

Japan and the Nuclear Ban Treaty¹

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Introduction

On 22 January 2021, the Treaty on the Prohibition of Nuclear Weapons (TPNW) entered into force. However, those countries which have not joined the TPNW remain beyond the reach of this treaty, and the nuclear weapon states and those states who rely on extended deterrence under the nuclear umbrella oppose the TPNW. Nevertheless, nuclear weapon states and their allies will not be able to ignore it. The fact that the treaty was adopted with the blessing of 122 countries in the negotiating conference under the auspices of the United Nations General Assembly, and that it has entered into force, is proof that there is a growing awareness in the international community of the urgent need to ban nuclear weapons.

Japan has made the Japan-U.S. Security Treaty the axis of its security policy, relying for much of its security on the extended deterrence of the United States. On the other hand, as the only nation to have suffered atomic bomb attacks in war, Japan has for many years taken the

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² The author takes full responsibility for the wording and content of this Policy Brief and this Policy Brief does not represent the views of any particular organisation. The Policy Brief, however, reflects the author’s working experiences in the IAEA, for a total of nine years, and, his [participation](#), as Secretary General of Mayors for Peace (2013-19), in a series of meetings ranging from the International Conference on the Humanitarian Impact of Nuclear Weapons to negotiating sessions for the TPNW.

lead in proposing resolutions calling for the elimination of nuclear weapons at the United Nations General Assembly, and has won the support of many countries. There is a considerable gap between reality and the ideal. Many countries are aware of the situation surrounding Japan, which shares its borders with China and Russia, nuclear-weapon states with different political regimes from Japan, and is also under the existential nuclear threat from North Korea. They have, therefore, shown understanding that Japan needs to focus on a realistic response while, as the only country to have been attacked by atomic bombs, ultimately aiming for a world without nuclear weapons. However, Japan's opposition to the TPNW has led some countries and civil society organisations which call for the elimination of nuclear weapons, to suspect that Japan pursues a world without nuclear weapons not as an achievable goal with political will and policy commitment, but only as an empty promise.

In 2020 and 2021, the Bulletin of Atomic Scientists set its Doomsday Clock to 100 seconds to midnight – the closest the clock had ever been to Doomsday. The main reason is failure of political leadership to cope with the danger of nuclear weapons use and climate change. Former US Secretary of Defense William Perry has been warning us that “Today, the danger of some sort of nuclear catastrophe is greater than it was during the Cold War.” In his recent book *The Button* (co-authored with Tom Collina), he emphasises the danger of unintended nuclear war, and makes specific recommendations on what the United States should do to avoid a nuclear disaster, such as banning the preemptive use of nuclear weapons, retiring the ICBM, extending the new START treaty, and restricting strategic missile defense. Also, the “Group of Eminent Persons for Substantive Advancement of Nuclear Disarmament” established by then Foreign Minister Kishida of Japan, states in its paragraph 25 of the recommendations submitted in March 2018 that “Although nuclear deterrence may arguably enhance stability in certain environments, it is a dangerous long-term basis for global security and therefore all states should seek a better long-term solution.” This recommendation differs from the official positions of nuclear-weapon states, but it was adopted by consensus, with the approval of renowned experts from the United States, France, Russia, and China.

Based on the growing awareness of the inhumanity and danger posed by the very existence of nuclear weapons, a new movement is gathering momentum in the international community to seek international security without nuclear weapons. The TPNW has been adopted in this context. Japan would be well advised to recognise this trend as an important aspect of international reality, and examine its policy on that basis. And there are things that Japan can do without compromising its own security. I hope that this Policy Brief can contribute to dialogues among those concerned with the future of our common security.

