

Let's Create a World Without Nuclear Weapons and War! A Proposal Made in Particular to American Friends

Ken'ichi Okubo, Secretary-General
Japan Association of Lawyers Against Nuclear Arms (JALANA)

Trends among Nuclear Powers

There are apparently 13,880 nuclear warheads around the world.¹ The US has 6,185 warheads, of which 1,750 are operationally deployed, i.e., ready to be used at any time. By using intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles (SLBMs), strategic bombers, or other means, it is possible to mount nuclear attacks on adversary countries. In February 2018 the US conducted a Nuclear Posture Review (NPR) which asserted that the US could counterattack with nuclear weapons even if it was attacked with conventional weapons. It also said that the US would begin making low-yield nuclear warheads (5- or 7-kt TNT equivalent; the Hiroshima bomb was 16 kt), and that SLBMs with the new W76-2 nuclear warhead have been fully deployed.²

The following May, the US unilaterally withdrew from the Iran Nuclear Deal.³ Currently the US-led "Iran encirclement" is set up in the Strait of Hormuz. Of course Iran's backlash has heightened regional tensions. In the February 4 State of the Union Address, President Trump spoke about the killing of Iran's General Qasem Soleimani, saying that "at my direction, the U.S. military" killed this "ruthless butcher," and boasting of the US government's dangerous behavior.

In February 2019 the US conducted a subcritical nuclear test.⁴ Such tests are meant to refine nuclear weapons. On October 2018 the US indicated that it would abrogate the INF Treaty⁵ because of a violation by Russia, and the treaty expired on August 2, 2019. The US

¹ According to the Nagasaki University Research Center for Nuclear Weapons Abolition (June 2019 data). These data are used throughout this paper for the numbers of nuclear weapons.

² *Akahata*, February 6, 2020. The Pentagon's statement called the W76-2 "a prompt, more survivable low-yield strategic weapon," said that it "supports our commitment to extended deterrence," and has in mind "potential adversaries, like Russia."

³ Formally, the Joint Comprehensive Plan of Action (JCPOA), which Iran entered into with Britain, France, Germany, Russia, China, and the US during the Obama Administration in 2015. Iran agreed that it would substantially restrict its nuclear development in exchange for termination of sanctions.

⁴ According to the Japan Association of Disarmament Studies' *Disarmament Dictionary* (Shinzansha Publisher, 2015), "A subcritical nuclear test is a nuclear test which does not involve a nuclear explosion because the reaction is stopped before fissile material attains criticality and causes a chain reaction," and "In general, these are tests which confirm the reaction and behavior by putting fissile material under high temperature and pressure, just as when the chemical high-explosive trigger for a nuclear test explodes."

⁵ The Intermediate-Range Nuclear Forces Treaty is a disarmament treaty entered into by the US and USSR in 1987. Its purpose is to eliminate intermediate-range nuclear forces (ranges of 550 to 5,000 km).

lost no time by resuming intermediate-range missile tests on August 19, and announced their success.⁶ One must remember that President Trump is the person who asked a foreign policy expert, three times in one hour, why nuclear weapons cannot be used even though America has them.⁷ The US maintains its system for using nuclear weapons, and the person with the nuclear button has no hesitation about using them.

How about Russia? It has 6,500 warheads, of which 1,582 are operationally deployed. In his 2019 annual state-of-the-nation address, President Putin remarked on the INF Treaty, from which the US had announced its withdrawal, saying that if missiles banned by the treaty were deployed in Europe, Russia would counter also the “decision-making centers authorizing their use” (even now, Washington DC seems to be targeted by Russian ICBMs). Putin also headed off missile deployments in Europe by noting Russia’s intention to target the US mainland with new hypersonic missiles. He openly showed Russia’s hard-line posture against the US.⁸ I have not forgotten that Putin considered using nuclear weapons when Russia annexed Crimea.⁹ He too is addicted to nuclear weapons.

How about China? That country has 290 warheads, but apparently they are not operationally deployed. Nevertheless, China stubbornly opposes the Treaty on the Prohibition of Nuclear Weapons (TPNW), and the US says it is possible that China makes year-round preparations to use its nuclear test sites, and that over the next decade China’s nuclear arsenal will at least double.¹⁰ Additionally, China uses government vessels to make intrusions near the Senkaku Islands, constructs artificial islands,¹¹ and makes other hegemonic moves in the East China Sea and South China Sea. China has assumed a clear stance: it sanctions nuclear weapons and attempts to achieve policy through force. China is a country in which the will of the people is not manifested in politics by means of elections, and as such, we must watch developments closely.

India has 130 warheads and Pakistan has 150, but apparently they are not operationally deployed. These countries are, however, engaged in a heated confrontation over Kashmir, and there have been military clashes. What is more, On August 5, 2019 India’s government announced that it would strip Jammu and Kashmir of its autonomy. Tensions will inevitably rise, and there is a risk that nuclear weapons will be used. An exchange of nuclear missiles would likely have a devastating impact on the global environment, not just on those two

⁶ *Chugoku Shimbun*, August 21, 2019.

⁷ *Mainichi Shimbun*, evening edition, January 30, 2018. See also: Ken’ichi Okubo, “*The Nuclear Age*” and *Article 9 of the Japanese Constitution*, Nippon Hyoronsha, 2019, p. 115.

⁸ *Asahi Shimbun Digital*, February 21, 2019.

⁹ On March 15, 2015 President Putin was asked if there was a possibility that he would place his nuclear forces in a combat readiness state if the Crimea situation developed in a disadvantageous way for Russia, and he stated definitely that “we were prepared to do so.”

¹⁰ *Akahata*, May 31, 2019.

