

**Recommendations for
the Oslo Conference to Confirm
the Inhumanity of Nuclear Weapons
by Japanese Lawyers**

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Japan Association of Lawyers Against Nuclear Arms
(JALANA)

URL:<http://www.hankaku-j.org/>
E-mail to: hankaku@hankaku-j.org

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Recommendations for the Oslo Conference to Confirm the inhumanity of Nuclear Weapons

Introduction

This set of recommendations has been prepared to demonstrate the inhumanity of nuclear weapons, to critique nuclear weapon states' policies relying on nuclear weapons, and to present a vision for early conclusion of a nuclear weapons convention. The authors are jurists (academics and lawyers) participating in the Japan Association of Lawyers Against Nuclear Arms (JALANA).

The theme of the Oslo conference proposed by the Norwegian government is the inhumanity of the use of nuclear weapons.

The Japan Association of Lawyers Against Nuclear Arms hopes to contribute to the success of this conference.

That is why the authors wish to report on the inhumane suffering inflicted upon the masses by the atomic bombings of Hiroshima and Nagasaki.

Furthermore, the authors wish to critique the arguments used by states to justify their possession or dependency upon nuclear weapons, on the basis of confirmation of the inhumanity of nuclear weapons, and also to do their utmost to chart a course towards illegalization of nuclear weapons and early conclusion of a nuclear weapons convention in cooperation with NGOs throughout the world.

Confirming the inhumanity of nuclear weapons from various perspectives is groundwork for establishing their illegality. In particular, examining and recording the human consequences of the actual use of nuclear weapons could be said to be the starting point for understanding the issues pertaining to them.

This is not a matter of simulating a nuclear war that might occur in the future. It is a matter of historical fact. When we stop learning from history, we are doomed to be engulfed in a nuclear abyss.

We must heed the testimony of the Hibakusha and grasp the devastating consequences of atomic weapons in fear and trembling. We must reconfirm that human beings cannot coexist with nuclear weapons.

States that possess or depend upon nuclear weapons claim that nuclear weapons are necessary and useful for their national security. Meanwhile, they insist that non-nuclear-weapon states must not be allowed to develop nuclear weapons.

Such an argument ignores the equal status and rights of nations envisioned in

the United Nations Charter and fails to curtail the proliferation of nuclear weapons or to promote nuclear disarmament.

The NPT regime entails a fundamental contradiction regarding the possession of nuclear weapons. If nuclear weapon states fail to pursue nuclear disarmament in good faith, this regime is liable to collapse. If this happens, the danger of proliferation and use of nuclear weapons will increase drastically compared to now.

That is why we must refute the arguments of the nuclear weapon states and the states that depend upon nuclear weapons, including Japan.

It is necessary to build a consensus that relying on nuclear weapons for national security is prohibited under international humanitarian law.

This is a reconfirmation of the existence of humanitarian values that take precedence over the military rationality of winning in armed conflict.

Furthermore, the need for this consensus to gain wide acceptance as a norm of international humanitarian law should be confirmed, and efforts must be made towards conclusion of a nuclear weapons convention.

Though nuclear weapons are yet to be abolished, efforts are underway to make nuclear weapons illegal.

In 1963, the Japanese judiciary (Tokyo District Court) ruled that the atomic bombings by the US military were illegal under international law.

In 1996, the International Court of Justice advised that the threat or use of nuclear weapons would generally be contrary to international law.

In 1997 and 2007, a "Model Nuclear Weapons Convention" totally prohibiting the development, testing, possession, transfer, use, threat of use, etc., of nuclear weapons was submitted for discussion at the United Nations.

The final document of the 2010 NPT Review Conference expressed concern for the catastrophic humanitarian consequences of the use of nuclear weapons and called for compliance with international law including international humanitarian law.

Though international society has not yet established a convention to explicitly ban the use of nuclear weapons, there can be no doubt that nuclear weapons are starting to be recognized as being illegal. This process must be accelerated and intensified.

The present set of recommendations has been prepared out of concern for the issues raised above.

The themes of each report are next introduced in sequence.

The first report is a self-introduction of the Japan Association of Lawyers Against Nuclear Arms by Takeya Sasaki, Attorney at Law. Mr. Sasaki is the current President of the Japan Association of Lawyers Against Nuclear Arms. He experienced the atomic bombing of Hiroshima.

He discusses the inhumanity of the use of nuclear weapons and efforts to illegalize nuclear weapons, touching upon JALANA's position regarding the Fukushima nuclear power plant accident.

The second report is a thesis by Masanori Ikeda, Attorney at Law, calling for understanding towards the Hibakusha. He warns that humanity will be annihilated by nuclear weapons if the memories of the horrors of the atomic bombings are not passed down as "a heritage of humanity." Mr. Ikeda is one of the founders of the Japan Association of Lawyers Against Nuclear Arms and has worked closely with the Hibakusha for many years.

The third report is a study of court cases regarding certification of atomic bomb disease by Masayoshi Naito, Attorney at Law. In Japan, there is the "Atomic Bomb Survivors' Assistance Act" under which people certified to require medical treatment for the effects of radiation from the atomic bomb are entitled to receive an allowance. However, implementation of the law is a far cry from what is needed to address the real damage from atomic radiation. The Japanese government has limited its scope epidemiologically to the effects of initial radiation, while it has ignored or downplayed the compounded effects of radiation and other factors. The Hibakusha achieved major victories, standing up to the government to demand compensation commensurate with the actual harm from the atomic bombings, overcoming great mental suffering and fear of discrimination to speak up about their experiences. A member of the legal team reports on these cases.

The fourth report is a thesis by Dr. Yasuhisa Ogura, an international law scholar, regarding the "Atomic Bomb Case" in which a Japanese court ruled that the atomic bombing of Hiroshima and Nagasaki by the US military violated international law. "Shimoda vs. The State" is the one and only case in which a court, as a public institution, judged the atomic bombings to be a violation of international law. It is a landmark case for understanding the relationship between nuclear weapons and humanitarian law.

The fifth report is a thesis by Toshinori Yamada, an international law scholar,

who is a board member of the Japan Association of Lawyers Against Nuclear Arms and the International Association of Lawyers Against Nuclear Arms, on the rights of the Hibakusha to claim compensation for damages. It discusses the legal theory for recognition of the rights of Hibakusha to claim compensation for damages from users of nuclear weapons. It is argued that the obligation of users of nuclear weapons to compensate Hibakusha contributes to achieving a world without nuclear weapons.

The sixth report is a thesis by Kenichi Okubo, Attorney at Law and Secretary General of the Japan Association of Lawyers Against Nuclear Arms. It introduces the arguments used by the USA to justify the atomic bombings and by nuclear weapon states to rationalize their possession of nuclear weapons, in light of the inhumanity of the use of nuclear weapons, and discusses the prospects for early conclusion of a nuclear weapons convention.

These theses have been written at the responsibility of their respective authors, and are not official statements of the views of the Japan Association of Lawyers Against Nuclear Arms. However, the aims of the authors are entirely consistent, i.e., to illegalize nuclear weapons on the basis of their inhumanity and to proceed towards a world without nuclear weapons.

It is hoped that this report will be read by as many people as possible, and that the total abolition of nuclear weapons will be achieved as soon as possible.

February 2013

Kenichi Okubo (Secretary General, Japan Association of Lawyers Against Nuclear Arms; Attorney at Law)

**The Activities of the Japan Association of
Lawyers Against Nuclear Arms (JALANA)
-As a Lawyer Fighting Alongside the Hibakusha-**

Takeya Sasaki, Attorney at Law
President of the Japan Association of Lawyers Against Nuclear Arms

The Japan Association of Lawyers Against Nuclear Arms

The atomic bombs that were dropped on Hiroshima on August 6th and Nagasaki on August 9th, 1945, turned cities to ruins, took the lives of many citizens, and deprived the survivors of their health, property, livelihoods and the possibility to lead normal human lives. Nonetheless, to this day, our planet has more than twenty thousand nuclear warheads capable of annihilating the human race. We who had participated in the inaugural general assembly of the International Association of Lawyers Against Nuclear Arms (IALANA) formed the Kanto Association of Lawyers Against Nuclear Arms in the autumn of 1989. We went on to establish "The Japan Association of Lawyers Against Nuclear Arms" in August 1994 as the World Court Project (WCP) was gaining momentum in its efforts to seek an advisory opinion from the International Court of Justice (ICJ) declaring the illegality of the threat or use of nuclear weapons. As nuclear war is a denial of the rule of law, we jurists resolved to contribute to relief of the Hibakusha, abolishment of nuclear weapons and prevention of nuclear war from our standpoint as jurists. We have continued to work for conclusion of a convention to completely abolish nuclear weapons in order to fulfill the wishes of the Hibakusha to prevent the recurrence of the horrors that they experienced.

