

**JALANA Report to the 2016 IALANA  
General Assembly  
(Lausanne, Switzerland)**

April 2016

Japan Association of Lawyers Against Nuclear Arms(JALANA)

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# **JALANA Report to the 2016 IALANA General Assembly (Overview)**

April 2016

**Kenichi Okubo, Secretary-General  
Japan Association of Lawyers Against Nuclear Arms**

This is the report from JALANA to the IALANA General Assembly, to be held in Lausanne, Switzerland on April 16 and 17, 2016. It comprises the following papers.

## **1. Report on JALANA's Recent Activities (Yaeka Inoue, JALANA Secretariat)**

This is the JALANA activity report from April 2015 to the present. It describes JALANA's involvement in the NPT Review Conference, the International Day for the Total Elimination of Nuclear Weapons, Discussion Meeting on the RMI's Nuclear Zero Lawsuits, the World Nuclear Victims Forum, the Nationwide Research and Exchange Conference in Fukushima on Nuclear Power and Human Rights, and more.

## **2. Breakout Session: "Nuclear Weapons and Nuclear Energy" Opening Remarks and Proposing the Issue (Takeya Sasaki, Lawyer)**

This report is the speech delivered by JALANA President Takeya Sasaki in the "Nuclear Weapons and Nuclear Energy" session of the Nationwide Research and Exchange Conference in Fukushima on Nuclear Power and Human Rights held this March 19 and 20 in Fukushima. Since the Fukushima nuclear accident on March 11, 2011, people including lawyers' organizations, academics, journalists, and citizen activists have held meetings around Japan on the themes of how they can work together to obtain relief for accident victims, and how to phase out nuclear power. This year's conference is the third. As one of the constituent organizations since the outset, JALANA has taken a stance that opposes the use of fission energy for weapons as well as its "peaceful use." This speech also deals with North Korea's recent nuclear testing.

## **3. Nuclear Deterrence Brings About Nuclear Proliferation (Kenichi Okubo, Lawyer)**

This report argues that because North Korea's persistent development of nuclear weapons is based on the "doctrine of nuclear deterrence" as in other nuclear weapons states, all countries must renounce the nuclear deterrence doctrine in order to make North Korea give up possession of nuclear weapons. The report points out that nuclear deterrence not only takes us farther from abandoning nuclear weapons, but also invites nuclear proliferation.

## **4. Approaches to Nuclear Disarmament and the Marshall Islands Cases (Toshinori Yamada, LL.M., Lecturer in International Law at Meiji University)**

This report argues that the Marshall Islands government's "Nuclear Zero Lawsuits" perhaps offer a way to resolve the clash between various approaches to nuclear disarmament. It also asserts that if these lawsuits enter the merits phase, they might well provide guidelines of some utility for nuclear disarmament negotiations. Although we do not yet know how the ICJ will deal with this issue, it is hoped that this will be an opportunity to totally rethink the character of the international community and its

dependence on nuclear weapons.

#### 5. Big Challenge of Nuclear Zero Lawsuits from Tiny Islands (Seiichiro Takemine, Ph.D., Associate Professor at Meisei University)

Using the lawsuits filed in the International Court of Justice by the Marshall Islands as a springboard, and with the existence of global Hibakusha taken into consideration, this report is a proposal for seeking a promise that no one will ever be harmed by nuclear weapons happen again.

#### 6. An Initiative to Legislate the Three Non-Nuclear Principles (Kazue Mori, Lawyer)

This report concerns the initiatives directed at legislating the “three non-nuclear principles,” which are held to be Japan’s national policy. These are the political principles stating that Japan will not make nuclear weapons, possess them, or allow their entry into Japan. However, Japan’s leadership is disinclined to make these political principles into a legal norm. The Japan Federation of Bar Associations (a national organization with which lawyers must register in order to practice) is considering and making preparations for the legislation of an “Anti-Nuclear Weapons Law.” This report describes the current status of those efforts.

#### 7. How to Face the People Living in Radiation-Contaminated Areas, From the Viewpoint of Peace Studies (Atsuko Shigihara, Environment and Peace Study Group)

This report’s keynote is the seriousness of the continuing damage from the Fukushima nuclear accident. Victims still suffer anxiety toward their future livelihoods and survival in relation to matters such as anxiety about health damage, decisions about whether to return to their homes or relocate, deep divisions among residents of disaster-stricken areas, and the discontinuance of support. The report questions a mode of social development and an international order which force life-threatening sacrifices on people in not only Japan, but around the world.

#### 8. Social Structure Reform Aimed at Abolishing Nuclear Weapons (Yuko Takabe, Doctoral Program Graduate Student)

This is a report on the “right to peace,” which has been under discussion by the UN Human Rights Council since 2008. Attempts to create a legal system to directly restrict nuclear weapons would be difficult without consent from nuclear weapons states, but this report poses the question of whether it would be possible to take an approach based on human rights law, creating a legal system which would recognize the right of the individual to live in a world without weapons of mass destruction, and the right to petition for the abolition of nuclear weapons.

#### References

1. Fujiwara report on the No More Hibakusha Lawsuits
2. Declaration of the World Nuclear Victims Forum in Hiroshima
3. Statement in Support of the Marshall Islands’ Cases against Nuclear Weapons States in the International Court of Justice

4. Letter to the former RMI Foreign Minister Tony de Brum
5. Matsui paper: “The Historical Significance of the Shimoda Case Judgment, in View of the Evolution of International Humanitarian Law”

The Japan Association of Lawyers Against Nuclear Arms (JALANA) has previously submitted reports to IALANA General Assemblies (San José, Costa Rica and Szczecin, Poland), NPT Review Conferences, and at other opportunities. Likewise on this occasion JALANA offers a number of reports. We hope that these reports will facilitate a meaningful exchange of opinions with our friends around the world.

# Report on JALANA's Recent Activities

**Yaeka Inoue, Secretariat**

**Japan Association of Lawyers Against Nuclear Arms**

## 1. The 2015 NPT Review Conference

The Japan Association of Lawyers Against Nuclear Arms (JALANA) sent 12 delegates to the 2015 Review Conference of the Nuclear Non-Proliferation Treaty (NPT) that started on April 27, 2015 and to related events held in conjunction with the Conference. Before and during the first week of the Conference, the delegates distributed copies of a booklet "*Japanese Lawyers' Recommendations for the 2015 NPT Review Conference*,"<sup>1</sup> which compiled our analyses on nuclear issues.

JALANA was an endorsing organization of the "International Peace & Planet Conference for a Nuclear-Free, Peaceful, Just, and Sustainable World," Rally, March, and Festival,<sup>2</sup> and our members attended those events held in New York. On April 25, 2015, the second day of the Peace & Planet Conference, Takeya Sasaki, a lawyer and the president of JALANA, delivered a speech at a workshop entitled "Small Islands, Big Threats: The Marshall Islands Tackles Nuclear Weapons and Climate Change," and expressed our support for the Marshall Islands' ICJ Cases. His remark was welcomed by participants of the workshop including Mr. Tony de Brum, the foreign minister of the Republic of the Marshall Islands (RMI).

At a side event of the NPT Review Conference entitled "Strategies for Nuclear Weapons Abolition" held on April 30, Toshinori Yamada, an international law scholar and one of board members of JALANA and IALANA, delivered an opening presentation on the humanitarian approach to nuclear disarmament. At the end of the side event, President Takeya Sasaki, who witnessed the mushroom cloud of the atomic bomb dropped on Hiroshima when he was five years old, stressed the importance of looking directly at the facts of Hiroshima and Nagasaki, mentioning his own experience.

## 2. 9/26 International Day for the Total Elimination of Nuclear Weapons Event

JALANA is a member organization of the Japan NGO Network for Nuclear Weapons Abolition. That Network, co-hosted by the UN Information Centre (UNIC) in Tokyo, organized a symposium entitled "70 years since the atomic bombings: What can we do today?" on September 26, 2015, the International Day for the Total Elimination of Nuclear Weapons, at the UN University in Tokyo.

After the keynote speech, "What Hiroshima and Nagasaki mean to me" by Genichiro Takahashi, a novelist from Hiroshima, there was a panel discussion, "What we can do now for nuclear abolition?" Kaoru Nemoto, the director of the UNIC in Tokyo, facilitated the discussion. Panelists consisted of an official from the Japanese Foreign Ministry, an A-Bomb survivor, the Nagasaki Youth Peace Messenger, the deputy director-general of Japanese Red Cross Society, and a former chair of the

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<sup>1</sup> See <[http://www.hankaku-j.org/data/jalana/150428/all\\_japanese\\_lawyer's\\_2015.pdf](http://www.hankaku-j.org/data/jalana/150428/all_japanese_lawyer's_2015.pdf)>

<sup>2</sup> See <<http://www.peaceandplanet.org/>>

Hiroshima Peace Culture Foundation.<sup>3</sup>

### 3. Discussion Meeting on the RMI's Nuclear Zero Lawsuits

JALANA holds a general assembly and discussion meeting in November every year. After the annual assembly on November 14, 2015, JALANA organized a discussion meeting on the Marshall Islands' Nuclear Zero Lawsuits filed against nine nuclear-armed states before the International Court of Justice (ICJ). At the meeting, keynote lectures were provided by Toshinori Yamada, and by Seiichiro Takemine, a researcher of regional issues concerning the Republic of the Marshall Islands (RMI).

Mr. Yamada gave an overview of the lawsuits and explained the outlook. Beginning with the background, he pointed out the frustrating clash between nuclear-weapon states and non-nuclear-weapon states, which seek humanitarian nuclear disarmament, mentioning the ongoing process of the UN General Assembly Resolutions that deal with nuclear disarmament. Second, he explained the recent proceedings on the three pending cases against the United Kingdom, India, and Pakistan, which accept the compulsory jurisdiction of the Court. In all three cases preliminary issues such as jurisdiction and admissibility need to be overcome before the Court proceeds to the merits phase. Third, he summarized the argument by the RMI and possible issues in these cases. The RMI asked the ICJ to declare that the Respondents have violated their obligations to pursue negotiations in good faith leading to nuclear disarmament, and to order the Respondents to take all steps necessary to comply with their obligations within one year of the Judgment. If the proceedings on merits start, the RMI and nuclear-weapon states will probably argue over the interpretation of "effective measures" on nuclear disarmament in the NPT text. Mr. Yamada concluded that if the Court decides on the merits, the RMI's Nuclear Zero Lawsuits would provide some legal clues about what form nuclear disarmament should take, something that has been debated for decades.

Mr. Takemine reported how the Marshallese saw the Nuclear Zero Lawsuits and how to support the litigation. First, he introduced basic information on the RMI and two big problems that the Marshallese face: the legacy of nuclear tests and climate change. Second, he explained the purpose of the Nuclear Zero Lawsuits based on his interviews with the RMI Foreign Minister Tony de Brum, who plays a key role in the lawsuits. Third, Mr. Takemine pointed out three concerns shared by the local people: negative effects on US-RMI bilateral relations; unresolved compensation for the nuclear tests; and political disputes inside the country. Fourth, he stressed that the significance of these lawsuits is the RMI's call for assurance that nuclear tragedy will never be repeated, while raising awareness of the unending damage of nuclear tests that the Marshallese people have suffered for nearly 70 years. Finally, Mr. Takemine explored ways of supporting the Nuclear Zero Lawsuits. He stressed the importance of developing exchanges and mutual understanding between RMI local communities and international NGOs leading the litigation, suggesting their possible visit to the RMI. He added that Japanese society should also get involved in the RMI's initiative more actively.

JALANA carried a report of the above meeting in its newsletter issued in late January 2016. The previous issue of October 2015 also featured the RMI's Nuclear Zero Lawsuits.

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<sup>3</sup> For more information, *See*

<https://nuclearabolitionjpn.wordpress.com/2015/09/02/2015nuclearabolitiondayevent/>

#### 4. The World Nuclear Victims Forum in Hiroshima

The World Nuclear Victims Forum was held from November 21 to 23, 2015 in Hiroshima, commemorating the 70th anniversary of the atomic bombings on Hiroshima and Nagasaki. Victims of all manner of nuclear activity such as atomic bombings, nuclear testing, uranium mining, use of depleted uranium (DU) weapons, and nuclear plant accidents, as well as experts and activists on these issues, gathered and reaffirmed that all persons living in the nuclear age have the right not to be exposed to radiation. The Hiroshima Declaration adopted at the Forum is appended to this booklet.

At the Forum, JALANA was represented by President Takeya Sasaki, Secretary-General Kenichi Okubo, IALANA Vice-President Kenji Urata, and Shuichi Adachi, a lawyer in Hiroshima. Prof. Manfred Mohr also represented IALANA Germany and the International Coalition to Ban Uranium Weapons (ICBUW).

JALANA had a small meeting on November 19, 2015 with Manfred Mohr, who visited Tokyo before attending the World Nuclear Victims Forum in Hiroshima. During the meeting in Tokyo, we discussed not only IALANA projects but also measures to support all war victims, with reference to the concept of Toxic Remnants of War.

#### 5. The Third Nationwide Research and Exchange Conference in Fukushima on Nuclear Power and Human Rights

JALANA is a member organization of the “Nuclear Power and Human Rights” Network, which consists of various organizations that include lawyers, scientists, and journalists. The Network held the two-day “Third Nationwide Research and Exchange Conference in Fukushima on Nuclear Power and Human Rights”<sup>4</sup> on March 19 and 20, 2016 at Fukushima University.

Following the plenary session on the first day, JALANA organized a breakout session entitled “Nuclear Weapons and Nuclear Energy” for the second day. Even though Japan has experienced four nuclear tragedies in Hiroshima, Nagasaki, Bikini, and Fukushima, the Government still relies on nuclear weapons and regards nuclear power as a mainstay of energy. During our session, we analyzed the background for this situation and explored ways to make a clean break with nuclear weapons and nuclear energy. The opening address was delivered by Takeya Sasaki, the president of JALANA. Toshinori Yamada coordinated a panel discussion entitled “Why Can’t Japan Give Up Nuclear Technology?” The opening remarks and summaries of speeches delivered by the panelists come later in this booklet.

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<sup>4</sup> Reports on the past two conferences are available in *IALANA News* July/ August 2012 and April 2014.



## **Breakout Session: “Nuclear Weapons and Nuclear Energy” Opening Remarks and Proposing the Issue**

March 20, 2016

**Takeya Sasaki, Lawyer and President,  
Japan Association of Lawyers Against Nuclear Arms**

On January 6 of this year, the Democratic People’s Republic of Korea (North Korea) announced that it had successfully tested a hydrogen bomb.

