons would be legal under international law?

**Mr Kent:** It is possible or it is impossible, we do not really know. It is certainly not, as the White Paper said, allowed, or whatever the expression was.

**Mr Ainslie:** I think the other point is that, if you are accepting that ICJ judgment, it would be conceivable to see that in the White Paper it actually saying Britain is only going to use nuclear weapons in the extreme circumstance where the survival of the state is at risk. It does not. It uses this term “vital interest”, which is far broader.



**Q106 Mr Jenkin:** I think the term “vital” in respect of interests is an interesting one, and I think that is a grey area, but who would make that judgment at that particular time? It would have to be a state, would it not? It would have to be the Government. It could not be an international court.

**Mr Ainslie:** There is more in there in terms of when the ICJ was mulling this over. My recollection of it is really in this Cold War scenario where there are all these missiles coming in and there are mass casualties and the state could quickly be annihilated. It is not saying in that scenario it is okay, it is saying that in that scenario the judges between them could not reach a clear agreement, but that is quite different from vital interests where something is happening and it is in our vital interests to protect something.

**Q107 Mr Jenkin:** The point is that the judgment did not say that the use of nuclear weapons would be illegal, did it?

**Mr Kent:** In all circumstances, it did not.

**Q108 Mr Jenkin:** It did not say that. Thank you.

**Ms Jones:** Can I just say that the only part where the ICJ could not reach a unanimous decision was --- Anyway, counter to your argument, they could not decide amongst themselves, though there are dissenting opinions, but they could not be lawful except in the self-defence situation. Self-defence is not, as John has said, in the White Paper. I would refer you to the 1998 Strategic Defence Review and the subsequent December 2003 document where the words “vital interest” are played out and explained, and in no way does that equate with self-defence. So, we are looking at a situation where the only thing the ICJ gave us was use in self-defence, and that is not our claim to be able to use them.

**Q109 Mr Jenkin:** Except that I have looked at the Opinion to which the CND paper refers, and it does not refer to any of that. I have also looked at the Opinion prepared on behalf of Greenpeace by Philippe Sands, and it is interesting the caveats that are entered. It says, "The use or the threat of use of nuclear weapons in self-defence would be unlawful where it fails to meet the requirements of necessity and proportionality." That is quite a strong caveat. It goes on, "We are of the view that the proportionality test is unlikely to be met." It does not say it cannot be met. It goes on to say, "It is difficult to conceive of any circumstances." It does not rule out circumstances. I think we have established, have we not, that the possession of nuclear weapons with the intent to use them under unspecified circumstances is actually legal.

**Mr Kent:** Very specified. The survival of the state is a specification.

**Q110 Mr Jenkin:** Even the legal opinions chosen by anti-nuclear organisations actually do not rule out the legal use of nuclear weapons?

**Mr Kent:** No, that is quite right.

**Ms Jones:** Can I follow up on that. What would have been interesting in the White Paper would be to see from the Government an answer to your question: under what circumstances would they feel that their decision to use nuclear weapons would pass those two fundamental tests of international humanitarian law which are applicable to all forms of war: necessity and proportionality? Those are the things that maybe you should ask the Government: where do they feel that it would have both necessity and proportionality were they to use nuclear weapons, and allow people to understand under what circumstances those decisions would be made. The last statement we had from the Government, although I understand his position is slightly different now, is Geoff Hoon saying he would have been willing to use them in a conflict situation in Iraq, and he said that in 2003.

**Q111 Mr Jenkin:** I have to confess that I was a little surprised by his utterance on that point.

**Ms Jones:** The question should be asked again.

**Mr Jenkin:** I would share your opinion that it would be useful for the Government to give us their legal opinion about their possession for potential use but without necessarily giving away the circumstances in which they might use them, because obviously that would undermine their effectiveness, as it has done.

**Linda Gilroy:** The Strategic Defence Review did, however, highlight the limitations placed on the use of British nuclear weapons, including the restrictions in place in the three nuclear-free zones around the world, and the Government did state some limitations: “We will not use nuclear weapons against a non-nuclear weapons state not in material breach of its nuclear non-proliferation obligations unless it attacks us, our allies, or a state to which we have a security commitment in association or alliance with a nuclear weapons state”, and that is where the Iran situation came in. That quote is often used selectively without also referring to that, and I am sure you have noticed that part of the Strategic Defence Review statement as well.

**Chairman:** Thank you. That puts that in context.

**Q112 Mr Jenkin:** Turning to the other main burden of your collective presentation, which is that the failure to disarm is somehow in breach of the nuclear proliferation treaty - and I correct myself because you did correct me, failure to negotiate in good faith - but where is your legal authority for arguing that somehow the Government is not negotiating in good faith even if we are replacing Trident?

