

however, recognise exclusively the nationality of the State in which he is habitually and principally resident or the nationality of the State with which in the circumstances he appears to be in fact most closely connected.

ARTICLE 9

A person possessing two or more nationalities of the contracting States, who has his habitual and principal residence within the territory of one of these States with which he is in fact most closely connected, shall be exempt from all military obligations in the other State or States.

Note: The Delegate of Iraq reserved his position on this Article.

ARTICLE 10

Without prejudice to the provisions of Article 9, if a person possesses the nationality of two or more States, and under the law of any one of such States has the right, on attaining his majority age, to renounce or decline the nationality of that State, he shall be exempt from military service in such State during his minority.

Note: The Delegates of Indonesia and Iraq reserved their position on this Article.

Explanatory Note: These Articles are intended to serve only as model rules as embodying certain Principles relating to elimination or reduction of Dual or Multiple Nationality. The provisions of each of the above Articles are independent of each other.

V. THE LEGALITY OF NUCLEAR TESTS

INTRODUCTORY NOTE

The subject of The Legality of Nuclear Tests was referred to the Committee by the Government of India under Article 3(e) of the Statutes as being a matter of common concern to the member States of the Committee.

At its Third Session held in Colombo in 1960, the Committee decided to take up this subject for consideration and directed the Secretariat to collect background material and information on the subject including such scientific data as might be available and to place the same before the Committee at its Fourth Session.

At the Fourth Session held in Tokyo in 1961, the Committee considered the subject on the basis of a report prepared by the Secretariat. After a general discussion, the Committee decided to take up the question for fuller consideration at its next Session. The Committee also decided that it would limit itself to the question of the legality of nuclear tests in time of peace.

At the Fifth Session held in Rangoon in 1962, the subject was discussed further on the basis of a revised note prepared by the Secretariat in accordance with the decision taken by the Committee at its Fourth Session. The Committee heard the viewpoints on the various topics on the subject from the Delegations of the participating States present at that Session. A Draft Report was also prepared on the basis of the discussion at the Fifth Session which was submitted to the member States for their comments.

At the Sixth Session of the Committee held in Cairo in 1964, the subject was finally considered on the basis of the Draft Report and comments received from member Governments thereon. The Committee drew up its final conclusions on the subject unanimously.

FINAL REPORT OF THE COMMITTEE ADOPTED AT THE SESSION

The Asian-African Legal Consultative Committee at its Third Session held in Colombo in January 1960 decided to take up for consideration the question of Legality of Nuclear Tests, a subject which had been suggested by the Government of India under Article 3(c) of the Statutes of the Committee, being a legal matter of common concern to all the States participating in the Committee.

At its Fourth Session held in Tokyo in February 1961, the Secretariat of the Committee presented before it the relevant material both from the scientific and legal points of view, which formed the basis of discussion at that session. After a general discussion the Committee decided to study the matter further and to take up the question for fuller consideration at its Fifth Session. The Committee decided that it would not concern itself with the question regarding the use of nuclear weapons in time of war, but that it would confine itself to an examination of the problem of the legality of nuclear tests in time of peace.

In accordance with the decision taken by the Committee at its Tokyo Session, the Secretariat prepared a report which was placed before the Committee at its Fifth Session held in Rangoon in January 1962, on the basis of which the matter was further considered.

The Committee heard the views and expressions of opinion on the various topics arising on this subject from the Members for Burma, Ceylon, India, Indonesia, Japan, Pakistan, Thailand, and the United Arab Republic. Thereafter further comments were submitted by member governments.

At the Sixth Session of the Committee held in Cairo in February-March 1964, the Committee considered the report prepared by the Secretariat and the comments received from Governments. The Committee took into account the various United Nations resolutions and international agreements relevant to the subject and the scientific data placed before the Committee. It also noted with satisfaction the conclusion of the Treaty of 5th August 1963 prohibiting nuclear tests, which has had a considerable effect upon the ultimate outcome of the Committee's deliberation.

The Committee has formulated the following conclusions, stating that they apply equally to test explosions of nuclear weapons carried out by anyone for whose action the State is responsible in international law;

CONCLUSIONS

1. As sufficient evidence regarding the harmful effects of the underground test explosions of nuclear weapons is not at present available to the Committee, the Committee is unable at this stage to express any opinion on the legality or otherwise of such test explosions. The conclusions hereinafter set out are therefore referable to all test explosions of nuclear weapons other than underground test explosions.
2. Scientific evidence examined by the Committee shows that every test explosion of nuclear weapons results in widespread damage, immediate or delayed, or is capable of resulting in such damage; the present state of scientific knowledge does not indicate that the harmful effects of such test explosions can reasonably be eliminated. Such test explosions not only cause direct damage, but pollute the atmosphere and cause fall-out of radioactive material and also increase atomic radiation, which are detrimental to the well-being of man and also affect future generations.
3. Having regard to its harmful effects, as shown by scientific data, a test explosion of nuclear weapons constitutes an international wrong. Even if such tests are carried out within the territory of the testing State, they are liable to be regarded as an abuse of rights (*abus de droit*).
4. The principle of absolute liability for harbouring dangerous substances or carrying on dangerous activities is recognised in international law. A State carrying out test explosions of nuclear weapons is therefore absolutely liable for the damage caused by such test explosions.
5. Test explosions of nuclear weapons are also contrary to the principles contained in the United Nations Charter and the Declaration of Human Rights.
6. Test explosions of nuclear weapons carried out in the high seas and in the airspace there above also violate the principle of

