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**SPECIAL  
ISSUE  
ON  
DISARMAMENT**

**NUMÉRO  
SPÉCIAL  
SUR LE  
DÉSARMEMENT**

## **1984 and Beyond: Canadian Policy on Arms Control and Disarmament**

**J. Alan Beesley, Q.C.\***

### **Introduction**

Given the complexity, diversity and scope of arms control and disarmament, it may seem ambitious to attempt to summarize Canadian policy in a brief article. However, in light of the intrinsic importance of the subject, and the unprecedented public interest in and concern over the arms race, it seems appropriate to include an outline of some of the salient features of Canadian policy in an issue of a Canadian university law journal devoted wholly to arms control and disarmament.

### **1. Canada's Tradition of Arms Control and Disarmament**

Canada's involvement in arms control and disarmament can be traced back to the *Rush-Bagot Treaty* of 1817 whereby the U.S.A. and Great Britain agreed to limit the size of their naval forces on the Great Lakes, an early example of a bilateral agreement between two Great Powers affecting the fate — in this case favourably — of less powerful countries such as Canada. In more recent times, in 1945, Canada, together with the United States and United Kingdom, proposed the establishment of a United Nations Atomic Energy Commission for the purpose of "entirely eliminating the use of atomic energy for destructive purposes". In August 1957, Canada, France, the United Kingdom, and the United States submitted a "package" of measures in the sub-committee of the United Nations Disarmament Commission including a commitment "not to transfer out of [their] control any nuclear weapons or to accept transfer to [them] of such weapons" except for the purposes of self-defence. Canada was a member of that original sub-committee — comprising also the United States, Great Britain, France, and the Soviet Union — which was established in 1952. Canada has been continuously a member of the Eighteen-Nation Disarmament Committee [ENDC] which commenced its operations in 1962, the Conference on the Committee on Disarmament [CCD] established in 1969, and the forty-member Committee on Disarma-

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ment (CD) set up in 1978. The tradition of active and constructive participation by Canada in arms control and disarmament negotiations has continued unabated and has, indeed, intensified in recent years.

## II. The Legal Framework

The "law of disarmament" is not lacking in important and effective examples of conventional law, but is sadly deficient in terms of universal binding norms. While the League of Nations proved unable to prevent war by controlling the arms race, it should nonetheless be noted that the *Covenant* included the declaration that "maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations". Moreover, the *Treaty of Versailles* imposed strict limitations upon Germany's armaments and demilitarized the Rhineland, and the allied powers attempted to establish agreed limits on weapons. These efforts failed when Germany walked out of the 1932 General Disarmament Conference and left the League, although the Disarmament Conference continued intermittently until 1937, when it broke up in the face of deadlock.

The *United Nations Charter* attempted a markedly different approach based on a system of collective security envisaging multinational U.N. forces operating under the direction and control of the Security Council. Unlike the *Covenant*, the *Charter* did not assign a high priority to disarmament. On the contrary, the five Great Powers would retain their armaments and act together as the "five policemen" to ensure the disarmament of Germany and Japan and the maintenance of peace pending the establishment of effective U.N. military forces. The framers of the *Charter* intended to prevent "the scourge of war" by controlling the use of force rather than by the elimination of arms. Thus the *Charter* does not include the elimination of the arms race as a *Charter* obligation. One must search elsewhere for norms.

Canada has argued before the U.N. General Assembly First Committee that the principles embodied in the 1925 *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*, signed at Geneva, 17 June 1925, have developed through the customary law process into peremptory norms of law binding upon all states (although over a score of the member-states of the U.N. have not ratified or acceded to the *Protocol*). Even in the case of some of the most important and far-reaching arms control agreements concluded since the Second World War, such as the *Non-Proliferation Treaty*, the *Partial Test Ban Treaty*, the *Outer Space Treaty*, and the *Seabed Arms Control Treaty*, all of which have been accepted by well over 100 states, it is not argued seriously that the principles embodied in such treaties constitute *jus cogens* (that is to say, peremptory norms binding on all states).

