



Submission to the Labor Draft National Platform Members Consultation

Nuclear Disarmament and the Treaty on the Prohibition of Nuclear Weapons

Positive steps taken on the Treaty on the Prohibition of Nuclear Weapons

We acknowledge with thanks the positive steps the Albanese government has taken in relation to the Treaty on the Prohibition of Nuclear Weapons (the Ban Treaty):

- Within weeks of coming into office, the government sent a delegation led by Susan Templeman MP to observe the First Meeting of States Parties to the TPNW. Commendably, Foreign Minister Penny Wong overruled advice from her Department against sending such a delegation.
- In October 2022, the government changed its vote from the previous government's consistent opposition to resolutions supporting the TPNW at the United Nations General Assembly First Committee to an abstention. While a modest step, this change was widely noted internationally and in doing so Australia became the first nuclear-dependent state to drop its formal opposition to the TPNW.
- The Prime Minister and Foreign Minister have repeatedly affirmed the priority the government attaches to nuclear disarmament, its desire for a world free from nuclear weapons. They affirmed Labor's policy on the TPNW, and repeated that the government was working to implement it. Addressing the National Press Club on 17 April 2023, Minister Wong stated: 'I think the TPNW is of substantial normative value.' She went on to note that the TPNW can complement, reinforce and assist the implementation of the NPT: 'In terms of the TPNW, I think the fact that so many states have signed it demonstrates the frustration that there has been insufficient progress in the context of the NPT, and if this can spur more progress in that arena, that is a good thing.'

Proposed wording for the Labor National Platform section on Nuclear Disarmament

Nuclear disarmament

1. *Acknowledges the growing threat and catastrophic and indiscriminate impacts of nuclear weapons and the importance of ambitious action on nuclear non-proliferation and disarmament to enhance global security.*

2. *Acknowledges the deep and ongoing consequences of nuclear testing in Australia, which have been borne disproportionately by our First Nations peoples, as well as testing in the Pacific.*
3. *Congratulates the Australian-born International Campaign to Abolish Nuclear Weapons on its work in returning to global prominence the cause of nuclear disarmament;*
4. *Welcomes the entry into force of the Treaty on the Prohibition of Nuclear Weapons (TPNW or Ban Treaty) in 2021 and ongoing efforts to achieve universal support;*
5. *Acknowledges the centrality of the US Alliance to Australia's national security and strategic policy.*
6. *Acknowledges the complementarity of the Ban Treaty and the longstanding Nuclear Non-Proliferation Treaty; the need to negotiate effective verification and enforcement provisions with nuclear-armed states that join the Treaty, and the requirement under Article 12 for all states parties to pursue universal support for the Ban Treaty.*
7. *Acknowledges the positive steps already taken by the Albanese Government to engage with the Ban Treaty and end Australia's opposition to it under previous Coalition governments.*
8. *Labor in government will continue its proud record of action on nuclear disarmament and non-proliferation by signing and ratifying the Ban Treaty without delay.*

Why are the suggested amendments appropriate?

We list below a brief overview of progress that has been achieved in the three areas mentioned in Labor's initial commitment to sign and ratify the TPNW, made in December 2018 and reaffirmed in 2021.

Labor committed to sign and ratify the Ban Treaty, after 'taking into account the need to:

- a) Ensure an effective verification and enforcement architecture;
- b) Ensure the interaction of the Ban Treaty with the longstanding Nuclear Non-Proliferation Treaty; and
- c) Work to achieve universal support for the Ban Treaty'.

Much work has been done to further all three of these issues. We refer readers to the document we circulated in September 2022, a [Briefing Paper: Update on Labor Joining the Nuclear Weapon Ban Treaty](#), which addressed progress made on these issues.

We also note that especially since the Ban Treaty entered into force in 2021, ongoing work has focused on addressing these issues. These advances mean that there should remain no further obstacles to the Labor Government signing and ratifying the Ban Treaty.

Progress on an effective verification and enforcement architecture

The TPNW is the only internationally agreed framework for the elimination of nuclear weapons, and it is an important and robust framework if nuclear-armed states choose to use it. It was not appropriate or feasible to include detailed elimination and verification regimes in the treaty, because these regimes will need to be quite specific to each nuclear-armed state, require the active involvement of those states, will require significant time and technical input, depend on whether they choose an ‘eliminate then join’ or ‘join then eliminate’ pathway, would have exceeded the negotiating mandate of the conference, and would not have been feasible within the negotiating timeframe in any case.

Nonetheless, states-parties to the treaty, international organisations and independent experts have made significant progress in addressing verification procedures under the TPNW, particularly since the First Meeting of States Parties in June 2022. Article 4 of the TPNW outlines ‘the pathways for the elimination of nuclear weapons of nuclear-armed states or states hosting other countries’ nuclear weapons on their territories who wish to join the TPNW.’