the freedom of the seas and the freedom of flying above the high seas, as such test explosions interfere with the freedom of navigation and of flying above the high seas and result in pollution of the water and destruction of the living and other resources of the sea.

7. Test explosions of nuclear weapons carried out in trust territories and non-self governing territories also violate Articles 73 and 74 of the United Nations Charter.

VI. OTHER DECISIONS OF THE COMMITTEE

Rights of Refugees

This subject has been referred to the Committee by the Government of the United Arab Republic under Article 3(b) of the Statutes. At the Sixth Session of the Committee it was taken up for consideration on the basis of a preliminary study prepared by the Secretariat and the legal issues listed in a memorandum furnished by the Government of the United Arab Republic. The United Nations Deputy High Commissioner for Refugees, who attended the Session in the capacity of an Observer, presented a memorandum and was invited to address the Committee.

The Committee after a general discussion on the subject decided that the governments of the participating countries be requested to send their comments on the subject together with the texts of constitutional provisions, laws and practice, particularly on the issues of compensation, the minimum standard of treatment of a refugee in the State where he has been admitted, and also on the question of constitution of competent international tribunals for determination of compensation that could be claimed by a refugee. It directed the Secretariat to prepare a fresh report on the basis of the materials which may be received from the participating governments and from other sources and to place the same before the next Session.

U.N. Charter from Asian-African Viewpoint

The subject of U.N. Charter from Asian-African Viewpoint has been referred to the Committee by the Government of the U.A.R. under Article 3(b) of the Statutes with the request that the Committee might examine the provisions of the Charter from the legal point of view taking into account in particular the changed composition of the United Nations after the admission of the newly independent Asian African States. The subject was considered on the basis of the memoranda submitted by the Governments of India and the U.A.R. and the preliminary study made by the Secretariat of the Committee. The Delegations present at the Session made statements expressing their views.

The Committee noted with satisfaction the adoption of the two resolutions by the General Assembly on the question of equit-

able representation in the Security Council and the Economic and Social Council and recommended to the participating States to ratify not later than 1st September 1965 the amendments set out in the aforesaid resolutions. The Committee also made an appeal to all Member States of the United Nations to ratify not later than 1st September 1965 the said amendments. It was decided to transmit the Resolution of the Committee to the United Nations Secretariat for bringing it to the attention of the Member States of the United Nations. The Committee directed the Secretariat to compile further material on the subject and to place the same before the next Session.

Relief against Double Taxation

The subject relating to Relief against Double Taxation was referred to the Committee by the Government of India under the provisions of Article 3(c) of the Statutes of the Committee for exchange of views and information between the participating countries. The Committee took up the subject for consideration at the Fourth Session and appointed a Sub-Committee to examine in what manner the Committee should treat the problem of avoidance of double taxation and fiscal evasion. The Sub-Committee fully discussed the subject on the basis of a general note prepared by the Secretariat of the Committee. The Committee, accepting the recommendations of the Sub-Committee, decided that the Secretariat should request the Governments of the participating States to forward to the Secretariat the texts, if any, of agreements for avoidance of double taxation and fiscal evasion concluded by them and the texts of the provisions of their municipal laws concerning the subject. The Committee also directed the Secretariat to draw up the topics of discussion (questionnaire with short comments) and to send it to the governments of the participating countries.

At the Sixth Session of the Committee, the subject was taken up for further consideration and a Sub-Committee was appointed to go into the question. The Sub-Committee received a memorandum from the U.A.R. Delegation and also a note from the Delegation of Ceylon containing its supplementary answers to the U.N. Questionnaire on Double Taxation. The Sub-Committee after a preliminary exchange of views concluded that though bilateral double taxation agreements provided a practical solution

to the financial problems which arose from the economic intercourse of nations, the conclusion of a multi-lateral convention may be desirable. The Sub-Committee felt that it was necessary for this purpose to have an exchange of views on the techniques employed by the participating States, their experiences and practices. Since the views of some of the participating countries were not before the Sub-Committee, it recommended to the Committee to postpone consideration of this question until the next Session and to direct the Secretariat meanwhile to complete the compilation of rules, regulations and State practice of the participating States and the agreements concluded by them.

