

FOR THE RECORD...

Addressing the Australian
Government's misrepresentation
of the UN Treaty on the
Prohibition of Nuclear Weapons



ICAN
AUSTRALIA

2017
NOBEL
PEACE
PRIZE

This document seeks to correct the information presented by the Australian Government on the website of the Department of Foreign Affairs and Trade (DFAT).

Source: <https://www.dfat.gov.au/international-relations/security/non-proliferation-disarmament-arms-control/nuclear-issues/Pages/australia-and-nuclear-weapons> (November 2020)

KEY POINTS

- Australia is a state party to the Nuclear Non-Proliferation Treaty (NPT). However, it is not fulfilling its obligations under Article VI of the NPT “to pursue negotiations in good faith on effective measures relating ... to nuclear disarmament ...”
- The Treaty on the Prohibition of Nuclear Weapons (TPNW) follows the path of other treaties banning biological and chemical weapons, landmines and cluster munitions. These have proven effective, even for countries that did not join the treaty. No weapon has been controlled without being prohibited first.
- The TPNW reinforces, complements and builds on the NPT, which always anticipated further legal instruments to achieve its purposes.
- The belief that nuclear weapons make us safer is erroneous. A realistic, evidence-based assessment of security dangers underpins the need for the TPNW. Many political and military leaders have warned us of these dangers. Risk analyses of the “realities of the global security environment” find we have come within a hair’s breadth of nuclear war at least seven times over the past few decades.
- The TPNW does not weaken the existing safeguards regime. In fact, Article 3 and 4 of the TPNW strengthen the safeguards provisions for states which join in several ways beyond those in the NPT.
- There is nothing in the TPNW which prevents non-nuclear military cooperation with a nuclear-armed state. The ANZUS Treaty contains no obligations for Australia - US military cooperation to involve nuclear weapons.
- The US designates 17 states as its “major non-NATO allies”; 11 of these voted for the adoption of the TPNW. Three of them - New Zealand,

Thailand and the Philippines have joined the TPNW. For none of these nations has there been any impact on their alliance relationship.

- The treaty is in force from 22 January 2021. It is not going to get rid of nuclear weapons overnight. But it will increase pressure on nuclear armed states to restart diplomatic negotiations in good faith to disarm, as they committed to do 50 years ago under the terms of the NPT. It is an essential step towards the elimination of nuclear weapons. As a party to the NPT, Australia has a responsibility to sign and ratify the TPNW.

THE AUSTRALIAN GOVERNMENT SAYS:

“What is the Nuclear Non-Proliferation Treaty (NPT)?

The major international treaty on nuclear weapons. This provides enduring benefits in curtailing the proliferation of nuclear weapons, advancing nuclear disarmament and underpinning the right of all nations to the peaceful uses of nuclear energy. Over 190 states are party to this cornerstone treaty, which has been in place for nearly half a century.”

FOR THE RECORD...

Australia is a state party to the NPT. However, it is not fulfilling its obligations under Article VI of the NPT, which applies to all 190 members, not only the nuclear-armed members, and states:

“Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament ...”

Australia is clearly not doing its share. The greatest contribution Australia could make to nuclear disarmament would be to stop being part of the problem by renouncing any role for nuclear weapons in the defence of Australians and Australia and joining the TPNW. Australia should also negotiate with the United States to

ensure it would not assist with the possible use of US nuclear weapons (through nuclear command, control and targeting) via facilities in Australia, such as certain systems at Pine Gap.

In addition to changing its own policies, Australia should also call out the nuclear-weapon states for their failure to pursue nuclear disarmament under Article VI.

The NPT’s provisions, especially in relation to nuclear disarmament, are brief and general. It anticipates additional legal instruments to implement it (such as a ban on nuclear testing and a treaty controlling the production of fissile materials able to be used to build nuclear weapons). It was negotiated in the expectation that nuclear disarmament would be undertaken by the nuclear weapon states; as this had not happened during

the NPT's original lifespan, it was extended in 1995, again with the clear expectation that disarmament would occur.

THE AUSTRALIAN GOVERNMENT SAYS:

"What is Australia's view of the Treaty on the Prohibition of Nuclear Weapons (ban treaty)? Australia does not support the "ban treaty" which we believe would not eliminate a single nuclear weapon."

FOR THE RECORD...

