



Précis Paper

North Korea

A discussion of the human rights issue of North Korea's escalation of nuclear capability and the response of the international community to the use of, threat of use and possession of nuclear weapons by nuclear states.

Discussion Includes

- Is there a crisis looming on the nuclear threat?
- The Summits between North Korea and the United States of America
- The United States' approach to negotiations with North Korea
- Non-Proliferation Treaty Framework
- ICAN
- Implications of Australia signing the Ban Treaty

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1. In this edition of BenchTV, The Honourable Michael Kirby AC CMG (Former Justice of the High Court of Australia, Sydney) and Alex Oliver (Director of Research, Lowy Institute, Sydney) discuss the human rights issue of North Korea's escalation of nuclear capability and the response of the international community to the use of, threat of use and possession of nuclear weapons by nuclear states.

Is there a crisis looming on the nuclear threat?

2. In 1989, then President Ronald Reagan and the Soviet leader Mikhail Gorbachev said, in relation to the nuclear problem, that Nuclear War must never be fought and can never be won.
3. The Global State of play on the nuclear threat is that there is an increasing number of nuclear armed States.
4. Further, the United States recently withdrew from the *Intermediate Range Nuclear Forces Treaty* in February 2019.
5. North Korea has been conducting a nuclear build-up including intense missile testing over the past couple of years, developing its long range missile capability.
6. Two North Korea and United States summits have been held, the last one being held in late February 2019.
7. The advisory opinion of the International Court of Justice in 1996 was that whilst it did not find that the possession, use and threat of use of nuclear weapons was in every circumstance disproportionate and illegal in international law, nuclear armed states had to engage in bona fide negotiations with the view to reducing the stockpiles of nuclear weapons. This has not happened.
8. In fact, the state of affairs has become even more concerning.
9. The *Treaty on the Non-Proliferation of Nuclear Weapons* which came into force in 1970 (also known as the Non-Proliferation Treaty) has been breached and there are four more nuclear states; India, Pakistan, Israel and DPRK - Democratic People's Republic of North Korea.
10. North Korea is particularly concerning as it is a country run by a government that is autocratic and cruel to its own population and so alien to modern procedures for democracy and engagement with its society.

The Summits between North Korea and the United States of America

11. Justice Kirby considers the very fact that these meetings have taken place is indication of a good step forward as there has been a reduction in fear and tension. However, insofar as it was hoped that there would be some long term plans towards de-nuclearisation on the part of North Korea, it has simply not happened and probably cannot happen given the desire of the Kim Jong Un dynasty to retain power.
12. Justice Kirby believes that there is not going to be a stable peace agreement reached with North Korea given the way their society runs and the way their citizens are treated by Government. Such a country is not going to be a stable or reliable partner dealing with other countries who are subject to democratic norms.
13. Justice Kirby views nuclear weapons themselves a human rights issue as they threaten the right to life, the right to health and the environment of the world.
14. Former Foreign Minister Gareth Evans' approach is that the economic sanctions so far have been entirely useless and North Korea has shown itself to be impervious to them.
15. However, Justice Kirby believes that if some infrastructure can start to be built upon, some economic benefits for the country offered and the improvement of human rights in North Korea prioritised, then eventually North Korea will be normalized and it will have less of a need to rely on nuclear weapons.
16. Therefore, Justice Kirby does not view the sanctions as useless. He views them as effective in that they are what drove Kim Jung Un to the conference table. He came there with an agenda that the United States of America had to loosen the pressure of the sanctions.
17. Further, the very fact that the Russian Federation and China agreed to the sanctions in the Security Council, is itself a very important fact and according to those that watch the border between North Korea and China, the introduction of the sanctions was at least for a time, quite effectively policed.
18. The sanctions however, have not been effective in getting the surrender of the missiles and nuclear weapons. In fact, these have increased from about 14 nuclear warheads to a suspected 27 nuclear warheads.
19. Garth Evans views are that in a framework where negotiations are only between the United States and North Korea, and in a framework where the United States has shown no sign of budging from its requirement that North Korea completely de-nuclearise and North Korea is not able to accept this as a bargain, the negotiations between the United States and North Korea have been wholly ineffective.