Yet the two important "non-armament" treaties, the *Outer Space Treaty*, banning the stationing of weapons of mass destruction in outer space, and the *Seabed Arms Control Treaty*, banning the emplacement of such weapons on the seabed and ocean floor, together wholly encompass two huge environments. Perhaps it is open to be argued that these treaties embody principles that have already developed into normative rules or are in the process of doing so, but definitive conclusions are not possible. Still less success has been achieved in developing peremptory norms with respect to land areas (subject to national sovereignty) and the high seas (beyond national sovereignty), even in the case of the limited field of weapons of mass destruction. Nevertheless, important albeit limited conventional law exists even with respect to these environments, including, in particular, the *Antarctic Treaty* and the *Latin American Nuclear-Free Zone Treaty*. It is not inconceivable that these conventions may be developing into "law-making treaties", laying down peremptory norms.

It is more difficult to make such an argument in the case of the *Partial Test Ban Treaty* and the *Threshold Test Ban Treaty*, because important nuclear weapons states have not yet become parties, and still less so in the case of the *Non-Proliferation Treaty*, which has well over 100 parties, but which has not yet been adopted by France or China, and which is vigorously opposed by some non-nuclear weapons states. Perhaps there is too much of a tendency to accept arms control treaties as conventional law binding only upon their respective parties and insufficient effort to encourage the greater utilization of the customary law process as a means of translating treaty obligations on arms control into universally binding norms. It is necessary, therefore, to employ a variety of means in advancing Canadian arms control and disarmament objectives.

### III. Recent Diplomatic Initiatives

A significant diplomatic initiative was taken by Canada on 1 February 1983, when Canada's Deputy Prime Minister and Secretary of State for External Affairs went to Geneva to deliver a major policy statement in the Committee on Disarmament. His statement is worthy of careful consideration. It was, in fact, much more than a policy declaration: it constituted a part of the negotiating process now underway in Geneva, in particular the negotiations on intermediate-range nuclear forces (INF). As part of that negotiating approach, Mr MacEachen had arranged to see both the U.S.A. and the U.S.S.R. INF and strategic arms (START) negotiators prior to making his policy statement. Thus, in enunciating the Canadian position, his statement reflected not only the results of the discussions with the negotiators for the two superpowers, but was directed to bringing Canada's influence to bear in those very negotiations.

In his address, the Deputy Prime Minister made a public reaffirmation of NATO solidarity and of continuing commitment to the NATO two-track decision. Such statements were echoed shortly afterwards by U.S. Vice-President Bush, as well as by the Foreign Minister of the Federal German Republic. Rarely does such a series of high level statesmen address the Committee on Disarmament. It is evident that these policy statements constitute an important part of the negotiating process, even on those issues discussed bilaterally outside the Committee on Disarmament.

By the same token, the meetings these statesmen have held with the negotiators on both sides, beginning with those held by Mr MacEachen, are an important element in the negotiating process. It is by such means possible — and perhaps essential — that Canada's voice be heard by both sides on questions of vital concern to Canadians.

Turning to the substance of the policy statement, entitled *Mutual Security: Negotiations in 1983*, it is important to note the overall thrust of the statement: "[A]n increase in mutual security is the only sound basis for effective arms control and disarmament." The message was very clearly addressed to both superpowers. The Deputy Prime Minister quoted Prime Minister Trudeau's statement at the Second United Nations Special Session on Disarmament (SSOD II), stressing that security in today's world cannot be achieved on a purely national basis; that attempts by one side to make gains at the expense of the security of the other ultimately will not work, and that action produces reaction and in the end, neither side achieves a long-term gain.