In response to the accident at the Fukushima No. 1 Nuclear Power Plant on March 11th, 2011, we have set forth and are working towards a new goal to free society from its dependence on nuclear power plants.

The Experiment of the Century - It was not a War

At 8:15 AM on August 6th, 1945, on a crisp and clear summer morning, the tranquil blue sky was torn apart by an intense flash of orange light like nothing in this world, followed by a thunderous sound, as if the ground had split open. There was a peculiar-shaped, eerie, dark black mushroom cloud standing still in the sky. It was a weird sight.

Though I was 32 km away from Hiroshima, the massive mushroom cloud looming above seemed as if it had risen from the neighboring town 4 km away. That flash of light and sound changed everything. In the blink of an eye, the city

of Hiroshima, with a population of 350,000 people was turned to scorched earth and 70,000 people were killed. By the end of the year, a total of 140,000 people had been killed.

My two aunts and my mother's father, who lived in his house 2.5 km from the hypocenter, survived the bombing. One of my aunts, who was in a crowded train 0.8 km from the hypocenter died two years later at the age of only thirty, and one of my uncles, who was leading an effort to dig bomb shelters 1.3 km from the epicenter died from a heart attack 19 years later at the age of fifty-two.

Twenty three of the 40 lawyers, nine judges, one probationary judge, 35 judicial officials, and 60 of the 298 medical doctors living in Hiroshima City were killed by the bomb blast.

The atomic bomb that was dropped on Nagasaki, with a population of 270,000 people, at 11:02 AM on August 9th, 74 hours and 47 minutes after the atomic bombing of Hiroshima, killed 70,000 people by the end of that year.

Following the nuclear test in Alamogordo, New Mexico, the uranium bomb dropped on Hiroshima was the second experiment using an atomic bomb. The plutonium bomb dropped on Nagasaki was the third experiment. Masses of people, including my uncle and aunt, as well as the cities and their cultural assets, their natural surroundings, and everything else were used as objects of this "experiment of the century."

The atomic bombs inflicted severe injury on the Hibakusha, robbed them of their property, ruined their lives entirely, tormented them with illness, traumatized them psychologically, and forced them to lead lives of travail.

The Hibakusha, who have survived to this day, bearing the burden of illness, poverty, discrimination, radiation-induced diseases, and the anxiety of life, speak out: "Nuclear weapons and human beings cannot coexist!" The instant that Hiroshima was turned into hell and the moment that Nagasaki became purgatory were moments of infamy - international law had been violated. The cruel, merciless, devastating tragedy caused by the use of a single inhumane weapon could not be considered part of a "war." It far exceeds the scope of the definition of "war."

We must not close our eyes to the "illegality and criminality" of the atomic bombings. It is our responsibility to tell the world the truth about atomic bombing, which annihilates life.

Relief for the Hibakusha

In 2003, the elderly Hibakusha, whose health had been harmed by cancer, leukemia and other illnesses, filed numerous class actions in various localities

nationwide to demand certification that they suffered from atomic bomb disease.

The "Atomic-Bomb Survivors' Assistance Act" entitles Hibakusha to receive a special medical allowance of about 130,000 yen per month if they are certified as having atomic bomb disease, which requires that their disease is recognized to be due to the effects of radiation from the atomic bomb (radiation-induced) and to require medical treatment (requiring treatment). However, the government seldom recognizes that the disease is radiation-induced.

Except for cases in which the Hibakusha had been exposed to a high dosage of initial radiation at the moment of the blast and fell ill with one of a limited number of designated diseases, they have been excluded from certification.

There is nothing unique about diseases contracted by Hibakusha compared to those of non-Hibakusha. Therefore, it is extremely difficult, indeed almost impossible for the Hibakusha to prove that their cancers etc. were contracted as a result of radiation.

On that day, Hiroshima was a cloud of ashes overflowing with Hibakusha frantically trying to escape. The fallout floated about in the air and fell to the ground. People breathed radioactive dust and consumed food and water contaminated with radioactivity. Some Hibakusha were more than 2 km from ground zero. There were people who were wet by black rain that was contaminated with radioactive fallout. There were some Hibakusha who went to the hypocenter to rescue or search for their loved ones and were exposed to residual radiation. My grandfather and grandmother were among them.

The intaken radioactive substances hid in the recesses of their bodies, and surreptitiously bared their fangs to emit alpha and beta rays that continued to irradiate internal organs, causing various diseases today. The atomic bomb is not a thing of the past; to this day it continues to wreak havoc in the body, exposing it to radiation from the inside.

The twenty-nine judgments handed down in favor of the plaintiffs criticized the government's erroneous certification criteria, and gave certification not only to external exposure to initial radiation but also internal exposure to radioactive fallout that had entered the body as well as exposure to residual radiation emitted from radioactivated objects. The judgments certified that not only cancerous diseases, but also liver diseases and other non-cancerous illnesses were radiation-induced, and also certified that radiation-induced diseases arose not only from high dose direct exposure, but also from low dose exposure at distances greater than 2 kilometers and from exposure incurred by people who entered the city later.

As a result of this grand struggle, which I joined as the head of the legal counsel in Hiroshima, the government drafted a "new screening policy" in April 2008.

However, the government remains reluctant to certify atomic bomb disease, so new suits have been filed to carry on with the struggle.

Hibakusha without relief

Operation Castle, which started with the Bravo test of a hydrogen bomb with 1000 times the explosive power of the atomic bomb dropped on Hiroshima, was carried out in the Central Pacific Ocean from March through May of 1954. A total of 992 fishing vessels were doused with "death ashes" and had to dispose of the tuna and other catch that had become contaminated with radiation. Crew members who ate the contaminated fish contracted atomic bomb disease and died at a young age or have suffered from the aftereffects. With the exception of the crew of Daigo Fukuryu Maru (Lucky Dragon No. 5), they have received no compensation or relief whatsoever. The truth about these nuclear bomb tests remains shrouded in secrecy.

Towards conclusion of a Comprehensive Nuclear Weapons Convention

The abolishment of nuclear weapons is the earnest aspiration of the Hibakusha who experienced the tragedy of the atomic bombings. It is a challenge for all of humanity. Our association aims to achieve "a world without nuclear arms" by creating a legal framework for a "Comprehensive Nuclear Weapons Convention."

(1) The judgment on the atomic bombings in Shimoda vs. the State

The judgment on the atomic bombings in Shimoda vs. the State (Tokyo District Court judgment on December 7th, 1963) was the only judicial ruling concerning the atomic bombings until the ICJ gave its advisory opinion on July 8th, 1996.

The ruling was of great significance in that it indicated a set of criteria for evaluation of the use of nuclear weapons under international law, first by examining the issue of the legality of the atomic bombings, secondly by making a legal interpretation of the atomic bombings, the prohibition of which is not explicit in international conventions, in light of the interpretation of international customary law and conventions at the time, application by analogy and the basic principles of international law, and thirdly by reaching a judgment in light of the basic principles of international humanitarian law. This year, on the 50th anniversary of the judgment, our association will organize an event to discuss about the atomic bombings and international humanitarian law.

(2) The Advisory Opinion

As the World Court Project progressed, our association set up a center in Japan, called upon municipal governments to adopt resolutions that "nuclear weapons violate international law" and urged citizens to sign a "declaration of public

conscience." In a short period of time, 3.3 million signatures were collected, delivered to, and made to be received by the International Court of Justice. The association also made its utmost efforts and lobbied the Japanese government so that the mayors of Hiroshima and Nagasaki could provide testimonies regarding the truth of the atomic bombings and their inhumanity directly in the presence of the judges.

Though the advisory opinion has serious issues with regard to the right of self-defense, which is a stumbling block, it refers to the "unique characteristics of nuclear weapons," stating that "it is imperative to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come," recognizes that their use is "scarcely reconcilable with" the basic principles of humanitarian law, judges that the threat or use of nuclear weapons is "generally" illegal, and concludes that "there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." It has been a major driving force for the movement ever since, raising awareness of the inhumanity of nuclear weapons around the world.

(3) The International Peoples' Tribunal

In July 2006, the "International Peoples' Tribunal on the Dropping of Atomic Bombs on Hiroshima and Nagasaki" was held in Hiroshima. I served as one of its co-representatives. Members of our association served as amici curiae and joined the prosecution, while three university professors of international law (including Carlos Vargas, Vice-President of IALANA (Costa Rica)) served as judges. In July of the following year, the 13 defendants including President Roosevelt and President Truman were found guilty in the judgment, which certified the criminality of the atomic bombings, which were deemed to constitute crimes against humanity and war crimes, being indiscriminate bombings of defenseless cities.

(4) Towards a Comprehensive Nuclear Weapons Convention

We are calling upon governments to conclude a "Comprehensive Nuclear Weapons Convention" based upon the "Model Nuclear Weapons Convention" which was drafted in 1997 by IALANA and others in response to the advisory opinion and which provides for the time-bound, phased abolition of nuclear weapons.

