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LUCK IS NOT A STRATEGY: WHY AUSTRALIA MUST JOIN THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

THE HONOURABLE MELISSA PARKE*

This article examines Australia's complex relationship with nuclear deterrence in the context of the Treaty on the Prohibition of Nuclear Weapons (TPNW). Despite Australia's historical leadership in disarmament, it remains outside the TPNW. The TPNW directly challenges the legitimacy of nuclear deterrence, advocating for a complete ban on nuclear weapons and offering a path toward their abolition. As most Southeast Asian and Pacific Island states have joined the TPNW, Australia is increasingly seen as the 'gap in the map'. This article calls for Australia to reconsider its stance, on the basis of international law, public opinion and the importance of joining other nations showing leadership on disarmament, and to explore non-nuclear defense strategies that maintain its alliances. With the third Meeting of States Parties approaching in 2025, Australia has a significant opportunity to shift its position and join the global effort to eliminate nuclear risks, but this requires a change in political will and policy direction.

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I INTRODUCTION

Arundhati Roy famously described nuclear weapons as ‘the ultimate coloniser’.¹ She stated that the pervasive politics and daily threat of these weapons have buried themselves like meat hooks deep in the base of our brains.²

Insidious and persistent mythology around the power of these weapons to avoid wars through threats of ultimate violence continues to this day. The cognitive dissonance in nuclear deterrence doctrines would have you believe that these weapons, designed for mass and indiscriminate destruction, offer protection through the threat of use.

The *Treaty on the Prohibition of Nuclear Weapons* (‘TPNW’)³ directly challenges nuclear deterrence theories by affirming a total ban on nuclear weapons and providing a path toward their abolition.

This article outlines the work of the *TPNW* and its challenge to nuclear deterrence theory. As an important state within the Asia-Pacific region but not yet a signatory to the *TPNW*, Australia has complex ties to nuclear deterrence. Do these ties complicate Australia’s ability to sign a treaty that eliminates these weapons? Or can Australia move away from nuclear defence while maintaining its alliance with the United States? With repeated

¹ Arundhati Roy, *The End of Imagination* (Haymarket Books, 2016) 57.

² Ibid.

³ *Treaty on the Prohibition of Nuclear Weapons*, opened for signature 9 August 2017, 3379 UNTS 161 (entered into force 22 January 2021) (‘TPNW’).

commitments to sign and ratify the *TPNW* through the Australian Labor Party's national policy, there are increasing expectations for Australia to join the Treaty, as most of its neighbours in Southeast Asia and the Pacific have already done. Since the universalisation of this Treaty is both an international and government concern, this article examines claims to extended nuclear deterrence as a potential obstacle to Australia's accession.

II THE TPNW

In a time of global instability — from geopolitical, societal, economic, human rights and environmental standpoints — the *TPNW* has fostered a sustained and positive dialogue of hope. It has achieved this through the collaboration of an engaged community of governments and civil society from around the world.

This engagement contrasts greatly with the disappointing lack of action from nuclear-armed states, which have failed for decades to honour disarmament in accordance with their legal obligations, including by boycotting the *TPNW* negotiations in 2017. Instead, these nuclear aggressor states have been squandering tens of billions of dollars every year to renew and expand their arsenals.⁴ Nuclear brinkmanship has been increasingly evident in Europe, the Middle East, and in Asia. Some nuclear weapons 'states are also waging wars of aggression', resulting in 'staggering death tolls and undeniable nuclear risks'.⁵ Against this backdrop of bloodshed, states and civil society have renewed calls not only for nuclear disarmament but also for 'multilateral approaches to peace and security and adherence to the international rule of law', based on the *Charter of the United Nations*, rather than an undefined 'international rules-based order'.⁶

The *TPNW* establishes that under international law, nuclear weapons are now banned, similar to other weapons of mass destruction. The Treaty is already having a demonstrable impact, solidifying the international consensus that nuclear threats are inadmissible, shifting norms on nuclear ownership and the threat of use, and challenging the financial and political infrastructure that previously enabled nuclear possession. The

⁴ International Campaign to Abolish Nuclear Weapons, *Wasted: 2022 Global Nuclear Weapons Spending* (Report, June 2023) <www.icanw.org/wasted_2022_global_nuclear_weapons_spending>.

