

No. 5045

**UNITED STATES OF AMERICA
and
CANADA**

Exchange of notes (with annex) constituting an agreement relating to the establishment of a ballistic missile early warning system. Ottawa, 13 July 1959

Official text: English.

Registered by the United States of America on 14 March 1960.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

Échange de notes (avec annexe) constituant un accord relatif à l'établissement d'un système de pré-alerte contre les engins balistiques. Ottawa, 13 juillet 1959

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 14 mars 1960.

No. 5045. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO THE ESTABLISHMENT OF A BALLISTIC MISSILE EARLY WARNING SYSTEM. OTTAWA, 13 JULY 1959

I

The American Ambassador to the Canadian Secretary of State for External Affairs

No. 322

The Ambassador of the United States of America presents his compliments to the Secretary of State for External Affairs, and has the honor to refer to recent discussions between agencies of our two Governments regarding the mutual defense interests of Canada and the United States in establishing at the earliest time a ballistic missile early warning system.

In these discussions it was recognized that there was a need to develop an integrated communications system to provide information to the North American Air Defense Command. The United States Air Force has selected a communications systems contractor which will work closely with appropriate agencies of the two Governments in carrying out this work under contract. Such an integrated communications system will involve the use of existing communications systems in Canada and may involve, as well, the construction of some new communications facilities in Canada. It is the intention of the United States to utilize Government as well as commercial communications facilities in Canada to the maximum extent possible consistent with technical capabilities, in order to obtain the required service.

It is understood that any action to be taken by the United States Government in connection with the establishment of a ballistic missile early warning system is subject to the availability of funds.

The United States Government now proposes that the activities which are to occur on Canadian territory in connection with the establishment, maintenance and operation of an integrated communications system in support of a ballistic missile early warning system be governed by the conditions set forth in the Annex²

¹ Came into force on 13 July 1959 by the exchange of the said notes.

² See p. 240 of this volume.

to this Note. If these conditions are acceptable to the Canadian Government, it is proposed that this Note and the Secretary's reply constitute an Agreement between the two Governments, effective from the date of the reply.

Enclosure :
Annex. ¹

Embassy of the United States of America
Ottawa, July 13, 1959

A N N E X

STATEMENT OF CONDITIONS GOVERNING THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF COMMUNICATIONS FACILITIES IN CANADA AS PART OF THE BALLISTIC MISSILE EARLY WARNING SYSTEM

(Hereafter, unless the context otherwise requires, "Canada" means the Government of Canada, "United States" means the Government of the United States of America, and "BMEWS" means the Ballistic Missile Early Warning System.)

1. *Consultation*

A communications systems contractor has been selected by the United States which will carry out the communications portion of the BMEWS Project. The United States has established a BMEWS Project Office which will direct and coordinate the work under this Project. Interested Canadian Government agencies will participate in the Project Office to facilitate consultation on matters covered by this statement of conditions.

2. *Site Surveys and Engineering Studies*

The United States may make engineering and other technical surveys and conduct path loss tests to determine suitable sites. These surveys will require contact with Canadian industry to determine the availability of existing commercial communications facilities. Representatives of the Royal Canadian Air Force and the Canadian Department of Transport will be included in survey teams. Interested Canadian Government departments will be informed through full consultation at all stages of such surveys as they proceed, and will be provided copies of all official reports made upon completion of surveys. Any arrangements which might involve use of provincial or private property will be made only through appropriate Canadian Government agencies. Advance information concerning contacts which will be required with Canadian telephone companies will be furnished to representatives of the Canadian Government at the BMEWS Project Office to permit any desired participation by the Canadian Government.

¹ See below.

3. Sites

The location and size of all airstrips and the location of all sites, roads, wharves and jetties required for BMEWS in Canada shall be a matter of mutual agreement by appropriate agencies of the two Governments. Canada shall, without charge to the United States, acquire and retain title to all lands required for BMEWS. Canada grants and assures to the United States, without charge, such rights of access, use and occupancy as may be required for the establishment, maintenance and operation of BMEWS.

