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Submission to IPAN-Inquiry Impact of US bases on ALP Govt signing TPNW

US military bases on our soil may prevent an ALP Government signing, ratifying and complying with the United Nations Treaty Prohibiting Nuclear Weapons?

The ALP National Conference has committed an ALP Government to sign and ratify the United Nations Treaty to Prohibit Nuclear Weapons. Will US military bases on our soil, which play a part in the United States nuclear warfare infrastructure, prove to be an obstacle to this signing?

ICAN, which has been the major lobbying force at the United Nations for the development of the Treaty to Prohibit Nuclear Weapons (TPNW) and now in Australia rallying community support for an Australian Government to sign and ratify that treaty, is to be congratulated on its persistent efforts and significant achievements for peace. In December, 2018 ICAN's lobbying, strongly supported by community organisations, was successful in having the ALP National Conference consider and then pass, a resolution committing a future ALP government to signing the TPNW. This reflects a strong community demand for the signing of the treaty.

Article 1 of the Treaty includes the following clauses:

1. Each State Party undertakes never under any circumstances to:
 - (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
 - (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty

So a future ALP government seeking to sign, ratify and comply with the TPNW will need to look closely at the Australia's military relationship with a nuclear super power, namely the United States and its military bases on our soil.

For example, consider the North West Cape Submarine Communications Base at Exmouth in WA. This radio facility operates at Very Low Radio Frequencies (VLF) which can penetrate seawater and allow communications with submerged submarines including US nuclear armed submarines. Such communications could include the trigger signal which would initiate the launching of a nuclear missile from a US submarine. In 1963, this facility was entirely US controlled. In 1997 Australia took over responsibility for the facility, although US involvement and funding continued. After December 2002, operation of the station passed to the Defence Materiel organisation's Electronic and Weapons System Division together with contractors from Boeing Australia Ltd.

Kim Beazley writing about the NW Cape Base in Oct. 2017 in an article titled "North West Cape: the joint facility that changed Australian politics" said:

"The Polaris/Poseidon nuclear-powered ballistic-missile submarines that North West Cape once serviced are long gone. It still closes a gap in the worldwide reach of US submarine

communications, but the main users now are our submarines and American nuclear-powered attack submarines. The RAN now runs the facility remotely out of HMAS Stirling.”

A reasonable deduction would appear to be that an ALP government in signing and complying with Article 1(c) of the Treaty would be need to advise the United States that Australia can no longer allow the US to communicate with its nuclear-armed submarines using the North West Cape communications facility.

Furthermore, the Pine Gap satellite communications joint facility established in Central Australia is understood to be an indispensable communications and surveillance facility providing battlefield intelligence and targeting information to the US military. An ALP Government signing and complying with the TPNW would need to identify which activities at Pine Gap support US nuclear weapons activities and which do not and ban those activities which support the US nuclear weapons infrastructure. This separation, in practice, might be difficult to determine.

The International Human Rights Clinic (Harvard Law School) in a paper titled “Australia and the Treaty on Prohibition of Nuclear Weapons (December, 2018) states:

“Some government leaders worry that, as a state party to the TPNW, Australia would be obligated to repudiate its military alliance with the United States, including by withdrawing from the ANZUS Treaty. Others contend that the integration of Australian and US defence systems—exemplified by the Joint Australian-US military facility at Pine Gap and the incorporation of US extended nuclear deterrence throughout Australia’s national security policies—poses too many logistical challenges to untangle. In response to a question from Senator Penny Wong during a Foreign Affairs, Defence, and Trade Legislation Committee hearing, the Department of Foreign Affairs and Trade (DFAT) asserted that it would be “impossible to separate out . . . bilateral activities under the Alliance . . . that support nuclear as opposed to non-nuclear deterrence-related functions.” DFAT added, “[I]t would be impossible for Australia to restrict cooperation with the United States to non-nuclear missions . . . without significant repercussions for the Alliance, the nature of ongoing US commitment and Australia’s national security.”

Clearly an ALP government which signs the TPNW treaty would have to advise the United States Government that the Pine Gap (Joint) facility must be restricted to non-nuclear deterrence functions. And in order to ensure compliance with this advice, the government might well have to take full operational control of Pine Gap involving removal of US military and CIA personnel from active involvement in the base.

Politicians claim that Australia’s security against a nuclear attack is dependent on the nuclear “umbrella” provided by the United States and which keeps Australia “safe” by threatening a potential perpetrator with nuclear retaliation.

The International Human Rights Clinic is very clear in its advice on this situation:

“Although the TPNW does not explicitly address the status of nuclear umbrella States like Australia, its prohibitions make it unlawful for a State party to base its national defence on an ally’s nuclear weapons. Therefore, as a State party to the TPNW, Australia would be obliged to renounce its nuclear umbrella. From a legal perspective, Australia can take this step without undermining its collective security agreement with the United States, i.e., the Australia, New Zealand, United States Security Treaty (ANZUS Treaty).”....

“In addition, nuclear umbrella arrangements contravene TPNW Article 1(1)(e). That provision prohibits state parties from assisting, encouraging, or inducing anyone to engage in an activity prohibited under the treaty. A state party could not remain in a nuclear umbrella arrangement because in so doing it would encourage or induce its protector state to possess nuclear arms.”

It would appear that an ALP government signing and ratifying the TPNW will need to address aspects of the US-Australia Alliance and US military bases on our soil in order to comply with the Treaty. An Australian government which grasped the opportunity to pursue a truly independent foreign policy would “take the bit between the teeth” and address these issues with the United States. Whether, however, an ALP Government would do so, or see these issues as an impediment to signing the Treaty, will become clearer in the next few years if and when the ALP wins government.

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