

Testing Customs: the CTBT and Customary International Law

Treaties like the Comprehensive Test Ban Treaty (CTBT) create binding obligations on States once they enter into force: for example, the obligation not to engage in nuclear weapons testing. But under international law, customs can also create binding obligations. Although the CTBT has yet to enter into force, does it nevertheless strengthen the formation of a customary law prohibition on nuclear testing? What are possible risks and impacts on customary law if entry into force is not achieved? And what is the role of the scientific community in shaping customs? This presentation assesses the required elements of customary international law—state practice and opinio juris—based on research into standards employed by the International Court of Justice, expert interviews, and comparisons to the role of custom in the Chemical Weapons Convention and the Biological Weapons Convention. Also considered are the role of women and youth in making international law, as the CTBTO's inclusion of these groups paves the path for a more equitable understanding of who determines legal customs. Through this analysis, the presentation seeks to answer pressing questions relating to the position of the CTBT within the international legal landscape.

Primary author: GAUTAM, Brenna (Georgetown University Law School)

Presenter: GAUTAM, Brenna (Georgetown University Law School)

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