

5120 Carney Road N.W., Calgary, AB, T2L 1G2
Phone: (403) 282-8260 FAX: (403) 289-4272
Email: bevdelong@shaw.ca

June 9, 2003

All Members
Standing Committee on Foreign Affairs and International Trade

Dear Sirs and Mesdames,

Re: Canadian participation in missile defence

We write to express our opposition to the proposal for Canadian involvement on the US ballistic missile defence program.

1. Adherence to international law requires no apologies

It appears this proposal is being considered now due to some mistaken understanding that Canada "owes" the U.S. because of our non-participation in the invasion and occupation of Iraq. Clearly, the position of the Government of Canada in not participating was fully in accord with international law - as has been repeatedly stated by legal experts - and we would therefore reject any argument that we must apologize for obeying the laws of the community of civilized nations.

2. US disregard for international law

Our group are increasingly alarmed by the shocking disregard shown for international law by the current US administration, as illustrated by:

- the actions taken by the U.S. to discourage the start of negotiations on an agreement to eliminate nuclear weapons, such negotiations being legally required under the Non-Proliferation Treaty ("NPT");
- the failure of the U.S. to ratify the Comprehensive Test Ban Treaty;
- the stated intention of the U.S. to develop smaller nuclear weapons, the use of which would be unlawful and would blur the uncrossable line between nuclear and conventional weapons;
- the recent statements of U.S. policy wherein they declare willingness to use nuclear weapons in response to chemical and biological attacks - a flagrant breach of the international humanitarian law principle of proportionality in the means and methods of warfare;
- the failure of the U.S. to endorse the Ottawa Treaty concerning the prohibition of antipersonnel landmines;
- the failure of the U.S. to sign and ratify the Rome Statue creating the International Criminal Court;
- the operation of the Guantanamo Bay camps in breach of the Third Geneva Convention concerning the treatment of prisoners of war.

We believe a stable peace demands a rules-based system respectful of international law. We sense that cooperation with the U.S. at this time poses grave danger to Canada's role as a proponent of international law.

3. Implications of BMD for the international obligation to disarm

Given the above, we need to consider the serious implications of ballistic missile defence for international law. Under the NPT, all States Parties have agreed as follows:

Article VI: Each of the parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

The International Court of Justice in its July 8, 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons examined Art. VI and concluded:

"Unanimously, There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective control."

At the NPT Review Conference in May 2000, the Nuclear Weapons States provided an "unequivocal undertaking" to "accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI".

It is our belief and that of many scholars of international law, that **the BMD program will serve to decrease global security by encouraging the proliferation through the acquisition of new nuclear weapons by certain states, or at least encouraging the maintenance of existing arsenals, in breach of the terms of the Non-Proliferation Treaty.**

4. Implications for Peaceful Use of Space.

Furthermore, the clear determination of the United States to continue its research on weapons to be used in space places Canada **in potential breach of our own stated official policy of opposing the weaponization of outer space.** We believe that our security would be better enhanced by negotiations within the Conference on Disarmament or other suitable forum for a Treaty for the Prevention of an Arms Race in Outer Space.

In addition, we note that BMD is part of long term planning described in the Vision for 2020. (See paper on NMD and International Law at www.peacelawyers.ca for further information.) This Vision details plans to conduct war in space and to deny access to space to other states, both of which would constitute breaches of the Outer Space Treaty.

5. Questions arising with respect to Canadian liability

We seek your response to serious questions about the missile defence program:

- What would be the liability of the Government of Canada for damage resulting from

radioactive debris falling to earth after an interception?

- Is there a risk of damage to Canadian commercial satellite capability due to material debris or electronic damage caused by interceptions? What are the cost implications of such damage to this industry and their insurers?
- What would be Canada's liability given damage to a satellite causes interference with ability to verify compliance by national technical means of compliance with the CFE? (The Conventional Forces Europe Agreement has a noninterference clause in Article XV stating "A State Party shall not interfere with national or multinational technical means of verification of another State Party operating in accordance with paragraph 1 of this Article.") Similar noninterference clauses can be found in other treaties. What would be the results of such interference for arms control?
- What will be the effect of debris on space travel or astronomical research?
- What will be the cost to the public purse of our participation in Missile defence? If there is no cost, what will we "owe" the U.S. in upcoming trade discussions? Will that political debt ever be repaid?

Conclusions:

Canada's support is being sought for this program due to this country's reputation in the world as a country that respects and acts in peace. But the Canadian government should not allow itself to be used by the Americans to give legitimacy to such a boldly illegal, expensive and militaristic activity. Missile defence imperils arms control achievements that have been secured to date and will shatter hopes of further reductions of the nuclear arsenal that can destroy the world many times over. The missile defence program, through its global collection of data but its extremely limited sharing of data collected, will build an international atmosphere of paranoia and distrust. The missile defence proposal contradicts Canada's work to date in building an international legal framework, striving for good relations with all states internationally, and working for reductions in nuclear arms. We need to call for an international system which supports democratization, war prevention and peace-building activities, and global political and economic ties. The solution to security challenges lies in building trust through diplomatic negotiations and aid, not through a technological fix.

To respond to the specific threat of nuclear weapons, **we need to call upon all the nuclear weapons states, both those declared and undeclared, to comply with their obligations under international law and negotiate an agreement on elimination of nuclear weapons.**

We look forward to your response to the questions set out in 5. above. Thank you for your attention to this very serious issue.

Sincerely yours,

Bev Tollefson Delong
President