⁵ Melissa Parke, 'Statement by the International Campaign to Abolish Nuclear Weapons', *Treaty on the Prohibition of Nuclear Weapons*, UN GAOR, States Parties, 2nd mtg, Agenda Item 8, 27 November 2023 <<https://docs-library.unoda.org/>>.

⁶ *Ibid.*

ban on nuclear weapons has prompted financial institutions to divest billions of dollars from companies that manufacture these weapons,⁷ a process expected to accelerate as more nations join the Treaty. The *TPNW* has also brought the fight for nuclear justice to the forefront, led by survivors of nuclear use and testing.

Proponents of the *TPNW* seek to release humanity from the ever-present and growing threat of nuclear annihilation. More work is needed to universalise the Treaty and popularise its norms. Each new ratification or accession strengthens the global resolve to rid the world of these weapons, fundamentally challenging the legitimacy of nuclear weapons. With 93 signatories, and 70 states parties to the Treaty just three years after its entry into force, the *TPNW* is a rare good news story in international diplomacy.⁸ *TPNW* states parties have shown principled leadership. They are laying the foundations for a more secure, just and peaceful future for all, addressing the challenge of nuclear abolition with systematic, progressive and strategic policy.

III NUCLEAR DETERRENCE

Lawrence Freedman explains that military deterrence is based on manipulating others through the use of conditional threats.⁹ Theorist Patrick M. Morgan has described it as a psychological relationship, where ‘the goal is to shape an opponent’s perceptions, expectations, and ultimately its decisions about launching an attack’.¹⁰ Nuclear deterrence dramatically alters the scope and threat of deterrence, elevating the inherent threat of violence to a new level, potentially challenging norms of proportionality and almost certainly involving indiscriminate impacts on civilians and the environment. Henry Kissinger observed that, ‘the nuclear age turned strategy into deterrence, and deterrence into an esoteric intellectual exercise’.¹¹ As Morgan notes, the retaliatory threats inherent in nuclear deterrence were a ‘retrograde development’ where

⁷ International Campaign to Abolish Nuclear Weapons, *Rejecting Risk: 101 Policies Against Nuclear Weapons* (Report, January 2022).

⁸ ‘Treaty on the Prohibition of Nuclear Weapons’, *United Nations Treaty Collection* (Webpage) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-9&chapter=26>.

⁹ Lawrence Freedman, *Deterrence* (Polity Press, 2004) 6.

¹⁰ Patrick M Morgan, ‘Applicability of Traditional Deterrence Concepts and Theory to the Cyber Realm’ in National Research Council (ed), *Proceedings of a Workshop on Deterring Cyberattacks: Informing Strategies and Developing Options for U.S. Policy* (The National Academies Press, 2010) 56.

¹¹ Henry Kissinger, *Diplomacy* (Simon & Schuster, 1994) 608.

‘deterrence became hostage-taking on a vast scale’, particularly in relation to attacks on civilians.¹² Nobel Prize winner Joseph Rotblat was more blunt, describing nuclear deterrence as ‘the ultimate form of terrorism’.¹³

Nuclear deterrence theory remains the supposed privilege of the nine nuclear-armed states and is based on assumptions of unerring predictability in all actors, including enemies. The theory fails to take into account accidents, miscalculations, unhinged leaders, terrorist groups, cyber-attacks or simple mistakes. The very existence of these weapons holds an intrinsic threat of use. It also fails to provide security or avoid wars, as is more than evident in the world today. The fact that we are here today close to eight decades since the advent of the nuclear age is more a result of dumb luck than good management or inherent system integrity. ‘But luck is not a strategy’, as the United Nations Secretary-General Antonio Guterres stated in his remarks to the tenth Review Conference of the Parties to the Treaty on the Prohibition of Nuclear Weapons.¹⁴