Hydrogen bombs use fission bombs as triggers, which cause nuclear fusion with deuterium and tritium. Some are hundreds of times more powerful than the atomic bombs dropped on Hiroshima and Nagasaki, and therefore this recent test was a severe shock to those who have been advocating that humanity give up nuclear weapons. It is sickening to watch video images of people applauding the birth of satanic weapons that could wipe out humanity. We oppose this outrage because nuclear weapons cannot coexist with humanity.

That same day Prime Minister Abe issued a statement saying, “Japan lodges a serious protest against North Korea, and strongly condemns its nuclear test.” Major parts of the statement were as follows.

1. “The international community including Japan has repeatedly called on North Korea to fully comply with the relevant United Nations Security Council resolutions (UNSCRs), and not to conduct any further provocation, including nuclear tests and ballistic missile launches.”
2. “This nuclear test, which North Korea conducted today despite these calls, is totally unacceptable, as it constitutes a grave threat to Japan’s security and seriously undermines the peace and security of Northeast Asia as well as the international community, when considered together with North Korea’s enhancement of its ballistic missile capability which could serve as a means to deliver weapons of mass destruction.”
3. “The nuclear test by North Korea is a clear violation of relevant UNSCRs... and represents a grave challenge to the authority of the United Nations Security Council. In addition, it represents a grave challenge to the international disarmament and non-proliferation regime centered on the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).”
4. “It also violates the Japan-DPRK Pyongyang Declaration as well as the Joint Statement of the Six-Party Talks, and goes against the efforts to resolve various issues through dialogue with North Korea.”

For these and other reasons, Japan will “consider further measures,” i.e., implement sanctions on North Korea. The protest resolution issued by both Diet houses says basically the same thing.

This statement totally lacks the standpoint that nuclear weapons are inhumane weapons, and that humanity cannot coexist with them. There is no standpoint that the danger of nuclear weapons use, the result of which would be unacceptable, can be avoided only by abolishing all nuclear weapons.

If North Korea were to lodge a protest against this statement, it might go like this.

1. The basis of Japan’s national security is the US nuclear umbrella, and the muzzle of America’s nuclear cannon is aimed at North Korea. As such, Japan is threatening

North Korea with this nuclear deterrent.

2. Japan depends on the existence and might of nuclear weapons. While saying that ultimately it aims to abolish nuclear weapons, it pushes abolition into the distant future. It has no intention whatsoever of abolishing nuclear weapons immediately, and recognizes value in the existence of nuclear weapons. Japan practices forked-tongue diplomacy: On the one hand, Japan places itself under the nuclear umbrella and legislates the right of collective self-defense, while on the other hand, in its capacity as the only victim of nuclear weapons, it talks about abolishing them. Japan should stop this duplicity.
3. Japan says that the three non-nuclear principles — it will not make nuclear weapons, possess them, or allow their introduction into Japan — are national policy, but it had a secret agreement on nuclear weapons with the US and it made the prior consultation system nonfunctional, while the US will neither confirm nor deny that nuclear weapons are being carried by its military aircraft flying over Japan, or by its warships and submarines sailing Japanese waters. Judging by this, there is no guarantee at all that nuclear weapons will not be brought into Japan.
4. Japan talks about “the peaceful use of nuclear energy,” but as of the end of 2014 Japan had 47.8 tons of plutonium produced at its nuclear power plants and kept in Japan and abroad. What is Japan going to do with all that plutonium? There is talk of Japan arming itself with nuclear weapons, and in fact, Japan has the capability to make them at any time. Japan has enough plutonium to make at least 6,000 Nagasaki-type bombs!
5. In December 2015 Prime Minister Abe agreed in principle to signing a nuclear energy agreement making it possible to export nuclear energy to India, thereby lending a hand to nuclear proliferation. What’s more, India is not a signatory to the NPT. How is it that Japan is a nuclear power, yet there is no problem with protesting North Korea’s nuclear test and imposing sanctions?
6. The NPT is an unfair treaty. Nuclear weapons states make no effort toward disarmament, so the treaty is totally non-functional.
7. One more thing. Even though what we launched was a satellite, the Japanese government and media, on the basis of whose thinking we do not know, secretly decided to say that “it was actually a long-range ballistic missile launch,” and issued many statements and articles saying as much. Such deception! Is a missile a satellite? Does it orbit the Earth? Japan is a country which has deceived the people by rephrasing “tragic death” to “heroic sacrifice” and “defeat” to “pullback,” and by recasting “war loss” as “war end,” and “occupation force” as “forces stationed in Japan.” And the ship-to-air missiles on Japan’s Aegis ships are aimed at North Korea.

Why can’t the world give up nuclear technology (nuclear weapons and nuclear energy)? Japan has experienced Hiroshima, Nagasaki, Bikini Atoll, and Fukushima, yet it depends on US nuclear weapons, uses nuclear energy as a key energy source, and has entered into a nuclear energy agreement with India, thereby helping nuclear proliferation through nuclear energy exports. What is necessary, and what must we do, to make Japan squarely face its own attitude toward nuclear energy and weapons, and to make it abandon and part decisively with them? Pondering this question is the theme of this session.

Japan’s nuclear policy comprises four main elements: (1) Compliance with the three non-nuclear principles, (2) the ultimate abolition of nuclear weapons, (3) dependence on the US nuclear umbrella, and (4) the peaceful use of nuclear energy. Here we will shed light on the process of this policy’s formation and on its historical background, and give

thought to what we must do to part ways with nuclear technology. We must seek ways to have countries that depend on nuclear weapons and nuclear energy give these things up.

From 1946 to 1958 the US, against opposition, conducted as many as 67 nuclear tests in the Republic of the Marshall Islands, and in April 2014 the Marshall Islands government filed lawsuits against nine nuclear weapons states in the International Court of Justice. These are the Nuclear Zero Lawsuits.

The Application against Britain demands that the UK “take all steps necessary to comply with its obligations under Article VI of the NPT and under customary international law within one year of the Judgment, including the pursuit, by initiation if necessary, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control.”

Oral proceedings were conducted two times each for three cases against India, Pakistan, and Britain from March 7–16 across seven days excluding Saturday, Sunday, and March 15.

A small country with great courage exercised legal means against big countries. We support the lawsuits filed by the Marshall Islands, which has courageously taken a stand for all of humanity.

In the forenoon at this session we shall have a report by Meisei University Associate Professor Seiichiro Takemine, who has been to the Marshall Islands many times. His report is titled, “From the Marshall Islands: Lawsuits Filed in the International Court of Justice Seek Proof that Nuclear Damage Shall Not Happen Again.” This will be followed by a lecture on the theme “Why Can’t Japan Give Up Nuclear Technology?” by Kyodo News journalist Masakatsu Ota, who has followed nuclear issues for many years.

The third report will be “Japan’s Nuclear Policy and Anti-Nuclear Sentiment” by Fukushima University Associate Professor Akira Kurosaki, and the fourth will be “How to Face the People Living in Radiation-Contaminated Areas, From the Viewpoint of Peace Studies,” by Atsuko Shigihara, the co-representative of the Environment and Peace Study Group. This will be followed by questions and discussion.

This afternoon the fifth report, titled “Current State of the NPT System and the Challenges We Face,” will be delivered by Mr. Toshinori Yamada, who teaches at Meiji University and is also a director of the Japan Association of Lawyers Against Nuclear Arms. This will be followed by a panel discussion involving the speaker and presenters.

Let’s all work together to make this session a rewarding experience for everyone.

# **Nuclear Deterrence Brings About Nuclear Proliferation, with North Korea's 'Hydrogen Bomb' Test as an Example**

February 8, 2016

**Kenichi Okubo, Secretary-General  
Japan Association of Lawyers Against Nuclear Arms**

## **Introduction**

On January 6, 2016 the Democratic People's Republic of Korea (North Korea) announced that it had successfully tested a hydrogen bomb. The Japan Confederation of A- & H-Bomb Sufferers (Hidankyo) immediately protested with a statement titled "We Strongly Protest the Hydrogen Bomb Testing by the DPRK." Additionally, both houses of Japan's Diet adopted a resolution calling the test "a grave challenge to the international nuclear non-proliferation system and a violation of UN Security Council resolutions." The Japanese government announced its own enhanced sanctions on North Korea, and has sought a resolution for sanctions from the UN Security Council (as of this writing).

These all condemn North Korea for its "hydrogen bomb" test, but there are differences in the basis for condemnation. Hidankyo's statement says that the "DPRK is completely countering the efforts of the world to abolish nuclear weapons," the Diet says that the test is a challenge to "the international nuclear non-proliferation system," and the government's position is, "Let's start with sanctions."

## **Identifying the Problem**

Many people would like to stop North Korea's nuclear weapons development, and of course so would I. The problem is: What rationale and method do we use to accomplish that?

It would not be impossible to use the force of arms or other strong-arm means. Someone could eliminate the "threat of North Korean nukes" by launching an attack on North Korea and toppling the Kim regime. But it is clear from the current Mideast situation that the cost would be astronomical.

One should also keep in mind that North Korea had at one time given up nuclear weapons development as a result of the six-party talks, and that Iran has abandoned nuclear arms thanks to talks with concerned governments. This means that a peaceful resolution is possible.

Hidankyo says, "We hope very much that the governments of Japan and other countries refrain from using force to address the situation, and instead handle it rationally."

Truly, "rational response measures" are needed, and to that end we must find out what motivates North Korea's actions because understanding the North's motivation is the key to developing response measures.

## **Motivation for the Hydrogen Bomb Test**

North Korea has made statements including: "Korea has become a nuclear power in possession of the hydrogen bomb, and now has the most powerful nuclear deterrent," "Possession of the hydrogen bomb is a sovereign state's legal means for the right of

self-defense,” and “As long as the United States’ policy of hostility toward Korea is not eliminated, we will never give up nuclear weapons, and shall reinforce our nuclear deterrent.”

The *Rodong Sinmun* published an editorial stating, “Because Korea is outside the Nuclear Non-Proliferation Treaty, we are not subject to that treaty’s restraints,” “Our hydrogen bomb test does not violate international law,” and “Hydrogen bomb possession is a self-defense right which assures our country’s sovereignty and the people’s right to live.”

In other words, as long as the US does not end its hostile policy, North Korea will of course not stop developing nuclear weapons as a means of self-defense. North Korea is invoking the doctrine of nuclear deterrence.

### Doctrine of Nuclear Deterrence

The doctrine of nuclear deterrence is a threat which says, “If you attack our country, we’ll counterattack with nuclear weapons and cause severe damage to you, so don’t attack us!” It is a “theory” for assuring the security of one’s country.

This theory has been adopted by nuclear-weapon states and also by Japan, and is actually not illegal under international law. North Korea, Japan, and the US all implement their defense policies with dependence on this theory.

Needless to say, from the standpoint of seeking the abolition of nuclear weapons, one cannot connive at such a position. It was for this reason that Hidankyo stated, “We strongly protest North Korea’s nuclear test, no matter what reason it gives.”

However, although the resolution by both houses of the Diet and the government’s statement criticize North Korea’s nuclear proliferation, they make no mention of abolishing nuclear weapons. There is no persuasiveness at all in an argument to pressure North Korea to give up nuclear weapons while depending on them oneself. It only elicits the opposite outcome by strengthening North Korea’s will to counter its adversaries. This fundamental flaw is the reason that the UN Security Council resolutions and sanctions tried thus far have had no effect whatsoever.

### The Danger of Nuclear Proliferation

If governments prohibit the possession of nuclear weapons by North Korea, they should say, “We’re going to stop depending on nuclear weapons, so why don’t you stop, too?” That is the logic of the international community, which assumes that all nations large and small have equal rights, and it is a rational attitude. If one instead attempts to achieve nuclear non-proliferation in a dictatorial manner, failure will come sooner or later because such a position is self-centered and unfair.

As a matter of fact, in response to North Korea’s hydrogen bomb test, some people argue that South Korea should likewise arm itself with nuclear weapons. They say, “The Kim regime has declared that, no matter what, it will not renounce nuclear weapons. Henceforth the North will likely forge ahead in a bid to get hydrogen bombs, ICBMs, and SLBMs. South Korea must, like Japan, consider ‘the right to choose nuclear arms,’ in which a country has the ability to make nuclear weapons.” This would constitute the horizontal proliferation of nuclear weapons to South Korea.

As this shows, nuclear non-proliferation policy that depends on the doctrine of nuclear deterrence not only cannot stop North Korea’s nuclear weapons development, but also invites the danger of new proliferation. This situation highlights the inherent

contradiction of the nuclear deterrence doctrine.

### Renounce Hostile Policy

North Korea's motive for possessing nuclear weapons is believed to consist in countering the United States' hostile policy, and defending national sovereignty and the lives of its people. If the US abandons its policy of hostility toward North Korea and if North Korea trusts the US, North Korea would no longer have a motive for possessing nuclear weapons.

The US has wiped "rogue states" off the face of the Earth. And North Korea has been labeled a "rogue state."

The *Rodong Sinmun* editorial stated, "No country has ever tried to save Korea from the US nuclear threat. Korea has to depend on itself to defend its own fate." For that reason North Korea is moving ahead with vertical nuclear proliferation by developing a "miniature hydrogen bomb."

I have no intention of taking North Korea's side. However, I do think that the US should provide North Korea with negative security assurance. I do not think so just because North Korea will feel secure if its motive for developing nuclear weapons disappears, but because I hope that it will lead to denuclearization and peace in Northeast Asia.

### Conclusion

I condemn North Korea's hydrogen bomb test. Not only that, I also condemn the nuclear deterrence doctrine of nuclear weapon states and states dependent on nuclear weapons, and I want negotiations for abolishing nuclear weapons to be commenced, and an agreement reached quickly. I think that resolutions by the UN Security Council, whose permanent members are all in the nuclear club, and sanctions by Japan, which depends on the US nuclear umbrella, merely inflame North Korea's antagonism, and will not lead to North Korea's abandonment of nuclear weapons, or other desirable outcome.

There is a growing effort in the international community to abolish nuclear weapons, with a focus on their inhumaneness. This reveals a trend toward stopping the use of nuclear weapons to achieve national security.

We must not just criticize North Korea's testing and possession of nuclear weapons, but demand the realization of a world which transcends the doctrine of nuclear deterrence and does not depend on nuclear weapons.