The Treaty on the Prohibition of Nuclear Weapons (TPNW) follows in the path of other treaties banning biological and chemical weapons, landmines and cluster munitions. These have proven effective, even in countries that did not join treaty negotiations or join the respective treaty. The stigmatisation of indiscriminate and inhumane killers of civilian populations grows in effect over time: each banned weapon is now less often justified, produced, deployed, traded or used than before it was prohibited. **No inhumane weapon has been controlled or eliminated without being prohibited under international law first.**

Australia has argued that nuclear weapons should only be prohibited once they have been eliminated. This is illogical, counterproductive and flies in the face of the consistent experience with every other type of unacceptable weapon. Australia supported the prohibition of biological and chemical weapons, landmines and cluster munitions in order to drive their

elimination, not the other way round.

Australia has supported many measures seeking to control and reduce fissile materials and nuclear weapons and their testing and proliferation which also have not eliminated a single nuclear weapon. These include the NPT itself, the South Pacific Nuclear Free Zone Treaty, the Comprehensive Test Ban Treaty, a fissile material cut-off treaty and nuclear transparency measures. A comprehensive legal regime to control and eliminate nuclear weapons and minimise the risks of their use in the meantime needs many different, complementary elements.

"[The TPNW] articulates the end-state and benchmark against which all other efforts towards nuclear disarmament must now be judged." Peter Maurer, President, International Committee of the Red Cross.

The TPNW in addition to prohibition provides the only internationally agreed framework for all nations to fulfil their legal obligation to eliminate nuclear weapons, through time-bound,

irreversible and independently verified elimination of their nuclear weapons programs and facilities. It provides pathways to either "destroy then join"

or "join then destroy". The TPNW thus provides a legal framework for the elimination of any or all nuclear-armed states' entire nuclear arsenal.

THE AUSTRALIAN GOVERNMENT SAYS:

Additionally, [the ban treaty] creates parallel obligations to the NPT...

FOR THE RECORD...

The TPNW reinforces, complements and builds on the NPT, which always anticipated further legal norms to achieve its purposes. All states that have signed or ratified the treaty are NPT members in good standing and **the TPNW explicitly affirms the vital role of full and effective implementation of the NPT.**

The TPNW creates additional obligations to those in the NPT for states that join, otherwise there would be little point to the treaty. However, far from conflicting with the NPT, these additional obligations advance its objects and purpose. For example, recognition of the major humanitarian and environmental impacts of nuclear weapons testing means assistance for the victims of nuclear use and testing, and feasible environmental remediation

of areas contaminated by nuclear use and testing, is a logical inclusion for this treaty.

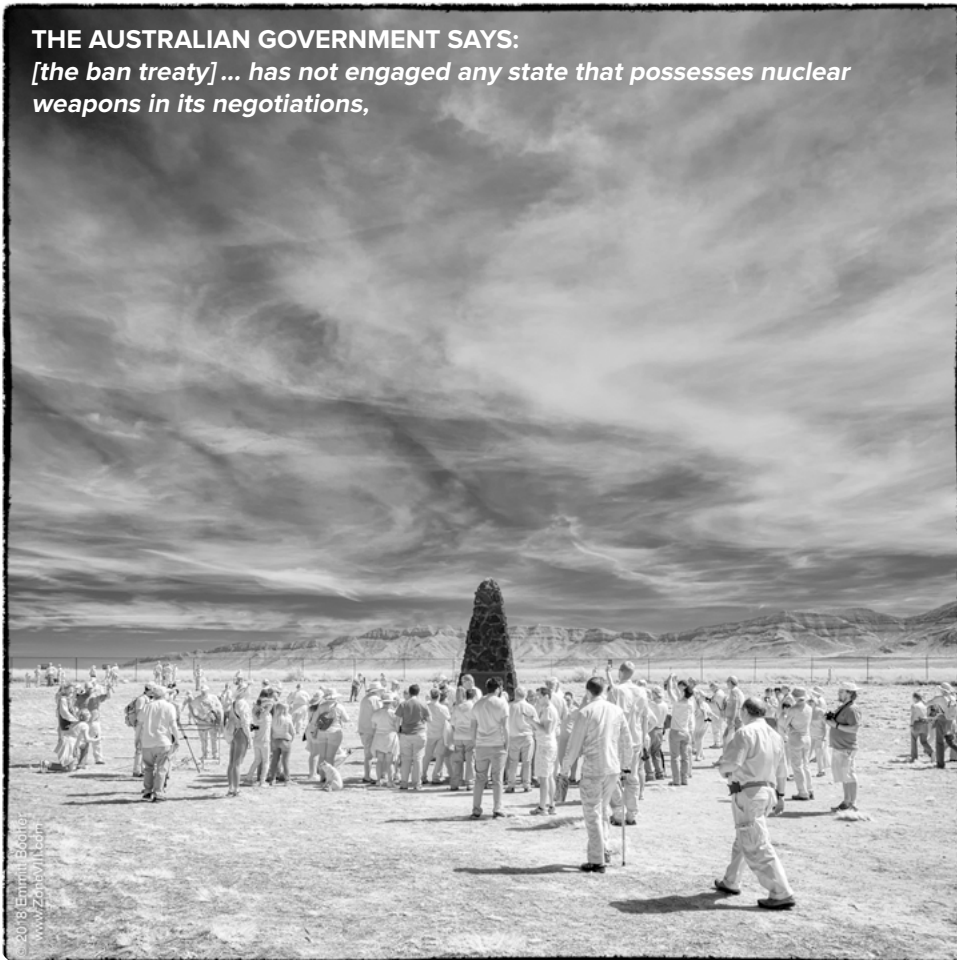
The NPT obliges nuclear disarmament and obliges states without nuclear weapons not to acquire them, but it does not categorically and comprehensively prohibit nuclear weapons and any assistance, encouragement or inducement to their possible use. The TPNW fills these gaps.

