



WITH THE COMPLIMENTS
OF THE
PERMANENT MISSION
OF CANADA

AVEC LES HOMMAGES
DE
LA MISSION
PERMANENTE DU CANADA

GENEVA, September 14, 1987

Mrs. Margaret E. GOUIN
Editor
The Canadian Conference on Nuclear
Weapons and the Law

Attached is my amended text of
Ambassador Beesley's participation
at the Canadian Conference on Nuclear
Weapons and the Law last June.

EXT 011

Permanent Mission of Canada
10A, avenue de Budé
1202 GENEVA
(Rosa Barrieau)



Kara
Please get the law
(corrected) version off
as soon as possible

The Canadian Conference on Nuclear Weapons and The Law
La Conférence canadienne sur l'armement nucléaire et le Droit

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11 August 1987

J. Alan Beesley, O.C., Q.C.
Canadian Ambassador to the
Conference on Disarmament
10-A, av. de Budé
1202 Geneva
Switzerland

Dear Sir:

I enclose the draft text of your participation at the Canadian Conference on Nuclear Weapons and the Law. As Judge Cohen mentioned in an earlier letter, we would appreciate your reviewing this text and providing any corrections which you feel would clarify your thought. Rewrites and extensive additions will not be accepted.

Please return your corrections by registered airmail, within four weeks of receipt of this package, to the following address:

Margaret E. Guoin
1 - 447 McLeod Street
Ottawa, Canada
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Corrections received after 18 September 1987 will not be included in the published proceedings of the Conference.

Thank you very much for your assistance in this matter.

THE CANADIAN CONFERENCE ON
NUCLEAR WEAPONS AND THE LAW

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Margaret E. Guoin
Editor

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PANEL 1: SCIENCE AND WEAPONS OF MASS DESTRUCTION IN THE
NUCLEAR AGE

INTERVENTIONS FROM THE FLOOR

Ambassador J. Alan Beesley (Canada):

I noted that each of the non-lawyer panellists did see a role for lawyers, and I'd like to emphasise that. In the case of Dr. Polanyi, he spoke of the role of lawyers in interpreting the ABM Treaty, in defining "weapons", in the whole infrastructure development, and he thought it could perhaps go beyond developing systems for inspection. Dr. Davydov concluded on the note of law, humanity and justice. He spoke on other issues rather than law. Dr. Teller spoke specifically on what lawyers could do; I will not abuse my privilege by quoting him at length, but he definitely sees a role for lawyers. I just want to underline it and say that it was worth my while to have come from Geneva to hear such a distinguished panel saying what they did on that issue, because I've believed that all my life, and I've been involved in the practice of law internationally for over thirty years. I want you to know that we're doing it now in the conference on disarmament, not very swiftly or success-

fully, but we're attempting to do the kinds of things you're talking about. So we're indebted to you and to Judge Cohen and others for organising this conference in order to bring the focus of attention on not just the role of law and the role of lawyers, but I suggest the rule of law, which is what is slipping away from us internationally.

My question is a very simple one: I want to ask this distinguished panel--not Oscar, but the others--do they see a role for lawyers working with scientists and military people and others in developing arms control treaties, or do they think the lawyers will just mess it up?

Dr. Polanyi:

I don't know very much about lawyers, but I would have thought that they could very much facilitate things that are being prevented really by those who are timorous about embarking on change and who clutch at various reasons, some of them technical (that's where scientists play a role) and some of them legal (that's where you people play a role) for continuing with business as in the past.

I mentioned an example which I think is an important one, that is the increasing threat to something that is very

PANEL 7 IMPLEMENTATION AND VERIFICATION OF ARMS CONTROL
ARRANGEMENTS: THE SEARCH FOR COMPLIANCE

Ambassador J. Alan Beesley (Canada):

Before speaking to my prepared text, I propose to outline the underlying concepts on which my comments will be based in order to put them into context, given the extent to which we have heard criticisms of international law, of international agreements, of the arms control process, of verification, and even of attempts to ensure compliance.