We sent a delegation to the NPT Review Conference held in 2010 at the UN Headquarters in New York, and submitted a memorandum calling for immediate commencement of negotiations leading to such a convention.

(5) Establishment of a Northeast Asia Nuclear Weapon-Free Zone

Northeast Asia faces extreme political instability as the Korean Peninsula has remained in a state of war (armistice) for many years, North Korea conducts tests of nuclear weapons and launches rockets (the Japanese government refers to them as missiles, but one of the satellites is in orbit), China and Russia possess nuclear weapons and Japan clings to a policy of relying on the American "nuclear umbrella" with the excuse of the nuclear threat of North Korea and China.

Our association aims to build a security regime for stability and peace that does not rely on nuclear weapons, through creation of a "Northeast Asia Nuclear Weapon-Free Zone" on the basis of confidence-building starting with "no first use."

(6) Enshrining the three non-nuclear principles in law

The three non-nuclear principles, the Japanese government's established policy "to neither possess nor manufacture nuclear weapons, nor permit their introduction" is now on the verge of collapse under nuclear umbrella and nuclear deterrence policies. We are carrying out a movement to establish a legal framework for the three non-nuclear principles by enshrining them in law, rather than leaving them as a political declaration.

A society that does not rely upon nuclear power plants

After the nuclear power plant accident, our association has been taking initiatives to provide relief to the Hibakusha in Fukushima, in pursuit of a "society that does not rely upon nuclear power plants," so as to never again create "new Hibakusha," reconfirming the importance of the appeal : "No More Hiroshima. No More Nagasaki. No More Hibakusha."

Conclusion

The Preamble of the Japanese Constitution declares that all peoples have "the right to live in peace, free from fear and want." Both nuclear weapons and nuclear power plants are sources of fear, as their use or malfunctioning threatens the right to live in peace, depriving people of their lives and health and leading humanity towards annihilation. Human beings cannot coexist with nuclear weapons or nuclear power plants.

Our association is conducting activities to seek a shift in Japan's nuclear policy, recognizing that nuclear weapons and nuclear power plants deny the principles of the sanctity of life and human dignity and that humanity is unable to control nature and does not know how to dispose of nuclear waste, and appealing therefore that humanity must eschew nuclear weapons and nuclear energy.

**An appeal from Japan, as a victim of nuclear war,
to save humanity from nuclear destruction:
Using the Japanese Constitution to build a world free from war**

Masanori Ikeda, Attorney at Law

The atomic bombing resulted in the complete desecration and destruction of human dignity

On 26 June 1945, the United Nations Charter was signed, beginning with the words, "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind," and confirms that "the threat of or use of force shall not be used in international relations." This was very important as the first time in human history for war to be declared illegal. Before the ink dried, however, just 42 days after signing the UN Charter, the US dropped the atomic bomb on Hiroshima on 6 August, even though Japan had already lost its war capacity. In 10 seconds, Hiroshima's buildings were razed by the destructive force of one bomb's massive shock wave emanating from atomic fission. A heat wave of 3,000 degrees Centigrade burned everything in the city, including the devastated buildings, and the people who had been living there suffered severe burns and died a fiery death. By the end of the year, 200,000 people had died. In addition, many continued to die from exposure to the initial radiation from nuclear fission, and as radioactive materials entered people's bodies, residual radiation brought about various aftereffects. The injury has continued with people falling ill to this day. Use of the atomic bomb created a hell on earth that defies description.

One *hibakusha* who experienced this apocalyptic hell could only express his anger towards "the cruel atomic bomb that robbed us of all human dignity" with his cry, "Give me back my humanity!"

The *hibakusha* deplore those who dropped the atomic bomb, and declare that, "dropping a cruel bomb like this is not something a human would do. It is the work of the devil."

The *hibakusha* who lost everything to the atomic bomb established the Japan Confederation of A- and H-Bomb Sufferers Organizations. They demand that the Japanese government that began the war allow "no more *hibakusha*," eliminate all nuclear weapons, and compensate victims of the atomic bombing. Toward the US, they demand an apology to the victims of the atomic bomb and to promise never to use atomic weapons again. They continue this struggle today, more than half a century later.

The legal judgment that atomic bomb use violates international humanitarian law is valid

It is clear that atomic bomb use violates international humanitarian law. This is articulated in no ambiguous terms in the Tokyo District Court's decision on the Atomic Bomb Case (Shimoda Case) of 7 Dec 1963 that states, "America's dropping of the atomic bomb violated international humanitarian law," and in the International Court of Justice's advisory opinion on 8 July 1996 on the illegality of nuclear weapon use. Nuclear-weapon states, however, ignore the legal judgments citing violation of international humanitarian law and continue to possess nuclear arms. The majority of UN member states-excluding those possessing nuclear weapons and the few non-nuclear weapon states that support them-agree with the legal judgment that use of nuclear weapons violates international humanitarian law and approve of a treaty to abolish nuclear arms.

Even states allowed to possess nuclear arms under the Non-Proliferation Treaty are required by the treaty to pursue negotiations in good faith on effective measures relating to nuclear disarmament, and the International Court of Justice's advisory opinion also states that "there exists an obligation to...bring to a conclusion negotiations leading to disarmament." In regard to this point, all nuclear-weapon states are extremely lacking in good faith. This lack of good faith is sustained by an enormous conglomeration working in the shadows that makes enormous profits from the manufacture, possession, upgrading and storage of nuclear weapons. If nuclear weapons are completely prohibited, both large and small companies in the US that are related to the nuclear industry would see their stock prices crash, and the US economy will face a crisis. So they are working hard to sustain the nuclear industry.

Bringing the enormous conglomeration that obstructs elimination of nuclear weapons to a natural end

It is difficult to make nuclear-weapon states take initiative or use their own capacity to renounce nuclear weapons. So there are two ways we can bring about the natural extinction of this conglomeration that profits from nuclear arms.

The first way is to expand the non-nuclear areas under Nuclear Free Zone Treaties, reducing the area where nuclear weapons can be used. In fact, the southern hemisphere is becoming non-nuclear by states becoming party to Nuclear Free Zone Treaties. This should be expanded to the northern hemisphere to cover the whole world.

The second way is to create a structure in every region of the world that makes war impossible (a small-scale united nations in each region). Typical examples are

the UN, EU, and the community towards which the Treaty of Amity and Cooperation in Southeast Asia aims to create. In Northeast Asia, there are the Six-Party Talks among Russia, China, North Korea, South Korea, Japan and the US. If the original purpose of the Six-Party Talks is realized, namely denuclearization of the Korean Peninsula, the continuation of this structure could lead to a six-party community in the future. If diplomatic negotiations were held to establish structures in Europe, South America, Africa, the Middle East, Southeast Asia, Northeast Asia, and every region of the world, armies and nuclear weapons would become white elephants, and in this way, nuclear arms and wars would disappear.

If the non-militaristic ideals of the Japanese constitution became the world's model, war would disappear

If every country adopted the non-militaristic model of the Japanese constitution, it would be a powerful force in building a system in each region of the world that made war impossible, as explained above.

The *hibakusha* experienced the horrors of nuclear war, which are the ultimate horrors of war. The ideals in the Japanese constitution are the embodiment of their cry of desire to live with human dignity. The ideals are also fundamental cautionary principles to prevent humanity from nuclear self-destruction.

Let us look at the Japanese constitution through the eyes of hibakusha. First, the preamble states that the Japanese people "resolved that never again shall we be visited with the horrors of war through the action of government," "recognize that all peoples of the world have the right to live in peace." In addition, Article 9 forever renounces war and the threat or use of force, and rejects maintenance of war potential and the right of belligerency of the state. These together make the Japanese Constitution a peace constitution through and through, stating that the Japanese people will not depend on military force for national security. We are "trusting in the justice and faith of the peace-loving peoples of the world" and "desire to occupy an honored place in an international society." It is indeed an embodiment of the hibakusha's prayer that war absolutely never be waged in this nuclear age.

Considering that the Constitution's principles are in the interest of all people living in this nuclear age, these principles can be universally shared.

We participated in the May 1999 Hague Appeal for Peace (attended by 10,000 people from 100 countries), and there we distributed 1,000 copies of our booklet entitled "Making the Japanese Constitution's non-militaristic philosophy a model for the world." As a result, the "Ten Fundamental Principles for a Just World Order" action plan was announced at the closing assembly. Its first principle

states: "Every Parliament should adopt a resolution prohibiting their government from going to war, like the Japanese article number nine." This was handed to then UN Secretary General Kofi Annan who had been invited to the general assembly.

We strongly felt that the world had entered an age in which the principles of the Japanese Constitution, embodying the cry of the hibakusha, would be internationally accepted.

