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HUMANITARIAN DISARMAMENT, THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS, AND JAPAN

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No place on earth better understands the humanitarian effects of nuclear weapons use than Japan. The atomic bombs dropped on Hiroshima and Nagasaki in 1945 wreaked havoc on people and the environment. Despite the devastation, in the decades that followed diplomatic efforts to address this existential threat were heavily influenced by national security interests, and progress was slow and incremental.

The tide turned in 2017 when 122 countries adopted the Treaty on the Prohibition of Nuclear Weapons (TPNW), a concrete and comprehensive step toward the elimination of nuclear weapons. This international legally binding instrument exemplifies a fresh, humanitarian approach to disarmament. It has been welcomed by the *hibakusha*, whose “unacceptable suffering” the preamble explicitly recognizes. Speaking of the adoption of the treaty, Hiroshima survivor Setsuko Thurlow said, “Having witnessed humanity at its worst, I witnessed, that day, humanity at its best.”

Today I will discuss the humanitarian approach to disarmament that produced the TPNW. I will show why humanitarian disarmament is the best path to achieving nuclear disarmament and ultimately a nuclear-free world. I will also explain why Japan can and should embrace humanitarian disarmament in the nuclear context and join the TPNW.

What is Humanitarian Disarmament

Humanitarian disarmament seeks to reduce the human suffering and environmental devastation inflicted by arms. A people-centered approach to governing weapons, it prioritizes protecting the security and well-being of individuals rather than states. Humanitarian disarmament originated with the 1997 Mine Ban Treaty and was solidified and strengthened with the 2008 Convention on Cluster Munitions, both of which Japan is party to.

Such humanitarian disarmament treaties are produced and implemented through an inclusive process. Civil society coalitions pressure countries to take action, provide a range of expertise,

and bring the voices of ordinary people to the table. Survivors humanize the suffering caused by arms and offer first-hand knowledge of how best to address it. International organizations, notably the United Nations and International Committee of the Red Cross (ICRC), provide legal advice, research, and other forms of support. Like-minded states engage in negotiations and commit to uphold the norms that result.

Humanitarian disarmament instruments use both preventive and remedial measures to achieve their goals. To avert future harm, they prohibit or regulate arms-related activities, such as production, possession, transfer, and use, and mandate stockpile destruction. To mitigate harm that has already occurred, they impose positive obligations to assist affected individuals and communities and to clear remnants of war.

The 2017 Treaty on the Prohibition of Nuclear Weapons is the most recent achievement of humanitarian disarmament. It emerged from a series of diplomatic conferences that spotlighted the human and environmental devastation associated with nuclear weapons. Early in its preamble, the TPNW makes clear that it seeks to address “the catastrophic humanitarian consequences that would result from any use of nuclear weapons.” The treaty’s operative paragraphs contain comprehensive provisions designed to prevent and remediate these consequences. The TPNW exemplifies humanitarian disarmament in its process, purpose, and provisions.

Advantages of Humanitarian Disarmament

The origins and content of the TPNW demonstrate the significance of the humanitarian approach for nuclear disarmament, and in particular, how it has propelled countries to act and created strong legal norms.

Propelling Action

Applying the humanitarian disarmament approach to nuclear weapons transformed the conversation about how to deal with these indiscriminate and inhumane arms. In 2010, the ICRC, the International Campaign to Abolish Nuclear Weapons (ICAN), and supportive states started to reframe the issue as primarily a humanitarian, rather than national security, one. Emphasizing the humanitarian threat made nuclear weapons a matter of global concern and motivated countries to look beyond their national interests. In so doing, it helped break down the barriers to diplomatic action that had stalled nuclear disarmament.

The inclusive nature of humanitarian disarmament also facilitated progress. During the international conferences of the 2013-2014 Humanitarian Initiative, civil society, international organizations, and other experts deepened states’ understanding of the gravity and urgency of the nuclear threat. The evidence they provided led non-nuclear armed states to recognize that nuclear disarmament should not be exclusively the purview of nuclear-armed states, and in 2016, the UN General Assembly resolved to initiate negotiations of a ban treaty. The nuclear powers and most nuclear umbrella states chose to boycott the negotiations, but in the end, 122 states voted to adopt the TPNW, with only one opposing and one abstaining. Although Japan did not participate, *hibakusha* gave moving remarks at the opening and closing ceremonies and have widely endorsed the treaty since its adoption.

Strong Norms

Humanitarian disarmament not only inspired a successful process but also provided legal precedent that helped bolster the TPNW's provisions. The TPNW's preamble, like those of the Mine Ban Treaty and the Convention on Cluster Munitions, articulates a clear humanitarian purpose. It highlights the "grave implications [of accidental or intentional nuclear detonations] for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations." The preamble links these humanitarian concerns with "the consequent need to completely eliminate such weapons" and the aim to "guarantee that nuclear weapons are never used again."

