

Indonesian government, US experts say AUKUS undermines NPT

8 Aug.—When it comes to defence and foreign policy, the Albanese Labor government has predictably found itself trying to ride two horses at once. On the one hand, it appears to be earnest about wanting to improve diplomatic and military-to-military relations with Indonesia, which have been patchy ever since Prime Minister John Howard wrecked the bilateral 1995 Security Agreement (Indonesia’s first ever bilateral security treaty) by backing Timor-Leste’s bid for independence in 1999, in an obnoxious manner and for purely selfish reasons.¹ Labor’s efforts might be more credible, though, were they not so obviously aimed at recruiting Indonesia to a future US-led war on China. This is especially so given that a key element of those preparations, the Australia-United Kingdom-United States (AUKUS) security pact that envisions Australia acquiring nuclearpowered attack submarines fuelled by weapons-grade highly enriched uranium (HEU), has so alarmed Indonesia that they have joined China in seeking to close the loophole in the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) that makes such transfers legally possible. Meanwhile a group of American arms control experts and former US government officials have cast significant doubt upon the rationale for supplying Australia with HEU reactors—namely that they are needed to power the submarines throughout their service life without refuelling, given Australia lacks a domestic nuclear industry—thereby calling into question the US government’s real reasons for proposing to do so.



The announcement of AUKUS on 16 September 2021. Since then, both Australian PM Scott Morrison and British PM Boris Johnson have lost their positions, and Indonesia is leading a challenge at the UN to have the nuclear submarine deal declared illegal. Photo: US Embassy in Australia

US President Joe Biden and the then-Prime Ministers of Australia and the UK, Scott Morrison and Boris Johnson, announced AUKUS in a joint press conference on 16 September 2021 (Australian time), after a reported year and a half of planning in Canberra and several months of behind-the-scenes

negotiations.² The government of France was not notified ahead of time that its state-controlled shipbuilding company Naval Group’s contract to design and build a fleet of 12 conventional submarines for the Royal Australian Navy, adapted from France’s new nuclear-powered Barracuda class, was being cancelled; indeed, until just hours before AUKUS was publicly unveiled, Canberra had pretended to the French that the project would continue. Labor was not briefed on the deal until the night before, despite Morrison having reportedly promised US officials to bring the then-opposition leader in on the game some four months earlier. None of Australia’s “Pacific family” (to borrow Morrison’s condescending phrase) or southeast Asian “partners”— whose waters Australia’s new subs would inevitably be at least travelling through, if not operating from, including in any future conflict of stand-off with China—were forewarned that Australia was even considering switching to nuclear submarines, let alone had already decided to acquire them. Having thus been denied the opportunity to raise its concerns directly with Australia, either bilaterally or at any of several regional forums of which both are members, Indonesia has instead taken them to the United Nations, in the form of a working paper submitted to the ongoing (1-26 August) Tenth NPT Review Conference in New York which seeks clarification of the legal requirements surrounding the transfer of HEU to non-nuclear weapons states for “non-explosive” military purposes.

Legal loophole

Australia has formally eschewed the development or possession of nuclear weapons since it became a State Party to the NPT in February 1970, and officially [claims](#) to be “committed to the goal of a world free of nuclear weapons”—albeit hypocritically, given its national defence policy is predicated upon being under the USA’s so-called nuclear umbrella (though whether it actually is is far from certain). Meanwhile, the federal *Environment Protection and Biodiversity Conservation Act 1999* prohibits any action involving the construction or operation of a nuclear power station or a nuclear fuel fabrication, enrichment, or reprocessing facility. What makes the AUKUS submarine deal legally permissible under both that Act and the NPT—and was reportedly the key to securing the fanatically anti-nuclear Labor

Party's support—is that the advanced HEU-fuelled reactors the USA has offered supposedly require neither refuelling nor maintenance during the projected service life of the boats they power.

Article I of [the NPT](#) prohibits the transfer by nuclear weapons states (NWS) “to any recipient whatsoever [of] nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices”, and further obliges them “not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices”. Under Article II, non-nuclear-weapon states (NNWS) like Australia undertake neither to accept any such transfer, inducement or assistance if offered, nor to develop nuclear weapons themselves. Article IV, meanwhile, states that it is “the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.”

Nuclear propulsion, however, exists in a grey area. As Dr Trevor Findlay of the University of Melbourne's School of Social and Political Sciences explains in an analysis for the International Campaign to Abolish Nuclear Weapons' January 2022 paper *Troubled Waters: Nuclear submarines,*

AUKUS and the NPT, ³ Australia “has a Comprehensive Safeguards Agreement (CSA) with the IAEA [International Atomic Energy Agency] that requires the Agency to verify that Australia is not diverting any nuclear material from peaceful purposes to weapons purposes. ... The difficulty is that nuclear propulsion for submarines is not considered a peaceful use, but a ‘non-explosive military use’.” And unlike civilian nuclear power plants, nuclear propulsion technology, including the design of both the reactor and the fuel, are highly classified state secrets.

