

# Nuclear Non-Proliferation Treaty Review Conference

## It's time to revive a struggling treaty

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### *Abstract*

The Nuclear Non-Proliferation Treaty is in trouble, and the war in Ukraine has compounded the problem. A treaty that began fifty years ago as an expression of hope that the world could rid itself of nuclear weapons has become an increasingly contested agreement where parties who have accepted obligations to refrain from acquiring nuclear weapons, and are subject to an intrusive verification regime, are challenging those parties that have nuclear weapons but have not met their obligation to make real and measurable progress on reducing and eliminating their nuclear weapon stockpiles. At the forthcoming review conference, a re-energised Australia could work with like-minded countries to broker agreements by the Nuclear Weapon States (NWS) to take initial steps towards verifiable disarmament. By leveraging our alliance with the United States, and our longstanding relationships with Britain, China, France and Russia, Australia could play a truly constructive role in highly uncertain times.

**Allan Behm**

**July 2022**

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ISSN: 1836-9014

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# Introduction

After several COVID-19 induced postponements, the tenth NPT Review Conference will be held in New York next month (1–26 August 2022). Repeated delays have not led to any amelioration in the widespread malaise facing the NPT, nor to any disposition on the part of the Nuclear Weapon States to tackle the intractable issue of nuclear disarmament as required by Article VI of the treaty. Indeed, the war in Ukraine and the repeated threats by Russia’s President Putin and Foreign Minister Lavrov to deploy and use nuclear weapons should any party (especially NATO) intervene directly in the ongoing conflict in Ukraine make makes the forthcoming review conference even more fraught.

Nonetheless, the NPT Review Conference comes at a critical time for the global community, as it does for the treaty itself. In a world that is subject to unprecedented economic, political, social and technological disruption, the international rules-based order on which all but the mighty depend (and even they too, were they to think about it) is under duress. The agreements, conventions, norms and treaties, and their supporting institutions, that have guided international behaviour since the end of WW2 are both crumbling at the centre and fraying at the edges. Yet without them, the global community descends into the chaos that brought two world wars and innumerable regional conflicts in the twentieth century, causing the deaths of hundreds of millions of people, mostly non-combatants.

This is nowhere truer than in the domain of nuclear arms control and disarmament, where the existential threat of humanity’s nuclear annihilation runs in parallel with the threats from global warming and pandemics. In each case, the world is at risk because of the denialism of some world leaders, the intransigence of others and the chronic inertia of the world’s citizens. And in the case of nuclear disarmament and global warming, the major treaty that underpins global efforts has been undermined by the constant shift of the “middle ground” away from high aspiration towards the lowest common denominator as key players erode the substance of earlier agreements.

The NPT is often described as “the cornerstone of the global non-proliferation regime”.<sup>1</sup> The problem is that the non-proliferation edifice is essentially a façade resting on only one corner, and that corner is crumbling. The question that faces the parties to the NPT is whether they want to strengthen the edifice – and the cornerstone – or whether they are prepared to see the NPT go the way of the new-START (Strategic Arms Reduction Treaty) – extinction.

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<sup>1</sup> See, for example, John Carlson, “Is the NPT Still Relevant? – How to Progress the NPT’s Disarmament Provisions”, *Journal for Peace and Nuclear Disarmament*, Vol. 2, 2019 Issue 1 <https://www.tandfonline.com/doi/full/10.1080/25751654.2019.1611187>

Either way, there is much at stake. Reinvigorating the NPT will take enormous diplomatic effort on the part of the Non-Nuclear Weapon States (NNWS), and significant concessions (and diplomatic sensibility) on the part of the Nuclear Weapon States (NWS). Extinction, on the other hand, is the easy way out where blame can be allocated, the finger pointed at disarmament idealists and so-called nuclear weapon realists alike, and the global community left captive to a dangerous stalemate. The parallels with the UN Climate Change Commission's Conference of the Parties (COP) are uncanny.

Yet the abandonment of the NPT, like the abandonment of the Paris Accords, would sound the death knell for both the legitimacy and the effectiveness of the measures that are already in place pursuant to the treaty. The nuclear proliferation restraints and the nuclear fuel cycle safeguards, along with the institutions that manage them, that have taken the global community half a century to construct would be in the gravest jeopardy. The danger here is less with the mavericks and pariahs of the kind that have broken away previously from the global consensus, dangerous though they be, than it is with the 'break out' of major economic and political powers that may feel that there is no strategic option in an unconstrained world but to be similarly unconstrained.