The United States' approach to negotiations with North Korea

20. The usual way to go about diplomacy and negotiations is to start on the periphery that is, starting with the easy things such as opening a mail service between North and South Korea.

21. Dealing with the external, smaller issues, would then allow for a negotiator to slowly move their way into the center of the dispute in a trusted manner.
22. The way in Mr Trump has asked Kim Jong Un to give up the nuclear weapons as an initial bargaining tool, has meant that Mr Trump has asked him to give at once his ultimate prize. The success of such bargaining would usually be expected once the parties have built up a way of dealing with each other that has a degree of respect.
23. The problem with the Kim Jung Un regime is that they will not give up their weapons if that is the guarantee for the survival of the regime.
24. Therefore, Justice Kirby views the way that Mr Trump has approached the dispute to not be in the normal ways of diplomacy and is inconsistent in obtaining the trust of North Korea that will lead them to a situation where they believe they can give away their nuclear weapons.

Non-Proliferation Treaty Framework

25. The international framework in relation to nuclear weapons involves *The Treaty on the Non-Proliferation of Nuclear Weapons* (The Non-Proliferation Treaty) which was opened for signature 1 July 1968 and entered into force 5 March 1970 and *The Treaty on the Prohibition of Nuclear Weapons* (the Ban Treaty) which was opened for signature 20 September, 2017 but is not yet in force.
26. Both Treaties are targeted at a different, though interrelated problem.
27. The Non-Proliferation Treaty is 50 years old and is targeted at making sure more states do not get their hands on nuclear weapons and become nuclear weapon states.
28. At the time it was negotiated, the nuclear weapons were confined to the P-5 countries, the permanent 5 members of the Security Council.
29. However that began to break down and Indian leaders, by the 1990s, were saying this was apartheid as all the countries, except for China were white, Caucasian, European countries and they did not see why they should be entrusted with the powers of the Security Council.
30. The objective of the Ban Treaty is addressed to the issue of reducing the stockpiles, missiles and the spread of the weapons to other countries and banning countries that do not themselves have nuclear weapons doing things to support the nuclearisation of our world.
31. At the end of the Cold War, there were reportedly about 30,000 nuclear warheads. Fortunately, the agreement between Ronald Reagan and Soviet General Secretary Mikhail Gorbachev, the *Intermediate-Range Nuclear Forces Treaty* led to about a halving of that. It is now thought that there are about 13,400 nuclear weapons.

ICAN

32. The International Campaign to Abolish Nuclear Weapons (ICAN) which began in Melbourne Australia, organised a group of organisations in Australia who were in favour of prohibiting the use, threat of use and possession of nuclear weapons and also the support of other countries using nuclear weapons.
33. This led to the formation of ICAN International which is now based in Geneva.
34. The establishment of the organisation won them the Nobel Prize in 2017 and it did so because they took a leading part in organising the international community in the General Assembly to develop the Ban Treaty which is now on the way to becoming International law.
35. It will become part of international law once it gathers 50 ratifications and at the moment it has gathered 24 ratifications.
36. Whilst there is no way that the P5 or even the 9 nuclear states will just meekly give away their warheads because a treaty of the United Nations says that it is unlawful to have them, use them or threaten to use them, the idea of ICAN and of the Ban Treaty is to de-legitimise nuclear weapons and to start acting to protect the world from the deliberate use of nuclear weapons but even more so, from the threat of accidents, mishaps, technological errors and the dangers they might produce.

Implications of Australia signing the Ban Treaty

37. Australia is not a nuclear weapon state, but it is an ally of one. If Australia were to sign or ratify the Nuclear Ban Treaty, it is arguable that it would be destroying the US alliance.
38. The 24 countries who have already signed include serious players such as the Irish Republic, Austria, Thailand, countries in Asia and New Zealand.
39. New Zealand has ratified the Ban Treaty and the question is now on the table, for us in Australia, should we do likewise.
40. The Australian Medical Association has come out in favour of signing the Ban Treaty saying a high priority for global health and our own health.
41. The Australian Labor party at its conference in December 2018 by a very large vote, favoured Australia ratifying.
42. There is nothing in the *Australia, New Zealand and United States Security Treaty* (ANZUS Treaty) about nuclear weapons.
43. We have never had a written guarantee by the United States of America that if we needed them that they would use, threaten to use or possess to our advantage nuclear weapons. Therefore, it is arguable that we would not be in breach of our treaty obligations with the United States.
44. Gareth Evans argues that nuclear weapons are integrated with other means of defence that the United States provides and further, that we are integrated with them through the pine gap facility which monitors and collects data essential for defence.

