**FIVE MISTAKES ABOUT THE TREATY ON PROHIBITION ON NUCLEAR WEAPONS**

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In late January 2021, something big is happening to influence international politics. And no, I’m not talking about the inauguration of the new U.S. president.

The Treaty on the Prohibition of Nuclear Weapons, the first international ban on nuclear weapons, will take full legal effect on Jan. 22, 2021. It joins the Chemical Weapons Convention and the Biological Weapons Convention as a treaty prohibiting weapons of mass destruction and follows the roadmap of the Mine Ban Treaty (known as the Ottawa Treaty) and Cluster Munitions Convention to bring together a coalition of civil society and diplomats to prohibit and eliminate weapons based on their humanitarian harm.

The treaty has widespread support in the international community — [122 countries](https://www.armscontrol.org/act/2017-07/news/nuclear-weapons-ban-treaty-adopted) voted for its adoption in 2017, and these countries have continued to express their support for the treaty in subsequent statements to the U.N. General Assembly, in spite of [resistance](https://apnews.com/article/nuclear-weapons-disarmament-latin-america-united-nations-gun-politics-4f109626a1cdd6db10560550aa1bb491) from nuclear-armed states and some of their allies, who have not joined the treaty.

This treaty is a big deal. And yet, political scientists and nuclear policy experts, largely from nuclear-armed states, repeatedly make mistakes in their analysis and interpretation of this treaty and international law. At a gathering of roughly 800 nuclear policy experts in Washington, D.C. [in 2019](https://twitter.com/azakre/status/1105502814598516736), experts overwhelmingly and incorrectly predicted the treaty would not enter into force by March 2021. A French academic even misread the actual treaty text — a clear error that was not flagged by any of the article’s expert reviewers, and was only[corrected](https://www.tandfonline.com/doi/full/10.1080/01402390.2020.1809842) after publication.

I work at the International Campaign to Abolish Nuclear Weapons, which won the 2017 Nobel Peace Prize for its efforts to negotiate the ban treaty. Its work is informed by international lawyers, academics, technical experts, diplomats, survivors of nuclear weapon use and testing, and advocates with regional expertise. This diverse and rich foundation of knowledge and experience informs our work to this day.

But some academics and nuclear policy experts that haven’t worked as closely on the treaty often make five key mistakes when analyzing this treaty and international law: that the treaty may be just symbolic, that NATO countries cannot join, that the treaty doesn’t address compliance, that it won’t have any impact on nuclear-armed and NATO states, and that the treaty will only affect democracies.

**Mistake One: The Treaty Is Purely Symbolic**

The legal impact of the Treaty on the Prohibition of Nuclear Weapons is clear: Once it enters into force, all states parties will need to comply with the treaty’s prohibitions and implement its obligations. While some treaty articles reinforce existing obligations under other treaties, states parties do actually take on new legal obligations, [contrary to what some have claimed](https://warontherocks.com/2017/10/more-than-paper-how-nuclear-ban-treaty-advocates-can-really-advance-disarmament/). Even without any other states joining the treaty, from a strictly legal perspective, the treaty is not merely “symbolic.”

The treaty prohibits states parties from developing, testing, producing, manufacturing, transferring, possessing, stockpiling, using (or threatening to use) nuclear weapons, or allowing nuclear weapons to be stationed on their territory. It also prohibits states parties from assisting, encouraging, or inducing states to engage in any of these prohibited activities. Some of these prohibitions are already enshrined in nuclear weapon-free zone treaties, but not all prohibition treaty states parties are members of these treaties.

Given that the Comprehensive Nuclear-Test-Ban Treaty unfortunately has yet to enter into force, the Treaty on the Prohibition of Nuclear Weapons will be the only agreement in force banning nuclear testing internationally.

In addition to adhering to prohibitions, states parties must implement positive obligations, some of which echo previous agreements, but many of which are new to this treaty.

There are some technical requirements. For example, states parties must submit a declaration with the U.N. secretary-general on their nuclear weapon status. They must also bring into force a comprehensive safeguards agreement with the International Atomic Energy Agency on inspecting their peaceful nuclear program, or maintain a more intrusive inspections regime (an “additional protocol”) if they have one in force already.

