

UPDATE ON LABOR JOINING THE NUCLEAR WEAPON BAN TREATY

Introduction

At its national conference in Adelaide in 2018, moved by Anthony Albanese and seconded by Richard Marles, Labor unanimously adopted in its Policy Platform a commitment that:

"Labor in government will sign and ratify the Ban Treaty, after taking account of the need to:

- *Ensure an effective verification and enforcement architecture;*
- *Ensure the interaction of the Ban Treaty with the longstanding Nuclear Non-Proliferation Treaty;*
- *Work to achieve universal support for the Ban Treaty."*

This policy was reaffirmed at Labor's national conference in 2021.

The most effective way for a nation to contribute to the development of any treaty is to be in the room participating actively in its negotiation. Australia missed that opportunity. The historic negotiations which produced the first comprehensive prohibition of nuclear weapons in the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017 were the first and only multilateral disarmament negotiations that Australia has ever boycotted.

There is little reason for states which have done the right thing to take seriously a state which has yet to get on the right side of history and 'walk the talk' on nuclear disarmament. **The most effective way for a nation to contribute to implementation and further development of a treaty is to join it.** This enables a nation to be in the room with 'skin in the game', be included with a respected voice in negotiations, and engage fully with commitment and credibility.

This paper examines the matters identified in Labor's policy platform to be taken account of in implementing its policy platform to sign and ratify the TPNW.

The bottom line: these matters are appropriate and important areas of work regarding any nuclear disarmament treaty, and they can be best developed and implemented by joining the Treaty.

Progress on the implementation of the nuclear ban treaty

The first meeting of states parties (MSP1) to the TPNW was held in Vienna on 21-23 June 2022. States parties unanimously agreed on a declaration which is likely the clearest and strongest multilateral statement yet against nuclear weapons, and also adopted by consensus a 50-point Action Plan. This details clear time-bound steps and who is responsible for each to progress the Treaty and implementation of all its major elements, before and beyond the next meeting of states parties scheduled for 27 Nov - 1 Dec 2023 at UN headquarters in New York.

Not surprisingly, the TPNW itself addresses the matters in the ALP platform, and at MSP1 working groups were established to take forward the work of states parties between meetings, which also mirror the matters identified in the ALP platform, addressing:

- **Universalization of the Treaty** (Article 12), co-chaired by South Africa and Malaysia.
- Implementation of Article 4 covering the **processes and verification of nuclear weapons elimination**, in particular work related to the future designation of (a) competent international authority(ies), to negotiate and verify the irreversible elimination of nuclear weapons and nuclear weapon programmes under the Treaty. This group will be co-chaired by Mexico and New Zealand. (Safeguards for states without nuclear weapons are covered in Article 3 of the Treaty.)
- Ireland was appointed as facilitator to further explore possible areas of tangible **cooperation between the TPNW and the nuclear Non-Proliferation Treaty (NPT)**, and other disarmament and non-proliferation instruments. MSP1, like the TPNW itself, affirmed the NPT as the cornerstone of the nuclear disarmament and non-proliferation regime, and the TPNW as entirely consistent with and furthering the NPT obligation to achieve the elimination of nuclear weapons. All TPNW states parties are also members of the NPT in good standing.

The MSP also established a working group on the Treaty obligations to assist victims of nuclear weapons use and testing, assist with feasible remediation of environments contaminated by nuclear weapons use and testing, and promote international cooperation and assistance (Treaty articles 6 and 7). This group will be co-chaired by Kazakhstan and Kiribati. This is of high relevance to Australia, given our hosting of British nuclear tests in the 1950s and 1960s, and the bitter legacy of over 300 nuclear tests conducted by France, the UK and US in the Pacific Islands region.

States parties will also have the benefit of a Scientific Advisory Group soon to be established with experts in diverse relevant fields.

Image: First meeting of States Parties to the TPNW in Vienna, June 2022.