¹¹ The South China Sea is a vital region for marine traffic and a rich fishery. There are also indications that it has oil and natural gas, for which reason territorial claims are made on the Spratly Islands by China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei. China asserts its right to virtually the entire South China Sea. It is building artificial islands in the Spratly Islands, and its activities generate speculation that it is establishing a military presence there. *Asahi Shimbun* morning edition, July 13, 2016.

countries.¹² It is hoped that cooler heads will prevail in both countries.¹³

France has 300 nuclear warheads and Britain has 215. Those operationally deployed are, respectively, 280 and 120. Germany, Italy, The Netherlands, Belgium, and Turkey share a number of deployed nuclear weapons (an arrangement known as nuclear sharing) which are likely aimed at Russia. Further, NATO forces are currently conducting training which assumes nuclear war.¹⁴ A nuclear war in the small region of Europe (excluding Russia) would be catastrophic.

Israel has 80 nuclear warheads, of which none are operationally deployed. Israel's actions would be in the spotlight in the event that Iran embarked on nuclear development. Would Israel again attack Iranian nuclear facilities using the pretext of "preemptive self-defense"?¹⁵ It is possible that a large military conflict could result. One's anxiety rapidly grows in view of Israel's relationship with President Trump, and its hard line against Palestine.

North Korea is thought to have 20 to 30 warheads, but they are not operationally deployed. Recently it has carried out multiple nuclear tests, but has of late stopped nuclear testing, and is conducting tests on short- and intermediate-range missiles. Because using nuclear weapons requires nuclear warheads and the means to deliver them, one must not trivialize missile tests. We need to end the Korean War and denuclearize the peninsula. One wonders how much longer the relationship of trust between Chairman Kim and President Trump will last, and this raises questions about that relationship's weak footing.

It is clear from the preceding rundown that the nuclear powers always keep their arsenals primed for use. Developments in the US are particularly dangerous. The state of readiness is such that President Trump's decision alone can launch nuclear weapons at any time.

Although the number of nuclear warheads has fallen below the 1986 peak of 70,000, modernized and more powerful nuclear weapons have been developed. There are enough to wipe out human society. And we must take special note that nuclear war could happen

¹² A Rutgers University research team estimated the direct damage caused if nuclear-armed India and Pakistan started a nuclear war. The estimated number of immediate fatalities would exceed 100 million, plant growth around the world would decrease 20–35%, and marine productivity would decline 5–15%, thereby causing mass starvation and ecosystem destruction, in turn killing even more people. The team speculated that it would take 10 years to recover fully from the nuclear impacts. *Newsweek*, web edition, October 3, 2019.

¹³ Tensions rose between India and Pakistan in 2002, and there was danger that the situation would evolve into nuclear war. At that time, US Secretary of State Powell telephoned Pakistani leaders and urged prudence, saying that the Powell and Pakistan's leaders all knew nuclear weapons couldn't be used. Powell continued by asking them if Pakistan intended to become the first country to use nuclear weapons since August 1945, and invited them to take another look at photographs of Hiroshima and Nagasaki, then pressed them by asking if they intended to do something like that. Pakistan's answer was an unequivocal no. Powell subsequently made the same appeal to India, and received a similar response. Apparently, both countries cooled off. *Asahi Shimbun*, morning edition, July 11, 2013.

¹⁴ *Akahata*, October 24, 2019.

¹⁵ In 1981 Israel conducted an aerial bombing of an Iraqi nuclear power facility using "preemptive self-defense" as the pretext.

because of not only the intentional use of nuclear weapons, but also their unintentional use.¹⁶ That observation also appears in the TPNW.¹⁷ No matter what the reason for their use, there would be “catastrophic humanitarian consequences.”

The nuclear powers display absolutely no will to “pursue negotiations in good faith” on disarmament negotiations, or to bring them to a conclusion, as required by Article 6 of the Nuclear Nonproliferation Treaty (NPT). Even though the TPNW will soon enter into force, it is necessary to ascertain the situation of each nuclear power because, even if the TPNW takes effect, none the nuclear powers will be likely to willingly get rid of their nuclear weapons. How do we come to terms with this reality? How we act is being put to the test. In the face of the current reality, I have, as a Japanese lawyer, resolved to act as follows.

Calling for “a World without Nuclear Weapons or War”

As a Japanese lawyer working in solidarity with the hibakusha of Hiroshima and Nagasaki, I am calling upon lawyers around the world — especially those in the US — and civil society to bring about “a world without nuclear weapons or war.”

Working in solidarity with the hibakusha means that because the hibakusha want “a world without nuclear weapons or war,” I concur with them. By “as a lawyer” I mean the awareness that the significance of the law’s existence is to help protect people’s lives, and bring about their freedom and happiness via dispute resolution which does not resort to violence, and that lawyers are the ones who engage in this application of the law. “A world without nuclear weapons or war” means not merely that there are no nuclear weapons, but also that the world is free from war. This is not just an expression of a peace philosophy or the shaping of a political intent, but also the resolve to bring about “a world without war” as a legal institution. And that means a world which has not only no nuclear weapons, but also no military forces or soldiers at all. The foundation for eternal peace, in which war cannot happen because there are neither weapons nor soldiers, would be shaped in the real world, not on a grave.¹⁸ It would be the abolition of not only standing military forces, but also all war potential.

The legal framework for “a world without nuclear weapons” is moving toward formation by the TPNW. Needless to say, just because the treaty will have entered into force, “a world

¹⁶ Classifying the crises of unintentional nuclear war yields the following examples. (1) A nuclear war which starts without regard to a clear decision based on careful consideration by a person with proper authority. (2) A nuclear war started on the basis of faulty assumptions. (3) A conventional war which unexpectedly escalates into a nuclear war. Christopher G. Weeramantry, *Nuclear Weapons and Scientific Responsibility*. Longwood Academic, 1987 (Japanese translation, Chuo University Press, 1987).

¹⁷ The TPNW notes the “risks posed by the continued existence of nuclear weapons, including from any nuclear-weapon detonation by accident, miscalculation or design.” There is no such thing as a person who makes no mistakes, or a machine which does not break down.