There are those who claim a reliance on a “nuclear umbrella” through the nuclear weapons of other states. Extended nuclear deterrence (‘END’) claims to guarantee a nuclear response on behalf of certain protégés in reaction or retaliation to nuclear threats against them. This concept of extended nuclear deterrence often includes North Atlantic Treaty Organization (‘NATO’) states, as well as Japan and South Korea, and can involve nuclear stationing. Australia has long expressed a reliance on United States (‘US’) nuclear weapons for its defence, despite questions about the evidence of overt commitments from the US. END agreements are notoriously complex and hard to qualify, as will be shown later in this article concerning Australia. A claim to END by successive Australian governments exposes a conflict, contradicting their claims of aiming for a world free from nuclear weapons.

There is another fundamental flaw in the logic of nuclear deterrence. The insidious reality is that the manufacturing, maintenance, and their eventual disposal of these weapons all come at an enormous cost, even without any direct use. These weapons displace people

¹² Patrick Morgan, *Deterrence Now* (Cambridge University Press, 2003) 14.

¹³ Joseph Rotblat, *A Quest for Global Peace: Rotblat and Ikeda on War, Ethics, and the Nuclear Threat* (I.B. Tauris, 2007) 78.

¹⁴ António Guterres, ‘Secretary-General’s Remarks to the Tenth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons’ (Remarks, UN Headquarters, 1 August 2022).

and communities from cradle to grave, diverting funds and scientific know-how from pressing global needs. Deterrence theory is a distraction and an abstraction. The reality is that these weapons create harm on many levels through their very existence. Survivors of the over 2,000 nuclear weapons tests conducted worldwide can verify the breadth of harm from developing this supposed deterrent. Such tests were crucial in demonstrating the credibility of a nuclear deterrent.

The feasibility of nuclear deterrence was called into serious question at the second Meeting of States Parties to the *TPNW* in late 2023.¹⁵ As governments gathered at the United Nations ('UN') alongside survivors of nuclear use and testing, intergovernmental agencies, scientific experts, and a vibrant array of civil society representatives from across the world, deterrence doctrines were critiqued and challenged.

The final declaration from the meeting notes that:

Far from preserving peace and security, nuclear weapons are used as instruments of policy, linked to coercion, intimidation and heightening of tensions. The renewed advocacy, insistence on and attempts to justify nuclear deterrence as a legitimate security doctrine gives false credence to the value of nuclear weapons for national security and dangerously increases the risk of horizontal and vertical nuclear proliferation.¹⁶

Concerns about the erosion of the nuclear disarmament and non-proliferation regime were strongly voiced at the meeting. The increase in states seeking nuclear-sharing, extended nuclear security guarantees, and nuclear stationing arrangements was noted. Under the *TPNW*, no state can claim a licence to either possess or host nuclear weapons. All such activities would contravene *TPNW* commitments, which bans the transfer of, control over, or stationing, installation or deployment of nuclear weapons. The final declaration noted that:

¹⁵ *Treaty on the Prohibition of Nuclear Weapons*, UN GAOR, States Parties, 2nd mtg, Agenda Item 15, UN Doc TPNW/MSP/2023/14 (13 December 2023).

¹⁶ *Ibid* annex I ('Declaration of the second Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons') [17].

The perpetuation and implementation of nuclear deterrence in military and security concepts, doctrines and policies not only erodes and contradicts non-proliferation, but also obstructs progress towards nuclear disarmament.¹⁷

The States Parties agreed to establish a consultative process, led by Austria, '[t]o better promote and articulate the legitimate security concerns, threat and risk perceptions enshrined in the Treaty that result from the existence of nuclear weapons and the concept of nuclear deterrence' and '[t]o challenge the security paradigm based on nuclear deterrence by highlighting and promoting new scientific evidence about the humanitarian consequences and risks of nuclear weapons and juxtaposing this with the risks and assumptions that are inherent in nuclear deterrence'.¹⁸ A report containing 'a comprehensive set of arguments and recommendations' in this regard will be submitted to the third Meeting of States Parties to the *TPNW* in March 2025.¹⁹