1. “Ensure an effective verification and enforcement architecture”

The TPNW strengthens the current nuclear safeguards regime run by the International Atomic Energy Agency by requiring all states without nuclear weapons since the treaty was adopted to have a Comprehensive Safeguards Agreement (CSA) in force within 18 months of the treaty entering into force for that state. The NPT also requires non-nuclear-weapon states to negotiate a CSA, but with no timeframe, and 11 states parties to the NPT have yet to conclude a CSA. The TPNW does not allow states to reduce the safeguards they already have in place, whereas under the NPT there is no such restriction on back-tracking. The TPNW anticipates and allows for safeguards to evolve and strengthen over time.

The TPNW provides the **first internationally agreed pathway to eliminate nuclear weapons to be codified in a treaty**. This framework is robust and fit for purpose, allowing states to “destroy then join”, or “join then destroy” their weapons. For the latter, it requires implementation of **agreed time-bound plans for elimination of nuclear weapons** and the programs that produce them, to be verified by an independent international authority. The treaty defines a realistic and practical framework, given the widely differing circumstances, arsenals and nuclear weapons development histories of nuclear-armed states. It provides an adaptable framework for negotiating the sequence of detailed steps that will require active participation of nuclear-armed states. This detail was also beyond the UN mandate for the treaty negotiations, and would not have been feasible in the time available. But most crucially, though the TPNW negotiations were open to all states, all the nuclear-armed states chose to boycott them. The International Atomic Energy Agency also did not participate.

The treaty’s framework can **readily accommodate detailed disarmament roadmaps when nuclear-armed states get serious** about their obligation to disarm. The treaty also stipulates that the highest possible standard of safeguards be applied in states which disarm, to prevent nuclear weapons being re-built. As [Australian Red Cross](#) has stated regarding the TPNW's Article 4 provisions: "these provisions still provide the most comprehensive elimination and safe-use requirements imposed on nuclear weapon states to date, while maintaining a flexible and pragmatic approach to operational realities." They further state that: "Any States concerned about the efficacy of potential verification processes under the TPNW, should participate in discussions around designating a competent verification body."

Regarding enforcement, the TPNW contains **mechanisms to promote compliance**, including the meetings of states parties and review conferences and measures they may take. Issues may be further raised with the UN General Assembly or the UN Security Council, or resolution sought before the International Court of Justice or the Permanent Court of Arbitration. These mechanisms are imperfect, but are subject to similar and not greater constraints than face other international treaties in a world of sovereign states.

Disarmament treaties supported by Australia vary widely in their verification provisions. Australia strongly supports the Biological Weapons Convention, despite this treaty having essentially no verification provisions.

Similarly, while the NPT has well-developed verification obligations for its non-proliferation provisions for state parties without nuclear weapons, largely through the nuclear safeguards

administered by the International Atomic Energy Agency (IAEA), it has no verification or enforcement provisions for its nuclear disarmament obligations. **In contrast, the TPNW does not permit disarmament which is unverified.**

States are able to withdraw from the NPT after giving 3 months notice of their intention to do so. (Withdrawal from international treaties is infrequent and generally discouraged, but because of the nature of the international system, treaties have provisions for state withdrawal.) The TPNW has higher barriers to withdrawal than the NPT does, requiring 12 months notice, an explanation of reasons, and if the state party is a party to an armed conflict on expiry of the 12-month notice period, it remains bound by the obligations of the TPNW and any additional protocols until it is no longer party to an armed conflict.

2. “Ensure the interaction of the Ban Treaty with the longstanding Nuclear Non-Proliferation Treaty (NPT)”

The TPNW has been carefully crafted to reinforce, complement and build on the NPT, which from its beginnings in the 1960s stipulated and required the negotiation of further legal measures to achieve nuclear disarmament. The TPNW explicitly affirms the vital role of full and effective implementation of the NPT. **All states parties to the TPNW are also bound by the NPT, and all are members in good standing.** Like all other states parties to the NPT, Australia is obligated to pursue “effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament” under Article VI. The world’s highest legal authority, the International Court of Justice, has unanimously agreed that the obligation on all states is not just to negotiate in good faith towards nuclear disarmament, but to bring these negotiations to a conclusion, ie. to achieve nuclear disarmament.