Mr MacEachen applied these principles in very specific terms to the bilateral intermediate-range nuclear force negotiations. He pointed out that such negotiations can succeed only if both parties accept as their fundamental objective, increased mutual security rather than unilateral advantage. He went on to explain that it was only as a result of the December 1979 "two-track" decision by NATO, taken in response to the Soviet build-up of intermediate-range missiles targeted on Western Europe, that the INF negotiations were begun at all. It will be recalled that the NATO governments proposed negotiations between the Soviet Union and the United States to limit land-based intermediate-range missile systems on both sides. At the same time, the NATO Alliance agreed to deploy Pershing II missiles and ground-launched cruise missiles beginning in late 1983 if such negotiations were unsuccessful. Mr MacEachen reminded the Committee on Disarmament that while, initially, the Soviet Union was critical of the NATO decision and reluctant to engage in negotiations, eventually, in the autumn of 1980, the Soviet Union agreed to preliminary discussions, and a year later, in November 1981, formal negotiations began.

It is suggested that these events constitute a classic example of the direct application of the principle of mutual security. As was pointed out by Mr MacEachen, there is some encouragement to be derived from the fact that the Soviet Union clearly has recognized that NATO governments have a legitimate concern about the number of SS-20s aimed at their European member-states, and that a reduction is necessary, as evidenced by a recent Soviet proposal concerning possible reductions of such weapons. As stated by the Secretary of State for External Affairs in Geneva, "[t]his in itself is progress. However, it is not yet clear that both sides have accepted that mutual security must be the basis of the negotiations. That is why 1983 is crucial." The events of 1983 will have important and far-reaching implications for 1984 and beyond.

At this stage, it is appropriate to make reference to another important policy pronouncement contained in the February Geneva statement, again one clearly addressed to all parties, and with significant implications for future Canadian policy.

After outlining the principles underlying effective arms control and disarmament negotiations, and emphasizing mutual security as the only acceptable basis for arms control and disarmament,\* Mr MacEachen made the following statement: "An attempt by any power to develop a policy which assumes that nuclear war can be winnable contributes to mutual insecurity." He went on to describe this statement as a home truth, albeit directly relevant to the current situation. This statement provides a sharp contrast to some of the rhetoric directed to the other element of the arms control and disarmament equation, namely the necessity for sufficient arms to provide an effective deterrent.

Examples of statements by both sides questioning the long-standing concept of mutual deterrence, which, in turn, is founded on the certainty of "Mutually Assured Destruction" (MAD), are readily available. Canada rejects the "winnable nuclear war" approach, and will resist it. This, it is suggested, is an encouraging fact of life.

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\*In Dr MacGuigan's statement of 25 February 1982, he indicated the Canadian perception of the crucial issue of the degree of balance of forces between the two superpowers in the following words: "We now face approximate parity at the strategic level between the Soviet Union and the United States, Soviet superiority in intermediate-range nuclear weapons in Europe, and the numerical superiority of the Warsaw Pact in conventional land forces."

#### IV. Canadian Arms Control and Disarmament Objectives

Canada's long-standing and active pursuit of arms control and disarmament has never consisted of mere policy pronouncements. Canada has proposed and is today pressing forward negotiations on a series of concrete proposals on fundamental arms control and disarmament problems. What follows is a brief summary of recent Canadian proposals which give some indication of the scope, variety and intensity of Canada's position.

The control and reduction of armaments form an important part of Canada's security policy. Canadian priorities remain:

- (a) to strongly support negotiations to limit and reduce nuclear arms;
- (b) to promote early progress toward the realization of a multilateral comprehensive test ban treaty (CTBT);
- (c) to press forward negotiations on a convention to completely prohibit chemical weapons;
- (d) to promote the evolution of an effective non-proliferation regime based on the *Non-Proliferation Treaty*;
- (e) to work toward the objective of prohibiting the development, testing and deployment of all weapons for use in outer space;
- (f) to participate actively in negotiations to limit and reduce conventional forces; and
- (g) to seek, step-by-step, to ultimately achieve general and complete disarmament, consistent with the legitimate security needs of states.

The Canadian Government takes every opportunity to stress the importance it attaches to the continuation of the SALT START process, for example, at the recent meetings in Geneva followed by talks in Ottawa with Vice-President Bush and at later consultations in Washington between Prime Minister Trudeau and President Reagan, as well as in exchanges with the U.S.S.R. through diplomatic channels. In the Committee on Disarmament in Geneva, Canadian expertise is being applied in the search for a comprehensive nuclear test ban and for a ban on chemical weapons. The Chairman of the Working Group on Chemical Weapons is Canadian Ambassador D. S. McPhail. In the Mutual and Balanced Force Reduction Talks in Vienna, Canada is seeking to limit and reduce conventional forces in Europe.

