

No. 8737. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE AVAILABILITY FOR DEFENCE PURPOSES OF THE BRITISH INDIAN OCEAN TERRITORY. LONDON, 30 DECEMBER 1966¹

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT² SUPPLEMENTING THE ABOVE-MENTIONED AGREEMENT, CONCERNING A UNITED STATES NAVAL SUPPORT FACILITY ON DIEGO GARCIA, BRITISH INDIAN OCEAN TERRITORY AND REPLACING THE SUPPLEMENTARY AGREEMENT OF 24 OCTOBER 1972³ (WITH ANNEXED PLAN). LONDON, 25 FEBRUARY 1976

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 27 July 1976.

I

*Minister of State for Foreign and Commonwealth Affairs to the Chargé d'Affaires
ad interim of the United States of America*

FOREIGN AND COMMONWEALTH OFFICE
LONDON

Note No. DPP 063/530/2

25 February, 1976

Sir,

I have the honour to refer to the Agreement constituted by the Exchange of Notes dated 30 December 1966¹ between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the availability of the British Indian Ocean Territory for defence purposes and to the Agreement constituted by the Exchange of Notes dated 24 October 1972³ between the two Governments concerning a limited United States naval communications facility on Diego Garcia, British Indian Ocean Territory. Pursuant to paragraph 2 (b) of the former Agreement, I now convey the approval in principle of the Government of the United Kingdom to the development of the present limited naval communications facility on Diego Garcia into a support facility of the United States Navy and propose an Agreement in the following terms:

(1) *Scope of the facility*

(a) Subject to the following provisions of this Agreement, the Government of the United States shall have the right to develop the present limited naval communications facility on Diego Garcia as a support facility of the United States Navy and to maintain and operate it. The facility shall consist of an anchorage, airfield, support and supply elements and ancillary services, personnel accommodation, and transmitting and receiving services. Immovable structures, installations and buildings for the facility may, after consultation with the appropriate administrative authorities of the United Kingdom, be constructed within the specific area shown in the plan attached to this Note. The specific area may be altered from time to time as may be agreed by the appropriate administrative authorities of the two Governments.

¹ United Nations, *Treaty Series*, vol. 603, p. 273, and annex A in volume 866.

² Came into force on 25 February 1976, the date of the note in reply, in accordance with the provisions of the said notes.

³ United Nations, *Treaty Series*, vol. 866, p. 302.

(b) During the term of the Agreement the Government of the United States may conduct on Diego Garcia such functions as are necessary for the development, use, maintenance, operation and security of the facility. In the exercise of these functions the Government of the United States, members of the United States Forces and contractor personnel shall have freedom of access to that part of Diego Garcia outside the specific area referred to in sub-paragraph (a), but the Government of the United States may erect or construct immovable structures, installations and buildings outside the specific area only with the prior agreement of the appropriate administrative authorities of the Government of the United Kingdom.

(c) Delimitation of the specific area shall, subject to the provisions of the BIOT Agreement and after consultation with the appropriate United States authorities with a view to avoiding interference with the existing use of the facility, in no way restrict the Government of the United Kingdom from constructing and operating at their own expense their own defence facilities within that area, or from using that part of Diego Garcia outside the specific area.

(2) *Purpose*

The facility shall provide an improved link in United States defence communications, and furnish support for ships and aircraft owned or operated by or on behalf of either Government.

(3) *Consultation*

Both Governments shall consult periodically on joint objectives, policies and activities in the area. As regards the use of the facility in normal circumstances, the Commanding Officer and the Officer in Charge of the United Kingdom Service element shall inform each other of intended movements of ships and aircraft. In other circumstances the use of the facility shall be a matter for the joint decision of the two Governments.