It was never envisaged during negotiation of the NPT that nuclear disarmament could or would be accomplished solely through the single sentence comprising Article VI, hence its stipulation of “effective measures” to be pursued. Other nuclear arms control and disarmament treaties, including ones supported by Australia, are also regarded as complementary to the NPT and furthering the implementation of its Article VI disarmament obligation. These include the Comprehensive Nuclear test Ban Treaty and nuclear weapons free zone treaties like the South Pacific Nuclear Free Zone, and yet to be realised measures supported by Australia, such as a treaty curbing the production of fissile materials for nuclear weapons.

The TPNW is the first such multilateral “effective measure” to enter into force in almost 50 years. **Far from conflicting with the NPT, the obligations under the TPNW reinforce and**



advance its objects and purpose “to facilitate the cessation of the manufacture of nuclear weapons, ... and the elimination from national arsenals of nuclear weapons and the means of their delivery”.

UN Secretary-General António Guterres has affirmed the complementarity of the TPNW and the NPT.

Joining the TPNW will also strengthen the commitments Australia has made under the South Pacific Nuclear Free Zone Treaty and Comprehensive Test Ban Treaty.

If the Albanese government persists with the Morrison government's plan for Australia to acquire nuclear-propelled submarines, joining the TPNW will become even more important. As evidenced at the recent NPT Review Conference in August 2022, many nations[1] have serious concerns about the plan's precedent-setting adverse proliferation implications, erosion of nuclear safeguards, and undermining of highly-enriched uranium minimisation efforts. **The most effective way for Australia to demonstrate that its acquisition of nuclear-powered submarines is not the start of a slippery slope towards nuclear weapons stationing or acquisition would be to sign, ratify and faithfully implement the TPNW.**

The **Vienna Declaration** issued from MSP1 states:

"We recognize the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as the cornerstone of the disarmament and nonproliferation regime, and deplore threats or actions that risk undermining it. As fully committed states parties to the NPT, we reaffirm the complementarity of the Treaty with the NPT. We are pleased to have advanced the implementation of the NPT's Article VI by bringing into force a comprehensive legal prohibition of nuclear weapons, as a necessary and effective measure related to the cessation of the nuclear arms race and to nuclear disarmament."

The appointment at MSP1 of Ireland, the principal architect of the NPT, to lead cooperation between the TPNW and NPT, is further indication of the seriousness of TPNW states parties to support, complement and implement the NPT of which they are all members.

The Vienna Declaration also states: "We reiterate our commitment to work constructively with all NPT States Parties to achieve our shared objectives." This commitment is being implemented - MSP1 was joined by 34 states as observers, including Australia, Switzerland, NATO members Belgium, Germany, Netherlands and Norway, three of which have US nuclear weapons stationed on their territory, and prospective NATO members Finland and Sweden.

Germany stated: "we highly appreciate the unequivocal declaration in support of the NPT, envisaged by this Meeting of States Parties. ... We fully share the goal of achieving a world free of nuclear weapons and we recognize the motives and the engagement of TPNW States Parties in this regard. We especially value the humanitarian perspective put forward. ... Germany is committed to engaging in constructive dialogue and exploring opportunities for practical cooperation. We are interested to hear more about the "positive obligations" of the Treaty. Indeed, we believe that the provision of victims assistance and environmental remediation from the long-term damages of nuclear testing deserve broader attention and engagement."

[1] Nations that publicly voiced serious concerns about Australia's nuclear-powered submarine plan at the August 2022 NPT Review Conference include China, Indonesia, Kiribati, Malaysia, Peru, Russia and South Africa. Similar views were expressed by many non-state participants, including from senior nuclear non-proliferation specialists in the United States and elsewhere.