The Prime Minister, in his address to the Second U.N. Special Session on Disarmament on 18 June 1982, proposed a "policy of stabilization", with two complementary components: the strategy of suffocation which seeks to inhibit the development of new weapons systems, and Canada's negotiating

approach aimed at qualitative and quantitative reductions in nuclear arsenals designed to achieve a stable nuclear balance at lower levels. The Prime Minister had proposed the strategy of suffocation at the First U.N. Special Session on Disarmament (SSOD I) in 1978. Its objective was to arrest the dynamics of the strategic nuclear arms race through the realization of four interrelated verifiable agreements designed to reduce the "technological impulse": a comprehensive test ban treaty; a ban on the flight-testing of all new strategic delivery vehicles; a ban on the production of fissionable material for weapons purposes; and an agreement to limit and then progressively to reduce military spending on new strategic weapons systems. As the Prime Minister has noted, "the strategy was never meant to be applied unilaterally." It was always envisaged within the context of negotiated agreements between the nuclear powers.

The strategy of suffocation is being actively promoted in international fora, in particular at the United Nations. Moreover, Canada continues to contribute concretely to more specific discussions which deal with implementing elements of the strategy. Canada has called for the resumption of the U.K.-U.S.A.-U.S.S.R. talks on a comprehensive test ban. In the Committee on Disarmament in Geneva, Canada is participating in the working group on a nuclear test ban and, also, in the work of the Seismic Experts Group which is developing an international verification system for an eventual test ban treaty. Canada has also continued its efforts to effect implementation of the second and third elements of the strategy. Although Canada is also pressing for action with regard to the fourth element, agreements to reduce military budgets cannot be concluded until the U.S.S.R. and its allies assume a more open policy with regard to information about their military spending.

It has been a long-standing Canadian position since the outset of arms control and disarmament negotiations after the Second World War that verification mechanisms are not only the key to the implementation of arms control and disarmament agreements, but in some cases a virtual precondition to their conclusion. It is encouraging that both superpowers are now directing their attention to various aspects of the problems of verification which go to the heart of every arms control and disarmament problem. Canada will continue to pursue most vigorously its efforts to push forward verification studies utilizing expertise inside and outside of government.

#### **V. Canadian Priorities for the Committee on Disarmament**

This is an appropriate stage at which to turn to the second part of the policy statement made by the Secretary of State for External Affairs in Geneva on 1 February 1983, namely, Canada's priorities in the Committee on Disarmament. It is worth noting that the statement was made in the full knowledge that with respect to some of these priority issues, Canada's



proposals present difficulties for one or both of the superpowers. Thus, while recognizing the facts of life concerning the limits upon Canada's ability to influence events, Canada has not hesitated to press vigorously for action and has sought support for such action from others where it is needed.

Mr MacEachen emphasized that the pursuit of a comprehensive nuclear test ban is a fundamental — perhaps the fundamental — nuclear issue before the Committee on Disarmament. He urged that the new working group begin to discharge its mandate on that subject as a matter of urgency in 1983. He argued for a step-by-step approach that could ensure that the key elements of a treaty are in place even before a final political commitment to a comprehensive nuclear test ban treaty has been undertaken by the nuclear weapons states.

Mr MacEachen then stressed the importance Canada has always attached to the prevention of the further spread of nuclear weapons. He pointed out that the *Non-Proliferation Treaty* emphasizes the non-discriminatory transfer of peaceful nuclear technology, but provides also for the de-escalation of the arms race by nuclear weapons states. He reminded the Committee that while more non-nuclear weapons states have adhered to the *Non-Proliferation Treaty*, such voluntary renunciation has not been matched by corresponding action by the nuclear weapons states. He suggested that those states with nuclear technology and those without must seek to persuade the nuclear weapons states to live up to their bargain.