4. Plans

Plans of the buildings, airstrips, roads (including access roads) and similar facilities, information concerning use of local materials, such as rock fill, sand and gravel, and information concerning other arrangements related to construction and major items of equipment, shall, if requested, be supplied to the appropriate Canadian authorities in sufficient detail to give an adequate idea of the scope of the proposed construction. Canadian officials shall have the right of inspection during construction. Proposals for subsequent construction, or major alterations, shall be discussed with the appropriate Canadian authorities.

5. Construction

(a) Procedures for awarding contracts for construction of the communications facilities and for the procurement of construction equipment, construction supplies, and related technical services shall be determined by agreement between appropriate agencies of the two governments.

(b) Rates of pay and working conditions will be set after consultation with the Canadian Department of Labour, in accordance with the Canadian Fair Wages and Hours of Labour Act.

6. Procurement of Electronic Equipment

The Canadian Government reaffirms the principle that electronic equipment at installations on Canadian territory should, as far as practicable, be manufactured in Canada. The question of practicability must, in each case, be a matter for consultation between the appropriate Canadian and United States agencies to determine the application of the principle. The factors to be taken into account shall include availability at the time period required, cost and performance. For the purpose of applying these principles to the BMEWS Project, the BMEWS Project Office shall be used as far as possible as the instrument for effective consultation between the Canadian and United States agencies concerned.

7. Canadian Law

Nothing in this Agreement shall derogate from the application of Canadian law in Canada, *provided*, that if in unusual circumstances its application may lead to unreasonable delay or difficulty in the establishment, maintenance, or operation of the communications facilities, United States authorities may request the assistance of Canadian

authorities in seeking appropriate alleviation. Canadian authorities shall give sympathetic consideration to any such request submitted by United States authorities.

8. *Operation and Manning*

(a) Where the establishment in Canada of new communications facilities is necessary, the question of manning and operation, including the extent of Canadian participation, shall be determined by agreement between appropriate agencies of the two Governments. It is understood that the systems contractor of the United States may be required to operate some or all of such facilities for at least an initial two-year period. It is also understood that Canada reserves the right, on reasonable notice, to take over the operation and manning of any or all of the communications installations located in Canada in connection with BMEWS. Canada will ensure the effective operation, in association with the United States, of any installations it takes over.

(b) The United States may station military and civilian personnel under the control and command of United States military authorities at the sites; the numbers of personnel to be stationed at any particular site will be a matter for mutual agreement between the appropriate agencies of the two Governments, and will, in any case, not exceed the minimum required to operate the BMEWS facilities effectively. The over-all manning policy as between the employment of military and civilian personnel shall be the subject of agreement between appropriate agencies of the two Governments.

(c) In light of the fact that the BMEWS Project is being undertaken in the mutual defense interests of both Governments and not as a commercial venture within the scope of the laws of Canada relating to regulation of communications companies, nothing in this agreement shall be construed as authority for the United States or its systems contractor to construct or operate a communications system in Canada for the furnishing of services to the public.

9. *Financing*

Unless otherwise provided herein or mutually agreed between appropriate agencies of the two governments, the cost of establishment, operation and maintenance of that portion of BMEWS to be located in Canada shall be the responsibility of the United States. However, if Canada should man any of the installations covered by paragraph 8 (b) above, Canadian military personnel costs shall be borne by Canada. Canada shall pay any added costs, including costs of operation, which result from adapting any part of the communications system required for BMEWS to accommodate purely Canadian requirements as mutually agreed between appropriate agencies of the two Governments.

10. *Period of Operation of the System*

The United States may operate the facilities and continue to station the personnel provided for in paragraph 8 for a period of ten years commencing from the date when this agreement enters into force, or such shorter period as may be agreed upon by the two Governments in light of their mutual defense interests. After the ten year period, in the event that either Government concludes that operation of such facilities is no

longer required, and the other Government does not agree, the question of continuing need will be referred to the Permanent Joint Board on Defense. Following consideration by the Permanent Joint Board on Defense, as provided above, either Government may decide that the facilities in question may be disposed of, in which case the arrangements shown in paragraph 11 below regarding ownership and disposition of the installations shall apply.