On February 7 North Korea performed a de facto missile launch. It is developing a means to deliver nuclear weapons. The development of nuclear weapons and the development of their delivery vehicles go hand in hand. The more hostility directed toward North Korea, the more it will pursue military expansion, and that will cause further deterioration of the security climate. This is a situation known as a security dilemma.

# Approaches to Nuclear Disarmament and the Marshall Islands Cases

**Toshinori Yamada, LL.M.,**  
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## Introduction

On 24 April 2014, the Republic of the Marshall Islands (RMI) filed lawsuits against nine nuclear armed states (China, DPRK, France, India, Israel, Pakistan, Russia, UK, and US) in the International Court of Justice (ICJ), accusing them of not fulfilling their obligations with respect to the cessation of the nuclear arms race at an early date, and to nuclear disarmament. The cases instituted by the RMI in the ICJ might help mitigate conflicts among the different approaches to nuclear disarmament. Procedures in these cases are now at the stage of determining jurisdiction and admissibility. If the cases proceed to the merits phase, they are expected to provide some guidance for negotiation relating to world nuclear disarmament.

## Current situation and background of the Marshall Islands cases

A tiny island state in the North Pacific Ocean, the RMI is well known as a nuclear test site under US administration. Especially Bikini Atoll nuclear testing and the *Lucky Dragon No. 5* are deeply ingrained in the memories of the Japanese people. Under the Compact of Free Association with the US, the RMI has a close relationship to the US, which exercises strong leverage over it with respect to national defense and security. Nevertheless the RMI has sued nine nuclear weapons powers including the US at the ICJ. The claims are not based on RMI's own damage from nuclear tests, but on the defendants' violation of their obligations for nuclear disarmament under Article VI of the Nuclear Non-proliferation Treaty (NPT), to which the RMI is also a party. The plaintiff asks the Court to adjudge and declare violations by the defendants, and to order them to take all steps necessary to comply with their obligations for nuclear disarmament. Procedures are now in progress for three cases in which defendants have accepted the ICJ's obligatory jurisdiction, i.e., the UK, Pakistan, and India, and oral arguments are to start soon (as of this writing). These three defendant states do not admit the jurisdiction of the court or its admissibility. Judgements on the proceedings are supposed to be issued on these cases.

These lawsuits are supported by some civil society groups such as the International Association of Lawyers Against Nuclear Arms (IALANA) and the Nuclear Age Peace Foundation against the backdrop of the stagnation of nuclear disarmament efforts. This is the last year of President Obama's second term, and the United States presidential election year. In retrospect, at Prague in 2009 he actively proclaimed his resolve to seek a world without nuclear weapons and bring about nuclear disarmament, which brought him the Nobel Peace Prize later that same year. But how far has nuclear disarmament proceeded since then? Though the New START entered into force, negotiations for a much deeper weapons reduction have yet to start owing to confrontation between the US and Russia in recent years. The entry into force of the CTBT, to which Obama committed himself in Prague, has not been realized yet, and negotiations on a Fissile Material Cut-Off Treaty (FMCT) have yet to begin. In addition, nuclear powers are modernizing their nuclear weapons, which prolongs anxiety over nuclear proliferation. Terrorism is always a concern in connection with nuclear materials. In Japan's vicinity, the nuclear powers of the US, Russia, and China jostle against one another, and North Korea is now making nuclear weapons by means of repeated nuclear tests and missile launches.

Under international law, nuclear weapons states have an obligation to expedite nuclear disarmament. Article VI of the NPT provides an obligation to pursue negotiations in good faith on effective measures relating to nuclear disarmament. In fact, NPT Review Conferences held every five years are supposed to be the forum to review the implementation of that article. Although the 2010 Review Conference agreed on Action Plans for the three pillars of the NPT — nuclear disarmament, non-proliferation, and peaceful use of nuclear energy — the 2015 Conference failed to arrive at a consensus, and nothing substantial was achieved.

### Different approaches among states to nuclear disarmament

For a long time, negotiating groups of states have been formed around issues of nuclear disarmament, and have competed with each other. Since the end of the Cold War, the step-by-step approach of nuclear weapons states and the comprehensive approach of the Non-aligned Movement states have polarized the debate on disarmament. Additionally, several new groups, for instance the New Agenda Coalition (NAC) and the Non-Proliferation and Disarmament Initiative (NPDI), have appeared and stand between the above two camps with the aim bridging the gap between them. At about the time of the 2010 NPT Review Conference, there appeared another approach that focuses on the humanitarian consequences of nuclear weapons use. This is the “humanitarian approach” advocated by civil society and academia. Now an increasing number of states support and promote this approach.

The 2015 NPT Review Conference ended without any concrete outcome. Now the approaches to nuclear disarmament, including those mentioned above, are in competition with each other. The common focus during the last Review cycle has been on “effective measures” relating to nuclear disarmament in Article VI of the NPT. The obligations concerning negotiations in good faith on effective measures relating to nuclear disarmament under that article are too vague to unite all the approaches asserted by different states with their differing interests.

### Humanitarian approach to nuclear disarmament

Attention is now focused on how far this approach can expedite nuclear disarmament. This approach attempts to apply the same method to nuclear disarmament that realized major success in other fields such as anti-personal landmines and cluster munitions. It does not adopt the conventional viewpoint on security, but tries to stigmatize nuclear weapons by spotlighting the humanitarian suffering that they cause, thereby building a social norm for banning them, then elevating that to a legal norm. Civil society groups insist on starting negotiations on a treaty banning the use and possession of nuclear weapons (BAN Treaty) even without the participation of nuclear weapons states. In the 2015 United Nations General Assembly, many resolutions based on this approach were proposed and adopted. On the basis of one resolution, an Open-Ended Working Group (OEWG) meeting will be held in Geneva as a subsidiary body of the General Assembly. One of its mandates is to “substantively address concrete effective legal measures, legal provisions and norms that would need to be concluded to attain and maintain a world without nuclear weapons.” In that context a Ban Treaty is supposed to be discussed as one of options.

But the nuclear powers, especially the P5, are averse to the humanitarian approach. They opposed or abstained from the above UNGA resolutions. They unanimously opposed the resolution that established the OEWG. We cannot expect their attendance at that meeting.

### Significance of the Marshall Islands Cases

Against that backdrop, I would like to point out the significance of the Marshall Islands Cases. First, they squarely question the interpretation of Article VI of the NPT. The obligation



under that article is not to achieve nuclear disarmament itself, but only to “pursue negotiations in good faith” on effective measures relating to nuclear disarmament. So there is ambiguity on the meaning of the article. But in 1996, the ICJ issued an Advisory Opinion on the legality of the threat or use of nuclear weapons, in which it held that there exists an obligation to pursue in good faith and “bring to a conclusion” negotiations leading to nuclear disarmament<sup>1</sup>. Although there are many different views on this opinion, it suggests that the ICJ interprets Article VI as obligating the parties to achieve “a precise result” of nuclear disarmament.<sup>2</sup> Indeed the RMI asks the Court to clarify that point. Needless to say, the NPT is one of the most universal treaties in the world, and provides the only legal foundation to impose the obligation of nuclear disarmament on nuclear weapons states. A judicial reaffirmation in the Marshall Islands Cases that there exists an obligation to abolish nuclear weapons under the NPT would have great significance. In addition, the RMI argues that this is now customary international law, and in its lawsuits against the non-NPT nuclear powers India, Pakistan, Israel, and the DPRK, insists that they have the same obligation (currently two cases against India and Pakistan are in progress). If the customary nature of the obligation for nuclear abolition is recognized, it means the obligation is binding for all the states in the world, which would generate powerful momentum for the debate on nuclear disarmament.

Second, we can expect that this judicial clarification of the obligation for nuclear disarmament would have the effect of encouraging compromise among the various conflicting approaches to nuclear disarmament. The nuclear disarmament obligation is imposed equally on nuclear weapons states and non-nuclear weapons states. Both groups are subject to Article VI. The “effective measures relating to...nuclear disarmament” in the article are to be taken by all state parties, whether or not they have nuclear weapons. If the case offers guidelines on effective measures, they would create momentum for joint initiatives on nuclear disarmament.

Apart from Article VI, since the late 1950s nuclear disarmament has been required from the viewpoint of general and complete disarmament (GCD), to which many international instruments on nuclear disarmament refer. For instance, Article VI of the NPT also obliges the parties to negotiate on “a treaty on general and complete disarmament.” But in the 1996 Advisory Opinion the ICJ held that “there exists an obligation to pursue negotiations in good faith and bring to a conclusions leading to nuclear disarmament in all its aspect, under strict and effective international control.” It seems that the ICJ separated the obligation for nuclear disarmament from GCD in this opinion. In pursuing nuclear disarmament, the extent to which we consider the element of GCD to be a legal and political problem is one of the factors which have generated clashes among the approaches to nuclear disarmament. Some states invoke the GCD to argue for the validity of the step-by-step approach. On the other hand, the humanitarian approach tries to redirect the discourse from conventional security and does not concern itself with the GCD concept. The ICJ might provide some helpful hints in this regard.

Lastly, I would like to note that the question on the status of nuclear weapons under the NPT underlies this lawsuit. In the above Advisory Opinion addressing the legality of the threat or use of nuclear weapons, the ICJ concluded that “the treaties dealing exclusively with acquisition, manufacture, possession, deployment and testing of nuclear weapons, without specifically addressing their threat or use,” such as the NPT, “could... be seen as foreshadowing a future general prohibition of the use of such weapons.” But after mentioning other similar instruments such as the Tlatelolco or Rarotonga treaties, it did not view these treaties themselves as amounting to a comprehensive and universal conventional prohibition on the use, or the threat of use, of those weapons as such.<sup>3</sup> On the other hand, the ICJ suggests

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<sup>1</sup> *ICJ Reports 1996*, p. 267, para. 105 (2) F.

<sup>2</sup> *Ibid.*, p. 264, para. 99.

<sup>3</sup> *Ibid.*, p. 253, paras. 62–63.

that there exists an obligation to achieve "a precise result" of nuclear disarmament, as mentioned above. In this light, a possible understanding of this is that the ICJ saw nuclear weapons as "transitional" or "temporary" instruments for security that are to be abolished at a certain time in the future, and also saw the privileged status of nuclear weapons states as "transitional" or "temporal" as well.

The Applications by the RMI are mainly based on the understanding of the obligation for nuclear disarmament set forth in the 1996 ICJ Advisory Opinion. The main issue is compliance with that obligation, not the legality of the threat or use of nuclear weapons. Therefore one might say that there is no need to consider the status of nuclear weapons in the international community. But the RMI lawsuits mention "unacceptable harm to humanity" and invoke "the principles of humanity," "elementary consideration of humanity," and "law of humanity" in its Applications.<sup>4</sup> It seems that the plaintiff envisions the development of international law aimed at "international law for humankind,"<sup>5</sup> but its implications are not clear.

In reality, however, the role of nuclear weapons in real-world security is very great, and their possession is widely perceived to be enormously effective in international politics. The fundamental problem of how to view the status of nuclear weapons and nuclear weapons states arises in the Marshall Islands cases. Some new developments with regard to nuclear disarmament might appear during the proceedings of the Marshall Islands cases in coming years. These lawsuits offer an occasion to reconsider the desirable state of the international community.

For the time being, it is not clear whether the ICJ will address those questions head-on. It is quite possible that the court will hand down a negative judgement with regard to jurisdiction at the procedural stage. Concerned parties need to watch the proceedings closely.

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<sup>4</sup> For example see *the Application against the UK*, p. 4, para. 6.

<sup>5</sup> See A. A. C. Trindade, *International Law for Humankind: Towards a New Jus Centium*, 2nd rev. ed. -- M. Nijhoff, 2013. (Hague Academy of International Law monographs ; v. 8).

# Big Challenge of Nuclear Zero Lawsuits from Tiny Islands

Takemine Seiichiro<sup>1</sup>

## 1. A Small Country vs the World's Nuclear Weapons States

Can you imagine that a microstate with population of only about 60,000 has challenged the great-power nuclear states to abolish their nuclear weapons?

On April 24, 2014 the Republic of the Marshall Islands (RMI) filed lawsuits in the International Court of Justice (ICJ) against the nine nuclear-armed states of the United States, Russia, the United Kingdom, France, China, India, Pakistan, North Korea, and Israel. At the same time, the RMI has brought a suit against the United States in US Federal District Court. These are the Nuclear Zero Lawsuits.

This paper analyzes the legal cases based on field research in the Marshall Islands. It will identify the distinctive characteristics, and describe plans to support this challenge from the view of area studies on Pacific islands and peace studies.

## 2. The Marshall Islands and US Nuclear Testing

Even if you look at the world map, it is quite hard to find the Marshall Islands, which has filed the Nuclear Zero Lawsuits. The country is roughly between Guam and Hawaii in the Middle Western part of the Pacific Ocean. Because the country totals about 180 square kilometers, you may see the islands only as dots.

The Marshall Islands had been ruled by Japan for 30 years starting in 1914 during World War I, along with the present Federal State of Micronesia and Republic of Palau. These Pacific islands, therefore, were also a battlefield between Japan and the US in the Pacific War.

Having obtained the Marshall Islands from Japan as a result of the war, the US resumed nuclear tests in the islands after displacing the local people. Between July 1946, about a year from the Hiroshima and Nagasaki bombings, and 1958, the US conducted a total of 67 nuclear tests on Bikini and Eniwetok atolls in the Marshall Islands. The total yield was equivalent to over 7,000 Hiroshima-type bombs.

A US hydrogen bomb test code-named "Castle Bravo" took place on March 1, 1954, also on Bikini Atoll in the Marshall Islands. The radioactive ash from the H-bomb explosion fell on the indigenous people as well as a Japanese tuna boats the *Fifth Lucky Dragon* (*Daigo Fukuryu Maru*) and the others.

The Nuclear Zero Lawsuits originate from ground zero where the US conducted these nuclear tests. "Our people have suffered catastrophic and irreparable damage from these weapons, and we vow to fight so that no one else on Earth will ever again experience these atrocities," said then Marshall Islands Foreign Minister Tony de Brum.

## 3. Characteristics of the Nuclear Zero Lawsuits: From a Global Perspective

From a global perspective, the Nuclear Zero Lawsuits have the following three remarkable characteristics.

First, it is noteworthy that the RMI's legal challenge is rooted in the direct experience of US nuclear tests. It introduces the unique perspective of the "hibakusha," who were victims and survivors of the atomic and hydrogen tests, to nuclear disarmament negotiations between diplomatic officials and security specialists.

