

JUDGEMENT

Of

***The International Peoples' Tribunal
On the Dropping of Atomic Bombs
On Hiroshima and Nagasaki***

July 16, 2007

Judges

**Lennox S. Hinds
Carlos Vargas
IE Masaji**

Prosecutors

**Mr. ADACHI Shuichi
Mr. INOUE Masanobu
Ms. SHIMONAKA Nami
Mr. AKIMOTO Masahiro
Mr. CHE Bong Tae**

Amicus Curiae

Mr. OHKUBO Kenichi

PLAINTIFFS

**A-Bomb Survivors
Citizens of Hiroshima
Citizens of Nagasaki
Any Other Supporters of A-Bomb Survivors**

DEFENDANTS

**UNITED STATES OF AMERICA
US. President, Franklin D. Roosevelt
U.S. President, Harry S. Truman
James F. Byrnes, Secretary of State
Henry L. Stimson, Secretary of War
George C. Marshall, Army Chief of Staff
Thomas T. Handy, Army Acting Chief of Staff
Henry H. Arnold, Commander of the Army Air Forces
Carl A. Spaatz, Commander of the US Strategic Air Force
Curtis E. LeMay, Commander of the 20th Bomber Command
Paul W. Tibbets, Pilot of B-29 “Enola Gay”
William S. Parsons, Weaponeer of B-29 “Enola Gay”
Charles W. Sweeny, Pilot of B-29 “Book s Car”
Frederick L. Ashworth, Weaponeer of B-29 “Bocks Car”
Leslie R. Groves, Head of the Manhattan Project
J. Robert Oppenheimer, Director of the Los Alamos Laboratory**

REGISTRY

**TSUBOI Sunao, SASAKI Takeya, TANAKA Yuki, FUNAHASHI Yoshie
YOKOHARA Yukio, TOSHIMOTO Katsumi, OKUHARA Hiromi
KUNO Naruaki, HINADA Seishi**

A: Universal Jurisdiction of the Court

1. In accordance with Article 2 paragraph (1) of the Charter of the International Peoples' Tribunal on the Dropping of Atomic Bombs on Hiroshima and Nagasaki, the Tribunal has jurisdiction over crimes committed against the citizens of Hiroshima and Nagasaki and the victims of the atomic bombs dropped on Hiroshima and Nagasaki on August 6 and August 9, 1945, respectively. This jurisdiction is applicable to Crimes Against Humanity, War Crimes and other violations of International Law. As a preliminary matter the Tribunal takes judicial notice of the public, unilateral and binding declaration, made in 1946 at the International Military Tribunal at Nuremberg, by the Chief Counsel for the Government of the United States of America, Mr. Justice Robert H. Jackson, who took a leave of absence, as a Judge of the U.S. Supreme Court to represent the United States at the Nuremberg Tribunal. Justice Jackson categorically declared that: *'If certain acts of violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others, which we would not be willing to have invoked against us'*. In conformity with the aforementioned declaration, the Tribunal examined the claim presented against the Defendants on the instant matter and agreed to apply the same rule of international law that had been applied at the Nuremberg Tribunal and the International Military Tribunal for the Far East.

2. In addition, the Tribunal observes that the concept of individual responsibility of national leaders for crimes committed by their governments, which has been applied by this Tribunal, was established in 1946 by the first United Nations General Assembly which adopted the Fundamental Principles recognized by the Nuremberg Tribunal Ordinances, i.e., Nuremberg Principles, and recognized them as general principles of

international law. Likewise, the Tribunal recognized the existence of the basic principles of International Humanitarian Law whereby civilized states have a very real interest in the punishment of war crimes and offense against the laws of war. Moreover, the Tribunal notes that it incorporated within this Judgment the criteria approved by United Nations Security Council in its Resolution 827 of 1993 by which *'the application of the principle nullum crimen sine lege requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt, part of customary law'*. Finally the Tribunal also considers that since the statute of limitations is not applicable to these crimes, responsibility should lie as well with the present Government of the United States of America

B: Applicable International Law

3. The International Laws – treaties and customary law - applicable to this case are: (a) The St. Petersburg Declaration of 1868; b) The Hague Conventions of 1899 and 1907, *in particular the Regulations Concerning the Laws and Customs of War on Land*; c) The Martens Clause included in the preamble of the Hague Convention IV of 1907; d) The Geneva Conventions of 1864, 1906, 1929 and 1949; e) The Nuremberg Principles; f) The Charter of the International Military Tribunal for the Far East; g) The 1963 Judgment of the Tokyo District Court in the Shimoda Case; h) and the International Court of Justice Advisory Opinion of July 8, 1996, in relation to the Legality or Illegality of the Threat or Use of Nuclear Weapons.

C: Proceedings

4. The Tribunal takes note that evidence was adduced, establishing the fact that the United States of America as one of the Defendants and the representative government in this case, was duly notified of these

proceedings. Since the United States of America refused or failed to appear the defendants were tried in absentia.