Reciprocal Enforcement of Judgments, Service of Process, and Recording of Evidence in Civil and Criminal Cases

The subject of Reciprocal Enforcement of Judgments has been referred to the Committee by the Government of Ceylon under Article 3(b) of the Statutes with a view to consider drawing up of a convention or multilateral treaty which will permit the reciprocal enforcement of a foreign judgment in each other's territories. At the Sixth Session of the Committee, the subject was taken up for consideration on the basis of a comprehensive note prepared by the Secretariat and the memoranda received from the Delegations of Ceylon and the U.A.R. A Sub-Committee appointed on the subject after studying the question fully submitted a report to the Committee recommending two draft conventions, one on the reciprocal enforcement of judgments and the other on the service of process. The Committee took note of the Report of the Sub-Committee and decided to give detailed consideration to the Report at the next Session.

Vienna Conventions

The Government of India by a reference under Article 3(b) of the Statutes had requested the opinion of the Committee on certain questions relating to the Vienna Convention on Diplomatic Relations, 1961, the Vienna Convention on Consular Relations, 1963, and the Vienna Convention on Nuclear Damage, 1963. These questions are:

- (1) To what extent are the provisions of these Conventions acceptable to the Government of your country?

- (2) Are there any provisions in these three Conventions which the Government of your country does not approve? If so, what are the reasons?
- (3) Does the Government of your country propose any revision or modification of any of the provisions of these three Conventions? If so, what are the reasons?
- (4) Does the Government of your country suggest any additional provisions to these three Conventions? If so, what are the reasons?
- (5) Does the Government of your country propose to ratify or accede to all or any of these Conventions? If so when?
- (6) Are there any bilateral or multilateral treaties between the Government of your country and the governments of any other countries on the subject matter of these three Conventions? If so, what would be the position of these treaties, if the Government of your country ratifies or accedes to these Conventions?

The Committee after a general discussion on the subject resolved that the Governments of the participating countries be requested to give their comments on these questions within a period of six months in respect of the Conventions on Diplomatic and Consular Relations, and within a period of nine months in respect of the questions pertaining to the Vienna Convention on Nuclear Damage. It directed the Secretariat to prepare a report on the subject within two months after the receipt of the comments from these governments for circulation. The Committee also decided that the subject be placed on the agenda of the Seventh Session, if so requested by any of the participating countries.

*Report on the Work Done by the International
Law Commission at its Fifteenth Session*

During its Fifteenth Session held from 6 May to 12 July 1963, the International Law Commission had considered *inter alia* the subjects of Law of Treaties, Question of Extended Participation in General Multilateral Treaties concluded under the auspices of the League of Nations, State Responsibility, Succession of States and Governments, and Special Missions. DR. H. W. TAMBIAH,

the Member for Ceylon on the Committee, who had represented the Committee at the Fifteenth Session of the Commission, submitted his report under clause 5(a) of Rule 6 of the Statutory Rules on the work done by the Commission at that session. The Committee expressed its appreciation for the services rendered by DR. TAMBIAH in representing the Committee at the Commission's Session and for presenting his valuable report. The Committee generally considered the report and decided that the Secretariat of the Committee should prepare a study on the Law of Treaties including the question of accession to general multilateral conventions concluded under the auspices of the League of Nations and particularly on the specific questions raised by the Delegates in the course of discussions at the Session. The Committee further decided to request the participating countries to communicate their views on the Draft Articles on the Law of Treaties prepared by the Commission so that they may be incorporated in the study to be prepared by the Secretariat. It directed the Secretariat to attach priority to this topic and place the same on the agenda of the next Session. The Committee further directed the Secretariat to collect materials on the Law of State Succession and prepare a report on the subject.

THE LEGALITY OF NUCLEAR TESTS

REPORT OF THE
COMMITTEE AND BACKGROUND MATERIAL

I. INTRODUCTORY

The Prime Minister of India in his inaugural address at the First Session of this Committee, held in New Delhi in April 1957 drew the attention of the jurists of the world to the fact that nuclear tests were being carried out and continued by various powers in different parts of the world. He posed the question as to whether such tests, which according to all scientific evidence had harmful effects on the well-being of peoples of the world, could be justified from the point of view of International Law. As this question had not been considered adequately by any body of jurists or by any of the well known authorities on International Law and having regard to the fact that the nuclear tests were being carried out in parts of Asia and Africa in spite of protests from the peoples of these Continents, this Committee at the suggestion of the Government of India decided at its Third Session, held in Colombo in January 1960, to undertake a study of the question of legality of nuclear tests as being a matter of common concern among the participating countries. The Committee directed the Secretariat to collect background material and information on the subject, including scientific data as may be available, and to place the same before the Committee at its Fourth Session.

