

Unenforceable Nuclear Ban Treaty to Become International Law

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On October 24, 2020, the United Nations announced that 50 countries had ratified the treaty to ban nuclear weapons. Passing this threshold means that the treaty will become international law within ninety days. The next day, the people who worked so hard on the treaty celebrated their victory. But now it's time for the sober assessment that must ask whether this changes anything. The real victory will come when the ratifiers, and other nations that might join them, find collective power and real leverage to establish the conditions for peace and to enforce the treaty.

Within the global hegemon, there are many current and retired government officials (the likes of Henry Kissinger and Colin Powell) who support the abolition of nuclear weapons because they know the United States has superiority in non-nuclear weapons and military spending. It is the smaller nuclear powers who insist on having nuclear deterrence because they feel threatened by the excessive advantages of the United States. They also insist on keeping their nuclear deterrence because they point to the United States' long history of using its military and economic superiority offensively. As long as the weaker nations insist on keeping their deterrence, the United States will keep its nuclear arsenal, and nothing will change.

Thus before we get too excited about nuclear weapons being banned by international law, as if that meant they were about to disappear, we will have to start working on a treaty to ban military aggression between states, including aggression that involves overt and covert interference in the affairs of sovereign nations. Wouldn't the world be a great place if we had such a treaty? Oh, wait, actually we have had such a treaty since October 24, 1945 when the United Nations Charter entered into force. Note the date: the nuclear ban treaty ratification threshold was announced on the same date seventy-five years later.

The UN Charter was created because of the failures to avoid two world wars in the 20th century. The drafters of the Charter were influenced by the Nuremburg trials that defined aggressive war by one state against another the highest crime. Article 2, paragraph 4 declared:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The addition of the words "any other manner consistent with..." seems to make Article 2 refer also to acts of covert and overt non-military interference in the affairs of other sovereign nations. The UN Charter gives United Nations members the right to act collectively to stop wars of aggression, but it denies the UN the right to interfere in the

internal affairs of nations once a military threat has been stopped. This right to interfere collectively has been hotly contested and bent since the concept of R2P arose in the 1990s—the Right to Protect inside nations where human rights violations were said to warrant international action. Ask people being sold as slaves in Libya how that’s been working out since the intervention there in 2011.

When the United States signed the UN Charter it became a treaty obligation, and treaty obligations, under Article 6 of the US constitution, become the law of the land. That means that every time a US president and his government waged aggressive war or interfered in the internal affairs of sovereign nations, that president and that government were violating the constitution in addition to violating international law. Congress never tried to impeach any president for these crimes. Likewise, none of these crimes have ever been prosecuted in any international court because the US is, by its own definition, outside the reach of international courts.

The scholar Lance deHaven-Smith has done much work on this subject of [the non-prosecution of state crimes against democracy](#). There is a stunningly long list of state crimes that American citizens and political parties have shown no interest in prosecuting, and these are often crimes that involve or lead to violations of international law, so the entire international community has also proven itself impotent against these crimes.



[Ruins of the Al-shifa pharmaceutical factory in Khartoum, Sudan](#), destroyed by US cruise missiles in 1998. It stands as one testament to the many war crimes—violations of international law—that have never been prosecuted. See [this eleven-minute video](#) listing additional indictable war crimes of US Presidents since 1945.

Thus the ratification of the treaty banning nuclear weapons cannot be seen, unfortunately, as a transformative change in world affairs. Article 2 of the UN Charter, written in 1945, already implicitly made the manufacture, possession and use of nuclear weapons illegal when it outlawed “the threat or use of force.” Other proscriptions of international law also implicitly cover nuclear weapons because their use would amount to genocide, mass

atrocities, violation of human rights, targeting of civilian populations, violation of the principle of proportionality, and so on. Nuclear weapons have always been morally abhorrent and illegal. The problem, as it always has been, is how to enforce international law when the hegemonic power is not only the perpetrator but also the largest financial contributor to the United Nations.

Nothing fundamentally changes with the ratification of the treaty banning nuclear weapons, but it does serve as a powerful message from the weaker nations to the stronger ones, and that in itself could lead to progress in solving the problem of enforcement. Will the fifty ratifying nations now be willing or able to collectively use diplomatic pressure and economic sanctions against the possessors of nuclear weapons? Could they ever stop using the US dollar or denounce the demonization of Russia and China by the US and its allies? Could they carry out new “Nuremburg or Tokyo trials” for all the violations of international law since 1945? Those tribunals have turned out to be history’s exceptions to the norm.

Fundamentally, the problem is that we are focused on the physical manifestation of the enmity between nations (nuclear weapons) and not on the enmity itself that is pushing us dangerously close to nuclear war. I might stop worrying about nuclear weapons completely if NATO forces would retreat from Russia’s borders and the US fleet would stay on its side of the Pacific Ocean.

I don’t enjoy saying what I’ve written here because I’ll be accused of raining on the parade or having betrayed the cause. I wrote [similar essays](#) after ICAN won the Nobel Peace Prize for making the treaty a reality and I was politely ignored by many friends in the anti-nuclear movement. The essays weren’t shared and my views didn’t catch on, obviously, because here we are three years later and everyone is celebrating as if international law, or even domestic law, really meant something in this world. I’m against the creation of false hope and the neglect of history, and, considering President Obama’s 2016 visit to Hiroshima, I hate to see the aging Japanese *hibakusha* being set up yet again for disappointment. These days I would much rather focus on getting [US military bases out of Okinawa](#) and working toward [ending the occupation of the Hawaiian Kingdom](#). That nation has been waiting since 1893 for international law to be enforced. This de-militarization and de-nuclearization of the “Pacific” region would be change I could believe in.

Honorable mention goes to the Marshall Islands, one of the most nuclear-bombed countries on earth. It has not even signed, let alone ratified, the nuclear ban treaty. It depends on the United States for compensation for the damage from nuclear tests and, in exchange for ongoing compensation, it hosts US military bases where long-range missiles are tested. I don’t mean to single out the unfortunate Marshall Islands for condemnation. This sovereign nation is actually just a dramatic example of the relationship that many countries, and many of the treaty ratifiers, have with the United States. As the saying goes, the US has hostages, not allies, so, like the Marshall Islands, the countries that ratified the treaty will also lack the means and the will to follow up with the boycott, divestment and sanctions that could force the US to pack up its military empire and lead the world, by example, toward nuclear disarmament. And the last two US presidential election campaigns have made it quite clear that the majority of US citizens have absolutely no interest in applying such pressure themselves.

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