If anyone had any doubt that the NPT alone is insufficient to achieve nuclear disarmament, now 52 years since its entry into force, the Review Conference concluded on 26 August 2022 should have banished that baseless hope. The month-long conference was unable to agree on even a very weak outcome document. Though Russia blocked its final adoption, none of the nuclear-armed state parties to the NPT (China, France, Russia, UK and US) were willing to commit to any new disarmament measures or timelines. A similar failure occurred in 2015. The last time a Review Conference reached any agreement was the Action Plan of 2010, effectively none of which has been implemented, like disarmament commitments from 1995 and 2000.

By contrast, the TPNW and its review mechanisms during Meetings of States Parties present a set of concrete and direct actions, with names of responsible parties and timelines. The complementarity between the two treaties can be viewed as the TPNW being an ‘effective measure’ as called for by the NPT in order to implement its objects and purpose.

3. “Work to achieve universal support for the Ban Treaty”

International law develops progressively, as more countries join and implement treaties; norms change and become institutionalised; evidence has impact; social, political, economic and moral pressure build. Very few treaties have been joined by every nation on Earth, as the Geneva Conventions and Montreal Protocol on Substances that Deplete the Ozone Layer have been. No disarmament treaty has been joined by all states. Often it takes many years for states to join treaties. For example, nuclear-armed China and France joined the NPT only in 1992, 22 years after it entered into legal force. Because of a few hold-out states, the Comprehensive Test Ban Treaty that Australia championed has yet to enter into legal force 26 years after it was negotiated.

The NPT has never been joined by India, Pakistan or Israel (all nuclear-armed), and North Korea withdrew from that treaty to further its pursuit of a nuclear arsenal. Even the treaties which prohibit biological and chemical weapons have not been joined by all states. Twenty-nine states have not yet joined the ban on landmines (which entered into force in 1999), 83 states have failed to yet join the ban on cluster munitions (which entered into force in 2010), including the US, China and Russia. **Nonetheless, Australia has recognised the normative and legal significance of these treaties and firmly supports all of them.**

Despite pressure from nuclear-armed states, the TPNW enjoys the support of a clear majority of the world's 193 UN member states. As of 13 Sep 2022, 86 states have signed, and 66 have ratified it. The Humanitarian Pledge initiated by Austria in 2014, committing to fill the then



Image: Negotiating conference for the TPNW at the UN, 2017.

absence of a treaty prohibiting nuclear weapons, was supported by more than 127 states. In 2016, a UN General Assembly (UNGA) mandate to negotiate a new legal instrument to prohibit and provide for the elimination of nuclear weapons was supported by 123 states. The TPNW was negotiated in 2017 at a conference open to all states, and the treaty was adopted by a vote of 122 to 1, with 1 abstention. At the 2021 UNGA, an annual resolution welcoming the TPNW and calling on all states to join it was supported by 128 states. **Thus the membership of the TPNW can confidently be expected to continue to grow steadily in coming years, and will grow faster if Australia and like-minded states support it.**

In the Action Plan adopted at MSP1, “States parties resolve: Action 1: To make universalization efforts a priority of States parties. These efforts should focus on increasing the number of signatures and ratifications, as well as actively engaging in promoting the norms, values and underlying arguments of the Treaty, such as concern about the inherent risks and catastrophic humanitarian consequences of nuclear weapons, and the Treaty’s effective contribution towards disarmament and international peace and security.”

Commendably, apart thus far for nuclear weapons, Australia has joined all the treaties which prohibit indiscriminate and inhumane weapons, and all applicable nuclear disarmament and non-proliferation treaties. Australia has joined such treaties under both Labor and Coalition governments. We were a leader in the development of the Chemical Weapons Convention, as well as the nuclear test ban treaty. We have joined disarmament treaties because it is the right thing to do for the security of Australians and our world, supporting and strengthening those treaties and the standards and norms they enshrine.

And **we already manage divergent positions of some of our allies.** The Australian Defence Force has already had considerable experience in implementing Australia's obligations under the landmines and cluster munitions bans, while cooperating militarily with the US, which has joined neither of these treaties.