**Mr Kent:** I think it is for you to tell me where the Government is negotiating nuclear abolition.



**Q113 Mr Jenkin:** We have already heard that the Government has substantially reduced its stocks and capabilities of nuclear weapons. In fact, the end of the Cold War resulted in just such a negotiation with the Soviet Union, a broad agreement.

**Mr Kent:** It is all perfectly explicable in terms of retaining a minimum nuclear deterrent; it is nothing to do with nuclear---

**Q114 Mr Jenkin:** Where does it say retaining a minimum nuclear deterrent is contrary to negotiating in good faith?

**Mr Kent:** Where is the negotiation in good faith? That is what I am asking. There is not any at the moment.

**Ms McDonald:** The negotiations we are looking for is to restart the conference on disarmament in Geneva. If that were going on, then I would understand your point, but I am not sure what you are referring to. There is no negotiation.

**Q115 Mr Jenkin:** I do not think this is a illegal question, I think it is fundamentally a political question. Let me put it to you. If the Government believed that unilaterally disarming our nuclear weapons was actually going to contribute to less security and more instability globally, that would be an irresponsible thing to do, would it not?

**Mr Kent:** The two issues are separate. I can conceive of people saying we should retain British nuclear weapons and even renew Trident, but we are obliged to negotiate the abolition of all nuclear weapons.

**Q116 Mr Jenkin:** But if the number of states possessing nuclear weapons is actually on the increase, it is quite respectable to argue that abandoning our own nuclear deterrent would actually contribute to global instability and a reduction in global security. It is an argument, is it not?

**Mr Kent:** Yes, it is an argument.

**Q117 Mr Jenkin:** So if that is a respectable argument, there is no legal basis for saying we have got to negotiate now, with a deadline, to get rid of our nuclear weapons, is there?

**Mr Kent:** The argument comes from quite a different source. The United States called on us to negotiate in good faith, and that is not going on. I am boring myself and, very probably, boring the Committee.

**Mr Ainslie:** I wonder if I can put it in a different way. The NPT arose in this climate when there was a lot of concern that lots of nations were going to get nuclear weapons, and it is a deal basically. The nations that did not have nuclear weapons said, "No, we are not trying to get them", and the nations that did have nuclear weapons said, "We will try to make progress towards disarmament." So there are two sides of that. Basically, if we are not keeping <sup>our</sup> ~~on~~ outside of the deal, if we are saying we are going to keep nuclear weapons for the next 50 years, then there is a sense in which the other side can say, "Hang on, why do you expect us to keep our part of the deal?"

**Q118 Chairman:** Mr Ainslie, is not that confusing the issue of negotiations with the issue of whether you are keeping nuclear weapons. Let us suppose that the Government is frightfully keen on negotiating on non-proliferation and the reduction of nuclear weapons but everybody else's negotiation desk is closed, they are not interested in negotiations. Is the Government, because it is not negotiating with anybody because there is nobody else interested in negotiating, thereby in breach of the Non-Proliferation Treaty?

**Mr Kent:** I do not think so. It is for a lawyer to say, but I would think probably not in a situation where no other country wanted to negotiate, but until we have tried that out we are not in a position to say.

**Q119 Chairman:** If not, Mr Kent, then surely the answer to your question, “Where are these negotiations going on?”, is that the Government is doing its best, it is ready and willing to negotiate, but it is not its fault if nobody else is taking it up.

**Mr Kent:** It is a totally passive role, is it not. Active action is called for to start negotiations. The commitment to disarm in Geneva is in complete collapse.

**Q120 Mr Hancock:** If there was a definitive clause in the White Paper which said, “Under no circumstances would the United Kingdom use a nuclear weapon as a first strike device”, would any of you then suggest that it was right to maintain it as a deterrent? Is there any proof that we have breached any of the non-proliferation treaties that we have signed up for? I do not believe we have. We have not assisted any country in manufacturing a nuclear weapon. Thirdly, under what circumstances would it be conceivable, in your view, for Britain to retain a nuclear deterrent?

**Mr Kent:** In my view, I think the British nuclear deterrent is quite unacceptable, for all sorts of reasons. I do not think it gives us any security.

**Q121 Mr Jenkin:** So these legal arguments are completely irrelevant?

**Mr Kent:** No, they are highly relevant.

**Q122 Mr Jenkin:** But your position does not rest on the legal argument.

**Mr Kent:** We are talking about two things. One is British nuclear weapons and the other is the obligation to negotiate.

**Q123 Mr Hancock:** We have not breached any treaty, have we, because we have not assisted any country - unless you have evidence to the contrary - to develop a nuclear weapon of their own?