At the Fourth Session held in Tokyo in February 1961, the Committee considered the subject on the basis of a study prepared by the Secretariat. The Delegates of the United Arab Republic, India, Ceylon, Indonesia, Iraq, Japan, Burma and Pakistan stated their points of view on the question of legality of nuclear tests, indicating at the same time the scope of the subject and the basic principles on which further material had to be collected. The Committee also heard statements from the Observer for Ghana and MR. F. V. GARCIA-AMADOR, Member of the International Law Commission, in his personal capacity as a recognised expert. Indicating the scope of the subject which the Committee had to consider, the Member for India pointed out that the Committee was not concerned with the controversial and debatable question of legality of the use of nuclear weapons in time of war, but was concerned with the question of legality of nuclear tests in time of peace. The question for consideration in his view was: Are nuclear tests conducted by a country within its territory or else-

where, which are likely to cause harm to inhabitants of other countries, permissible according to International Law? The Committee, in his view, was concerned with considering whether any known or accepted principles of International Law could be applied to the situation arising out of these tests. If the existing principles were inapplicable or inadequate, the Committee would have to consider whether International Law, which had in the past met new situations by evolving new principles, could not in the present case similarly attempt to counter the grave threat to which States were exposed by these tests by formulating a suitable doctrine with new principles to meet the new situation. The representatives of other participating countries concurred in this approach to the problem and the Committee decided that it would confine itself to an examination of the problem of legality of nuclear tests in time of peace. The Committee further decided that the Secretariat of the Committee should continue its study of this subject and prepare a report for the consideration of the Committee at its Fifth Session.

At the Fifth Session held in Rangoon in January 1962, the subject was fully discussed by the Committee on the basis of the materials on the scientific and legal aspects of nuclear tests collected by the Secretariat of the Committee. The Governments of Japan and the United Arab Republic submitted written memoranda on the subject. The Committee heard the viewpoint and expressions of opinion on the various topics on this subject from the Delegations of Burma, Ceylon, India, Indonesia, Japan, Pakistan, Thailand and the United Arab Republic. The Committee also heard statements from the Observers for Ghana, Laos and the Philippines, and the representative of the League of Arab States. DR. RADHABINOD PAL, President of the International Law Commission, in his personal capacity as an expert, and DR. OSCAR SCHACHTER in his personal capacity, also made a few remarks.

The Committee considered the question on the basis of the scientific information on the effects of such tests including the material contained in the Reports of the United Nations Scientific Committee on the "Effects of Atomic Radiation", the Reports of the British Medical Research Council on the "Hazards to Man of Nuclear and Allied Radiations" and the Reports of Japanese Scientists on the "Effects and Influences of Nuclear Bomb Test

Explosions." Indicating the scope of the discussion, the President of the Committee, MR. M. C. SETALVAD, again pointed out that the Committee was not concerned with the question of the use of nuclear weapons in time of war, but only with the question of the legality of nuclear tests in time of peace. The President drew the attention of the Committee to the Topics for Discussion prepared by the Secretariat and the Committee discussed the subject on the basis of the following questions:—

I. (a) Is a State responsible or ought it to be so for direct damages caused to the inhabitants of the area where the tests are carried out due to deaths of human beings and destruction of their property resulting from explosions of atomic devices under the law of tort or principles analogous thereto?

(b) If such damage is caused to a foreign national resident or sojourning in its territory or to one who may be accidentally passing through the danger area, would the State which is carrying out the tests be liable to pay reparation to the injured alien's home State under the principles of State Responsibility in International Law?

(c) If such damage is caused to a foreign national whilst resident or sojourning in a neighbouring State, would the State carrying out the test be held liable to pay reparation to the injured person's home State under principles analogous to that of State Responsibility in International Law?

II. (a) Can it be said that a State which carries out atomic tests in its own territory is endangering the safety and well-being of its neighbouring States and their inhabitants due to possibilities of radioactive fall-out; and if so, whether the use by a State of its own territory for such purposes is not contrary to the principles of International Law?

(b) Can it be said that the use by a State of its own territory for the purpose of carrying out nuclear tests by explosion of atomic devices amounts to an abuse of its rights in respect of use of its State territory?

III. (a) If it is established that explosion of nuclear devices results in pollution of the air with radioactive substance and that such contaminated air is injurious to the health of the peoples of the world, would the State carrying out the test be said to be res-

possible for an international tort in accordance with the principles laid down in the *Trail Smelter Arbitration* case?

(b) In an action based on commission of an international tort, would it be necessary for the claimant State to prove actual damage, or is the general scientific and medical evidence on the effects of nuclear explosions sufficient to maintain the action?

(c) Even if the harmful effect resulting from contamination of the air can be confined within the territories of the particular State, can it be said that the State has violated the human rights of the citizens and aliens living in its territory, and if so, whether the State is responsible for the harm caused to the aliens under the principles of International Law relating to State Responsibility?

IV. Is the use of atomic weapons in a war illegal, and if so, can the tests carried out for the purpose of manufacture and perfection of such weapons be said to be illegal *per se* without proof of any damage? Can the question of stoppage of such tests be said to be a matter of international concern?

