

INTRODUCTION: NUCLEAR BAN TREATY IS SET TO ENTER FORCE

Experts explain what comes next.

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Seventy-five years after their destructive power was first unleashed, nuclear weapons are about to be officially and explicitly prohibited by international law. For the average person, it may come as a surprise to know that nuclear weapons, dreadful as they are, weren't already outlawed. But for the vast majority of nuclear weapons experts, the ban will arrive [far sooner than expected](#).

The Treaty on the Prohibition of Nuclear Weapons, informally called the ban treaty, was [adopted with the approval of 122 countries](#) at the United Nations in July 2017. It [forbids](#) anything and everything related to nuclear weapons, including their development and possession. It also obligates countries that join it to provide support to the victims of nuclear weapons testing and use, and to undertake environmental cleanup.

But to enter into legal force, the treaty needed more than just a vote at the United Nations; it needed ratification by at least 50 countries. It achieved that mark on October 24, after [Jamaica, Nauru, and Honduras](#) deposited the 48th, 49th, and 50th ratifications in rapid succession over the course of several days. Accordingly, the treaty will become official international law 90 days hence, on January 22, 2021.

There's an obvious snag though: The treaty is not binding on countries that have not yet ratified it, and all of the countries that possess nuclear weapons stand in unanimous opposition and have boycotted the entire process of negotiating the treaty from the start. In fact, just days before Jamaica, Nauru, and Honduras acceded to the treaty, the United States took the unusual step of [urging other countries to withdraw from it](#).

In some ways, the ban treaty has already made its mark as more and more countries commit to never building nuclear weapons. In 2017, the International Campaign to Abolish Nuclear Weapons, or ICAN, [won the Nobel Peace Prize](#) for its key role in bringing the treaty into existence.

So what happens now? Even supporters of the treaty have modest expectations about the effects of its entry into force. In a forthcoming interview that will be published in a special 75th anniversary issue of the *Bulletin*, Beatrice Fihn, ICAN's executive director, said, "Obviously it won't have a direct, immediate sort of change on the situation in the world, but it's a starting point for moving toward nuclear disarmament.... Implementing the treaty, in many ways, it's just building normative pressure, building financial pressure through divestments."

Though change may not be swift, Fihn is optimistic about the long-term outlook, noting that the world's power dynamics are shifting. "In the top 10 [countries with] the biggest populations in the world, you have five nuclear armed states and five countries that have been leaders in the TPNW." She said a country like Nigeria, which has ratified the treaty, could become a regional or global power in the coming decades, whereas nuclear-armed countries like France, the United Kingdom, and even the United States are rapidly losing global influence.

With these dynamics in mind, how might the treaty be implemented, stonewalled, or ignored over the coming years? The *Bulletin* reached out to top experts on nuclear politics to help answer those questions. Their responses, edited for clarity, are shown below:

1: NUCLEAR BAN TREATY AND LEVERAGE FOR ITS SUPPORTERS

When the ban treaty enters force in 2021, non-nuclear armed states will regain the legal leverage they lost in 1995.

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The entry into force of the Treaty on the Prohibition of Nuclear Weapons (TPNW) is a legal game-changer. The legal leverage that non-nuclear armed states lost in 1995, when the Nuclear Non-Proliferation Treaty (NPT) was indefinitely extended, will be regained.

When the NPT was indefinitely extended in 1995, the non-nuclear armed states lost legal leverage within that forum to get the nuclear armed states to give up their weapons. Article 10 paragraph 2 of the NPT limited the initial duration of the treaty to 25 years, after which members had to decide by majority vote whether to extend the treaty indefinitely or for a fixed period or periods. This provision was included precisely to give non-nuclear armed states some leverage to hold nuclear weapon states to their Article 6 obligations: cessation of the nuclear arms race and nuclear disarmament.

If there had been periodic votes to extend the treaty, such as the option of [25-year rolling extensions](#) proposed in 1995, the non-nuclear armed states could have used those to extract concessions from the NPT's five nuclear armed states. Instead, because it was extended forever, the NPT became a status quo treaty, extending the legality of nuclear weapons in practice indefinitely too. Worse, the promises made at the 1995 conference to secure indefinite extension by consensus and at subsequent review conferences are simply not being kept despite their binding nature.

As we know, as long as some states get to have nuclear weapons, others may come to feel they need them too. Under the NPT, nuclear disarmament can be continually postponed, and because of that the NPT has become a weak and dangerous instrument for nonproliferation. It has no normative power left; only coercive power of the hypocritical kind: Do as we say, not as we do, or else.

The only legal recourse that non-nuclear armed states have left to challenge this outcome is to [threaten withdrawal](#) from the NPT. But, the majority of non-nuclear armed states do not want nuclear proliferation any more than they want the nuclear armed states to continue having nuclear weapons. Withdrawal from the NPT would also make their peaceful programs suspect and subject to the hypocritical harassment of those with nuclear weapons. So the threat to withdraw from the NPT is inadequate as a form of leverage.

