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SUBMISSION TO IPAN INQUIRY

Prospects for the UN Treaty on the Prohibition of Nuclear Weapons

The UN Treaty on the Prohibition of Nuclear Weapons (TPNW) has now entered into Law and is making a significant contribution to establishing a global norm against nuclear weapons.

It is a path that has been successfully followed in establishing global norms against Chemical Weapons, Biological Weapons, Land Mines and Cluster Munitions.

It will depend for its effectiveness on the degree to which it focusses public attention on the issue of nuclear weapons and mobilises public sentiment around the world for the elimination of nuclear weapons.

In Australia it has received public attention partly because ICAN received the Nobel Prize.

Two existential threats threaten the survival of humanity – climate change and nuclear war. Of these 2 threats climate change is receiving all the attention and nuclear war hardly any by comparison. The public has become complacent about the threat of nuclear war. The Cold War is a memory and the nightmare of the Cuban Missile Crisis was not experienced by most. It is possible that this complacency will continue until a crisis occurs which poses the threat of the use of nuclear weapons, or until a nuclear weapon is actually used. Then a terrifying situation will abruptly bring the nuclear weapons issue to the forefront.

This could happen quickly at any time in a number of situations and flashpoints around the world eg India/Pakistan where emotional and impulsive decisions can be made by military commanders in a crisis situation (Pakistan's nuclear forces are under the control of the military rather than government).

Possibly one of the most concerning scenarios is evolving at the moment. The possibility of military conflict between the US and China in the South China Sea is real, simply because of the presence of military forces in the region coming into contact. We know how easily incidents can happen which are not planned or intended. Neither the US or China wants to embark on a war – but incidents can very easily spiral out of control.

Tactical nuclear weapons now exist which some sections of the military could regard as “usable” war-fighting weapons (an example is the nuclear war-head cruise missile which the Trump administration wanted to develop and the Biden administration may proceed with).

Academic strategist Professor Hugh White at the ANU has stated that he thinks the threshold for escalation to the use of nuclear weapons in a military conflict or war between the US and China in the Pacific is quite low. He has stated that the US and China could fight a nuclear war.

In a situation where one side looked like it was losing the conventional war a nuclear weapon could be used. One cannot imagine either the US or China backing down and accepting defeat. Hugh White said that it is far from a given that the US would prevail in a conventional war in the Pacific. The reason is that although the US has greater conventional forces they would be at the disadvantage of having to project those forces far from the US into the Pacific, whereas China would be operating from its home area.

With tactical nuclear weapons available, even though governments have no intention to fight a nuclear war, military commanders could react with their own decisions in the chaos of battle. Once the nuclear barrier has been breached it is likely to spiral into a general nuclear war.

Here are Hugh White's words (from a Hawke Centre webinar “Borders and the Pandemic” 16/7/20):

“The second point relates to the military balance between the US and China.

And if you look at the stuff America has of course the stuff they've got – they've got a longer list of

stuff than anybody else. But I think that's a mistaken way of looking at armed force.

What matters with armed force is what you can do with it where it matters and in a military contest between the US and China – that is in the western Pacific.

If we were talking about a contest in the Caribbean, America would win it, there's no question, but in the western Pacific China has immense advantages.

Above all it has the immense advantage that America has to project power across the sea into the western Pacific – China can operate from its own mainland bases.

And because of the balance between military technologies, which have been shifting steadily for a century, very quickly in the last few years, the projection of power has become harder and harder. So although it's true that America has got more stuff and still spends more, I think China has long passed the point where it can deprive the US of an opportunity to win a conventional war in the western Pacific.

And one of the reasons I think America's prospects in Asia are so grim, is that the costs and risks to the US over a contest with China over something like Taiwan for example, are now very high indeed. And one of the implications of that is that if neither side can win a decisive victory in conventional terms, the risk of escalation to a nuclear exchange is very high.

One of the things that worries me is that people talk about escalating rivalry between the US and China without remembering that these are both nuclear powers.