We have already seen glimmerings of this malaise. Paul Dibb, one of Australia's best-known defence commentators, coyly raised the question in late 2018, neither advocating the development of a nuclear weapon nor dismissing it on either moral or strategic grounds. While the subliminal strategic concern was China's massive expansion of its conventional military capabilities to "threaten us seriously" (invoking a kind of antipodean *force de frappe*), Dibb surprisingly puts the question in terms of our alliance with the United States.

. . . We face a stark dilemma: increasing uncertainty about US extended nuclear deterrence versus the daunting alternative of acquiring our own nuclear deterrent. The other alternative is to simply accept (as we did in the Cold War) that we are a nuclear target and take our chances. My view is that Australia should at least be looking at options and lead times. Doing so doesn't commit us to proliferating.<sup>2</sup>

Another leading Australian defence commentator, Hugh White, is no less adamant that the nuclear weapons question is one "we will not be able to avoid over the decades to come".<sup>3</sup> The fact that two of Australia's leading defence thinkers should revisit an issue that Australia's ratification of the NPT might have been thought to have resolved is noteworthy. The fact that their doing so caused barely a ripple, except for an elegant rebuttal by Ramesh Thakur, is also noteworthy.<sup>4</sup> But these developments are not simply a sign of the times.

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<sup>2</sup> See Paul Dibb, "Should Australia develop its own nuclear deterrent?", *The Strategist*, 4 October 2018 <https://www.aspistrategist.org.au/should-australia-develop-its-own-nuclear-deterrent/>

<sup>3</sup> See Hugh White, *How to Defend Australia* (Melbourne: Latrobe University Press in conjunction with Black Inc, 2019), p. 231.

<sup>4</sup> See Ramesh Thakur, "The bomb for Australia? (Parts 1-3), *The Strategist*, 17 January 2018, 19 January 2018 and 22 January 2018 <https://www.aspistrategist.org.au/bomb-australia-part-1/>;

They are also a sign that the NPT has failed to deliver the confidence and security that it was intended to do.

It is also, of course, a sign that defence commentators are more inclined to view the nuclear weapons issue through the lens of warfare kinetics (the exchange of military force) than through the lens of securing and maintaining the peace. That, they might say, is their job, though whether engaging in a war that ultimately cannot be won can morally be traded for maintaining the peace is the core strategic question. As President Reagan said, “A nuclear war cannot be won and must never be fought”.<sup>5</sup> The peace, however, can be won, and that is the job of an engaged and sustained international diplomacy. Winning the peace is the task that the global community now confronts in more urgent terms than ever before, and a more active and focused diplomacy is the task that governments must now sign up to more than ever before.

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<https://www.aspistrategist.org.au/bomb-australia-part-2/>; <https://www.aspistrategist.org.au/bomb-australia-part-3/>

<sup>5</sup> President Ronald Reagan, *Address before a Joint Session of the Congress on the State of the Union*, 25 January 1984 <https://www.reaganlibrary.gov/federal-records>

# What is the NPT?

The trigger for the negotiation of the NPT was the first nuclear test conducted by China at the Lop Nor nuclear test site on 16 October 1964.<sup>6</sup> This prompted the UN Commission on Disarmament to commence work on a non-proliferation treaty in June 1965. After three years of intensive and sometimes rancorous negotiation, a draft treaty was opened for signature on 1 July 1968.<sup>7</sup> The United States and the Soviet Union were prime movers – hardly surprising given their nuclear face-off during the Cuban Missile Crisis in October 1962 and the strategic imperative for both the superpowers to prevent the proliferation of nuclear armed states. France, in a display of gallic determination, refused to recognise the NPT as a disarmament initiative, preferring instead to see it as an agreement on the non-armament of unarmed countries. Britain, for its part, sought to preserve the nuclear *status quo* whereby its nuclear weapons capability was effectively legitimised by agreeing to a treaty that afforded recognition of its nuclear weapons status.

The NPT rests on what President Trump might have called a “three-way deal” which, like most deals, is viewed somewhat differently by those bound more closely by a specific element of the deal. Critically, the NPT embraces non-proliferation under a strict verification regime (nuclear weapons are not to be acquired by states that do not already have them), an ‘inalienable right’ to nuclear science and nuclear energy for peaceful purposes, and disarmament (states with nuclear weapons are to eliminate them).

This three-way deal is captured in Articles II and III taken together, IV and VI.

## ARTICLES II AND III

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Article II places comprehensive demands on the Non-Nuclear Weapon States (NNWS). The blanket proscription on the acquisition of nuclear weapons or the supporting technology constitutes a high point in international arms control negotiation.