Our alliance with the United States need not be a barrier to signing the TPNW. There is nothing in the TPNW which prevents military cooperation with a nuclear-armed state, provided nuclear weapons activities are excluded from such cooperation. There has been no disruption to the ongoing non-nuclear military cooperation between the US and its allies New Zealand, the Philippines and Thailand, all of which have ratified the TPNW. Similarly, there are no legal roadblocks for NATO members, Japan or South Korea to join the TPNW while maintaining their alliances. A [Harvard University International Human Rights Clinic report](#) concluded that: “Australia should therefore join the TPNW as soon as possible and renounce its nuclear umbrella arrangement with the United States. Signing and ratifying this instrument would further its declared desire for a nuclear-weapon-free world, while preserving its military alliance with the United States.”

Every state joining the TPNW is obliged to work for the goal of “universal adherence of all states to the treaty” (Article 12). As with other treaties, the greater the adherence to the TPNW, the more effective the treaty can be. The best way to promote the universalisation of the TPNW, as with any treaty, is to ‘walk the talk’ and lead by example – **join it, faithfully implement it, promote it, work to enhance it, and thereby be in a strong and credible position to encourage other states to do the same.**

Australia leading by example and signing the treaty would make a substantial positive difference, especially to universalization efforts. Many fence-sitting states will feel much more comfortable about also joining the TPNW if a major US ally like Australia does. It will also encourage NATO members and other US allies to look more seriously and constructively at the treaty, as a number are already doing. And if Australia's key concern about membership is getting nuclear-armed states on board, the single most effective action it can take to make this more likely is to itself join the treaty.

Australian Red Cross supports this view: "we believe the treaty reinforces the stigma against the use of nuclear weapons, further disincentives their proliferation and strengthens the case for their elimination. ... In addition to strengthening the taboo against use of nuclear weapons, the TPNW increases the pressure on the nuclear-weapons States to reduce and eliminate their nuclear arsenals, ... **we believe the participation of allies of nuclear-weapons States in the TPNW, will assist in breaking down of reluctance by such States in considering the potential application of the TPNW**".

One infrequently discussed benefit of the TPNW is its non-proliferation value. Joining the TPNW is the most effective way for states to foreswear acquiring nuclear weapons. Preventing additional states from acquiring nuclear weapons profoundly benefits Australia's security. At a time when Russia's nuclear-weapons-enabled aggression in Ukraine may be prompting other states to consider acquiring nuclear weapons, TPNW states parties are doubling down on their commitment never to do so. The more states join that the TPNW, the safer all people and Australia are.