¹⁸ In *Perpetual Peace*, Kant said, “Peace is the total absence of hostility.” (Kant, E., *Zum Ewigen Frieden. Ein philosophischer Entwurf, 1795*: Japanese translation, Iwanami Bunko, 1985, p. 13). Even if hostility arises, an armed clash would be impossible owing to the lack of war potential. As such, the non-existence of war potential is the foundation of perpetual peace. Perpetual peace must be established in a place other than a grave.

without nuclear weapons” will not come about unless the nuclear powers eliminate nuclear weapons, but there is no mistaking that the legal framework is in the process of being established. Underlying this is the philosophy and rationale that because the use of nuclear weapons would bring about “catastrophic humanitarian consequences,” nuclear weapons must be eliminated to avoid those consequences.

Article 1 of the TPNW states that not only the use of and threat to use nuclear weapons, but also their development, testing, production, manufacturing, acquisition, possession, stockpiling, transfer, and receipt of transfer are illegal. The illegality of nuclear weapons is confirmed as “the law as it is,” not “the law as it should be.”¹⁹

Meanwhile, armed force is being used around the world. Despite the prohibition of war and armed force by the UN Charter, slaughter and destruction continue on pretexts such as individual or collective “self-defense” and “the war on terror.” Many people find themselves assaulted by senseless death or the misfortune of being suddenly deprived of their peaceful everyday lives. It is an inhumane situation. The fear and want caused by the use of armed force are violating basic human rights including human dignity and the right to live in peace.²⁰ I feel that I must do something to change such situations. War and the use of armed force must never be permitted under any circumstances. This is because it should be deemed that there is no armed force that is justified. This is the outlawry of war.²¹

I do not at all think it is impossible. That is because there are about 26 countries which do not have military forces, and which therefore cannot use armed force.²² For at least the last 70 years, Japan too has not directly killed or wounded the soldiers or people of any other

¹⁹ “It needs no emphasis that the function of the Court is to state the law as it now is, and not as it is envisaged in the future. Is the use or threat of use of nuclear weapons illegal under presently existing principles of law, rather than under aspirational expectations of what the law should be? The Court’s concern in answering this Request for an Opinion is with *lex lata* not with *lex ferenda*” (Dissenting Opinion of Judge Weeramantry by John Burroughs. *Illegality of Nuclear Weapons* by Kenji Urata, the supervisor of the translation. Institute of Comparative law in a series. 2001. P. 268.). Judge Weeramantry thought that the illegality of nuclear weapons was that of “the law as it is,” but some judges saw it as “the law as it should be.” Incidentally, Judge Oda refused involvement in judging the illegality of the use or threat of nuclear weapons, saying that opinion-seekers should go to New York, not The Hague.

²⁰ The recollection of a school principal in the Burmese mountain state of Kachin: “We know that atomic bombs were dropped on Hiroshima and Nagasaki, that many were injured and killed, and that even now some people are suffering from radioactivity-induced illnesses. It’s also in the Burmese-language textbooks that we use in school. I think it was a terrible event. But hardly any Japanese people know that during World War 2 the Japanese military bombed our little Kachin State mountain village, which isn’t even on the map.” (Toshihiro Yoshida, *Anti-Bombing Thinking*, NHK Books, 2006, p. 282. When I read this passage, I felt that someone had sternly pointed out my ignorance.

²¹ “Outlawry of war” means to banish war from the domain of law, or to place it outside the bounds of law. This is to be sharply distinguished from “the argument for making war illegal,” in which, having placed war inside the domain of law, a case is made for its legality or illegality.

²² Maeda, A., *27 Countries without Armies*, Nippon Hyoronsha, 2008. See also: Okubo, op. cit., p. 55.

country. It is merely a matter of Japan stopping its cooperation with the US and maintaining its non-involvement with US military forces (although there is still the matter of disbanding the Self-Defense Forces). The continued existence of a non-military peaceful state is certainly not a utopian ideal.²³

In my thinking, we lawyers of an atomic-bombed country, with empathy for the hibakusha resolve, have a special mission and responsibility for working to bring about “a world without nuclear weapons or war.”²⁴

The Resolve of the Hibakusha

On June 5, 2001 the Japan Confederation of A- & H-Bomb Sufferers Organizations (Hidankyo) published a “21st Century Hibakusha Declaration” titled “For a World without Nuclear Weapons or War.”²⁵ It begins as follows.

August 6 and 9, 1945. The two bombs dropped by the US on Hiroshima and Nagasaki instantaneously transformed them into cities of death. Even people who were severely burned, could not save their family members, and managed to escape the jaws of death at that moment subsequently succumbed to radiation and expired one after the other. It looked like a scene from hell, not this world.

Atomic bombs are weapons of absolute evil, whose only purpose is extinction. They do not allow people to either live or die as humans should. The only way for hibakusha to live as human beings is to negate atomic bombs.

Over the last half century the hibakusha have overcome suffering, told the world about the true state of atomic-bombing harm, and have pleaded that we “never again create hibakusha.” The hibakusha plea has expanded in the form of public opinion and movements for “eliminating nuclear weapons,” and has become a major world current. Since Hiroshima and Nagasaki the use of nuclear weapons in battle has been blocked. Indeed, it is world public opinion and movements that discourage against nuclear war.

The spirit of this appeal has been employed in the preamble of the TPNW in language such as “Mindful of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons,” and “Stressing the role of public conscience in the furthering of the principles of humanity as evidenced by the call for the total elimination of nuclear weapons, and recognizing the efforts to that end undertaken by the United Nations, the International Red Cross and Red Crescent Movement ... and the hibakusha ...”²⁶

Now, as the world resonates with the hibakusha feelings and movement, we are moving with great strides toward a world without nuclear weapons. Eighty nations have signed the

²³ The Liberal Democratic Party’s constitutional amendment draft holds that Article 9 is utopian thought.

²⁴ This is JALANA’s basic position.

²⁵ The entire text is posted on the Hidankyo website (in Japanese).

²⁶ See the preamble of the TPNW.

TPNW, and 35 have deposited ratification instruments.²⁷ If the treaty enters into force, it will ban not only the use of nuclear weapons and the threat of their use, but also their development, testing, possession, transfer, and other acts, which will likely pressure nuclear powers and nuclear weapon-dependent powers to change their policies of dependence on nuclear weapons. Establishment of the illegality of nuclear weapons as an international legal norm would be a big step toward “a world without nuclear weapons.” We must not impede that step.