Perhaps I could also help put my comments in context by saying that I have known and worked with Bill Epstein for ~~twenty~~ ^{over} twenty years or more, I knew ^{him} before he lost his virginity when he was still in the UN system and I didn't know he had all these evil thoughts. I worked with David Fischer in ~~Geneva~~ ^{Vienna} when I was Canadian Governor on the IAEA, ^{but} I don't think he's saying much different now than he did then.

~~But~~ I would like particularly to associate myself with his closing comments on the importance of maintaining the Non-Proliferation Treaty and with it, the whole IAEA system which is verification of compliance, and on the dangers to all of

us if that system collapses. It troubles me personally as well as officially that in the Conference on Disarmament and in many other fora now, including the recent conference on the peaceful uses of nuclear energy, some of the countries mentioned, particularly India, Argentina and Brazil, are attacking the NPT and gradually some parties are beginning to share their views. So a fairly major effort is going to be required in order to maintain that Treaty.

The concepts on which my comments are based are fairly simple, perhaps simplistic. First, that quite apart from customary^{Law -}--it's closely related of course to treaty law and sometimes the two interrelate--there is an existing body of international law comprising a vast and complex network of bilateral and multilateral treaties which effectively regulate relations between and amongst states, in spite of the lack of sanctions to enforce them.

Second, that in the field of arms control alone there are over twenty contemporary treaties laying down obligations which states do observe, and the adversarial parties admit that they observe them, such as the Outer Space Treaty, the Seabed Arms Control Treaty, the Antarctic Treaty, and the Tlatelolco Treaty. Some of these treaties place explicit

constraints upon the conduct of states over large areas of the globe, including two whole environments.

Third, that cases do occur of breaches of treaty obligations, including those relating to the 1925 Geneva Poison Gas Protocol, to which both Iran and Iraq are parties, as well as interpretation disputes such as that concerning the ABM Treaty. It would be idle, and I think counterproductive, to ~~suggest~~ suggest otherwise.

Fourth, that none of the foregoing, I suggest, could be cited to ~~prove~~ prove or establish the non-existence or inefficacy of binding international law any more than the continuing commission of murders, robberies, rapes and hooliganism can be cited on the domestic plane to prove the absence of any legal order or the rule of law municipally, where there is, after all, ample machinery for enforcing the law. So I am suggesting that we look at this system of law in perspective, because it is primitive and it is nascent; but where we have sophisticated systems, I have yet to see one that works perfectly.

Fifth, that it is dangerous and simplistic to take either an overly idealistic approach to the actual state of international ^{law}, or to adopt a cynical view of the concept of the rule

of law on the international plane as non-law because there are no effective sanctions. To do that, I think, is to condemn ourselves to international anarchy, or if you prefer the phrase, self-help.

Finally, if we don't like the scope and content of existing international law, then it is open to Canada and the other countries represented here to seek together to change the law, to create new law (by the process known as progressive development, although some do it by imaginative treaty interpretation). Certainly Canada has sought to alter the law in certain fields, such as the law of the sea, the law of the environment, and I think we're seeking to develop the law of outer space.

The foregoing views, incidentally, are outlined in an article in the fortieth anniversary review of the publications Disarmament, where I spelled out in some detail the unfairness of criticism of the UN and of international law, and thought to place the blame squarely where it belongs, on the governments which do not see fit to comply with their obligations.

I take the position, which happily coincides with that of the Canadian government, that the essence of the arms control and

disarmament process is that contracting parties agree to renounce, limit or destroy armaments or military forces in return for treaty commitments by other parties to do the same. No matter how cynical we may wish to be, that's a very serious undertaking and a very serious commitment, to ask a state to renounce or scrap weapons, hardware, and to accept a "mere" treaty guarantee in their place. So I don't like to associate myself with the "scrap-of-paper" line of thinking which, in denigrating the treaty process and the arms control process, denigrates the rule of law. I'm not accusing anyone here of that; I'm just saying I think it is very important to bear in mind that it is a lot to ask of any state. That doesn't make me less committed to arms control; it makes me all the more committed to it.

I think also it should be taken into account that in effect a state accepts a treaty in lieu of weapons as a means of protecting its security, and depending on one's point of view--whether one sits in the military or in a political science faculty or External Affairs or the State Department or wherever--I think we all recognise the need and the desirability to make that decision and make that commitment.