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<sup>6</sup> China’s decision to develop a nuclear weapons capability was a direct response to what Mao Zedong saw as nuclear provocation and blackmail by the USA during the Korean War. China received significant technical assistance from the Soviet Union in the early years of its weapons development program. See “China Nuclear (2015)” on the *Nuclear Threat Initiative* website <https://www.nti.org/learn/countries/china/nuclear/>. It is important to recall that China was not a member of the United Nations or of the United Nations Security Council at that time, the seat being occupied by Taiwan. A decade would pass before China assumed its seat in the UN.

<sup>7</sup> See Bertrand Goldschmidt, “The Negotiation of the Non-Proliferation Treaty”, IAEA Bulletin, vol. 22, No. 3/4, August 1980 [https://www.iaea.org/sites/default/files/publications/magazines/bulletin/bull22-3/223\\_403587380.pdf](https://www.iaea.org/sites/default/files/publications/magazines/bulletin/bull22-3/223_403587380.pdf)

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

The use of the phrase ‘control over such weapons’ is, in terms of the strategic context of the 1960s, particularly interesting. The stationing of nuclear weapons on the territory of allies was as contentious an issue as could be imagined, as much for the losers of WW2 (Germany and Japan in particular) as for the winners (the Soviet Union, facing weapons stationed in Western Europe) and the US, which had stared down the stationing of missiles (and nuclear warheads) in Cuba. While the host countries may have been able to exercise control in the political or legal sense (they could either agree to or refuse a US request to station nuclear weapons, under US ‘control’, on their territories, they certainly had no role in their deployment or use. This is a fine example of nuanced negotiating language.

A comprehensive safeguards and verification regime is integral to the proscription on the acquisition of nuclear weapons. Article III sets out the requirements.

Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards . . . for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

The safeguards and verification regime that was subsequently developed by the International Atomic Energy Agency (IAEA) has been through several major iterations during the past 50 years. IAEA safeguards are comprehensive, and they are intrusive, as they need to be. In their most recent guise, the IAEA’s full-scope safeguards have been augmented by the Additional Protocol – less a stand-alone agreement than a set of additional tools for extended inspection and verification to undeclared (or suspected) nuclear facilities as well as those declared to the IAEA and already subject to inspection.<sup>8</sup> While most of the NNWS parties to the Treaty submit without public complaint, others (especially Brazil and Egypt) bridle at a diminution of freedom and sovereignty that is not imposed upon the Nuclear

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<sup>8</sup> See “Additional Protocol”, International Atomic Energy Agency paper <https://www.iaea.org/topics/additional-protocol>



Weapon States (NWS). The linkage of NNWS safeguards and inspection/verification to the lack of progress by the NWS towards disarmament is understandable, but it is not helpful to a safeguards system in which all parties must have the fullest confidence.

## ARTICLE IV

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The equal right of all states party to the NPT to access nuclear energy and nuclear science for their own national economic and social purposes was a fundamental aspect of the three-way deal. Article IV prescribes that

Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination.

The Article goes on:

All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

The optimism of the 1950s and 60s that nuclear power would introduce a brave new world of limitless energy driving limitless economic growth has given way to a much more sober assessment of the downsides of a national nuclear industry. The nuclear accidents at Three Mile Island (USA) in March 1979, Chernobyl (Ukraine) in April 1986 and Fukushima (Japan) in March 2011 and their environmental consequences are the best known of a series of smaller incidents during the early days of nuclear weapon development and nuclear power reactor development for submarines. But the more compelling dissuasive force has been the escalating cost of nuclear power reactors which are now commercially unviable: they cost too much to build and their power output is too expensive when compared with electricity produced by other means.<sup>9</sup>

Even for states party that have mature nuclear power generation capabilities, the construction of new generators has been subject to massive cost overruns that have rendered them prohibitively expensive. Britain's experience with the Hinkley C facility is a

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<sup>9</sup> For a comprehensive paper on the uneconomic nature of nuclear power generation costs, see Tom Swann and Audrey Quicke, *Over Reactor* (Canberra: The Australia Institute, 2019) <https://www.tai.org.au/content/nuclear-power-uninsurable-and-uneconomic-australia>

cautionary tale.<sup>10</sup> Notwithstanding substantial subsidies to maintain momentum during the construction phase, it is estimated that the British public will pay in excess of £50 billion through the life of the project.<sup>11</sup> What might justify such a subsidy? While the public record is by no means clear, some UK scientists suggest that a large nuclear power reactor is necessary if Britain is to retain its nuclear weapons capability as deployed in the Trident submarines. As *The Guardian (UK)* reported,

The government is using the “extremely expensive” Hinkley Point C nuclear power station to cross-subsidise Britain’s nuclear weapon arsenal, according to senior scientists.<sup>12</sup>