The “21st Century Hibakusha Declaration” also says:

Japan’s government does not question America’s responsibility for dropping the atomic bombs, but instead unquestioningly follows the US and attempts to put off the elimination of nuclear weapons. We also cannot abide Japan’s cooperation with US nuclear policy, or its support of the “nuclear umbrella.” Japan is virtually a nuclear-armed country, which means that the atomic-bombed country of Japan is on the way to becoming a nuclear aggressor. We cannot close our eyes to this dangerous situation.

We want Japan to get out from under the “nuclear umbrella.” Japan must abrogate the Japan-US secret agreement on nuclear weapons, and further must conform to and legislate the three non-nuclear principles. Doing so is also the way to leverage the Japanese Constitution and to contribute to world peace as a nuclear-bombed country and a “non-nuclear country.”

Here the declaration states that by getting out from under the US nuclear umbrella Japan would leverage the Japanese Constitution and contribute to world peace as a “non-nuclear country.”

This declaration was subsequently carried over into the founding of the Hibakusha Article 9 Association, where it is disseminated as the earnest appeal of the hibakusha. Two examples:

A passage in the appeal of the Hibakusha Article 9 Association, which was founded in March 2007, states: “Article 9, which establishes that Japan renounces war, does not maintain war potential, and denies the right of belligerency, was birthed by the desire to ‘not repeat Hiroshima and Nagasaki.’ It gave the hibakusha the hope to live.”²⁸

Second, at the Nagasaki peace ceremony on August 9, 2018, Hibakusha representative Terumi Tanaka read the “pledge of peace,” which includes the passage: “The spirit of the Japanese Constitution’s Article 9, which establishes that Japan maintains no war potential

²⁷ The list of ratified countries as of January 3, 2020 is as follows: Antigua and Barbuda, Austria, Bangladesh, Bolivia, Cook Islands, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Gambia, Guyana, Holy See, Kazakhstan, Kiribati, Lao People’s Democratic Republic, Maldives, Mexico, New Zealand, Nicaragua, Palau, Panama, Paraguay, St. Lucia, St. Vincent and the Grenadines, Samoa, San Marino, South Africa, Thailand, Trinidad and Tobago, Uruguay, Vanuatu, Venezuela, and Vietnam. The Cook Islands did not sign, but deposited an instrument of accession with the UN, which has the same legal force as ratification.

²⁸ Okubo, *op. cit.*, p. 23.

for the purpose of dispute resolution, is a norm which Japan can hold up proudly in appealing to the world in the nuclear age.”²⁹

As these examples show, the hibakusha use their credo of “don’t create any more hibakusha,” which arises from their own experience, as the basis of their appeal to globalize Article 9 of Japan’s Constitution — a constitution which not only renounces war, but also gives up all war potential and denies the right of belligerency. I want to respond to this appeal.

The Relationship of Nuclear Weapons Elimination to Armed Force Prohibition and the Abandonment of War Potential in General

Confirming the Premise

1. Although waging war and the use of armed force are generally seen to be illegal in today’s international society, exercising the right of self-defense is justified. This is because it is assumed that in some cases the use of war and armed force are legal (*jus ad bellum*). On the other hand, even in cases where the use of armed force is permitted, international humanitarian law prohibits some means of combat (*jus in bello*). Indiscriminate attacks which do not differentiate between civilians and military personnel or between military and civilian facilities, and cruel weapons which inflict unnecessary suffering³⁰ are banned. In other words, even if using armed force is not illegal, there is a ban on using cruel weapons. In line with this thinking, the reason for allowing the use of nuclear weapons as a means of armed force is that the use of such armed force is given legal justification, thereby giving rise to cases in which nuclear weapons are not indiscriminate or cruel weapons. To summarize: 1) If the use of armed force is not given legal justification, then the use of weapons is prohibited, whether the weapons are nuclear or conventional. (2) If use of armed force is not illegal, the use of weapons which are not inhumane is permitted. If nuclear weapons are deemed not to be indiscriminate or cruel weapons, their use is consequently permitted. (3) Conversely, if nuclear weapons are deemed to be indiscriminate and/or cruel weapons, then even if the use of armed force itself is not considered illegal, the use of nuclear weapons would be banned, and their use in armed force would be illegal.
2. Therefore, it is possible that the prohibition and illegalization of using nuclear weapons could be realized by a rationale which emphasizes their inhumaneness and violation of international humanitarian law, even if there is not an overall ban on the use of armed force. Regardless of whether they are necessary for security, this rationale would attempt to bring about the illegality of nuclear weapons by invoking international humanitarian law and the inhumaneness of using nuclear weapons. This is a humanitarian approach, as well as being the values and rationale of the TPNW, which was enacted to avoid “catastrophic humanitarian consequences.” Use of nuclear weapons will be banned, even if for national security, and to guarantee that prohibition, the treaty will completely ban actions including development, testing, manufacture, possession, transfer, and receipt of transfer. Once it takes effect, the

²⁹ Okubo, op. cit., p. 38.

³⁰ Some examples are poison gas, dum-dums, anti-personnel mines, and cluster bombs.

doctrine of nuclear deterrence will lose its reason for existence because the treaty will ban the very possession of nuclear weapons, not to mention their use and threat. The doctrine of nuclear deterrence would not be viable in the absence of nuclear weapons. International society has progressed to this point.³¹ We must confirm our state of progress and then press onward.

