

FOR THE ACHIEVEMENT OF PEACE AND A NUCLEAR FREE ZONE IN EAST ASIA

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I. *Introduction*

Since the conclusion of the Cold War, which continued for a long time after the end of World War II, the threat of another World War seems to have decreased in international society. However, many regional conflicts still occur and international peace has not been sufficiently achieved yet.

In Asia, the political and military tensions in the Korean Peninsula have still not eased, and the relationship between China and Taiwan remains unstable. There are also many unresolved problems in Cambodia, Myanmar, and Indonesia, which make it difficult to achieve stability in Asia.

Under these international circumstances, it seems to be an inevitable task of Japanese scholars to consider sincerely what Japan can do to promote peace in Asia. As Japan invaded many Asian countries during World War II and slaughtered more than twenty million Asian people, it bears a heavy responsibility to establish peace and never resort to war in Asia again. Concerning the Korean Peninsula, Japan ruled the Peninsula as its colony for a long time until the end of World War II and had special responsibility for its division into South and North after World War II.

In this sense, I, as one of the Japanese scholars, feel obliged to say something constructive at this kind of symposium regarding the Peace of East Asia and Unification of the Korean Peninsula. This is the reason why I agreed to speak to you today at the kind invitation of Prof. Kim Tscholshu at Seoul University. However, since I am a constitutional lawyer and not an expert on Asian or Korean problems, please allow me to speak only from my viewpoint on this theme¹.

II. *For the Achievement of Peace in East Asia*

(1) **The Responsibility of Japan for World War II**

When I discuss peace in East Asia, I must mention, first of all, the fact that the Japanese Government has not yet apologized clearly to the Asian people for its colonization of Asia and

¹ This paper was presented at the second Kyung-ju Academic Forum which was held at Kyung-ju, South Korea from 22, August till 24, August 1997. John Middleton, Assistant Professor at Hitotsubashi University, read kindly the manuscript of this paper, and corrected errors of English.

actions during World War II. In spite of the lapse of 50 years since the end of World War II, the problem of war compensation has yet to be solved, and suits are still raised by Asian war victims against the Japanese Government demanding war compensation. This is entirely due to the fact that the Japanese Government has not clearly acknowledged its war responsibility. Furthermore, this kind of attitude of the Japanese Government seems to have hindered the building of confidence between Japan and other Asian countries.

In order to develop confidence as a precondition of peace in East Asia, the Japanese Government should, above all, apologize clearly for its war responsibility and fulfill its duty to compensate the victims of its acts. This problem will be perhaps reported precisely by my colleague, Prof. Ohkubo², so I would like only to mention the problem here and proceed to other issues.

(2) A War Renunciation Agreement and Human Rights Charter in East Asia

In order to establish peace in East Asia, we should, before anything else, seek to avoid armed conflicts in the region. For that purpose, I think it is worth considering making an agreement for the renunciation of war in this region. As is well known, the CSCE (Conference on Security and Cooperation in Europe) has made a great contribution to the establishment of peace in Europe, making a war renunciation declaration between member states in 1990 and succeeding in establishing a so-called "Peace House in Europe." I think this model of Europe is very instructive to East Asian countries to build a Peace House here. Of course, this kind of declaration or agreement would only be possible after the steady endeavour of confidence-building between East Asian countries, but I think it is worth pursuing as our objective.

Along with such endeavour, it seems indispensable to try to eliminate the roots of conflicts. As you know, conflicts develop most typically from poverty and starvation, so, it is important that the relatively affluent countries help those less fortunate in developing countries. Japan has certainly offered large amounts of ODA (Official Development Assistance) to developing countries, but they could not sufficiently help to raise the living standards of very poor people. It is by all means necessary to satisfy the basic human needs of such people.

At present, it is reported that the food problems in North Korea are very serious and many people there are hungry, if not starving. In such a situation, it seems necessary to send food urgently to the poor people in North Korea in spite of many unresolved problems between North and South Korea, or between North Korea and Japan. I believe that such food assistance would surely help to open the closed door of North Korea and contribute to stability in East Asia.

In addition to such food assistance, I, as a constitutional lawyer, think it is desirable to make an Asian Human Rights Charter in the near future, which would guarantee the right to live in peace and the right to development, not to mention civil and political liberties.