A third priority cited by Mr MacEachen was the conclusion of a comprehensive treaty on chemical weapons. He noted that the time is ripe for progress toward a treaty on the prohibition of the development, production and stockpiling of chemical weapons and on the destruction of existing stocks. He referred to the allocation of funds to enable Canadian technical experts to be made available to the Canadian Delegation for longer periods to enhance the active role Canada has been playing in the Chemical Weapons Working Group.

Mr MacEachen turned then to the sensitive question of weapons for use in outer space.\* He urged the Committee to begin as soon as possible its essential task of defining the legal and other issues necessary to build upon the outer space legal regime and made clear Canada's intention to participate actively in this work. He concluded by urging the establishment of a working group on this subject.

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\*Critics of the *Outer Space Treaty* as a mere non-armsament convention agreed to by the superpowers in their own self-interest overlook the possible consequences of the non-existence of an agreement precluding claims to sovereignty and banning the emplacement of weapons of mass destruction in outer space or on celestial bodies. It is not hard to imagine the potentially serious consequences of the U.S.A. landing men on the moon and the U.S.S.R. landing space vehicles on the moon in the absence of prior agreement on such a treaty.

## VI. Canada's Security Policy

Various questions raised about Canada's policy on arms control and disarmament and some suggestions for future policies resolve themselves into a single issue, namely, Canada's role in two collective defence arrangements, NATO and NORAD. It will be recalled that a searching examination of Canada's defence policy and potential contribution to the maintenance of world peace was carried out by the Canadian Government in the late 1960s. At the end of this study, on 3 April 1969, Prime Minister Trudeau delivered a public policy pronouncement which reads, in part, as follows:

The Government has rejected any suggestion that Canada assume a non-aligned or neutral role in world affairs. Such an option would have meant the withdrawal by Canada from its present alliances and the termination of all cooperative military arrangements with other countries. We have decided in this fashion because we think it necessary and wise to continue to participate in an appropriate way in collective security arrangements with other states in the interests of Canada's national security and in defence of the values we share with our friends. . . . In summary, Canada will continue to be a member of the North Atlantic Treaty Organization and so cooperate closely with the United States within NORAD and in other ways in defensive arrangements.

Canada's membership in these collective security arrangements constitutes an important element of Canadian security policy.

It is widely accepted that there is a virtually symbiotic relationship between arms control and disarmament on the one hand, and defence on the other. It is necessary, therefore, to expand upon, if only briefly, Canada's policy for national security. This policy was expressed recently by Canada's then Secretary of State for External Affairs, the Honourable Mark MacGuigan, to the Standing Committee on External Affairs and National Defence on 25 February 1982. Dr MacGuigan pointed out that Canada's security policy has three complementary thrusts: "They are (1) deterrence of war through the collective security arrangements of NATO (the North Atlantic Treaty Organization) and NORAD (the North American Aerospace Defence Command); (2) active cooperation in efforts to achieve equitable and verifiable arms control and disarmament agreements; (3) support for peaceful settlement of disputes and the collective effort to resolve the underlying economic and social causes of international tensions." This long-standing security policy of Canada remains, it is suggested, a further fact of life for Canadians seeking to develop realistic and attainable arms control and disarmament policy options for 1984 and beyond.

The reference made to "deterrence of war" is an important one, the more so in light of the attention now being focused in Canada and in other NATO countries on the whole concept of deterrence. In the statement just quoted, Dr MacGuigan went on to underline that "Canada recognizes the need for collective efforts to deter aggression against the North American and Euro-

pean regions of the North Atlantic alliance. It supports and contributes to this defence effort. We are members of an alliance which relies on a deterrent strategy in which nuclear weapons play an important part. This is unavoidable in the world as we know it. . . . The NATO strategy of flexible response and forward defence depends on our being ready and able to respond to aggression at whatever level is necessary to counter it. The nuclear weapons of the United States and other NATO allies make an essential contribution to the security of Canada and of the alliance as a whole."

