

Misrepresenting the nuclear weapons ban treaty, one year on

Richard Lennane

John Carlson, a former director-general of the Australian Safeguards and Non-proliferation Office, posted on the [Lowy Interpreter blog on 4 October](#) an appraisal of the Treaty on the Prohibition of Nuclear Weapons (TPNW, or ban treaty) one year after its opening for signature. Carlson's post was a welcome review of this ground-breaking instrument, but was riddled with factual errors and misrepresentations – to a degree that is frankly astonishing from such an expert author. Reasonable people may differ on the merits and ultimate effectiveness of the ban treaty, but Carlson seems to have accepted and reproduced a number of talking points used by anti-ban governments (such as Australia's) without subjecting them to any critical scrutiny – or even checking the facts.

So we're going to set the record straight, and it's going to hurt. (Sorry, John, but you really should have known better.) Let's start with the factual errors:

1. As Carlson notes, the treaty banning antipersonnel landmines was a model for the nuclear ban. Carlson is however incorrect to claim that “the major possessor countries concluded [the weapons in question] were not essential to their national security”. The major possessor countries insisted they needed antipersonnel landmines and did not join the treaty – *and still have not*. The treaty nevertheless is widely regarded as a major success, and has *significantly affected the behaviour of the countries that have not joined*. This last point was a fundamental element of the reasoning behind the nuclear ban treaty.

2. Carlson claims that the ban treaty's prohibition on assistance “could be

interpreted as prohibiting any defence cooperation with a nuclear-armed ally”. Perhaps it *could* be – but only if all legal precedent and treaty implementation practice is ignored. The [Harvard Law Review](#) has pretty thoroughly debunked this notion, but if you don't believe them, take it from the [Swiss critique](#) Carlson himself cites: “The treaty text does not in principle place any legal restrictions on military cooperation with nuclear weapon states or nuclear umbrella states, provided such cooperation is not aimed at developing, modernising, acquiring or using nuclear weapons.”

3. Carlson says adherence to the ban treaty “has been slow”. This is simply not true, as anyone with an internet connection can check in a few minutes. Whatever the merits or otherwise of the ban treaty, it is (so far) collecting ratifications faster than the NPT, BWC, CWC or CTBT.

Now, on to the misrepresentations:

Carlson's concerns about the way the ban treaty handles safeguards are shared to some extent by many proponents of the treaty. Most of the states participating in the negotiations would probably have preferred the additional protocol to be the minimum standard. But there are some influential states, such as Brazil and Egypt, with very strong contrary views (if nuclear alliance states like Australia had participated in – rather than boycotted – the negotiations, they might just have tipped the balance in favour of the additional protocol). My own view is that the safeguards provisions of the ban treaty represent a missed opportunity that needlessly exposes the ban treaty to criticism – both justified and unjustified.

Carlson's characterisation, however, is inaccurate on several counts and misrepresents both the ban treaty and the existing safeguards arrangements:

1. The ban treaty is in no way "weaker" than the existing arrangements: it is at least as strong as the NPT, and in some limited respects stronger. There is currently *no legal requirement* for states to conclude an additional protocol. To characterise the ban treaty safeguards provisions as "weaker" when they literally reproduce the legally-binding safeguards requirements of the NPT is self-evidently nonsensical. Yes, it would be nice if they were stronger. But in legal terms (which are all a new treaty can be judged by) they are not weaker.

2. The ban treaty explicitly prohibits backtracking: any state that joins with an additional protocol has to keep it. Nobody can use the ban treaty to wriggle out of safeguards obligations they have taken on pursuant to NPT review conference decisions or anything else. This may be modest progress, but is still *stronger* than the current situation, as it locks in existing safeguards commitments – even if a state were to withdraw from the NPT.

3. Carlson says the ban treaty "undermines the requirement, unanimously endorsed by NPT Review Conferences, for the highest safeguards standard – currently the International Atomic Energy Agency's 'additional protocol' – to apply to all countries". First, NPT review conferences "encourage" rather than "require" this standard; ban treaty review conferences could equally "encourage" it, or go further. Second, this "requirement" does not apply to "all countries". The five NPT nuclear-weapon states are currently not legally required to have *any safeguards at all*. So the ban treaty safeguards provisions, far from "undermining" the current arrangement, are in this respect clearly stronger. Under the NPT, even if a nuclear-weapon state were to unilaterally disarm tomorrow, it would still have no legal obligation to

conclude a safeguards agreement (strange but true: there is no way for an NPT nuclear-weapon state to become an NPT non-nuclear-weapon state). In contrast, all parties to the ban treaty are required to have comprehensive safeguards at a minimum. This may not be ideal (Carlson is quite right to prefer the additional protocol), but it is *better and stronger than what exists now*.

Finally, Carlson is correct that "those that reject the ban treaty have a responsibility to produce something better". But misrepresenting the ban treaty and the existing safeguards regime makes a poor basis for future action. Rather than indulging in dubious and poorly-informed critiques of the ban treaty, experts like Carlson would do better to think about how the treaty can contribute to stimulating action on the kind of practical steps towards disarmament that they and everyone else agree will be necessary.

8 October 2018

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