But it isn't made lightly, so how do we persuade states to make it? I suggest that it can be done by producing the

basis for an effective, workable, enforceable and thus verifiable arms control treaty. It is, after all, long accepted (certainly by European powers, and also by many others) ^{that} the primary responsibility of any government must be to protect the security of the country, however ^{its security is} defined or perceived.

Given this traditional concern with national security, the importance of verification becomes ^{readily apparent,} ~~clearly evident~~. It is the means by which each party maintains confidence throughout the life of an arms control agreement that other parties are complying with their obligation, while at the same time providing the opportunity to demonstrate its own good faith. I might just ^{point out} ~~say~~ that this element of good faith is central to treaty law. It is ^{crucial} ~~central~~ not only to the performance of obligations undertaken pursuant to a treaty, but to the interpretation of treaties. You will find a good-faith reference in the Law of Treaties Convention on both issues.

In a world where there are relatively few internationally effective sanctions, verification, I suggest, inevitably must play a critical role in ensuring that a treaty is and remains effective and does not become a source of tension rather than a means of resolving it.

dot Just in passing, I don't disagree with some of what Bill Epstein said, in that, for example, the 1925 Geneval Gas Warfare Protocol had no verification measures. Admittedly it was only a non-use convention, but most of us believed it had reflected a common will. It can be interpreted as being merely a non-~~first~~-use treaty. But ^{we} you know what^{has} happened, and I don't think anyone would disagree with the notion that we have to work very hard, and very quickly and urgently, in replacing it with a comprehensive chemical weapons convention, which is what we're trying to do in Geneva in the Conference on Disarmament.

~~And I have to tell you that~~ No one in that Conference has suggested that verification is a non-issue. The difficulty is, contrary to what was said yesterday morning, ^{that} the US has produced a proposal that is the most comprehensive submitted thus far, and the most intrusive in terms of inspection and verification; and some of its own allies are having difficulty with it, as they will admit. But the USSR has also had difficulty, and so have some of the non-aligned and developing countries. Nonetheless, if we're trying to be objective, we have to recognise that ^{here} ~~there~~ is an example of a treaty put forth by the US which has very stringent verification provisions.

Well, the answer I hear regularly is that that proves it's a sham, because the US knows it wouldn't be accepted and therefore there will never be a treaty. That's the kind of no-win approach which doesn't help those trying to negotiate a treaty. What is ^{actually} happening is that the British have ~~proposed~~ ^{Submitted} ~~come up~~ with a challenge inspection proposal; the US is not committing itself on it; but the USSR is edging up to it, at first privately and now publicly, and I think we're seeing the beginning of a meeting of minds, the beginning of the development of common ground.

So I suggest that the events of recent years have underscored the critical importance in certain arms control agreements of compliance with their provisions and thus verification of compliance. It is axiomatic, therefore, that in the kind of world in which we live, just as there can be no arms control ~~ultimately~~ without confidence in compliance, there can be little chance of confidence in compliance without adequate verification. I'm not thereby suggesting any untruth in what Bill Epstein said.

There are examples of treaties which were concluded without verification, but I consider them imperfect. In the case of the Seabed Treaty, I don't know what we would have had to ^{propose} ~~suggest~~, because I had a part in that ^{negotiation,} ~~operation,~~ as I did ^{also,}

incidentally in the Outer Space Treaty negotiations, and there is only so much a non-space power can do, which ~~was our status~~ ^{was our status} at that time although we had more than a gleam in our eye, about verifying something relating to outer space. The difficulty is not much less in the case of the seabed, unless some imaginative proposal ~~comes up~~ ^{arises} of using ^{Canadian} nuclear submarines to investigate what is going on on the deep-ocean seabed. That might be what we have in mind.

In any event, verification, I do ^(assist) ~~suggest~~ is important, and I know Bill Epstein agrees with me, ~~there~~, he just doesn't like to see it misused. We have seen, I hope, from the discussion to date that verification mechanisms can be important; but even with ~~them~~ ^{these inclusion} in some multilateral agreements such as the Biological and Toxic Weapons Convention of 1972, they have proven inadequate to dispel suspicions of violations. I am not prepared to address ^{possible} reasons or point fingers; I am merely saying that the existence of verification provisions does not operate as a kind of magic to turn the world into a better place. But it helps.