But Britain’s more pressing need would seem to be the industrial base and the associated engineering skills needed to support its nuclear submarine propulsion systems. The Trident program is an ambitious mix of nuclear weapon capability, missile delivery systems and a nuclear-powered submarine that is capable of long-term underwater deployment as part of Britain’s nuclear deterrence policy. The integrated nuclear fuel cycle and the ancillary systems required for a credible nuclear deterrence strategy demand a close link between the civil and military nuclear industries.<sup>13</sup>

So, many of the NNWS parties to the Treaty consider that Article IV is a chimera – great promise at an unaffordable cost, and no assistance from the NWS that control the technology needed for civil uses. They claim, with some justification, that their decisions of fifty years ago have both denied them the right to develop nuclear weapons and access to nuclear technology for peaceful uses.

By the same token, all parties to the NPT appreciate that the realisation of Article IV could, in some circumstances, create a kind of nuclear Trojan Horse, as has happened in the case of Israel, Iran and North Korea, where undeclared research facilities were exploited to produce the fissionable materials needed for nuclear explosives. Indeed, the link between the development of a full nuclear fuel cycle capability (which envisages both enrichment and reprocessing) and a nuclear weapon capability has long been recognised. Speaking at the 2005 NPT Review Conference, for example, the Principal Deputy Assistant from the US Bureau of Verification and compliance said:

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<sup>10</sup> See Holly Watt, “Hinkley Point: the ‘dreadful deal’ behind the world’s most expensive power plant”, *The Guardian (UK)*, 21 December 2017 <https://www.theguardian.com/news/2017/dec/21/hinkley-point-c-dreadful-deal-behind-worlds-most-expensive-power-plant>

<sup>11</sup> See Jillian Ambrose, “Hinkley Point’s cost to consumers surges to £50 bn”, *The Telegraph (UK)*, 18 July 2017 <https://www.telegraph.co.uk/business/2017/07/18/hinkley-points-cost-consumers-surges-50bn/>

<sup>12</sup> See Holly Watt, “Electricity consumers to fund nuclear weapons through Hinkley Point C”, *The Guardian (UK)*, 13 October 2017 <https://www.theguardian.com/uk-news/2017/oct/12/electricity-consumers-to-fund-nuclear-weapons-through-hinkley-point-c>

<sup>13</sup> For a detailed and well-supported analysis of this linkage, see Mycle Schneider and Anthony Froggatt, “Interdependencies between civil and military nuclear infrastructures”, *The World Nuclear Industry Status Report 2018*, pp. 173-186 <https://www.worldnuclearreport.org/IMG/pdf/wnisr2018-v2-lr.pdf>

NPT parties have the responsibility to implement Article IV in such a way that not only preserves NPT compliant parties' right to develop peaceful uses of nuclear energy, but also ensures against abuse of this right by States Party pursuing nuclear weapons capabilities. Thus, non-proliferation efforts such as export control restrictions, Nuclear Suppliers Group supply guidelines, end-use restrictions, interdiction measures such as the Proliferation Security Initiative, the imposition of national or international sanctions in response to nuclear-related proliferation problems, and efforts to restrict the spread of proliferation-sensitive enrichment and reprocessing technology -- none of these are in any way inconsistent with Article IV.

Some have asserted that any State Party in demonstrable compliance with the NPT has a specific right to develop the full nuclear fuel cycle, and that efforts to restrict access to the relevant technologies is inconsistent with the NPT. The Treaty is silent on the issue of whether compliant states have the right to develop the full nuclear fuel cycle, but as I have noted, it does provide for discretion on the part of supplier states regarding the nature of their cooperation with other states. Paragraph 2 of Article IV speaks of the "fullest *possible* exchange" and sharing in the development of *applications* of nuclear energy for peaceful purposes. Furthermore, the Preamble to the NPT affirms the general "principle that the *benefits* of peaceful applications of nuclear technology ... should be available for peaceful purposes to all Parties." While compliant State Party should be able to avail themselves of the benefits that the peaceful use of nuclear energy has brought to mankind, the Treaty establishes no right to receive any particular nuclear technology from other States Party -- and most especially, no right to receive technologies that pose a significant proliferation risk.<sup>14</sup>

By slicing and dicing any NNWS sense of entitlement to full nuclear fuel cycle assistance, the US and the other NWS have certainly constrained ambition. But they have also generated a sense of grievance on the part of some NNWS, which in turn link regional political and security issues (such as Israel-Palestinian relations) to the tension between Articles III and IV, and thence to Article VI. And, of course, intransigence by the NWS in embarking on any concrete steps towards disarmament only exacerbates the problem.