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At the Review Conference to the Treaty on the Non-Proliferation of Nuclear Weapons in 2015, then Foreign Minister Tony de Brum asked the disarmament ambassadors, diplomats, and experts, “How many in this room have personally witnessed nuclear weapon detonations?” Yes, the RMI Minister is an eye-witness of the nuclear disasters. He made reference to his personal experience of the H-bomb test in 1954.

Second, it is also important to remember that the RMI, a small Pacific country, challenges the nuclear power in cooperation with international disarmament NGOs. This legal action is not a solo action; the RMI does not stand alone. The lawsuits proceed in a transnational network between the RMI and NGOs, especially the Nuclear Age Peace Foundation and the International Association of Lawyers Against Nuclear Arms (IALANA).

Third, it is remarkable that the then Marshall Islands Foreign Minister Tony de Brum has developed the Nuclear Zero Lawsuits based on an extremely wide perspective that transcends the interests of a single nation state and the current generation. He sees the global wellbeing of all humanity in the future.

This legal challenge has inspired millions of people around the world. Former Foreign Minister Tony de Brum became a candidate for the Nobel Peace Prize in 2016. However, the Marshall Islands is not completely in favor of the Nuclear Zero Lawsuits.

#### 4. Concerns about Nuclear Zero Lawsuits: From the Local Perspective

The Republic of the Marshall Islands is definitely not an anti-American country. It hosts the US Army Ronald Reagan Ballistic Missile Defense Test Site at Kwajalein Atoll, which the US uses to conduct missile tests including those for the nuclear-capable unarmed Minuteman 3 missile. Some Marshallese serve in American military units. In addition, revenue from the US government accounts for about 60% of the Marshall Islands’ annual budget. Considering these circumstances, there is naturally opposition to the RMI government decision to file suits against nuclear-armed countries including the US.

In addition, “Thinking locally before acting globally” was the headline of an article written by Giff Johnson, the editor of the *Marshall Islands Journal*. The article said, “Can these lawsuits help Marshall Islands nuclear test victims, the nuclear clean up, health care, and compensation they seek and deserve?” and “Engagement at home on nuclear and other issues is a needed first step.”

In the eyes of the world, the legal action strengthened the tiny Pacific country, which normally goes unnoticed, and it gained the attention of international media and disarmament NGOs. This reminded the world that RMI has an unsolved nuclear legacy, and it increased people’s interest in the Marshall Islands’ nuclear issue. The lawsuit against the US, however, does not seek compensation.

Senator Kenneth Kedi, elected from the exiled Rongelap community, raises a question about the lawsuits, asking who is to benefit, and that if the ICJ says the RMI is right, then what? “Clean up the islands, treat the cancers, and provide a comprehensive health care system,” he asserts.

European and American NGOs cooperating with the Nuclear Zero Lawsuits have little relationship with civil society in the Marshall Islands. They have not yet to build a relationship with the local community in the Marshall Islands, which must deal with the issue of radiation exposure.

#### Conclusion

This has been a discussion of the Nuclear Zero Lawsuits with a focus on the

Marshall Islands.

The tiny country, which sacrificed its precious land for nuclear tests, is pursuing an aggressive action to acquire evidence to prevent a repeat of nuclear tragedy anywhere on Earth. The Nuclear Zero Lawsuits open up the potentiality of both the microstate and NGOs in the world.

Disarmament is, of course, essential for a nuclear-free world. However, this small island nation tells us that it keeps pursuing the way for people to live in peace, so that nuclear survivors and victims can be free from fear. This is also deep importance as an agenda for nuclear zero.

Both the Nuclear Zero Lawsuits and the nuclear issues in the Marshall Islands concern more than just these small islands. It is a matter of global concern what we should learn from the Pacific islands. If you would like to support this legal challenge, I invite you to use the lawsuits as an opportunity to form a personal relationship with civil society in the Marshall Islands.

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# An Initiative to Legislate the Three Non-Nuclear Principles

Kazue Mori, Lawyer

## I. Sequence of events leading to enactment of the Anti-Nuclear Weapons Law

1. In my capacity as a lawyer, I belong to the Nuclear Weapons Abolition Project Team of the Japan Federation of Bar Associations (JFBA) Task Force on Constitutional Issues. Based on a stance which aims to abolish nuclear weapons, this team is exploring and preparing to enact a law provisionally called the “Law Prohibiting the Manufacture and Possession of Nuclear Weapons, and Their Entry Into Japan” (Anti-Nuclear Weapons Law) in order to legislate the three non-nuclear principles.
2. The three non-nuclear principles state that Japan will not make nuclear weapons, possess them, or allow their introduction into Japan.<sup>1</sup> These principles have long been regarded as a national policy of Japan. The term used for “national policy” means “a country’s established political administration policy,” and is not legally binding. Therefore, even if there has been an act suspected of violating the three non-nuclear principles, it has been impossible to take any legal measures against it.
3. The government and ruling party are averse to legislating the three non-nuclear principles, some of the reasons being, “All people in Japan and other countries are fully aware of the three principles, thereby rendering legislation unnecessary,” and “It’s better to keep the principles a national policy instead of making them into a law that might be amended in the future.”

This is arguably a position which limits the three non-nuclear principles to a political declaration, and attempts to avoid legislation. Additionally, in recent years there are attempts such as changing the three principles to the “2.5 principles,” and in particular there is even an initiative to reconsider the principle of not allowing nuclear weapons into Japan. Firmly upholding the three non-nuclear principles and preventing their evisceration, as well as establishing the foundation of non-nuclear political policy, require clearly articulating the principles as a whole to have legal normativeness. We have therefore decided to make preparations for enacting the Anti-Nuclear Weapons Law for “the purpose of strictly complying with the three non-nuclear principles, which have long been regarded as national policy, and under no circumstance using or allowing the use of nuclear weapons in Japan, thereby guaranteeing the peace and security of the Japanese people.”

## II. Overview of the “Anti-Nuclear Weapons Law” bill

As outlined below, the bill comprises a Preamble and 16 articles.

The Preamble explains the bill’s underlying circumstances, including the constitutional right to live in peace, actualizing the renunciation of war, and the feelings of the Japanese people as the only victims of a nuclear attack.

Article 1 sets forth the purpose of enacting the law as “strictly complying with the three

<sup>1</sup> According to the official translation of the third non-nuclear principle provided by the Japanese Ministry of Foreign Affairs, Japan shall not allow the “introduction” of nuclear weapons into the country. The word “introduction” means to unload something from a vessel to land, and therefore its interpretation does not include stopping or passage of ships in Japanese territorial waters. On the other hand, our understanding of the original Japanese text is that Japan will not allow the “entry” of nuclear weapons into the country, including its territorial waters. This is why the secret nuclear agreement, under which US vessels equipped with nuclear weapons stopped at Japanese ports for transit, has scandalized people in Japan. Aiming to avoid such a pitfall, the word “entry” is used in the text of the Anti-Nuclear Weapons Law.

non-nuclear principles, which have long been regarded as national policy, and under no circumstance using or allowing the use of nuclear weapons in Japan, thereby guaranteeing the peace and security of the Japanese people.”

Article 2 defines “nuclear weapons” as covered by the law.

Article 3 provides for a ban on the manufacture of nuclear weapons, Article 4 prohibits their possession, and Article 5 bans their entry into Japan.

Articles 6 through 9 prescribe the duties of the prime minister.

Specifically, Article 6 specifies the requirements for entry into Japan: “The prime minister can allow the entry of ships, aircraft, and other craft into Japanese territory, airspace, inland waters, and territorial waters, if it is possible to determine that they carry no nuclear weapons.” Article 7 prescribes expulsion demands: “The prime minister must require the withdrawal, from Japanese airspace, inland waters, and territorial waters, any ship, aircraft, or other craft when it is not possible to determine that the craft is not carrying nuclear weapons.” Article 8 prescribes that the prime minister must seek the opinion of the Non-Nuclear Monitoring Commission when determining whether a craft is carrying nuclear weapons. Article 9 prescribes the duty of the prime minister to deliver reports to the Diet.

Articles 10 through 12 provide for the creation of the Non-Nuclear Monitoring Commission, its mission, inspections, organization, and operation.

Specifically, Article 10 states that “The Non-Nuclear Monitoring Commission shall be established in the Cabinet Office to ensure that nuclear weapons are never used and that their use is never allowed in Japan.” Article 11 specifies the mission and boarding inspection right of the Non-Nuclear Monitoring Commission. Article 12 prescribes that a separate law shall establish the organization and operation of the Non-Nuclear Monitoring Commission.

Article 13 prohibits “disadvantageous treatment” in order to protect whistleblowers.

Articles 14 through 16 specify penalties in order to ensure effective compliance with the three non-nuclear principles.

Specifically, Article 14 specifies penalties for entities which have “developed, tested, assembled, or manufactured nuclear weapons.” Article 15 specifies penalties for entities which have “possessed or maintained nuclear weapons.” Article 16 specifies penalties for entities which have refused boarding inspections by the Non-Nuclear Monitoring Commission.

### III. Challenges facing legislation of the Anti-Nuclear Weapons Law

1. The Anti-Nuclear Weapons Law is still at the preparatory stage, and in moving toward legislation it will be necessary to conduct multilateral deliberation and gain citizen acceptance.

Of course discussion is also needed on what the law should include. Japan is considered to be a non-nuclear weapon state under the Atomic Energy Basic Law and the Nuclear Nonproliferation Treaty (NPT), and as such the development and possession of nuclear weapons are banned under this legal framework. On the other hand, the “peaceful use” of nuclear energy, i.e., civilian use including nuclear power, are to be promoted. Such being the case, in view of Japan’s experience of the Fukushima nuclear accident, the status of nuclear power under the Anti-Nuclear Weapons Law could also be an issue.

2. The point of enacting the Anti-Nuclear Weapons Law would in reality be to prohibit by law the entry of US nuclear weapons into Japan. At present the Japanese government claims that it relies on US nuclear deterrence to assure Japan’s security, and therefore one aspect of the Anti-Nuclear Weapons Law proposal is that it clashes with the

government's security policy. In this sense one can easily anticipate that there might be considerable resistance.

Nevertheless, judging by the fact that the three non-nuclear principles, as national policy, have been able to coexist with the "Japan-US alliance," this does not lead to the conclusion that the Anti-Nuclear Weapons Law would be inconsistent with the Japan-US Security Treaty. Even with the Security Treaty it would be possible to enact the Anti-Nuclear Weapons Law and ban the entry of nuclear weapons into Japan.

This is because the Japanese government's view is that major changes in US military positioning and equipment (the introduction of nuclear warheads and medium- and long-range missiles, and construction of their bases) are subject to prior consultation so that the US military takes no arbitrary action in conflict with Japan's wishes. Under the Security Treaty, in principle the US cannot bring nuclear weapons into Japan if the Japanese government states in prior consultations that doing so would conflict with Japan's wishes. In other words, even the Security Treaty does not enable the US military to bring nuclear weapons into Japan against the wishes of the Japanese government.

Additionally, the requirement for United States Forces, Japan (USFJ) and their personnel to respect Japan's laws is not only a principle of general international law, but also expressly stated in Article 16 of the Status of Forces Agreement. Further, USFJ facilities and areas are Japanese territory whose use is granted to the US by the Japanese government. Accordingly, it is possible to adopt the interpretation that the Anti-Nuclear Weapons Law applies directly to the possession of nuclear weapons in, and their entry into, USFJ facilities and areas.

Therefore the Japan-US Security Treaty does not preclude enactment of the Anti-Nuclear Weapons Law.

3. "As the world's sole victim of a nuclear attack, as the country which experienced the serious Fukushima nuclear accident, and as a Northeast Asian country, Japan has a duty to play a leadership role in the international community by striving toward the abolition of nuclear weapons and other threats to humanity's survival, and by banning the use and threat of nuclear weapons." As a lawyer, and also from the standpoint of achieving the pacifism prescribed by the Japanese Constitution, I shall make every effort to have the Anti-Nuclear Weapons Law enacted.



## **How to Face the People Living in Radiation-Contaminated Areas, From the Viewpoint of Peace Studies**

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### 1. Fallacy of the "peaceful use" of nuclear power

Since World War II Japan has pursued economic growth and modernization that rely on nuclear power as a "peaceful use" of nuclear energy based on the Japan-US security arrangement. The Japanese government took advantage of urban-rural inequality to launch rural development projects which promoted risky projects that had some economic benefits for rural areas, and which would also help urban areas prosper. It touted the peaceful combination of development policy and security measures to achieve economic growth under the US nuclear umbrella. It can be said that the Fukushima Daiichi nuclear disaster after 3.11 definitely overturned peaceful views of Japan's economic power, which is based on nothing but political lies.

The "Atoms for Peace" speech delivered to the UN General Assembly by Dwight D. Eisenhower in 1953 played a role as a slogan that made people consciously distinguish nuclear weapons from nuclear power. But the word "peace" in the speech only means "peace" as opposed to military force. In addition, by replacing "peaceful use" with "civilian use" (i.e., economic use), the peaceful use of nuclear energy becomes the essential condition for national interests and corporate profits which are exclusively promoted in response to economic requirements. In Japan the design of energy policy and the siting of nuclear power plants have been used as measures against rural depopulation and unemployment.

Additionally, the peaceful use of nuclear energy based on the NPT system has been an "inalienable right." But the operation of nuclear power plants has caused radiation exposure for workers at uranium mining sites and indigenous people in developing countries. The system creates radiation exposure damage continuously through risk acceptance by local communities, radioactive exposure of nuclear power plant workers, and leaving the problem of nuclear waste disposal to the next generation. Furthermore, depleted uranium munitions, which were used in the Gulf War, are also a byproduct of "peaceful use." There is no doubt that the military use and peaceful use of nuclear technology are one in the same.

Meanwhile, under the market economy governments have adopted neoliberal decision-making that prioritizes economic efficiency and corporate profits. The international community has already experienced many problems that threaten people's lives and health, and pressure the natural environment because of the endless quest for profit. It is not enough to say that there is no war, because there is no such thing as the "peaceful use" of nuclear technology, just the misuse of the word "peace" from the perspective of peace studies focused on economic disparity, poverty, and environmental problems, which threaten the survival of the people. Nuclear power plants can never be called "peaceful use" of nuclear technology because they have been creating countless sacrifices somewhere.