But the Treaty on the Prohibition of Nuclear Weapons also includes [ground-breaking provisions](https://www.tandfonline.com/doi/full/10.1080/25751654.2020.1842657?scroll=top&needAccess=true) on providing assistance to victims of nuclear weapons use and testing and remediating contaminated environments.

This is the first time that international law has mandated that countries address the humanitarian devastation caused by decades of nuclear weapons testing and the U.S. bombing of Hiroshima and Nagasaki 75 years ago. It is a critical step forward to address the racist, colonialist, and unjust legacy left by these uniquely horrible weapons of mass destruction. Analysis of this treaty would do well not to ignore these historic articles.

Specifically, Article 6 of the treaty requires states to “provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support,” for victims of nuclear weapons use and testing “as well as provide for their social and economic inclusion.” States must also “take necessary and appropriate measures” towards the remediation of contaminated environments. States with affected communities and contaminated environments under their jurisdiction are primarily responsible to structure and implement these obligations in order to respect these states’ sovereignty and follow the legal precedent for victim assistance in other treaties.

However, Article 7, which requires that all countries cooperate to implement the treaty’s provisions, specifically calls on all states “in a position to do so” to provide assistance to other states as they carry out these initiatives. Such assistance can take many forms, including technical, financial, and material, so every state should be in a position to contribute.

These provisions [will be at the center of the first meeting of states parties](https://www.tandfonline.com/doi/full/10.1080/25751654.2020.1842657?scroll=top&needAccess=true) to the treaty, to take place within one year of the treaty’s entry into force. Austria has already offered to host this meeting in Vienna. At this meeting, [states will discuss](https://www.armscontrol.org/act/2020-11/features/nuclear-weapons-ban-treaty-enter-into-force-whats-next) routine logistics of international treaty meetings, such as costs and establishing the rules of procedure.

Observer states, including signatory states, and some non-signatory states, including at least Sweden and Switzerland, will also attend and share the cost of the meeting. The extent of their participation will be determined by the rules of procedure. Civil society will also likely play an active role.

**Mistake Two: NATO Countries Cannot Join the Treaty**

One academic [recently argued](https://warontherocks.com/2020/11/what-the-nuclear-ban-treaty-means-for-americas-allies/) that membership in NATO and the Treaty on the Prohibition of Nuclear Weapons would be “mutually exclusive.” While fully compliant membership in both treaties would require a few policy adjustments, it is certainly possible. There is no prohibition in the treaty for a member to be involved in military alliances or exercises with nuclear-armed states, as long as there is not a significant nuclear dimension to those alliances.

NATO itself [states](https://www.nato.int/cps/en/natohq/topics_50068.htm), “NATO is committed to arms control, disarmament and non-proliferation, but as long as nuclear weapons exist, it will remain a nuclear alliance.” However, legal experts [explain](https://www.armscontrol.org/act/2018-10/features/nuclear-weapons-prohibition-treaty-interpreting-ban-assisting-encouraging) that if a NATO state would like to join the treaty, they may certainly do so and remain in the alliance as long as that state renounces participation in the nuclear dimension of the alliance and indicates that it does not support activities prohibited by the treaty.

There is a precedent of NATO members “[footnoting](https://www.tandfonline.com/doi/abs/10.1080/14682745.2011.558176?journalCode=fcwh20)” alliance documents to signal disagreement with certain policies. A NATO state could thus announce its change in policy and adjust its behavior accordingly to be in compliance with the treaty’s provisions. Exactly how the NATO state would need to adjust its behavior to be in compliance with the treaty varies by country and could be determined in consultation with states parties.

Historically, different members of NATO can take different positions on controversial weapons without obliterating the alliance. Indeed, [there are already divergent policies](http://hrp.law.harvard.edu/wp-content/uploads/2018/06/Nuclear_Umbrella_Arrangements_Treaty_Prohibition.pdf) within NATO on the extent of participation in the nuclear aspect of the alliance: Some NATO countries go so far as to host U.S. nuclear weapons on their soil [while others](https://www.government.is/media/utanrikisraduneyti-media/media/Varnarmal/National-Security-Policy-ENS.pdf) do not allow deployment on their territory under any circumstances.