5. The written charges or indictment upon which the Tribunal has been requested to submit its Judgment, named President Franklin D. Roosevelt, as a principal defendant and secondly President Harry S. Truman and other key members of the White House, who made the decisions to use the atomic bombs against the people of Japan. Other key defendants included major scientists who were closely involved in the development of the atomic bombs, and military personnel who carried out the order to release the bombs on Hiroshima and Nagasaki.

6. The Tribunal applied the same rules that were adopted at the International Military Tribunal of the Far East, under which Japanese war criminals were judged. Likewise the official languages of the Tribunal were Japanese and English.

7. Written submissions were filed with the Tribunal by the following individuals: (a) Mr. OHKUBO Kenichi from Saitama Bar Association, as Amicus Curiae; (b) International Law Professor MAEDA Akira from Tokyo Zokei University; (c) Mr. TAKAHASHI Akihiro, former Director of the Hiroshima Peace Memorial Museum and A-bomb survivor; and (d) those from the prosecutors side.

8. In the course of the public hearings conducted in Hiroshima on July 15 and 16, 2006, the Tribunal had officially considered testimony in the opening statement of the Prosecution by Mr. ADACHI Shuichi and the admission into evidence of 68 documents including 64 documents obtained from the National Archives Collection of the United States of America. The Tribunal also considered the oral testimonies of the following witnesses: Mr. OHKUBO Kenichi, Amicus Curiae; Dr. KAMADA Nanao,

Expert Radiation Doctor from Hiroshima University; Mr. TAKAHASHI Akihiro, A-bomb survivor from Hiroshima; Ms. SHIMOHIRA Sakue, A- bomb survivor from Nagasaki; Mr. KAK Kifung, A-bomb survivor from Korea; Mr. ARAI Shinichi, History Professor; Mr. MAEDA Akira, International Law Specialist.

9. Two witnesses, Professor MAEDA Akira and Mr. TAKAHASHI Akihiro provided supplemental statements in response to questions from members of the Tribunal.

10. During the proceedings, the Tribunal reviewed sixty-four archives, that are public documents of the U.S.A National Archives Collection, and which were until recently classified by the U.S.A. as secret documents as follows: 1) Letter from Albert Einstein to the U.S. President F.D. Roosevelt (August 2, 1939); 2) Letter from President Roosevelt to Einstein (October 19, 1939); 3) Letter to Vannevar Bush to President Roosevelt (June 15, 1940); 4) Report of National Academy of Sciences Committee of Atomic Fission; 5) The Maud Report – Report by M.A.U.D. Committee on the Use of Uranium for a Bomb; 6) Report to the President of the National Academy of the Sciences by the Academy Committee on Uranium (November 6, 1941); 7) Letter from Vannevar Bush to President Roosevelt (November 27, 1941); 8) Letter from V. Bush to President Roosevelt (March 9, 1942); 9) Memorandum from President Roosevelt to V. Bush (March 11, 1942); 10) Letter from V Bush and J. B. Conant to the US Vice President H.A. Wallace, Henry Stimson and General G Marshall (June 13, 1942); 11) Letter from V. Bush to President Roosevelt (June 17, 1942); 12) Letter from V Bush to J. B. Conant (June 19, 1942); 13) Memorandum from V. Bush to President Roosevelt (June 24, 1942); 14) Record of meeting held on September 23, 1942, in the office of the secretary of war; 15) Memorandum (September 23, 1942); 16) Memo written by Major General L.R. Groves - Discussion with Secretary of War on 6 or 7, March 1945 (April 7, 1945); 17) Actions Reported by Major General

L.R. Groves Policy Meeting (May 5, 1943); 18) Tube Alloys: Aide-memoire of conversation between the US President and the British Prime Minister (September 18, 1944); 19) Memorandum from V. Bush and J. Conant to the Secretary of War (September 19, 1944); 20) Memorandum from V. Bush and J. Conant to the Secretary of War (September 30, 1944); 21) Memorandum from Major General L.R. Groves to General G Marshall (December 30, 1944); 22) Stimson's Memo Discussed with the President (April 25, 1945); 23) Memorandum from Captain W.S. Parsons to Rear Admiral W.R. Purnell (December 12, 1944); 24) Summary of Target Committee Meetings (May 10 and 11, 1945); 25) Memorandum from Brigadier General Lauris Norstad to the Director of Joint Target Group (April 28, 1945); 26) Memorandum from the Director of Joint Target Group to Chief of Staff of the 20 Air Force (May 5, 1945); 27) Memorandum from Oppenheimer to General Farrell (May 11, 1945); 28) Minutes of Third Target Committee Meeting – Washington (May 28, 1945); 29) Memorandum from Brigadier General Lauris Norstad to Commanding General, XXI Bomber Command (May 29, 1945); 30) Memorandum from V. Bush to Dr. Conant (February 13, 1945); 31) Letter from Stimson to Dr Conant (May 4, 1945); 32) Notes of an Informal Meeting of the Interim Committee (May 9, 1945); 33) Notes of an Informal Meeting of the Interim Committee (May 14, 1945); 34) Memorandum from George Harrison to the Secretary of War (May 30, 1945); 35) Notes of the Interim Committee Meeting (May 31, 1945); 36) Science Panel Recommendations on the immediate Use of Nuclear Weapons (June 16, 1945); 37) Notes of the Interim Committee Meeting (July 6, 1945); 38) Notes of the Interim Committee Meeting (July 19, 1945); 39) Memorandum from V. Bush and J. Conant to the Members of the Interim Committee (July 18, 1945); 40) Memorandum from L. Groves to G.L. Harrison (July 25, 1945); 41) Atomic Bombs and Postwar Position of the United States in the World (Spring 1945); 42) Summary Russian Situation [unsigned, undated]; 43) Memorandum by the secretary of the Joint Chiefs of Staff (McFarland) (June 18, 1945); 44) Diary of the Secretary of War, Stimson (July 3 -