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<sup>14</sup> Christopher Ford, Statement to 2005 Review Conference, New York, 18 May 2005 <https://2001-2009.state.gov/t/vci/rls/rm/46604.htm>

## ARTICLE VI

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Article VI, however, has been the principal cause for concern in recent review conferences, and can again be expected to generate considerable angst at the forthcoming review conference. It prescribes:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

Only the NWS are capable of disarming, and while the US and the former Soviet Union, and more recently the US and Russia, have undertaken parallel reductions in both weapons stockpiles and delivery systems, they have also improved their nuclear weapons and their missiles, effectively replacing quantity with quality. There may indeed be fewer weapons in the nuclear arsenals of the US and Russia, but they are still both capable of destroying the world many times over. China has long claimed ‘poor cousin’ status, steadily improving both its nuclear weapons and their delivery systems in order eventually to match the nuclear capabilities of its major rivals. France and the UK have similarly hidden behind their second echelon status to resist any substantial change to their nuclear second-strike capabilities.

While not subject to the strictures of the NPT, the nuclear pariah states – India, Pakistan, North Korea, Israel and potentially Iran – display a kind of nuclear braggadocio that both destabilises their immediate regions and offers a model of defiance that encourages their neighbours towards a nuclear stalemate. This continues to have serious implications for the NPT. Indeed, Russia’s quite explicit threat to use nuclear weapons to sanction foreign military responses to its invasion of Ukraine is an even more direct challenge to the authority, credibility and legitimacy of the NPT.

# The NWS Dig In

But Russia's direct threat to consider nuclear weapons use in the context of its invasion of Ukraine is not without precedent. The qualitative improvements to its nuclear weapons systems appear to have persuaded the US that it could contemplate the tactical use of nuclear weapons in conventional warfare 'in extreme circumstances'. In its 2018 Nuclear Posture Review, the US returned to an early Cold War policy of blurring the distinction between nuclear and conventional warfare, linking the two and leaving open the use of nuclear weapons in 'extreme circumstances'.

. . . The United States will maintain the range of flexible nuclear capabilities needed to ensure that nuclear or non-nuclear aggression against the United States, allies, and partners will fail to achieve its objectives and carry with it the credible risk of intolerable consequences for potential adversaries now and in the future. To do so, the United States will sustain and replace its nuclear capabilities, modernize NC3 [Nuclear Command, Control and Communications], and strengthen the integration of nuclear and non-nuclear military planning. Combatant Commands and Service components will be organized and resourced for this mission, and will plan, train, and exercise to integrate U.S. nuclear and non-nuclear forces to operate in the face of adversary nuclear threats and employment. . . . No country should doubt the strength of our extended deterrence commitments or the strength of U.S. and allied capabilities to deter, and if necessary defeat, any potential adversary's nuclear or nonnuclear aggression. . . . The United States would only consider the employment of nuclear weapons in extreme circumstances to defend the vital interests of the United States, its allies, and partners. Nevertheless, if deterrence fails, the United States will strive to end any conflict at the lowest level of damage possible and on the best achievable terms for the United States, allies, and partners.<sup>15</sup>

It is both extraordinary and dispiriting that the US, which established the post-WW2 global rules-based order that has maintained global stability, has refused to exercise the leadership that its authority over the past fifty years might have sustained. The Trump administration has shut tight the slender opening created by President Obama when he spoke in Hradcany Square in Prague in 2009. Obama said:

. . . as a nuclear power, as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act. We cannot succeed in this endeavor alone, but we can lead it, we can start it. So today, I state clearly and with

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<sup>15</sup> US Department of Defense, *Nuclear Posture Review 2018*, p. viii

conviction America's commitment to seek the peace and security of a world without nuclear weapons.<sup>16</sup>

Yet the disarmament program that Obama announced on 5 April 2009 has been replaced by a more strident US affirmation of the role of nuclear weapons in its defence strategy. It is unclear, however, whether, in the face of Russia's reliance on its nuclear deterrence capabilities to deter conventional military responses to its invasion of Ukraine, America's linkage of nuclear weapons use to "exceptional circumstances" in conventional warfare presents the US with a viable nuclear use option.

Without US leadership, progress towards effective nuclear disarmament is impossible. Ambiguity, of course, has long been a cardinal element of nuclear deterrence doctrine. But to extend that ambiguity to nuclear weapons use in conventional warfare introduces new levels of strategic nuclear uncertainty. That bodes ill for any reasonable consideration of Article VI at the NPT review conference.

And for their part, the smaller NWS, Britain, China and France argue that their relative poverty somehow exempts them from undertaking any effective cuts in their nuclear arsenals, which they claim to retain for retaliatory (second strike) purposes only. That is tantamount to arguing that if destruction is mutually assured, it is legitimate and that second-strike nuclear weapons use is normative.