1. Background to the Adoption of the TPNW

Why was it possible to hold a treaty negotiation meeting at the United Nations and to adopt the “Treaty on the Prohibition of Nuclear Weapons” in a short period of time, despite the strong opposition of nuclear-weapon states and their allies? In essence, many non-nuclear-weapon states and a wide range of civil society partners have taken action, recognising the inhumanity of nuclear weapons and the dangers of their use. In particular, in the recent process leading up to the adoption of the TPNW, ICAN (International Campaign to Abolish

Nuclear Weapons), a civil society campaign organisation, has become a major driving force at the grassroots. In that sense, it makes sense for ICAN to receive the Nobel Peace Prize on behalf of the appeals of the atomic bomb survivors (hibakusha) and the contributions of a wide range of civil society partners.

(1) Driving forces leading to the adoption of the TPNW

In the long process of international efforts for nuclear disarmament, accelerated momentum in recent years to seek prohibition of nuclear weapons was triggered by a statement of Dr. Jacob Kellenberger, President of the International Committee of the Red Cross (ICRC) in April 2010. It stated that “The ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law”, and appealed to “all States, and to all in a position to influence them, to seize with determination and urgency the unique opportunities now at hand to bring the era of nuclear weapons to an end.” This statement intended to make the illegality of nuclear weapons definitively clear by removing an ambiguity left in the 1996 Advisory Opinion of the International Court of Justice (ICJ) which “was unable to decide whether, even in the extreme circumstances of a threat to the very survival of the State, the use of nuclear weapons would be legitimate.”, while “the use of nuclear weapons would generally be contrary to the principles and rules of international humanitarian law.” In response to the call by Kellenberger, a move to promote nuclear disarmament, through a humanitarian approach, intensified in the fora of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the United Nations. And in 2013 and 2014, the International Conference on the Humanitarian Consequences of Nuclear Weapons was held three times in Norway, Mexico, and Austria. In these meetings, especially in Mexico and Austria, participants were shocked by the testimonies of the survivors of atomic bombing, learned that there were far more accidents of nuclear weapons and crises on the brink of nuclear war than they imagined, and realised that anyone could become victims of nuclear detonation by accidents, miscalculations, or terrorism. It has resulted in the heightened sense of ownership among non-nuclear-weapon states, who had been considering nuclear disarmament as merely a problem between the United States and Russia, and has led to a move to seek swift action to legally prohibit nuclear weapons.

(2) Changing approaches to the legal prohibition of nuclear weapons

The discourse on the legal prohibition of nuclear weapons was stimulated by the above-mentioned advisory opinion of the ICJ. In 1997, Costa Rica submitted the “Model Nuclear Weapons Convention” drafted by civil society organisations such as the International Association of Lawyers against Nuclear Arms, to the United Nations General Assembly (A / C. 1/52/7). In 2007, a revised version was submitted to a Preparatory Committee of the NPT Review Conference (NPT / CONF.2010 / PC.1 / WP.17). This model convention was, in addition to the total prohibition of nuclear weapons, a comprehensive legal draft that included verification measures to govern the legal prohibition. Many non-nuclear-weapon states supported it, but nuclear-weapon states opposed, insisting on a step-by-step approach. In the face of such a strong opposition, the above-mentioned model convention failed to bring about a treaty negotiation to promulgate a legal instrument to prohibit nuclear weapons. The same was true for various other ideas of legal prohibitions.

On the other hand, among the various proposals based on the humanitarian approach since 2010, the Ban Treaty campaign led by ICAN from around 2011 took a different course. This campaign presupposes the opposition from nuclear-weapon states as a persistent reality, and on that basis, it aims to legally declare a ban on nuclear weapons in its totality, without participation of nuclear-weapon states. Initially, most countries, including non-aligned countries, and many nuclear experts were negative to this idea, saying that a legal ban without the participation of nuclear-weapon states was meaningless. However, in the course of discussions on humanitarian approaches, awareness and concern has heightened that the existence of nuclear weapons overshadows humanity with the danger of nuclear catastrophe. Thus, support has been gathered for the method of legally declaring a ban as a means to overcome the stagnation of nuclear disarmament. In addition, organisations in various fields such as doctors, human rights, environmental protection, and local governments brought in ideas for the treaty. The TPNW was drafted on the basis of the Ban Treaty's ban-first approach but it also took into account various other ideas including the Mayors for Peace proposal (A / CONF.229 / 2017 / NGO / WP.15) that a door should be left open for the future participation of nuclear-weapon states, etc., and it should provide that the detailed stipulation of verification measures is scheduled to be made later.