In January 2021, when the TPNW enters into force, that will change. Non-nuclear armed states will have regained the legal leverage that they had lost in 1995. They will have an alternative legal instrument to affirm and verify their commitment to nonproliferation and to further nuclear disarmament. They will not have to belong to an NPT that in practice legitimizes nuclear weapons—not just for the NPT's five nuclear armed states, but by their example for all states.

The TPNW is clear: Nuclear weapons are inhumane. Over time, the treaty will stigmatize nuclear weapons and their possessors and strengthen the legal case for abolition. Hopefully, the only effect of the unacceptable pressure that the United States has put on non-nuclear armed states not to support the ban treaty will be that they exercise their legal leverage sooner rather than later.

2: TAKING THE BAN TREATY FORWARD

Demands for nuclear disarmament—perhaps too sensitive a topic in the past—can now be brought up as a matter of course in diplomatic venues.

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The Treaty on the Prohibition of Nuclear Weapons makes a case that nuclear weapons are in fundamental conflict with basic humanitarian sensibilities and international law. If it is to ultimately be successful, this view will have to become the common sense of the world.

For treaty parties and supporters, the challenge of nuclear disarmament politics going forward will be getting publics and policy makers in nuclear weapon states (and their allies) to set aside their long held, deeply institutionalized sense of nuclear superiority and moral exceptionalism and accept the treaty's humanitarian imperative, its lawfulness, and the obligations that follow. The nine countries with nuclear weapons all stayed away from the talks, and some of them will work hard to prevent the treaty gaining ground. The key to long-term progress will be the United States, which more than any other country has set the global nuclear agenda since it made the first nuclear weapons and remains the only country ever to have used them in war. It is also the country most responsible for the existing international system.

The treaty requires parties to make its universalization part of their political engagement with the nuclear weapon states. Article 12 of the treaty mandates that states practice disarmament diplomacy and more. It declares that "each State Party shall encourage States not party to this Treaty to ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty." This will require new kinds of official and public engagement with weapons states and opens the door for new kinds of transnational citizen diplomacy on disarmament. A key step in the new disarmament politics must be discussion of the forms that this encouragement can take, and what role citizens of ban treaty states and of nuclear weapon states can and should play in this effort.

To be taken seriously by the nuclear weapon states, the growing community of ban treaty states and peace activists worldwide must be willing to continue to be bold and take political risks, as they did in getting the treaty. They must put at the heart of their relationship with the weapon states the treaty's acknowledgment of "the ethical imperatives for nuclear disarmament and the urgency of achieving and maintaining a nuclear-weapon-free world, which is a global public good of the highest order, serving both national and collective security interests."

Persuading nuclear weapon states to join the treaty will not be easy. It will require that governments and citizens use new forms of international politics that the treaty empowers. For example, politically charged demands for nuclear disarmament—perhaps avoided as too sensitive a topic in the past—can now be brought up as a matter of course when presidents and prime ministers from ban treaty states meet with their counterparts in nuclear weapon states. Along with trade and investment and tourism and sports delegations, ban treaty countries can now sponsor disarmament delegations, to explain why they signed the treaty—

and why weapon states should do the same. Along with these types of engagement, of course, there can also be sanctions and boycotts. The ban treaty permits a politics of nuclear naming and shaming, shunning and divestment. These tools are well established when it comes to human rights and war crimes; they can be applied with new force to nuclear weapon sites, institutions, officials, and employees.

If they are to prevail, the ban treaty states will need to hold together and expand their coalition and keep working with civil society groups. Together they will need to present unified demands—at the UN General Assembly and in other international forums—that weapon states join the treaty. They can hold joint Article 12 summits and support campaigns in the weapon states to focus attention and build support for the treaty. Ban treaty states could seek to further embed the treaty's prohibitions into international law by seeking an amendment to the statute of the International Criminal Court to make the use of nuclear weapons a war crime. The court's statute permits such an amendment if it relates to "weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition." The ban treaty is a comprehensive prohibition, and many ban states are signatories of the International Criminal Court statute and could build a majority in support of such an amendment.

3: THE NUCLEAR TREATY AND COMPETING NUCLEAR NORMS

The United States argues that the treaty is pointless, but its vehement opposition tells a different story.

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When the 50th country ratified the Treaty on the Prohibition of Nuclear Weapons (TPNW) last week, setting up the treaty to enter into force in January 2021, the US government reiterated a longstanding talking point about it. State Department spokeswoman Morgan

Ortagus asserted: "The TPNW will not result in the elimination of a single nuclear weapon." By saying this, the US government is making the argument that no current nuclear weapon possessor state—itsself included—intends to join the treaty. Nor have states protected by extended nuclear deterrence so far indicated any plans to join it. The talking point seems to suggest the treaty is pointless—it will not do the one thing it set out to accomplish, ridding the world of nuclear weapons.