## 2. Continuing radiation exposure damage

Safety standards and the government's view of radiation exposure, which were adopted after the Fukushima Daiichi nuclear disaster, are based on the recommendations of the ICRP (International Commission on Radiological Protection). The standards were established according to the survey results of Hiroshima and Nagasaki atomic bomb survivors by the ABCC (Atomic Bomb Casualty Commission). This survey was influenced by the US military's Cold War strategy, whose rationale was that of US military research. It did not adopt the victims' perspective, which would have meant considering low-level radioactive exposure and internal exposure.

The "safety standards" which understated exposure damage in Hiroshima and Nagasaki were used to recruit postwar nuclear power plant workers. Since 3.11 they have been used as the "scientific basis" for agreement about exposure damage. Despite the experience of exposure in various areas such as Hiroshima and Nagasaki, Bikini, and Fukushima, exposure damage has arguably not been researched fairly from the perspective of those who suffered exposure.

Exposure damage has been understated and made invisible in accordance with political decisions made from the viewpoint of economic rationality. Seeing the situation in terms of the "profit and loss" of nuclear technology use does not necessarily guarantee human dignity and the right to live in peace. Decision-making about nuclear use measures profit and loss, including the benefit of nuclear-related industries. From the perspective of understating exposure damage, military use and peaceful use of nuclear are two sides of the same coin, both meant to maintain nuclear technology.

## 3. What is happening in the radiation-contaminated areas?

However, it is difficult to see the situation from the perspective of people living in contaminated areas, and the full extent of the damage in affected areas is not readily known at present. The government promoted a return policy as the mainstay of reconstruction which aims to achieve "immediate reconstruction," while at the same time cutting off support to voluntary evacuees. Disparities in how evacuation zones were determined and in compensation due to the nuclear accident created deep divides among residents. Even though many people have been forced to make the undesirable choice between either moving to other regions or returning, their decisions were regarded as self-determination, which underlay the classification of geographical zones as areas with or without radiation contamination.

The document on "how to properly understand radioactivity" published by the Ministry of Education and distributed by educational organizations states that "too much anxiety about radioactivity will cause mental and physical disorders." The exhortation "Do not incite unnecessary anxiety" makes people keep silent about radioactive exposure damage and their anxiety.

In radiation-contaminated areas people are told that the hope for "reconstruction" is a symbol of "ties" among people, so that people anxious about health damage are exposed to peer pressure.

In areas where human relationships and community livelihoods had been underpinned by the nuclear power plant, people who fear destruction of relationships and livelihoods have allowed themselves to accept the risk of exposure, and have even denied the damage. This threatens the right of the next generation to live in peace.

#### 4. Toward sustainability without nuclear power

Nuclear power plants for Japan's postwar reconstruction and international competitiveness were meant to strengthen the economy, and now they are a part of earthquake reconstruction and the Japanese economic recovery. What's more, nuclear technology has been upgraded to a growth strategy with the claim that the nuclear disaster has ensured the world's highest safety level, in order to support nuclear power plant exports.

Since the earthquake the "Japan-U.S. Public-Private Partnership for Reconstruction" has been trumpeted widely. The business community requested the early restart of nuclear power plants, and it has also influenced how reconstruction is conceptualized. Multi-layered community profiteering, which includes both Japanese and US business and industry, has encouraged the restart of nuclear power plants. Today's reconstruction thinking, which aims to achieve "Japan's economic revival," will likely reinforce the existing international order and hegemony structure by using nuclear power.

To achieve a sustainable society without nuclear power under these circumstances, the people facing exposure damage in radiation contaminated areas should join hands and build a movement to stop the use of nuclear technology. Through our daily lives, we must think carefully about the present conditions under which we enjoy living in an affluent society thanks to the "peaceful use" of nuclear power, which imposes sacrifices on people somewhere. Furthermore, we must reconsider the social development model and international order which entail the sacrifice of human life in Japan and other countries.

## **Social Structure Reform Aimed at Abolishing Nuclear Weapons**

**Yuko Takabe**

**Peace Education Video Producer**

**Japan Committee of International Campaign of the Right to Peace**

The international regulation of nuclear weapons has consisted mainly in intergovernmental relationships, but the involvement of individuals in this area has attracted attention for decades. The international process of codifying the right to peace, especially the right to disarmament, is an ambitious challenge toward such a paradigm shift.

Direct regulation of government possession or use of nuclear weapons is obstructed by a consensus of sovereign states because security policy has been dominated by governments, but the involvement of individuals in human rights, human security, and the right to peace might be able to defeat this traditional state-dominated system.

The UN Declaration on the Right to Peace has been under deliberation by the UN Human Rights Council since 2008. The right to peace is a right by which people see the matter of peace as an individual right, make governments and international agencies stop violations of peace, and make them adopt peaceful policies.

In 2012 the Human Rights Council (HRC) Advisory Committee, which is the HRC think tank, produced a draft declaration whose Article 3, Paragraph 3 (“Right to Disarmament”) reads, “All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons.”

While the Nuclear Weapons Convention is an intergovernmental convention under which the governments of signatory nations would have obligations toward other governments, the right of the individual for abolishing nuclear weapons means that individuals have the right to demand that governments abolish nuclear weapons, and as such governments have obligations toward individuals. Thus, the abolition of nuclear weapons as a human right will help further intensify the groundswell toward abolition even under circumstances in which the Nuclear Weapons Convention has yet to be enacted.

Furthermore, the UNHRC advisory draft includes the right to peace education, which could include the right to education about the tragic consequences of using nuclear weapons, and how to create peace. It promotes the approach of action by individuals because education enables people to raise awareness of the importance of peace, and to cultivate creativity.

In UNHRC deliberations the right to disarmament and the right to peace education have been deleted from the draft owing to strong opposition from Western countries. But governments in favor and participating NGOs are working on a version which is close to the 2012 draft Declaration on the Right to Peace. We must establish the right to peace as an individual right in order to achieve progress in nuclear disarmament and in abolition by transcending the framework of intergovernmental negotiations.

Opfer radioaktiver Strahlung in Deutschland, Nuklearwaffen, Atomkraftwerke  
Berichts fürs Konferenz

**„Endlose Qual der Hibakusha und No more Hibakusha  
Gerichtsverhandlung“**

**Seigo FUJIWARA (No more Hibakusha Verhandlung,  
Leiter des japanischen Rechtsanwaltsverbands)**

Zusammenfassung

1. Noch immer setzt sich das Leiden fort, auch 70 Jahre nach dem Atombombenabwurf
2. Die japanische Regierung lehnt es ab, ihre Verantwortung anzuerkennen und Entschädigung gegenüber den Hibakusha (Atombombenopfern) zu leisten
3. Wieso wurde die Klage zur Anerkennung der Strahlenkrankheit erhoben? Was für Fakten hat die Klageerhebung ans Licht gebracht und was hat sie erreicht?
4. Was sind noch offene Probleme?  
Zusammenhang des Kampfs der Atombombenopfer und der Abschaffung der Nuklearwaffen und Atomkraftwerke sowie Hilfsaktionen für die Opfer von Atomtests
5. Was müssen wir unternehmen, um das gemeinsame Ziel zu erreichen?

1. Im Namen des Verteidigerteams für die „No more Hibakusha Verhandlung“, in der die Hibakusha aus Hiroshima und Nagasaki heute noch kämpfen, möchte ich den Inhalt und die Bedeutung der Gerichtsverhandlung erläutern.
2. Kläger der „No more Hibakusha Verhandlung“ beteiligen sich mit Leib und Seele an Ihren Aktionen, um Nuklearwaffen aus der Welt abzuschaffen.
3. Warum führen die Hibakusha, die im Schnitt über 80 Jahre alt sind, 70 Jahre nach den Bombenabwürfen immer noch die Gerichtsverhandlung fort? Zwischen den Tagen der Bombenabwürfe bis zum Jahresende 1945 sind 140 000 Einwohner in Hiroshima und 90 000 Einwohner in Nagasaki verstorben.  
2015 waren auf den Hibakusha Gedenktafeln 300 000 Namen in Hiroshima und 170 000 Namen in Nagasaki eingetragen. Wir sollten den Erfahrungsberichten der Hibakusha gut zuhören. Die über 4 000 Grad heiße Hitzewelle verbrannte den Erdboden. Der Wind wehte mit über 280m/sek. Die unglaublich starke radioaktive Strahlung hat den menschlichen Körper durchdrungen. Es gibt keinen Menschen, der von der Situation im

Epizentrum berichten kann.

„Wie könnte man den grellen Lichtblitz vergessen.

30 000 Lichter auf der Straße gingen schlagartig aus.

Auf dem Grunde der bedrückenden Finsternis stießen 50 000 Menschen ihren Todesschrei aus.

Nachdem sich der wirbelnde gelbe Rauch gelegt hatte, taten sich gespaltene Gebäude, zerstörte Brücken, verbrannte Eisenbahnzüge auf.

In Hiroshima breiteten sich endlose Trümmer und Haufen von Asche aus.

Eine Schlange weinender nackter Menschen lief – beide Hände, von denen lumpenartig die Haut herunterhing, vor die Brust haltend und nur notdürftig verbrannten Kleiderstoff um die Hüften geschlungen, über die Gehirnflüssigkeit der Leichen stapfend ziellos durch die Stadt.

Die Studentinnen, die sich in die mit Exkrementen gefüllte Waffenfabrik geflüchtet haben, liegen mit geschwollenen Bäuchen, abgeschürfter rötlicher Haut und Köpfen ohne Haare. Als die Morgensonne auf sie scheint, ist kein sich regendes Wesen in Sicht. Man hört nur noch das Brummen der Fliegen, die in dem stechenden Gestank fliegen. Wie könnte man diese absolute Ruhe in der Stadt mit 300 000 Einwohnern vergessen?“

(Der Dichter Sankichi Touge „Der 6. August“ Auszug)

4. Der Atombombenabwurf liegt noch nicht lange zurück. Und die Geschichte ist mit den Bombenabwürfen nicht beendet. Vom 6. bzw. 9. August an bis heute dauert das Leben als „Hibakusha“ seit über 70 Jahren an. Das Leben ist noch nicht zu Ende.

Sie sind stets den Erinnerungen an ihre Familienangehörigen ausgesetzt, die grausam umgekommen sind. Oft leben sie in Furcht, aufgrund der Strahlung zu erkranken oder Diskriminierung bei der Arbeitssuche und bei der Eheschließung zu erleben. Darüber hinaus machen sie sich Sorgen um ihre Kinder wegen der Nachwirkung. Sie haben bis heute stets mit vielerlei Ängsten und Sorgen gelebt.

5. Nach September 1945 existierten für ca. 10 Jahre offiziell keine „Hibakusha“ in der Welt. Am 05. September 1945 hat der Journalist der Daily Express, Herr Burchett, berichtet, dass Menschen an der Strahlenkrankheit sterben.

Daraufhin hat Generalmajor Farrell von der US-Armee am 06. September folgendes Statement abgegeben. „Die dem Sterben geweiht waren, sind bereits gestorben. Es gibt keinen Menschen, der an der Auswirkung radioaktiver Strahlung stirbt.“

Im selben Monat verbot die US-Armee die Veröffentlichung der Fotos von Bombenschäden, Berichterstattung sowie Erzählungen durch Bürger, weil es sich dabei um militärische Geheimnisse handele.

6. Im März 1954 wurden auf dem Gebiet der Marshallinseln und dem Bikini-Atoll viele Inselbewohner und Fischer durch den Wasserstoffbombentest verstrahlt. Es gab es auch viele Tote darunter. Bürger und Hibakusha haben dieses Ereignis zum Anlass genommen, die „No more Hibakusha“ Bewegung ins Leben zu rufen. Am 06. August 1955 fand die erste internationale Konferenz zur Abschaffung der Atom- und Wasserstoffbomben statt.
7. Im April 1957, 12 Jahre nach dem Bombenabwurf wurde das „Gesetz zur medizinischen Versorgung für die Atombombenopfer“ erlassen. Durch hartnäckige Bemühungen wurde der Anwendungsbereich und der Gesetzesinhalt schrittweise verbessert, sodass das „Gesetz zur Unterstützung der Atombombenopfer“ im Dezember 1994 verabschiedet wurde. Die Anzahl der aufgrund dieses Gesetzes vom Staat als Strahlenkranke anerkannten Atombombenopfer betrug allerdings nur 2 200. Das waren nur 0,6 % der 370 000 Hibakusha, die in der Spitzenzeit identifiziert worden waren. Die Anerkennung durch den Staat war also ein harter Weg.
8. Der Staat hat versucht, durch Verschärfung der Anerkennungskriterien für die Strahlenkranke die Verantwortung des Staats einzuschränken. Hibakusha und Hibakusha-Verband(Hidankyo) konnten diese Tendenz nicht tolerieren. Daher haben Sie sich in ganz Japan erhoben, und ab April 2003 haben 306 Hibakusha in 17 Landesgerichten geklagt, um eine Zurücknahme der Abweisung ihrer Anerkennung als Strahlenerkrankte zu erreichen. Diese Prozessaktion ist bekannt als kollektive Verhandlung für die Anerkennung der Strahlenkrankheit.
9. Von dem ersten Urteil im Mai 2006 am Landesgericht Osaka an haben wir in ganz Japan 40 Mal Urteile für die Anerkennung der Strahlenkrankheit erwirkt.
10. Durch die Gerichtsverhandlungen haben wir folgendes erreicht:  
Hibakusha berichten Fakten über die Strahlungsschäden und ihre eigenen Erfahrungen vor Gericht. Somit konnten nicht nur Richter, sondern auch viele andere Menschen diesen Geschichten zuhören. Durch die Auseinandersetzung mit dem Staat hat sich einiges klar gezeigt:
  - a. Die Auswirkung der radioaktiven Strahlung hält an, sogar nach dem Tod. (Es ist festgestellt worden, dass Alpha-Strahlen aus den in einem Labor in Nagasaki aufbewahrten inneren Organen von Hibakusha nach 70 Jahren immer noch austritt.)
  - b. Zu den Krankheiten durch radioaktiven Strahlung zählen...  
...Leukämie und verschiedene Krebsarten (Magen, Dickdarm, Lungen,

Leber, Nieren, Speiseröhren, Prostata, Brust, Haut, usw.) sowie Herzinfarkt, Schilddrüseninsuffizienz, Katarakt, Hirninfarkt.

In dem Urteil wurde die Kausalität nachgewiesen.