2. Nature and Characteristics of the TPNW

The TPNW adopted on July 7 2017 belongs to the category of disarmament treaties in the sense it prohibits weapons, but more than that, it aims to ensure human security from the perspective of human rights and humanitarianism. That is why the TPNW characterises the prohibition on nuclear weapons as a global issue that the whole world should address, rather than an issue that can be left to the nuclear-weapon states alone.

Here, I will touch on the characteristics of the TPNW only in the aspects related to the discussion in this paper. Regarding the **preamble**, which is important for understanding the background and purpose of the treaty, it is well known that it provides that total elimination of nuclear weapons is the only way to guarantee that nuclear weapons are never used again under any circumstances. It is also well known that it acknowledges the hibakusha not only as victims of nuclear attack but also contributors to the cause of nuclear weapons abolition. On the other hand, it is often overlooked that it describes the legal prohibition, not as the end itself, but as “an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable, and transparent elimination of nuclear weapons,” and “determined to act towards that end.” It also respects and aims to strengthen the existing legal norms such as the UN Charter and the NPT. It explains that the TPNW is promulgated in the concern “by the slow pace of nuclear disarmament, the continued reliance on nuclear weapons” and “modernization of nuclear weapons.” This is the main reason why the TPNW was adopted against the opposition of nuclear-weapon states.

Article 1 (Prohibitions) of the TPNW prohibits nuclear weapons comprehensively (all aspects such as development, acquisition, storage, use, threatening, etc.) and indiscriminately (each State Party). **Article 12 (Universality)** encourages the participation of all States (including nuclear-weapon states) in order to make prohibition effective. And

a number of other articles contain provisions to facilitate universal participation. For example, while the TPNW needs “verification” provisions, as does any other nuclear disarmament treaties, to ensure treaty obligations to be abided by, it is not possible to promulgate reliable provisions for concrete verification measures without the participation of nuclear-weapon states. For this reason, the TPNW has adopted a framework agreement type of method, in line with the proposal of the Mayors for Peace ([A / CONF229 / 2017 / NGO / WP.15](#)). More specifically, **Article 4** on the obligations of the **total elimination of nuclear weapons**, provides only the sketchy outline of “verification” measures. Although with its six paragraphs, treating two different cases of nuclear elimination (**Paragraphs 1 and 2**) and providing plans of elimination, declaration and reporting requirements and verification to be agreed upon later (**Paragraphs 3-6**), it does not identify a concrete mode of transparent, verifiable and irreversible elimination nor “a competent international authority or authorities to negotiate and verify the irreversible elimination of nuclear weapons programmes”. Their amplification and specifications are left for future actions by the Treaty meetings. And **Article 8 (Meeting of State Parties)** stipulates the consideration and necessary decisions of specific measures that include verified elimination of nuclear weapons, as one of the mandates of the Meeting of the State Parties (**Paragraph 1 (b)**). States not party to the Treaty, relevant international organisations and NGOs can also participate in the Meetings of the State Parties as observers (**Paragraph 5**). Therefore, nuclear-weapon states and their allies that are not parties to the Treaty can also participate in the deliberations of the Meetings.

3. Criticisms of the TPNW and their Rebuttals

Nuclear-weapon states and their allies have made various criticisms of the TPNW. The following five criticisms are typical among them and their rebuttals from supporters of the TPNW are described below.

Critique 1: The TPNW ignores the reality of the international security environment.

Critique 2: A prohibition treaty lacking participation of nuclear-weapon states is legally meaningless.

Comments on criticisms 1 and 2 are closely interrelated. Accordingly, their rebuttals are put together below.