Opposition within NATO to banning landmines and cluster munitions did not stop those prohibitions from moving forward, even as the [United States pressured](https://www.hrw.org/news/2020/07/31/treaty-banning-cluster-munitions-turns-10-without-us) countries to not even participate in the process to negotiate a treaty banning cluster munitions, and certainly did not destroy the alliance. Dozens of former leaders from NATO states, including two former NATO secretaries-general, [recently called on](https://www.nytimes.com/2020/09/20/world/treaty-nuclear-arms-united-nations.html) their countries to join the Treaty on the Prohibition of Nuclear Weapons and certainly did not suggest that such a move would involve leaving NATO or that it would fracture the alliance. N

ATO’s status as a nuclear alliance has [evolved over time](https://www.tandfonline.com/doi/abs/10.1080/09592296.2020.1721086), and it could continue to adapt to shifting international norms.

**Mistake Three: There Is No Mechanism to Address Compliance Concerns in the Treaty**

If there are any concerns about compliance with the terms of the treaty, the treaty explains clearly what states should do in Article 11. When a state party has a concern about another state party’s implementation of the accord, the two states may resolve the dispute amongst themselves or bring the matter to a meeting of states parties to discuss.

Concerns about compliance with an international treaty would certainly not be unique to this treaty and do not indicate that it is any less legitimate or valuable than other treaties with compliance disputes. States parties to the Nuclear Non-Proliferation Treaty regularly [raise concerns](https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom19/statements/1May_NAM.pdf) about nuclear weapon-state compliance with their obligation to pursue nuclear disarmament under Article VI during meetings of states parties of that treaty. Likewise, states parties to the Chemical Weapons Convention [condemn](https://www.opcw.org/sites/default/files/documents/2018/11/rc4wp10%28e%29.pdf) Syrian and Russian violations.

These examples demonstrate the value of international treaties to reinforce norms and provide a forum to discuss and condemn violations of international standards for peace and security. Of course, given that the treaty has not yet entered into force, no state can currently be judged to be in non-compliance with the accord.

**Mistake Four: The Treaty Will Only Impact Countries That Have Joined It**

States parties’ implementation of their obligation to assist victims of nuclear weapons use and testing will also have lasting impact beyond those countries themselves. There is currently no international standard for [adequate victim assistance](https://www.icanw.org/around_the_world_victim_assistance_comes_up_short) for those who have been impacted by nuclear weapons use and testing and [no standard](https://www.icanw.org/the_environmental_legacy_of_nuclear_production_five_case_studies) for how to judge that a nuclear-contaminated site has been adequately remediated.

States parties’ work on these provisions in the treaty will help to provide research and experience in these fields that can be applicable and useful even beyond countries that have joined the treaty.

Countries that are not part of the treaty can still contribute to these important measures. The United States, for example, [is one of the largest donors](http://www.the-monitor.org/en-gb/reports/2019/landmine-monitor-2019/support-for-mine-action.aspx) to Mine Action, which facilitates mine clearance, despite not joining the Mine Ban Treaty. Mounir Satouri, a French member of the European Parliament, has [expressed interest](https://www.youtube.com/watch?v=mD6hKLJFo5c&feature=youtu.be) in encouraging European Union countries, including NATO members, to contribute to victim assistance and environmental remediation measures under the treaty, even if they have not yet joined as states parties.

The treaty will [continue to grow](https://warontherocks.com/2020/08/making-sense-of-the-nonproliferation-disarmament-divide/) and integrate into the international system well beyond its entry into force in January and first meeting of states parties. The norm established by previous weapons prohibitions [impacted banks, companies, and government policies](https://www.icanw.org/entry_into_force_briefing_paper) in countries that had not joined the treaty, and the same can be expected for the nuclear prohibition norm.

The treaty’s adoption [has already caused](https://www.dontbankonthebomb.com/abp/) a major Dutch pension fund to divest from companies involved in nuclear weapons, and more divestment can be anticipated once the treaty takes full legal effect.

