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Bad Idea: Ignoring the Treaty on the Prohibition of Nuclear Weapons

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The Treaty on Prohibition of Nuclear Weapons (TPNW), colloquially known as the “Ban Treaty,” is hailed by supporters as the beginning of the end for nuclear weapons. Proponents of the treaty recognize that it will not immediately force nuclear weapons states to disarm; instead, they hope that the treaty will delegitimize nuclear weapons and contribute to the creation of international norms against their possession. The nuclear weapons states, including the United States, vehemently disagree with this proposition, and have criticized the treaty on its shortcomings as a legal instrument for disarmament. Beyond this criticism, the United States has done little to engage with the Ban Treaty or its supporters. But ignoring the Ban Treaty is a bad idea that will exacerbate the divide between nuclear and non-nuclear states and could lead to a dangerously uneven pace of international disarmament.

The TPNW was born out of frustration with the disarmament regime created by the [Nuclear Non-Proliferation Treaty](#) (NPT). The NPT rests upon a bargain between recognized nuclear states (the United States, Russia, China, France and the United Kingdom) and non-nuclear states. The non-nuclear states agreed to forgo the pursuit of nuclear weapons, while the nuclear weapons states agreed to work in good faith toward disarmament. In recent years, however, some non-nuclear weapons states have become increasingly frustrated by what they perceive as a lack of effort by nuclear weapons states to fulfill their end of the bargain. This frustration was further expounded when the 2015 NPT Review Conference failed to produce a consensus statement outlining future steps on disarmament. Although it is not [unusual](#) for NPT Review Conferences to end without consensus, civil society groups and non-nuclear states had [high hopes](#) that the 2015 conference would produce significant progress.

As a result, non-nuclear states created an [open-ended working group](#) (OEWG) within the United Nations General Assembly as an alternative mechanism to promote the disarmament agenda. The concept of a treaty

to ban nuclear weapons had already been put forward by the [Humanitarian Initiative](#), a group of civil society actors and non-nuclear weapons states who seek to reframe the conversation around nuclear weapons in humanitarian terms. The idea gained traction within the OWEG, which produced a [working paper](#) in 2016 that recommended the General Assembly hold a conference in 2017 to “negotiate a legally-binding instrument to prohibit nuclear weapons.” In March 2017, the first round of treaty negotiations took place in New York City, where the P5 were noticeably absent. After a second round of negotiations in June, the Ban Treaty was adopted in July and opened for signature on September 21, 2017. As of early December 2018, the treaty had [19 of the 50](#) ratifications it needs to enter into force.

Once it enters into force, the [TPNW](#) will legally bar parties to the treaty from possessing, developing, acquiring, testing, stockpiling, transferring, stationing, or threatening the use of nuclear weapons. The treaty also makes it illegal for parties to assist, encourage or induce engagement in prohibited activities. If and when it enters into force, the treaty will not directly impact the nuclear weapons states, all of whom have [indicated](#) that they will not sign it. Instead, the goal of the treaty is to delegitimize the possession of nuclear weapons and induce political and societal pressures on states to disarm.

To date, the United States has had minimal interaction with the Ban Treaty and its supporters. It participated in only one of the three humanitarian meetings and had no hand in treaty negotiations. Instead, the United States has offered legal and practical explanations for why the Ban Treaty is not the right path to disarmament and supported a [joint statement](#) from the P5 opposing the Ban Treaty and reaffirming their commitment to the NPT. The joint statement specifically rejected the idea that the Ban Treaty would contribute to the development of customary international law, standards, or norms.

The United States’ refusal to acknowledge the potential impact of the ban treaty demonstrates a fundamental misunderstanding—or willful ignorance—of the conditions that led to the treaty’s negotiation in the first place as well as the goals and methods of the treaty’s negotiators. The Ban Treaty was negotiated because non-nuclear weapons states felt their concerns about the pace of denuclearization were not being taken seriously. The acrimonious status of the relationship between the nuclear and non-nuclear states is reflected in the treaty itself, which sets up a [discriminatory verification framework](#) that would essentially punish nuclear weapons states for having ever possessed nuclear weapons if they join the treaty. Brushing off

the Ban Treaty will likely deepen the frustration of the non-nuclear states and further reduce the possibility of productive action on nuclear disarmament and nonproliferation in venues like the 2020 NPT Review Conference. Despite the failure of the 2015 Review Conference, this venue is still [considered important](#) by ban supporters and proponents alike.

Furthermore, by not engaging with the Ban Treaty seriously, the United States and its allies cede critical moral ground to the treaty's supporters. Supporters of the Ban Treaty [view all nuclear weapons states as equally culpable](#) and consider all of the P5 to be in violation of their legally binding disarmament obligations, regardless of whether they have taken steps to disarm or if they continue to expand their nuclear arsenals. Moreover, treaty supporters' strategy is to use public opinion to pressure governments to take action on nuclear disarmament. This strategy is much more effective in open, democratic societies than it is in autocratic states. For example, of the International Campaign to Abolish Nuclear Weapons' (ICAN) almost [500 partner organizations](#), over 200 work in the United States, while roughly 200 more work in Europe. In contrast, two ICAN partner organizations work in China, two work in Russia, and there are none in North Korea. By leaving the narrative of moral equivalency narrative uncontested, the United States allows the international community to let countries like North Korea off the hook while treaty proponents focus on pressuring more susceptible, democratic countries to disarm.

Going forward, the United States needs to engage with Ban Treaty supporters, demonstrate respect for their concerns, and look for ways to make progress on disarmament outside of the treaty. Supporters and opponents alike need to move past the polarized issue of the treaty itself to have meaningful conversations on disarming North Korea, restoring the INF Treaty, extending the New START Treaty, and strengthening institutions and creating accountability for recent violations of the Chemical Weapons Convention—an exercise that will not only prevent an ongoing humanitarian crisis, but may also help prepare the international community to consider seriously issues of verification and enforcement should the Ban Treaty achieve its ultimate goal.

Additionally, the United States should encourage treaty supporters to differentiate between nuclear states with dramatically different behaviors. If treaty supporters continue to disproportionately target western, liberal democracies, they run the risk of creating a world in which nuclear weapons are possessed solely by

states unbound by civil society, democratic restraints, and commitment to the rules-based international order.

Moreover, the United States needs to offer the public a stronger counter narrative as to *why* the Ban Treaty and unilateral disarmament by western democracies is not conducive in the current political environment. Consequently, the U.S. should promote substantive discussions on nuclear issues and encourage increased education and literacy on nuclear weapons that address the ethical dilemma but move beyond it to focus on challenges the broader nonproliferation and arms control regimes face today.

Ignoring the Ban Treaty will not make it magically disappear; in fact, it will make things worse. By refusing to meaningfully engage with the treaty, the United States and other nuclear states continue to drive a wedge between nuclear and non-nuclear states and impede significant progress in nonproliferation and disarmament--leaving the door open for actors like North Korea to develop a nuclear arsenal. Furthermore, by not countering the treaty's moral equivalency argument, the United States allows illiberal actors to continue operating under the radar and away from the pressures of treaty supporters. The United States can't stop the Ban Treaty from entering into force. But by engaging treaty supporters and the general public, it can take a role in shaping how the ban impacts the existing disarmament and nonproliferation framework.

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