September 6, 1945); 45) Copy of Diary Kept by the President at Potsdam (July 16 - July 30, 1945); 46) Letter from Admiral E. J. King to Admiral C.W. Nimitz (January 27, 1945); 47) Memorandum from J.A. Derry to L. Groves (March 10, 1945); 48) Recommended Action by the Joint Chief of Staff (June 30, 1945); 49) Memorandum from L. Groves to the Chief of Staff (June 30, 1945); 50) Memorandum from L. Groves to the Chief of Staff (July 18, 1945); 51) Letter from L. Groves to J.R. Oppenheimer (July 19, 1945); 52) Memorandum from J. Stone to General Arnold (July 24, 1945); 53) Memorandum from Handy to General Marshall (July 24, 1945); 54) Memorandum from Harrison to the Secretary of War (July 24, 1945); 55) Order to drop the A- bomb issue by T.T. Handy to C. Spaatz (July 25, 1945); 56) Memorandums from Headquarters, US Army Strategic Air Forces, Guam to War Department (July 31 1945); 57) Memorandum from H.M. Pasco to General Spaatz (July 31, 1945); 58) Field Order 13 trop A-bomb on Hiroshima (August 2, 1945); 59) Memorandums from L. Groves to the Chief of Staff (August 6, 1945); 60) Statement by President of United States (August 6, 1945); 61) Statement of the Secretary of War (August 6, 1945); 62) Statement by the Prime Minister and Mr. Churchill on the Atomic Bomb (August 6, 1945); 63) Field Order 17 to drop the A-bomb on Kokura or Nagasaki (August 8, 1945); 64) Radio Report to the American People on the Potsdam Conference (August 9, 1945).

11. The Tribunal also took into consideration the following written submissions which were admitted into evidence: a) *The A-bomb Radiation Effects Digest* by SHIGEMATSU Itsuzo, ITO Chicako, KAMADA Nanao, AKIYAMA Mitoshi, and SASAKI Hideo (Hiroshima International Council for Medical Care of the Radiation, 1995); b) *The Spirit of Hiroshima: An Introduction to the Atomic Bomb Tragedy* by Hiroshima Peace Museum, published in 2005; c) The written testimony on the Illegality of Atomic Bombing by International Law Professor MAEDA Akira; d) A-bomb Survivor testimony by TAKAHASHI Akihiro.

12. All the abovementioned documents were considered as evidence in addition to the testimonies of the fact and expert witnesses presented during the public hearings.

D: FINDING OF FACT

13. The evidence presented by the prosecution established the following facts beyond a reasonable doubt.

- a) The Tribunal finds that at 8:15 a.m. on August 6, 1945, for the first time in human history, an atomic bomb was used on mankind and dropped from the sky above Hiroshima at 11:02 a.m. and on August 9th of the same year a second atomic bomb was dropped on Nagasaki. The bomb used on Hiroshima was a uranium-type atomic bomb, referred to as “Little Boy”. It exploded approximately 580 meters above the ground, and is said to have had the equivalent of 12.5 kilotons of TNT. On the other hand, the bomb used on Nagasaki was a plutonium-type atomic bomb referred to as “Fat Man”. It exploded approximately 503 meters above the ground and, is said to have had the equivalent of 22 kilotons of TNT. Of the total amount of energy that rained upon the ground, 35% was comprised of heat rays, 50% was the blast and the remaining 15% was radiation.
- b) The evidence presented to this Tribunal revealed that the atomic bombs which were detonated over Hiroshima and Nagasaki emitted powerful heat rays for a period of approximately 0.2 to 0.3 seconds, heating the ground to temperatures ranging from 3,000 to 4,000 degrees Centigrade.