45. The question is are we simply to ignore the obligation to our own citizens and the world and would it truly be an end to our relationship with the United States which rests upon long features of history and mutuality or would it lead the United States into a more active response to the danger of nuclear weapons?
46. Until we respond to that danger there is the risk of accidents, mistakes, technological faults and leaders who act rashly.
47. Pine Gap, The Northwest Cape Naval Communications Station and other facilities are unique facilities that go far beyond other alliance commitments and obligations. These are arguably the most significant American Intelligence gathering facilities outside the United States and were in fact the strategic essence of the relationship.
48. Gareth Evans argues that Australia cannot step away from that part of the alliance and just keep the conventional parts of the alliance.
49. Australia lobbied furiously on behalf of the interests that the United States advocated and completely opposed ICAN. We just don't know what would happen if we signed the Ban Treaty because we have never addressed this issue in our relationship with the United States.
50. The Pine Gap facility makes Australia a major target in a nuclear exchange.
51. The United States is also terminating treaties that are beneficial for example the Treaty with Iran has been terminated, which was negotiated by the Obama administration to try to dissuade Iran from developing nuclear weapons.
52. The time may have come for Australia to stand up for its own interests.
53. Australia went along doing the work of the United States in lobbying furiously against the Ban Treaty which didn't work. 122 countries went to the General Assembly, which is nearly two thirds of the countries of the United Nations and supported the negotiation of the Ban Treaty and now we are already halfway towards the ratifications that are essential for it to come into force in International Law.
54. Australia is in the realm of trying to work out a way of keeping our good relations with the United States.
55. The United States has been important in Australia's defence in times of war. However, it has also led us into some unfortunate war and war-like situations.
56. The question will be how do we, a middle ranking power and a foundation member of the United Nations, generally a human rights respecting country develop our own voice and speak in our own way.
57. The polls indicate that especially amongst labor voters, around 80% of them believe that we should be supporting our own stance on nuclear weapons and the illegality of them and even in coalition voters, there is still a substantial majority supporting our own stance on nuclear weapons.
58. It is imperative to work out a way to keep our good relations with the United States including our defence relations with the United States but on a basis that makes it clear that something must happen to respond to the proliferation of nuclear weapons,

the availability of nuclear weapons and the growing number of states that control them.

59. The alternative is to continue to do nothing and build strategic nuclear weapons. The way to go is for humanity to take control of its survival and that means doing something and the first step in that is likely the ratification of the Ban Treaty.

BIOGRAPHY

The Hon. Michael Kirby AC CMG

Former Justice of the High Court of Australia, Sydney

The Hon. Michael Kirby AC CMG is a former Justice of the High Court of Australia. He was served as Commissioner on the Global Commission on HIV and the Law and led a Commission of Inquiry into human rights abuses in North Korea. He is a Member of the Secretary General's High Level Panel on Access to Medicine and Chair of the Technical Advisory Group within the Panel.

Alex Oliver

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Alex's other research interests include Australia's diplomacy and diplomatic infrastructure, consular affairs and public diplomacy and she has authorized or co-authored several major studies for the Lowry Institute on Australia's diplomacy. She has written for international press including Foreign Affairs, Foreign policy, The Wall Street Journal and BBC.com as well as for the major Australian news outlets. She has given evidence at parliamentary inquiries and delivered a Senate Occasional Lecture in 2014. Before joining the Institute in 2007, Alex was a senior associate at Mallesons Stephen Jaques Solicitors in Sydney. Alex was the University Medalist in law at UNSW, has bachelor degrees in Law and Science and A.Mus.A.

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