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P. N. Bhagwati

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International Aspects of the Rights to Life, Peace and Development

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P.N. BHAGWATI*

I am grateful to the International Association of Lawyers Against Nuclear Arms (IALANA) for giving me an opportunity to speak to you this afternoon. You will be glad to know that we in India have also set up an association called, "Indian Lawyers Against Nuclear Arms" under the same objectives as IALANA and it proposes to work in the Indian-ruled continent as an affiliate of IALANA. I have been appointed President of this Association which has some leading lawyers on its Board. The Secretary-General Sharma is also here with us at this Conference. It is for us lawyers in India a matter of great satisfaction that IALANA has been formed with the objective of creating international awareness among lawyers throughout the globe about the grave threat of extinction facing humanity; charging them with the purpose of making major contributions to the development of international law against production, use and deployment of nuclear weapons. I am sure the deliberations of this conference will go a long way toward the realization of this goal.

The New York Zoo had at one time installed (I do not know whether it is still there) in the Great Apes House an exhibit entitled, "The most dangerous animal in the world." The exhibit consisted of a mirror with the following phrase:

You are looking at the most dangerous animal in the world. It alone, of all the animals that ever lived, can exterminate entire species of animals. Now it has achieved the power to wipe out all life on earth.

Today, on account of mass weapons of destruction fashioned by the ingenuity of man, the world is at the brink of annihilation. Humanity is facing the danger of extinction and the future of the humanity of this planet is at stake. One shudders to think what the state of this planet would be a day after a nuclear holocaust. The unsure potential for destruction from nuclear weapons is spine chilling. For the first time since the end of the Second World War and the creation of the United Nations as an instrument for maintenance of international peace and security, the threat of nuclear war, which will yield no victors should it erupt, is again facing humanity.

Nuclear war will lead to colossal destruction and catastrophic consequences for civilization and for all life on earth. The data available clearly indicate the growing destructive effect of the increasingly sophisticated

* Former Chief Justice, Supreme Court of India; President, Indian Lawyers Against Nuclear Arms.

nuclear and thermo-nuclear weapons upon the environment and upon human life. Under these conditions, which have had no analogues in the entire history of mankind, the world community must pause to consider, with an awareness never before paralleled, what a heavy price mankind is paying for the irresponsible and insane arms race which is leading humanity toward destruction. The total military expenditure worldwide is now in excess of some \$1,000 billion (U.S.) per year, which is five times India's gross national product. Each minute the world is spending more than a million dollars on the arms race. The arms trade is increasing thirteen percent every year. One billion dollars produces approximately 28,000 jobs in military and industrial establishments, while the same amount of money could generate double the employment in consumer industries and three times the number of jobs in education. The average world expenditure on a soldier is \$20,000, yet only \$380 is spent on a school child (this amount is even smaller in developing countries). There are nearly 600 soldiers for every 100,000 people but only eighty-five doctors for that same number of people. There is also, due to increasing militarization, military dominance of scientific research which drains treasuries, weakens economies and distorts science and human values.

Apart from this, while billions of dollars are being spent on nuclear weaponry, 40,000 children in developing countries are dying each day from hunger and disease, seven million people are undernourished, 600 million people remain illiterate, 1.5 billion people have only a limited access to medical assistance or do not have it at all, 1.2 billion have no drinking water or sanitation, and 250 million children have no schooling. As a consequence of the arms race, especially that of weapons of mass destruction, the most precious values that constitute the meaning and context of the right to life, the right to international peace and security, and the right to development are seriously jeopardized and are in grave danger of being destroyed. There is an integral relationship and close connection between the right to life, the right to peace and the right to development on the one hand, and the nuclear arms race on the other. The nuclear arms race negates these rights, or at least, creates serious obstacles in the promotion of these rights.