**Mistake Five: The Treaty Only Impacts Democracies**

Countries that have not yet expressed support for the treaty are also [expected to join in time](https://warontherocks.com/2017/07/the-nuclear-ban-treaty-how-did-we-get-here-what-does-it-mean-for-the-united-states/). In many countries that do not officially support the treaty, [polls show](https://d3n8a8pro7vhmx.cloudfront.net/ican/pages/1718/attachments/original/1601295290/Briefing_Paper_on_the_Significance_of_TPNW_EIF_FINAL_September_2020.pdf?1601295290) that domestic opinion is behind the ban and [capitals in nuclear-armed and NATO states](https://cities.icanw.org/) have adopted resolutions calling on their governments to join. [Critics claim](https://carnegieendowment.org/2017/03/15/real-problem-with-nuclear-ban-treaty-pub-68286) that domestic support may push Western democracies – in particular France, the United Kingdom, the United States, and NATO allies — to join the treaty, while more autocratic states — without a strong civil society to demand they adhere — remain unfazed by the new international law and norm.

That’s not [how international law works](https://academic.oup.com/isr/article-abstract/17/3/347/1817448). International law applies to all countries, regardless of their governance structure, and all countries are influenced by the new norms advanced by international treaties. Pressure to join the treaty does not just come from an active civil society, but from other states, international organizations, and the changing norm established by the treaty itself.

Article 12 of the treaty legally requires that all states parties urge other countries to join. This can be done in the form of public statements in international fora, like the United Nations, or privately in bilateral meetings. Pressure to adhere can even come from international figures like the [U.N. secretary-general](https://www.nytimes.com/2020/10/25/world/americas/nuclear-weapons-prohibition-treaty.html), the [Dalai Lama](https://www.hindustantimes.com/world-news/dalai-lama-hails-un-treaty-to-prohibit-nuclear-weapons/story-pBMOdtFLG6S8HTeW4t1GbL.html), and [the Pope](https://www.armscontrol.org/act/2020-05/features/papal-vision-beyond-bomb) who have all welcomed the Treaty on the Prohibition of Nuclear Weapons.

So far, the record shows that Western democracies are not necessarily [more susceptible to pressure to support the treaty or to join](https://carnegieendowment.org/2020/11/13/un-nuclear-ban-treaty-enters-into-force-in-january-then-what-event-7459) it. While the United States and some NATO allies [held a press conference](https://www.nytimes.com/2017/03/27/world/americas/un-nuclear-weapons-talks.html) outside the negotiations of the treaty in protest, China merely [abstained on the resolution](https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/votes/L41.pdf) to start negotiations.

When the treaty reached 50 states parties, a U.S. official Twitter account [called the treaty](https://twitter.com/StateISN/status/1320729153088430082) “counterproductive,” while the Chinese UN Mission on Twitter [claimed](https://twitter.com/chinamission2un/status/1320178238069624832?s=21) its objectives were “in line with purposes of the TPNW.” Of the states that have already joined the treaty, many have done so not because of civil society pressure, but [due to their desire](https://www.icanw.org/namibia_ratification) to adhere to international laws and norms against nuclear weapons.

**Conclusion**

In January, the treaty will take its rightful place among the other international treaties regulating nuclear weapons and other weapons of mass destruction, as an [implementing instrument](https://www.tandfonline.com/doi/full/10.1080/25751654.2020.1738815) of the Nuclear Non-Proliferation Treaty’s Article VI and complement to the Comprehensive Nuclear-Test-Ban Treaty.

[Most countries support](https://reachingcriticalwill.org/disarmament-fora/unga/2020/statements) the Treaty on the Prohibition of Nuclear Weapons as an important achievement for peace and security and towards a world free of nuclear weapons. As the risk of nuclear weapons use [increases alarmingly](https://d3n8a8pro7vhmx.cloudfront.net/ican/pages/1166/attachments/original/1580226579/ICAN_emerging_technology_and_nuclear_weapons_policy_briefing.pdf?1580226579), nuclear disarmament measures like this treaty are urgently needed.

The Treaty on the Prohibition of Nuclear Weapons will impact the norm against nuclear weapons and in the meantime will provide concrete assistance for victims of nuclear weapons use and testing and contribute to remediating radiologically contaminated areas. It is a powerful tool: important enough for leaders to ratify even in the midst of a global pandemic and influential enough that the United States actually called on countries to withdraw their instrument of ratification or accession.

Analytical attempts to belittle or undermine the significance of this treaty may appease the minority of countries that cling to these weapons of mass destruction for now, but make no mistake — the Treaty on the Prohibition of Nuclear Weapons is a game-changer.

And it is not going anywhere.