In line with this, the *Working Group on the Implementation of Article 4* was established in Vienna at the First Meeting of States Parties, to undertake “work related to the future designation of a competent international authority or authorities.” The *Working Group's* Vienna Action Plan includes four actions, Actions 15-18, dedicated to the implementation of Article 4. Three meetings of international experts have been held to date, with the most recent meeting examining ‘the key steps and considerations required to eliminate and verify the elimination of nuclear weapons under the TPNW, from making an initial declaration under Article 2, to cooperating with a designated international authority to verify disarmament and that authority reporting on irreversible elimination, to ongoing safeguards needed to monitor compliance.’

In addition to this ongoing process, several technical experts, legal analysts, nuclear weapons scholars and political figures have also been involved in discussing the technical and political requirements for verification. A sample of these studies is provided here:

- *Verifying disarmament in the Treaty on the Prohibition of Nuclear Weapons*, ed, Pavel Podvig, UNIDIR Report, 2022. Available at https://www.unidir.org/sites/default/files/2022-06/UNIDIR_Verifying_Disarmament_TPNW.pdf The Report ‘explores the concept of nuclear disarmament verification in the TPNW context and outlines how various TPNW verification issues can be addressed, stating that ‘the TPNW has enough flexibility to accommodate different approaches’.
- *On Creating the TPNW Verification System*, Thomas E Shea, TODA Institute Policy Brief 92, 2020. This paper ‘argues in favour of creating a new verification authority responsible only to the TPNW Parties to address the elimination of the existing arsenals, complementing the verification missions assigned to the International Atomic Energy Agency (the IAEA) in the text of the Treaty. The author presents a possible framework, methods and techniques to meet the three verification requirements noted.’

- [*Fit For Purpose: An Evolutionary Strategy for the Implementation and Verification of the Treaty on the Prohibition of Nuclear Weapons*](#), Tamara Patton, Sébastien Phillipe and Zia Mian, *Journal for Peace and Nuclear Disarmament*, 24 September 2019
- Further, a *Scientific Advisory Group to TPNW States Parties* comprising 15 experts from 12 countries has been appointed and commenced its work program at its first meeting on 1 March 2023. The group includes substantial expertise in nuclear physics and technical aspects of nuclear disarmament and its verification.

In sum, the verification issue does not prevent Australia from signing the treaty. We note that even the NPT does not contain detailed verification provisions, these having evolved over time. And unlike the TPNW, the Biological Weapons Convention has *no* verification measures at all, and efforts to establish these have been clearly rejected by certain states. Yet this has not stopped Australia from ratifying and strongly supporting that disarmament treaty.

Ensuring the positive interaction of the Ban Treaty with the longstanding Non-Proliferation Treaty

There is a broad and consistent agreement among states that the TPNW complements and reinforces the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT). All states parties to the TPNW are also parties to the NPT in good standing and remain firmly committed to the NPT's full implementation. The TPNW is, according to its parties, "a necessary and effective measure related to the cessation of the nuclear arms race and to nuclear disarmament", as envisaged in Article VI of the NPT.

The TPNW was carefully crafted to reinforce, complement, and build on the NPT, which obligates its parties to negotiate further legal measures to achieve nuclear disarmament. To date, in addition to the TPNW, these have included nuclear weapon free zones and the Comprehensive Nuclear Test Ban Treaty. Both the NPT and the TPNW are an integral and permanent part of the international nuclear non-proliferation and disarmament architecture, and have the same goal at their core: a nuclear-weapon-free world.

We present below a small sample of research which has been conducted on this issue:

- [*The Relationship between the NPT and the TPNW*](#), Thomas Hajnoczi, *Journal for Peace and Nuclear Disarmament*, 2020. The author notes that 'Great care was taken during the negotiations of the TPNW to secure its full compatibility with the Treaty on the Non-Proliferation of Nuclear Weapons. This goal has been accomplished. The TPNW strengthens and supports the NPT which has always anticipated further legal norms to achieve its purposes. Like in the other pillars of the NPT, reaching the objective of the disarmament pillar – a world free of nuclear weapons – will not be feasible without further legal instruments. For the full implementation of Article VI of the NPT, the creation of a legally binding norm to prohibit nuclear weapons is indispensable. The adoption of the TPNW on 7 July 2017 brought about this legal instrument'.

- *Submission to the House of Lords International Relations Committee regarding its inquiry into the Nuclear Non-Proliferation Treaty and Nuclear Disarmament.* Harvard Law School, International Human Rights Clinic (NPT0009). This document stressed to the British House of Lords that ‘the TPNW enhances rather than undermines the NPT’s provisions. For example, the TPNW strengthens the NPT’s safeguard regime. Article 3 of the TPNW mandates that states parties maintain, at a minimum, their International Atomic Energy Agency (IAEA) safeguards obligations. TPNW states parties that have signed the IAEA’s stronger Additional Protocol, which is not a requirement of the NPT, must uphold the Protocol’s obligations.’
- *The NPT and the TPNW: Compatible or conflicting nuclear weapons treaties?* Tytti Erasto, SIPRI, 2019. The author concludes that ‘It would be difficult to make the case of legal incompatibility between the TPNW and the NPT, as the former so clearly builds on NPT Article VI on disarmament’.
- *On the legal relationship between the Treaty on the Prohibition of Nuclear Weapons and the Non-Proliferation Treaty.* Research Services of the German Bundestag, 19 Jan 2021. This study concludes: ‘... the great bulk of international law literature - including proven experts in the field of international disarmament law from universities and research institutes, but above all also participants (diplomats and academics) at the UN Diplomatic Conference which negotiated the TPNW - come to the conclusion that the two treaties are in a complementary rather than a competing legal relationship. In concrete terms this means that the TPNW does not legally contradict the NPT ... The TPNW does not undermine the NPT, it is part of a common nuclear disarmament architecture.’