The need for a movement to reform the Japanese government's neglect of the peace constitution

In spite of having an incredible peace constitution, Japan's successive governments have consistently ignored and ravaged the principles in it, and the public has not been able to stop this trend. The main reason for this is that the US government, which effectively controls Japan, has enforced political demands on the Japanese government to neglect the constitution for US interests. After surrender, together with the US-Japan Peace Treaty, Japan was forced to sign the Japan-US Security Treaty, obligating Japan to indefinitely allow US bases in locations around the country. In return, the US did not question the Japanese emperor's war responsibility and provided support for economic recovery. And even half a century later, Japan's subordinate position to the US has been maintained. In particular, the Japanese government has depended on the US nuclear deterrent for national security. The hibakusha have been continuously and deeply disturbed by this contradiction in which the evil weapon that causes them immense suffering is now being used to protect Japan. Even more, the ruling elite in Japan gained enormous economic profits as a result of trade with the US and the huge demand for military goods created by the large-scale wars that the US fought in Korea and Vietnam. This made Japan an economic power, and deepened the friendship between Japan and the US.

To realize a world free from war and nuclear arms where the principles of the peace constitution are the norm, those of us in the peace movement with the hibakusha must move to change the Japanese government's nuclear policy of dependence on the US nuclear deterrent for national security, and the policy of neglecting our own constitution for US interests. We also believe that the achievements of the international movement to eliminate nuclear arms has the power to change Japan's policies of subordination to the US, so we believe these two movements have a very close relationship.

A nuclear free world can be secured by sharing the hibakusha's memory and legacy

"No more *Hibakusha*: Association to inherit the memories and legacy of the *hibakusha*" was officially established in May 2012 in order to pass on to eternity the memory and legacy of the a-bomb survivors. The average age of hibakusha is now 78. They are decreasing in number, and their activities are beginning to weaken. This Association will at some point take up where the hibakusha leave off, and will take up the important challenge of how, as non-hibakusha, to carry on the legacy of the hibakusha. It is a challenge we must overcome. We can also look at this as a sign of reform and development.

The voices of hibakusha are essential for the realization of a nuclear-free world.

In order to create a nuclear-free world, respect for rule of law is an important way of thinking. However, even if countries agree with and sign a convention to eliminate nuclear arms, all it would take is for one country to violate the law, and that would be it. If it comes to war, it is likely that the law will be broken and nuclear weapons will be manufactured in order to win.

The most certain guarantee to ensure respect for the rule of law that agrees on elimination of nuclear weapons is for all of humanity to continue sharing the memory and legacy of the hibakusha's cry, "no more hibakusha!" Nothing else can guarantee nuclear arms elimination. This is our appeal from Japan, the country that suffered the ravages of nuclear war.

The Trials for Recognition of A-Bomb Injuries and the Feelings of Hibakusha

Masayoshi NAITO, Attorney at Law
Japan Association of Lawyers Against Nuclear Arms (JALANA)

1. Introduction

A-bomb injuries are disorders caused by radiation from the atomic bomb. The point of contention in the class action lawsuit concerning the recognition of A-bomb injuries begun in 2003 is whether or not the disorders suffered by the Hibakusha are late-onset effects of radiation from the A-bomb. Nationwide, 29 rulings in favor of Hibakusha have been won and a certain degree of change in the administrative recognition criteria has been gained.

Through a description of the institutional background to the A-bomb injury recognition trials and their progress, facts that have become clear from the lawsuits and the inhumanity of the A-bomb will be discussed in this paper along with the feelings of the Hibakusha.

2. Japan's legal institutions and recognition of A-bomb injuries in relation to Hibakusha

(1) Japan's legal institutions and Hibakusha

The A-bombs were dropped on Hiroshima and Nagasaki on 6th and 9th August 1945. The A-bombs devastated both cities in an instant, and by the end of 1945 had killed 140,000 people in Hiroshima and 70,000 people in Nagasaki. Further, Japan was under US military occupation until 1952, during which time the Hibakusha were neglected by the Japanese government, many of them dying in that period.

Following the Bikini Atoll incident in March 1954, in which many Japanese fishing boats were exposed to radiation during the first US H-bomb test at Bikini Atoll, the ban-the-bomb movement picked up steam, with over half the Japanese voters signing a petition to ban the A- and H-bomb. This resulted in the establishment of a legal institution for Hibakusha in 1956.

Under the current law, (the Hibakusha Aid Law-1995) people who were within a certain distance of ground zero at the time the A-bomb was dropped (within roughly four to five kilometers of ground zero) and others, for example, who entered within two kilometers of ground zero within two weeks of the bombing were issued with a Hibakusha Health Card, are entitled to become Hibakusha in the legal sense of the term and to be covered with self-pay portion of medical expense (It should also be noted that Japan has a universal health insurance

system.).

Japan, however, has not paid victim compensation for life or physical injury to any non-combatant war sufferers (including the 100,000 people that died in one night in the conventional bombing of Tokyo) except for some military personnel and others who cooperated with the war effort. This has been linked with the fact that Japan has taken no responsibility vis-a-vis the affected countries for the war of aggression.

Due to this equilibrium, the system of relief for Hibakusha has been limited to those who have suffered radiation effects, and there has been no compensation for those who died in the A-bomb explosions. In that sense, Japan's Hibakusha institutions are legal institutions that are specifically for survivors who have suffered radiation effects.

(2) The system for recognition of A-bomb injuries and the Hibakusha who arose

The system for recognition of A-bomb injuries is that in the case that a legal Hibakusha becomes ill, the illness is recognized as an "A-bomb injury" if a. the illness is due to the effect of A-bomb radiation, and b. treatment is recognized as being necessary. Hibakusha who are recognized as suffering from an A-bomb injury are paid a monthly allowance of just over 130,000 yen.

Nevertheless, over this long period of time, only very few of the legal Hibakusha have been recognized as suffering from A-bomb injuries (the number of legal Hibakusha immediately prior to the institutional reform of March 2008 as a result of litigation stood at around 250,000, but only approximately 2200 of these had been recognized as suffering from A-bomb injuries). This is because the Japanese government, based on the epidemiological data of the ABCC (Atomic Bomb Casualty Commission) and Radiation Effects Research Foundation, had limited recognition of A-bomb injuries to only specific malignant tumors and non-cancer disorders such as cataracts in people who were close-range Hibakusha, within two kilometers of ground zero (receiving a primary dose of 100mSv).

In the midst of this situation, Hideko MATSUYA, a Nagasaki Hibakusha who was exposed at the relatively distant range of 2.45 km demanded recognition of A-bomb injuries through litigation and won her case in the Supreme Court. Since the government, however, in contrast made the practical procedures for recognition of A-bomb injuries even stricter than they had previously been, a class action lawsuit came to be proposed through the advocacy of the Japan Federation of A- and H-Bomb Sufferers Organizations. This was a reflection of the feeling of the Hibakusha, who after more than 60 years since the end of the war, "wished fervently to condemn the cruel realities of the effects of the A-bomb before they

died."

3. Facts that came to light in the lawsuits for recognition of A-bomb injuries

(1) Effects of radioactive materials

The government (the defendant country) has claimed that there were almost no effects from residual radiation from the Hiroshima and Nagasaki A-bombs. The government has claimed that since Hiroshima and Nagasaki were mid-air explosions, the fireball did not come into contact with the land surface, the generation of induced radioactivity was extremely small, radioactive fallout also dispersed in the atmosphere, and the government has therefore also denied the existence of internal exposure due to residual radioactivity.

The government's claims, however, are clearly different from the actual experience of the Hibakusha. People who were exposed at some distance and then later entered the cities, coming within the vicinity of ground zero after the A-bomb had been dropped, suffered from acute symptoms such as hair loss (epilation), purple spots (purpra) and diarrhea. The courts rejected the government's claim that only close-range direct exposure led to radiation effects and recognized as A-bomb injuries illnesses of people who were exposed at a distance and those who were exposed when entering the cities later.

(2) Sustained radiation effects

Prior to the litigation, the government also had recognized as radiation effects only those leading to a small number of disorders such as specific malignant tumors and cataracts. However, even after recovering from acute symptoms, Hibakusha continued to suffer symptoms known as "Bura-bura disease," which is characterized by listlessness, easy pus formation, frequent colds, and a loss of stamina. Researchers at the time named this "chronic A-bomb symptom" and pointed out that some kind of change had taken place in the bodily constitution of the Hibakusha. This, however, was not widely perceived by the medical world, as it did not appear on any of the testing data at the time, and did not become a basis for recognition of A-bomb injuries by the government.