- c) **These heat rays burnt many people to death and melted bricks and rocks. It is said that people up to 3.5 kilometers from the hypocenter in Hiroshima, and about 4 kilometers from Nagasaki suffered burns. The surface of roof tiles within 600 meters of the hypocenter, melted and blistered. Clothing on bodies or drying on the line out to 1.8 - 2 kilometers ignited. Thatched roofs approximately 2.5 kilometers away went up in flames. Many trees spontaneously ignited. Electric poles, trees, and lumber within three kilometers were charred. The evidence also demonstrated that the blast of the atomic bomb completely destroyed all surrounding structures. In areas a long distance from and surrounding the hypocenter, people were slammed into walls, crushed to death by collapsing houses and sustained injuries, from flying glass and other debris. The evidence shows that the most characteristic, devastating feature of the atomic bomb was radiation. Of the total amount of energy released from the explosion, 5% was initial radiation and 10% was of residual radiation. Initial radiation was caused by nuclear fission of uranium and plutonium. Gamma rays and neutron rays were emitted at this time, and these rays penetrated through people on the ground. Neutron rays caused soil and aboveground structures to become radioactive. Fission products were picked up and carried into the atmosphere by upward wind currents, turning into "Black Soot" and once in the atmosphere tiny particles caused both internal and external exposure. Many people killed after the bomb, died displaying acute symptoms such as hair loss, diarrhea, purpuric skin lesions, bleeding gums and fever. Cancer, leukemia and various other aftereffects also became apparent. The compound effects of the heat rays, the blast and the radiation of the atomic bomb had a far greater effect than any one of these would have had individually.**

- d) **The Tribunal finds that the nature of damage caused by the atomic bombs can be described as indiscriminate extermination of all life forms or inflicting unnecessary pain to the survivors. The evidence also reveals that the atomic bombs wiped out people's lives in the wink of an eye. The victims of the bombs were not only Japanese nationals, but also Korean and Chinese who were forced to live in Japan. Victims of the atomic bombs also included allied prisoners of war, captured by the Japanese military forces. Tens of thousands also died soon after the bombs were dropped. The evidence presented before the Tribunal demonstrates that about 140,000 individuals died in Hiroshima and 70,000 individuals in Nagasaki. Victims and experts' testimonies revealed that since 1945, countless more have died as the result of various after effects. Hiroshima and Nagasaki became a common place of death, and living became the exception. People's eyes came out of their sockets and pealed skin hung off their bodies. Many flocked to the rivers looking for water. People no longer looked human. Parents had to abandon their children, children could not rescue their parents, and family members were unable to recognize one another. Victims overflowed out of hospitals and relief stations. Agonized cries from the injured in damaged air raid shelters and burnt ruins, shouts for family members and calls for help continued through the night, as person after person died.**
- e) **The Tribunal finds that in Hiroshima and Nagasaki, family, friends and colleagues were lost in an instant. Nobody knew what had happened. People who were injured beyond recognition walked around dazed. Some did not know where they were and others were taken to relief stations. Lifelines were lost and large numbers of people died through lack of medical supplies. Many of those who experienced this "hell on earth", suffered serious psychological**

damage. The atomic bomb plunged the people of both cities to depths of physical deprivation and psychological despair.

f) The Tribunal, thus, finds that the irrefutable scientific evidence reveals that radiation from the atomic bombs damaged genes, which later became linked to cancer as well as other medical disorders that scientists still do not understand. Today, going on 62 years since the end of the war, survivors and their off-springs are experiencing new aftereffects causing survivors to live in constant fear of dying horrible deaths. Victims and their off-springs disfigured by the bomb, faced many forms of discrimination. Marriage and employment for those disfigured survivors became difficult, and people became isolated from the “healthy” society. The atomic bomb as a consequence has made it impossible for these people to live a normal life in every respect.

g) Additionally, the Tribunal observes that the written evidence presented as *Documents of the United States National Archives Collections* has demonstrated the following facts:

g 1) That on December 17, 1944, the 509th Composite Group was formed and deployed under the command of General Henry Arnold in order to implement the atomic bomb strategy.

g 2) A memo from Leslie R. Groves, Head of the Manhattan Project, to Army Chief of Staff George Marshall dated 30 of December 1944, directed that necessary information be provided to the staff and commanders of the Army, the 20th Bomber Command and the Navy (Fleet Admiral Chester Nimitz) and that vital support systems for the armed forces be put in place in order to carry out the strategy, on the assumption that the atomic bomb would be used on Japan around the

1 of August 1945. This note was approved by both Stimson and President Roosevelt.

g 3) In December 1944, Colonel William S. Parsons suggested an engineering officer to be sent to the Joint Intelligence Committee of the Pacific Operations Analysts at Pearl Harbor in order to obtain information regarding the possible targets. As a result Colonel Frederick L. Ashworth was dispatched in January the following year. Later in the spring 1945, the Military Policy Committee held numerous meetings over the criteria for selecting targets and finally a final conclusion was reached by Dr. Oppenheimer and other senior advisors.

g 4) On the 27 April 1945, Groves set up the Target Selecting Committee in Washington, to closely examine the targets that were being discussed by the Military Policy Committee. This committee was attended by people involved with the Manhattan Project, the 20th Bomber Command Chief of Staff, Lauris Norstad, and Colonel Russell Fisher. At this meeting, the members discussed and became aware of the full ramifications of the atomic bomb.