*Ms McDonald:* I think we have to look at how we collaborate with the United States over nuclear weapons, and that was done by undermining the commitments already made by both countries to the NPT, by setting up the Mutual Defence Agreement in 1958 to change that; so I think we have reneged on our commitment not to work with another government on nuclear weapons. The other thing about this is that it comes back to this idea of an insurance policy. An insurance policy must be recommended for all, everyone, not just for a few, and so to pursue that insurance analogy would be to accept that every country was entitled to have it. There are big problems by not giving the recognition and the weight that is due to the NPT and to the countries who have tried to maintain it, the countries who have set up the 13 steps, the whole NPT meetings that there have been over the last ten years. Being an initiator and supporter of disarmament negotiations, it seems to me, would give a very big signal to the rest of the world of Britain's intentions, and those are the intentions we wish to foster. Of course it would take quite a long time to disarm the present nuclear system anyway, and taking them off patrol would be the first step. These things are all staged, but I would like to go back, since you ask questions about the law. The ICJ 1996 judgment came out of previous law, and I am not a lawyer, but the previous law, the Geneva Convention and all the other laws that they looked at to come to their conclusion, was to do with not threatening or killing non-combatants, and the whole point about nuclear weapons (perhaps we just take it for granted) but which needs to be said so any times in the public domain, is that it kills everybody and for a long time afterwards with the radiation effects as well and you would only need four to completely obliterate what is presently a 'rogue state'. So it is a very dangerous game that is being played out, and it is getting more dangerous and, with the more complicated computer controls and the size of the chips getting smaller and smaller, the potential for mistake or accident, apart from all the other accidents, for example on the M6, with nuclear weapons outside Preston, people are very well aware if they know about it, but it is not common

knowledge, and one of the things that the Government, and certainly this Committee, perhaps can help do is to educate the public more about what nuclear weapons mean.

**Chairman:** I am grateful to you because you have brought us back to the legality issue which I want to concentrate for the moment on through Bernard Jenkin, then Mr Ainslie, I will call on you, then John Smith, then Linda Gilroy. We were getting a little away from it.

**Mr Jenkin:** I want to make one last point. To quote from the Rabinder Singh and Professor Chinkin Opinion, which has been obtained for CND, paragraph 74: “Enhancing nuclear weapons systems, possibly without going through Parliamentary processes, is, in our view, not conducive to entering into negotiations for disarmament as required by the NPT Article 6 and evinces no intention to ‘bring to a conclusion negotiations leading to nuclear disarmament’ in all its aspects.” I would submit that that is a political opinion. That is not a legal opinion, that is a political judgment, and it is perfectly arguable for the Government to say that the best way of bringing to a conclusion disarmament negotiations is for us to maintain a minimum deterrent so that we have a chip on the table to negotiate with. The point is that this is not a legal question; it is a political question.

**Q124 Chairman:** Mr Ainslie, would you like to comment.

**Mr Ainslie:** The point I was going to make was to reinforce Di’s thing about the legal and moral issues. The two are not separate; the legal thing is based on the same fundamental point. The ICJ Opinion includes Judge Weeramantry’s long dissenting Opinion. That is going through how different cultures, different religions are all pointing to the same conclusion that say the threat of the use of nuclear weapons is illegal. It is not just using the legal arguments, it is also using the moral arguments, and it is there in the ICJ Opinion itself.

**Q125 Chairman:** Except the ICJ Opinion does not actually say that upgrading a nuclear weapons system is in breach of the obligation to negotiate---



**Mr Ainslie:** When I am saying “Opinion”, the Opinion includes all the dissenting opinions.

**Ms Jones:** May I make a couple of remarks about this. One is that the NPT, although it is a treaty, is a very weak instrument, and, of course, it was politically constructed at a very specific time.

**Q126 Chairman:** As treaties tend to be.

**Ms Jones:** As treaties tend to be. It is also a treaty without a treaty body where states are under no obligation to report on their performance. Some of the questions that we have raised previously in this debate about can we show whether Britain has progressed towards negotiating good faith towards nuclear disarmament are not actually set against any standards to which all states are required to respond, both nuclear weapons and non-nuclear weapons; so maybe it would be a useful thing if we were to try and measure this progress that the UK is apparently making towards disarmament. The other thing is a mixture of politics and semantics. When you say “enhancing a nuclear weapon therefore cannot be seen as a violation of the treaty”, because the treaty is loosely worded and because we use words like “enhancement” or “replacement”, the image that is given here is of somebody who is just popping out to get a new car which has got the latest refinements in it, and that argument is so disingenuous. What we are going to have to do is to get rid of one nuclear weapons system and replace it with another. It is a new generation of nuclear weapons. Whatever the language they use, it will be able to do its job more efficiently, it will be better targeted, it will have a higher efficiency, it will be apparently safer, we understand, which seems to be a contradiction in terms of nuclear weapons. The net result is the same. We will have a “better” weapons system for the indiscriminate use against civilians, which is a fundamental prohibition under any form of international law. So we can use the semantics, we can use the arguments, but basically this needs testing in some legal form, and we know the only way of testing the legality of nuclear weapons would be *post facto*, and I certainly do not want to see



