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Japan Federation of Bar Associations

**Opinion concerning the Declaration on the Right of
Peoples to Peace**

Japan Federation of Bar Associations

(JFBA)

JAPAN FEDERATION OF BAR ASSOCIATIONS

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<Opinion>

Japan brought calamity to many people in many different countries especially in Asia by waging wars including World War II and caused her own people to be sacrificed in acts of war, including two nuclear weapon attacks.

After deep reflection on these events, the Japanese people adopted the Constitution of Japan which in the Preface incorporates the right to live in peace declaring, "We recognize that all peoples of the world have the right to live in peace, free from fear and want." In Article 9 of the Constitution the Japanese people forever renounce war. In order to realize peace and the right to live in peace, the lawyers of Japan have operated through the various activities including undertaking various litigation in the courts.

In the light of these experiences and shared ideals of Japanese lawyers towards peace, the Japan Federation of Bar Associations, a sole national bar with compulsory membership in Japan, wishes to offer the following opinions concerning the declaration on the right of peoples to peace which the United Nations Human Rights Council Advisory Committee is drawing up.

1. The Declaration on the Right to Peace should be determined by the United Nations Human Rights Council Advisory Committee and adopted by the Human Rights Council and the General Assembly of the United Nations.

2. When affirming a declaration of a right to peace, it is important to consider existing precedents and achievement of state practices from various states especially those focused on the right to live in peace.

3. We consider that a declaration of the right of peoples to peace should include the following.

(1) The right of peoples and individuals to peace should admit no ground for discrimination in relation, for example, to race, color, gender, language, religion, political or other opinions, or discrimination based on nationality, ethnicity or social origins, whether a person is rich or poor, their country of birth or other status-related aspect (Article 1 related).

(2) The right of peoples and individuals to peace is must be consistent with internationally recognized human rights, and should not be interpreted so as to restrict these rights under conditions in which peace does not exist such as in a state of emergency, for example (Article 1 related).

(3) In order to realize the right to peace, each state must develop the possibilities of judicial remedy (Article 14 related).

<Reasons>

1. Regarding the adoption of the declaration on the right to peace

Article 28 of the 1948 Universal Declaration of Human Rights states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized," declaring that in order to realize their human rights, individuals have a right to

the peace that constitutes part of the international order. The right to peace has been affirmed in the United Nations by a number of UN resolutions such as the United Nations Declaration on the Right of Peoples to Peace of 1984 and then in more recent times, by a series of resolutions adopted by the Human Rights Council.

Some states believe that peace issues should be handled only by the UN Security Council. The problem here is that it is individuals who are most affected when peace is destroyed, yet the UN Security Council is a mechanism that operates to maintain and realize peace between nations and therefore does not provide a venue for directly reflecting the positions of individuals and the benefits that accrue to them. Moreover, protecting the right to peace as a right belonging to individuals has great significance that the will of individuals who want peace enables the realization of peace through democratic processes.

Thus the declaration should be determined by the United Nations Human Rights Council Advisory Committee and adopted by the Human Rights Council and the General Assembly of the United Nations.

2. Considering precedents and achievement of state practices

Legal principles and incidences of implementation of laws that provide precedents for a right to peace exist in various states around the world.

The Constitution of Japan, for example, declares three basic principles: the principle that sovereign power resides with the people; the principle of peace and international cooperation; and the principle of respect for fundamental human rights. The "right to live in peace" of all peoples of the world is affirmed in that Preface, and steps towards the realization of that right are provided through objective systems, such as the renunciation of war enshrined in Article 9 and the protection of individual, fundamental human rights enshrined in Chapter 3.