Drawing on humanitarian disarmament precedent, the TPNW includes broad preventive measures that make nuclear weapons illegal as well as immoral. The treaty prohibits activities at all stages of a nuclear weapon's lifespan, from creation and acquisition to possession and use. It also lays out safeguards and requires states parties to destroy their nuclear arsenals and remove nuclear weapons stationed in their territory. These provisions are essential to averting the humanitarian consequences of future detonations. They are also a prerequisite to the ultimate goal of a world free of nuclear weapons.

The coupling of such preventive measures with remedial ones, a key characteristic of humanitarian disarmament, allows for a more comprehensive response to the problem of nuclear weapons. TPNW Article 6 requires states parties to assist affected individuals by providing medical care, rehabilitation, and psychological support, and adopting measures to ensure socioeconomic inclusion. Article 6 further obliges states parties to take "necessary and appropriate measures towards the environmental remediation of [contaminated] areas." It thus extends humanitarian disarmament's existing requirements to clear explosive remnants of war to the toxic remnants of war resulting from radioactive fallout. These obligations differ from compensation regimes because they focus on addressing humanitarian needs rather than imposing legal liability for wrongdoing, but nothing in the TPNW precludes affected states parties from pursuing or receiving other forms of redress.

For legal and practical reasons, TPNW Article 6 assigns affected states parties the lead role in assisting victims and remediating the environment, but Article 7 makes clear that they should not bear this responsibility alone. That article requires other states parties "in a position to do so" to provide technical, material, or financial assistance to help affected states parties implement their positive obligations. In addition, Article 7 explicitly obliges states parties that used or tested nuclear weapons to provide "adequate assistance" to support victim assistance and environmental remediation efforts. The article's framework of shared responsibility helps ensure that the needs of affected individuals and environments will be met.

Why Japan Can Join the TPNW

The humanitarian disarmament approach is well established in the context of conventional weapons but relatively new to nuclear disarmament. As a result, some people have raised questions regarding the TPNW and its relationship with other nuclear weapons-related obligations. Two concerns are relevant to Japan as a state party to the 1968 Nuclear Non-Proliferation Treaty (NPT) and a nuclear umbrella state, but neither should prevent Japan from signing and ratifying the TPNW.

While some critics have contended that the TPNW will water down the NPT, their arguments are unfounded. NPT Article VI requires states parties, including Japan, to “pursue negotiations in good faith on effective measures relating to . . . nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” The TPNW is the product of such good faith negotiations. It is also an “effective measure” to promote global nuclear disarmament. The TPNW is stronger than as well as consistent with the NPT. The TPNW extends the NPT’s prohibitions on acquisition to all states parties, including nuclear armed states, and establishes stronger safeguards to prevent violations. Thus, by joining the TPNW, Japan would comply more fully with the NPT’s Article VI obligation and advance that treaty’s purported goal of general and complete disarmament.

Some nuclear umbrella states, including Japan, have cited security agreements with nuclear armed states as reasons not to ratify the TPNW, but the treaty and those agreements do not inherently conflict. The TPNW prohibits states parties from relying on another state’s nuclear arms for protection, so Japan would have to renounce its nuclear umbrella status if it were to join. The TPNW, however, does not prohibit states parties from maintaining alliances with nuclear-armed states, such as the United States, or engaging in joint military operations that do not involve nuclear weapons.

Japan’s 1960 Treaty of Mutual Cooperation and Security with the United States also does not present an unsurmountable legal obstacle because it contains no reference to nuclear weapons. The nuclear umbrella is established through the 2015 Guidelines for Japan-US Defense Cooperation, which constitute a political commitment not a legally binding document. Indeed, the Guidelines specify they do not “create legal rights or obligations for either government.” Therefore, while Japan may face political challenges to joining the TPNW, the two treaties can be understood as compatible from a legal perspective.

Why Japan Should Join the TPNW

Japan not only *can* join the TPNW; it also *should*. First, by signing and ratifying the TPNW, Japan would speed the treaty’s entry into force, making it binding on states parties. Japan’s support would also bolster the stigma against nuclear weapons established by the treaty. Other humanitarian disarmament treaties have shown that stigma can be a powerful tool for pressuring even states not party to comply with international norms.

Second, joining the TPNW would make Japan a leader among nuclear umbrella and nuclear affected states. Several NATO states have started discussing the TPNW, but Japan could still be the first nuclear umbrella state to become a party. Japan would not be the first affected state party. This month, the president of Kazakhstan, which was heavily affected by nuclear testing during the Cold War, signed its ratification papers, meaning it is poised officially to join. Nonetheless, Japan’s unique history as the target of the only use of nuclear weapons would give its signature and ratification added symbolic value and political weight.

Finally, Japan should join the TPNW for its people. By embracing the humanitarian disarmament provisions of the TPNW, Japan would honor the residents of Hiroshima and Nagasaki who suffered and continue to suffer the immediate and long-term consequences of nuclear weapons.

In addition, Japan would answer the *hibakusha*'s calls for concrete measures to ensure the humanitarian horrors they experienced never occur again.