(4) *Access to Diego Garcia*

(a) Access to Diego Garcia shall in general be restricted to members of the Forces of the United Kingdom and of the United States, the Commissioner and public officers in the service of the British Indian Ocean Territory, representatives of the Governments of the United Kingdom and of the United States and, subject to normal immigration requirements, contractor personnel. The Government of the United Kingdom reserves the right, after consultation with the appropriate United States administrative authorities, to grant access to members of scientific parties wishing to carry out research on Diego Garcia and its environs, provided that such research does not unreasonably interfere with the activities of the facility. The Commanding Officer shall afford appropriate assistance to members of these parties to the extent feasible and on a reimbursable basis. Access shall not be granted to any other person without prior consultation between the appropriate administrative authorities of the two Governments.

(b) Ships and aircraft owned or operated by or on behalf of either Government may freely use the anchorage and airfield.

(c) Pursuant to the provisions of the second sentence of paragraph (3) of the BIOT Agreement, ships and aircraft owned or operated by or on behalf of a third government, and the personnel of such ships and aircraft, may use only such of the services provided by the facility, and on such terms, as may be agreed in any particular case by the two Governments.

(5) *Protection and security*

Responsibility for protection and security of the facility shall be vested in the Commanding Officer, who shall maintain a close liaison with the Commissioner. The two Governments shall consult if there is any threat to the facility.

(6) *Shipping, navigation and aviation facilities*

The Government of the United States shall have the right to install, operate and maintain on Diego Garcia such navigational and communications aids as may be necessary for the safe transit of ships and aircraft into and out of Diego Garcia.

(7) *Radio frequencies and telecommunications*

(a) Subject to the prior concurrence of the Government of the United Kingdom, the Government of the United States may use any radio frequencies, powers and band widths for radio services (including radar) on Diego Garcia which are necessary for the operation of the facility. All radio communications shall comply at all times with the provisions of the International Telecommunications Convention.

(b) The Government of the United States may establish such land lines on Diego Garcia as may be necessary for the facility.

(8) *Conservation*

As far as possible the activities of the facility and its personnel shall not interfere with the flora and fauna of Diego Garcia. When their use is no longer required for the purposes of the facility, the two Governments shall consult about the condition of the three islets at the mouth of the lagoon with a view to restoring them to their original condition. However, neither Government shall be under any obligation to provide funds for such restoration.

(9) *Anchorage dues and aviation charges*

Collection of dues and charges for use of the anchorage and airfield at Diego Garcia which may be levied by the Commissioner shall be his responsibility. Aircraft and ships owned or operated by or on behalf of the Government of the United States shall be permitted to use the anchorage and airfield without the payment of any dues or charges.

(10) *Meteorology*

The Government of the United States shall operate a meteorological facility on Diego Garcia and supply such available meteorological information as may be required by the Government of the United Kingdom and the Government of Mauritius to meet their national and international obligations.

(11) *United Kingdom Service element*

The United Kingdom Service element on Diego Garcia shall be under the Command of a Royal Navy Officer who shall be known as the Officer-in-Charge of the United Kingdom Service element.

(12) *Finance*

(a) The Government of the United States shall bear the cost of developing, operating and maintaining the facility. However, in relation to United Kingdom personnel attached to the facility, the Government of the United Kingdom shall be responsible for their pay, allowances and any other monetary gratuities, for the cost of their messing, and for supplies or services which are peculiar to or provided for the exclusive use of the United Kingdom Services or their personnel and which would not normally be provided by the Government of the United States for the use of its own personnel.

(b) Except in relation to the United Kingdom Service personnel attached to the facility, logistic support furnished at Diego Garcia by either Government, upon request, to the other Government, shall be on a reimbursable basis in accordance with the laws, regulations and instructions of the Government furnishing the support.

(13) *Fisheries, oil and mineral resources*

The Government of the United Kingdom will not permit commercial fishing in the lagoon or oil or mineral exploration or exploitation on Diego Garcia for the duration of this Agreement. Furthermore, the Government of the United Kingdom will not permit

commercial fishing or oil or mineral exploration or exploitation in or under those areas of the waters, continental shelf and sea-bed around Diego Garcia over which the United Kingdom has sovereignty or exercises sovereign rights, unless it is agreed that such activities would not harm or be inimical to the defence use of the island.