- c. Die Auswirkung der radioaktiven Strahlung wurde aufgrund der epidemiologischen Untersuchung der Hibakusha in Hiroshima und Nagasaki festgestellt. Die Untersuchung ist noch nicht beendet. Bisher sind nur 5 % der Wirkungen, die radioaktive Strahlung auf den menschlichen Körper hat, bekannt.  
(Ex. Vorstandsvorsitzender der RERF, Herr Okubo: Radiation Effects Research Foundation)
  - d. Die Strahlendosis ist nicht unbedingt proportional zur Distanz zum Epizentrum.  
Die Messung der aus dem AKW in Fukushima austretenden radioaktiven Strahlung hat ergeben, dass sie keine konzentrischen Kreise bildet, sondern an bestimmten Stellen Hotspots bildet, wo hohe Dosen gemessen wurden.  
Die Nachstrahlung, z.B. wenn jemand ohne direkte Bestrahlung auf der Suche nach seinen Familienangehörigen das Epizentrum betritt und sekundäre Strahlung abbekommt, spielt auch eine Rolle.  
Nicht zu vergessen ist auch die innere Strahlung durch Aufnahme radioaktiv verseuchter Lebensmittel und Wasser.
  - e. Beschränkung der zu unterstützenden Hibakusha  
Das aktuelle Gesetz zur Unterstützung der Atombombenopfer beschränkt die Anwendung dieses Gesetzes auf Strahlungsoffer, wobei die Opfer von der Hitze- und Druckwelle ausgeschlossen sind.  
Der Grund dafür besteht in der Vermeidung der Gesetzesanwendung auf die anderen Kriegsoffer.
11. Nach der Serienniederlage des Staats in den Gerichtsverhandlungen haben der damalige Premierminister Aso, der Hibakusha Verband (Hidankyo) und Hibakusha am 06.08.2009 die „Vereinbarung über die Beendigung der Gerichtsverhandlungen „ unterzeichnet.  
In der „8.6.Vereinbarung“ hat die japanische Regierung folgendes versprochen.
- f. bezüglich der Strahlenkrankheit verzichtet der Staat auf Auseinandersetzungen mit Hibakusha und zahlt ihnen Entschädigungen.
  - g. Der Minister für Gesundheit und Arbeit, der Hibakusha Verband(Hidankyo), Klägergruppe und Rechtsanwaltsgruppe beraten regelmäßig, damit sie ohne Gerichtsverhandlung stets eine Lösung finden.

12. Für die wichtige Gruppe der Hibakusha, die außerhalb der Klägergruppe



stehen, fand die Vereinbarung keine Anwendung. Die regelmäßige Beratung fand nur formell statt. Die Regionalverwaltungen haben der Anerkennungskriterien des Gerichts ungeachtet die Anerkennungsverfahren für die Strahlenkrankheit größtenteils zurückgewiesen. Dabei haben sie eine herablassende Haltung gezeigt und eine Diskrepanz zwischen der Gesetzgebung und Administration gezeigt. Darüberhinaus hat der Minister für Gesundheit und Arbeit am 16.12.2013 die „neue Richtlinie der Anerkennungsverfahren“ erlassen, die die Anerkennung von Nicht-Krebskranken durch direkte Strahlung auf 2 km vom Epizentrum begrenzt und durch Nachstrahlung innerhalb von 1 km begrenzt. Die Regionalverwaltungen haben die neue Richtlinie ganz maschinell angewendet und Anträge auf Anerkennung der Strahlenkrankheit zurückgewiesen. Das Ministerium für Gesundheit und Arbeit hat die Hibakusha sogar gedrängt, sich anzupassen, wenn sie keinen Mut haben, Gerichtsverfahren einzuleiten.

13. Von den Hibakusha, die dem nicht tatenlos zusehen wollten, haben 118 Hibakusha nach Beendigung der kollektiven Gerichtsverhandlung trotz ihres hohen Lebensalters in 7 Landesgerichten Klage erhoben. Zurzeit laufen in 2 Oberlandesgerichten (2. Instanz in Osaka und Fukuoka, 16 Kläger) und in 5 Landesgerichten mit 88 Klägern Verhandlungen.
14. Aktuell sieht das Ministerium für Gesundheit und Arbeit vor:
  - a. Anträge werden zurückgewiesen, wenn sie winzige Abweichungen von der neuen Richtlinie aufweisen. Die Anerkennungsrate von Nicht-Krebskranken im letzten Jahr betrug 43,54%. Insgesamt sind 848 Hibakusha zurückgewiesen worden.
  - b. Bei der Gerichtsverhandlung fordern die Vertreter des Staates von den Hibakusha Angaben darüber, wo und wie viel Gy Strahlung sie vor 70 Jahren abbekommen haben. Ansonsten werden ihre Ansprüche nicht anerkannt. Wer kann überhaupt darüber Angaben machen, wieviel Strahlung man mit 0 oder 5 Jahren abbekommen hat? Das ist ein absurdes Vorgehen.
  - c. Nach der Klageerhebung von „No more Hibakusha“ wurden in den letzten 1 1/2 Jahren 8 Urteile gefällt. In den meisten Fällen wurde die Zurückweisung rückgängig gemacht. Somit haben die Hibakusha gewonnen. In den bereits gefällten Urteilen wurde die Zurückweisung der Anträge wegen Katarakt, Herzinfarkt, chronischer Hepatitis, Myelodysplastischem Syndrom(MDS) anhand der neuen Richtlinie rückgängig gemacht. Darin zeigt sich, dass die aktuelle „Neue Richtlinie“ nicht korrekt ist.
  - d. Das Ministerium für Gesundheit und Arbeit hat trotz mehrfacher Niederlage in der 1. Instanz (Landesgericht) Berufung eingelegt.

Das Ministerium für Gesundheit und Arbeit hat eine Abhandlung von prominenten Radiologen erstellen lassen und anhand dieser die Urteile der Gerichte kritisiert. Ein Beispiel hierfür:

- Gegen das Urteil, dass Hypothyreose, insbesondere Autoimmunhypothyreose durch radioaktive Strahlung verursacht wurde, hat das Ministerium eine kritische schriftliche Meinungsäußerung unter dem Namen von Vorstandsvorstand und Mitarbeitern des Forschungsinstituts für Auswirkungen radioaktiver Strahlung erstellt und vorgelegt, die dem Urteil unterstellt, medizinische Fehler begangen zu haben. Der Inhalt der Äußerung selbst beinhaltet eine Fülle medizinischer Fehler. Anhand meiner Gegenargumente kann er nur zurückgewiesen werden.

Das wesentliche Problem besteht aber in dem Grund, weshalb ein solches Schriftstück erstellt und vorgelegt wurde:

Das Ministerium will abstreiten, dass die Ausbreitung radioaktiv verseuchter Partikel Schilddrüsenkrebs und Hypothyreose verursacht. Zurzeit ist umstritten, ob Kinder in Fukushima unter durch Strahlung ausgelöstem Schilddrüsenkrebs und Hypothyreose leiden. Die Ärzte, die das Schriftstück erstellt haben, spielen nach dem Willen der Regierung eine wichtige Rolle im Kreis der dementierenden Gruppe. Und das, obwohl sie die Lage in Tschernobyl erkundet haben und genügende Kenntnisse besitzen.

Sie möchten dazu beitragen, die Schäden durch den AKW-Unfall in Fukushima verglichen mit den Auswirkungen der radioaktiven Strahlung der Atombombe möglichst gering aussehen zu lassen. Diese Aktivität ist äußerst politisch. Dürfen Ärzte bzw. Wissenschaftler der Politik statt der Wahrheit dienen? Diese Frage betrifft nicht nur Fukushima, sondern auch Hibakusha auf den Marshallinseln, in Kanada sowie auf der ganzen Welt. Darüber hinaus betrifft sie auch Bürger, die in der Nähe von AKW wohnen, Arbeiter in AKW sowie Richtlinien für die Beseitigung und Aufarbeitung nuklearer Abfälle. Diese Teile der Kette sind alle miteinander verbunden.

#### 15. Orientierung und Ausblick auf eine Lösung

- a. Reform des Gesetzes zur Unterstützung der Atombombenopfer und Abschaffung des Anerkennungsverfahrens auf Basis von Einzelfällen. Wenn ein Hibakusha einen gewissen Krankheitsstand erreicht, sollte er als Strahlungsoffer anerkannt werden.
- b. Reform der Regionalverwaltung, sodass die von der Rechtsprechung festgelegten Beurteilungskriterien zu Hilfsmaßnahmen für Strahlungsoffer eingehalten werden. Medizinische Disputation und die

Hilfeleistung der Strahlungsoffer passen nicht zueinander. Der politische Wille, AKW und Nuklearwaffen beizubehalten, darf auf keinen Fall zur Beeinträchtigung der Hilfeleistung für Strahlungsoffer führen.

- c. Wir fordern, dass es keine weiteren Strahlungsoffer gibt.  
Gleichzeitig fordern wir, dass die Regierung Verantwortung für die bereits geschädigten Opfer übernimmt und diese ausreichend entschädigt.
- d. Mit welchen Aktionen können wir diese Ziele erreichen?
- Unterstützt durch die Kraft der öffentlichen Meinung und der Politik fordern wir, dass der Staat seine Verantwortung zur Entschädigung der Hibakusha erfüllt.
  - Der Wunsch der Hibakusha ist es, durch ihrer eigenen Erfahrungen an die ganze Welt zu appellieren, dass es niemals wieder zu Schäden durch Atombomben kommt.
  - Vorbeugung und Entschädigung für Opfer von Atomtests, für Opfer von AKW-Unfällen, für zum Betrieb von AKWs eingesetzte und radioaktiv verseuchte Arbeitskräfte und für Umweltschäden durch Nuklearabfälle. Darüber hinaus fordern wir die Abschaffung aller Nuklearwaffen.  
Dieses Ziel ist nur durch Zusammenarbeit auf globaler Ebene zu erreichen. Atomstrahlenopfer aller Welt vereinigt Euch!
  - Um den innigsten Wunsch der Menschheit zu erfüllen und die Abschaffung von Nuklearwaffen zu realisieren, stellen sich Hibakusha an die Spitze der Aktionen. Der erste Schritt für die Abschaffung der Nuklearwaffen ist, Hiroshima und Nagasaki zu besuchen und die Erfahrungsberichte vor Ort anzuhören.

Zum Schluss möchte ich mit einem Zitat des Papstes von Dezember 2014 meinen Vortrag beenden.

„Wir befinden uns in einer Art Dritter Weltkrieg. Von den Erfahrungen in Hiroshima und Nagasaki hat die Menschheit überhaupt nichts gelernt.“

Die „No more Hibakusha Verhandlungen“ ruft die ganze Welt genau dazu auf. Lassen Sie uns gemeinsam kämpfen.

## **Declaration of the World Nuclear Victims Forum in Hiroshima (Draft Elements of a Charter of World Nuclear Victims' Rights)**

November 23, 2015

1. We, participants in the World Nuclear Victims Forum, gathered in Hiroshima from November 21 to 23 in 2015, 70 years after the atomic bombings by the US government.
2. We define the nuclear victims in the narrow sense of not distinguishing between victims of military and industrial nuclear use, including victims of the atomic bombings in Hiroshima and Nagasaki and of nuclear testing, as well as victims of exposure to radiation and radioactive contamination created by the entire process including uranium mining and milling, and nuclear development, use and waste. In the broad sense, we confirm that until we end the nuclear age, any person anywhere could at any time become a victim—a potential *Hibakusha*, and that nuclear weapons, nuclear power and humanity cannot coexist.
3. We recall that the radiation, heat and blast of the atomic bombings of Hiroshima and Nagasaki sacrificed not only Japanese but also Koreans, Chinese, Taiwanese and people from other countries there as a result of Japan's colonization and invasion, and Allied prisoners of war. Those who survived "tasted the tortures of hell." We pay tribute to the fact that the *Hibakusha* question the responsibility of the Japanese government which conducted a war of aggression; call for recognition of the right to health and a decent livelihood; have achieved some legal redress and continue to call for state redress to be clearly incorporated within the Atom Bomb Victims Relief Law; struggle to guarantee the rights of those who experienced the atomic bombings yet are not recognized as *Hibakusha*; and call not only for nuclear weapons abolition but also oppose nuclear power restarts and exports, and demand adequate assistance for nuclear power plant disaster victims.
4. We noted that through the international conferences on the humanitarian impact of nuclear weapons held in Oslo in 2013 and in Nayarit and Vienna in 2014, the understanding is widely shared internationally that the detonation of nuclear weapons would cause catastrophic harm to the environment, human health, welfare and society; would jeopardize the survival of the human family; and adequate response is impossible. We warmly welcome the Humanitarian Pledge endorsed by 121 states, pledging to fill the legal gap for the prohibition and elimination of nuclear weapons. We support the adoption in early November 2015 at the UN General Assembly First Committee, by an overwhelming majority of 135 in favor with only 12 opposed, of a resolution convening an open-ended working group "to substantively address concrete effective legal measures... and norms that will need to be concluded to attain and maintain a world without nuclear weapons."

5. We acknowledge that the mining and refining of uranium, nuclear testing, and the disposal of nuclear waste are being carried out based on ongoing colonization, discriminatory oppression, and infringement of indigenous peoples' rights, including their rights to relationships with their ancestral land. These activities impose involuntary exposure to radiation and contaminate the local environment. Thus, the local populations are continually and increasingly deprived of the basic necessities for human life with ever more of them becoming nuclear victims.
6. We also reconfirmed that every stage of the nuclear chain contaminates the environment and damages the ecosystem, causing a wide array of radiation-related disorders in people and other living beings. Through the experience of the nuclear disasters at Chernobyl and Fukushima, we see that nuclear accidents inevitably expose entire populations living near the power plants and the workers assigned to cope with the accident to harmful levels of radiation, and that adequate response to such a disaster is impossible. We further see that radioactive contamination is inevitably a global phenomenon. We know that "military" and "industrial" nuclear power are intimately connected within a unified nuclear industry, and that every stage of the nuclear chain, including the use of depleted uranium weapons, creates large numbers of new nuclear victims.
7. Complete prevention of nuclear chain related disasters is impossible. No safe method exists for disposing of ever-increasing volumes of nuclear waste. Nuclear contamination is forever, making it utterly impossible to return the environment to its original state. Thus, we stress that the human family must abandon its use of nuclear energy.
8. We acknowledge that the Atomic Bomb Trial against the State of Japan (the Shimoda Case; December 1963) found that the US military violated international law in dropping the atomic bombs, and that the advisory opinion issued by the International Court of Justice stated 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" (July 1996). We support the Marshall Islands, whose people have suffered the effects of intensive nuclear testing, in bringing this issue back to the Court in April 2014 through filing cases against nine nuclear armed states. Furthermore, we recall the World Conference of Nuclear Victims which pursued criminal liability on the part of the nuclear weapon states and the nuclear industry (New York Resolution, 1987), and that the military industrial complex was found to have the responsibility of providing damages compensation (Berlin Resolution, 1992). In addition, we confirm that the International People's Tribunal on the Dropping of Atomic Bombs on Hiroshima and Nagasaki found all 15 defendants guilty, including President Truman (July 2007).
9. We emphasize that all states that promote nuclear energy, the operators that cause radioactive contamination, and the manufacturers of nuclear facilities including nuclear power plants must bear

liability for damages done, as do their shareholders and creditors. We are gravely concerned that the export of nuclear power plants is extremely likely to result in severe human rights abuses and environmental damage.

