

STATEMENT BY AMBASSADOR J. ALAN BEESLEY

BEFORE THE

CONFERENCE ON DISARMAMENT

THURSDAY, JULY 17, 1986

Mr. President, I would like first to take this opportunity to welcome the recent news that U.S. and Soviet officials are to meet soon in Geneva to discuss questions relating to observance of the Salt II Treaty and, as well, the announcement of the agreement between the two major nuclear powers to open experts-level bilateral talks on nuclear testing issues. When I addressed this Conference on July 3, I stated that the subject of nuclear weapons was the most vital one on our agenda and that the ABM and Salt agreements remain fundamental building blocks for shaping a more secure future, and that the conclusion of a comprehensive test ban is a fundamental Canadian arms control objective. The fact that the United States of America and the Soviet Union have now agreed to meet to discuss important aspects of these vital issues is most encouraging and we can but hope that these increased bilateral contacts will enhance mutual understanding and confidence, thereby paving the way for the conclusion of meaningful arms control and disarmament agreements, both bilateral and multilateral. Mr. President, my delegation is particularly encouraged that the two superpowers have moved so swiftly, after our plea, whether or not in response to it.

May I take this opportunity of re-iterating our hope that the bilateral talks on aspects of outer space will lead to success and to early evidence of success, and that this forum can make a useful contribution to that process and vice versa.

Mr. President, my main purpose in asking for the floor this morning is to make a related announcement foreshadowed in my statement of July 3rd in which I informed the Conference of my delegation's intention to submit a working paper dealing with selected aspects of legal terminology relevant to arms control and outer space.

Last year my delegation tabled a working paper, CD/618, entitled "Survey of International Law Relevant to Arms Control and Outer Space." In general, it comprised a broad discussion of the significance, scope and application of existing relevant treaties. Supplementary to that survey, and in accordance with our conclusion that certain key definitions need consideration and clarification, I am now pleased to table another Canadian working paper, which will bear the number CD/716, entitled "Terminology Relevant to Arms Control and Outer Space". An advance copy in English only will be distributed this morning to all delegations.

As you know, Mr. President, several delegations to the Conference on Disarmament have drawn attention during our current session, both in their plenary statements and in meetings of the ad hoc committee on the prevention of an arms

race in outer space, to the need for greater terminological precision, and a common understanding of certain basic definitions relating to outer space. There is evident concern that imprecision or perceived imprecision in defining treaty obligations has led, in some instance, to controversy regarding compliance with those obligations. While it has been argued on occasion that "constructive ambiguity" may facilitate negotiations and eventual agreement, such an approach, in our view, should be used with the greatest caution. The need for flexibility should not be transposed into an acceptance of ambiguity. It is essential to come to a shared understanding of the nature of obligations - a commonality of commitment - in order to ensure that parties apply the same standards when judging the compliance behaviour of others.

The Canadian working paper, which has been submitted to the Secretariat for translation and reproduction and which will soon be distributed officially to all delegations, summarizes a range of views concerning some key terms. As I indicated on July 3rd, it is our hope that the working paper will serve further to elucidate the legality or otherwise of current and contemplated activities in outer space in light of existing treaties and legal precepts. More specifically, CD/716 outlines the variety of interpretations that exists among international legal experts, which is to varying degrees reflected in views of governments, and draws the following conclusions based on the analysis contained in the working paper:

- Firstly, having in mind conflicting interpretations of the concept of "peaceful purposes", it is difficult to arrive at an unqualified and clear-cut definition of "peaceful purposes". It is our view that a restrictive interpretation is the most appropriate in view of the negotiating history of the Outer Space Treaty, its actual wording and state practice since its coming into force.
  
- Second, terms such as "weaponization" and "militarization", which have been widely used, are even more ambiguous. These terms are not used in space treaties and do not even appear to have any generally accepted meaning in political discussions.
  
- Third, States have agreed to or acquiesced to a considerable extent in the military use of outer space. Many of the satellites now in orbit must be considered to be military. The ABM Treaty provides for verification by "national technical means" including photoreconnaissance satellites, which are clearly military. However, such stabilizing military uses of space are highly desirable and should continue without interference. Indeed, they should be supported by the international community and by international law.
  
- Fourth, apart from weapons of mass destruction, the placement of weapons in earth orbit has, in the past, not

been addressed in any extensive fashion, partly because, until recently, this was not seen as a technically feasible or militarily useful possibility.

- Fifth, the paper postulates that, in the absence of more developed treaty law in outer space, general international law would apply. This has been explicitly done to some extent already, according to the terms of various outer space conventions.
  
- Sixth, from the point of view of general international law, outer space may be analogous to other environments beyond national jurisdiction, notably the high seas. The Law of the Sea Convention stipulates in article 88 that "the high seas shall be reserved for peaceful purposes". This is a more clear-cut expression of the concept than appears in the Outer Space Treaty. Article 88 has never been interpreted as preventing, for example, the passage of warships or prohibiting maritime military activities such as naval exercises or even weapons tests. Nor has it been seen to ban the stationing of any type of weapons on the high seas. "Peaceful purposes" as this phrase applies to outer space is open to military activity. If the international community decides on restrictions on certain types of activity which do not otherwise contravene international law, it must do so and should do so by specific agreement, as indeed it did to some extent in the Outer Space Treaty. Again an analogy with the law of the

sea is relevant. The 1971 Seabed Treaty, as its title states, prohibits "the emplacement of nuclear weapons and other weapons of mass destruction on the seabed and ocean floor". This treaty embodies the prohibition of a particular use of a particular weapon which otherwise would not have been contrary to international law, except with respect to the continental shelves of other states. The same considerations apply in outer space. In the absence of an existing specific prohibition (such as, for example, the one against nuclear weapons) and on the assumption that the activity in question is not contrary to an existing principle of international law (such as non-use of force) the placement of weapons in orbit in space is not per se unlawful, at this stage of development of the law of outer space.

- Seventh and last, it is not suggested that placing or using weapons in space (or the increased "militarization" or "weaponization" of space) would be a desirable development. However, the elementary level to which space law has so far progressed does not of itself seem an adequate basis on which to prevent such a trend. To prevent the risks to security on earth which may be posed by the threat of weapons placed in space or for use in space will require that states develop the law well beyond this elementary stage. May I express my personal hope that this forum will make a contribution to just that process.

Mr. President, as in the case of all Canadian working papers, CD/716 on terminology relevant to arms control and outer space is being submitted for the sole purpose of accelerating progress in our deliberations on item 5 of our agenda, whether delegations all agree with our conclusions or not. In our view, attempts to clarify the meaning of outer space related concepts could constitute a useful and essential step and we therefore hope that our working paper will enable the ad hoc committee on the prevention of an arms race in outer space to advance its work pursuant to its mandate and agreed work programme.