Let me first address the implications of the right to life. Insofar as priority can be given to any single human right, it is the right to life that should be given top priority since life is requisite for enjoying all other human rights. There have been two stages in the process of the development of the right to life. The most important aspect of the right to life, is the traditional interpretation of life as contained in constitutional instruments. The distinctive features of such an interpretation, on the one hand, are strictly of an individual nature and on the other hand, involve international aspects of this right. This right is affirmed in general terms in Article III of the Universal Declaration of Human Rights¹ and it is

1. G.A. Res. 217A, 3 U.N. GAOR (Resolutions, Pt. 1) at 135, U.N. Doc. A/810 (1948).

broadly defined in Article VI of the International Covenant on Civil and Political Rights² which provides: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."³ There are references in this article to the cases where this right would be imperilled; one is the death penalty, and the other is when deprivation of life constitutes the crime of genocide.

This interpretation of the right to life was, however, soon found to be inadequate. The need for a broader interpretation of the right to life was emphasized by the Human Rights Committee when it said: "The Committee has noted that quite often the information given concerning Article 6 has been limited to only one of the aspects of this right. It is a right which should not be interpreted narrowly." The creation of nuclear weapons, the sophistication of those already existing, the creation of other kinds of weapons of mass destruction, and the unprecedented nuclear arms race, have considerably intensified the threat to the life of the world community.

In this situation, the right to life acquires a new significance; a new dimension which hitherto had not come to light and which constitutes the second stage in the right to life concept. In the first place, since a nuclear war threatens the lives not only of individuals but also of whole peoples, protection of the right to life is being demanded by everyone. As a result, the right to life has received recognition not only as an individual right, but also as a *collective* right. Secondly, ensuring the right of life far exceeds the responsibilities and capabilities of a single nation-state and calls for a concerted political effort of all members of the international community. This is particularly true for the states which are members of the nuclear club. Therefore, this is added to the individual aspects what I call the international aspects of the right to life.

This development of the right to life concept which comprises qualitative enrichment of its contents has been finding increasing support in recent times. The United Nations General Assembly resolution on "Human Rights and the Use of Scientific and Technological Developments"⁴ was the first document of an international legal nature reflecting this new qualitative approach in the right to life concept. This resolution recognized the need to ensure that the primary right of each person, namely, the right to life, is validated by the need to prevent the employment of nuclear weapons. The General Assembly stressed that ensuring the right to life means "the urgent need for the international community to make every effort to strengthen peace, remove the growing threat of war, particularly nuclear war, halt the arms race, and achieve general and complete disarmament."⁵ The General Assembly expressed its firm con-

2. G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6546 (1966).

3. *Id.*

4. G.A. Res. 113, 38 U.N. GAOR Supp. (No. 47), U.N. Doc. A/38/648 (1983), *reprinted* in 22 UNITED NATIONS RESOLUTIONS, Ser. 1, at 426 (Djonovich ed. 1986).

5. *Id.*

viction that "all peoples and all individuals have an inherent right to life,"⁶ and recognized an additional dimension of the right to life, namely, the collective nature of this right.

The General Assembly also formulated the basic guarantee for most effectively ensuring the right to life and indicated that the major responsibility for ensuring this right should rest on the international community thus recognizing the crucial aspects of this right. The need to save the planet from total destruction has brought a qualitative, progressive development to the content of the traditional right to life. It is necessary that this enlarged content of the right to life should find reflection in effective international law so as to act as a check on production, possession and deployment of nuclear weapons.

Next, I will consider the right to peace which is also gravely threatened by nuclear weapons. The right to peace concept is granted in the United Nations Charter.⁷ This came into prominence in the middle of the 1970's and has since been actively developing as a doctrine of international law at both the national and the international levels within the United Nations. The foundation for the explicit recognition of the right to peace is to be found in the "Declaration on the Preparation of Societies for Life in Peace"⁸ which enunciated the principle that:

Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.⁹

The Human Rights Committee elaborated the universal aspect of the right to peace in its Resolution 5 (XXXII), adopted on February 27, 1976, when it proclaimed: "Everyone has the right to live in conditions of international peace and security and fully to enjoy his economic, social and cultural rights and civil and political rights." There was further development of the right to peace concept in the two conferences of experts held in 1978 and 1980 under the aegis of UNESCO, the reports by the United Nations Secretary General presented to the Human Rights Committee at its thirty-sixth and thirty-seventh sessions¹⁰ and also the Seminar on the Relations that Exist Between Human Rights, Peace and Development,¹¹ held in New York, in 1981. It was recalled in the proceedings of that sem-

6. *Id.*

7. U.N. CHARTER art 1, ¶ 1. See also Nanda, *Nuclear weapons and the Right to Peace Under International Law*, 9 BROOKLYN J. INT'L L. 283 (1983).