(14) *Health, quarantine and sanitation*

The Commanding Officer and the Commissioner shall collaborate in the enforcement on Diego Garcia of necessary health, quarantine and sanitation provisions.

(15) *News broadcast station*

The Government of the United States may establish and operate a closed circuit TV and a low power radio broadcast station to broadcast news, entertainment and educational programmes for personnel on Diego Garcia.

(16) *Property*

(a) Title to any removable property brought into Diego Garcia by or on behalf of the Government of the United States, or by a United States contractor, shall remain in the Government of the United States or the contractor, as the case may be. Such property of the Government of the United States, including official papers, shall be exempt from inspection, search and seizure. Such property of either the Government of the United States or of a United States contractor may be freely removed from Diego Garcia, but shall not be disposed of within the British Indian Ocean Territory or Seychelles unless an offer, consistent with the laws of the United States then in effect, has been made to sell the property to the Commissioner and he has not accepted such offer within a period of 120 days after it was made or such longer period as may be reasonable in the circumstances. Any such property not removed or disposed of within a reasonable time after termination of this Agreement shall become the property of the Commissioner.

(b) The Government of the United States shall not be responsible for restoring land or other immovable property to its original condition, not for making any payment in lieu of restoration.

(17) *Availability of funds*

To the extent that the carrying out of any activity or the implementation of any part of this Agreement depends upon funds to be appropriated by the Congress of the United States, it shall be subject to the availability of such funds.

(18) *Representative of the Commissioner*

The Commissioner shall designate a person as his Representative on Diego Garcia.

(19) *Supplementary arrangements*

Supplementary arrangements between the appropriate administrative authorities of the two Governments may be made from time to time as required for the carrying out of the purposes of this Agreement.

(20) *Definitions and interpretation*

(a) For the purposes of this Agreement

“BIOT Agreement” means the Exchange of Notes dated 30 December 1966, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the availability of the British Indian Ocean Territory for defence purposes;

“Commanding Officer” means the United States Navy Officer in command of the facility;

“Commissioner” means the officer administering the Government of the British Indian Ocean Territory;

“Diego Garcia” means the atoll of Diego Garcia, the lagoon and the three islets at the mouth of the lagoon.

(b) Questions of interpretation arising from the application of this Agreement shall be the subject of consultation between the two Governments.

(c) The provisions of this Agreement shall supplement the BIOT Agreement and shall be construed in accordance with that Agreement. In the event of any conflict between the provisions of the BIOT Agreement and this Agreement the provisions of the BIOT Agreement shall prevail.

(21) *The Diego Garcia Agreement 1972*

This Agreement shall replace the Agreement constituted by the Exchange of Notes dated 24 October 1972 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning a limited United States naval communication facility on Diego Garcia, British Indian Ocean Territory.

