

POLICY BRIEF



Can the Treaty on the Prohibition of Nuclear Weapons Protect Japan?

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CAN THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS PROTECT JAPAN?

EXECUTIVE SUMMARY

The Treaty on the Prohibition of Nuclear Weapons (the Prohibition Treaty) rejects the concept of nuclear deterrence. If Japan accedes to the Treaty, it will be required to withdraw from the US extended nuclear deterrence, also known as the nuclear umbrella. This nuclear umbrella serves as a crucial element of Japan's security policy and ensures its protection in the challenging security environment of Northeast Asia. Consequently, adopting the Prohibition Treaty is not a viable policy option for Japan at present. However, lessons can be drawn from the various challenges that have emerged alongside the Prohibition Treaty, and the legitimacy of the NPT (Treaty on the Non-Proliferation of Nuclear Weapons) should be maintained to ensure the balanced implementation of its three pillars: nuclear disarmament, nuclear non-proliferation, and the peaceful use of nuclear energy.

INTRODUCTION

On 22 January 2021, the Prohibition Treaty entered into force. While there are no official statistics, it appears that many Japanese harbor a sense of ‘righteous anger,’ questioning why Japan, the sole country to have suffered atomic bombings during wartime, is unable to join the Prohibition Treaty. In this article, drawing from my direct involvement in the negotiations that led to the establishment of the Prohibition Treaty in Geneva, I aim to address this question and explore several nuclear disarmament-related issues that emerged during the negotiation process.

The establishment of the Prohibition Treaty can be traced back to a paragraph adopted during the 2010 NPT Review Conference expressing deep concern over the catastrophic humanitarian consequences of the use of nuclear weapons and emphasising the need for all countries to adhere to international humanitarian law. This paragraph initiated the “humanitarian process,” which gained momentum within the international community. Leading this movement were countries that did not fall under the “nuclear umbrella” of the United States or Russia, such as Austria, Ireland, New Zealand, and Mexico.

The movement reached its peak at the 2014 Humanitarian Conference in Vienna, where the “Austrian Pledge” was unilaterally declared. This pledge aimed to “stigmatise”, “prohibit” and eventually “eliminate” nuclear weapons. It highlighted the need to address a “legal gap” in the existing international legal framework to achieve nuclear disarmament, emphasising the necessity of negotiating a new legal instrument for this purpose.

Subsequently, the Prohibition Treaty was negotiated and adopted by like-minded countries, without the participation of the nuclear-weapon states (those that conducted nuclear tests before 1 January 1967), nuclear-possessing states (such as India, Pakistan, North Korea, and Israel), and countries dependent on nuclear deterrence for their security. The Netherlands was the sole ‘nuclear umbrella’ state that attended the negotiating conference, doing so at the request of its parliament.

WHAT ARE THE ISSUES ASSOCIATED WITH THE PROHIBITION TREATY?

Since its adoption, the Prohibition Treaty has faced criticism from nuclear-weapon states, nuclear-possessing states, and “nuclear umbrella” states for being “unrealistic.” While the fact that Finland has recently joined NATO and Sweden is likely to follow, shows the importance of nuclear deterrence in protecting a nation against nuclear threats, I would like to delve into specific issues surrounding the Prohibition Treaty in greater detail.

First, the Prohibition Treaty challenges the concept of nuclear deterrence. Article 1 of the treaty prohibits activities such as the development, testing, production, possession, acquisition, and the use or threat of use of nuclear weapons. It also prohibits any form of assistance related to these prohibited activities. This prohibition means that once a

country becomes party to the Prohibition Treaty, it relinquishes the option of seeking nuclear protection. To illustrate this point, let us consider a hypothetical scenario. Suppose Japan faces nuclear intimidation from China, Russia, and/or North Korea. These neighbours, implying the use of nuclear weapons, threaten Japan by stating, “This island is our territory, and if you continue to deny our claim, you will face serious consequences.” In such a situation, Japan would seek support from the United States, its allied nuclear-weapon state, requesting it to counter the nuclear intimidation with its nuclear deterrent. However, once Japan accedes to the Prohibition Treaty, it cannot request such protection. Moreover, the Prohibition Treaty does not offer any alternative measures in such cases. Joining the treaty means becoming unarmed in terms of nuclear capabilities in today’s challenging security environment.