10. We accuse the International Atomic Energy Agency (IAEA) and the International Commission on Radiological Protection (ICRP) of underestimating the harm done by radiation exposure and hiding the true effects of nuclear power accidents. We demand the abolition of the IAEA's mandate to "promote the peaceful use of nuclear power".
11. We have identified that the military-industrial-government-academic complex and states that support it have, through the use of nuclear energy, degraded the foundations of human life, and violated the right to life of all living beings. We assert that the acts of members of this complex violate fundamental principles of international humanitarian, environmental and human rights law.
12. We condemn the Japanese government for failing to learn from the Fukushima disaster, without carrying out adequate investigations into the facts and impacts, hiding and trivializing the damage, and cutting off assistance to the victims, while investing in the restart and export of nuclear power plants. We oppose the building, operating or exporting of nuclear power plants or any industrial nuclear facility in Japan or any other country.
13. We call for the termination of uranium mining, milling, nuclear fuel production, nuclear power generation and reprocessing, and for the abolition of the entire nuclear chain.
14. We call for the urgent conclusion of a legally binding international instrument which prohibits and provides for the elimination of nuclear weapons.
15. We call for the prohibition of manufacture, possession and use of depleted uranium weapons.
16. With the momentum of this World Nuclear Victims Forum, we confirm our desire to continue to cooperate in solidarity and share information regarding nuclear victims, and disseminate our message through various methods including art and media.
17. Thus, as a result of this World Nuclear Victims Forum and in order to convey to the world the draft elements of a World Charter of the Rights of Nuclear Victims, we adopt this Hiroshima Declaration.

## **Draft Elements of a World Charter of the Rights of Nuclear Victims**

### [I] The Basis of Rights of Nuclear Victims

1. The natural world is the foundation of all life, and each human being is an integral member of the human family innately endowed with the right to partake in human civilization with equal rights to life, physical and emotional wellbeing, and a decent livelihood.
2. All peoples have the right to be free from fear and want, and to live in an environment of peace, health and security.
3. Each generation has the right to enjoy a sustainable society and the responsibility of effective stewardship for the benefit of the future generations of all living beings.
4. There exists the inherent dignity of the human person and the right of all peoples to self-determination as enshrined in the Charter of the United Nations, the rights to life, health and survival as stipulated in international positive law including the Universal Declaration of Human Rights, International Covenants on Human Rights, and the Declaration of the Rights of Indigenous Peoples, as well as exists the principle of international customary law which helps to shape the emerging “law of humanity”.

### [II] Rights

(1) To alleviate current and prevent future nuclear catastrophes, all persons living in the nuclear age have the right to demand the following:

1. Not to be exposed to ionizing radiation other than that which occurs in nature or is for medical purposes,
2. Prohibition of coerced labor involving potential exposure to ionizing radiation, and when labor involving such potential exposure cannot be avoided, for exposure to be minimized,
3. Minimization of medical exposure to ionizing radiation, and
4. Full, accurate information regarding the dangers of ionizing radiation exposure through school and community education; this information to include the facts that no level of radiation exposure is without risk and that children, women and girls are especially sensitive to radiation.

(2) Additionally, nuclear victims have the right to demand the following:

5. Nuclear victims have rights under domestic law derived from human rights and basic freedoms, including personal rights and the right to health.
6. To receive free of charge the best possible medical care and regular examinations for effects related to past, present and future exposure; this right to extend to the 2<sup>nd</sup>, 3<sup>rd</sup> and future generations.

7. An apology and compensation from the offending party for all damage to life, health, finance, suffering, and culture related to the use of nuclear energy.
8. The remediation of radiation contaminated land and domicile, and the renewal of community and local culture.
9. Thorough scientific investigation of the victim's exposure by competent scientists independent of the offending party, with all findings and information completely open to the public, and the victims themselves involved in the investigation and control of information.
10. To not be forced to return to radiation contaminated land, and for the freedom to choose whether to evacuate from or remain in a radiation affected area. And, no matter this choice, to receive support to minimize exposure to radiation, protect health, and maintain and rebuild a way of life.
11. To refuse to work in an environment where radioactive contamination could constitute a health threat, said refusal having no negative ramifications for the victim.



# **Statement in Support of the Marshall Islands' Cases against Nuclear Weapons States in the International Court of Justice**

July 23, 2014

## **Japan Association of Lawyers Against Nuclear Arms**

On April 24, this year, the Republic of the Marshall Islands sued nine nuclear-armed countries in the International Court of Justice. These countries are China, North Korea, France, India, Israel, Pakistan, Russia, the UK, and the US.

Although the cases differ, depending on whether the countries are established nuclear-weapons states under the Non-Proliferation Treaty (India, Israel, and Pakistan are not) and whether they accept the Court's compulsory jurisdiction (i.e. India, Pakistan, and the UK), the Marshall Islands seeks in essence the following:

- i. Confirmation that by not actively pursuing negotiations in good faith on effective measures relating to cessation of the nuclear arms race and nuclear disarmament, the five original nuclear-weapons states are breaching their legal obligations under Article Six of the Treaty, with all the nine states violating customary international law.
- ii. Court orders requiring the nine states to put in place within a year all the measures that are necessary to comply with these obligations. They include pursuing in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

We, the Japan Association of Lawyers Against Nuclear Arms, working for the abolishment of nuclear weapons, welcome the lawsuits by the government of the Marshall Islands and hereby express our strong support and solidarity.

The international community has recently been strengthening its efforts to focus on inhumane aspects of the use of nuclear weapons, thus confirming their illegality, and the momentum towards the abolishment of nuclear weapons is growing.

The following are some reasons why the cases filed by the Marshall Islands are significant:

- i. The cases are launched by a state that has suffered from nuclear tests.
- ii. The 1996 advisory opinion by the ICJ continues to be ignored by nuclear-weapons states, and these lawsuits demand that this situation be corrected.
- iii. The cases contend that the non-compliance with Article Six of the NPT constitutes a "denial of human justice," as it is now sixty-eight years since the first UN General Assembly resolution regarding the elimination of nuclear weapons and other weapons of mass destruction, forty-five years since the entering into effect of the NPT, and nearly twenty years since the ICJ advisory opinion.

We are also sending our message of hope and encouragement to the government of the Marshall Islands that the Court will overcome debates regarding jurisdiction and begin hearing the cases, providing an important milestone in our effort to accelerate the movement to abolish nuclear weapons.

At the same time, we will be spreading the news about the lawsuits throughout Japan, asking people for their support and solidarity.



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March 1, 2016

Your excellency Mr. Tony de Brum,

Japan Association of Lawyers Against Nuclear Arms (JALANA), a lawyers' organization whose purpose is abolition of nuclear weapons and support for nuclear victims, hereby delivers a message of solidarity to you, who is present at the March 1 Bikini Day events in Shizuoka, Japan.

As the Foreign Minister of the Republic of Marshall Islands (RMI), you filed the "Nuclear Zero Lawsuits" before the International Court of Justice. The Lawsuits against nuclear-armed states have brought great encouragement to us, lawyers and citizens in Japan.

The reason is that the RMI, a small country, has sued the nuclear powers before the International Court of Justice in order to demand compliance with international law. The Charter of the United Nations reaffirms the equal rights of nations large and small, but the international community is controlled by the will of powers in fact. In some cases, stark violence goes ahead of judicial settlement.

In such a situation, the "Nuclear Zero Lawsuits" are expected to bring a new prospect for the momentum toward the nuclear weapons abolition.

Though JALANA has already expressed its support for the "Nuclear Zero Lawsuits," I hereby honor your initiative of ingenuity once again, and would like to tell you that we will provide as much support as possible to make the "Nuclear Zero Lawsuits" a great success.

We hope your success in the upcoming oral proceedings of the International Court of Justice.

Very respectfully yours,

Takeya Sasaki

President of Japan Association of Lawyers Against Nuclear Arms

# The Historical Significance of the Shimoda Case Judgment, in View of the Evolution of International Humanitarian Law

**Yoshiro Matsui,**  
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## Introduction

On December 7, 1963 Tokyo District Court handed down a decision (the Shimoda Case judgment<sup>1</sup>) which ruled that the atomic bombings of Hiroshima and Nagasaki violated international law. This lawsuit (known internationally as the Shimoda Case) was filed by Ryuichi Shimoda and four other plaintiffs who were victims of the Hiroshima and Nagasaki bombings seeking compensation on the assumption that the bombings were illegal. Although the Court rejected their demand for compensation, it determined that the bombings were illegal in light of the principles of contemporary positive international law.

This paper places the Shimoda Case within the subsequent evolution in international law — particularly the advance from the “laws of war,” under which the benefit of the law is assured equally for all belligerents, to international humanitarian law, whose focus is on protecting individual victims of war — and examines its historical significance.

## I. Major Considerations in Assessing the Shimoda Case

### 1. Basic Issues in Assessing the Use of Nuclear Weapons According to International Law

The Shimoda Case judged the legality of the Hiroshima and Nagasaki atomic bombings under international law, and internationally it was also the first judicial decision on the use of nuclear weapons. Roughly there are two issues: First, whether international law applies to the use of new weapons for which there is no express prohibition, and second, whether the atomic bombings can be declared illegal based on two principles of the laws of war, i.e., doctrine of military objectives (principle of distinction) and banning the use of weapons which cause unnecessary suffering.

In view of the fact that the 1996 ICJ Advisory Opinion on the Legality of Threat or Use of Nuclear Weapons (below, Advisory Opinion) also takes up these issues, the historical significance of the Shimoda Case judgment transcended the specific instance of the Hiroshima and Nagasaki atomic bombings, and presented an international law rationale that is applicable to the use of nuclear weapons in general.

In recent years the inhumaneness of nuclear weapons has come into the spotlight as a nuclear weapons abolition strategy. Let us examine the Shimoda Case judgment in this respect.

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<sup>1</sup> An English translation of the verdict is available on the website of the International Committee of the Red Cross. <<https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/aa559087dbcf1af5c1256a1c0029f14d>>

## 2. Confirming the Application of International Law to the Use of Nuclear Weapons: Negating the Argument that It Does Not Apply to New Weapons

At times when new weapons appear, there is of course no customary law that specifically bans them, and also no treaties. Additionally, there is a strong traditional argument that it is permitted to use weapons which are not specifically banned by international law, and this claim is also made for nuclear weapons.

On this issue, the judgment states: “The rules contained in these instruments do not include any provisions directly touching upon the atomic bomb, a new weapon which appeared during the Second World War. On the strength of this fact, the defendant State argues that the question of violation of positive international law cannot arise, since the use of an atomic bomb was not expressly prohibited by positive international law inasmuch as there was neither a customary rule of international law nor treaty law-prohibiting its use at that time.

“It can naturally be assumed that the use of a new weapon is legal as long as international law does not prohibit it. However, the prohibition in this context is to be understood to include not only the case where there is an express rule of direct prohibition, but also the case where the prohibition can be implied *de plano* from the interpretation and application by analogy of existing rules of international law (customary international law and treaties).”

The judgment held that it is possible to apply interpretation and application by analogy of existing customary law and treaties, and the rules of international law that underpin them.

## 3. Assessment from Two Principles of the Laws of War

### (1) Doctrine of Military Objectives (“Principle of Distinction”)

The decision judged that, “according to the customary rules generally recognized in international law concerning hostile acts, there is a distinction between a defended city and an undefended city” with regard to bombardment by land and naval forces, and that with regard to aerial bombardment under the Draft Rules of Air Warfare (1923), “It can therefore be said that the prohibition of indiscriminate aerial bombardment of an undefended city and the principle of military objectives contained therein are rules of customary international law in view of the fact that these are also found in common in the rules of land and sea warfare.” Invoking this, the decision stated, “It is beyond dispute” that because Hiroshima and Nagasaki were undefended cities which, even though having defense facilities and military units, were far removed from battlefields and not in danger of being occupied by enemy forces, “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.”

Regarding the issue that no express related treaties exist, this decision based its judgment on the doctrine of military objectives, a basic rule of the laws of war. In view of the fact that the subsequent Protocol I Additional to the Geneva Conventions of 1977

abolished the distinction between defended and undefended cities and fully applied the principle of distinction to both cases, this decision is commendable for its great contribution to the evolution of international humanitarian law.

#### (2) Prohibition of Weapons that Cause Unnecessary Suffering

The decision then invoked the 1868 St. Petersburg Declaration, which defines unnecessary suffering, and Article XXIII(e) of the Hague Regulations Respecting the Laws and Customs of War on Land, which provides for a ban on the use of weapons which cause unnecessary suffering, stating, “It is indeed a fact to be regretted that the atomic bombing of the cities of Hiroshima and Nagasaki took away the lives of tens of thousands of citizens, and that among those who have survived are those whose lives are still imperiled owing to its radioactive effects even now after eighteen years,” and that in light of this “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 which prohibits the causing of unnecessary suffering.” Calling attention to this point as well endows the Shimoda Case judgment with great significance.

#### 4. Inhumaneness as an Assessment Criterion

Underlying the judgment that the atomic bombings of Hiroshima and Nagasaki violate international law was the recognition of the inhumaneness and cruelty of atomic bombs. Although the decision did not make a direct finding of fact on the state of harm from the Hiroshima and Nagasaki bombings, in concluding that “the atomic bombs have characteristics which differ from all conventional weapons, and must be said that they are truly cruel weapons,” it stated that “we have already observed the horror of the many kinds of physical damage” arising from the characteristic radiation of the atomic bombs. The decision concluded that the atomic bombs were inhumane based on the severe damage they caused, which is public knowledge in Japan.