(22) *Duration and termination*

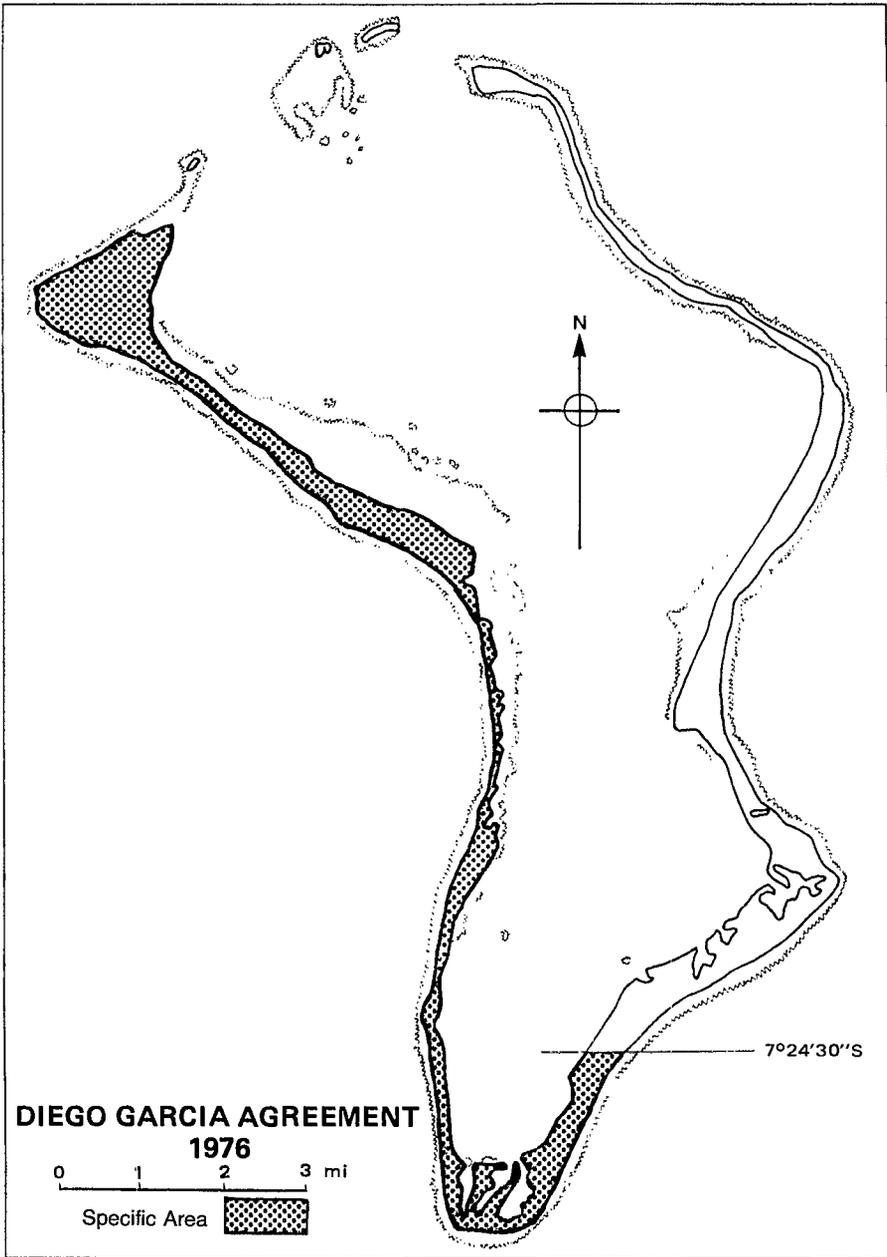
This Agreement shall continue in force for as long as the BIOT Agreement continues in force or until such time as no part of Diego Garcia is any longer required for the purposes of the facility, whichever occurs first.

2. If the Government of the United States of America also approves in principle the development of the facility subject to the above terms, I have the honour to propose that this Note and the plan annexed to it, together with your reply to that effect, shall constitute an Agreement between the two Governments which shall enter into force on the date of your reply and shall be known as the Diego Garcia Agreement 1976.

I have the honour to be with high consideration, Sir, Your obedient Servant

ROY HATTERSLEY

ANNEX



II

*The Chargé d'Affaires ad interim of the United States of America
to the Minister of State for Foreign and Commonwealth Affairs*

EMBASSY OF THE UNITED STATES OF AMERICA
LONDON

25 February 1976

Sir,

I have the honor to acknowledge receipt of your Note No. DPP 063/530/2 of 25 February 1976, which reads as follows:

[*See note I*]

I have the honor to inform you that the Government of the United States of America approves in principle the development of the facility subject to the terms set out in your Note, and therefore agree that your Note, and the plan annexed to it, together with this reply, shall constitute an Agreement between the two Governments which shall enter into force on today's date and shall be known as the Diego Garcia Agreement 1976.

Accept, Sir, the renewed assurances of my highest consideration.

RONALD I. SPIERS

Title: SUPPLEMENTARY ARRANGEMENTS¹ 1976
FOR DIEGO GARCIA FACILITY

PREAMBLE

Pursuant to paragraph 19 of the Diego Garcia Agreement 1976 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the United States Navy support facility on Diego Garcia, the Ministry of Defence (Navy) and the United States Navy (USN) have made the following supplementary arrangements:

Paragraph 1

Personnel. The USN will establish a manning level for the facility. Representatives of both administrative authorities will jointly decide which positions shall be filled by UK Service personnel. All personnel assigned to Diego Garcia will serve an unaccompanied tour of duty.

