

sion in peacetime of tested nuclear weapons, whether for peaceful purposes or otherwise.

The basis for the Moscow negotiations was the draft of the limited nuclear test ban treaty tabled in Geneva on August 27, 1962, by the United States and United Kingdom delegations. Article I of that draft prohibited nuclear weapon tests. Explosions were dealt with in Article II. Such explosions were permitted but were to be subjected to controls because of the difficulty of distinguishing peaceful purpose explosions from weapons tests.

In the course of the Moscow negotiations, the Soviets rejected Article II of the August 1962 draft completely. This rejection would have left a loophole in the Treaty if Article I had remained confined to "nuclear weapon test explosions." A party might have conducted explosions revealing valuable military data or even weapon tests on the pretense that they were in fact peaceful purposes explosions and not "nuclear weapon test explosions." In order to close this loophole, the phrase "any other nuclear explosion" was inserted in Article I at the appropriate points. Its purpose is to prevent, in the specified environments, peacetime nuclear explosions that are not weapons tests. That is its only significance.

III. GENERAL UNDERSTANDING

This construction of the phrase "or any other nuclear explosion" is supported by the public statements of United States and other officials prior to the signature and ratification of the Treaty. Thus, in his radio address presenting the Treaty to the American public, the President said:

"[N]o nation's right of self-defense will in any way be impaired. Nor does this treaty mean an end to the threat of nuclear war. It will not reduce nuclear stockpiles; it will not halt the production of nuclear weapons; it will not restrict their use in time of war."

The President's message transmitting the Treaty to the Senate for advice and consent to ratification makes the same point,¹ as does Acting Secretary Ball's letter transmitting the Treaty to the President.² Secretary of State Rusk reiterated the point at the signing ceremony in Moscow, and again in his testimony before the Senate Foreign Relations Committee. There he said:

"This Treaty does not affect the use of nuclear weapons in war. It has to do with nuclear testing in time of peace."

This understanding of the import of the Treaty is not confined to United States officials alone. For example, United Nations Secretary-General U Thant, appearing in Moscow at the Treaty signing, listed a number of "other equally important measures aimed at the relaxation of tension." Among these he included the following:

"I would also hope that the proposal, initiated in the fall of 1961, for convening a special conference for signing the convention on the prohibition of the use of nuclear and thermonuclear weapons for war purposes, will now receive wider support."

It would obviously be unnecessary to hold such a conference if the test ban treaty itself outlawed the use of such weapons in war.

IV. TACTICAL WEAPONS

There has been some suggestion that the phrase "or any other nuclear explosion" might outlaw the use of tactical, as opposed to strategic, weapons in wartime. There is no basis in the Treaty for making any distinction whatever between tactical and strategic weapons. The analysis in this Opinion applies fully to tactical as well as strategic weapons.

ABRAM CHAYES, *Legal Adviser*.

Chairman MORGAN. Mr. Rosenthal.

MR. ROSENTHAL. Mr. Foster, last year a number of Members in both Houses prepared a bill—I think it was calling for an Economic Con-

¹ "While it will not end the threat of nuclear war or outlaw the use of nuclear weapons, it can reduce the world tension, open a way to further agreements, and thereby help to ease the threat of war."

² "The phrase 'any other nuclear explosion' includes explosions for peaceful purposes. Such explosions are prohibited by the treaty because of the difficulty of differentiating between weapon test explosions and peaceful explosions without additional controls. The article does not prohibit the use of nuclear weapons in the event of war nor restrict the exercise of the right of self-defense recognized in article 51 of the Charter of the United Nations."