## II. Evolution of International Humanitarian Law and the Use of Nuclear Weapons

### 1. From the Laws of War to International Humanitarian Law: Shift in the Benefit of the Law

In response to Resolution XXIII, “Human rights in armed conflicts,” of the International Conference on Human Rights, Teheran, which was held to commemorate the 20th anniversary in 1968 of the Universal Declaration of Human Rights, the UN General Assembly took up the matter of “Respect for Human Rights in Armed Conflicts,” which started the legislative process of international humanitarian law that led to adoption of the Protocol I Additional to the Geneva Conventions of 1977.

Under the prohibition of use of force by the UN Charter, doubts arose in international humanitarian law about equality in the benefit of the law between aggressors and aggression victims, but benefit of the law is still upheld for protection of individual victims of armed conflict.

Further, in recent times we have come to see a phenomenon which might be called

the mutual permeation of international human rights law and international humanitarian law, and the world has adopted the view that protection under human rights conventions is not suspended even in times of armed conflict, except in special cases. One must keep such changes in mind when considering the application of humanitarian law to nuclear weapons use.

## 2. Protocol I Additional to the Geneva Conventions of 1977 and the Use of Nuclear Weapons

### (1) Rigorous Observance of the Distinction Principle (Doctrine of Military Objectives): Articles 48–58

Additional Protocol I provides that “The civilian population as such, as well as individual civilians, shall not be the object of attack” (Article 51.2) and “Attacks shall be limited strictly to military objectives” (Article 52.2), and it unconditionally prohibits indiscriminate attacks (Article 51.4). The stance adopted here discarded the concept of defended and undefended cities in the traditional laws of war, upon which the Shimoda decision is based; instead, it applies the doctrine of military objectives, i.e., the principle of distinction, to all situations.

Considering together Article 51.4, which defines indiscriminate attacks, Article 54, whose intent is to reinforce civilian protections, Article 56, and others, there is no scope at all for the use of nuclear weapons to be legal under the Protocol.

### (2) Reconfirmed Prohibition of Weapons that Cause Unnecessary Suffering: Articles 35 and 36

The protocol reconfirms the ban on weapons that cause unnecessary suffering in Article 35.2. This provision being a general rule, does it not apply to the use of nuclear weapons, for which there is no specific prohibition? But Paragraph 2 of the Protocol’s Article 1, “General principles and scope of application,” sets forth the Martens Clause by stating, “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.” Therefore, if one reads the ban on weapons which cause unnecessary suffering, set forth in Article 35 Paragraphs 1 and 2, in conjunction with the Martens Clause in Article 1.2, it is clear that the prohibition applies also to the use of nuclear weapons.

### (3) Protection of the Natural Environment: Articles 35.3 and 55

The Protocol incorporates the element of protecting the natural environment. Article 35.3 prohibits using methods and means of warfare “which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment,” while Article 55.1 requires taking care to protect the natural environment against such damage, and prohibits the use of warfare methods and means “which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.” These articles are written in a way which strongly suggests that the anticipated environmental damage would not be caused by conventional weapons, but by weapons of mass destruction such as nuclear weapons.

### 3. Use of Nuclear Weapons as a War Crime: Rome Statute of the International Criminal Court, Article 8.2(b)(xx)

For many years there was no mechanism for implementing the argument that the use of nuclear weapons constitutes a crime against humanity or is a war crime, but the entry into force of the Rome Statute of the International Criminal Court (ICC) in 2002 created an avenue for such a possibility. Article 8.2(b)(xx) of the Statute, “Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict,” builds on Article 35.2 of Additional Protocol I, and although it does not specify nuclear weapons, it can be read as a provision which assumes the use of nuclear weapons.

In the past, it was argued on the political-movement level that using nuclear weapons is a war crime, but now this is argued on the level of interpreting the Rome Statute, which is positive law. This fact clearly shows progress in the debate.

## III. ICJ Advisory Opinion on the “Legality of Threat or Use of Nuclear Weapons”

### 1. Opinion Framework

The UN General Assembly sought an Advisory Opinion from the ICJ on the question, “Is the threat or use of nuclear weapons in any circumstance permitted under international law?” In Dispositif (1) the ICJ decided to respond to the request for an Advisory Opinion, and in Dispositif (2) it examined the issue of legality or illegality.

In Dispositif (2) A through E the Court confirmed that there is no authorization in particular for the threat or use of nuclear weapons, nor is there any comprehensive and universal prohibition therefor, and went on to state that the threat or use of any kind of weapon is illegal if it violates Article 2.4 of the UN Charter and does not fulfill the requirements of Article 51, and that whether or not the possession of nuclear arms for deterrence corresponds to the “threat” in Article 2.4 of the Charter depends on whether the assumed use of force is prohibited by the article and, if for the purpose of self-defense, whether it violates the principles of necessity and proportionality.

The Court, having found that there are no treaty rules or customary rules which specifically prohibit the threat or use of nuclear weapons themselves, then moved ahead with a discussion of whether they are illegal in light of the principles and rules of international humanitarian law, and in Dispositif (2)E ruled that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law; However... the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”

As the basic principles of international humanitarian law which should be the criteria for judging illegality, the Court here cites, first, the principle of distinction, which prohibits indiscriminate attacks, and second, the principle banning weapons which cause unnecessary suffering. The Court then refers to the Martens Clause, and

states that it “has proved to be an effective means of addressing the rapid evolution of military technology.” The Court goes on to state that most of the rules of humanitarian law are very fundamental to the respect of human individuals and “elementary considerations of humanity,” and that the rules “are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law,” thereby recognizing that the basic rules of international humanitarian law bind all countries as customary law.

One must take note of the facts that, in applying the basic principles of humanitarian law to nuclear weapons, the Court produced a detailed finding on “the unique characteristics of nuclear weapons,” that is, their inhumanity, and that it repeatedly emphasizes the “inherently humanitarian character” of international humanitarian law.

## 2. Assessment of the Advisory Opinion from Two Principles of International Humanitarian Law

### (1) Assessment of Nuclear Weapons According to Humanitarian Law: Opinion Dispositif (2) E, First Half

However, while the Court itself recognized the inhumanity of nuclear weapons, it is hard to understand the expression suggestive of exceptions, arrived at as a result of applying the basic principles of humanitarian law to their use, that it “would generally be contrary to the rules of international law.” Moreover, on this point the Court offers no concrete justification. It is more than evident that the use of nuclear weapons corresponds to indiscriminate attacks, which violate the distinction principle, and that they cause unnecessary suffering. To give no justification in spite of that was perhaps a last-ditch measure to avoid such an inevitable conclusion, open the way to an “exception,” and narrowly secure a majority of judges in favor.

What kind of “exceptions” are possible? The only possibility quoted by the opinion was that the use of low-yield nuclear weapons against warships at sea or troops in sparsely populated areas would have little secondary damage on civilians, which was argued by the UK and US. But even if this can be an exception to the distinction principle, it is not an exception to the ban on the use of weapons that cause unnecessary suffering. Even more of a problem is that the Court turned a blind eye to the Martens Clause, which the Court itself positively assessed as an “expression of the pre-existing customary law,” and conducted no specific consideration at all of the possibility of applying to nuclear weapons the basic principle of banning weapons which cause unnecessary suffering.

### (2) Argument on the Right of Self-Defense: Opinion Dispositif (2) E, Second Half

As a possible exception, the Advisory Opinion suggested “an extreme circumstance of self-defense, in which the very survival of a State would be at stake,” but the matter of whether a certain use of force fulfills the requirement for self-defense is on the level of the judgment of whether it can be justified in light of the UN Charter and the law of self-defense, and if this is determined satisfy conditions, then next is the consideration of whether, in light of law applicable to armed conflict, there are violations involving the nature of the weapons or how they are used. Therefore, satisfaction of the conditions for self-defense is not a reason for precluding the illegality of means and methods of warfare that violate the basic principles of humanitarian law. Here the Court committed



a major contradiction in logic.

### 3. Obligation to Pursue in Good Faith and Bring to a Conclusion Negotiations Leading to Nuclear Disarmament: Opinion Dispositif (2) F

Finally, the Court stated, “F. There exists an obligation to pursue in good faith and bring to a conclusion negotiation leading to nuclear disarmament in all its aspects under strict and effective international control.” Paragraph F does not correspond to the question set forth by the UN General Assembly, and as such arguably is *ultra vires* of the Court, but there is great significance in the fact that in the end the judges use this judgment to unanimously conclude their opinion, in which the Court had harshly clashed. This is certainly because the Court thought that the continued difference of opinion over the legal status of devastating weapons such as nuclear weapons would be harmful to international law and the stability of the international order.

Moreover, while at first glance this obligation appears to be a restatement of the NPT’s Article 6, it is not just an obligation for mere negotiations; in that the Court recognizes this as evolving this obligation into an obligation to achieve total nuclear disarmament by concluding negotiations in good faith, and that this dual obligation involves not only the 182 NPT parties, but demands the cooperation of all nations in the realistic pursuit of total and complete disarmament, especially nuclear disarmament, the Court arguably advances the existing discussion a step further.

### Conclusion

During the 30-odd years between the Shimoda Case and the ICJ Advisory Opinion, the traditional laws of war that applied in the former evolved into international humanitarian law, as symbolized by Protocol I Additional to the Geneva Conventions of 1977. Under the laws of war, assuring the equality of belligerents was the main benefit of the law, but under international humanitarian law, the main benefit of the law is assuring the human rights and humane treatment of individuals, who are the victims of armed conflict, based on “elementary considerations of humanity.” The Shimoda Case judgment beautifully predicted this evolution of international law. In particular, it affirmed the application of the existing laws of war to the dropping of the atomic bombs, which were new weapons, and it rendered judgment on the legality of these new weapons based on the basic principles of the laws of war, i.e., the doctrine of military objectives (the distinction principle) and the ban on weapons that cause unnecessary suffering, which underscored the historical significance of the Shimoda decision in the sense that it provided a model that should be used when assessing the use of nuclear weapons under international law. Although the Advisory Opinion does not directly quote the Shimoda decision, that decision — known internationally as the “Shimoda Case” — had been published in English translation, and it seems likely that the ICJ judges had read the judgment. The Advisory Opinion in general follows the Shimoda judgment model.

Let us examine the extent to which the Advisory Opinion, which builds on the establishment of international humanitarian law, advanced the Shimoda judgment stance toward banning the use of nuclear weapons and abolishing them. Above I pointed out the Advisory Opinion’s problems, but it doubtless has several positive

facets as well. The opinion put an end to the argument, which had persisted among nuclear-weapons powers and their academics, that the existing laws of war and humanitarian law do not apply to the use of nuclear weapons, which are a new type. The ICJ Advisory Opinion also emphasized the inhumaneness of nuclear weapons, underscored the humane character of international humanitarian law, and recognized that the use of nuclear weapons is “scarcely reconcilable” with the principles and rules of humanitarian law.

The Advisory Opinion’s stumbling block was the argument for self-defense and the doctrine of nuclear deterrence which underlies it. One reason that the Court in the *dispositif* abandoned a judgment on the legality or illegality of using nuclear weapons in an “extreme circumstance of self-defense” was that it could not ignore the customary use of deterrence policy, to which “an appreciable section of the international community” had adhered to many years. Accordingly, overcoming nuclear deterrence doctrine is essential to confirm the total illegality of using nuclear weapons.

Overcoming nuclear deterrence doctrine also necessitates the establishment of a new view of security — a “human-security” view — that aims to guarantee the individual’s right to live in peace. This would replace the traditional military-security view, which is based on the country. Nuclear deterrence doctrine is rooted in the most extreme inhumane thinking, in which another country’s entire populace is held hostage for the “security” of one’s own country. In this sense, deterrence is not only a contrary concept of international humanitarian law, but also a contrary concept of “human security.”

Establishing the “human-security” view and overcoming nuclear deterrence doctrine requires the use of *realpolitik*, and both domestic and foreign public opinion play a major role in doing that, as shown by the Shimoda Case and the ICJ Advisory Opinion. It is well known that behind the Shimoda decision was the Campaign against Atomic and Hydrogen Bombs, which experienced a groundswell in the wake of the 1954 *Daigo Fukuryu Maru (Lucky Dragon No. 5)* incident, and that underlying the UN General Assembly resolution that sought the ICJ Advisory Opinion were the activities of the World Court Project, which was affiliated with the International Association of Lawyers Against Nuclear Arms (IALANA) and many other anti-nuclear NGOs. These anti-nuclear NGOs had significant influence over the ICJ’s advisory proceedings, and it was an achievement of this campaign that the mayors of Hiroshima and Nagasaki, whose views differed from those of the Japanese government, participated in oral statements from Japan oral statements, which was highly unusual.

The heightening of humanitarian consciousness among the citizens based on the tragic experience of war has always underlain the advance from the laws of war to international humanitarian law. This advance was brought about mainly against the backdrop of the heightening of humanitarian consciousness among the citizens and the strength of the movement supported by it. There is no expectation that the “obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects” confirmed by the Advisory Opinion would ever be discharged if it were left entirely up to the governments of nuclear-weapon states and other countries. Even though the UN General Assembly has time and again passed resolutions to quickly initiate negotiations to abolish nuclear weapons, they have yet to begin, and this fact shows that we cannot expect any progress on the inter-state level alone. Perhaps the only way to overcome this difficulty is the strength of international public opinion marshaled by the anti-nuclear movement. In other words, the

anti-nuclear movement passed the ball to the ICJ, and the ICJ in effect threw it back. Surely now the true value of the anti-nuclear movement is being tested.

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This paper is a summary produced by the secretariat of a keynote speech delivered at the Memorial Symposium for the 50th Anniversary of the Shimoda Case Judgment, which was hosted by the Japan Association of Lawyers Against Nuclear Arms on December 8, 2013 in Tokyo



## About Us

Japan Association of Lawyers Against Nuclear Arms (JALANA) is a lawyers' organization whose purposes are abolition of nuclear weapons and nuclear energy, and support for the Hibakusha (A-Bomb survivors). It is also Japanese affiliate of the International Association of Lawyers Against Nuclear Arms (IALANA), which has consultative status with the UN.

JALANA consists of about 300 members who are convinced that Japanese lawyers have special imperative of eliminating all nuclear arsenals. The reason why we must abolish nuclear weapons is their illegality and inhumanity. As jurists of the country that actually suffered nuclear attacks, we must demonstrate their illegality and inhumanity in order to establish a world free of nuclear weapons.

JALANA organizes events on nuclear disarmament, and issues journals "*Hankaku horitsuka*" (meaning "Lawyers Against Nuclear Arms") four times a year that cover reports on our activities and analyses and opinions on current issues related to nuclear weapons.

For more information, please visit our website: <http://www.hankaku-j.org/>



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