Of course, there are voices within the NWS policy communities calling for policy changes, and for the smaller members of the P5 (the NWS Permanent Members of the UN Security Council) to display initiative in arguing for an across-the-board reduction in nuclear stockpiles. Accepting the normative significance of the Treaty on the Prohibition of Nuclear Weapons (TPNW), Royal United Services Institute research analyst Christina Varriale, for instance, argues that the UK is in a prime position to "inject new life into the NPT process to demonstrate it remains the cornerstone of the [nuclear disarmament] regime".<sup>17</sup> For the reasons touched on above, it is difficult to imagine any UK Prime Minister heeding such advice.

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<sup>16</sup> See President Obama, "Remarks By President Barack Obama In Prague As Delivered", 5 April 2009 <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-prague-delivered>

<sup>17</sup> See Christina Varriale, "The UK should lead the way to a successful 2020 NPT Review Conference", *European Leadership Network*, 4 June 2018 <https://www.europeanleadershipnetwork.org/commentary/the-uk-should-lead-the-way-to-a-successful-2020-npt-review-conference/>

# What Can Australia Do?

With such a grim outlook for the NPT Review Conference, there would appear to be little prospect that Australia could do much to arrest the decline in the NPT's authority or credibility. Like the decision to boycott the 2017 TPNW negotiating conference in New York, successive Australian governments have failed to display the energy and resolve necessary to accelerate international disarmament initiatives – a distinct departure from the practice of Labor and Coalition governments in previous decades that directed active Australian participation in disarmament forums. As Foreign Ministers, both Andrew Peacock (Fraser government) and Gareth Evans (Hawke and Keating governments) were active proponents of arms control and disarmament.

Yet the fact remains that Australia has considerable agency and national power when it chooses to use it. As a leading light in APEC and a member of the G20, Australia has substantial economic status and, as an advanced economy with strong public institutions and high levels of human and social capital, we are able to make substantial contributions to international initiatives when we have a mind to do so. Australia's role in generating international action on climate change, albeit a decade ago, shows what can be done when national policy settings are focused on coordinated international action.

If Australia is to help defend the authority and credibility of the NPT, and particularly its safeguards system, government needs to endorse strong and constructive disarmament policies and allocate the human and financial resources to enable our diplomats to function effectively. This needs to be done without delay.

To regain its credibility in the international disarmament arena, Australia needs to set a small number of policy targets where the generation of a measure of international consensus is possible. From the extensive action menus<sup>18</sup> agreed at the 1995<sup>19</sup>, 2000<sup>20</sup> and 2010<sup>21</sup> NPT review conferences, the Australia Institute recommends a concentration of effort on four items that will both contribute to effective disarmament and build confidence:

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<sup>18</sup> For a concise list of the various recommendations of previous NPT review conferences, see John Carlson, *art.cit.*, pp. 6-7.

<sup>19</sup> See "Review and Extension Conference: Principles and Objectives for Nuclear Non-Proliferation and Disarmament." *NPT/CONF.1995/32 (Part I), Annex*.  
<https://www.un.org/disarmament/wmd/nuclear/npt1995/>

<sup>20</sup> See the thirteen-point action plan at "Final Document of the 2000 NPT Review Conference". <https://www.un.org/disarmament/wmd/nuclear/npt2000/final-documents>

<sup>21</sup> See the sixty-four main recommendations at "*Final Document of the 2010 NPT Review Conference, 64-point Action Plan*". [https://www.nonproliferation.org/wp-content/uploads/2015/04/2010\\_fd\\_part\\_i.pdf](https://www.nonproliferation.org/wp-content/uploads/2015/04/2010_fd_part_i.pdf)

- signature and ratification of the Comprehensive Test Ban Treaty (CTBT) by both the NWS and the NNWS;
- the negotiation of a Fissile Material Cut-off Treaty (FMCT);
- a 'No First Use' declaration by all states possessing nuclear weapons, including the NWS; and
- the five NWS party to the NPT to pursue bilateral and multilateral negotiations to reduce both weapons arsenals and delivery systems (which may include de-alerting, notwithstanding the technical difficulties identified by some of the NWS).

## THE COMPREHENSIVE TEST BAN TREATY

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Negotiations on the CTBT ended in 1996, and the US was the first to sign the treaty. But the US has not ratified the treaty, nor have seven (China, Democratic People's Republic of Korea, Egypt, India, Iran, Israel and Pakistan) of the other 43 states whose ratification is specified for the treaty to come into force. Eleven conferences of the states signatory to the treaty have been convened since the CTBT was concluded, but ratification remains a distant hope.