Needless to say, the Universal Declaration of Human Rights of 1948 says in its Preamble that the recognition of inalienable human rights is the foundation of world peace. In 1950, the European Convention on Human Rights was signed by the members of the Council of Europe

² Prof. Shiroh Ohkubo at Ritsumeikan University presented a paper at the same Forum, which was titled Reunification of the Korean Peninsula and the Role of Japan.

and this Convention played a significant role in establishing peace in post-war Europe. On the American Continent, the American Convention on Human Rights was signed in 1969 by the member states of the OAS (Organization of American States). And, in 1981, the so-called Banjul Charter on Human Rights was signed by the member states of the OAU (Organization of African Unity). Taking into account this tendency on other continents, I think it is useful and necessary for us Asian people to make an Asian Convention on Human Rights in the near future.

It has certainly been pointed out that the fact that there are so many different ethnic groups and religions in Asia would make it difficult to have one unified human rights charter. Moreover, some scholars say that if a unified Charter is made, it would probably become low-leveled compared with the standard of human rights guaranteed in democratic countries.

These criticisms may be true in some respects, but I think nonetheless that it is necessary to try to conquer these difficulties and make a unified charter on human rights in Asia. Besides, there are already some drafts of such a human rights charter. For example, the Asian Human Rights Commission in Hongkong is reported to have made such a draft³, and there are some researchers in Japan who are preparing such drafts⁴. I think it would be very useful for many groups to make various drafts and encourage the movement to make an Asian Charter on Human Rights. And such efforts would surely contribute to the achievement of peace in Asia.

(3) The Promotion of Disarmament in East Asia

Now, what is very important for the establishment of stability and peace in East Asia is to promote disarmament in this region. After the end of the Cold War, a reduction in armaments has gradually been carried out in Western countries, but to our great regret, this is not the case in East Asia. Or rather, an expansion in armaments is taking place in East Asian countries in the name of modernization of arms and weapons. This trend of expansion in armaments in East Asian countries is not conducive to peace in East Asia, so we must reverse this trend.

I must admit that Japan is greatly responsible for this trend of expansion in armaments in East Asia, for, Japan has been spending the largest amount on armaments in Asia in spite of its Peace Constitution which forbids all armaments. According to *The Military Balance 1995-1996*, published by IISS (International Institute for Strategic Studies), Japan's military expenditure is not only larger than that of China and South Korea, but also three times as large as those of ASEAN countries. Moreover, according to this book, Japan's defense budget is larger than any other countries in the world except the United States and Russia. Japan's defense budget became larger than those of Germany, France, and the United Kingdom in 1993, and since then, the difference has become larger and larger as expressed in dollars.

This fact is undesirable not only for Japan, but also for the stability of the whole Asian region. Many Japanese constitutional lawyers consider this large amount of military expenditure as unconstitutional, but the Japanese Government has not changed its military policy

³ The Asian Charter on Human Rights, in *Human Rights Solidarity-AHRC Newsletter* Vol.13, Feb. 1997.

⁴ Masaki Ina, *A Plan for Asian-Pacific Human Rights Charter*, in T.Hukase/Y. Sugihara/Y. Higuchi/K. Urata (ed.), *In Quest of World Peace for All Time* (1998) p.1013.

which is closely related to the Japan-U. S Security Treaty.

The Japanese Government always turns a deaf ear to Japanese constitutional lawyers, but reacts sensitively to the voices of foreign governments and, perhaps, foreign scholars. Thus, I hope many foreign governments and scholars will criticize Japanese military policy. Such criticism would surely contribute to a reduction in armaments in East Asia.

III. *The Establishment of a Nuclear Free Zone in North-East Asia*

(1) **The International Trend toward Nuclear Disarmament**

In order to establish peace in East Asia, it is necessary to realize not only disarmament of conventional weapons, but also of nuclear weapons in East Asia. However, in this area, Japan's effort is far behind the efforts of other foreign countries in spite of the fact that Japan was the first country to be attacked with atomic bombs. This lack of effort is closely connected to the Japan-U. S. Security Treaty pursuant to which Japan has relied largely upon the protection afforded by the so-called nuclear umbrella of the United States for its security. As the Mayor of Hiroshima appealed on August 6 this year, I think it is essential for Japan to rid itself of the nuclear umbrella of the United States in order to make earnest efforts for nuclear disarmament in East Asia.