In Japan, a legal precedent determined under the Constitution exists stating that "the right to live in peace is a basic right at the foundation of all fundamental human rights enabling all such rights to be enjoyed because the fundamental human rights protected by the Constitution today cannot exist except on a foundation of peace" (Judgment of the Nagoya High Court, April 17, 2008^{*}, with the same reasoning also applied in a Judgment of the Okayama District Court on February 24, 2009). In making the following statement, this Judgment of the Nagoya High Court confirms that the right to live in peace is a comprehensive right that includes civil liberties and social rights and affirms that this includes as legal canon, the fact that the right to live in peace consists of legally enforceable rights.

"This right to live in peace can be seen as a comprehensive right existing in relation to its different aspects by manifesting in its forms as civil liberties, social rights and suffrage, and there are cases in which these can be affirmed as specific, substantive rights in the sense that it is possible to seek the operation of legally enforced measures from the courts requiring their

* A judgment in an appeal to the district court judgment on claims of injunction to the dispatch of the Self Defense Force to Iraqi.

protection or remedies if breached. For example, in the case of an infringement of Article 9 of the Constitution by the state, in other words, in a case in which the life or freedom of an individual is violated or there is risk of such violation through, for example, the prosecution of a war or exercise of military power, or acts in preparation for war, or in a case in which there is damage or fear inflicted due to an actual war, or again in a case of compulsion to participate in or cooperate with the prosecution of a war in breach of Article 9, the right to live in peace would manifest itself in its form of civil liberties, making it possible to seek a remedy from the court by the method, for example, of seeking an injunction against such acts in breach of the Constitution or claiming compensation for loss.”

The content of this Judgment is in perfect agreement with the understanding of the right to live in peace expressed repeatedly by the Japan Federation of Bar Associations, an organization representing the legal profession in Japan.

The right to peace being considered by the Human Rights Council and the right to live in peace prescribed in the Constitution of Japan should be seen in the light of a current in international law that has sought to prohibit war leading to the 1945 Charter of the United Nations. Both of these rights exist in a very close relationship with the protection of fundamental human rights, a common feature being, for example, that they exist against a background of significant fear of nuclear war. Accordingly, in framing the right to peace the Japanese legal principle of the right to live in peace should be referred to as a precedent of state practices in various states.

3. Issues which should be included in the declaration

(1) Principle of Nondiscrimination

The principle of nondiscrimination is a principal providing the basis for protection of a variety of human rights but is not included in the Draft of the Seventh Session. Although that Draft provides protections for a number of specified groups, such as women, victims, vulnerable groups, refugees and migrants etc., we cannot believe that it was the intention to allow discrimination without any reason. Accordingly, the principle of equality that provides the general principle of human rights protection should appear as an item defined in "Article 1 Human Rights to Peace – Principles."

(2) Consistency with International Human Rights Laws and Non-applicability of Restrictions On The Ground That Peace Is Not Present

The Seventh Session Draft does not take the form of inclusively enumerating the rights included in the various kinds of international human rights treaties, and that is preferable in order to make the Draft concise. On the other hand, the fact that a number of freedoms are listed, such as freedom of thought, conscience, expression and religion, could invite the misunderstanding that other rights are therefore excluded. In order to negate the possibility of such misunderstanding arising, it is necessary to make it clear that Article 1 Human Rights to Peace – Principles is premised on the protection of all rights protected by international human rights laws.

Further, the right to peace is something that should fulfill its role, more often than not, under unusual conditions such as war or civil disturbance etc., and thus needs to provide a system of

rights that should be protected not only during times of peace but in times of disturbance also. Accordingly, with respect to the relationship between the right to peace and the handling of derogation from obligations in time of public emergency, there is a need to make it clear that the framework for derogation in time of public emergency already established under international human rights law and adopted in the International Covenant on Civil and Political Rights applies.

(3) Measures to Enable Legal Remedies

Because the right to peace is frequently relevant in connection with armed conflict occurring between nations or forces, there is a possibility for this right to be taken as a moral right expected to be realized politically. There exist elements in the right to peace, however, that can be realized through a state's judicial procedures as legally established rights as well as through processes of legislation and administration. (See International Covenant on Civil and Political Rights Article 2, 3. (b))