In the Gulf War, I mentioned that we have seen the consequences of the absence of any sort of verification provisions. But even there the Secretary-General has set up some ad hoc machinery, fact-finding missions, which have

proven pretty effective, and I consider them a kind of breakthrough because it ^{has occurred,} ~~happened,~~ no one has resisted it or refused to let it happen; ~~and~~ we had a Western resolution which eventually become a more widespread resolution aiming at that very objective. Without adopting the provisions ^{of} ~~in~~ the resolution, the Secretary-General acted in accordance with it and we can see how imaginative "ad-hockery" can play a role in this process.

But something more and better is needed. These few examples, and there are many in multilateral and bilateral agreements, demonstrate, I suggest, both the importance of verification and ~~that~~ of compliance; but at the same time they highlight the ^{extreme} intense political sensitivity of the whole process of detecting and handling events suggesting possible non-compliance. Indeed, recent concerns about verification and compliance seem in some cases to have eroded confidence among parties to arms control agreements, rather than to ^{increase and ve. info} ~~enforce~~ it.

Nonetheless it is the Canadian position, ~~again~~ which I am glad to share--I can always resign when I don't--that the careful crafting of adequate and effective verification provisions in agreements and the development of necessary implementation mechanisms is essential to preventing the

deterioration of confidence. This applies a fortiori to agreements involving nuclear weapons and nuclear tests.

The role of the lawyer, indeed the role of the law on the international plane is, I suggest, obvious, ^{and here} ~~but there too~~ I see the very nexus that others have referred to. For me it has been an educational experience--perhaps one I could have done without, because it is slightly disorientating to hear the extent to which one can get out of touch with developments at home that parallel and in many ways reinforce developments on the international plane^{ave each} where we ~~are~~ trying to achieve certain ^{common} objectives. I found that part of our discussion fascinating.

But I would go further and say that without widespread support for the rule of law on the international plane, which I think is what we really are hearing from the participants in this Conference, going well beyond utilising lawyers as legal technicians or mechanical drafting specialists, not only will we not achieve a world order or the rule of law, but we will see a gradual decline into what I would term anarchy but others call "self-help." Still others call it unilateralism. I don't think we can afford that, for all the reasons we've heard in the past two days, and I think we are all in agreement there.

Because of the time constraints, I am going to leave ^{a part of} the substance of my speech for a few moments and outline some examples of concrete steps Canada is taking to contribute in what we see as a pragmatic, constructive manner to the verification process. I will come back to the rationale for this process if I have time, but I hope I have at least said enough to indicate that we take it seriously.

In the Conference on Disarmament, we have probably used less rhetoric than any other delegation. We have a very low-key approach, a very pragmatic approach. We're trying to focus attention on working papers that suggest solutions, rather than unilateral monologues that talk past the ^{other} delegates and thereby insure against any actual negotiations. It does show, that when you ~~put in~~ a working paper, ^{is tabled,} people address it, if only to say what is wrong with it.

On chemical weapons, on December 4, 1985, Canada presented to the United Nations Secretary-General a handbook for the investigation into allegations of the use of chemical or biological weapons. The handbook, tabled in the Conference on Disarmament in April 1986, is a study by Canadian scientists and officials, and represents a practical contribution to the investigation into allegations of non-compliance with the ^{existing} ~~testing~~ agreements relating to chemical weapons.

In May of this year, Canada made available to the international community further results from its on-going research into the verification of CW use, in the form of a report titled Verification: Development of a Portable Tricho.... Sensor Kit for the Detection of T2 Microtoxin in Human Blood Samples. This report describes a project undertaken as a case study to better understand the technical problems involved in developing appropriate sensors for teams investigating allegations of the use of a novel CW agent. An actual operational kit would be used to screen blood samples in order to reduce the number of blood samples which must be sent to laboratories for more detailed testing.