14. The criteria for selecting targets were as follows: a) Select a location that would destroy Japanese morale; b) Select a location with great military significance; c) Select a location that had not suffered any damage so that the impact of the atomic bomb could be accurately assessed; d) Select a primary target large enough to accurately judge the impact of the atomic bomb.

15. That the Interim Committee decided that psychological considerations were of particular importance when selecting targets. The Committee unanimously agreed that 'Hiroshima had the advantage of being such a

size and with possible focusing from nearby mountains that a large fraction of the city may be destroyed'. They went on to say that, for the initial use of the weapon, any small and strictly military objective should be located within a much larger subject to blast damage in order to avoid undue risk of the weapon being lost due to bad placing of the bomb.

16. The Defendants knew or should have known of the destructive impact of this weapon. In fact the Interim Committee held two unofficial meetings, on May 9th and on May 14th. It was decided that scientists Robert Oppenheimer, Ernest Lawrence, Arthur Compton and Enrico Fermi, four of the top scientists in the United States, would be charged as an advisory group. These individuals clearly knew the destructive impact of nuclear weapons and these individuals advised the defendants in this particular case.

17. The target cities would be used as demonstration sites for experimentation to measure the impact of the atomic bomb. This finding is based upon the criteria used by the Joint Intelligence Committee and by the Interim Committee for selected targets.

18. Facts relevant to people directly involved

President Truman, Secretary of War Henry L. Stimson, Secretary of State James F. Byrnes, Commander of the Army Air Forces Henry Arnold and Army Chief of Staff George Marshall first received news of the successful atomic testing conducted on the 16th of July 1945 while attending the Potsdam Conference. Upon receiving this information, they embarked on formulating plans for the use of the atomic bomb on Japan. Originally, the Presidential order to drop the atomic bomb was to be issued to Marshall, however, since he was not in Washington at the time, it was decided that it be issued to Handy on the 25th of July 1945. Following this, Handy, acting

on behalf of Marshall, issued the order to Spaatz for the use of the atomic bomb. Spaatz then communicated the order to the 20th Bomber Command and on the 1st of August 1945, LeMay met with Farrell, Parsons, Tibbets and Ashworth in Guam in order to discuss in detail the plan of attack.

19. **Franklin D. Roosevelt:** President Roosevelt promoted the Manhattan Project and promoted the aims of using the atomic bombs on Japan. He established the “Top Policy” group and encouraged the actual use of the atomic bombs. In 1944 he met in Hyde Park with Prime Minister Winston Churchill, an un-indicted co-conspirator in this case, who agreed to the use of atomic bombs on Japan. Following this, he encouraged preparations and in December of 1944 ordered military training to begin. On 15 March 1945, he set up a committee to begin examining the impact that the bombs would have on Japan after their use, and he continued to support the use of the atomic bombs on Japan until his death on April 12, 1945.

20. **Harry S. Truman:** President of the United States following the death of President Roosevelt. He became fully aware of the content in the Manhattan Project continued with President Roosevelt’s plan to use the atomic bombs on Japan, and carried out the relevant preparations. We find that the reasons given by defendant Truman do not constitute justification recognized by any principle of international law and therefore were a pretext for the commission of this international crime.

21. **James F. Byrnes:** Secretary of State, in February 1945 accompanied defendant Roosevelt to the Yalta Conference in order to discuss strategies in the war with Japan. On 3 July 1945, President Truman appointed him Secretary of State. On 25 July 1945, Byrnes participated in the formulation of the Presidential order to use atomic bombs.

22. Henry L. Stimson: in October of 1941, President Roosevelt appointed Stimson as Chairman of the “Top Policy” group. This group was established for the purpose of examining the “Top Policy”- a plan for the manufacture of the atomic bomb. After becoming Secretary of War, Stimson was one of the senior advisors of the Manhattan Project. He encouraged the plan to use atomic bombs and advised President Truman to use them. Stimson also held a key position on the Interim Committee, set up to select targets suitable for the use of the atomic bombs. On 25 July 1945, Stimson participated in the formulation of the Presidential order to use atomic bombs.

23. George C. Marshall: Army of Chief of Staff, secretly conducted the development of the atomic bomb as a part of the “Top Policy” Group. He also participated in the selection of targets from Stimson and Arnold.

24. Thomas T. Handy: On the 24th of July 1944, defendant Thomas F. Hardy, Army Acting Chief of Staff, communicated the order to drop the atomic bomb to Marshall in Potsdam. Acting on behalf of Marshall and with the approval of the President on the 25th of July, Hardy issued the order to drop the atomic bomb to Carl Spaatz, Commander of the U.S Strategic Air Force.

25. Henry H. Arnold: On the 17th of December 1944, Arnold established the 509th Composite Group in order to implement the strategy to use the atomic bomb in Japan.

