

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

### Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The themes of each report are next introduced in sequence.

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

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

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

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

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

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

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

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

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

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

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