^{should}
I [^] like to ~~just~~ underline a point that might not be all that obvious: ^{the international community} that if ~~we can get used to people~~--decision makers, lawyers, political scientists, military people, governments--^{can get used to experts} showing up with such kits whenever there's a danger of ~~such a~~ CW use, then it won't become such a controversial issue. This is a little bit the way that most countries have ^{becom'} ~~gotten~~ used to the Red Cross coming in in certain situations. Once it becomes an established practice, it isn't such a sensitive political issue.

Canada will shortly be making available further research results relating to procedures for investigating CW use.

On the comprehensive test ban, on February 7, 1986 the Canadian government announced its decision to spend \$3.2 million over three years to upgrade the Yellowknife seismic array as a major Canadian contribution to research into monitoring an eventual comprehensive test ban treaty. As far as I'm concerned--and the government continues to allow me to say this--the achievement of a comprehensive test ban treaty is a fundamental Canadian objective. Yellowknife, in the Canadian Northwest Territories, is recognised as a unique and sensitive location for monitoring global seismic events, including underground nuclear tests. The programme to update and modernise the Yellowknife seismic array will enable Canada, using the best technology available, to contribute to an international system which one day may constitute an essential monitoring arrangement for a negotiated comprehensive test ban treaty.

In October 1985, a two-year research grant was made to the University of Toronto to examine the effectiveness of using regional seismic data, and in particular high-frequency seismic waves, to discriminate between earthquakes and underground nuclear explosions, including those conducted in

decoupled situations. In October of last year, Canada hosted a technical workshop for seismic and data specialists of seventeen countries to discuss the exchange of seismic wave form data. This work is being made available to the Conference on Disarmament, and has ^{received} had extremely favourable reactions.

Some of the most interesting, innovative and exciting (albeit low-key) moves that Canada is making relate to outer space: the PAXSAT concept. Canada has investigated some aspects of the technical requirements that might exist for verifying a multilateral agreement to control space weapons. We have conducted feasibility studies--^{which were} we farmed them out to Spar, who has done a highly professional job--and the ^{results} certainly impressed the participants of the Conference on Disarmament who assembled in Montreal a few weeks ago for a workshop.

Under the PAXSAT "A" study as it is called, the practical feasibility of the application of space-based ~~civilian~~ remote sensing techniques to verify an outer space treaty has been examined. PAXSAT "B", on the other hand, which has only recently been concluded, would involve space-based verification of a regional conventional-weapons agreement. What is entailed is that Canada would cooperate with other non-superpowers--I don't care who, Sweden, India, Brazil, other

countries that have some space capacity, not the superpowers, not the countries that can take care of themselves so to speak--and together we would envisage the possibility of monitoring and verifying agreements. As I have mentioned, ^{what was envisioned} in ^{was} one case space-to-ground for conventional agreements, in the other case space-to-space.

I suppose that sounds pretty controversial. Well it is at least bold and innovative, and we haven't just talked about it. ^{The government has} ~~We've~~ paid out money for feasibility studies and ~~they've~~ ^{been positive} the results are very encouraging. No one suggests that ^{these systems} ~~they~~ could do the job alone, but no one so far denies that they would be an extremely useful additional tool; ^{practical work we are doing.} ~~and this is the kind of thing we're up to.~~

I'm out of time, otherwise I'd tell you what we're doing on the non-proliferation of nuclear weapons. If I had the time, I would tell you that outside the Canadian Government Verification Research Programme, Canada has developed an extensive programme aimed at developing and improving the verification mechanism of the Non-Proliferation Treaty itself, because we are both a user and an exporter of nuclear power reactors and nuclear materials. And Canada recognises the IAEA must have strong ^{system} and viable techniques and the

active cooperation of member states, for the very reasons that David Fischer outlined in his concluding comments.

In support of the objectives of the IAEA, if I had time I would tell you that we want to develop an improved system of safeguards suited to the Canadian CANDU reactor. Canada established the Canadian Safeguards Research and Development Programme in 1978, which is designed to assist IAEA in the development of safeguard systems for CANDU reactors. I was in Vienna, involved with the IAEA, when India let off its "peaceful pop." That was one of the most profoundly ~~discouraging~~ ^{discouraging} ~~depressing~~ experiences of my adult life, and it still influences me. The programme I mentioned has received a five-year budget of approximately \$11 million and work under these auspices is already well advanced.