In relation to nuclear safeguards, the TPNW strengthens the safeguards obligations included in the NPT. This has been the definitive assessment of the International Committee of the Red Cross ([ICRC Briefing Note. Safeguards and the Treaty on the Prohibition of Nuclear Weapons](#)). The TPNW has prompted a number of states to conclude and bring into force IAEA comprehensive safeguards agreements – and, in some cases, additional protocols – resulting in greater compliance with the NPT.

Progress on work to achieve universal support for the Ban Treaty

States parties to the Ban Treaty are required under Article 12 to encourage all other countries to join it, with the goal of attracting “universal adherence”. They can do this in many ways – for example, by making statements in support of the treaty at the United Nations, by raising it in their bilateral, multilateral and international dealings with other countries, or by hosting regional workshops.

We note that to date, 92 states have signed the TPNW, including some states which are part of a broad US alliance. Support for the treaty will continue to increase over time as its norms become more deeply entrenched and pressure to conform to them intensifies. Some countries that were initially reluctant to come on board have eventually felt compelled to reassess their position as the treaty’s membership grows larger, and as more and more of their parliamentarians and citizens demand action.

In short, universality of a treaty is not necessarily about getting every state to sign before the treaty can have any effect. Rather it is about the efforts needed to encourage non-members to sign, precisely because a greater number of signatures serves to strengthen the norm enshrined in the treaty. As support becomes a growing feature of international politics as time progresses, a treaty's impact is magnified. This has been the case for other treaties. For example, France and China initially opposed the Non-Proliferation Treaty when it was negotiated in 1968 but resolved to join it decades later.

Moreover, even states which might refuse to sign a treaty can, over time, change their behaviour to make it accord with a treaty's obligations. For instance, the growth of support for the landmines treaty and the cluster munitions treaty has come to influence US policy and behaviour regarding these weapons. While the US was once a heavy user of these weapons, it has, thanks to the normative effect of existing treaties, modified its behaviour in line with treaty expectations.

As one analyst has observed, 'universalisation of the TPNW should be understood as a strategy to maximise the authority of the treaty's norms and principles in order to influence the nuclear weapons policies of nuclear-armed states in the direction of nuclear disarmament' (Ritchie 2021). Universalisation is a goal that will proceed gradually and steadily. It will entail convincing more states to sign and ratify the treaty. This is based on the historical evidence that every ratification and signature of a treaty like the TPNW serves to strengthen its normative value on a global scale (Bulletin of the Atomic Scientists, 2023).

There is nothing in the TPNW which prevents non-nuclear military cooperation with a nuclear-armed state. It is worth remembering that even NATO states (Germany, Netherlands, Norway) have commissioned studies assessing the compatibility of signing the Ban Treaty with their Alliance obligations. These studies have shown overwhelmingly that states can remain in an alliance with the US and sign the Ban Treaty, provided that they renounce any affiliation or activities with nuclear weapons. In the same way, the Harvard Human Rights Clinic has shown that Australia can sign the Ban Treaty without having to leave the ANZUS alliance; it would remain in a conventional weapons alliance.

Similarly, signing the Ban Treaty will not prevent Australia from proceeding with the AUKUS pact; indeed, signing will reassure our region and the world that Australia has no intention of developing nuclear weapons as a consequence of AUKUS.

Some NATO states also attended the First Meeting of States Parties last year, as did Australia, in an observer capacity. It is likely, in our estimation, that one or other NATO state will sign the Ban Treaty in time, which will in turn prompt others to do so too.

The most compelling evidence of the compatibility of joining the TPNW with an ongoing military alliance with a nuclear-armed state is the experience of New Zealand, the Philippines and Thailand. Their ratification of the TPNW has not impeded in any way their ongoing, and in the case of the Philippines in particular - expanding military cooperation with the United States, because that cooperation does not involve nuclear weapons.

The best way for Australia to promote universality is by becoming a signatory to the TPNW, and then working with others to persuade non-signatory states of the value of the treaty. Remaining outside the treaty does nothing to further universal support for the Ban Treaty.

Conclusion:

In sum, it is clear that Labor's 2018 and 2021 position that it needs to take into account verification procedures, compatibility with the NPT, and the goal of universal support prior to signing the TPNW can be easily demonstrated to have been met. The above analyses and studies have shown that these elements have been addressed and fulfilled, and that there is thus no obstacle to Australia joining the TPNW.

We remind the government of the broad support for the Ban Treaty among the Australian people, and the fact that 108 federal parliamentarians individually support Australia joining this important treaty. There is every reason to expect that the Labor government will operationalise its commitment to sign and ratify the TPNW without delay.