3. Truly, the nuclear powers cannot sanction this fundamental negation of nuclear deterrence doctrine. The nuclear powers assert that the use of nuclear weapons is necessary and helpful for their national security. As such, because the TPNW illegalizes, as “inhumane weapons,” the nuclear weapons they depend upon, in their view the treaty negates their own pride and sense of justice, and therefore they absolutely cannot allow it to enter into force. That is the reason for their fierce resistance. There is no middle ground in this conflict because the treaty does not at all provide grounds for exception with respect to the illegality of using nuclear weapons. Under the treaty, nuclear weapons are absolutely illegal.
4. As such, nuclear weapons cannot be used even in a critical circumstance threatening the survival of a state. In this respect, the TPNW transcends the viewpoint set forth in the International Court of Justice Advisory Opinion,³² which states that the threat or use of nuclear weapons would generally be contrary to international humanitarian law, but that legality of the use or threat of nuclear weapons could not be definitively determined in “an extreme circumstance of self-defence.” This is because under the treaty, the use and threat of nuclear weapons are definitely illegal, even if the survival of a state is threatened. It is safe to say that this resulted from the great effort of the judges who argued that the use of nuclear weapons is absolutely illegal.³³
5. Now that the effort has come this far, I would like to have the TPNW take effect soon, and to get the nuclear powers on board. But there are two concerns that bother me. First, banning and abolishing nuclear weapons would be a great accomplishment, but would that alone be sufficient? Second, to have nuclear powers abandon their nuclear weapons, I wonder if there is something a bit more innovative that we could do to change the mindset of the governments and people of those countries. Simply put, it is the matter of why the hibakusha do not limit themselves to the “make no more hibakusha” slogan, but also insist on defending Article 9 of the Japanese Constitution, which negates both war and military forces. We need a critical awareness which invites us to listen to why the hibakusha — who have personally experienced the inhumaneness of nuclear weapons — insist not only on making the TPNW happen, but also on implementing Article 9. It seems to me that the inhumaneness of nuclear weapons requires a quantum leap beyond merely banning nuclear weapons, extending also to banning all war and use of armed force, that is, banning also war for self-defense and retribution, and leading to eliminating the need for the maintenance of any war potential, as well as making it illegal. And that directly links to the discussion on the special nature of nuclear weapons.

³¹ As of July 2017, 122 of 193 UN members have agreed and adopted the TPNW.

³² 1996 International Court of Justice Advisory Opinion, Reply E.

³³ Judge Weeramantry argued that the use and threat of nuclear weapons are absolutely illegal.

The Special Nature of Nuclear Weapons

Much has been said about the special nature of nuclear weapons, starting just after their use.³⁴ The preamble of the TPNW sums it up in the following manner.

Cognizant that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation...

As this indicates, it is observed that the use of nuclear weapons has grave impacts on human survival, the environment, food security, and the health of future generations. In other words, there are concerns that using nuclear weapons will bring about the extinction of human society. It is said this will be Armageddon,³⁵ the coming of the end. We must not ignore these characteristics of nuclear weapons. The discussion on this special nature was also a theme in the process of enacting the Japanese Constitution.

Discussion in the Imperial Diet When the Constitution Was Enacted

>From June 25 through October 8, 1946, the Imperial Diet worked on revising Japan's Constitution. During that time the Diet conducted the following discussion on nuclear weapons.³⁶ Answering for the government is Kijuro Shidehara.

As a principle which still governs international relations in the current situation, initiatives such as trying to rationalize and legalize military sanctions within a certain range were the reason for many repeated failures in the past, and are no longer what should inform our country's actions. In the final analysis, civilization and war are mutually incompatible. Unless civilization quickly eliminates war, war will eliminate civilization. (August 27 Reply, p. 288).

The very invention of the atomic bomb likely makes war proponents greatly reconsider their stance... Japan should now take the lead in an all-out peace movement, and move forward while carrying this huge banner. If one renounces war, all arms become unnecessary. And if arms become unnecessary, it would no longer be necessary to spend money on arms as we have been. (August 29 Reply, p. 321)

As this shows, Japan's government at that time had to reconsider the nature of war just for the reason that the atomic bomb had been discovered. Its thinking was that rationalizing

³⁴ See Okubo, op. cit., p. 111 ff.

³⁵ In the Revelation of St John, Armageddon is the place where the final battle between good and evil will occur at the end of the world. Also used to mean a major battle which decides the world's fate. *Japanese Encyclopedia*.

³⁶ *Facsimile Edition: Imperial Constitution Revision Proceedings*, Shinnippon-Hoki Publishing Co., Ltd., 2017.

and legalizing military sanctions would just repeat failure, and that war leads to the demise of civilization. If war in the “nuclear age” brings ruin to civilization, war must be abandoned, and if war is abandoned, arms are no longer needed. The logic is concise. Discussion such as this was behind the enactment of Article 9 of the Japanese Constitution.³⁷ In addition, one cannot ignore the major influence on the enactment of Japan’s Constitution by the words and actions of Douglas MacArthur, Supreme Commander for the Allied Powers.

MacArthur’s Speech to the Allied Council for Japan

On April 5, 1946 GHQ Supreme Commander Douglas MacArthur delivered the following speech to the Allied Council for Japan, which was overseen by the Far Eastern Commission.³⁸

While all provisions of this proposed new constitution are of importance, and lead individually and collectively to the desired end as expressed at Potsdam, I desire especially to mention that provision dealing with the renunciation of war. Such renunciation, while in some respects a logical sequence to the destruction of Japan’s war-making potential, goes yet further in its surrender of the sovereign right of resort to arms in the international sphere. Japan thereby proclaims her faith in a society of nations governed by just, tolerant and effective rules of universal social and political morality and entrusts its national integrity thereto...

No thoughtful man will fail to recognize that with the development of modern science another war may blast mankind to perdition — but still we hesitate — still we cannot, despite the yawning abyss at our very feet, unshackle ourselves from the past. Therein lies the childlike faith in the future — a faith that, as in the past, the world can somehow manage to survive yet another universal conflict.

MacArthur asserted that Japan’s renunciation of military force was not just the natural consequence of the Japanese military’s collapse, but also signified the renunciation of the state’s right to resort to war, and that Japan was entrusting its security to an international society governed by justice and tolerance, and by the rules of social and political morality. He also predicted that owing to modern scientific progress (which means the invention of the atomic bomb), the next war would wipe out humanity.