As Austria has said, 'states who think they must rely on nuclear weapons are on a mistaken and dangerous track ... the seemingly unwavering belief in a security approach that is based on the threat of global mass destruction, humanitarian catastrophe and profound environmental damage is not only morally unacceptable but a high-risk gamble with the security of all humanity'.²⁰

IV NUCLEAR DETERRENCE AND THE AUSTRALIAN CHALLENGE

The problematic concepts of nuclear deterrence become further complicated when extended beyond the nuclear-possessing state. Australia has expressed a general commitment to END through defence White Papers since the 1990s,²¹ but no explicit agreement has ever been clearly articulated by the US. The first explicit record of Australia's reliance on END was in the *1994 Defence White Paper*.²² In this, the White

¹⁷ Ibid [19].

¹⁸ Ibid annex II ('*Decisions of the second Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons*') Decision 5 (a)(i),(ii).

¹⁹ Ibid Decision 5 (a).

²⁰ Alexander Kmentt, 'Second Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons General exchange of views Statement by the Republic of Austria' (Speech, New York, 28 November 2023).

²¹ Dimity Hawkins and Julie Kimber, 'Australia's Stance on Nuclear Deterrence Leaves it on the Wrong Side of History', *The Conversation* (online, 26 August 2016) <<https://theconversation.com/australias-stance-on-nuclear-deterrence-leaves-it-on-the-wrong-side-of-history-64163>>.

²² Commonwealth, Department of Defence, *1994 Defence White Paper* (Report, 1994) 96 ('*1994 White Paper*').

Paper noted firstly that, '[t]he Government does not accept nuclear deterrence as a permanent condition. It is an interim measure until a total ban on nuclear weapons, accompanied by substantial verification provisions, can be achieved'.²³ However, the White Paper went on to state that:

In this interim period, although it is hard to envisage the circumstances in which Australia could be threatened by nuclear weapons, we cannot rule out that possibility. We will continue to rely on the extended deterrence of the US nuclear capability to deter any nuclear threat or attack on Australia. Consequently, we will continue to support the maintenance by the United States of a nuclear capability adequate to ensure that it can deter nuclear threats against allies like Australia.²⁴

Subsequent Defence White Papers have continued this posture, though not the position on a non-acceptance of deterrence as a permanent condition. Instead, we have seen the further entrenchment of deterrence concepts, alongside the rather confused position that has become the norm for successive governments — a reliance on US nuclear weapons for Australia's defence, while claiming to be working towards a world free from nuclear weapons. The *2013 Defence White Paper* exemplified this, stating, 'Australia is confident in the continuing viability of extended nuclear deterrence under the Alliance, while strongly supporting ongoing efforts towards global nuclear disarmament'.²⁵ Most recently, the independent 2023 Defence Strategic Review, commissioned by the Albanese government, claimed:

In our current strategic circumstances, the risk of nuclear escalation must be regarded as real. Our best protection against the risk of nuclear escalation is the United States' extended nuclear deterrence, and the pursuit of new avenues of arms control.²⁶

The nature of threats that would justify the engagement of END for Australia has never been clearly articulated. Is END the most effective strategy to combat such threats? Are these threats exacerbated by Australia's willingness to host US war-fighting bases and increased engagement in military exercises and infrastructure on behalf of allied states?

²³ Ibid 96 [9.7]

²⁴ Ibid.

²⁵ Commonwealth, Department of Defence, *2013 Defence White Paper* (Report, 2013) 29 [3.41].

²⁶ Commonwealth, Department of Defence, *National Defence: Defence Strategic Review* (Report, 2023) 38 [4.10].

Does the trilateral AUKUS²⁷ agreement bring new justification or pressures for END for Australia? Ultimately, what would be the implications of nuclear use against another state in Australia's name?

There is also a lack of clarity of any commitment from the US to extend nuclear deterrence to Australia. Without a clear commitment to use nuclear force in Australia's defense, questions remain about the credibility of any such claims. Ambiguity is not commonly a feature of nuclear deterrence postures.²⁸ Additionally, questions arise about whether Australia willingly adopted END or if it has been bound to END through its alliance to a nuclear superpower. These questions deserve greater scrutiny and examination.