There are differences between the opposers and the proponents of the TPNW in their perception of the effectiveness of nuclear deterrence on one hand, and the inherent danger of the existence of nuclear weapons on the other. Nuclear-weapon states and their allies believe that nuclear deterrence is working and argue that it is inappropriate to consider elimination of nuclear weapons in the face of unstable international realities. On the other hand, treaty proponents have grave concerns on the lack of progress in recent years, in the fulfillment of Article VI obligations of the NPT to negotiate nuclear disarmament in good faith, and huge investments being made by nuclear-weapon states in the modernisation of their nuclear weapons. They are worried that, in an increasingly volatile world full of conflicts, the very existence of more than 13,000 nuclear weapons (as of January 2020) could cause an unintended nuclear catastrophe. In addition, they consider that political leaders have a responsibility to exercise decisive leadership to ease tensions in times of

crisis. They clearly recall that past nuclear disarmaments have been achieved in a number of cases where leaders took joint initiatives to overcome differences in the midst of extreme international tensions. Notable examples are the conclusion of the Partial Test Ban Treaty by Kennedy and Khrushchev and the agreement on the Treaty on the total elimination of Intermediate Nuclear Forces (INF) by Reagan and Gorbachev. And many non-nuclear-weapon states and civil society organisations consider that, since the danger of nuclear weapons overshadows the entire world, in addition to the heavy responsibility of nuclear-weapon states and their allies, the other countries also have their share of responsibilities and the right to address this global concern. The TPNW, although imperfect, is a practical achievement in pursuit of what they can do now exercising their right to speak up, against the opposition of nuclear-weapon states. Seeking the way out of the impasse that the full-fledged Nuclear Weapons Convention was not achievable right away, they decided that they could start from the legal declaration of nuclear weapons prohibition first on the basis of humanitarian approach, to stigmatise nuclear weapons and thereby inviting nuclear-weapon states to depart from the policy of nuclear deterrence. And as has been pointed out above, the TPNW devises various ways to facilitate future participation of nuclear-weapon states to the Treaty.

Many former U.S. officials recognise the problems of nuclear deterrence and the need for nuclear disarmament. For example, Robert McNamara wrote in his memoir's appendix "Nuclear Crisis in the 1960s and Lessons for the 21st Century", "As long as the great powers possess large amounts of nuclear weapons, we will face a crisis of their use."

Critique 3: The TPNW is inconsistent with the NPT and it weakens the NPT regime.

This criticism seems to have originated from the residual memory of some ICAN activists who initially claimed the demise of the NPT in view of the lack of progress in the fulfillment of the Article VI obligation to negotiate nuclear disarmament in good faith. However, this position has changed over time in the process of promoting the ban treaty. They have come to recognise the importance attached to the NPT by a great majority of states and experts. And as mentioned above, the TPNW is promulgated keeping consistency with the NPT and it provides, in its preamble, that the NPT is the cornerstone of nuclear disarmament and non-proliferation. The preamble also states that "a legally binding prohibition of nuclear weapons constitutes an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable and transparent elimination of nuclear weapons." This clause in the preamble means that the TPNW intends to amplify concrete measures to ensure and manage prohibition in the future, and identify itself as an important contribution to advance NPT Article VI obligations.

Some criticise that negotiating a treaty outside the NPT is a disregard for the NPT. However, it does not require any explanations to those who have participated in and negotiated at the review conferences and preparatory meetings of the NPT that negotiating a treaty at such meetings is impractical in view of their tight schedule and limited budget.

The NPT is a "basic treaty" consisting of the preamble, 11 operative articles, and the final clause. It contains only a brief provision on nuclear disarmament in Article VI. It, therefore, requires supporting agreements and frameworks to amplify and implement its provisions. For example, implementation of safeguards to verify the fulfillment of nuclear non-

proliferation obligations set out in Article III is entrusted to a safeguards agreement concluded with the International Atomic Energy Agency (IAEA) by each non-nuclear-weapon State Party to the NPT.