“Australia's CSA, like all others”, Findlay wrote, “seeks to skirt this obstacle by providing, in paragraph 14, that nuclear material may be removed from safeguards for the duration of its use in a submarine reactor and returned to safeguards once that use ends.” The drafters of the CSA, however, “apparently assumed that a state would enrich its own nuclear materials and that all the material would be derived from and returned to peaceful uses”. Transfer of HEU-powered reactors to a NNWS with no domestic nuclear industry was apparently never contemplated. Wrote Findlay, “From the little detail we have of the AUKUS proposal, it does not fit the model suggested in paragraph 14. On the contrary, it appears to envisage a ‘military to military’ transfer completely outside safeguards.” Paragraph 14 does require that any nation contemplating a “non-explosive military use” negotiate an “arrangement” with the IAEA (for which purpose the agency's Director-General Rafael Grossi has recently visited Australia and has pronounced himself satisfied thus far, though he has warned that designing an appropriate verification process will be “very tricky”). “Yet because no state has ever triggered the implementation of paragraph 14, this is unknown territory”, Findlay notes. “There is no model for Australia to follow.”

Proliferation risks

Indonesia and other neighbouring countries believe that the AUKUS submarine deal therefore represents a serious proliferation risk, and are pushing to have it modified or scrapped. The *Australian* reported 2 August that Indonesian officials had confirmed they were urging fellow members of the Non-Aligned Movement (NAM)—a grouping of 120 nations that refused to take sides in the original Cold War, and are not much interested in joining Washington and company's new one either—to “help it close [the] legal loophole” in the NPT. “Indonesia's UN ambassador, Arrmanatha Nasir, said as chief negotiator for the non-aligned movement on the NPT, Indonesia had been engaging with fellow NAM member states leading up to the conference, and would continue to do so throughout the month-long review”, the *Australian* reported. ““We have discussed it with NAM countries and they are generally very supportive of Indonesia's efforts to issue a paper on nuclear propulsion on submarines, in which the principle is in line with what we hold in NAM’, he said. He singled out Malaysia as one country that had ‘expressed full support’.”

Indonesia et al.'s view is that the precedent AUKUS would set should be avoided, whether or not Canberra seeks nuclear weapons or ever would. As Indonesia's working paper puts it, “The exclusion of the production, use and disposition of highly enriched uranium for nuclear naval propulsion from ... [IAEA] safeguards could be exploited to provide a shield for diversion of that material to nuclear weapons programmes”, in breach of the NPT and any other arms-control treaties any particular NWS might be party to. Moreover, “The use and sharing of nuclear technologies and materials for military purposes ... could potentially set precedence for other similar arrangements and complicate safeguards mechanisms needed to prevent risks arising from such arrangements, including, but not limited to, leading to the emergence of new types of weapons of mass destructions derived from the combination of nuclear materials and conventional weapons”—a concept known as a “dirty bomb”, the nightmare of every counterterrorism officer the world over. And adding a sting to the tail, it concludes by “[urging] all State parties to the Treaty to refrain from actions that create an environment that is not conducive to nuclear disarmament and that would increase the risk of nuclear conflict, including by *avoiding the dual use of nuclear and conventional military installations and weapon platforms that can be armed with nuclear and conventional weapons.*” (Emphasis added.) As the *Australian Alert Service* noted when AUKUS was announced, given that on the one hand, Australia had concurrently signed agreements to host unlimited numbers and types of US weapons systems; and on the other, that all US and UK nuclear submarines on which Australia's might be based are capable of deploying nuclear weapons, a potential adversary would be forced to assume that ours

would too, and respond accordingly.

HEU reactors not needed

None of the foregoing is to argue against nuclear naval propulsion, or even HEU-fuelled reactors (subject to proper safeguards) were they actually necessary to the national defence. But according to a group of well experienced US arms-control experts led by Frank von Hippel, a professor at Princeton University and former Assistant Director for National Security at the White House Office of Science and Technology Policy, low-enriched uranium (LEU) reactors could do the job just as well, without the proliferation issues.

In a 6 October 2021 open letter to the White House, which they re-sent with addenda on 26 July 2022, von Hippel et al. wrote that whilst *current* life-of-ship reactors could only be made with HEU, new models powered by a highdensity LEU fuel type currently under development by the US Naval Reactors office (NR) should be available by the time any of Australia's subs are actually built. But that aside, they noted, given the diameter of the US Navy's forthcoming new class of submarine referred to as *SSN(X)*—upon which Australia's are likely to be based—is reportedly several meters larger than that of the *Virginia* class it is to replace, “a larger life-of-ship LEU core could be accommodated—even one based on current naval fuel density.” Not only that, they note, but the NR reported to Congress way back in 1995 that “a one-metre increase in the diameter of the *Virginia* submarine hull (from 10 to 11 metres) *would allow it to accommodate a lifetime LEU core without a change in fuel design .*” (Emphasis added.) Which means, in case it weren't obvious, that we might simply have ordered a boat that size from France, and avoided the whole mess. What, then, is AUKUS really for?

Footnotes

1. The Howard government professed a desire that the democratic will of the Timor-Leste (East Timor) be respected, and led the 22-nation INTERFET peacekeeping operation there from September 1999 until its replacement by a United Nations-sponsored “Transitional Administration” in February 2000. As later events would prove, however, Howard's real agenda was to re-draw maritime boundaries in the Timor Sea in Australia's favour, including to gain control of the enormous Greater Sunrise gas field, to which end Foreign Minister Alexander Downer infamously had the Australian Secret Intelligence Service bug Timor-Leste's cabinet offices in 2004.

2. “AUSMIN/AUKUS make Australia staging point for WWII”, AAS, 22 Sept. 2021.

3. See <https://icanw.org.au/troubled-waters/>. Dr Findlay's paper is revised and expanded from one [originally published](#) in *Australian Outlook*, Oct. 2021.

By Richard Bardon, Australian Alert Service, 10 August 2022