V. Would the payment of damages by a State for injuries suffered due to nuclear tests be regarded as sufficient or should an injunction for stoppage of such tests be necessary?

VI. Does the interference with the freedom of the air or the sea navigation resulting from declaration of danger zones over the areas where the tests may be carried out amount to violation of the principles of International Law?

VII. Is the destruction of living resources of the sea which result from nuclear tests on islands or areas of the high seas to be regarded as violative of the principles of International Law?

VIII. Is it lawful for an administering authority to use territories, which it holds on trust from the United Nations, for purposes of holding nuclear tests?

The Delegates expressed their views on the above questions and on the basis of these discussions the Secretary of the Committee prepared and presented a Draft Report on the subject for the consideration of the Committee. After a general discussion, the Committee decided that the Secretariat should submit the Draft Report on Legality of Nuclear Tests to the Governments of the

participating countries for their comments and that the subject should be placed before the next session of the Committee as a priority item on the agenda.

At the Sixth Session of the Committee held in Cairo in 1964, the subject was finally considered on the basis of the Draft Report and comments received from member governments thereon. The Committee drew up its final conclusions on the subject unanimously.

II. STATEMENTS OF DELEGATES AND OBSERVERS

Made at the Fourth Session

Statements of Delegates and Observers

U.A.R.:—In 1945 two atomic bombs were exploded in Japan. France, more recently, has exploded three nuclear bombs in the Sahara which lies in the heart of Africa.

There can be no doubt at all that nuclear and thermonuclear explosions, whether in the air or on the ground or in the sea, produce fall-out, blast, heat and radiation which entail physical and biological effects very harmful to mankind. The nuclear explosions over Japan in 1945 brought with them widespread destruction to lives and properties within wide areas. The radiation effects of these nuclear explosions were responsible for about 12 – 15 per cent of the casualties inflicted in the range of blast and heat flash. With the development of thermonuclear explosions the damage would extend over immense areas.

Apart from the contamination of the environment and the hazards arising from local fall-out, the serious danger caused by nuclear explosions would be the global contamination of the atmosphere and the global fall-out. Although nuclear tests may be conducted in deserted areas and under worked up precautions in order to avoid the exposure of people to local fall-out, yet nothing can be done to avoid exposing, almost the entire world population, to global fall-out resulting from a large explosion. This global fall-out is inherent in the very nature of nuclear tests, particularly multi-megaton tests, and it cannot be eliminated. It is a long-term hazard; its short-term effects are not the only risk.

We shall not go into detail about the consequences of the global fall-out and its hazards. Scientists add to its internal hazard to the human body the hazard from radio-strontium. The risk of introducing strontium-90 in the atmosphere could be colossal to the future of humanity. Scientists have already explained its biological damage, its relation with diseases (leukaemia, bone tumors, cancer), and its effects in the reduction of life span and its genetic effects.

Apart from the damage caused by radiation, nuclear explosions have the following serious economic effects:

- (a) The possibility of mass movement of the population and of deprivation of their means of livelihood.
- (b) The effect on weather and rain.

- (c) The destruction of the living resources of the seas.
- (d) The interference with the freedom of air navigation and navigation in the high seas.

It is appropriate to mention now the effects of the three nuclear tests conducted by France in the African Sahara during the year 1960 on two African countries, i.e. Ghana and the U.A.R.

It was announced that Ghana suffered from the first atomic bomb which was exploded on February 13, 1960. An increase in radiation was found in the samples of research workers. Harvest, soil, water and even milk were badly affected.

The effects of the two other atomic bombs, which were exploded on the 1st April and the 27th December 1960, were obvious in the U.A.R. territory, although the place of explosion was 3,400 Km. to the west of Alexandria. It was stated in a report done by the Faculty of Science, Alexandria University, that the radiation increased and the radioactive fall-out resulting from the second explosion became on December 28, 1960 twenty times double the normal. The radioactive fall-out resulting from the third explosion is increasing gradually but it has not reached a serious point until now.

France has conducted these three nuclear tests in complete defiance of the resolution adopted by the General Assembly of the United Nations on November 23, 1958 which reads:

"The General Assembly,

Recognizing the anxiety caused by the contemplated tests in the Sahara among all peoples, and more particularly those of Africa:

1. Expresses its grave concern over the intention of the Government of France to conduct nuclear tests.
2. Requests France to refrain from such tests."

France, in addition to that, has ignored the agreement concluded between the United States of America, the Soviet Union, and the United Kingdom for the suspension of nuclear tests for a certain period.

We believe that nuclear and thermonuclear weapons are illegal. They are against the existing rules of International Law. There are many international instruments, such as the Declaration of St.

