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To cite this article: Paul Meyer & Tom Sauer (2018) The Nuclear Ban Treaty: A Sign of Global Impatience, *Survival*, 60:2, 61-72, DOI: [10.1080/00396338.2018.1448574](https://doi.org/10.1080/00396338.2018.1448574)

To link to this article: <https://doi.org/10.1080/00396338.2018.1448574>



Published online: 20 Mar 2018.



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The Nuclear Ban Treaty: A Sign of Global Impatience

Paul Meyer and Tom Sauer

Future historians may record summer 2017 as the beginning of the end of the nuclear age. On 7 July 2017, 122 states adopted the text of a legally binding international treaty that provides for a comprehensive ban on nuclear weapons (or 'ban treaty').¹ The treaty was opened for signature on 20 September 2017, and at the time of writing, 56 states had signed and five had ratified.

The nine nuclear-weapons states and their allies are still in a state of denial, however.² They have consistently resisted the very idea of a treaty banning nuclear weapons, despite their obligation under the 1970 Nuclear Non-Proliferation Treaty (NPT) to pursue multilateral negotiations on the elimination of nuclear weapons. They have ridiculed the Humanitarian Initiative that was the driving force behind the ban treaty, convinced that it would fail just as previous disarmament efforts by NGOs and like-minded states had done. They regarded the states advocating for the treaty as 'unimportant', an expression used by a former high-level American arms-control expert in a Track Two workshop. In 2017, the nuclear-weapons states and the NATO member states (excepting the Netherlands) boycotted the multilateral negotiations that produced the ban treaty, something that had never been seen before with respect to a negotiation authorised by the UN General Assembly. (States have sometimes rejected outcomes from such negotia-

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tions, but to boycott an approved process en masse was unprecedented.) By doing so, they ignored the basic requirements of the NPT and responsible multilateralism, and missed the chance to shape the treaty in accordance with their own wishes.

Critics of the treaty point out that it is very unlikely that any of the nuclear-weapons states or their allies will be among the first group of signatories.³ Yet treaty advocates knew this would be the case right from the beginning.⁴ Just as slavery was not abolished through the efforts of slave owners, the abolition of nuclear weapons is not expected to be accomplished by the possessors of nuclear arms.

Scope and drivers of the treaty

The ban treaty will forbid the development, production, testing, acquisition, stockpiling, transfer, possession and stationing – as well as the use and threat of use – of nuclear weapons. Consequently, the decades-old doctrine of nuclear deterrence will become illegal for the signatory states, and in the eyes of the hundreds of millions of citizens around the world who support the treaty. Whether it will eventually gain the status of customary international law will depend on state practice in the future, but a major normative step has been taken towards that goal. At the very least, the ‘taboo’⁵ against the use – now extended to the possession – of nuclear weapons will be strengthened.

The treaty will enter into force once 50 states have ratified it, thus ensuring that it commands wide support while avoiding the pitfall of requiring ratification by specific states, which has prevented the Comprehensive Test-Ban Treaty (CTBT) from entering into force. Given that 122 states voted in favour of the adoption of the treaty, the agreement is likely to enter into force sooner rather than later (estimates have ranged from late 2018 to mid-2019), although this will require sustained political action and advocacy on the part of its supporters.

The nuclear-weapons states and their allies have two options under the treaty: they can either destroy their nuclear weapons and then join the treaty, or join the treaty and at the same time make specific plans to eliminate their nuclear weapons. For their nuclear-dependent allies, this will

require disavowal of the doctrine of nuclear deterrence and its enabling systems, such as providing basing or aircraft for the delivery of nuclear weapons. Of course, the nuclear-weapons states may well persist in their rejection of the treaty, and proceed with their plans to retain and modernise their nuclear weapons at a cost of hundreds of billions of dollars. Such a stance would, however, guarantee a schism between non-nuclear-weapons and nuclear-weapons states, thus threatening the foundations of the nuclear non-proliferation regime established by the NPT.