The Article VI obligation to negotiate nuclear disarmament in good faith has mainly been carried out by bilateral negotiations of arms control agreements between the United States and the Soviet Union (US-Russia), which hold more than 90% of the world stockpile of nuclear weapons. According to a paper (2019) by Mr. Hajnoczi, then Director for Disarmament, Arms Control and Non-Proliferation, Austrian Federal Ministry for Europe and International Affairs, these arms control agreements often have explicit mention that they serve to implement the Article VI obligation of the NPT. The new START Treaty (2011) is one of them, and the Strategic Offensive Reductions Treaty (SORT) (2002), the Strategic Arms Reduction Treaty (STARTI) (1991), and the Strategic Arms Limitation Talks Agreement (SALTII) (1972) also contain reference to Article VI of the NPT.

The Comprehensive Nuclear Test Ban Treaty (CTBT) was negotiated outside the framework of the NPT and it does not contain reference to Article VI of the NPT. But it is generally considered to contribute to the implementation of Article VI.

Critique 4: The TPNW lacks verification provisions for nuclear disarmament.

This point is already dealt with in section 2 above. Credible provisions on concrete verification measures cannot be stipulated in detail without the involvement of nuclear-weapon states. Therefore, in line with the proposal of the Mayors for Peace ([A / CONF.229 / 2017 / NGO / WP.15](#)), the TPNW treated verification measures with a method of framework agreement. It foresees future amplification of reliable verification measures with the participation of nuclear-weapon states and their allies.

Critique 5: The TPNW weakens the IAEA safeguards regime.

What is legally required to meet the obligation to undertake safeguards under Article III of the NPT? A short answer is the conclusion of a comprehensive safeguards agreement (INFCIRC / 153 (corrected)) with the IAEA. North Korea's suspected nuclear weapons programme was made public when undeclared activities were detected by inspections and information analysis conducted by the IAEA within the framework of the comprehensive safeguards agreement. However, in the case of Iraq, which was under the IAEA's comprehensive safeguards agreement, the IAEA could not find breach of the agreement until after the first Gulf War when a thorough investigation of occupied Iraq revealed secret nuclear activities. Addressing this potential shortcoming, the IAEA created a model Additional Protocol (INFCIRC / 540 (corrected)) to strengthen its verification measures. While the comprehensive safeguards measures verify the accuracy of the declaration made by contracting parties based on the notion of "trust, and verify", the Additional Protocol aims to ensure both accuracy and completeness (absence of undeclared nuclear material and activities), by expanding the scope of the IAEA safeguards, in particular, the access rights of the IAEA inspectorate to information and sites of the State in question. The IAEA Secretariat emphasises that the Additional Protocol is indispensable to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in a State Party in question as a whole.

Many countries understand it and have also cooperated in its universalisation, and currently about 140 countries have become party to the Additional Protocol. However, the IAEA has not yet succeeded in making the Additional Protocol a “legal” requirement to fulfil safeguards obligation under Article III of the NPT.

Based on the above, let me comment on the provisions regarding safeguards (for state parties that do not possess nuclear weapons or other nuclear explosive devices) in **Article 3** of the TPNW. True, it is unfortunate that the treaty text does not explicitly mention the IAEA’s Additional Protocol, even though the Additional Protocol has not become a “legal” requirement to fulfil safeguards obligation under NPT. On the other hand, **Paragraph 1** of **Article 3** provides that each such state party “shall, at a minimum, maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty, without prejudice to any additional relevant instruments that it may adopt in the future.” The parties to the Additional Protocol are also obliged to maintain this. **Paragraph 2** also requires States parties that have not concluded the IAEA Comprehensive Safeguards Agreement to conclude and maintain them, and “does not prevent them from adopting additional relevant instruments in the future.” These provisions are products of painstaking work. However, it may not be a bad idea to continue further examination of **Article 3** at meetings of the State Parties, etc. to ensure the effectiveness of the safeguards measures.

Unlike **Article 3**, **Article 4**, on the Parties obligated to totally eliminate nuclear weapons and other nuclear explosive devices, contains, in **Paragraph 3**, a descriptive provision that appears to refer to the Additional Protocol of the IAEA. It provides that such a State Party “shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in that State Party as a whole.”, and that “That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may adopt in the future.”