Petersburg of 1868, the Declaration of the Brussels Conference of 1874, the Convention of the Peace Conference of 1899 of the Hague, the Geneva Protocol of 1952 and the Geneva Convention of 1949 which were accepted by the majority of the different countries including the Great Powers. These instruments included specific prohibition of the use of poisonous weapons and gases and of weapons of mass destruction. The basic principle of international law agreed upon in these conventions is that the only legitimate objective of war is to defeat the enemy's military force. The destruction of life and property which goes beyond this objective is illegal. Nuclear- and thermonuclear weapons are against this basic principle of International Law because they are poisonous, they cause unnecessary suffering, and they are employed without any regard to the distinction between combatants and non-combatants.

Nuclear weapons are also against the principles of morality. Morality urges nations to stop exposing humanity to the dangers of nuclear radiation. The fear created by nuclear explosions is that of total destruction and no nation is morally allowed to spread such fear and anxiety among the peoples of the world. The principles of morality which are prevalent in a given society are indirect sources of its law in the sense that the content and meaning of its rules of law are influenced by those principles. In our interpretation of the rules of law governing nuclear explosions we could not forget the moral side of the problem.

Nuclear weapon tests are, in our opinion, illegal too even if conducted by a country either in its colonies or in trust territories or in its own territory. The illegality of nuclear tests conducted by a country in its colonies may be based on Articles 73 and 74 of the Charter of the United Nations. Article 73 reads:

"Members of the United Nations, which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government, recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust, the obligation to promote to utmost, within the system of international peace and security established by this Charter, the well-being of the inhabitants of these territories." Article 74 reads:

"Members of the United Nations also agree that their policy in respect of the territories to which this Charter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic and commercial matters."

We believe that the aforementioned two Articles give specific rights to non-self-governing territories, and that these territories are no more under the complete sovereignty of colonial countries. The Members of the United Nations, having committed themselves to the respect of certain international standards in their relations with their colonies, no more, have the right to expose the peoples of these territories as well as of the neighbourhood to disasters by undertaking nuclear tests.

In regard to trust territories, we believe that under Chapter 12 of the Charter of the United Nations concerning trusteeship system as well as under the terms of trusteeship agreements, the trustee authority has no right to use the territories it holds, in trust from the United Nations, for the purpose of undertaking nuclear tests. Such an act from the trustee authority is against the basic objectives of the trusteeship system.

As regards nuclear tests undertaken by a State in its territory, we do believe that any State conducting nuclear weapon tests should be considered as committing a harmful illegal act directed, not only against the States neighbouring the centre of the explosion but also, against all countries of the world. This State would be consequently responsible for the damage inflicted on those States.

Since the nuclear weapons are illegal under the existing rules of international law, tests carried out for the manufacture and the perfection of these weapons should also be considered illegal.

It was argued that on the basis of national sovereignty, every country has the right to acquire nuclear weapons as a means of self-defence and maintaining its security. This concept is unacceptable.

It is a well known international rule that the responsibility of a State may become involved as the result of an abuse of a right enjoyed by virtue of international law. This occurs when a State

avails itself of its right in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage. According to this principle, nuclear tests should be considered illegal since these tests will undoubtedly entail risks and dangers to the peoples of other countries.

It has been suggested also that a State undertaking nuclear explosions could be considered responsible on the basis of the theory of risk. This theory has been recognized in the legislations of various countries and it should be adopted in international law.

Nuclear tests undertaken in the high seas are also illegal. According to the Law of the Sea, no State can exercise sovereignty over the high seas. In time of peace, freedom of navigation, freedom of fisheries, freedom to lay submarine cables and freedom of aerial movement, are co-related to the absolute rule of freedom of the seas. Nuclear tests on the high seas cause injurious effects upon fishing even outside the zone of immediate danger. Moreover, States undertaking nuclear tests in the high seas prohibit air navigation and sea navigation within the area where the tests are carried out. This act is an illegal interference with the freedom of air and of high seas and thus should be forbidden.

I should come now to a conclusion. I do believe that nuclear weapon tests should be wholly suspended, due to the dangers and risks entailed in the area of explosion, in the environment, and in the atmosphere. The abandonment of these tests is absolutely necessary for the benefit of humanity and for the non-interruption of our civilization.

Taking full account of the importance of the role of the Afro-Asian countries in international relations, I hope that our Committee shall adopt, in the present session, a resolution outlawing nuclear and thermonuclear tests and recommending the member States to continue and strengthen their efforts for the suspension of these tests, for the prohibition of nuclear and thermonuclear weapons bases in Africa and Asia and lastly for using nuclear energy for peaceful purposes only.

India:—In his inaugural speech, at the First Session of the Committee in April 1957, the Prime Minister of India had asked

whether tests in connection with the nuclear devices, which were being carried on by various powers and the effects of which had been established by scientific data to be harmful to mankind, were permissible according to international law. These tests have since continued. Scientific and medical opinion has, on the other hand, increasingly emphasized their evil effects as is evidenced by numerous recent publications. Indeed, 900 scientists from 43 countries are stated to have requested the United Nations to take steps to put an end to these tests. Realizing the grave importance and urgency of the subject from the point of view of the health and well-being of the peoples of the world, we decided at our last session to direct the Secretariat to prepare background material on this subject, so that we may be able to discuss it at this session. May I on behalf of our Delegation express our appreciation of the manner in which the Secretariat has discharged the task entrusted to it. Not only has it put before us a careful study from different points of view, but it has indicated in a detailed bibliography further sources which can be looked into for an adequate treatment of the subject.