26. Leslie R. Groves: Head of the Manhattan Project and member of the “Top Policy” group, was responsible for the S-1 plan to manufacture the atomic bomb for the use in the war, and became the Chief Military Executive Officer of the Military Policy Committee.

27. Robert Oppenheimer: As director of the Los Alamos Laboratory, was granted wide ranging authority, administrative responsibility and was put in charge of researching the manufacture of the atomic bomb.

28. Paul Tibbets: On August 6, 1945, at 2:45 am, Paul Tibbets, Pilot of B-29 “Enola Gay”, took off from Tinian Island. At 8:15 am, following the order given by Weaponer William Parsons, Bombardier Thomas Frisbee dropped the atomic bomb on the city of Hiroshima.

29. Charles Sweeny: On August 9, 1945, Pilot of B-29 “Bocks Car” Sweeney took off from Tinian Island. Following the order given by Weaponer Frederick Ashworth, Bombardier Kermit Beahan dropped the atomic bomb on the city of Nagasaki.

E: CONCLUSIONS OF LAW

30. The Tribunal will now address the conclusions of law in light of International Law applicable to the facts. In review of the foregoing, the Tribunal concludes that the primary applicable International Law regarding the use of weapons with widespread impact on civilian populations are the “Laws and Customs of War”, as they were called by The Hague International Court of Justice 1996 Advisory Opinion, included: a) The St. Petersburg Declaration of 1868; b) The Hague Conventions of 1899 and 1907, in particular *the Regulations Concerning the Laws and Customs of War on Land*; c) The Martens Clause included in the Preamble of the Hague Convention IV of 1907; and d) The Geneva Conventions of 1864, 1906, 1929 and 1949 (I.C.J. 1996, Advisory Opinion Judgment, par.75).

31. The Tribunal takes judicial notice that the “Laws and Customs of War”, as recognized by the Hague International Court of Justice in 1996, ‘*fixed the rights and duties of belligerents in their conduct of operations and*

limited the choice of methods and means of injuring the enemy in an international armed conflict (I.C.J. 1996, Advisory Opinion, Judgment, par.75). As has already been stated by the World Court, in its 1996 Advisory Opinion, this Tribunal considers that the St. Petersburg Declaration provides the basis of International Customary Law derived from the two general principles of the International Humanitarian Law applied to this case: a) That the right to injure the enemy is not unlimited; and b) That means of warfare which cause unnecessary suffering are prohibited.

32. Additionally, the World Court held that with the Geneva Law (i.e., the Geneva Conventions of 1864, 1906, 1929 and 1949) which protects the victims of war and aims to provide safeguards for disabled armed forces personnel and persons not taking part in the hostilities, the “Laws and Customs of War” gradually formed one single complex system known today as International Humanitarian Law (ICJ Reports 1996 pp. 226, 227).

33. This Tribunal believes that the World Court Opinion summarized the treaty provisions applicable to this case, beginning with the Hague Conventions of 1899 and 1907 up to the present, which established that by their nature, the use of weapons having indiscriminate effects violates the treaties mentioned and Customary International Law. The Tribunal, found that the fact, and intent, of waging war on civilian populations is implicit in the choice of weaponry, and therefore does not provide any defense.

34. The Tribunal also observes that the Martens Clause, included in the preamble of the Hague Convention IV of 1907, declares that *‘Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and belligerents remain under the protection and the rule of principles of law of nations, as they*

result from usages established amongst civilized peoples, from the laws of humanity, and from the dictates of public conscience’.

35. The Tribunal notes that the rules established in the Martens Clause, comprises a large number of International Customary Rules, that has informed the practice of the States and prohibit the use of nuclear weapons. This same conclusion was reached by the World Court when it held as follows: *‘Finally the Court points to the Martens Clause, whose continuing existence and applicability is not to be doubted, as an affirmation that the principles and rules of Humanitarian Law apply to nuclear weapons’* (I.C.J. 1996, Advisory Opinion, Judgment, par. 87).

36. On the basis of the aforementioned, the Tribunal shares the 1996 World Court Opinion that declares that *‘Humanitarian Law, at a very early stage, prohibit certain types of weapons either because of their indiscriminate effect on combatants and civilians or because of the unnecessary suffering caused to combatants. If an envisaged use of weapons would not meet the requirements of Humanitarian Law, a threat to engage in such use would also be contrary to that law’* (I.C.J. 1996, Advisory Opinion, Judgment, par.78).

37. The Tribunal further notes that the World Court held that the principles constituting the basis of International Humanitarian Law are the following: *‘The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets. According to the second principle, it is prohibited to cause unnecessary suffering to combatants: it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second*

principle, States do not have unlimited freedom of choice of means in the weapons they use' (I.C.J. 1996, Advisory Opinion, Judgment, par.78).

38. The Tribunal also observes that the World Court's advisory opinion regarding the use of nuclear weapons, declared that *'the threat or use of nuclear weapons would generally be contrary to the rules of International Law applicable in armed conflict, and in particular the principles and rules of Humanitarian Law'* (ICJ Report 1996, Court Decision paragraph e).