I'll have to leave my conclusions to ^{utilize as} ~~be the answers~~ to ^{possible} ~~some~~ questions, but I hope I have at least illustrated that there is one ~~naive~~ person representing ^a ~~an incredibly naive~~ country which still believes in the necessity of developing effective verification in order to build confidence, rather than erode it, in order to ensure compliance with agreements that are vital to the interests of all of us.

PANEL 7 IMPLEMENTATION AND VERIFICATION OF ARMS CONTROL
ARRANGEMENTS: THE SEARCH FOR COMPLIANCE

INTERVENTIONS

Bruce Torrie (Canada):

Out of deference to our Canadian representative, I'd like to ask Mr. Beesley for his conclusions.

Alan Beesley:

Well, now that you insist: We live today in an imperfect world too frequently characterised by suspicion, uncertainty and lack of trust. We've heard quite a bit about that in the last couple of days. Regrettably, in the history of international affairs this lack of trust has all too often been justified by the actions of some countries. We must therefore be cautious where important questions of national security are involved. We must seek to ensure that compliance with arms control undertakings is adequately verified and that non-compliance is reliably detected.

Arms control is central to the development of a secure and peaceful world. It is a prerequisite to the achievement of the rule of law on the international plane. It is, I suggest, incumbent on all of us here, lawyers and non-lawyers alike, to seek to contribute to this process. The search for assured compliance is not an easy one, and it can be misused. But it is nevertheless an ongoing search that must take place throughout the negotiating period and also ^{during} the life of existing arms control and disarmament agreements.

If an agreement significantly affects the security of parties, it is only to be expected that they want some assurance that their security is not placed at risk by the non-compliance of other parties. Such assurance is best achieved by expressly providing for adequate and effective verification mechanisms in agreements--again a role for lawyers.

I won't go on beyond that, except to say that I have avoided touching on one of the central themes of the ^{discussion,} ~~issue,~~ namely that no verification process can be perfect, and therefore something less than total certainty must be accepted. Therefore some standard must be applied, some standard that is generally acceptable. The standard I suggest--I don't say this is the Canadian government position--is the standard of

"grounds for suspicion of violation that would affect the security of other states, or even relatively minor violations which occur with such frequency or in such pattern that it would pose a threat." These are the kinds of verification mechanisms and the kinds of compliance standards that we should seek. ~~We can~~ ^{It is} always ^{possible to} reject any treaty ^{if a standard of perfection} ~~otherwise~~ on ^{is} the grounds that somebody can get around it. What I'm ^{required,} interested in, and what the government is interested in, is in building up a climate of mutual confidence and trust by demonstrating good faith and by asking for it.

Tariq Rauf (Canada):

I headed a Canadian Centre for Arms Control and Disarmament study on non-proliferation related to the 1990 NPT review conference. As Ambassador Beesley very correctly pointed out, compliance with arms control agreements is to some extent a matter of interpretation and perception. Some of the recent examples are SALT I and II and the ABM Treaty. My question relates to compliance with the NPT and IAEA-related safeguard systems under Insert 153. The question deals with Article 14 of Insert 153 which allows a non-nuclear-weapon state to withdraw from IAEA safeguards a certain amount of nuclear material or a nuclear reactor for permitted military purposes, that is non-explosive military uses, and then

tion of tension you make more progress; during mini-cold wars or chills you make no progress.

Alan Beesley:

I'm a member of ^{an informal CD} a group which has had to change its name and can no longer call itself the Seven Wise Men because I'm it. It devotes itself to improving ^{the} our working methods ^{of the C.O.} I fear that I agree with Bill, but let me mention ^{one} out of a whole series of disagreements, ^{namely} the consensus rule, ^{which} is necessary since you can't impose a major arms control treaty if for example the US and USSR, China, France and the UK disagree with ^{it, - but it} you, ^{has} been develop^{ed} to a high point of technical application so ^{that} it simply means "veto" again and again. If it's any encouragement to you, the very same process is used in the GATT council ^{with} against the same ^{discouraging results, but there the situation is reversed as between} countries ~~(with one exception of course)~~. ^{Who is accused of using} consensus to block progress.