Given that the mainstream media largely ignored the ban-treaty negotiations, some may be surprised to learn that a majority of NPT states have already agreed that nuclear weapons should be banned.⁶ Indeed, a major challenge to the existing nuclear order has been in the making for some time.⁷ The underlying driver of the ban treaty has been the frustration among the non-nuclear-weapons states with the unfulfilled promises of the nuclear-weapons states to pursue total nuclear disarmament. There are currently some 15,000 nuclear weapons on earth. Most of these weapons have a destructive capacity that is ten or even 100 times greater than the bomb that wiped out Hiroshima. The use of only a fraction of these weapons could render the planet uninhabitable. For anyone who is not absolutely sure that nuclear deterrence will always work, the risks associated with these weapons are unacceptably high.

For decades, the NPT was seen as the primary legal framework for managing the risks presented by nuclear weapons. This widely supported treaty, signed by 191 states, codified a 'grand bargain' in which the non-nuclear-weapons states promised never to obtain nuclear weapons, the five existing nuclear-weapons states committed to work towards the elimination of their nuclear arsenals, and all NPT signatories pledged to cooperate on the peaceful uses of nuclear energy.

Probably the greatest lacuna of the NPT is the absence of a deadline for realising nuclear disarmament as required by Article VI of the treaty. While the nuclear-weapons states point to the many thousands of nuclear weapons that have been removed from their operational arsenals, the non-nuclear-weapons states have always expected the complete elimination of such weapons. This is the only way of overcoming the discriminatory

character of the NPT, which currently accepts a distinction between nuclear 'haves' and 'have-nots'.

Over the years, the frustration of the non-nuclear-weapons states over the limited progress toward nuclear disarmament has only grown. These frustrations were especially evident during the NPT Review Conferences convened every five years.⁸ Indeed, the origins of the Humanitarian Initiative can be directly linked to the failure of the 2005 NPT Review Conference. Other contributing factors were the stagnation seen in multilateral arms control in the preceding decade (1995–2005), and the successful campaigns against landmines (1997) and cluster munitions (2008) that resulted in what became known as 'humanitarian disarmament' accords. These successes triggered ideas for launching a new campaign with the ambitious goal of eliminating nuclear weapons – the only weapon of mass destruction not covered by a comprehensive prohibition agreement. NGOs such as International Physicians for the Prevention of Nuclear War (which received the Nobel Peace Prize in 1985) were at the forefront of establishing a new global movement that came to be known as the International Campaign to Abolish Nuclear Weapons (ICAN). Today encompassing more than 400 NGOs from over 100 states, ICAN was the recipient of the 2017 Nobel Peace Prize for its advocacy and lobbying efforts on behalf of the ban treaty.⁹

At the same time that ICAN was gathering momentum, the International Red Cross and Red Crescent movement put the abolition of nuclear weapons higher on its agenda. Together with Switzerland, they were able to include a reference to the 'catastrophic humanitarian consequences' of the use of nuclear weapons in the final document of the 2010 NPT Review Conference.¹⁰ The language used was agreed by all member states, including the nuclear-weapons states. In all likelihood, they were not aware that these words would constitute the starting point of the journey towards the ban treaty.¹¹

The main idea behind the Humanitarian Initiative was, and still is, to shift the nuclear narrative away from its focus on deterrence, which simultaneously encompasses a strategic rationale for the non-use of nuclear weapons and a threat to employ them if deterrence fails, to a concern with the dangers attendant upon the actual use of these weapons. The former

is an abstract theory that is used by defence intellectuals to legitimise the maintenance of nuclear arsenals. Its advocates believe that the existence of nuclear weapons has prevented the outbreak of a third world war. The fact that nuclear weapons have not been used since the end of the Second World War is also attributed to deterrence.¹² Critics have pointed out, however, that these claims are impossible to prove.¹³ Other factors, such as the memory of the two world wars with their tens of millions of casualties, European integration and global economic interdependence could be cited as reasons why there has not been a global war since 1945. Moreover, nuclear deterrence has sometimes blatantly failed, as in the case of the Yom Kippur War (1973), the Gulf War (1991) – in which Israel’s nuclear arsenal failed to deter Iraq from launching missile attacks against it – and Pakistan’s Kargil incursion (1999). Nuclear abolitionists emphasise the dangers and high material costs of having nuclear weapons on high alert, ready to be launched on a moment’s notice.