39. In view of the aforementioned principles, the Tribunal considers that the defendants use of nuclear weapons in Hiroshima and Nagasaki was illegal in the light of the principles and rules of International Humanitarian Law applicable in armed conflicts, since the bombing of both cities, made civilians the object of attack, using nuclear weapons that were incapable of distinguishing between civilians and military targets and consequently, caused unnecessary suffering to the civilian survivors.

40. Turning now to the applicability of International Law to Crimes Against Humanity, the Tribunal takes into consideration the following aspects of International Law: a) The Second Hague Declaration of July 29, 1899, which prohibits "the use of projectiles, the object of which is the diffusion of asphyxiating or deleterious gases"; b) Article 23 (a) of the regulations respecting the Law and Customs of War on Land annexed to the Hague Convention IV on October 18, 1907, which states that 'It is specially forbidden to employ poison or poisonous weapons'; c) The Geneva Protocol of June 17, 1925, which prohibits "the use in war of asphyxiating, poisonous or other gases and all materials or devices"; d) Article (5) (c) of the Charter of The International Military Tribunal for the Far East, "for waging inhuman acts against the civilian population during the second World War and the violation of the laws and customs of war". Examined in their totality, the above referenced aspects of the law in relation to Crimes

Against Humanity, the Tribunal notes that Crimes Against Humanity are those crimes that cause tremendous damages to ordinary citizens. Those crimes literally destroy humanity, or destroy the consciousness of human beings. They also destroy the ideas and philosophies of civilizations. The Tribunal notes that Crimes Against Humanity contains the following elements: 1) The perpetrator inflicted great mental and physical suffering and/or serious bodily injuries, by reason of inhuman acts; 2) The perpetrator was aware of the factual circumstances that established the character of the act; 3) The conduct was committed as part of a widespread or systematic attack directed against civilian populations; 4) The perpetrator knew that the conduct was part of or intended to be part of a widespread or systematic attack directly against a civilian population. In view of the aforementioned, the Tribunal considers that the characteristic elements of the Crimes Against Humanity were established by the defendants atomic bombing of Hiroshima and Nagasaki.

41. The Tribunal notes that the atomic bombing of Hiroshima and Nagasaki caused many civilians to suffer severe and prolonged physical and emotional pain and suffering, except for those who died instantly. The perpetrators of the atomic bombing were aware that these serious and catastrophic damages of the civilian population would be caused by the atomic bombing. The Tribunal finds that Defendants knew or should have known civilians would suffer injury or suffer the consequence of exposure to the radioactive material at least in addition to those who would face instant deaths. Finally, the Tribunal holds that the Defendants knew that the A-bomb was part of a systematic attack against civilian populations with the stated objective to end the war against Japan. Therefore, the Tribunal concludes that the illegal actions of the Defendants namely, the dropping of Atomic bomb on Hiroshima and Nagasaki constituted Crime Against Humanity.

42. The Tribunal must therefore now address the matter of War Crimes in the light of the applicable International Law. In order to render its Judgment in relation to this charge, the Tribunal notes the following principles of International Law.

- a) The Martens Clause which established international customary principle to protect the victims of war.**
- b) Article 22 of the Regulations respecting the “Law and Customs of War on Land” annexed to the Hague Convention IV on October 18, 1907, which states that ‘*The right of belligerents to adopt means of injuring the enemy is not unlimited*’.**
- c) The Geneva Protocol of 17 June 1925, which prohibits “the use in war of asphyxiating, poisonous or other gases and all materials or devices”.**
- d) The Nuremberg Principles which established a set of guidelines for determining what constitutes a War Crime.**

43. In conformity with the aforementioned principles of International Law, the Tribunal notes the existence of five elements in the definition of War Crime. The First requirement involves deliberate killing; the second requirement involves the killing of ordinary citizens and attack on civilians. The third requirement involves deliberate destruction of cities and towns. The fourth requirement involves attacks which causes unnecessary and excessive deaths. The fifth requirement involves attacks on unprotected cities. The Tribunal notes that the dropping of the atomic bombs on Hiroshima and Nagasaki established all of the elements of the definition of War Crimes.

44. In view of this, the Tribunal finds that the atomic bombing of Hiroshima and Nagasaki violated the principles prohibiting the mass murder of civilians, wanton destruction of cities and villages resulting in excessive death not justified by military necessity. Therefore, these acts constitute

War Crimes established in the Principle VI (b) of the Nuremberg Principles, and in Article (5) paragraph (b) of the Charter of the International Military Tribunal for the Far East.

45. The Tribunal will now turn to the 1963 Tokyo District Court Judgment in SHIMODA vs. THE STATE, which declared the illegality of the atomic bombing of Hiroshima and Nagasaki, and was the first public judgment concerning the issue. The Tribunal observe that the Tokyo Court declared that *'even if the aerial bombardment has only a military objective as the target of its attack, it is proper to understand that an aerial bombardment with an atomic bomb on both cities of Hiroshima and Nagasaki was an illegal act of hostility as the indiscriminate aerial bombardment on undefended cities'*.