Second, NATO has nuclear sharing arrangements that have allowed several European countries and Turkey to host non-strategic nuclear weapons on their territories since the Cold War era, providing security through nuclear deterrence against the Soviet Union and later Russia. However, if international tensions were to ease and domestic public opinion in one of these countries were to favour the Prohibition Treaty, the obligations of the treaty would take precedence over NATO obligations in accordance with Article 18. Consequently, the deployment of nuclear weapons on that country’s territory would be prohibited. In relation to that prohibition, on 20 September 2017, the date of the treaty’s signing, the North Atlantic Council, the supreme decision-making body of NATO, issued the following statement: “The Prohibition Treaty, in our view, disregards the realities of the increasingly challenging international security environment. At a time when the world needs to remain united in the face of growing threats, in particular the grave threat posed by North Korea’s nuclear program, the treaty fails to consider these urgent security challenges.” The current Japanese government shares this concern with NATO.

Third, there is a shortcoming in the verification system for the disposal of nuclear weapons under the Prohibition Treaty. There are no clear procedures on how to verify the dismantlement of nuclear weapons and ensure that there are no ‘loopholes.’ The current procedures are largely derived from those used in the Anti-Personnel Landmine Convention and the Cluster Munitions Convention, but it is not appropriate to apply similar procedures to nuclear weapons verification given that nuclear weapons are strategic weapons that could determine the fate of a state. Experience tells us that the verification of nuclear disarmament is a challenging task. Under the Strategic Arms Reduction Treaty (START), a bilateral arms control treaty between the United States and Russia, both countries have faced difficulties in confirming the dismantlement of nuclear weapons, despite satellite surveillance and mutual inspectors’ visits. In addition, since the NPT does not allow inspectors from non-nuclear weapon states to access nuclear weapons-related information, inspections must be carried out in a manner that respects the confidentiality of such sensitive information. The involvement of nuclear-weapon states, therefore, is essential to effectively inspect the dismantlement of nuclear

weapons. So unless these states become involved in the Prohibition Treaty, its verification mechanism will remain imperfect and inadequate. I believe that the creation of the Prohibition Treaty was too rushed, propelled by the wind of humanitarianism at its back, towards the ideal of prohibiting nuclear weapons and nuclear deterrence. It seeks to change the reality of a world where a great number of nuclear weapons still exist. The nuclear-weapon states, nuclear possessors, and “nuclear umbrella” states will not accede to the treaty.

WHAT CAN WE LEARN FROM THE PROHIBITION TREATY?

What are the issues that the Prohibition Treaty poses to the international community?

First, the Prohibition Treaty has questioned the effectiveness of the “progressive approach” to nuclear disarmament based on the NPT. This approach entails the early entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT), improved transparency in nuclear armament, the negotiation of the Fissile Material Cut-off Treaty (FMCT), the establishment of verification technology for nuclear disarmament, and the creation of the Weapons of Mass Destruction (WMD)-free zone in the Middle East. Proponents of the “progressive approach” must critically evaluate the delayed progress in implementing these measures and put forth fresh proposals to reform the present disarmament mechanisms and nuclear disarmament packages.

Second, the Prohibition Treaty has prompted a re-evaluation of the concept of security. Nuclear explosions, whether intentional or accidental, would have severe, far-reaching global consequences that transcend national borders. The security of not only the country in question but also the entire world is at stake. On the other hand, the international community is still primarily organised around sovereign states, and is not sufficiently integrated to centrally manage nuclear weapons. Since no one can guarantee the security of a country that has withdrawn from nuclear deterrence and thus become ‘unarmed,’ the country will eventually have to defend itself. Therefore, at present, the “security of humanity” cannot serve as a substitute to “national security.”