The TPNW constitutes a necessary measure for the implementation of NPT Article 6.

Australia accepted "parallel obligations" to those in the NPT when it subsequently joined the South Pacific Nuclear Free Zone Treaty, or Rarotonga Treaty. This is not a legitimate obstacle to joining the TPNW.

THE AUSTRALIAN GOVERNMENT SAYS:

[the ban treaty]... has not engaged any state that possesses nuclear weapons in its negotiations,



Trinity nuclear test site, US, Emmitt Booher

FOR THE RECORD...

All states, including nuclear possessor states were invited and encouraged to join TPNW negotiations, but they and many nuclear dependent states, including Australia, chose to boycott them. This was the first time that Australia has ever boycotted a multilateral disarmament negotiation. Similarly, every preceding step leading to the negotiations – the 3 intergovernmental

conferences on the humanitarian impacts of nuclear weapons, and working groups established by the UN General Assembly, were open to all states to participate. Leadership is about negotiating.

All nuclear-armed states are modernising their nuclear arsenals and have failed for decades to outline any plans to eliminate them.



Taranaki nuclear test site at Maralinga, South Australia, Jessie Boylan

FOR THE RECORD...

The belief that nuclear weapons make us safer is erroneous. A realistic, evidence-based assessment of security dangers underpins the need for the TPNW. Many political and military leaders have warned us of these dangers.

Risk analyses of the “realities of the global security environment” find we have come within a hair’s breadth of nuclear war at least seven times over the past few decades. This has been due to human error, radar error, unusual weather patterns and even something as simple as a faulty computer chip.

Only good luck has prevented nuclear conflict. With over 13,400 nuclear weapons globally and 1800 on hair-trigger alert, it is clear we cannot continue to rely on luck.

Add to this risk of error the brinkmanship of unpredictable world leaders, the repeated skirmishes between India and both Pakistan and China, and the risks of cyberwarfare and extremists.

A 2016 UN analysis found that because of technological advances there is less need to directly access an actual weapon to effect a nuclear detonation.

If nuclear weapons are retained, at some time our luck will run out, and by accident or design, nuclear war could engulf our world.

We know that even a regional nuclear war in one part of the world, using less than 1% of the explosive power of the global nuclear arsenal, would incinerate cities, lofting millions of tons of smoke high into the atmosphere, cooling, darkening and drying the climate worldwide, within a few weeks producing ice age conditions, which would last over a decade.

This would decimate agriculture worldwide and put billions of people in jeopardy of starvation. A nuclear war involving Russia and the US would risk the extinction of humans and many other species. No-one's security is enhanced by nuclear weapons; they are effectively global suicide bombs

which render meaningless notions of winners and losers.

Nuclear weapons fuel tensions and get in the way of addressing the real threats to human security worldwide – global heating, pandemics, poverty, inequity, disasters, food and water insecurity, violent extremism, racism, gender inequality, polluted and unsafe environments.

The first responsibility of every level of government is to protect its citizens. The danger of indiscriminate nuclear violence from nuclear weapons themselves poses the most acute existential threat to the security of people everywhere. And it is completely preventable.



THE AUSTRALIAN GOVERNMENT SAYS:
[the ban treaty] has weaker safeguards provisions than the existing NPT framework...

FOR THE RECORD...

This claim is false.