While the debate between advocates and critics of nuclear weapons has been ongoing for some time, the Humanitarian Initiative has sought to draw attention to the potential consequences if nuclear weapons were actually used, something that has rarely been discussed. What would be the physical consequences in terms of heat, blast and radioactive fallout? Are societies ready to deal with so much as a single nuclear explosion, let alone a nuclear war? The hope is that a greater awareness of the dangers posed by nuclear weapons, and the limitations of any humanitarian response, would generate increased support for nuclear disarmament. Thus, the initiative has asked whether humanity is prepared for the immediate destruction and long-term effects such weapons can be expected to cause. It invited scientists to present updated studies on the phenomenon of ‘nuclear winter’, for example, a prospect that had been studied in the 1980s on the premise that a major nuclear exchange between the US and USSR would cause so much dust and smoke to enter the atmosphere that it would block the sun’s rays. One updated study was based on a scenario of a ‘limited’ nuclear war between India and Pakistan involving the use of 100 nuclear weapons. The

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study found that even such a restricted nuclear exchange would directly kill 30 million people and imperil hundreds of millions more by lowering the earth's temperature and thereby contributing to crop failures.¹⁴ Other experts demonstrated the virtual certainty of killing large numbers of civilians even in the case of a single nuclear weapon targeting a military installation.¹⁵ This analysis reinforced the view that any conceivable use of nuclear weapons would contradict international humanitarian law, with its principles of proportionality, discrimination and precaution.

Future of the treaty

The ultimate goal of the Humanitarian Initiative was to demonstrate that any use of nuclear weapons would be unacceptably destructive, immoral and illegitimate, and therefore that these weapons should be made illegal, just as chemical and biological weapons, and even landmines and cluster munitions, have been. It determined that an international treaty prohibiting the possession and use of nuclear weapons would be one way of doing so. The negotiation of such a treaty was regarded as an achievable short-term goal that would constitute the first step towards the complete elimination of nuclear weapons.

The Humanitarian Initiative organised three international conferences in 2013–14 (in Norway, Mexico and Austria) that brought together increasing numbers of NGOs and government representatives, and which generated support for UN resolutions and statements at NPT meetings. In 2016, the UN General Assembly adopted a resolution authorising the convening of multilateral negotiations in 2017 to develop a legally binding agreement to prohibit nuclear weapons.¹⁶ Importantly, the resolution specified that General Assembly rules of procedure would apply, meaning that decisions would be taken by majority vote instead of by consensus. Too often, the need to achieve consensus on previous disarmament-related initiatives had allowed the nuclear-armed states to stymie these efforts. This time, the non-nuclear-weapons states would be able to prevent such obstruction. Having been denied their usual method of blocking progress on disarmament, the nuclear-weapons states and their allies (with the notable exception of the Netherlands) opted to boycott the proceedings. The fact that, in the end, the

Netherlands decided to cast the sole negative vote against adoption of the treaty demonstrated the wisdom of circumventing the consensus trap.

The ban treaty, like any treaty, is not without its flaws, not least because it was negotiated in a very short time span. One of its flaws is that it represents a mixture of both a prohibition and an elimination treaty. While many had expected that it would be limited to a simple prohibition statement that would later be supplemented by a more extensive Nuclear Weapon Convention detailing the process of elimination, the actual treaty contains both elements, and is therefore best regarded as a framework agreement that will require subsequent supplementary arrangements to specify verification and other procedures. Far from being a major weakness of the treaty as some have suggested,¹⁷ however, this pragmatic approach recognises that eventual adherence by nuclear-weapon-possessing states will require their input into how 'irreversible' elimination (admittedly a high standard, but one which all parties to the NPT have affirmed) would take place. The interests of non-nuclear-weapons states will be assured through the involvement of a 'competent international authority' and agreement on terms by a meeting of treaty signatories. This may be challenging, but is not infeasible.