As you know, there are already several nuclear-free zone treaties in the world. The Treaty of Tlatelolco was signed in 1967 by Latin-American countries. In 1985, the Treaty of Rarotonga was signed by South Pacific countries. In South East Asia, the Treaty on the Nuclear Weapons Free Zone was signed by ASEAN countries in 1995. And in 1996, the Nuclear Free Zone Treaty was signed by African countries⁵. If you include the Antarctic Treaty of 1959 among these treaties, almost all regions of the Southern Hemisphere are now nuclear-free. Based upon this fact, New Zealand proposed last year at the General Assembly of the United Nations the establishment of a nuclear weapons-free Southern Hemisphere, and this proposal was accepted by a majority of the General Assembly.

If we take these world trends into consideration, it is by all means necessary to make a Nuclear Free Zone Treaty in North-East Asia, too. This is not only necessary for North-East Asia, but also for nuclear disarmament throughout the world.

It is true that the myth of nuclear deterrence has long prevailed among the nuclear powers since World War II, but this myth was gradually revealed to be false. For example, the final document of the Special Assembly for Disarmaments of the United Nations in 1978 proclaimed clearly that the existence and storage of nuclear weapons is more dangerous than secure to the very existence of humankind. When the NPT (Treaty on the Non-Proliferation of Nuclear Weapons) was extended indefinitely in 1995, it obliged the nuclear powers to make sincere efforts for nuclear disarmament and prescribed that the establishment of the nuclear-free zone would contribute to stability and peace in the region. Moreover, in 1996, the International Court of Justice (ICJ) delivered an advisory opinion, stating that the threat or use of nuclear weapons is generally contrary to the rules of international law applicable in

⁵ See, International Legal Materials, Vol.35, No.3, May 1996. p.635.

armed conflicts, and in particular the principles and rules of humanitarian law⁶.

Of course, this advisory opinion said at the same time that the Court could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake. This statement seems to be very problematic, but it should be noted that the Court did not affirm the legality of the threat or use of nuclear weapons in any circumstance. Attention should be also paid to the last part of the opinion, where the Court held that there exists an obligation on the part of the nuclear powers to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament.

Perhaps influenced by this advisory opinion, the CTBT (Comprehensive Test Ban Treaty) was signed in the autumn of 1996. It has not yet entered into force, but I think the signing itself is very significant as one step towards the complete nuclear disarmament. To establish a Nuclear Free Zone in North-East Asia is surely consistent with these world trends towards nuclear disarmament.

(2) The Concept of a Nuclear Free Zone in North-East Asia

By the way, the nuclear powers in North-East Asia are Russia and China, with the United States also deploying some nuclear weapons in the region. Also, it is still fresh in our memory that North Korea was suspected in 1994 of developing nuclear weapons.

As for Japan, the Government adopted the so-called Three Non-Nuclear Principles as a national principle in 1971, and has promised since then not to manufacture, possess or introduce nuclear weapons in Japanese territory. However, the Government has also stated that the storage or use of nuclear weapons is theoretically not unconstitutional, if kept to the minimum necessary for national defense. Japan has also preserved large amount of plutonium, and it is reported that Japan will store more than 100 tons of plutonium by 2010. These are the reasons why Japan has been suspected by some countries of possibly developing nuclear weapons in the near future.

Such being the nuclear situation in North-East Asia, it is necessary to establish a nuclear-free zone in North East Asia urgently. Based upon such belief, a citizens' group in Japan, of which Professor Shimizu at Chuo University, Professor Furukawa at Senshu University and I are members, proposed in 1994 that a Japan Nuclear Free Zone Act be enacted in the territory of Japan and at the same time that the making of a Treaty on a Nuclear Free Zone in the Asia-Pacific Region be promoted. We have since made drafts of the Act and Treaty⁷, which you can see in the booklet (publication) the Korean Branch of the IACL has so kindly prepared.

When we made these drafts in 1994, there was still no Treaty on the South-East Asian Nuclear Weapon-Free Zone, so we included in our draft not only North-East Asia, but also South-East Asia and the Pacific Region. As the Treaty on the South-East Asia Nuclear Weapon-Free Zone was signed in 1995, it will now be better to limit the application of our

⁶ ICJ, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, in *International Legal Materials*, Vol.35, No.4, July 1996, p. 809.