Third, for nuclear-weapon states and supporters of extended deterrence, the Prohibition Treaty has cast doubt on the legitimacy of the NPT, which has served as the cornerstone of international security for half a century. While there has been a severe lack of progress in nuclear disarmament, a key objective of the NPT, the question of whether nuclear abolition can be realised while preserving the NPT has been discussed in relation to the Prohibition Treaty movement. However, for over fifty years, the NPT has placed non-proliferation obligations on non-nuclear-weapon states, curbing the proliferation of nuclear weapons and restraining the actions of nuclear-weapon states. Despite some twists and turns, the NPT has served as the cornerstone of international security without losing sight of its ultimate goal of nuclear abolition. We must not undervalue the achievements of the NPT thus far. The wavering legitimacy of the NPT

regime also obscures the “grand bargain” between the nuclear-weapon states and the non-nuclear-weapon states, a bargain which involves the latter’s commitment to refrain from acquiring nuclear weapons in exchange for the former’s sharing of peaceful nuclear technology and pursuit of nuclear disarmament towards the complete elimination of their nuclear arsenals. Countries advocating for the “progressive approach” must maintain the legitimacy of the NPT by making tangible progress towards not only nuclear non-proliferation and the peaceful use of nuclear energy, but also nuclear disarmament.

CONCLUSION

The proponents of the Prohibition Treaty raised the issue of “nuclear deterrence and morality” throughout the negotiation process. They challenged the concept of nuclear deterrence, arguing that nuclear weapons, due to their devastating effects and ultimate inhumanity, cannot coexist with humanity on moral grounds. Indeed, the international community has banned anti-personnel landmines and cluster munitions through treaties in the surge of humanitarianism since the late 1990s. These treaties included victim support clauses and wore the colour of the humanitarian treaties rather than disarmament treaties. However, issues related to nuclear weapons and nuclear deterrence should not be solely approached from a moral standpoint. Since World War II, the international community has made significant achievements in areas such as human rights, humanitarian concerns, development, and climate change, contributing to the betterment of human well-being driven by humanitarian and moral fervour. However, in the realm of security, the international community has not yet evolved into “a society that can be managed only by high morality;” instead, it remains a society where the law of the jungle still prevails. The era of post-Cold War international cooperation has ended and the world has entered a new era of intense competition among major powers. The time is not ripe for abandoning nuclear weapons. Rather, nearly all nuclear weapons-possessing countries are openly advancing nuclear programs, developing various missiles, and increasing the number of their nuclear warheads. Under these circumstances, the Prohibition Treaty appears to be detached from reality. Deeply aware of the tragic consequences of nuclear attacks, we must do our best to ensure that such disasters will not be repeated. The international community should continue to comply with its nuclear non-proliferation obligations and devote itself to the peaceful use of nuclear energy through strict IAEA safeguards.

ABOUT THE AUTHOR

Toshio Sano was appointed as a Commissioner of the Japan Atomic Energy Commission (JAEC) in December 2017, and reappointed in December 2020. Before the appointment to the commissioner, he had developed his career in the diplomatic circle since his entering into the Ministry of Foreign Affairs (MOFA) in 1977, and had gained considerable experience on the issues related to non-proliferation and the international cooperation in energy policy in the diplomacy. Specifically, he was a Vice- Chair of 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons. His former postings include the Ambassador to the Conference on Disarmament in Geneva from 2013 to 2017, the Ambassador to the Kingdom of Denmark from 2010 to 2013, and Director-General of Disarmament, Non-proliferation and Science Department of MOFA from 2008 to 2010.

ABOUT APLN

The **Asia-Pacific Leadership Network for Nuclear Non-proliferation and Disarmament (APLN)** is a Seoul-based organization and network of political, military, diplomatic leaders, and experts from across the Asia-Pacific region, working to address global security challenges, with a particular focus on reducing and eliminating nuclear weapons risks. The mission of APLN is to inform and stimulate debate, influence action, and propose policy recommendations designed to address regional security threats, with an emphasis on nuclear and other WMD (weapon of mass destruction) threats, and to do everything possible to achieve a world in which nuclear weapons and other WMDs are contained, diminished, and eventually eliminated.



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