Paragraph 2

Military Command. The Officer-in-Charge of the UK Service element will, in matters relating to the operation of the facility, report to the Commanding Officer. The Commanding Officer and the Officer-in-Charge of the UK Service element will establish the manner in which orders and instructions will be complied with, which manner will be consistent with the concept of mutual respect for relative ranks. However, nothing in this paragraph is intended to require obedience to any command inconsistent with the obligation of their respective service laws nor to establish disciplinary power in either officer over members of the Armed Services of the other country.

Paragraph 3

Logistic Support. Subject to Paragraph 4 below, military personnel of both Governments will be entitled to use: upon the same terms and conditions, such recreational, accommodation and messing

¹ The two Parties agree that the Supplementary Arrangements and the related notes are not international agreements, nor part of the Agreement of 25 February 1976, and it is therefore their view that they do not qualify for registration under article 102 of the Charter. They are published for information at the request of the Government of the United States of America.

facilities as are available or as are established for military personnel by either Government. UK Service personnel serving with this facility will be entitled to send and receive mail through the United States Fleet postal system. The USN will, upon request, transport UK Service personnel to and from the facility from such places as may be agreed from time to time by the USN and the Ministry of Defence of the United Kingdom (MOD). For the purpose of such transport UK Service personnel may be accompanied by personal baggage which does not exceed a gross weight of 120 pounds per man. The USN will give sympathetic consideration to requests for transportation of official UK Service visitors. The USN will, upon request, provide such supplies and services on an equivalent basis with USN personnel as may be required by UK Service personnel serving with the facility on Diego Garcia. When these supplies and services are peculiar to the UK Services the MOD will make them available to the USN at a place or places agreed to by the MOD and the USN at the time.

Paragraph 4

Finance. The financial arrangements have been laid down in paragraph 12 of the Diego Garcia Agreement 1976, which reads as follows:

“(a) The Government of the United States shall bear the cost of developing, operating and maintaining the facility. However, in relation to United Kingdom Service personnel attached to the facility, the Government of the United Kingdom shall be responsible for their pay, allowances and any other monetary gratuities, for the cost of their messing, and for supplies or services which are peculiar to or provided for the exclusive use of the United Kingdom Services or their personnel and which would not normally be provided by the Government of the United States for the use of its own personnel.

(b) Except in relation to UK Service Personnel attached to the facility logistic support furnished at Diego Garcia by either Government, upon request, to the other Government, shall be on a reimbursable basis in accordance with the laws, regulations and instructions of the Government furnishing the support”.

Paragraph 5

Radio Frequencies and Telecommunications. The following procedures for obtaining the prior concurrence of the Government of the United Kingdom to the use of any radio frequencies, powers and band widths for radio services (including radar) on Diego Garcia which are necessary for the operation of the facility, and for international notification, will be followed:

- a. Prior to the assignment, or modification of an assignment, of any radio frequency on Diego Garcia, concurrence for the same will be obtained from the United Kingdom through the established military co-ordination channel. This channel is between the Joint Frequency Panel (J/FP), USMCEB and the Defence Signal Staff, Signals 2 (DSS 2) Ministry of Defence, United Kingdom.
- b. Upon obtaining such concurrence the United States will transmit to the International Frequency Registration Board (IFRB) notification of the assignment in accordance with existing US/UK frequency co-ordination procedures.

Paragraph 6

Aids to Navigation and Approach Control. The United States may use and maintain existing electronic navigation and landing aids, such as airport surveillance radar, ground controlled approach (GCA), Tacan and instrument landing systems (ILS). If in the future it should be necessary to make significant changes to the present electronic navigation and landing aids or to expand them significantly, this may be done subject to agreement between the MOD and the USN.