The “additional relevant instruments” in **Articles 3 and 4** do not only refer to the IAEA’s Additional Protocol, but it can be interpreted to include relevant instruments that may be created in the future in order to cope with technological and other developments that require further strengthening of safeguards measures.

4. What Japan Should Do

It may be difficult for Japan to conclude the TPNW immediately. But it would be wrong for Japan, the only country to have been hit by atomic bombs, to simply oppose and criticise the TPNW. The TPNW aims to prohibit nuclear weapons from the humanitarian perspectives. And it is the ardent wish of the hibakusha of Hiroshima and Nagasaki. Japan has also been placing priority on human security.

Even with the TPNW in place, realisation and maintenance of a world free of nuclear weapons demand cooperation of the entire international community beyond individual interests. Change is also necessary in basic ideas of international security in order to

transform a confrontational security environment into a cooperative one. And, while maintaining peace is essential for sustainable growth, eliminating poverty and inequality reduces the causes of conflict and contributes to maintaining peace. In that sense, the promotion of SDGs can support the maintenance of peace and the progress of disarmament. With such a broad perspective and new ideas, Japan should play a major role in fostering a cooperative international environment that facilitates significant progress of disarmament.

(1) What Japan should do immediately is to participate as an observer in the first meeting of the State Parties, which will be convened within one year from the entry into force of the TPNW, and to project Japan's activities and ideas toward a world without nuclear weapons. The first meeting is likely to be held in Austria, but holding future meetings in Hiroshima or Nagasaki could also be considered.

(2) When participating as an observer, Japan should place its priority on frank dialogue and listen attentively to the views of supporters of the TPNW. There must be new discoveries, and there are many things Japan can offer.

a) The testimonies of the hibakusha of Hiroshima and Nagasaki with their universal and humanitarian message that "no one else shall ever again suffer as we have" have been the force that has prevented the use of nuclear weapons and have formed an important basis for the appeal for the abolition of nuclear weapons. It is necessary to continue to disseminate the awareness of the inhumanity of nuclear weapons. Japan should facilitate visits by people from around the world to Hiroshima and Nagasaki, and provide opportunities for international conferences to promote nuclear disarmament as well as broad civil society debates on peacemaking.

b) Japan should present the activities and recommendations of the Group of Eminent Persons for Substantive Advancement of Nuclear Disarmament, launched by Foreign Minister Fumio Kishida in 2017.

c) Verification measures for the elimination of nuclear weapon programmes under the TPNW are to be worked out at the meeting of the State Parties. Japan has participated in several activities to develop verification measures for nuclear disarmament in which both nuclear-weapon and non-nuclear-weapon states participate, such as the International Partnership for Nuclear Disarmament Verification (IPNDV) and the Group of Governmental Experts to consider the role of verification in advancing nuclear disarmament (GGE). It would be a good idea to introduce these activities to the extent that they can be made public.

d) Japan's contributions related to the universalisation of the Additional Protocol of the International Atomic Energy Agency (IAEA) and the promotion of participation in the Comprehensive Nuclear-Test-Ban Treaty (CTBT) also deserve to be made known. Japan could also propose strengthening Article 3 of the TPNW regarding safeguards.

e) Japan's contribution to further strengthening of legal norms and international cooperation on nuclear terrorism, nuclear security measures and nuclear material control should also be introduced.

f) Japan should put forward its own ideas to apply its universal vision of the Preamble and Article 9 of the Constitution of Japan in the practices of international community. For this purpose, in addition to close US-Japan dialogue, Japan should also engage in continual conversations with Russia, China, the Korean Peninsula, ASEAN countries and others to formulate workable ideas.

These are just a few exemplary ideas, but I hope they will help Japan build bridges between nuclear-weapon and non-nuclear weapon states. I also hope that they can facilitate open and frank dialogue with the countries in the TPNW circle.

The Author

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