In the lawsuits for recognition of A-bomb injuries, symptoms that were seen in many Hibakusha were presented to the courts. Through these and research outcomes, including those of the Radiation Effects Research Foundation, it became clear that sustained internal inflammation, immunological deterioration, and so on were associated with A-bomb radiation. Building up these cases, the courts recognized that the effects of radiation had caused a continuation of suffering of Hibakusha over long periods of time and that effects of the A-bomb radiation led to not only cancer and malignant tumors, but also a wide range of illnesses such

as heart attacks, strokes, liver function disorder, and hypothyroidism.

4. Multiple effects recognized by the courts

Late-onset disorders due to radiation appear from a few years to several decades after the event, and it is also becoming clear that radiation has an effect on immunity. Through listening to the sufferings of many Hibakusha, the courts expanded the range of effects of radiation. Based on the facts that a large part of radiation effects are still not elucidated, that the A-bomb resulted in effects not only due to radiation but also due to heat rays and bomb blast, and that the A-bomb also brought about mental and social suffering associated with social collapse, the courts took a wide view of the effects of radiation as being synergetic with these factors.

5. The reason for the inhumane nature of A-bomb radiation being clarified

Here I will discuss the background to the strict A-bomb injury recognition.

(1) Limiting of the effects of radioactivity and the US cover-up

The surveys of Hibakusha that became the basis for the recognition of A-bomb injuries has its background in the fact that they were begun by the US for military purposes and that the truth of exposure was covered up.

Recognition of A-bomb injuries is based on Hibakusha survey data over the last more than half a century by the ABCC, set up in 1947 and its successor, the joint Japan-USA research organization, the Radiation Effects Research Foundation. ABCC, however, was originally established for US military purposes, and therefore Hibakusha were for nothing but data. In addition, the US occupation force was afraid of having the inhumanity of the A-bomb effects known to the world, and so banned research by Japanese doctors or took their data back to the USA with them.

The basic scheme for the epidemiological survey was completed by ABCC in 1955, but that period coincided with the period of "Atoms for Peace" proposed by US President Eisenhower, the resistance against Japan's ban-the-bomb movement triggered by the Bikini Atoll incident, and there is also a possibility that the survey was conducted for the purposes of researching the correlation between radiation and external radiation dose in connection with nuclear power stations. At the same time, there was at work in the US an intent to deny the fact that Hiroshima and Nagasaki were contaminated with residual radioactivity from the A-bombs. Because of that, the survey conducted looked only at the effects of the primary radiation that people were exposed to at the instant the A-bombs exploded.

(2) Neglect of the Hibakusha and the Japanese government's collusion in the cover-up

Meanwhile, the Japanese government also tagged along with the US in colluding with the cover-up of the truth of exposure, and carried out neither an independent study nor treatment, simply neglecting the Hibakusha. As a result, many lives were lost up to the time of the end of the occupation and the opportunity to carry out a survey of the truth of exposure was forfeited. Not only that, but in the class action lawsuit the broad and sustained effects of radiation were also denied, and the claim denying the effect of residual radiation continually made. This was not simply a problem of the system of recognition, but is seen to reflect the current nuclear and nuclear power policy of the Japanese government which views these ideas as objectionable.

6. The recognition of A-bomb injury trials, the inhumanity of nuclear weapons and the voices of the Hibakusha

(1) Military effectiveness and collateral effectiveness are discussed with regard to the inhumanity of nuclear weapons

When nuclear weapons are used in a way that they explode high in the atmosphere, the military effectiveness is small and always results in an inhumane killing and wounding of non-military targets.

On the other hand, if a military target such as underground silo is attacked with a nuclear weapon for military effectiveness, a huge amount of radioactive material will be generated. However, even in the case of the atmospheric explosion at Hiroshima and Nagasaki, there were impacts from radioactive materials over a wide area. When a ground attack is made, there are many different kinds of impacts on non-military objects over a wide range.

Seen in this light, it can only be said that there is no method of using nuclear weapons that would be legal under the International Humanitarian Law.

(2) Invisible radiation damage and the collapse of society

Japan has experienced Fukushima after Hiroshima and Nagasaki. The big problem in Fukushima is that the outer extent of damage due to radioactive materials is unclear, and because of this, before physical health effects appear, the division and collapse of human society, and discrimination, occur along with the social disquiet. Here, there are common points with the damage associated with biological and chemical weapons.

In the case that nuclear weapons are used, in combination with the spiritual, psychological and social damage due to the overwhelming destruction by heat rays and blast, there also occur a variety of complex problems associated with the as

yet indefinable radiation effects. In addition, in a future large-scale nuclear war, global-scale environmental contamination and, for example, starvation as a result of environmental destruction would overlap.

(3) The voices of the Hibakusha

We Japanese lawyers have come into contact with Hibakusha through the recognition of A-bomb injuries trials and so on.

After relating the situation at the time of exposure, some of the Hibakusha said they vomited and became ill after providing testimony to the court about their experiences at the time of the bombing. One Hibakusha said that she was shocked when the Korean War broke out. Because of what had happened at the end of the Second World War, she had thought that war would never happen again, and yet another war had occurred. That Hibakusha said that she was afraid to turn on the light in the evening. Further, saying you are a Hibakusha, meant that one would be the object of discrimination and prejudice.

Hibakusha have overcome experiences that are themselves painful to recollect, and while saying that one is a Hibakusha is to invite discrimination, Hibakusha have prevented a third nuclear attack by appealing to Japan and the world for No More Hiroshima, No More Nagasaki and No More Hibakusha. They have also become the plaintiffs in the recognition of A-bomb injury trials.

They have done this because of their sense of responsibility as "survivors" of the A-bomb hell. This is a responsibility that comes with those who have lived this far. As people who have heard their voices, we are obligated to inherit those feelings and responsibilities.

What the Shimoda Case Achieved and Its Contemporary Significance

Yasuhisa OGURA, LL. D.

Lecturer in International Law at Meiji University, Tokyo, Japan

Introduction

On December 7, 1963, the Tokyo District Court judged that the use of the A-bomb on Hiroshima and Nagasaki by the US military was in violation of international law. This was the first time in history that an organ of the judicial branch had judged the use of nuclear weapons to be illegal. This trial became known as the Shimoda Case* by taking the name of one of the plaintiffs, Ryuichi SHIMODA. This year (2013) marks the 50th anniversary of this historic judgment and I would like to consider here a reconfirmation of the final conclusion of the Shimoda Case and its contemporary significance.

The person who thought of pursuing legal liability for the use of the A-bomb was the lawyer Shoichi OKAMOTO of the Osaka Bar Association. The catalyst for this goes back to the Tokyo War Crimes Tribunal, in which the allied powers pursued the liability of the Japanese leaders for acts carried out during the Second World War. The lawyer Mr. Okamoto, who served as lawyer for Lieutenant General Akira MUTOH, felt a strong resentment at the time due to the fact that liability for serious violations of international law by the allied powers was not questioned for the reason that they had been the victors. Following the conclusion of the peace treaty, Mr. Okamoto decided to submit a civil lawsuit in the domestic court of the United States with the US government and President Truman as the defendants.

Mr. Okamoto sought the cooperation of the legal profession in the United States, but received a very cold reply. As the next best move, Mr. Okamoto decided to submit a civil lawsuit claiming that the Japanese government was indirectly liable for the US use of the A-bomb to the domestic Japanese court with the Japanese government as defendant. In other words, since the use of the A-bomb on Hiroshima and Nagasaki was in violation of international law, victims of the atomic bombing, the plaintiff in this case, had the right of claim to damage reparations from the United States government. However, since the Japanese government, the defendant, had forfeited the right of claim under Article 19 (a) of the San Francisco Peace Treaty, the plaintiff argued that the defendant was obligated to make damage reparations.

The lawyers Mr. Okamoto and Mr. Yasuhiro MATSUI, who was from Hiroshima and who would later become the Chairman of the Japan Association of Lawyers Against Nuclear Arms, acted as proxies for the case. In the trial, there was almost

no contention concerning the circumstances of the suffering due to the A-bomb, but much time was spent in problems of the interpretation of laws. What was surprising was that the defendant, the Japanese government, claimed that the use of the A-bomb on Hiroshima and Nagasaki was legal.

After roughly eight and a half years had passed since the initiation of the trial in April 1955, the Tokyo District Court found that the use of the A-bomb was a violation of international law. However, the court did not recognize the plaintiff's right to claim reparations for damage, and the claim itself was dismissed. The Japanese judicial system has adopted the three-tiered judicial system, and so it was possible for both the plaintiff and the defendant to appeal for a ruling from a higher court. The plaintiff, however, evaluated the fact that the illegality of the use of the A-bomb had been recognized and decided to forgo the appeal. The defendant, while expressing dissatisfaction with the result, also decided not to appeal, since the court's failure to recognize the right of claim for reparations was a formal victory for the defendant. As a result, the judgment of first instance became the final settlement. Further, the Act on Special Measures concerning Hibakusya was enacted in 1968 due to the momentum created by the Shimoda Case, and can be said to be one of the outcomes of the trial.

