

This places a different view on the “customary” aspects of a nuclear test ban. The view or belief that the practice or rule of non-testing is legally binding on states originates not from practice (as we can clearly see, as recent practice by France, China, India, and Pakistan dispels the myth that testing is customarily abandoned). Rather, the view that non-testing is “customary” emerges from official statement of governments and delegations. While it might be suggested that political declarations are merely rhetoric and that international law must be supported by binding agreements, and not official statements, customary international law is based on the principle of progressive developments. In other words, a legal obligation is not established until a sense of legal obligation exists. Although a principle may not have fully developed into law, it may become “accepted” as law before being codified. Furthermore, the matter of obligation is essential: legal obligations may arise from moral obligations, or political obligation.

On the matter of the CTBT, governmental statements, as well as the Final Reports of the Article 14 conferences in 1999 and 2001 make explicit reference to the need to refrain from acts that would run counter to the principles of the Treaty “pending its entry into force.” Clearly, the reference to EIF here is more than an accident, and symbolizes the importance placed on the EIF process by members of the Article 14 conference delegations. Therefore, we cannot assume, or make the supposition, that non-testing (and the CTBT itself) is “customary” international law. However, there is an argument to be made in international law that the elements of the CTBT may be enforceable upon signatories and ratifiers. This argument is based on the aforementioned concept of obligation.

*Rule of law imposed on signatories to and ratifiers of a treaty yet to enter into force*

Based both on practice and rule of law, it would be difficult, if not impossible, to ascertain that customary international law exists for a non-testing regime. In fact, as the previous section argues, “customary” international law simply does not exist for the CTBT.

There is, however, another way of viewing the content of the CTBT as binding. This concerns the “obligations” of signatories and ratifiers of the Treaty not to “defeat” the objectives of the agreement. The most rudimentary way of appreciating this is to consider the nature of international agreements themselves. Despite the fact that international agreements may not be legally binding on states unless they are ratified by those states, and while international agreements often include specific EIF conditions, the act of signing an agreement is not considered merely a charade in global diplomacy. In fact,