Although the treaty's adoption at the close of negotiations by 122 states certainly represents a major diplomatic achievement, it is fair to ask what its impact on global nuclear affairs will ultimately be. Sceptics point out that the treaty is of mainly symbolic importance, and that the nuclear-weapons states and their allies, the treaty's main targets, will not change their policies as they continue to assert that nuclear deterrence is essential for their security. Nevertheless, the treaty's advocates, while harbouring no delusion that the nuclear-weapons states will radically change course in the short term, believe that it sets in motion two forces that may eventually serve to alter the behaviour of these states and their allies. The first of these is the way the treaty may encourage enhanced restraint by private-sector firms (especially banks and investment funds) with respect to their exposure to the nuclear-weapons industry.¹⁸ In an age of ethical investing, banks and investment funds care about their reputation. Once nuclear weapons are declared illegal, many financial institutions will think twice before funding or investing in firms that are doing business in the nuclear-weapons sector.

Indeed, a large Norwegian pension fund changed its policy even before the treaty was agreed, and a Dutch pension fund followed suit shortly afterwards.¹⁹ It is possible that many more banks will come under pressure to do likewise, which would in turn cause problems for nuclear-weapons-related businesses. This could have implications for state policy.

Secondly and more fundamentally, the treaty will demonstrably strengthen the global norm against nuclear weapons, thereby increasing the stigma for states that continue to possess them.²⁰ It is possible that as support for the treaty grows, new societal and political debates about the future of nuclear weapons will emerge within the nuclear-weapons and allied states

One nuclear-weapons state may feel the near-term effects

themselves, especially the five basing states for NATO's nuclear forces in Europe.²¹ Indeed, official policy in the Netherlands has already been influenced by civil-society activism. Pax, the main peace movement in that country, successfully collected 40,000 signatures on a 2016 petition against nuclear weapons. That achievement led automatically to a debate on the subject being held in the

Dutch parliament on 28 April 2016. The four-hour debate was attended by the Dutch minister of foreign affairs, Bert Koenders, and resulted in motions calling upon the Dutch government to at least attend the ban-treaty negotiations. (These motions received the approval of both opposition and governmental parties.) Despite enormous pressure from the US, the UK and France, as well as other allies, Dutch diplomats did attend, and contribute to, the negotiations – though, as noted, the Netherlands was the only delegation to vote against the treaty. Meanwhile, eminent members of society in many non-nuclear NATO member states have spoken in favour of their governments adopting a positive stance towards the treaty. Once it enters into force, pressure will grow on at least some of these governments (to possibly include Belgium, Canada, Germany, the Netherlands and Norway) to sign the treaty or align their security policies with its goals.²²

At least one nuclear-weapons state may also feel the near-term effects of the ban treaty. In the UK, the costly renewal of the *Trident* nuclear deterrent has already triggered a societal debate. Most Scottish politicians are

against the retention of nuclear weapons, reflecting in part the fact that the only British nuclear base is less than 65 kilometres from Glasgow. Labour Party leader Jeremy Corbyn is a lifelong member of the Campaign for Nuclear Disarmament, and even attended the 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons. Many of his young followers are fervent critics of nuclear weapons. As party leader, he has declared that if he becomes prime minister he will never push the 'nuclear button'. Although the official party line (reflecting the influence of labour unions and members of parliament) is still in favour of *Trident* renewal, the consequences of Brexit and economic stagnation may work to overturn that earlier decision given the high opportunity costs that renewal will entail. The Greens are against, and Liberal Democrats are also lukewarm about maintaining nuclear weapons and have suggested a recessed nuclear deterrent instead. This leaves only the Conservative Party fully in favour of renewing *Trident*. The entry into force of the ban treaty may help the many advocates of nuclear disarmament in the UK to make their point even more vehemently. If Labour wins the next election, a variety of factors (not least cost) may result in *Trident* renewal being dropped, opening the way for the UK to become a state without nuclear weapons and thus the first NPT nuclear-weapons state to fully realise its Article VI commitment.

If the UK signs the ban treaty, a positive domino effect may follow. At a minimum, it will put pressure on the remaining nuclear-weapons states to explain exactly how they intend to achieve the world without nuclear weapons that they have espoused, at least rhetorically, as a goal.