What the judgment in the Shimoda Case achieved

(1) The application of international law to new weapons

Since the A-bomb was a new weapon at the time it was used, there was no international law that clearly interdicted its use. However, that did not mean necessarily that the use of new weapons was legal. The verdict found that even if a weapon was new, existing international law (international customary laws and treaties) and "principles of international law which are the basis of the above-mentioned positive international laws and regulations" may be applied.

(2) "The prohibition of indiscriminate attacks"

The judgment performed a legal evaluation of the use of the A-bomb on Hiroshima and Nagasaki from the viewpoint of the "prohibition of indiscriminate attacks," one of the basic principles of the regulations on warfare. Firstly, the content of international customary law that was applied, *"Thus, we can say that it is a long-standing, generally recognized principle in international law respecting air raids, that indiscriminate aerial bombardment is not permitted on an undefended city and that only aerial bombardment on military objective is permitted"* was clarified. The court then evaluated the use of the A-bomb by the US as follows:

"Therefore, since an aerial bombardment with an atomic bomb brings the same

result as a blind aerial bombardment from the tremendous power of destruction, even if the aerial bombardment has only a military objective as the target of its attack, it is proper to understand that an aerial bombardment with an atomic bomb on both cities of Hiroshima and Nagasaki was an illegal act of hostility as the indiscriminate aerial bombardment on undefended cities."

It was in this way that the Shimoda Case Judgment found that the use of the A-bomb on Hiroshima and Nagasaki by the US military was a violation of international law. What should be kept in mind here is that the verdict did not find that the A-bomb itself was an illegal weapon, but that the use of the A-bomb against the undefended cities of Hiroshima and Nagasaki was illegal.

(3) "The prohibition of unnecessary suffering"

In addition, the judgment performed a legal evaluation from the viewpoint of the "prohibition of unnecessary suffering," one of the basic principles of the regulations on warfare. Firstly, it was confirmed that the use of weapons "that cause unnecessary and inhumane suffering" are prohibited under international customary laws. Further, the judgment stated that "we can safely see that besides poison, poison-gas and bacterium the use of the means of injuring the enemy which causes at least the same or more injury is prohibited by international law." Having clarified the provisions of law to be applied, the court evaluated the issue as follows.

"It is a deeply sorrowful reality that the atomic bombing on both cities of Hiroshima and Nagasaki took the lives of many civilians, and that among the survivors there are people whose lives are still imperilled owing to the radial rays, even today 18 years later. In this sense, *it is not too much to say that the pain brought by the atomic bombs is severer than that from poison and poison-gas, and we can say that the act of dropping such a cruel bomb is contrary to the fundamental principle of the laws of war that unnecessary pain must not be given.*"

The Shimoda Case Judgment thus held that the use of the A-bomb also violated the principle of the "prohibition of unnecessary suffering." However, this principle in the end only applies to combatants, the inflicting of damage on non-combatants itself being prohibited.

The Contemporary Significance

Since this year marks the 50th anniversary of the Shimoda Case Judgment, I would like to consider its contemporary significance. Firstly, the advisory opinion of the International Court of Justice of 1996 adopted almost the same framework as

the judgment in the Shimoda Case regarding the provisions of law to be applied. We can say that through the adoption of an almost identical framework in the two judicial judgments the framework for judging the illegality of the use of nuclear weapons became more robust.

Further, since the use of the A-bomb in August 1945, international humanitarian law, though still insufficient, has achieved some progress. We now have the Geneva Conventions of 1949, the 1977 Protocols Additional to the Geneva Conventions, the Rome Statute of the International Criminal Court, and others. The provisions of the law applied in the Shimoda Case Judgment have now become a little outdated.

However, the most important characteristic of this trial is that specific events were the object of the judgment. The present day cities of Hiroshima and Nagasaki have achieved recovery, and the objects that indicate the damage done by the A-bomb are preserved as monuments. Many of the Hibakusha who survived the A-bomb have also passed away. This indicates that the ability of the evidence substantiating the damage done by the A-bomb or the essence of the A-bomb itself has faded.

The Shimoda Case Judgment held that "The atomic bomb... has characteristics different from all kinds of weapons of the past in that it inflicts on the human body various kinds of pain and bad influences. We must say that the atomic bomb is a really cruel weapon." We can call the A-bomb a "cruel weapon," but in order to have it pronounced as a cruel weapon by judicial judgment requires sufficient evidence. Today, nearly 70 years since the use of the A-bomb, it is extremely difficult to amass that evidence. The fact that the Shimoda Case Judgment based its legal evaluation of the essence of the A-bomb on the testimony of Hibakusha means that its significance should never diminish. And we pray that it will never diminish.

* An English translation of the verdict is available on the website of the International Committee of the Red Cross:

<http://www.icrc.org/ihl-nat.nsf/276c23458e6a0d2441256486004ad099/aa559087dbcf1af5c1256a1c0029f14d!OpenDocument>

Title: Shimoda et al. v. The State, Tokyo District Court, 7 December 1963

Date: 07.12.1963

Source: *Hanrei Jiho*, vol. 355, p. 17; translated in *The Japanese Annual of International Law*, vol. 8, 1964, p. 231.

Emerging Rights to the Reparation of Hibakusha and Nuclear Disarmament

Toshinori YAMADA*

Introduction

The Final Document of the 2010 NPT Review Conference noted that "[t]he Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law."¹ This perception has later come to be held in common with other non-NPT parties, with the exception of Israel, through various resolutions in the UN General Assembly.² At the same time, the above-mentioned Final Document also states that the Review Conference "affirms that all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons."³ Various countries today, in the process of nuclear disarmament, cannot deny that a catastrophic humanitarian outcome would result from the use of nuclear weapons and that the relevant international laws should be observed. At the same time, the inhumanity of the use of nuclear weapons and the observance of the relevant international laws must be appropriately positioned in the "necessary framework" for the achievement and maintenance of "a world without nuclear weapons."

The Human Suffering of Hibakusha in Hiroshima and Nagasaki as the core element of "humanitarian impact of nuclear weapons"

The existence of victims (Hibakusha) of the use of nuclear weapons is one of the centermost issues of the catastrophic humanitarian consequences of their use. The dropping of the atomic bombs on Hiroshima and Nagasaki has proven that catastrophic humanitarian consequences arise from the use of nuclear weapons. Concerning the two atomic bombs dropped in 1945, it is said that "[t]he number of killed and wounded, to say the least, amounted to more than 70,000 and 50,000 respectively, in Hiroshima, and to more than 20,000 and 40,000 respectively, in

* Lecturer in International Law at Meiji University, Board Member of the Japan Association of Lawyers against Nuclear Arms (JALANA), and Director of the International Association of Lawyers against Nuclear Arms (IALANA).

¹ See *The Final Document of the 2010 NPT Review Conference*, Conclusions and recommendations for follow-on actions, NPT/CONF.2010/50 (Vol. I), p. 19.

² In 2012, the above-mentioned sentences in the NPT Final Document were referred to in the UNGA Res. 67/33 (proposed by Malaysia), 67/34 (proposed by NAC) and 67/59 (proposed by Japan). India, Pakistan and DPRK voted for UNGA Res. 67/33, and DPRK also for 67/34, but Israel voted against both.

³ See *supra*. note 1, p. 20.

Nagasaki" (Judgment in the Shimoda Case). The explosive power emitted from the atomic bombs dropped on Hiroshima and Nagasaki is said to have been equivalent to 16 kilotons and 21 kilotons, respectively, of TNT. The energy possessed by all the nuclear weapons in the world as of 2013 far exceeds that of the bombs dropped on Hiroshima and Nagasaki. At this Oslo Conference, it is of primary importance that the consequences of the use of the nuclear weapons that exist in the world today be accurately perceived in the light of the experience of Hiroshima and Nagasaki.

The legal status of Hibakusha in the Shimoda Case Ruling

At the same time, we must also take note of the fact that the relief for these Hibakusha is beginning to be requested under "applicable international law, including international humanitarian law." Since Hiroshima and Nagasaki, developments have taken place in international law relating to relief for Hibakusha that cannot be overlooked.