V AN OPPORTUNITY FOR AUSTRALIA

Instead of maintaining a questionable policy of reliance on the nuclear weapons of the US, Australia has the opportunity to forge a new path through the *TPNW*. For those states that have yet to fully join the international efforts to abolish nuclear weapons, like Australia, the opportunity to join meetings of states parties ('MSP') as observers offers valuable insights. Several non-signatory states have been constructively engaging in the first two MSPs as observer states. The Australian example is noteworthy in this regard.

Australia was represented at the MSPs for the *TPNW* in 2022 and 2023 by observer delegations led by Labor Member of Parliament Susan Templeman. Foreign Minister Penny Wong appointed Templeman to the role, stating in 2023 that, 'Australia is considering the *TPNW* systematically and methodically as part of our ambitious agenda to advance nuclear non-proliferation and disarmament'.²⁹ In committing Australia to be an observer state, Foreign Minister Penny Wong reiterated three considerations that Australia has been prioritising in its work towards signing and ratifying the *TPNW*. These

²⁷ Trilateral security partnership between Australia, the United Kingdom, and the United States.

²⁸ Peter Hayes and Richard Tanter, 'Beyond the Nuclear Umbrella: Re-Thinking the Theory and Practice of Nuclear Extended Deterrence in East Asia and the Pacific' (2011) 26(1) *Pacific Focus* 5; 'Australia: Extended Nuclear Deterrence', *Nautilus Institute* (Web Page) <<https://nautilus.org/projects/by-ending-date/a-j-disarm/aust-japan-coop/extended-nuclear-deterrence-contemporary-theory-and-policy/>>; Allan Behm, 'Extended Deterrence and Extended Nuclear Deterrence in a Pandemic World' (2020) 4(sup1) *Journal for Peace and Nuclear Disarmament* 135.

²⁹ Penny Wong, 'Second Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons' (Media Release, 26 November 2024) <www.foreignminister.gov.au/minister/penny-wong/media-release/second-meeting-states-parties-treaty-prohibition-nuclear-weapons>.

include investigating verification and enforcement regimes, addressing issues around complementarity with other disarmament instruments, and seeking universality of the Treaty. Much work has gone into each of these considerations and other issues, led by inter-sessional working groups of states parties formed at the first Meeting of States Parties in Vienna in June 2022.³⁰

Universalisation is more than simply a matter of attaining further signatures and ratifications for the Treaty. As the states parties have said, it should be ‘understood broadly’ to include greater acceptance of ‘the underlying rationale of the total elimination of nuclear weapons owing to their inherent risks and catastrophic humanitarian consequences’ and ‘serve as a strategy to maximise the authority of the core norms and principles of the Treaty in international politics’.³¹

Importantly, it is about the process and growth of engagement, building confidence in the Treaty to encourage states towards signature and ratification. While some states outside of the Treaty attempt to undermine it by questioning its legitimacy without the participation of nuclear-armed states, it is worth reminding them that the *TPNW* prohibits nuclear weapons comprehensively, not selectively. It provides a legal framework for disarmament, not merely an obligation to pursue that goal. Therefore, it seeks to treat all states equally, under the same rules, dispensing with the double standards inherent in other disarmament and non-proliferation instruments. Nuclear-armed states are welcome to join the *TPNW*, but they must do so on the same level as any other state and accept the obligation to eliminate their nuclear weapons completely.

Key to the goal of universality is the work to address foundational misconceptions about the value and legitimacy of deterrence doctrines. Australia needs to examine its own role in this, guided by international efforts through science, diplomacy and policy. The humanitarian consequences of nuclear weapons and the ever-present risk of further nuclear use are pressing concerns for all governments. Security paradigms that accept the concept of nuclear weapons by any nation undermine true national and regional stability. With the majority of the Southeast Asian and Pacific Island states now parties

³⁰ *Treaty on the Prohibition of Nuclear Weapons*, UN GAOR, States Parties, 1st mtg, Agenda Item 15, UN Doc TPNW/MSP/2022/6 (21 July 2022).