Advocates hope that the ban treaty will be a wake-up call for the nuclear-weapons states and their allies. If they were previously unaware that nuclear disarmament is viewed as a priority by the rest of the world, they should have received the message now. The ban treaty is nothing less than a heart-felt cry for nuclear abolition. Ignoring it could be a recipe for disaster down the road. If the nuclear-weapons states and their allies do not take substantial steps towards elimination (in the form of deep cuts to arsenals, no-first-use policies, the de-alerting of deployed forces, the withdrawal of nuclear weapons stationed abroad and the halting of modernisation) before the next NPT Review Conference in 2020, the probability of that conference

failing will be extremely high. The failure of two such conferences in a row would further erode the authority of what will then be a 50-year-old NPT, and could well lead some of its non-nuclear signatories to abandon it in favour of the more comprehensive provisions of the ban treaty.

The prospect of defections from the NPT is certainly not foreseen in the ban treaty itself, which, in a preambular paragraph, reaffirms ‘the full and effective implementation’ of the NPT. Nevertheless, if nuclear-weapons states that are party to the NPT are judged not to be implementing their treaty obligations, non-nuclear-weapons states may begin to lessen their engagement with that treaty regime, especially if they are party to a treaty with higher disarmament standards. The weakening of the global nuclear non-proliferation regime that might result from this process would not be in the interest of the nuclear-weapons states, even if their conduct over the decades would have contributed to bringing it about. In this sense, the ban treaty is the most recent manifestation of decades of frustration over the failure of nuclear-weapons states to realise their NPT obligations, and of the determination of the majority of NPT parties to rebel against the status quo and champion another route for nuclear disarmament.

The best way to prevent this scenario is for the nuclear-weapons states to take substantial steps in the direction of nuclear-weapons elimination in the near term.²³ The ban treaty serves as a stark reminder of the unfinished business of the NPT.

Notes

- ¹ See United Nations, ‘United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards Their Total Elimination’, <https://www.un.org/disarmament/ptnw/>.
- ² See, for example, ‘Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons’, New York, 7 July 2017, <https://usun.state.gov/remarks/7892>.
- ³ See, for example, Benjamin Valentino and Scott Sagan, ‘The Nuclear Weapons Ban Treaty: Opportunities Lost’, in *Bulletin of the Atomic Scientists*, 16 July 2017, <http://thebulletin.org/nuclear-weapons-ban-treaty-opportunities-lost10955>.
- ⁴ See, for example, Beatrice Fihn, ‘The Logic of Banning Nuclear Weapons’, *Survival*, vol. 59, no. 1, February–

- March 2017, pp. 43–50.
- 5 See Nina Tannenwald, *The Nuclear Taboo* (Cambridge: Cambridge University Press, 2007).
 - 6 The significance of the treaty seems to have been overlooked even by many foreign-relations experts. For an exception, see Shatabhista Shetty and Denitsa Raynova (eds), 'Breakthrough or Breakpoint? Global Perspectives on the Nuclear Ban Treaty', ELN Global Security Special Report, December 2017.
 - 7 See Rebecca Johnson, 'Banning Nuclear Weapons', *OpenDemocracy*, 26 February 2013; Beatrice Fihn (ed.), 'Unspeakable Suffering: The Humanitarian Impact of Nuclear Weapons' (Geneva: Reaching Critical Will, February 2013); John Borrie, 'Humanitarian Reframing of Nuclear Weapons and the Logic of a Ban', *International Affairs*, vol. 90, no. 3, 2014, pp. 625–46; Tom Sauer and Joellen Pretorius, 'Nuclear Weapons and the Humanitarian Approach', *Global Change, Peace and Security*, vol. 26, no. 3, 2014, pp. 233–50; and Tom Sauer, 'It's Time to Outlaw Nuclear Weapons', *National Interest*, 28 April 2016.
 - 8 See Tom Sauer, 'The Nuclear Nonproliferation Regime in Crisis', *Peace Review*, vol. 18, no. 3, 2006; Paul Meyer, 'Saving the NPT', *Nonproliferation Review*, vol. 16, no. 3, November 2009, pp. 463–72; Alexander Kmentt, 'How Divergent Views on Nuclear Disarmament Threaten the NPT', *Arms Control Today*, vol. 43, no. 10, December 2013; and Paul Meyer, 'The Nuclear Nonproliferation Treaty: Fin de Régime?', *Arms Control Today*, vol. 47, no. 3, April 2017, pp. 16–22.
 - 9 For further information about ICAN, see its website at <http://www.icanw.org/>.
 - 10 '2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: Final Document', New York, 2010, NTP?CONF.2010/50 (Vol. I), pp. 12, 19, https://www.nonproliferation.org/wp-content/uploads/2015/04/2010_fd_part_i.pdf.
 - 11 See William Potter, 'Disarmament Diplomacy and the Nuclear Ban Treaty', *Survival*, vol. 59, no. 4, August–September 2017, pp. 75–108.
 - 12 Some go even further by advocating the spread of nuclear weapons. See, for example, Kenneth Waltz, 'More May Be Better', in Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons*, second edition (New York: W.W. Norton & Co., 2003), pp. 3–45.
 - 13 See, for example, John Mueller, 'The Essential Irrelevance of Nuclear Weapons', *International Security*, vol. 13, no. 2, Fall 1988, pp. 55–79; Tom Sauer, *Nuclear Arms Control* (New York: Macmillan, 1998); Ken Berry et al., *Delegitimizing Nuclear Weapons* (Monterey, CA: CNS, 2010); Ward Wilson, *Five Myths about Nuclear Weapons* (New York: Houghton Mifflin Harcourt, 2013); and James E. Doyle, 'Why Eliminate Nuclear Weapons?', *Survival*, vol. 55, no. 1, February–March 2013, pp. 7–34.
 - 14 Owen Toon et al., 'Atmospheric Effects and Social Consequences of Regional Scale Nuclear Conflicts and Acts of Individual Nuclear Terrorism', *Atmospheric Chemistry and Physics*, vol. 7, 2007, pp. 1,973–2,002; Michael Mills