an International Criminal Court addressing the issue of whether it was unlawful for us to use nuclear weapons because I think we might not be in a position to make reasoned and legal judgments, and so we have to look at the law in advance acknowledging the political context in which that law has been constructed.

**Linda Gilroy:** The whole tenor of the way in which we have been discussing this issue and the most recent debate about the legalities has been very pessimistic, perhaps understandably so given the pressure that the NTP is under, but I wonder if at this stage in our proceedings you would want to express any positive views towards what the Non-Proliferation Treaty has been able to achieve, and may yet still be able to achieve, given that countries in the beginning were so pessimistic about the possibility of it succeeding that there was difficulty in them signing up, that there was a 25-year time limit on it so that people could have a get-out clause and in 1995 it was renewed, and that perhaps we should have just a little bit of trust that Britain, having reached a minimum deterrent status, should not at this stage express a unilateral commitment to disarm against the background of the debate we are having; and that is very important to the way in which we look at the legal issues that Bernard Jenkin has been putting before you.

**Q127 Chairman:** That is a long question. Can you try to make it a snappy answer?

**Mr Kent:** I think, certainly, the NPT has probably prevented other countries from developing nuclear weapons. That is very positive. It is under great threat. The Americans have just signed a treaty negotiating nuclear technology with India, though India has never signed the NPT and it has now got nuclear weapons. So there are grave threats going on to the NPT but its positive achievements, I think, have to be acknowledged.

**Q128 Linda Gilroy:** It has been far more successful than most people thought it could be at the time that this was all started.

*Mr Kent:* Indeed, so.

**Q129 Chairman:** Can I ask you one final question about legality. Accepting your view for the purposes of this argument that Britain is in breach of its duties already to negotiate and to disarm generally and accepting your view that there is a different issue about the life extension of Trident, if this decision by the Government were limited to the replacement of the submarines, the platform from which these weapons are fired, is that any reason to suggest that that decision itself would be illegal?

*Mr Ainslie:* I can answer this probably in terms of the timescale that we are talking about here. We are extending our nuclear capability for a long time into the future, and that is really sending this message.

**Chairman:** That is a different issue, sending messages and all of that. Is it illegal to replace a submarine?

**Mr Hancock:** There are two things, not the missile, the weapons.

**Q130 Chairman:** What is the answer?

*Mr Kent:* I would think probably not, but the legality requires the negotiations. That is where the issue is.

**Q131 Chairman:** And that is a different issue, but replacing the submarines as such is not illegal?

*Mr Kent:* I am not a lawyer, but I would think that a case could be made that it was not illegal, just the submarine.

**Q132 John Smith:** You are all experienced campaigners. The White Paper has now been published. The Government has clearly declared its preference. Are you winning the argument? Are you winning the hearts and minds of people following publication of this

White Paper or are you disappointed in the level of public interest and support. I must tell you that, as far as I understand it, this is the first formal public hearing since the White Paper was published and the attendance is very sparse.

**Mr Kent:** I am disappointed and encouraged. We have been through a period where nobody was interested at all in these matters. I spoke in Hexham on Saturday to 250 people, in Dorchester to 250 people. There is an interest. I have never been asked to write for the Yorkshire Post before and I am doing a feature article. There is a growing interest in this issue. We are nothing like “Make Poverty History” of two years ago, nothing like it, but there is a serious interest growing.

**Q133 John Smith:** And the CND of the 1980s?

**Mr Kent:** Not quite, no, not yet.

**Mr Ainslie:** I think in terms of the Scottish perspective, I always wear two hats. I am involved with the Scottish Campaign for Nuclear Disarmament but there is another group, which is Scotland for Peace, which is a joint initiative involved with trade unions, and that joint group has taken this issue on and there have been three debates in the Scottish Parliament.

**Q134 Chairman:** As I understand it, this session has been live on Sky, so we have reached an audience of billions. If there are no further questions, may I say thank you very much indeed to the witnesses and to the Committee for becoming genuinely engaged in what has become a very interesting issue.

**Mr Kent:** Can we thank you for the opportunity.