MacArthur’s speech to the Allied Council for Japan was also quoted by Kijuro Shidehara in a reply in the Diet.³⁹ Common to both Shidehara and MacArthur were the idea of excluding not only war, but also arms from Japan’s Constitution, and that they sought the reason for this exclusion in the invention of the atomic bomb. The problem is the degree of persuasion one recognizes in their thinking and explanations.

I too do not think their words and actions as manifestations of pure pacifism. Shidehara

³⁷ See Okubo, op. cit., Part 1 Chapter 1, Resource 1, and others.

³⁸ Report by Subcommittee of the Research Commission on the Constitution, *Origins of the Japanese Constitution*, Jiji Press Ltd., 1961, p. 258 ff.

³⁹ At the beginning of his reply of August 27 (note 36, p. 288).

had resolved to perform his final service to the Emperor,⁴⁰ and MacArthur was using the Emperor as an expedient to implement occupation policy. He said that the Emperor's existence was equal to the existence of a million soldiers.⁴¹ Although Shidehara and MacArthur did not necessarily see eye to eye, they both thought it was necessary to keep the Emperor. At the time, the USSR, Australia, The Netherlands, and other countries were of the opinion that the Emperor should be punished as a war criminal. One explanation offered is that the draft constitution incorporated renunciation of war, which would thwart revival of the Japanese military, in order to head off that opinion of the Soviets and others. If one recalls that MacArthur considered the use of atomic bombs during the Korean War, this explanation is somewhat convincing. A cooler view might be to say that they might have taken advantage of the atomic bombs for the survival and use of the Emperor. In other words, it could have been an attempt by them to use damage from the atomic bombings to conceal the Emperor's war responsibility. They would have been using the myth⁴² that Japan's defeat was because of the atomic bombings.

But in the "nuclear age" — when the atomic bomb was invented and actually used, and when we do not know when it will be used again — perhaps they were on the mark by predicting that if disputes continue to be resolved with armed force, then war will destroy civilization and result in the demise of humanity. If such is the case, then even if their references to the atomic bombings were based on their respective political thinking, perhaps we should listen to what they had to say. In the following section, let's see if we can verify their prediction that if the world tries to resolve international disputes with armed force, dependence on nuclear weapons will continue, and war will destroy civilization.

Dispute Resolution with Armed Force, and the Relationship to Nuclear Weapons

If people try to resolve disputes with armed force, nuclear weapons become the "ultimate weapons" because they are impossible to defend against. That is why nuclear powers make no effort to give them up, or to allow other countries to have them. And that is the reason that nuclear powers are enthusiastic about nuclear non-proliferation, while they achieve hardly any progress in their nuclear disarmament obligation under NPT Article 6. To put it in the vernacular, "Nukes for me but none for you."

Because nuclear weapons are the "ultimate weapons" and cannot be countered, if we attempt to solve problems with armed force, giving up nuclear weapons would run counter to military rationality. If people think that deploying more powerful military forces is required for the peace and security of their own countries, the possession and use of nuclear weapons are the natural conclusion. In the final analysis, countries will depend on nuclear weapons if they try to resolve international disputes with the force of arms. This leads to the statement that as long as nuclear weapons exist, no one will give up nuclear deterrence.⁴³ Thus we will

⁴⁰ "The Emperor has commanded me to serve as prime minister... I have firmly pledged in my heart that, if it's something I'm capable of doing, I must lay down my life for that purpose." Kijuro Shidehara, *Fifty Years of Diplomacy*, Chuko Bunko, 1987, p. 225.

⁴¹ In a letter from MacArthur to the Chairman of the Joint Chiefs of Staff, dated January 25, 1946.

⁴² Ward Wilson, *Five Myths About Nuclear Weapons*, 2013 (Japanese translation, Horitsu-bunkasha, 2016, p. 25 ff.).

⁴³ US President Barack Obama made essentially the same statement in his 2009 Prague

never know when “a world without nuclear weapons” will become reality.

Even if there was a pledge to ban the use of nuclear weapons in peacetime, that pledge would be broken in wartime.⁴⁴ In sum, if countries try to resolve disputes with armed force in “the nuclear age,” it would invite nuclear war and bring about the ruin of human society.

If people want to avoid ruin, it is necessary to ban the use of nuclear weapons, but as long as dispute resolution using armed force is sanctioned, dependence on nuclear weapons will continue. There is no need to question the logical consistency of this, because the real world proves it. The world now apparently has nearly 14,000 nuclear weapons. The “nuclear age” continues, and the Doomsday Clock sits at 100 seconds before midnight.⁴⁵ Humanity may be on the brink of ruin.

In view of the foregoing, the predictions of MacArthur and Shidehara were not just spur-of-the-moment thoughts, but rather observant scenarios of the real world in later years.

I feel that instead of having our attention monopolized by their limitations of real-world politicians, we should also spotlight those parts of their words and actions that we should adopt and preserve.

Let’s examine why ideas that we should adopt and preserve were germinating inside these men’s minds.

The Thought and Movement that Influenced the Thought and Actions of MacArthur and Shidehara⁴⁶

There was a movement for the outlawry of war in 1920s America. Its leaders included attorney Salmon Levinson, the philosopher John Dewey, and Senator William Borah. The gist of their position can be described as follows.

A system premised on war continues to create more war, so unless that system is fundamentally changed, humanity will never be liberated from war. No matter how hard we try to make war illegal, as long as we approve wars of retribution and use them as a means of solving problems, arms will be justified and the citizens will be driven to war. Conversely, as long as we do not abolish the institutions of international and domestic law, which hold that the institution of war is legitimate, war will not be abolished. The only way to truly make war impossible is for the citizens to not participate in war. To abolish the institution of war, the citizens must indicate that abolition is their own will. Instead of assuming that war will never go away, each and every citizen must look for ways to settle disputes without resorting to war, thereby abolishing war as the result of a hard-to-resist citizen demand.

speech.

⁴⁴ “Whatever agreements not to use H-bombs had been reached in time of peace, they would no longer be considered binding in time of war, and both sides would set to work to manufacture H-bombs as soon as war broke out, for, if one side manufactured the bombs and the other did not, the side that manufactured them would inevitably be victorious.” The Russell-Einstein Manifesto, 1955.