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- 15 Matthew McKinzie et al., 'Calculating the Effects of a Nuclear Explosion at a European Military Base', presented at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 8 December 2014.
 - 16 United Nations General Assembly, 'Taking Forward Multilateral Nuclear Disarmament Negotiations', 23 December 2016, <https://www.unog.ch/oewg-ndn>.
 - 17 See, for example, Newell Highsmith and Mallory Stewart, 'The Nuclear Ban Treaty: A Legal Analysis', *Survival*, vol. 60, no. 1, February–March 2018, pp. 129–52.
 - 18 See the report by Pax and ICAN, 'Don't Bank on the Bomb: A Global Report on the Financing of Nuclear Weapons Producers', December 2016, https://www.dontbankonthebomb.com/wp-content/uploads/2016/12/2016_Report_final.pdf.
 - 19 Peter Stubbley, 'World's Largest Wealth Fund Pulls Out of BAE Systems Over Nuclear Weapons Links', *Independent*, 16 January 2018, <http://www.independent.co.uk/news/uk/home-news/bae-systems-nuclear-weapons-links-norway-government-pension-fund-defence-arms-manufacturer-a8162521.html>; 'Biggest Dutch Pension Fund Drops Tobacco, Nuclear Weapon Investments', *DutchNews.nl*, 11 January 2018, <https://www.dutchnews.nl/news/archives/2018/01/the-netherlands-biggest-pension-fund-drops-tobacco-and-nuclear-weapons/>.
 - 20 Patricia Shamai, 'Name and Shame: Unravelling the Stigmatization of Weapons of Mass Destruction', *Contemporary Security Policy*, vol. 36, no. 1, 2015, pp. 104–22.
 - 21 Tom Sauer, 'How Will NATO's Non-Nuclear Members Handle the UN's Ban on Nuclear Weapons?', *Bulletin of the Atomic Scientists*, vol. 73, no. 3, May–June 2017, pp. 171–81.
 - 22 The Canadian Pugwash Group, for example, has recommended that the government of Canada sign the ban treaty now and work on modifying NATO policy to be consistent with its provisions prior to ratification. See <http://www.pugwashgroup.ca>.
 - 23 For a discussion of how this might be done, see Lewis Dunn, 'After the Prohibition Treaty: A Practical Agenda to Reduce Nuclear Dangers', *Arms Control Today*, vol. 47, no. 6, July–August 2017, pp. 6–12.