46. Accordingly, in view of the Shimoda Case Judgment, the Tribunal finds that the atomic bombing of Hiroshima and Nagasaki was an indiscriminate bombing of undefended cities and was illegal.

47. Finally the Tribunal addresses the matter of "Conspiracy" regarding the aforementioned facts and the applicable International Law. The Tribunal observes that under international law, conspiracy consists of an agreement between two or more persons to commit a crime, and the taking of such steps in preparing and arranging for the commission of such a crime; for instance, planning an air attack on civilians or the use of such prohibited arms as chemical or bacteriological weapons or the indiscriminate killing of civilians as part of a widespread or systematic attack on civilians and combatants. The Tribunal finds that the agreement and actions taken by the Defendants to promote the indiscriminate extermination of all life forms in Hiroshima and Nagasaki by deploying the atomic bomb causing unnecessary pain and suffering to the survivors was an act carefully planned by the Defendants since December 1944. The Tribunal finds that

the Defendants were aware of the full ramifications of the atomic bombing when they selected the targets, and that all of the acts that they carried out to prepare and arrange the atomic bombing constitute “Conspiracy”.

48. In regard to the above, the Tribunal delivers the following Judgment:

F: IN RELATION TO CONSPIRACY

49. In light of the evidence adduced, the Tribunal concludes that the defendants - U.S. President Franklin D. Roosevelt, U.S. President Harry S. Truman, Secretary of State James F. Byrnes, Secretary of War Henry L. Stimson, Army Chief of Staff George C. Marshall, Acting Army Chief of Staff Thomas T. Handy, Commander of the Army Air Forces Henry H. Arnold, Head of the Manhattan Project Leslie R. Groves, and Director of the Los Alamos Laboratory J. Robert Oppenheimer - are guilty of conspiracy to commit War Crimes and Crimes Against Humanity.

G: IN RELATION TO CRIMES AGAINST HUMANITY

50. Taking into consideration the above mentioned aspects of law in relation to Crimes Against Humanity, the Tribunal concludes that the defendants - U.S. President Harry S. Truman, Chief of Staff George C. Marshall, Army Acting Chief of Staff Thomas T. Handy, Commander of the Army Air Forces Henry H. Arnold, Carl A. Spaatz, Curtis LeMay, Charles Sweeney, Paul Tibbets and William S. Parsons - are guilty of Crimes Against Humanity.

H: IN RELATION TO WAR CRIMES

51. The Tribunal has concluded, with respects to the mentioned aspects of the international law in relation to war crimes, that the defendants - U.S. President Harry S. Truman, Chief of Staff George C. Marshall, Army Acting Chief of Staff Thomas T. Handy, Commander of the Army Air Forces Henry H. Arnold, Carl A. Spaatz, Curtis Le May, Charles Sweeney, Paul Tibbets and William S. Parsons - are guilty of War Crimes.

I: IN RELATIONS TO INTERNATIONAL LAW

52. Under the 1996 International Court of Justice Advisory Opinion, '*There is in neither customary nor conventional International Law or any specific authorization of the threat or use of nuclear weapons*'. In view of this principle the Tribunal concludes that the defendants and its representative government are guilty of violating general principles of International Law for dropping the atomic bombs in Hiroshima and Nagasaki.

J: IN RELATION TO INTERNATIONAL CUSTOMARY LAW

53. The Tribunal previously concluded that the part of conventional international humanitarian law referred in the Hague Conventions, the Geneva Conventions, the Martens Clause, and the Nuremberg Principles, has beyond doubt become part of international customary law and the law applicable in armed conflicts.

54. Under the aforementioned principles of International Customary Law, the Tribunal concludes that the Defendants and its representative government are guilty of waging inhumane nuclear attacks against civilian targets in Hiroshima and Nagasaki.

K: RECOMMENDATIONS

55. Based on these findings of facts and conclusions of law, the Tribunal makes the following recommendations to the United States government:

- a) That the United States must publicly acknowledge that the atomic bombings carried out on 6 and 9 August 1945 were violations of International Law. It must declare that the effect of nuclear weapons is contrary to International Law, and must eternally maintain and exhibit the declaration in a national military history museum.**

- b) The United States must officially apologize to all the victims and their relatives of the atomic bombing of Hiroshima and Nagasaki and must pay compensation to them.**

- c) The US government, as the only State that has ever used nuclear weapons, must promise to never use such weapons again.**

- d) The United States must implement its article VI NPT obligations and eliminate its nuclear armaments and make every effort to eliminate all nuclear weapons from this planet consistent with the aims of the Non-Proliferation Treaty.**

- e) The United States must establish a memorial dedicated to the victims of the atomic bombs in each related nation, and must incorporate within the curriculum of its educational institutions that the atomic bombing of Hiroshima and Nagasaki was a violation of the International Law.**

Declared by Judges:

**Lennox Hinds
Carlos Vargas
IE Masaji**