⁴⁵ US scientific journal *Bulletin of the Atomic Scientists*, January 23, 2020.

⁴⁶ This section owes much to two works: Akihiro Kawakami, *A Study of the Ideological Origin in the Formation of the Constitution of Japan, Article 9: “Outlawry of War” Theory and the Pacifism Provision of the Constitution of Japan*, Senshu University Press, 2006; Shin’ichi Yamamuro *The Ideological Wellspring of the Japanese Constitution, Article 9*, Asahi Shimbun, 2007.

This movement was carried out across the US, over 1 million copies of the authors' pamphlet were printed, and apparently over 2 million people signed a petition calling for the outlawry of war. It is said to be the biggest petition movement in US history. Certainly I too would have signed.

It is said that this movement heavily influenced the Kellogg-Briand Treaty of 1928.⁴⁷ Akihiro Kawakami states, "The Kellogg-Briand Treaty was heavily influenced by this movement. The Senate Foreign Relations Committee chairman, who decided that the US would join the treaty, was Senator William Borah, one of the leaders of this movement. The movement also included Former Secretary of State Philander Knox, and it is likely this influenced Secretary of State Kellogg. When Japan's Ministry of Foreign Affairs signed the treaty, it thoroughly investigated the pact, and noted that the movement to outlaw war was in the treaty's ideological underpinning. I have been conducting research to determine the ideological underpinning of the Japanese Constitution's Article 9, and it can be found in the Kellogg-Briand Treaty, and before that the movement to outlaw war. It is said that Prime Minister Shidehara and MacArthur drafted Article 9. Indeed, Shidehara had served as Japan's ambassador to the US, and had links to Wilson, Kellogg, and Borah."⁴⁸ Kawakami suggested that Shidehara had been influenced by this movement, which involved people including a president, a secretary of state, and a Senate Foreign Relations Committee chairman.

Ultimately, however, the argument advanced by Levinson and others was not adopted for the Kellogg-Briand Treaty. The treaty outlawed war, and that was an historic event. But it allowed the use of armed force that is not illegal, and did not exclude the maintenance of war potential. In other words, the treaty had a framework for maintaining war potential to be used in wars that are not illegal. And that limitation was carried over into the UN Charter.

Although we do not know the extent to which this movement resonated with Shidehara, he doubtless had the sense by which to understand the movement's argument. It is quite conceivable that the movement had some kind of influence on the formation of Shidehara's thought, and that it burst forth in the form of Shidehara's words and actions when the Japanese Constitution was enacted. War in the nuclear age will destroy civilization. This is because the vision for abandoning all war and armed force is at the core of both Japan's Constitution and the outlawry of war movement.

And what about MacArthur? Both Kawakami and Shin-ichi Yamamuro shine the

⁴⁷ Formal title: General Treaty for Renunciation of War as an Instrument of National Policy. It was adopted and signed in Paris on August 27, 1928. The title "Kellogg-Briand Treaty" comes from the names of its advocates, French Foreign Minister Aristide Briand and US Secretary of State Frank Kellogg. Another name, "Pact of Paris," is based on where it was concluded. This treaty prohibited the parties from resorting to war as a means of resolving international disputes or as a means of international policy, and prescribed that in all disputes between nations, the parties are to work for resolutions which use only peaceful means. However, treaty negotiations made exceptions for "wars conducted as League of Nations sanctions" and "wars of self-defense." In that the treaty made advances in outlawing war, it is of great importance. On the other hand, it also catalyzed the creation of the self-defense exception. The UN Charter takes the same position.

⁴⁸ From a speech delivered in a seminar before the Hague Appeal for Peace Civil Society Conference at the 1999 Japan Congress Against Atomic and Hydrogen Bombs.

spotlight on MacArthur's 1951 testimony in the Senate Armed Services and Foreign Relations committees. They focus on MacArthur's statements that the Japanese themselves decided to write the abolition of war and the outlawing of war into their Constitution. They say the term used was the outlawing of war. MacArthur himself recalled that he had knowledge of the movement to outlaw war in the 1920s. Needless to say, he was antagonistic toward the movement because of his elite status with the Army, but perhaps this clash afforded him with the opportunity to gain deep knowledge of its philosophy.⁴⁹ It is likely not at all preposterous to speculate that MacArthur, who understood the atomic bombing impacts and the need for the Emperor, and who, with Shidehara, had established the ideological underpinning and norms of pacifism and disarmament, recalled the wellspring of the movement to outlaw war.

The Americans who were involved in drafting Japan's Constitution under MacArthur had been students, or had just embarked on their careers as lawyers or administrators, during the years when the Kellogg-Briand Treaty was ratified in the midst of the excitement of the movement to outlaw war. Yamamuro writes that this is historical background which cannot be ignored when considering the ideological wellspring of Article 9.^{50 51}

The movement to outlaw war was characterized by its total non-recognition of war's legality. War as retribution, war for the purpose of self-defense, war to bring about justice, and other wars were also placed outside the framework of law. It negated the use of armed force to resolve disputes, and advocated solutions through judicial process. In addition to its thorough peace doctrine, it also advocated the rule of law, and dispute resolution through the courts. One other feature that must not be overlooked is that this movement was backed by popular support. One can see the importance of collaboration with autonomous citizens and civil society. It is important to focus on the fact that trust in the rule of law and in civil society is theory and action which transcend religious prayer and personal resistance.

Kawakami writes that if a "movement to outlaw war" by American citizens of a different era influenced the ideological underpinning of Article 9, then we see that the historical significance of Article 9's creation is made deeper in an international sense because the practical actions of citizens who long for peace, human rights, and democracy mutually influence one another, from past to future and by transcending national borders and ethnic differences.⁵²

I support Kawakami's reasoning, and on that basis I want to consider what we should be doing.

What We Must Do

As noted at the beginning, we can see signs of a nuclear arms race among the major

⁴⁹ Kawakami, op. cit., p. 360.