The International Committee of the Red Cross assesses that “the TPNW does not weaken the existing safeguards regime.”¹

Rather, the TPNW's Article 3 and 4 strengthen the safeguards provisions for states which join in several ways beyond those contained in the NPT:

- A state that has not yet done so must conclude and bring into force a Comprehensive Safeguards Agreement with the International Atomic Energy Agency (IAEA);
- A state must maintain and cannot lower any additional safeguards arrangements they have agreed to when they join the TPNW. Under the NPT, states are entitled to withdraw from any such safeguards

arrangements they make;

- Only some nuclear-armed states are members of the NPT, and they only have selective voluntary safeguards arrangements. All nuclear-armed states that ratify the TPNW will have to conclude a much more stringent safeguards arrangement that provides “credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities”, ie safeguards at least equivalent to a Comprehensive Safeguards Agreement (covering declared material and activities) plus an Additional Protocol (concerning the absence of undeclared nuclear material and activities).

Australian officials have at times suggested that lack of a requirement for universal adherence to an Additional Protocol is a deficiency in the TPNW. The NPT doesn't require its states parties to have an Additional Protocol in force, and indeed a large number of NPT states parties don't have such a protocol in force, as it is a voluntary measure. The fact that the 2010 NPT Review Conference "encourage[d] all States parties that have not yet done so to conclude and bring into force an additional protocol" does not make this a legal requirement of the NPT.

A universal requirement for NPT states parties to implement the highest safeguards standards including an Additional Protocol is certainly desirable. However it is inappropriate and disingenuous to suggest that the TPNW negotiations should have gone beyond their negotiating mandate and achieved international nuclear safeguards goals that it has not been possible to achieve over decades through the NPT.

1. ICRC Briefing Note, *Safeguards and the TPNW*, April 2019.



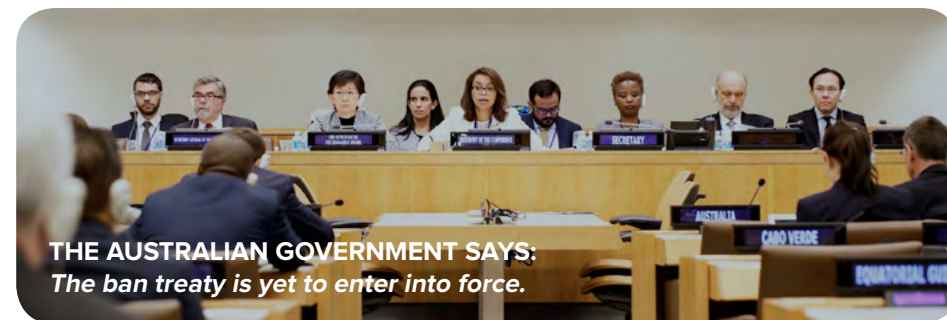
THE AUSTRALIAN GOVERNMENT SAYS:
and [the ban treaty] would be inconsistent with our US alliance obligations...

FOR THE RECORD...

There is nothing in the TPNW which prevents non-nuclear military cooperation with a nuclear-armed state. Nuclear weapons are not mentioned in the ANZUS Treaty, which contains no obligations for Australia - US military cooperation to involve nuclear weapons.

The US designates 17 states as its "major non-NATO allies"; 11 of these voted for the adoption of the TPNW.

Three of them - New Zealand, Thailand and the Philippines have already joined the TPNW. For none of these nations has there been any impact on their alliance relationship and ongoing military co-operation with the US, because this cooperation excludes nuclear weapons. Thus other US allies have already clearly demonstrated that there is nothing in the TPNW that would preclude Australia maintaining a (non-nuclear) military alliance and cooperation with the US.



THE AUSTRALIAN GOVERNMENT SAYS:
The ban treaty is yet to enter into force.

FOR THE RECORD...

The treaty reached the milestone of its 50th ratification on 24 October 2020 and is therefore in legal force from 22 January 2021.

The TPNW is not going to get rid of nuclear weapons overnight. But it does increase pressure on nuclear armed states to restart diplomatic negotiations in good faith to disarm, as they committed to do 50 years ago under the terms of the NPT.

The TPNW is a permanent part of international law. **As with other treaties banning unacceptable weapons, its legal, political and moral force and stigmatising of nuclear weapons will only grow over time.**

As the number of states joining and implementing their obligations under the treaty continues to grow, and as responsible financial institutions divest from companies profiting from making the worst weapons of mass destruction, Australia will be increasingly isolated in its position.





**Should Australia sign
and ratify the Treaty
on the Prohibition of
Nuclear Weapons?**

Ipsos, July 2020

Unsure
20%

No
9%

Yes
71%