They could fight a nuclear war.

And I personally think that the threshold for nuclear escalation between the two of them, in an Asian conflict, is quite low.

And that's a very good reason for focussing on putting in a lot of effort in to how you can prevent that war from happening." (Hugh White, 16/7/20)

The aim of the TPNW is to mobilise public opinion against nuclear weapons and for their elimination by putting them in the same category as other unacceptable weapons of mass destruction such as chemical and biological weapons. The aim is to put pressure on governments via mass public opinion. If this is the aim then we have to consider what is the best strategy to achieve this from here. We are at a point where most non-nuclear armed nations that are not sheltering under a "nuclear umbrella" have joined the Treaty. The next step would be for those nations which shelter under the "nuclear umbrella" of the US (Australia and the NATO nations) to declare that they no longer want to be defended by nuclear weapons and to join the Treaty.

Certainly Australia joining the Treaty would have a tremendous political impact around the world and a tremendous impact in advancing global public awareness of nuclear weapons and hopefully generate considerable impetus towards the goal of worldwide nuclear disarmament. It would show the way for other nuclear umbrella states to follow suit.

The problem for Australia is that under the prevailing interpretation of the wording of the TPNW action would be required on Pine Gap and NW Cape.

I was hopeful that the Treaty could be interpreted in such a way that no action would be required on Pine Gap or NW Cape and that Australia could join the Treaty with only a political declaration that Australia repudiates the idea of being defended by nuclear weapons and that Australia regards ANZUS as a conventional forces Treaty. However so far ICAN insists that the Treaty cannot be interpreted that way and that changes in Australia's arrangements re Pine Gap and NW Cape would be required. If that is indeed the case then there is zero chance that a Labor government would join the Treaty.

Here are the clauses from the Treaty that ICAN says imply action on Pine Gap would be required:

Under ARTICLE 1 of the Treaty: "Each State Party undertakes never under any circumstances to:

1(d) Use or threaten to use nuclear weapons or other nuclear explosive devices

1(e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty."

The Australian Labor Party has incorporated the TPNW into its Platform hedged with 3 “escape clauses” allowing indefinite postponement of joining the Treaty. Here is what the Labor platform says re the TPNW (called the Ban Treaty):

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

It has become clear that even though many Labor parliamentarians and some Liberal parliamentarians (and of course the Greens) have pledged support for the TPNW, the Labor Party leadership has no intention of signing Australia up to the Treaty and I believe would avoid any mention or discussion of the Treaty in government.

Here are Penny Wong's words in reply to a motion passed by a Labor meeting in the Federal seat of Boothby calling for Federal Labor to speak out publicly on nuclear disarmament and express support for the goals of the TPNW and a letter from me in which I said “I believe there is an open path forward for a Labor Australian government to sign the TPNW which only requires the Australian government to declare through political statements that we disavow the concept of the use of nuclear weapons on our behalf and that we do not want to be 'protected' by a nuclear 'umbrella'.” “While Labor has congratulated advocates for their work in progressing the Treaty, it carries some deficiencies. As Gareth Evans has said, the Treaty is “manifestly normative rather than immediately practical” and has been drafted “without much attention to it being a practically implementable blueprint for change, and contains several obvious weaknesses.” Australia signing and ratifying the Treaty is more than a political statement. It risks being inconsistent with Australia’s alliance with the United States, potentially impacting our key security relationship at a time of great challenge in our region.” (Penny Wong Nov 2020)

Of course Labor is going to avoid any suggestion of challenging the US alliance. Even though ICAN is claiming that Australia can join the Treaty without effecting the ANZUS alliance the problem is Pine Gap and NW Cape. I was hopeful the Treaty could be interpreted as allowing Australia to join with simply a political declaration to the effect that Australia does not want to be defended by nuclear weapons (while maintaining the ANZUS Alliance as a conventional defence alliance), but ICAN leadership insists not. Labor leadership has been scared off by that and seems to agree with that interpretation. Gareth Evans for example.