⁵⁰ Yamamuro, op. cit., p. 191.

⁵¹ Shoichi Koseki points out that Charles Kades, Alfred Hussey, Milo Rowell, and others responsible for drafting the Constitution at GHQ performed military duties during the war, but that all were in their early 40s, had graduated from law school, and had experience as lawyers. He notes that they spent their 20s during a time of liberal thought. See: Shoichi Koseki (Ray A. Moore, ed. and trans.), *The Birth of Japan's Postwar Constitution*, (Original Japanese Edition, Chuko Soshu, 1989), Westview Press, 1997.

⁵² Kawakami, op. cit., p. 364.

powers. Japan's government makes no attempt to stop this tide, and in fact it leans heavily toward the US. Japan unquestioningly follows the US, deploying Self-Defense Forces abroad and getting a start in resolving conflicts using armed force, and calling it something like "positive pacifism."

Unmistakably, however, there are forces working to bring the TPNW into force, and to prevent deleterious changes to the Constitution. We must not become hostage to despair and disillusion. The path of hope has been opened unto us.

Indeed, we cannot assume that very powerful entities — whether their power be physical violence or the power of capital — will voluntarily abandon armed force or any other kind of power. Apart from the question of whether that is the true nature of human beings, it is a reality that we can readily confirm. The only thing that can strip them of their power is social power, which is even stronger. Those who have the authority to possess and use nuclear weapons, which are the ultimate in violence, are the presidents and prime ministers who have the political responsibility in the nuclear powers (those empowered to make decisions differ according to country). Those people hold those positions because their citizens agree to it. Whether directly or indirectly, and regardless of the proportions, the legitimacy of those who have the nuclear button is based on citizen support. Such being the case, if there is a change in the will of the citizens, who grant that legitimacy, it is possible to strip leaders of their legitimacy. The prerequisite for seeking a non-nuclear government is forming a majority who want a non-nuclear government. And what is needed for that? It is having people understand that any use of nuclear weapons brings about "catastrophic humanitarian consequences." The historical reality of "catastrophic consequences" is the reality of what happened to people, starting with the bombing experience in Hiroshima and Nagasaki. It is necessary to have people understand this reality and build the will to abolish nuclear weapons. The suffering and damage which senselessly deprive people of their peaceful everyday lives can perhaps be shared with many people because that is the foundation of humanity. Likewise for the TPNW, which is based on the "unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha)." Despite resistance from the nuclear powers, the world is unmistakably trying to part ways with nuclear weapons. We can definitely abolish them because they were made by humans. And for that purpose we must never again allow a nuclear arms race or other such actions.

Japan's Constitution plays a major role in this movement because it not only renounces war, but also negates war potential and the right of belligerency. We have seen that about 100 years ago there was a movement in the US to abolish war itself. Of course that movement did not make a sudden appearance; it was heir to the thought and the movement embodying the long-held desire to eliminate war from the world and bring about lasting peace.

Incidentally, the biggest difference between those days and the present is that humanity now has nuclear weapons. Constitutional law scholar Yoichi Higuchi makes the following observation: When the UN Charter was signed in San Francisco before the atomic bombings on June 26, 1945, humanity still did not understand the significance of nuclear weapons. In contrast to the UN Charter, which is based on the idea of peace through armed force, the 1946 Japanese Constitution, which was adopted after the atomic bombings on August 6 (Hiroshima) and August 9 (Nagasaki), found unacceptable the idea of peace secured by means of armed force prosecuting a "correct war." We can find a persuasive conclusion here.

But Higuchi goes on to say that an explanation which says it is no longer possible to have a “correct or legitimate war” that should be prosecuted even by resorting to nuclear weapons is indeed one explanation. Nevertheless, that is not going far enough, the reason being that when a “correct war” is conducted while dressing it up as “high-tech war” or “clean war,” one finds no rationale which negates “correct war.”⁵³

Higuchi is asking us if we approve of wars which are not inhumane while at the same time recognizing the persuasiveness of the argument that using nuclear weapons is inhumane. Higuchi suggests, between the lines, that based on the premise that there cannot be a war which is not inhumane, war itself would be negated instead of stopping with the abolition of nuclear weapons. We have to answer his question.

The US in the 1920s had the opportunity to see the true state of the First World War. That war too was brutal, but there were no nuclear weapons. At a time when nuclear weapons did not exist, Americans asked fundamental questions about international and domestic laws which determined war to be a legal institution, and they argued that war should be outlawed. They not only made an issue of the indiscriminate and cruel nature of war’s means and methods, but also tried to deprive war itself of legality. We have examined that rationale above. There is a Copernican revolution here, and Article 9 Paragraph 2 of the Japanese Constitution brings it up to the present. It is the renunciation of all war and arms, which the League of Nations and the United Nations did not bring about. We must confirm this achievement because retreating from that horizon in the nuclear age means leading humanity to ruin.

A century has passed since that movement, and we now approach a showdown in the struggle against those who wish to change Article 9. Additionally, we are working to bring the TPNW into force while standing up to those who depend on nuclear weapons. We have been assigned the mission of once more shining the spotlight on the movement to outlaw war, which came to fruition in Article 9 Paragraph 2, while at the same time defending Article 9 and promulgating it throughout the world. We must also bring the TPNW into force in order to avoid “catastrophic humanitarian consequences.” Although these two tasks are closely connected, we must proceed to carry them out with an awareness that they are separate tasks. Humanity and nuclear weapons cannot coexist, and if nuclear weapons are used, the war could destroy civilization and result in the ruin of human society. Further, as long as we approve the use of war to solve problems, it is unlikely that the nuclear powers will renounce nuclear weapons. The abandonment of war itself is also necessary. Let us take our first step forward.

⁵³ Yoichi Higuchi, “The Meaning of the 1946 Pacifist Constitution in the History of the Development of Constitutionalism: Era-to-Era Continuity and Discontinuity,” in: *For Lasting World Peace: Proposal from the Japanese Constitution*, Nipponhyoron-sha, 1998, pp. 140-141.