8. G.A. Res. 73, 33 U.N. GAOR Supp. (No. 45), U.N. Doc. A/33/486 (1978), reprinted in 17 UNITED NATIONS RESOLUTIONS, Ser. 1, at 305 (Djonovich ed. 1986).

9. *Id.* at 306.

10. See *Report of the Human Rights Committee*, 36 U.N. GAOR Supp. (No. 40), U.N. Doc. A/36/40 (1981). See also *Report of the Human Rights Committee*, 37 U.N. GAOR Supp. (No. 40), U.N. Doc. A/37/40 (1982).

11. U.N. Doc. ST/HR/SER.A/10 (1981).

inar that the Declaration on Social Rights and Development emphasized that international peace and security, on the one hand, and social progress and economic development on the other, are closely interdependent and influence each other. And as late as December 7, 1987, the General Assembly by its resolution on the "Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms"¹² recognized, *inter alia*, that "international peace and security were essential elements for the full realization of human rights, including the right to development."¹³

The right to peace has thus secured recognition in the United Nations system and it may be regarded as a component of developing international law. The halt of the nuclear arms race and total elimination of nuclear weapons is necessary to ensure this right to peace. Ensuring this right to peace, just as the right to life, is of vital importance for the destiny of humanity and is the most important condition and a necessary prerequisite for effectively ensuring these rights.

The main function of the right to peace is the promotion and protection of the right to life through peaceful settlement of disputes, by the prohibition of the threat or use of force in international relations, by the prohibition of the manufacture, use and deployment of nuclear weapons, and by total disarmament. "It is the supreme duty of the states," as observed by the Human Rights Commission, "to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life of large sectors of the community and to make every effort to avert danger of war, especially nuclear war and to strengthen international peace and security as it constitutes the most important condition and guarantee of the right to life." That is why the central focus in the activities of the international community must belong to the proposition of achieving total disarmament, particularly in the field of nuclear weapons which constitute the major threat to international peace and security. Nuclear weapons must be declared illegal by international law since they result in the violation of the right of peace and the right to life, which are internationally recognized universal rights.

I would also point out that nuclear weapons pose a serious threat to the right to development. They impede development in more ways than one. The right to development is now recognized by the United Nations as a collective, as well as an individual right. But what is this right of development which has been classified as a third generation human right? It does not mean mere economic growth, it means something more. The General Assembly, in the Preamble to the "International Development Strategy for the Third U.N. Development Decade"¹⁴ added: "The devel-

12. G.A. Res. 119, 42 U.N. GAOR Supp. (No. 49), U.N. Doc. A/42/792 (1987).

13. *Id.*

14. G.A. Res. 56, 35 U.N. GAOR Supp. (No. 48), U.N. Doc. A/35/592/Add. 1 (1980),

opment process must promote human dignity. The ultimate aim of development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom."¹⁵ I do not think a more appropriate explanation of the concept of development could be found anywhere else.

It is necessary to point out that peace, both nationally and internationally, is essential for development. So long as nuclear weaponry is a threat to the right to peace, it is bound to create an atmosphere which is not at all conducive to development. Moreover, there is a close interrelationship between the full realization of the right to development and disarmament. This interrelationship has been examined by the United Nations on several occasions and in this connection, the destructive potential of existing arsenals, particularly nuclear arsenals, and the opportunities for development that are lost through continuing use of global resources for military purposes, has always been a matter of great concern to the United Nations. The study of the interrelationship between disarmament and international security prepared by the Secretary General also indicated clearly that the arms race, particularly the nuclear arms race, had developed into a threat to the security of all nations and that it represented "a waste of resources, a diversion of the economy away from its humanitarian purposes, a hinderance to national development efforts, and a threat to the democratic processes."