In the so-called Shimoda case trial, the judgment handed down by the Tokyo District Court in Japan on December 7, 1963, 50 years ago, while sanctioning the dropping of the atomic bombs as breaches of international law, dismissed the claim for the payment of damages against the Japanese government.⁴ The plaintiffs asserted that Japan's waiver of their claims for damages against the US under domestic and international law gave rise to an obligation for the government of Japan itself to pay damages. The three main reasons for the dismissal of their assertion were as follows. (1) "Generally speaking, the subject of a right in law is a person, who has the possibility of asserting his rights and of being bound by his duties in his own name. Accordingly, in order for a person to be a subject of a right in international law, there must be the possibility for him to assert his right and be bound by his duties in his name. It is still proper to understand that individuals are not the subject of rights in international law, unless it is concretely recognized by treaties as seen in ... [the] example of mixed arbitral tribunals. ... [T]here is no general way open to an individual who suffers damages from an illegal act of hostility in international law, to claim damages in international law." (2) The right of an individual to bring a claim under international law does not exist in domestic courts in either Japan or the USA (this being due to the principle of jurisdictional immunity of a foreign state under international law recognized in Japanese Courts and to the legal theory of so-called Sovereign Immunity under the

⁴ See Shimoda et al. v. The State, Tokyo District Court, 7 December 1963, *Hanrei Jiho*, vol. 355, p. 17; translated in *The Japanese Annual of International Law*, vol. 8, 1964, p. 231, available via <<http://www.icrc.org/ihl-nat.nsf/WebALL!OpenView>>.

law of the USA). (3) Since with regard to a claim under municipal law, the individual cannot ask for redress before the courts of Japan or the United States, there is no admitting the existence of even the claims in municipal law. Reflected here are, as pointed out by Judge Cançado Trindade of the International Court of Justice, "the insufficiencies of an international legal order being conceived and erected on the basis of an exclusive inter-State system."⁵

Emerging Rights to the Reparation of Hibakusha

Contemporary international law, however, is beginning to confirm the necessity for the rights and relief of individual victims of breaches of international humanitarian law and international human rights law, including Hibakusha.

Firstly, the right to effective relief is recognized for victims of human rights abuses. Article 8 of the 1948 Universal Declaration Human Rights stipulates that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Article 2 (3) of the International Covenant on Civil and Political Rights stipulates that "[e]ach State Party to the present Covenant undertakes...[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." In addition, Article 6 of the International Convention on All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 13 and 41 of the EU Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 25 and 63 of the American Convention on Human Rights, Article 21 (2) of the Banjul Charter (African Charter on Human and Peoples' Rights), and so on all stipulate the guarantee of an effective remedy against human rights violations.

In addition, a number of human rights supervising bodies have expressed their opinions regarding violations of human rights during armed conflicts, and that jurisprudence is accumulating. Among the cases of human rights violations are included those committed by state organs and agents during military operations, and the various human rights supervising bodies passing judgment on these is in fact leading to an accumulation of jurisprudence regarding laws on acts of hostility.⁶

Secondly, the practice of UN organs is supporting the formation of a consensus

⁵ See Antonio Augusto Cançado Trindade, *International Law for Humankind*, Nijhoff, 2010, p.427.

⁶ See Giulia Pinzauti, "Good Time for a Change: Recognizing Individuals' Rights under the Rules of International Humanitarian Law on the Conduct of Hostilities", in *Realizing Utopia The Future of International Law*, Antonio Cassese ed., OUP, 2012, pp. 575-576.

on the existence of individual rights in international humanitarian law. For instance, the UN General Assembly adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" in 2005.⁷ These principles and guidelines are confirmations of existing legal obligations,⁸ but in contrast to the title, the structure of the document places the obligations of states at the center and does not focus on the rights of victims. However, it is important that the document does confirm that the obligation of relief for victims lies with the state.

In the Wall Case Opinion, the International Court of Justice found "further that Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned," clarifying the obligation of reparation imposed on the perpetrating state.

Thirdly, since the 1990s, international commissions have been established for the purpose of reparations to individual victims following armed conflict. These are, for example, the UN Compensation Commission established by the Security Council following the Gulf War in 1991, the Commission for Real Property Claims of Displaced Persons and Refugees that was set up by the Dayton Peace Agreement following the end of the civil war in the former Yugoslavia, the Housing and Property Claims Commission established in association with the Kosovo War in 1999, the Eritrea-Ethiopia Claims Commission set up under the Eritrea-Ethiopia peace agreement in 2000, the Iraq Property Claims Commission established after the Iraq War in 2003, and so on.⁹ While each of these has differences, each of them has as its premise the notion that individuals have the right to claim reparation or restoration to the original state for damage due to breaches of international law stemming from, among others, armed conflict or suppression under a suppressive regime. A system to realize reparation for victims is also being prepared by the International Criminal Court,¹⁰ and this also is premised upon the right of the individual to receive reparation.

Fourthly, in domestic courts thus far there has been a strong tendency to defend state sovereignty against attempts to claim reparation by individuals, but there are signs of change appearing. For instance, the judgment of the Hague Court of Appeal in the Netherlands on July 5, 2011 indicated the responsibility of the Dutch

⁷ General Assembly Resolution 60/147, adopted on 16 December 2005, UNDoc. A/RES/60/147.

⁸ See Principles and Guidelines, preamble para. 7.

⁹ See Shuichi Furuya, "Draft Model Statute of an Ad Hoc International Compensation Commission" in International Law Association, Rio De Janeiro Conference (2008), *First Report of Compensation for Victims of War*, pp. 23-31, available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1018>>.

¹⁰ See Article 75 of the ICC Statute.

government to pay compensation in the case of the death of three Muslims in the Srebrenica massacre in 1995.¹¹

Fifthly, it is also noteworthy that soft law instruments have been drawn up that recognize the right to reparation to victims of breaches of international humanitarian law. For instance, in 2003 the International Law Association established and began work in the Committee on Reparation for Victims of Armed Conflict, and the ILA Hague Conference in 2010 adopted the Declaration of International Law Principles on Reparation for Victims of Armed Conflict (Substantive Issues) (Resolution 2/2010). Deliberations on the procedural aspect on the rights to reparation are currently in progress.¹²

Finally, in the various treaties on disarmament law there is a gradual trend toward the strengthening of regulations concerning relief for victims. The 1993 Chemical Weapons Convention contains merely a provision of assistance for State Parties (Article 10), but the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Convention) requires States Parties "in a position to do so" to "provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims" (Article 6), and coming to the 2008 Convention on Cluster Munitions, "Victim Assistance" is provided for in an independent provision (Article 5). The 2006 Convention on the Rights of Persons with Disabilities was influential in the preparatory work for this Convention.

Conclusion

These practices in international law strongly suggest that relief for Hibakusha is demanded in law and that reparation for Hibakusha is recognized as a right in international law.

Naturally, there are many issues. Rigorous academic examination will be necessary to determine whether or not from these various practices the rights of Hibakusha are established as *lex lata* in general international law. Further, even if the right of Hibakusha to reparation is realized, what form of relief will be considered for not only future possible Hibakusha but also past (and currently existing) Hibakusha is also a question that will require examination.

Nevertheless, those who would use nuclear weapons in the future will at least be unable to ignore relief for any possible future Hibakusha, and it is clear that they

¹¹ English translation of the Ruling of July, 5, 2011 of the Court of Appeal in The Hague in the Srebrenica case, is available at < <http://www.rechtspraak.nl/Organisatie/Gerechtshoven/Den-Haag/Nieuws/Pages/RulingofJuly,5,2011intheSrebrenica-case.aspx>>.

¹² See documents of the Committee, available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/1018>>.

must be prepared to meet those costs. It should be unnecessary to argue that the way to avoid this burden would be to not use nuclear weapons any more.

In addition, it should be noted that the notion of "guarantees of non-repetition" is also becoming established as one form of reparation for victims (2005 "Principles and Guidelines," Principle 18 and 23,¹³ and the 2010 ILA Declaration, Article 10¹⁴). This signifies that the pledge never to use nuclear weapons again can be considered as relief for Hibakusha.¹⁵ This not only conforms to the current assertion of Hibakusha, the realization of this form of reparation also encourages, from a different perspective, the implementation of the obligation "to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament."¹⁶ Thus the establishment of the right of Hibakusha to reparation encourages nuclear disarmament and is an indispensable element in the "necessary framework" to achieve and maintain "a world without nuclear weapons."

¹³ Principle 18 stipulates "[i]n accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non repetition" and Principle 22 exemplifies measures of guarantees of non-repetition.

¹⁴ Article 10 provides "[t]he responsible party is under an obligation to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."

¹⁵ See documents released by Nihon Hidankyo (Japan Confederation of A- and H-Bomb Sufferers Organizations), available at <<http://www.ne.jp/asahi/hidankyo/nihon/english/about/about3-01.html>>.

¹⁶ See Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, *ICJ Rep. 1996*, p.267.

No More *Hibakusha*
For a nuclear-free world

Kenichi Okubo, Attorney at Law
Secretary General
Japan Association of Lawyers against Nuclear Arms

Humanity and nuclear arms cannot coexist

"No More Hibakusha" is a message from the hibakusha to all of humanity. They are calling for the elimination of nuclear weapons as witnesses of history who themselves experienced the devastating effects of nuclear arms.