But the very fact of the strong vocal opposition is telling. If the treaty is worthless, why have the nuclear weapon states felt the need to so vehemently denounce it? Why did the United States, in a last ditch effort to prevent its entry into force, try to persuade current members to withdraw from it? Nuclear weapons states could, after all, simply ignore the new treaty and not provide it with any undue additional attention.

The reason is because they fear the treaty, even if they do not plan to join it. Why? The nuclear weapon states are aware of the long-term potential effect of the norm that underpins it: the idea that it is not appropriate for any states to possess nuclear weapons. In attempting to stigmatize nuclear weapons among populations around the world, the treaty risks bringing attention to the devastation wrought by nuclear weapons to members of the general public. Though nuclear weapon states do not plan to join the treaty today, they are concerned that in

the short- to medium-term their allies will face pressure to join the treaty, undermining extended nuclear deterrence. In the longer term, the norm enshrined in the treaty could influence their own publics, potentially turning citizens against nuclear weapons. A public against nuclear weapons will not support nuclear deterrence or the immense expense involved in maintaining and updating nuclear arsenals. For a government that believes that nuclear deterrence is a source of strategic stability and existential security, this norm is dangerous.

The United States in particular knows the power of strong, universal norms, especially in the nuclear realm. For 50 years, the US government has been the most important force in promoting the universalization of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in order to promote a global norm against the spread of nuclear weapons. A [1992 cable](#) from the US State Department to several US embassies reads: "The NPT has proved its value over the years: It has established an international norm under which virtually all nations view the further spread of nuclear weapons a grave threat to regional and global security." Recognizing the value of a strong nonproliferation norm, the US government promoted the NPT to all states, even those that had little interest in nuclear technology. As the US Government Accountability Office explained in a [1980 report](#) on US efforts to promote the NPT: "But countries with little or no nuclear material are not ignored, as adherence by just one additional state increases by two the difference between the number of parties and nonparties and thereby serves to further isolate the nonparty states."

Universal norms have power—US leaders know this. For proponents of nuclear deterrence like the US government, the norms of the NPT are strategically valuable because they allow the United States and four other states to maintain their nuclear weapons while keeping the rest of the world from possessing their own. In contrast, the norm promoted by the ban treaty is meant to apply to all states and so US leaders fear its long-term effects.

4: THE DAWN OF A NUCLEAR ORDER

When the ban treaty enters force, it will create a deepening crisis of legitimacy for nuclear weapons possessors.

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The vast majority of countries in the world do not have nuclear weapons. Exasperated by the [arms control reversals](#), fed up with slow progress on disarmament that was [promised by the Nuclear Non-Proliferation Treaty \(NPT\)](#), and motivated by humanitarian concerns, they have asserted their agency to take back nuclear legitimacy. The changed legal structure that will begin when the Treaty on the Prohibition of Nuclear Weapons enters force January 22, 2021 will recalibrate the balance of costs and benefits to the net detriment of nuclear possessor states and create a deepening crisis of legitimacy for their status.

It will also add to the domestic difficulties for some umbrella states. Although Japan benefits from US extended nuclear deterrence, a poll by the Japanese public broadcaster NHK last December showed [two-thirds support among Japanese](#) for joining the ban treaty, and only 17 percent opposition.

Detractors will claim that, realistically, the ban treaty does nothing to reduce the number of nuclear weapons in the world. But even during the substantial culling of US and Soviet/Russian nuclear warheads that began with Ronald Reagan and Mikhail Gorbachev and continued with

their successors, not one warhead was eliminated through a multilateral agreement. Nor has a single multilateral disarmament negotiation ever been held under the NPT.

So, on one hand, the ban treaty's inability to eliminate any warheads will be no worse than 50 years of NPT history. On the other hand, it will rob all nuclear-armed states of the fig leaf of international legitimacy, devalue nuclear weapons as the currency of international politics, and degrade both their military utility and political value.

This could also unlock some frozen bilateral frames. For example, the authors of a recent paper published by the Carnegie Endowment for International Peace described [China's dismissive attitude to India](#) as a function of India's being outside the NPT. This gives Beijing cover to refuse nuclear dialogues with India. Now, both countries will find themselves on the illegitimate side of the nuclear weapons divide. Perhaps Beijing's rejection of India's nuclear status will soften enough for the two to enter into a dialogue on a bilateral crisis stability and a [nuclear restraint regime](#).

And while some have suggested that the ban treaty will undermine or weaken the NPT, these fears are overblown. All ban treaty signatories are NPT members in good standing. They support the new treaty as a sincere effort to complete the normative agenda of the old one.

The real significance of the ban treaty lies in its successful delegitimization of the possession and doctrines of use of nuclear weapons for all countries. It has the great advantage of being non-discriminatory and universal, which sets it apart from the NPT.