~~But~~ Consensus, which I believed in, because it was the process by which we developed the whole of the corpus of the Law of the Sea Convention, ^{- for} we always worked by consensus until the last two days, when we had a vote imposed on us, I've seen utilised in Geneva both in GATT and in CD as a means of blocking progress. As long as ^{it is necessary} you ~~have~~ to have consensus, ^{then} you only one delegation from one country, however large or

small, ^{can} ~~to~~ stop things ^{everyone} in their tracks. So there are a lot of things we could do to improve the process, but I don't know how successful ^{we will} ~~would~~ be in achieving them.

On the NPT, let's face it, ^{of course} ~~sure~~ it's discriminatory. It allows some states to have nuclear weapons and ^{requires} ~~gets~~ the others to promise not to. ^{Of course} ~~Now~~ there were bargains: one was technical assistance, and some of those who want it say they are not getting it the way they'd like to. The other defect in the implementation of that bargain is the one discussed yesterday and today. The great powers have not reduced the numbers of their nuclear weapons. So there is good reason for the treaty to be criticised, not as a treaty perhaps but in the way it's being implemented.

If we are talking about the discriminatory nature of it, ^{as a cause for non-accession,} I don't really buy that line, because the UN Charter is pretty discriminatory too. There are five permanent members of the Security Council, each has a veto, etc. It's a reflection of the real world in which we live. Although we don't like it, I accept it, provided the other part of the bargain is adhered to. And it isn't. And I worry that as this ^{situation} ~~con-~~tinues, the people who really believed in the NPT will abandon it. Not perhaps if we get some progress now.

Alan Beasley:

Bill, I share your objectives fully, and those of David, ^{and} ~~that~~
it is pointless to spell out the extent of disagreement
except in order to show the area of agreement. ^{The NPT success} ~~It~~ didn't
"just happen" in 1985. There was a lot of work and a lot of
lobbying by those countries committed to the Treaty, as both
of you probably know. It may be of interest that Canada
began the process of calling together parties, ^{- I know because I did so as a personal initiative} including the
Eastern Europeans, Western countries, and non-aligned and
developing countries, and ^{we} got to them ^{together in their common interest} quickly enough before
the protest notes began to come in; and lo and behold, we
were in agreement ^{on fundamental objectives} and had the nucleus of a really integrated
and coherent policy agreed to by the three groups working
together all over the world. But even when we did it we all
knew it was touch and go. Bill is right when he said it was
a fluke, because at the end it was very touch and go whether
we would get the right formulation. But I think ^{it} ~~that did~~
happen ^{as} as a result of a lot of very serious ^{and skillful} diplomatic work.
I don't know whether we can expect that to be repeated if
there isn't some kind of a sign of a breakthrough on arms
control in the meantime, especially on CTB.

would be prepared to negotiate with Israel. I think it would be in everybody's interests to have a nuclear-free zone in the Middle East. Now that all of the parties favour that, if you only start negotiations you can get that. The problem is that the Arabs don't want to negotiate directly with Israel at the present time, they don't even recognise the existence of the state.

Alan Beesley:

I know I shouldn't speak again but this is a very important question you've raised, and although I didn't want to tell you ^{everything} ~~all the wonderful things~~ I've done, my first posting was Israel. At that time, Demona was wrapped in secrecy. To my mind, there would be nothing to be lost by a proposal that might be supported by both Egypt and Israel well before a total peace was achieved. It could lead to a better climate of opinion, a better atmosphere, better relations. But it would have to be carefully thought ^{through} ~~out~~ and it would have to carry the full weight of the judgement of the government of Egypt, the government of Israel, and, I suspect, Jordan and some others. But it is an interesting idea that needn't necessarily await the final peace treaty ~~that~~ we all hope for.

I remember asking thirty years ago how long this confrontation could continue. My then Ambassador said we could have a stalemate for twenty years, ^{and I was shocked,} but it's been thirty years. Anything that loosens up the situation pertaining ~~there~~ ^{in that area,} following the precedent set by Egypt, would be very welcome, I think. What would prevent a third party from constructing a treaty in consultation with both Egypt and Israel and floating it around? This is a technique we use all the time in diplomacy; in GATT they call them "papers from heaven."