⁷ Shingokensanzengo-undoh, *A Draft of Japan Nuclear Free Zone Act and Treaty of a Nuclear Free Zone in Asia-Pacific Region (1994)*.

Draft to North-East Asia.

One problem is whether such Treaty should include Russia and China, and there would naturally be different opinions on this matter. I am of the opinion that at the first stage of the Treaty, only South Korea, North Korea and Japan should be Parties to the Treaty, and a Protocol should be made and be open for signature by nuclear powers, such as Russia, China and the United States, in which these nuclear powers promise to respect the Treaty.

In this connection, it has been reported that China recently expressed support for the principle of such a North-East Asia Nuclear Free Zone Treaty at an International Conference held at Beijing in 1997⁸. If so, it would be better to propose this idea to, and gain the support of, the United States and Russia as well.

As we know, there is already a Joint Declaration of Nuclear Disarmament in the Korean Peninsula signed in 1991 by South and North Korea. It would be useful to make this Declaration more effective by making a Treaty and including Japan as one of the parties to it. Such a Treaty would be an important step towards creating stability in the Korean Peninsula and promoting peaceful reunification of the Korean Peninsula in the future. It would also assist the building of mutual confidence between the two Koreas and Japan.

As the specific contents of such a Treaty, I would like to indicate only a few points here. First of all, the Treaty should prohibit each party from developing, manufacturing, or otherwise acquiring or possessing nuclear weapons anywhere inside or outside the Zone. It should also prescribe that each party undertake to prevent in its territory the stationing of any nuclear explosive device. According to the Treaty, each party should undertake to prevent in its territory the testing of any nuclear explosive device, and undertake not to dump radioactive waste or other radioactive matter at sea anywhere within the Nuclear-Free Zone. And, in order to oversee the implementation of the Treaty and ensure compliance with its provisions, a Commission should be established, of which all states parties would be members, and, if possible, in which representatives of NGO (Non-Governmental Organizations) could take part in some way.

Along with the proposal of making such a Treaty, the citizens' group in Japan is proposing the enactment of a Japan Nuclear Free Zone Act within the territory of Japan. We believe that the enactment of such act is indispensable to overcome other countries' suspicions that Japan may develop nuclear weapons.

The main contents of the Draft are as follows; The Draft prohibits anyone from developing, testing, manufacturing, possessing or introducing nuclear weapons anywhere in the territory of Japan. It also prohibits the separating or extracting of any plutonium or uranium used for nuclear weapons. What is most characteristic about this Draft is that it prescribes complete freedom of information concerning nuclear weapons and other nuclear materials. Japan's Fundamental Act on Atomic Energy prescribes the principle of openness to the public concerning atomic energy, but its level of disclosure is limited. Our Draft is based upon the belief that complete freedom of information concerning nuclear weapons and other nuclear materials benefits the existence and security of the people. Hence, according to this Draft, any person could seek and obtain information about nuclear weapons and materials from the Japanese Government.

⁸ See, The Third Symposium on Peace, Disarmament, Symbiosis in the Asia-Pacific, in *Gunsyukumondaishiryō*, No.200, 1997, p.66.

Moreover, the Draft forbids the Government from allowing the visit of any foreign ship and aircraft to Japanese territory, unless the Government receives an assurance from the foreign government concerned that no nuclear weapons is loaded in the said aircraft or ship. As far as this provision of the Draft conflicts with the practice of the Japan-U. S. Security Treaty, the former should be given priority over the latter.

IV. *Conclusion*

It is certain that our proposal has yet to gain wide consensus within Japan, and the Japanese Government has still not begun negotiations with other governments to make the Treaty or commenced the procedure to enact the Act. I also have no idea whether the Governments of South or North Korea are considering making such a Treaty now. Nevertheless, we must not give up our idea, for, it is neither nonsense nor unrealistic. The recent world trend towards nuclear disarmament seems to prove that our idea is both realistic and universal.

If the governments in North-East Asia do not take concrete action to establish a nuclear-free zone in this region, it is the task of scholars and citizens to spread hand in hand the campaign for the nuclear-free zone in this region internationally. I hope from the bottom of my heart that this symposium will be an opportunity to advance our cause for the establishment of a nuclear free-zone and the attainment of peace in North-East Asia.

Thank you very much for your kind attention.

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