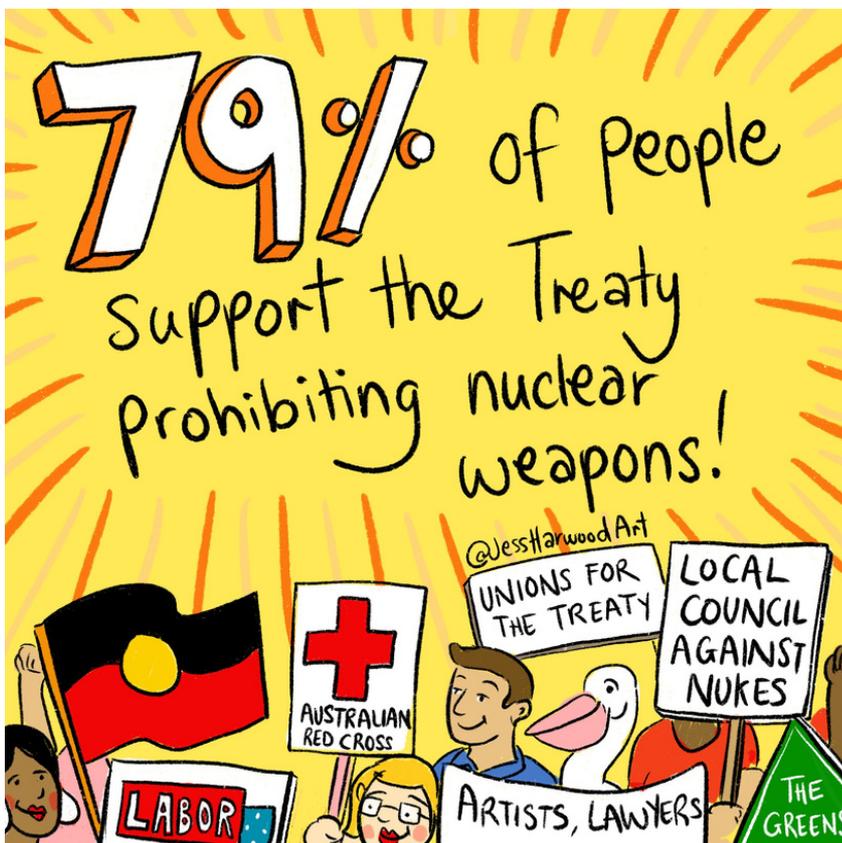


Illustration: Jess Harwood

Conclusion

The world is at a critical juncture, with multiple pressing global problems requiring cooperative global solutions worsening while global leadership and cooperation to address them fragment and weaken. The Doomsday Clock stood at 100 seconds to midnight, further forward than it has ever been before, even before Russia's brutal and illegal invasion of Ukraine, enabled by claimed impunity based on specific threats to use nuclear weapons. The risk of nuclear war is widely assessed to be at least as great as during the Cuban missile crisis of 1962, and perhaps ever. Hard-won nuclear weapons control and disarmament treaties have been abrogated, with no negotiations underway to replace them. All nine nuclear armed states are investing in modernising their arsenals, including with entirely new types of nuclear weapons. None are winding back policies to use nuclear weapons. **For the first time in decades, the number of available deployed nuclear weapons is increasing.**

Despite all this and an urgent need for progress on disarmament, the NPT Review Conference has failed to reach any agreement, again. By contrast, the recent meeting of TPNW signatories was a collaborative and productive success. **This treaty currently provides the best hope for progress on nuclear disarmament and the only bright spot in a bleak and darkening nuclear landscape.** We do not have the luxury of time or inaction. The need to prevent nuclear war is urgent. Australia needs to step up, and join the vast majority of our Pacific and ASEAN neighbours in the nuclear ban treaty.

The considerations identified in Labor's policy platform can serve as useful signposts for Australia's ongoing engagement with the treaty once it has joined. They reflect the priorities of states which are already party to the treaty. **They should not properly be seen or disingenuously used as obstacles or reasons to delay joining the ban treaty.** Australia should signal its good faith intention by signing the TPNW without delay, followed as soon as feasible by its ratification of this ground-breaking agreement, once the changes needed to bring Australia into compliance with the treaty have been put in place. That would not only make history, but get our nation on the right side of it.

In the meantime, Australia should use every opportunity, such as UN General Assembly sessions, to welcome and support the TPNW and recognise the compelling evidence which underpins it - on the acute existential threat posed by the catastrophic humanitarian consequences and growing danger of nuclear war. Australia should promote the voices of Australian nuclear test survivors, look for opportunities to constructively engage with the Treaty even before signing it, make clear that the nuclear disarmament policies of the Albanese government differ from those of its predecessor, and that **it will act to implement its policy commitments.**

Further reading

Further detail about why and how Australia should join the TPNW can be found in ICAN Australia's report [Choosing Humanity](#).

The United Nations Institute for Disarmament Research (UNIDIR) in June 2022 produced a report on "[Verifying Disarmament in the Treaty on the Prohibition of Nuclear Weapons](#)"

The International Committee of the Red Cross Briefing Note on "[Safeguards and the Treaty on the Prohibition of Nuclear Weapons](#)"

Ireland and Thailand submitted a Working Paper to MSP1 in June 2022 on the [complementarity between the TPNW and the NPT](#).

The [Nuclear Weapons Ban Monitor](#) is a detailed annually updated report examining the status of the TPNW and the position of every nation regarding nuclear weapons and the TPNW

[International Human Rights Clinic, Harvard Law School, Australia and the Treaty on the Prohibition of Nuclear Weapons](#), December 2018.

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