11. *Ownership of Removable Property*

Ownership of all removable property brought into Canada or purchased in Canada and placed on the sites, including readily demountable structures, shall remain in the United States. The United States shall have the unrestricted right of removing or disposing of all such property, *provided* that the removal or disposition shall not impair the operation of any installation whose discontinuance had not been determined in accordance with the provisions of paragraph 10 above, and *provided* further that removal or disposition takes place within a reasonable time after the date on which the operation of the installation has been discontinued. The disposal of United States excess property in Canada shall be carried out in accordance with the provisions of the Exchange of Notes of April 11 and 18, 1951¹ between the Secretary of State for External Affairs and the United States Ambassador in Ottawa, concerning the disposal of excess property.

12. *Telecommunications*

(a) It is contemplated that existing Government and commercial communications facilities in Canada will be utilized by the United States to the fullest extent possible. Where new circuits or extension or improvement of existing communications circuits or equipment is desired, every effort will be made to secure the necessary extension or improvement through leases or other appropriate arrangements with the Canadian commercial companies or Government corporations or agencies involved. If communications facilities covered by agreements between the two Governments are affected, the provisions of such agreements shall, so far as practicable, govern with respect to manning and operation of any additions or improvements to such facilities.

(b) The United States military authorities shall obtain the approval of the Canadian Department of Transport, for the establishment and operation of radio stations associated with this project and shall establish and operate stations so approved, in accordance with the terms of licences issued by the Department of Transport. To enable this action to be taken, appropriate licence applications are to be forwarded, through Canadian military channels, to the Department of Transport. That Department will require complete technical data concerning the radio stations, including desired frequency assignments, power, class of emission, bandwidth, number and capacity of circuits, particulars of antenna structures and their marking and lighting, and details of proposed sites.

(c) Each landing of a submarine cable to be used for external communication is a special case involving questions of policy which might be peculiar to a particular landing ;

¹ United Nations, *Treaty Series*, Vol. 134, p. 205.

each and every landing shall be the subject of a separate supplemental agreement within the purpose of this agreement and in which other relevant provisions of this agreement shall be applied.

(d) The provisions of telecommunications circuits (both radio and land-line) required during the construction period and thereafter will be the subject of consultation between the appropriate authorities of the two Governments, having regard to the desirability of using existing military circuits and existing Canadian public carriers where this may be feasible.

13. *Scientific Information*

Any geological, topographical, hydrographical, geophysical, or other scientific data obtained in the course of the construction or operation of the BMEWS System shall be transmitted to the Canadian Government.

14. *Matters Affecting Canadian Eskimos*

The Eskimos of Canada are in a primitive state of social development. It is important that these people are not subjected unduly to disruption of their hunting economy, exposure to diseases against which their immunity is often low, or other effects of the presence of white men which might be injurious to them. It is therefore necessary to have certain regulations to govern contact with and matters affecting Canadian Eskimos. The following conditions are set forth for this purpose :

(a) Any matters affecting the Eskimos, including the possibility of their employment in any area and the terms and arrangements for their employment, if approved, will be subject to the concurrence of the Department of Northern Affairs and National Resources.

(b) All contact with Eskimos, other than those whose employment on any aspect of the project is approved, is to be avoided except in cases of emergency. If, in the opinion of the Department of Northern Affairs and National Resources, more specific provision in this connection is necessary in any particular area, the Department may, after consultation with the United States, prescribe geographical limits surrounding a station beyond which personnel associated with the project, other than those locally engaged, may not go or may prohibit the entry of such personnel into any defined area.

(c) Persons other than those locally engaged shall not be given leave or facilities for travel in the Canadian Arctic (other than in the course of their duties in operation of the project) without the approval of the Department of Northern Affairs and National Resources, or the Royal Canadian Mounted Police acting on its behalf.

(d) There shall be no local disposal in the north of supplies or materials of any kind except with the concurrence of the Department of Northern Affairs and National Resources, or the Royal Canadian Mounted Police acting on its behalf.

(e) Local disposal of waste shall be carried out in a manner acceptable to the Department of Northern Affairs and National Resources, or the Royal Canadian Mounted Police acting on its behalf.

(f) In the event that any facilities required for the system have to encroach on or disturb past or present Eskimo settlements, burial places, hunting grounds, etc., the

United States shall be responsible for the removal of the settlement, burial ground, etc., to a location acceptable to the Department of Northern Affairs and National Resources.