The reality is I think that Labor would be unwilling even to disavow the 'nuclear umbrella'. Given that, I have suggested that one way forward would be to amend the Treaty itself at the first Conference of the States Parties in Austria next year by deleting clause 1(e). That could clear the way for Australia to join the TPNW. The negative side of that is that it weakens the Treaty itself and the proposal is immediately condemned by ICAN for that reason. But the positive side is that the political and public impact of Australia joining the Treaty would be a very powerful boost to the growth of a global norm against nuclear weapons – stigmatising nuclear weapons in the same way that chemical and biological weapons have been stigmatised. If the main game is the growth of public sentiment around the world for the banning of nuclear weapons, then we shouldn't worry too much about the details of the Treaty. The idea is that governments will feel increasing pressure from the people of the world to get rid of nuclear weapons as nuclear weapons are 'de-normalised' and stigmatised. If that is the main game then that would be facilitated tremendously by 'umbrella' states such as Australia and the NATO states, joining the Treaty.

Even if the TPNW is amended Labor may still not join the Treaty because it would displease the US. But without clause 1(e) they would struggle to explain to the public why, so it would make building pressure on Labor easier.

The alternative with the TPNW as it is, is to spend decades lobbying and railing at the Australian government for its inaction, and hope that this will generate increasing pressure from the public. Maybe that is the right way to go, but my personal feeling is that much more would be achieved

much more quickly by having 'umbrella' states join the Treaty, or at least be put in the position where they struggle to explain to their people why they will not express support for banning nuclear weapons by doing so.

Meanwhile we have a third way forward. We can lobby Labor to publicly support vital nuclear arms control measures such as declarations by nuclear-armed nations of a "No First Use" policy. There is a burgeoning movement in the UN and civil society (including Australia's Gareth Evans) and amongst Democrats in the US to have the Biden administration declare a "No First Use" policy for the US on nuclear weapons. Senator Elizabeth Warren and Representative Adam Smith have introduced a No First Use Act.

At present only China and India have a declared No First Use policy. Words matter and political declarations have a big effect in international relations and in cooling down and holding back military confrontations and preventing war.

In the context of a developing military confrontation or war between the US and China, a "No First Use" declaration by the US would mean that both the US and China would have such a policy and could play a crucial role in preventing a conventional war from turning into a nuclear war. Many commentators including Prof. Hugh White at the ANU believe that the thresh-hold for escalation from conventional to nuclear in a US-China conflict is quite low and that they could fight a nuclear war, so Labor's role in supporting No First Use could be crucial.

A public declaration of support by Labor for "No First Use" policy would immediately garner public support and improve Labor's prospects in the election. The Australian public overwhelmingly support nuclear disarmament and nuclear arms control. Labor would wedge the Liberals and the Morrison government would not be able to credibly argue against it. It would signal to the public that Labor is concerned with protecting the security of the Australian people and with global welfare.

Our advocacy for No First Use should be announced publicly in a speech by Anthony Albanese or Penny Wong so that it is picked up by the media, because of its benefit to Labor in the coming election. Australia and all 'umbrella states', as allies of the US, can play a vital role in persuading the Biden administration to adopt No First Use.

The following motion was passed unopposed by Labor's Boothby FEC in Adelaide on 16 June: Boothby FEC calls on Federal Labor to publicly declare Labor's support for a No First Use policy to be adopted by the US and by all nuclear weapons-armed nations.

Boothby FEC believes such a declaration now would be beneficial to Labor in the upcoming Federal election.

I think in the lead up to the Federal election we should lobby and persuade the Labor party to do itself a favour by coming out with public declarations of support for nuclear arms control and disarmament such as the No First Use step, which has such obvious public appeal, particularly in the context of the developing US-China confrontation in our region.

Labor's profile in the media has been lack-lustre and unexciting. Announcements such as support for No First Use could cut through in the media and capture the attention of the public.