Along with the NPT, the CTBT is a key element in global progress towards general nuclear disarmament and, as such, there is need for a greater sense of urgency. That demands leadership, and the obvious candidate is the US. While Australian advocacy for the CTBT appears to have waxed and waned over the decades, Australia has the advantage of working with the US on this matter since the late 1970s and, as an ally of the US, is well placed to encourage and support the US in taking up the leadership challenge. Of course, that will require a change in policy on the part of the US administration. That is what Australia needs to work towards. While Australia has been a consistent supporter of US global initiatives, we appear reluctant to leverage our relationship with the US to advance our own national priorities. Yet it is in Australia's national interests that the US exercise its leadership role on key disarmament issues, particularly current circumstances where the global community is effectively leaderless. While China, or even Russia, might aspire to global leadership, neither has the power or the authority to exercise that role. It may be that the Biden administration does not have an appetite for the role, but it remains the case that most members of the international community are looking for the stability that constant and consistent leadership affords.



## THE FISSILE MATERIAL CUT-OFF TREATY

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The FMCT negotiations have been in abeyance for many years.<sup>22</sup> Again, the issue is one of leadership, and once more the US is best positioned to provide that. Australia has been a strong advocate for the ‘cut-off’ treaty since joining the Committee on Disarmament in 1979.<sup>23</sup> It is important to recognise that ceasing the production of fissile material would have two critical outcomes. It would place a limit on the availability of nuclear explosive material for the production of weapons. And it would more importantly extend comprehensive safeguards to the production and reprocessing facilities where such materials are extracted and refined and not further diverted to nuclear weapons.

The NWS recognise that there are significant national stockpiles of fissile material available to them, both from the refabrication of older nuclear weapons and from the reprocessing of spent nuclear fuel rods to produce either highly enriched uranium or plutonium. As of January 2017, the global stockpile of highly enriched uranium (HEU) was estimated to be about 1340 ± 125 tons. The global stockpile of separated plutonium was estimated to be about 520 tonnes, of which about 290 tonnes was under the control of civilian as distinct from military authorities.<sup>24</sup>

Stockpiles of such volumes raise two inter-related issues: there is no need for additional fissile material, suggesting that a ‘cut-off’ treaty is an imperative; and such materials as do exist should be subject to full scope safeguards, including verified material balance accounting and, ideally, storage and quarantine under International Atomic Energy Agency control. Notwithstanding the objections of Pakistan, which regards itself as being at a serious strategic disadvantage with respect to Indian stockpiles, the five NWS are in a good position to progress the FMCT as a serious step towards meeting their obligations under Article VI.

## NO FIRST USE

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In a *New York Times* leader in 2016, James Cartwright (a former vice-Chairman of the US Joint Chiefs of Staff and commander of the US Strategic Command) and Bruce Blair (a

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<sup>22</sup> The Arms Control Organisation has a useful summary of FMCT developments in its briefing note “Fissile Material Cut-off Treaty (FMCT) at a Glance”, June 2018 <https://www.armscontrol.org/factsheets/fmct>

<sup>23</sup> The author of this article, in collaboration with the Canadian delegation to the Committee on Disarmament (CD), prepared and lodged a position paper on ‘cut-off’ with the CD secretariat in 1979. It certainly seems to take a long time to make no progress.

<sup>24</sup> See “Fissile Material Stocks”, published by the International Panel on Fissile Materials, 12 February 2018 <http://fissilematerials.org>

research scholar at Princeton University) put the argument for ‘no first use’ in persuasive terms.

. . . Nuclear weapons today no longer serve any purpose beyond deterring the first use of such weapons by our adversaries. Our nonnuclear strength, including economic and diplomatic power, our alliances, our conventional and cyber weaponry and our technological advantages, constitute a global military juggernaut unmatched in history. The United States simply does not need nuclear weapons to defend its own and its allies’ vital interests, as long as our adversaries refrain from their use.<sup>25</sup>

They proceeded to list the benefits of a ‘no first use’ policy, noting in particular that it would move responsibility for nuclear planning away from military commanders and return it to where it should be in a democracy – with the elected civilian leader. And the authority of a US President, backing the ‘no first use’ policies of China and India, would “lead the way in establishing it as a global norm among all of the nine countries with nuclear weapons”.<sup>26</sup>

Yet within three weeks, the New York Times reported that President Obama was inclined to take the advice of national security advisors that a ‘non first use’ pronouncement could undermine allies and embolden Russia and China. Notwithstanding the advice of former US Defense Secretary William J. Perry that a ‘no first use’ pledge would formalise what had been unspoken US policy for decades, senior military planners continued to control nuclear policy.<sup>27</sup>

A ‘no first use’ declaration remains anathema to nuclear strategists, who maintain that the residual uncertainty attaching to the very possession of a variety of nuclear weapons and associated delivery systems deters both nuclear and conventional war. This is a clear case of *post hoc ergo propter hoc* – the consequence determines the cause. Even though there are no moral or strategic grounds that would justify first use, the nuclear theorists appear to prefer adherence to an untestable risk calculus over a measure that would deliver greater nuclear stability and improved crisis control.