(g) If in the opinion of the Department of Northern Affairs and National Resources the condition of buildings, equipment or other material which are no longer to be used for the Project may have an injurious effect upon the Eskimos, the two Governments will consult with a view to working out mutually satisfactory arrangements for razing any such buildings, removing or otherwise disposing of any such equipment, and restoring the site to a reasonable condition, bearing in mind the authorized uses to which the site has been put.

15. *Canadian Immigration and Customs Regulations*

(a) Except as otherwise agreed, the direct entry of United States personnel from outside Canada shall be in accordance with Canadian customs and immigration procedures which shall be administered by local Canadian officials designated by Canada.

(b) Canada shall take the necessary steps to facilitate the admission into the territory of Canada of such United States citizens as may be employed by United States contractors on the establishment, maintenance or operations of BMEWS, it being understood that the United States shall undertake to repatriate, without expense to Canada, any such persons if such contractors fail to do so.

16. *Taxes*

The Canadian Government will grant remission of customs duties and excise taxes on goods imported and of federal sales and excise taxes on goods purchased in Canada which are or are to become the property of the United States Government and are to be used in the construction or operation of the BMEWS System, as well as refunds by way of drawback of the customs duty paid on goods imported by Canadian manufacturers and used in the manufacture or production of goods purchased by or on behalf of the United States Government and to become the property of the United States Government for the construction of the system.

17. *Use of Airstrips*

Airstrips at Canadian installations in the BMEWS System shall be used by the United States solely for the support of the System. If it should be desired at any time by the United States to use an airstrip for other purposes, requests should be forwarded through appropriate channels. The airstrip shall be available for use by the Royal Canadian Air Force as required. The airstrips shall also be available for use by Canadian civil air carriers operating into or through the area, whenever such use would not conflict with military requirements, and *subject* to the understanding that the United States Air Force will not be responsible for the provision of accommodation, fuel, or servicing facilities of any kind. Proposals and arrangements for such use of United States Air Force operated airstrips by Canadian air carriers shall be submitted to the Royal Canadian Air Force, which shall consult the United States Air Force before granting any such permission.

18. *Landing Facilities*

Landing facilities at any of the stations on tidewater will be available for use by Canadian Government ships and ships employed on Canadian Government business.

19. *Transportation*

Canadian commercial carriers will to the fullest extent practicable be afforded the opportunity to participate in movements of project materials, equipment and personnel within Canada. The United States will select the means of transportation and specific carriers for the movement of material, equipment, and personnel from points outside of Canada to BMEWS sites, provided that in the case of air carriers applicable civil air transport agreements and procedures shall be observed.

20. *Resupply Arrangements*

Because of the special conditions in the Canadian Arctic, the Canadian Government has a particular interest in the arrangements for the resupply of the BMEWS. These arrangements shall therefore be a matter for later consultation and agreement between the two Governments.

21. *Status of Forces*

The "Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces", signed in London on June 19, 1951,¹ shall apply.

22. *Supplementary Arrangements and Administrative Agreements*

Supplementary arrangements or administrative agreements between authorized agencies of the two Governments may be made from time to time for the purpose of carrying out the intent of this agreement.

II

The Canadian Secretary of State for External Affairs to the American Ambassador

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

No. 170

The Secretary of State for External Affairs presents his compliments to the Ambassador of the United States of America and has the honour to refer to the Ambassador's Note No. 322 of July 13, 1959, concerning the establishment of a Ballistic Missile Early Warning System.

¹ United Nations, *Treaty Series*, Vol. 199, p. 67 ; Vol. 200, p. 340 ; Vol. 260, p. 452, and Vol. 286, p. 380.

The Canadian Government recognizes the need which exists for an integrated communications system to support the proposed Ballistic Missile Early Warning System. The Canadian Government agrees that the activities which are to occur on Canadian territory in connection with the establishment, maintenance and operation of an integrated communications system in support of a Ballistic Missile Early Warning System should be governed by the conditions set forth in the Ambassador's Note and the Annex to that Note.

The Canadian Government agrees, therefore, that the Ambassador's Note and Annex, together with this reply, shall constitute an agreement between the Canadian and United States Governments, effective from the date of this reply.

(Initialled) [illegible]

Ottawa, July 13, 1959