It is this very policy, this further "fact of life" for Canadians, which is being questioned by some in Canada, and it may be worthwhile therefore to examine the policy a little further. In the White Paper *Foreign Policy for Canadians — United Nations*, the question is dealt with as follows:

At the present time and in the foreseeable future, the ultimate preventative of war between the super powers is the mutual balance of nuclear deterrence — that is, the existence in both the United States and the Soviet Union of a credible capability to inflict unacceptable retaliatory damage in a nuclear exchange. However, a sharply accelerated pace in the competitive evolution of strategic nuclear weapons could upset the existing balance, which constitutes a credible deterrent, and make it less stable. Potentially destabilizing developments in the strategic arms race are capable of presenting grave risks for international security in the 1970s. This adds urgency to the search for successful nuclear arms control measures.

The relationship between deterrence and disarmament was dealt with by Dr MacGuigan in the statement previously referred to, in which he emphasized that Canada's support for the maintenance of forces sufficient to deter aggression and to defend the NATO area is entirely consistent with Canada's commitment to a vigorous arms control and disarmament policy. He pointed out that the two policies are more than consistent, they complement and support one another, and together constitute a single coherent policy serving the same goal of enhancing security and preserving peace. Dr MacGuigan emphasized also that only on a basis of undiminished security can nations be expected to accept limitations on the numbers and quality of their weapons. It is suggested that this thesis is a fact of life for all states and all peoples for 1984 and well beyond. It was this concept of "mutual security" that was later emphasized by the Prime Minister at SSOD II and developed further by Canada's present Deputy Prime Minister and Secretary of State for External Affairs at the Committee on Disarmament in the February policy statement.

### VII. Attainability of Priority Objectives

The Geneva policy statement indicates very clearly that in the view of the Canadian Government, 1983 is a crucial year for both bilateral and multilateral arms control and disarmament negotiations. It makes equally clear the views of the Canadian Government as to the priority areas for action in 1983 — and, as a consequence, for 1984 and beyond, because few if any of the

Canadian objectives can be attained in the space of a single year. The time it takes to negotiate arms control and disarmament agreements even in the best conditions is, of course, one of the most significant facts of life for those engaged in negotiating on such issues.

It will be noted, moreover, that in attempting to determine which important subjects, all needing urgent attention, should be given priority over others, difficult choices are entailed, the more so because it is already evident that Canada's priorities are not necessarily those of the Soviet bloc or the non-aligned "Group of 21", who have somewhat different perceptions from the West and from each other. Thus, another fact of life is that it is not possible to do everything at once, and Canada's priorities, such as the strategy of suffocation, may not be those of others.

Public opinion is having an important and highly desirable impact in the whole field of arms control and disarmament, at least in Western countries. Those committed to the pursuit of arms control and disarmament, both in and out of government, have long sought to awaken public opinion to the crucial nature of the issues involved. Clearly, public opinion is now deeply engaged in these matters. Equally encouraging is the clear evidence that there is a very broad spectrum of interest groups and individuals from all walks of life who are taking a serious and sustained interest in these crucial issues.

Not infrequently, the question is posed, "What can Canada do?" It is necessary to be realistic and to recognize the constraints within which a country which is not a Great Power can influence events. It is equally essential, however, to ensure that every ounce of pressure that countries such as Canada can bring to bear should be exerted.

The "strategy of suffocation" presented by Prime Minister Trudeau at SSOD I, and developed at SSOD II, includes, for example, a ban on the flight testing of all new strategic delivery vehicles and a ban on the production of fissionable material for weapons purposes. It has been pointed out on a number of occasions by the Prime Minister that the strategy of suffocation will not be implemented by Canada unilaterally. There is a problem as to how much can be achieved with respect to such objectives if they are not supported actively by the Great Powers, as well as by other countries of both the industrialized and developing world. The outlook is not always encouraging, but it reflects the basic fact of life for negotiators. Canada must keep up the pressure by every available means and attempt gradually to expand support for such objectives. It is a lengthy and difficult process. Those charged with the task must bring to it commitment and creativity, coupled with patience and perseverance. It is essential and, indeed, urgent for Canada to participate in the process of developing imaginative, realistic proposals, utilizing every legitimate means to seek support for them.