Successive Australian governments have expressed their confidence in the extended nuclear deterrence provided, they believe, by the ANZUS Treaty – though it should be noted that the ANZUS treaty is completely silent on the issue. Japan has a similar confidence in the protection of the US nuclear umbrella, which is similarly unstated. Consequently, both

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<sup>25</sup> James Cartwright and Bruce Blair, “End the First-Use Policy for Nuclear Weapons”, The New York Times, 14 August 2016 <https://www.nytimes.com/2016/08/15/opinion/end-the-first-use-policy-for-nuclear-weapons.html>

<sup>26</sup> Loc.cit.

<sup>27</sup> See David Sanger and William Broad, “Obama Unlikely to Vow No First Use of Nuclear Weapons”, The New York Times, 5 September 2016 <https://www.nytimes.com/2016/09/06/science/obama-unlikely-to-vow-no-first-use-of-nuclear-weapons.html>

Australia and Japan have been less than full-throated in their support for a ‘no first use’ declaration by the US. Ramesh Thakur sums up and then demolishes the issue well.

A nuclear umbrella may offer protection of a powerful ally, but any actual use against a nuclear rival ceases to be protective and instead morphs into the most catastrophically self-destructive security guarantee imaginable. The only rational strategy is to threaten but not actually use nuclear weapons first. But if carrying out the threat would be national suicide, the threat cannot be credible and a non-credible threat cannot deter.<sup>28</sup>

This, again, is an issue on which Australia would be well advised to leverage its alliance with the US. It is, in effect, a truly low-cost option for the US to indicate some progress on its implementation of Article VI. It remains to be seen, however, whether the good sense of politicians can trump the inflexibility of nuclear theorists.

## BILATERAL AND MULTILATERAL NEGOTIATION AMONG STATES WITH NUCLEAR WEAPONS

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The five NWS party to the NPT are at least aware of their obligations under Article VI, even if they are reluctant to undertake any significant steps towards nuclear disarmament. There are, however, four other states whose possession of nuclear weapons is even more destabilising than the massive arsenals controlled by at least two of the NWS. India, Israel, North Korea and Pakistan (and potentially Iran) also need to join international efforts to reduce and eliminate nuclear weapons.

The Cold War superpowers, the US and the Soviet Union, undertook bilateral steps to reduce their nuclear stockpiles and to impose controls on their delivery systems. And while, in contemporary circumstances, they continue to dominate the nuclear weapons domain, the other states that have nuclear weapons – and those that may aspire to acquire them – cannot be permitted to hold the world to ransom. This, again, is perhaps ultimately a leadership role for the US, with the support of its allies (which include France and the UK).

Just as the energy of an earlier Australian government led to an international convention on chemical weapons, so again an Australian initiative may provide the stimulus that the international community is looking for. It is particularly important that China, already the dominant regional power and aspiring to a stronger global voice, assumes the responsibility that it clearly must take effective steps towards nuclear disarmament. At the very least, the

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<sup>28</sup> See Ramesh Thakur, “A no first use policy reduces risk of nuclear war”, *The Strategist*, 25 August 2016 <https://www.aspistrategist.org.au/no-first-use-policy-reduces-risk-nuclear-war/>

five NWS that are party to the NPT need to embark on multilateral discussions on verifiable nuclear arms reductions and their eventual elimination. Of course, they will not disarm while other states retain nuclear arsenals. But at least they can set the preconditions.

# Conclusion

As the global strategic environment experiences increasing disruption and uncertainty, the risk to humanity from climate change, pandemics and nuclear weapons continues to grow. The war in Ukraine, and Russia's explicit threat to employ nuclear weapons against any state that might intervene militarily in support of Ukraine, has heightened global insecurity, the fragility of the international community and diminished the authority of the institutions and treaties that support stability and security. But the response of states, such as Australia, that put a value on human life and on the right of all people to well-being cannot be fatalism and passivity. Rather, countries such as Australia have a responsibility to address these existential threats to humanity, both on their own motion and in concert with like-minded countries. This demands initiative and leadership. Australia has displayed that in the past and can do so once again. The NPT review conference is that opportunity. And as everyone recognises, the global community needs the comfort and security of a functioning NPT if it is to reduce the threat of nuclear war.