It is essential at the outset to appreciate the scope of the subject which we have decided to discuss. We should, we think be clear that we are not concerning ourselves with the very controversial and much debated question of the legality of the use of nuclear weapons. That subject on which writers and students of international law have expressed divergent views is, we think, a wider and a different though a connected subject. That subject concerns the legality of the use of certain weapons and devices when fighting a war. What we are concerned with is a topic of much lesser scope. Are nuclear tests conducted by a country within its territory or elsewhere, which are likely to cause harm to inhabitants of other countries, permissible according to international law? We are, as I have already said, not concerned with the question of the legality of nuclear warfare; nor with the manufacture and possession of nuclear weapons. What we have decided to discuss is the carrying on of the nuclear tests by countries whether for military or peaceful purposes, in a manner which would endanger the health, life and property of the citizens of neighbouring or distant countries.

It may be said that it is difficult to isolate the question of the validity of nuclear tests from the larger question of the legality of

nuclear warfare. But would such a view be correct? A closer examination of the two problems reveals that their solutions depend on distinct legal principles. The question whether nuclear warfare is permitted by international law will have to be determined by ascertaining whether it is prohibited by any of the well accepted sources of international law, viz. customary international law, conventions or treaties entered into by States and the general principles of law recognized by civilized nations. On the other hand, the legality of the carrying out of nuclear tests in one's own territory, if such tests cause harm to persons outside the territory, will depend on the application of the rule of international customary law which imposes an obligation on a State "not to knowingly allow its territory to be used for acts contrary to the rights of other States". If the rule applies, the testing State will have committed an international tort and will be responsible to other States and persons for the consequences of its illegal action.

The distinction between the two problems—the legality of nuclear warfare and the legality of nuclear tests—will become clearer still if one remembers that the first problem can arise only in the case of war, whereas the latter is capable of arising and has, in fact, arisen in times of peace and even in reference to nuclear tests carried out to further peaceful uses of atomic energy.

Therefore, what we have to discuss and ponder over is first whether any known and accepted principles of international law can be applied to the situations arising out of these tests. If none are applicable or if such as are applicable are not adequate to meet the situations which are developing, the further point to consider is whether any extensions of the existing principles can be worked out so as to impose responsibility on the testing States. Finally, it will be a matter for consideration whether international law, which has in several cases in the past met new situations by evolving new principles, cannot in the present case similarly attempt to counter the grave threat to which States generally are exposed by the holding of these tests by the formulation of a suitable doctrine. Before, however, we can enter upon these questions with advantage, we need to have a clear idea of the extent and nature of the threat to the very existence of man which these tests involve.

Though some States which carry out these tests do it secretly, so that it is not possible to know of their consequences, and though

others have boldly denied that any evil consequences at all follow them, it can, we think, be said that the known results of some of the tests, scientifically and technically examined, leave little room for doubt that it is not possible to confine even the direct effects of these tests to the territory of the testing State. The indirect effects are naturally more widespread in the shape of pollution of air by radioactive material, economic effects on residents and industries in distant regions, meteorological effects over wide areas, interference with the freedom of air and sea navigation and the destruction of the living resources of sea. It would, therefore, we think, be safe to proceed on the assumption that the adverse biological and genetic effects and the widespread economic damage resulting from the fall-out of the radioactive tests cannot be denied.

In this connection, the questions of the responsibility of the testing State in respect of its own nationals and the aliens within its territory may well arise. But it appears to us that the more important question is that of the responsibility of the State in respect of injury of different kinds to persons and property outside its territory.

A State has no doubt sovereign authority over its own territory. But can such rights of sovereignty extend to possessing something of doing some acts on its own territory which will injure or destroy or adversely affect the citizens of other States? The sovereignty of each State can be exercised by it only consistently with the sovereign rights of other States. This is the basis of the doctrine well accepted in international law that a State may not use its territory contrary to the rights of other States. Anglo-Saxon municipal law and doubtless other system of municipal law prevent an owner of property from doing acts on his property and dealing with it in a manner dangerous to the neighbouring owners. A similar doctrine should, broadly speaking, be applicable in international law and the State harbouring dangerous things on its territory or entering upon adventures on its territory likely to cause damage outside its territory should incur legal responsibility to other States. The responsibility should extend to every kind of damage whatsoever—biological, meteorological, economic and otherwise—which can proximately be traced to the acts of the State on its own territory. Such acts would be international torts.