The updated reports on the economic and social consequences of the arms race also warned that "the arms race must be stopped not only because of the immediate peril it holds for everyone, but because, the longer it continues, the more serious the problem of economic growth, social justice and environment will become." The report on the relationship between disarmament and development, prepared by The Working Group of Governmental Experts in 1981,¹⁶ stated that the continued failure to genuinely arrest the arms race or at least to stop further increase in the quantity of resources devoted to armaments is bound to result in the loss of opportunities to improve the economic and social prospect of mankind. Nuclear war, should it ever occur, would for all practical purposes destroy civilization as we now know it and would render development objectives immaterial and meaningless.

The Final Document of SSDI (1978) also stated that the nuclear and conventional arms build-up threatens to thwart peace and stall development. SSDI, held in June, 1982, came to the same conclusion. Moreover, the Sub-Commission emphasized in its resolution 1985 that the nuclear arms race was consuming the scarce material resources of our planet, destroying the ecological balance, and wasting much of our human and sci-

reprinted in 19 UNITED NATIONS RESOLUTIONS, Ser. 1, at 286 (Djonovich ed. 1986).

15. *Id.* at 287.

16. U.N. Doc. E/CN.4/1489 (1981).

entific resources in destructive pursuit. Rising military expenditures, particularly those for nuclear weapons, have acquired a staggering magnitude which has serious implications for the world economy and particularly for the economic prospects of the developing countries.

The General Assembly, time and time again, has stressed the fact that the arms race in the nuclear field represented the largest known instance in human history of a massive diversion of resources which could and would otherwise be available for development. The same conclusion was reached at the International Conference on the Relationship between Disarmament and Development¹⁷ held in New York, in August-September 1987. The Final Document of that conference noted that the contrast between the global military expenditure and the unmet socioeconomic needs, particularly of the developing countries, provides a compelling moral appeal for linking disarmament to development and that there is a growing recognition that both the arms race, especially in the nuclear field, and underdevelopment constitute a threat to international peace and security.

I have referred to this collection of documents and events to emphasize that there is near unanimous agreement in the international community that nuclear weapons and the nuclear arms race pose a serious threat to the third generation of the human right to development and are, in fact, destructive of that right. Hence, it is high time that it is accepted as a norm of international law that the manufacture, possession and deployment of nuclear arms are rendered illegal. This evolution of international human rights law should be regarded as a matter of highest priority and vital interest to the peoples of the world.

It is obvious that with nuclear arsenals growing at a rapid pace and newer and more sophisticated weapons of mass destruction being fashioned by science and technology, the question of effectively protecting, by means of international law, the right to life, the right to peace and the right to development against the threat from the nuclear arms race has acquired great importance and urgency. The General Assembly, in its Declaration on the Prohibition of the Use of Nuclear and Thermo-nuclear Weapons,¹⁸ proclaimed:

- (a) The use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, is a direct violation of the Charter of the United Nations;
- (b) the use of nuclear and thermo-nuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and the laws of humanity;

17. *Report of the International Conference on the Relationship between Disarmament and Development*, U.N. Doc. A/CONF. 130/39 (1987).

18. G.A. Res. 1653, 16 U.N. GAOR Supp. (No. 17), U.N. Doc. A/4942/Add.3 (1961), reprinted in 8 UNITED NATIONS RESOLUTIONS, Ser. 1, at 236 (Djonovich ed. 1986).

(c) the use of nuclear and thermo-nuclear weapons is a war directed not against an enemy or enemies alone but also against mankind in general, since the peoples of the world not involved in such a war will be subjected to all the evils generated by the use of such weapons;

(d) any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization¹⁹

This Declaration was reaffirmed by the General Assembly in several of its subsequent resolutions. On January 13, 1984, the General Assembly adopted a resolution for the Condemnation of Nuclear War.²⁰ It is worthwhile to reproduce this resolution in full:

The General Assembly,

Expressing its alarm at the growing threat of nuclear war, which can lead to the destruction of civilization on earth,

Drawing the attention of all States and peoples to the conclusions arrived at by the most eminent scientist and military and civilian experts to the effect that it is impossible to limit the deadly consequence of nuclear war if it is ever begun and that in a nuclear war there can be no victors,

Convinced that the prevention of nuclear catastrophe is the most profound aspiration of billions of people on earth,