1. [Make reference in endnote to both Beesley's and Epstein's unpublished papers.]

have to think about and make decisions of this sort. But I take it from the tenor of the remarks over the past two or three days that you who are the participants in this would not be adverse to steps being taken, if that is the wish of the participants in Canada, to see something go forward in due course. Am I right?

[The delegates applauded enthusiastically.]

Ambassador Alan Beesley:

Although I have been a diplomat for over thirty years, I've been a lawyer for over thirty-five years, and against that background and that experience, this Conference has been a revelation to me, particularly today's discussion. I haven't the time or the inclination to single out ^{from} amongst the many excellent statements ^{those of} any particular participant, because so much has been said that is at least food for thought, and at best not a mere "wake-up call" but perhaps a clarion call. I feel privileged to have ~~been privileged to have~~ been present.

Against that background, I'm looking particularly perhaps at Professor Weston, Joe Samuels and Geoff Pearson because of the nature of the ~~particular~~ statements they made, which struck a chord with me; ^{And} But I ~~did~~ want to make two very

practical comments against the background of my own experience.

Firstly, on the role of the legal adviser: Like others present, I've expressed my views in publications on the matter, but in brief the legal adviser has to be involved in the decision-making process. He cannot be relegated to a dusty little office and consulted when someone else believes that an issue warrants legal advice. If the lawyer is not involved in the decision-making process, then he's not fulfilling the function entrusted to him. Law and the practice of law is a profession, and that applies as much on the international plane as it does on the domestic plane. I must say that as a member of the Canadian Bar Association in good standing--because I pay my fees for fear I'd never pass the exams--and as a member of the B.C. Law Society for the same reason, I am absolutely delighted to hear what I hear from my fellow lawyers.

But the second point I wish to make, which others have touched on, may seem contradictory to the point I've just made. In fact it is complimentary to it. What is needed, not only in the field of international law today but more particularly on arms control issues--and environmental issues and many others such as the population problem--is an

interdisciplinary approach ^{in which} ~~where~~ the lawyer must be involved. Let me give you just one example, without trying to express an opinion. How can a lawyer give a legal opinion on the effect of the Genocide Convention coupled with the nuclear winter concept if he doesn't consult with scientists and others who have first-hand knowledge of these issues?

For that reason I want ~~to~~ merely to make a very personal suggestion that we all bear in mind, ^{that} ~~that~~ the lawyer must be involved in the decision-making process; but he must be humble enough, I hope, and wise enough to consult with members of other professions and ^{technologies} ~~trades~~ in necessary, because these are technical as well as professional areas of expertise that are required. When we add that up, I think it means that not only should lawyers become more involved. My appraisal of what has happened in the last few days is that lawyers are more involved, both domestically and internationally; I applaud it with heart and soul, and I thank you for including me here.

I came a long distance, somewhat reluctantly, because I had to lead behind some duties requiring my presence, such as the meeting ^{of the International Law Commission, which has on its agenda, for example,} ~~of the International Law Commission, which has on its agenda, for~~ ~~of the International Law Commission, which has on its agenda, for~~ ~~of the International Law Commission, which has on its agenda, for~~ ~~a few words missed when recording tape was changed~~ offences against the peace and security of mankind, and I would have been very surprised if any group of lawyers from

any western country would come up with comments that would tend to be supportive of what the ILC is doing on that issue. I go back with a slightly different point of view. I'll say no more on that subject because ^{my membership on the ILC} ~~it~~ is a personal ~~kind of~~ appointment.

Judge Cohen:

This is the last working session of the Conference. I would be remiss if I didn't feel I wanted to express thanks to the Conference. I will do so in a more formal way at luncheon; but informally, at the end of what is obviously a classical moment in our common professional history, I cannot but look at this as a landmark occasion which many of us will not forget.

I add a personal tribute to you, Mr. Chairman. You were my first co-chairman when you were President of the Canadian Bar Association. Under conditions of great difficulty, you kept the faith and kept it to the present day. You have been a loyal supporter; you have been a superb chairman; and we shall not forget your contribution.