Would in such cases the occurring of actual damage be necessary before a State can be fixed with responsibility? Would not the certainty or probability of damage be enough? Could not, as in many systems of municipal law, a State be compelled to desist from its dangerous acts by appropriate action? By what agency or in what manner can a State be made to desist from such action? Here one more aspect of this question requires our consideration. In the municipal law relating to the tort of negligence or nuisance, compensation or damages for the harm caused may be an adequate remedy in some cases; in other cases, relief by way of compensation of the intended threat or danger is the appropriate remedy. In the matter of nuclear tests, the direction of the danger is often unpredictable e.g., miscalculation of the weather conditions etc. In view of the unpredictable nature of the harmful effects likely to be caused, it is a matter for consideration whether prevention of such tests, which are fraught with great danger to mankind, is not the appropriate remedy.

Another aspect of the question which has recently assumed some importance is the likelihood of unforeseen accidents in the matter of these nuclear tests resulting in adverse effects which cannot be controlled by any human agency.

Another approach to the problem is a consideration of the action of some States in virtually depriving other States temporarily of the use of the high seas on the ground that certain areas on the high seas would be for a time danger zones. A similar disability in the navigation of certain air spaces is also imposed. Is it permissible to these testing States to deprive other States even temporarily of the freedom of navigation of parts of the high seas and air space by declaring them to be danger zones? The question is not free from difficulty and the answer would perhaps depend on whether these rights of navigation are absolute rights or "relative rights which must be exercised in a spirit of reasonableness and moderation."

These are only a few of the problems which States who do not indulge in these tests will have to consider by reason of the ever growing competition in "cosmic irresponsibility" which is reaching "a point when it threatens to affect seriously the life and health of the populations of the rest of the world." We may not, however,

forget that legal solutions and legal restraints are hardly an adequate or constructive answer to a race in nuclear tests on a large scale which is bound to result in the gradual pollution of the air, water and soil of our planet. What may be a solution "is a world public order which any of the parochial States can flout only at its own risk."

Ceylon:—We in Ceylon have always been against nuclear tests because we feel that as long as these tests are capable of causing, and have in fact caused, the adverse global, biological, genetic and economic effects that have been so ably set out in the general note prepared by the Secretariat of the Committee, they should be condemned by this Committee and condemned in no uncertain terms. We are no doubt deeply conscious of the vast scientific possibilities that are opened up by these tests. But we feel that as long as these tests are capable of causing the great misery that they have caused to countries affected by them like, Japan, Ghana and the U.A.R., any beneficial results that may accrue to mankind are offset by such results, and unless and until science can evolve some method by which these tests can be carried out advantageously without their corresponding miseries to mankind, no words of protest against these tests would, in our opinion, be too strong.

The history of these tests has been set out in the general note prepared by the Secretariat and in the forthright statement made by the Distinguished Delegate of the United Arab Republic. It is not necessary for me to add to the facts so ably presented in these two documents. But our country feels that the explosions that have been carried out in the past, and that have been recently proposed by countries, like France, which intends to explode a nuclear weapon in a direct line to the south of our own island, cannot be too strongly condemned. In making the protest, we are not motivated by any insular outlook, because our country, though a small one, has never hesitated to protest, and to protest in the strongest terms, against any attempt by any power, whether larger or small, to endanger the lives and the economy of other countries.

Now we consider the legal aspects. These tests have been defended on grounds of the sovereignty of the State and the security of the State. To these defences, the simple answer seems to be

that when the very survival of the human race on this planet is in issue, every other consideration must bow before this paramount consideration.

If it is alleged that the same process is used in the development of atomic energy for peaceful purposes, as, for example, in the construction of nuclear weapons, we still feel that there is no choice but to insist on a total ban unless and until human ingenuity can devise a safer method of handling these materials, preferably under the directions of the United Nations or some other representative world organization.

We have no doubt whatsoever that the tests that have been held so far are violative of the principle of the freedom of the seas and the use of the air space above it.

On the question of the use of mandated and trust territories for the staging of these tests, we feel that this is a flagrant violation of the sacred trust that has been placed in the trustee countries and it must be condemned without hesitation.

Another question that has been posed is whether a country can shelter itself behind the argument that when these tests are carried out within the limits of its own territories, they are not legitimately the concern of other States. The answer is that as the effects admittedly are global, biological, genetic and economic, and in short, the problem concerns the future of mankind on this planet, and the available evidence shows that the extinction of the human race by the continuance of these tests is a distinct probability and a frightful reality, jurists and world opinion are compelled to condemn them, to declare them illegal and to be contrary to the interests and welfare of mankind. This, in our opinion, applies equally to the safety of all persons residing within the territories of the offending State, both nationals and aliens. In condemning these tests, it would appear to us that this Committee need no longer hesitate to register its emphatic protest with one united voice. There is no room for delay nor would it appear to us that there is any need to go back to and adopt old principles to meet the most perilous situation that has confronted the human race in its entire recorded history. These old principles were evolved at a time when jurists never for a moment contemplated the vast potentialities and the serious repercussions of these tests. This