Reaffirming its call for the conclusion of an international convention on the prohibition of the use of nuclear weapons with the participation of all the nuclear-weapon States,

1. *Resolutely, unconditionally and for all time condemns* nuclear war as being contrary to human conscience and reason, as the most monstrous crime against peoples and as a violation of the foremost human right—the right to life;

2. *Condemns* the formulation, propounding, dissemination and propaganda of political and military doctrines and concepts intended to provide 'legitimacy' for the first use of nuclear weapons and in general to justify the 'admissibility' of unleashing nuclear war;

3. *Calls upon* all States to unite and redouble their efforts aimed at removing the threat of nuclear war, halting the nuclear-arms race and reducing nuclear weapons until they are completely eliminated.²¹

This Resolution reflects the consensus of the entire international community and it can legitimately be regarded as embodying *jus cogens*, a peremptory notion of international law from which no derogation should be

19. *Id.* at 237.

20. G.A. Res. 75, 38 U.N. GAOR Supp. (No. 47), U.N. Doc. A/38/648 (1983), *reprinted in* 22 UNITED NATIONS RESOLUTIONS, Ser. 1, at 283 (Djonovich ed. 1986).

21. *Id.*

permissible.

A year earlier, the World Assembly for Peace and Life Against a Nuclear War²² was held in Prague at the end of June, 1982, and was attended by 3,625 participants from 132 countries. The assembly unanimously expressed the view that,

the inherent right to life has been put in jeopardy by the danger of a nuclear war and the danger has assumed unprecedented properties. The existing international law in the field of law and disarmament should be consolidated and expanded to confirm the unlawfulness and the amoral nature of a nuclear war and nuclear armaments.

The humanitarian law provisions would be totally ineffective in protecting the right to life in case of the use of nuclear weapons. The Protocol Additional to the Geneva Convention relating to the Protection of Victims of International Arms Conflicts established a basic rule concerning the protection of the civilian population against the effects of hostilities by providing that parties to the conflict shall direct their operations only against military objectives. But this basic rule of humanitarian law would have no real operational value in case of a nuclear conflict where there would be practically no distinction between civilian population and military objectives. It is therefore necessary to evolve norms of international law for insuring the right to life under these conditions and this requires consolidation of a provision declaring that the manufacture, possession and deployment of nuclear weapons is a crime against humanity and against peace and is therefore illegal under international law.

It should be possible to lay down norms prohibiting nuclear weapons. We have the Geneva Protocol of 1925 regarding the prohibition on employing asphyxiating, toxic and such other gas and bacteriological means.²³ This protocol is playing an effective role as an instrument for averting chemical war. The objective of the Convention on Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction is the complete liquidation of bacteriological and toxic means of warfare.²⁴ The conclusion of this convention has largely removed the possibility of unleashing a war with the employment of these means.

There is no reason why, in the same way, the international community should not agree to a Convention on Prohibition of Development, Production and Use of Nuclear Weapons which are much more destructive than these other kinds of weapons and which can destroy the whole of mankind several times over. I would submit that, in any event, the

22. Sponsored by the World Peace Council, held June 21-26, 1982.

23. *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gas, and of Bacteriological Methods of Warfare*, June 17, 1925, 26 U.S.T. 571, T.I.A.S. No. 8061, 94 L.N.T.S. 65.

24. G.A. Res. 2826, 26 U.N. GAOR Supp. (No. 29), U.N. Doc. A/8574 (1971), reprinted in 13 UNITED NATIONS RESOLUTIONS, Ser. 1, at 386 (Djonovich ed. 1986).

time has come to obtain the advisory opinion of the International Court of Justice on the legality of nuclear weapons. If an opinion is rendered by the International Court that the manufacture, possession and deployment of nuclear arms is illegal under international law, and I believe firmly that such an opinion would be forthcoming if the International Court is moved for an advisory opinion, it would establish an international norm which would add considerable strength to the already vocal opinion of the international community.

The overwhelming problem before mankind today is whether it is going to heed the voice of reason and eliminate the weapons of its destruction or blindly hurtle and insanely follow the path leading to its annihilation.