³¹ *Ibid* annex II [6].

to the *TPNW*, Australia appears to be the ‘gap in the map’. Australia has long boasted of a principled and activist position on disarmament and non-proliferation issues, being a strong advocate in the past for some of the world’s most established international law in these matters. However, the last multilateral nuclear disarmament treaty that Australia took an active role in was the *Comprehensive Nuclear-Test-Ban Treaty* in 1996.³² Nearly 30 years on, it is time for Australia to step up again and join the community of nations working towards nuclear abolition.

The *TPNW* also includes novel provisions on victim assistance and environmental remediation. This is an important consideration for Australia, as a state that was the test site for the first dozen of Britain’s atmospheric nuclear weapons and hundreds of bomb development trials through the 1950s and 1960s.³³ The legacies of harm from these tests continue to challenge governments and create intergenerational burdens on nuclear veterans and local populations, particularly First Nations Peoples. The *TPNW* seeks to assist communities still suffering from the legacy of tests, more often than not conducted by colonial powers that showed little or no concern about the devastating human and environmental toll. They selected their test sites for their supposed remoteness — whether in the deserts of Australia and Algeria, Pacific atolls, the steppes of Kazakhstan, or deserts of southern US — but remoteness from whom? Not from those living nearby, downwind or downstream. Remote, certainly, from the decision-makers in national capitals, who deemed the local populations expendable, their lands and waters worthless, as they worked to perfect their ability to kill and destroy on a massive scale. It is this same colonial attitude — the belief in one people’s superiority over another, the desire to dominate and control, the flagrant disregard for the consequences of one’s actions upon others — that guides much of the ongoing work to enhance nuclear armaments today. Such ideas deserve contest and rebuttal. Through the *TPNW*, we are seeing the long-term fights for justice for survivors of this nuclear violence gaining voice and force.

There is significant evidence of a groundswell of public opinion in support of the *TPNW*. Currently, 110 federal and many state parliamentarians have signed a parliamentary

³² *Comprehensive Nuclear-Test-Ban Treaty*, opened for signature 24 September 1996 (not yet in force) (*‘Comprehensive Nuclear-Test-Ban Treaty’*).

³³ ‘Nuclear Weapons Testing in Australia’, *International Campaign to Abolish Nuclear Weapons* (Web Page) <www.icanw.org.au/learn/nuclear-testing-in-australia>.

pledge to support the *TPNW*.³⁴ Cities and towns across Australia have joined the global Cities Appeal, expressing concern for the grave threat nuclear weapons pose for communities around the world and calling on the national government to sign and ratify the treaty.³⁵ Consistently, national polling shows majority support for the treaty.

Particularly in light of AUKUS, growing militarism in the region, and the stated position that AUKUS in no way involves nuclear weapons, Australia is under a spotlight in the region right now. If Australian claims to honouring the *Treaty of Rarotonga*³⁶ are to be believed, Australia's acquiescence to the *TPNW* could provide a significant confidence-building measure in the region.

Undeniably, there is work ahead for Australia to sign and ratify the *TPNW*. Shifts in entrenched positions of advisers and policy heads, a true exploration of the possibilities of a non-nuclear defence with Australia's largest alliances, and collaborative discussions with international experts and *TPNW* states parties will be required. As we work towards the third Meeting of the States Parties in early 2025, Australia has a real opportunity to join the global community working to eliminate nuclear risks. It is only a matter of political will to see this change.

³⁴ 'Parliamentary Pledge', *International Campaign to Abolish Nuclear Weapons* (Web Page) <icanw.org.au/pledge>.

³⁵ 'Cities and Towns', *International Campaign to Abolish Nuclear Weapons* (Web page) <www.icanw.org.au/cities>.

³⁶ *South Pacific Nuclear Free Zone Treaty*, opened for signature 6 August 1985, 1445 UNTS 177 (entered into force 11 December 1988) ('*Treaty of Rarotonga*').

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