We cannot discuss our present or future without knowing what nuclear arms have done. We must lend our ears to the testimony of hibakusha. And we must remember those who have lost their chances to speak.

I believe that the use of nuclear arms violates international law and is incompatible with the principles of humanity and justice that are at the foundation of the law. This is because when one knows the reality of what atomic bombs do, one believes that nuclear arms and humanity cannot coexist and that law does not allow for nuclear arms.

I want to eliminate nuclear arms, and I believe that this is possible.

The reason I want to eliminate them is because nuclear weapons are an absolute evil, and they could annihilate human society. If used, they would most likely lead directly to human annihilation. Even unused, they are useless, dangerous, require enormous amounts of money, and lead to a gradual demise.

Elimination of nuclear arms is possible

I believe it is possible to eliminate nuclear arms because they are man-made and are tools of government policy.

Earthquakes and tsunami are natural phenomena, but humans make nuclear weapons. Without human will and action, nuclear weapons would not exist. The dismantling of existing nuclear weapons is possible. Though issues of how to handle nuclear materials remain unresolved, ensuring that these materials cannot be used for weapons is not so difficult.

In addition, wars are the violent realization of a nation's political will. When government is structured so that the government's will is a reflection of the will of the people, control by the people is possible. The fact that nuclear weapons have not been used since Nagasaki is proof of this. It is possible for nuclear weapons to be eliminated by the will of the people.

Our task, therefore, is first to understand how inhumane nuclear arms are, to oppose the values and logic of nuclear arms proponents, and to build political will towards elimination of nuclear weapons. Here, the inhumanity of nuclear weapons is not in question, so I will examine the logic of those who rely on nuclear weapons.

Reasons for the atomic bombing

US President Truman issued a press release immediately after the atomic bombing in which he said, "Sixteen hours ago an American airplane dropped one bomb on Hiroshima...the largest bomb ever yet used in the history of warfare. ... The Japanese began the war from the air at Pearl Harbor. They have been repaid many fold. ...The force from which the sun draws its power has been loosened against those who brought war to the Far East. ...It was to spare the Japanese people from utter destruction that the ultimatum of July 26 was issued at Potsdam. Their leaders promptly rejected that ultimatum."

Truman had a precise understanding of the characteristics of nuclear energy when he chose to say, "repaid" for Pearl Harbor, "loosened against those who brought war to the Far East," and "spare the Japanese people from utter destruction."

And it continues to be argued in the US that to occupy Japan would have required the sacrifice of one million more American lives and twice the number of Japanese, and that the atomic bomb ended the war and saved those lives.

Reasons given for the atomic bombing are, 1) immediate end to the war, 2) immediate liberation from occupation and colonization, 3) repayment for Pearl Harbor.

Do the reasons for the atomic bombing justify the suffering of the hibakusha?

Do the above reasons legitimize the indiscriminate, large-scale, cruel massacre and devastation, and the continuing suffering of the hibakusha brought about by the atomic bombing? This is what is in question. Even if it was for the militaristic rationale of winning, humanity and justice demand that certain methods and means of combat are unacceptable, and this is the reason we have international humanitarian law.

Let me introduce two facts related to this.

On 10 August 1945, the Japanese Imperial Government issued its "Protest against the Attack of a New-Type Bomb by American Airplane." This Protest points out that the indiscriminate and cruel nature of the atomic bomb violates international law, and it condemns the US government in the name of all of

humanity and civilization.

In the "Atomic Bomb Case" of 1963, the Tokyo District Court ruled that the US nuclear bombings violated international law.

Both the Japanese government and court have thus taken the view that the use of nuclear arms is a violation of international law, humanity and civilization. One is reminded here that even the US had argued for the elimination of nuclear weapons right after World War II.

Arguments for nuclear weapons

As the only country to have suffered atomic bombing, the Japanese government is calling for the elimination of nuclear weapons. This abolitionist position, however, cannot be taken at face value, because the Japanese government relies on US nuclear deterrence for national security.

Essentially, the logic behind the nuclear deterrence theory is that the threat, "we will annihilate your country with nuclear retaliation if you try to attack our country" would "deter" the military action of the other country. Japan is a very close ally of the US, which possesses nuclear arms, and Japan wants to deter other countries' military actions by staying under this "nuclear umbrella."

As long as countries use this nuclear deterrence logic and try to secure their safety with nuclear weapons, they will never take initiative to eradicate nuclear weapons of their own accord. This is because as long as national security depends on military strength, it would go against reason to give up nuclear arms, which are the most powerful weapons in existence. As long as a nation's safety is secured by military strength, nuclear weapons will not be eliminated.

Because nuclear deterrence proponents know very well how effective nuclear weapons are, they want to keep their own nuclear arms but prevent other countries from having them. This is the "non-proliferation" logic. When it comes to non-proliferation, these unfair and self-serving nuclear deterrence proponents work with zeal, but when it comes to nuclear arms reduction, no one could be more indolent. This is why nuclear-weapons states tend to neglect their responsibilities under Article 6 of the Nuclear Non-Proliferation Treaty (NPT).

Nuclear deterrence theory accepts the need and utility of nuclear weapons and is contradictory to nuclear arms elimination.

President Obama's proposal for a "world without nuclear weapons"

President Obama's "world without nuclear weapons" is, aside from the rhetoric, a proposal to prevent a nuclear attack on the US should nuclear weapons fall into

the hands of terrorists. According to Obama, the radical policy to prevent nuclear attack is to eliminate nuclear weapons. His proposal is practical and logical, but is not informed by the catastrophe brought about by the bombings of Hiroshima and Nagasaki. This is clear from his statement that the US and its allies should retain their nuclear arms until their countries' security can be ensured. His logic is the newest version of the nuclear deterrence theory.

In addition, in his Nobel Peace Prize acceptance speech, Obama endorsed the concept of "a just war." He is still under the spell of the nuclear deterrence theory and has not let go of wars for justice. As long as he is particular to this set of values and logic, President Obama may escape assassination, but will never be able to realize "a world without nuclear weapons" in his lifetime.

Obama's failed logic

Why not in his lifetime? Because if other states or non-states adopt Obama's logic, the US can never let go of its nuclear arms. In actuality, North Korea thinks they need nuclear arsenal to prepare for US use of military force. North Korea will most likely retain its nuclear weapons as long as it feels the US is a threat, and as long as North Korea does not dismantle its nuclear arms, the Japanese government will stick to its position that it needs the US "nuclear umbrella." This puts the US, Japan and North Korea all on the same level, making nuclear weapons a requirement for their nations' independence and security.

To say that the US's nuclear weapons are necessary but North Korea's are impermissible is an unconvincing and self-righteous claim. Here too, the contradictions in entrusting a nation's security to nuclear arms are evident. Nuclear weapons are a threat to everyone. The logic that one party may possess these weapons of terror but others cannot is incompatible with "trusting in the justice and faith of the peace-loving peoples of the world" (Japanese Constitution Preamble).

Eliminating nuclear weapons and abolishing war

In 1955, Bertrand Russel and Albert Einstein issued a manifesto declaring, "whatever agreements not to use H-bombs had been reached in time of peace, they would no longer be considered binding in time of war, and both sides would set to work to manufacture H-bombs as soon as war broke out, for if one side manufactured the bombs and the other did not, the side that manufactured them would inevitably be victorious." Though written in the Cold War era, the incisiveness of this widely endorsed manifesto in describing the characteristics of nuclear weapons endures to this day.

As long as the goal is to win war, having nuclear weapons is extremely effective because there is no way to counter them. If used, however, they threaten the survival of the human race.

This manifesto also warns that an agreement made in times of peace to prohibit use of nuclear weapons would be trampled upon in times of war. This is why it is necessary to go beyond prohibiting use of nuclear arms and to aspire to their complete elimination.

In addition, the manifesto points out that as long as a system of war remains, there will always be the threat of nuclear retaliation and human extinction. This suggests that those who aspire to the eradication of nuclear arms also need to aspire to abolish war.

As long as we try to resolve things through military might and war, it will be impossible to let go of the "ultimate weapon", and if used, there will be no conquerors and no conquered. If we are to wish for a nuclear-free world, coupling it with a call for the abolition of war would be powerfully effective.

Article 9 of the Japanese Constitution does not stop at the renunciation of war and use of force, but renounces war potential and the state's right of belligerency. Our task is to call for both elimination of nuclear weapons and internationalization of the Japanese Constitution.

Countering the real crisis

The real crises that humanity faces is that in spite of having 20-some thousand nuclear warheads, Nuclear Weapons Convention negotiations have not begun.

In today's international community, not enough is shared about how inhumane nuclear arms are, and nuclear arms proponents dominate the political scene.

We must change the government's position of reliance on nuclear weapons, and we must counter the forces that disregard human life and that put profit before people.

To be free from fear and want, and to live in peace, we must continue this fight. We will surely be victorious.