Paragraph 7

Scientific Research. If the Government of the United Kingdom wishes to grant access to Diego Garcia to members of scientific parties wanting to carry out research on Diego Garcia and its environs written notice will be given to the United States Department of State or the US Embassy in London at least four weeks prior to the intended visit. This notice will contain the following information:

- a. identification of visiting party, including nationality and names of all members of the party;
- b. scientific purpose;
- c. date of arrival and expected duration;
- d. areas to be utilised;
- e. activities to be conducted;
- f. equipment to be utilised;
- g. services requested from the facility.

Such notice and the response thereto will constitute the consultation referred to in sub-paragraph 3a of the Diego Garcia Agreement 1976. Scientific parties will, where necessary, be responsible for reimbursing the Government of the United States for any goods and services supplied to them by the USN.

Paragraph 8

Local Administration. The following matters have been authorised by the Commissioner BIOT:

- a. Drivers' Licences. United States or United Kingdom motor vehicle drivers' licences will be accepted as valid for the operation of all motor vehicles on Diego Garcia.
- b. Medical Services. US medical personnel may perform medical services in Diego Garcia of the same type which such persons are authorised to perform at United States military medical facilities without prior examination or revalidation of their professional certificate by the United Kingdom authorities, and such facilities will be made available to United Kingdom Service personnel. For the purposes of this paragraph, the term "US medical personnel" means the physicians, surgeons, specialists, dentists, nurses and other United States personnel in Diego Garcia who perform medical services, and other doctors of United States nationality or ordinarily resident in the United States employed or contracted in exceptional cases by the United States Forces.

c. Recreational Fishing. United States personnel and United Kingdom personnel are permitted reasonable recreational fishing on Diego Garcia and its environs without obtaining any licence or paying any fees. Such recreational fishing includes fishing from boats as well as from the shore.

Paragraph 9

Alteration. These Supplementary Arrangements may be altered at any time by the mutual consent of the parties hereto.

Paragraph 10

Interpretation. Unless the context otherwise requires, terms and expressions used herein will have the meanings assigned to them in the Diego Garcia Agreement 1976. In the event of any conflict between the provisions of these Supplementary Arrangements and of the Diego Garcia Agreement 1976 the latter will prevail.

For the Royal Navy:

[Signed]

R. D. LYGO
Vice Admiral

For the United States Navy:

[Signed]

D. H. BAGLEY
Admiral

Signed in duplicate at London, the twenty-fifth day of February 1976.

RELATED NOTES

I

No. 5

Sir:

I have the honor to refer to the Diego Garcia Agreement 1976, constituted by the Exchange of Notes of today's date between the Government of the United Kingdom of Great Britain and Northern

Ireland and the Government of the United States of America, supplementing the British Indian Ocean Territory Agreement (BIOT Agreement), effected by an Exchange of Notes between the two Governments dated December 30, 1966.

In accordance with the recent discussions between representatives of our two Governments, I have the honor to inform you that the Government of the United States of America, subject to the availability of funds, plans to undertake the following additional construction on Diego Garcia for the United States Navy support facility to be developed there:

<i>Item</i>	<i>Approximate Capacity or Size</i>
Expanded dredging for fleet anchorage	4,000 acres
Fuel and general purpose pier	550 feet of berthing
Runway extension	4,000 linear feet
Aircraft parking apron	90,000 square yards
Hangar	18,000 square feet
Air operating building addition	2,900 square feet
Transit storage building	4,000 square feet
Aircraft arresting gear	—
Storage petroleum, oil and lubricants	640,000 barrels
Power plant expansion	2,400 kilowatts
Vehicle repair hardstand	1,200 square yards
Subsistence building addition	3,600 square feet
Cold storage addition	4,200 square feet
Armed forces radio and television station	1,200 square feet
General warehouse addition	13,200 square feet
Utilities	—
Ready issue ammunition magazine	2,000 square feet
Protective open storage area for munitions	6,000 square yards
Bachelor enlisted quarters	277 men
Bachelor officers' quarters	32 men
Receiver building addition	1,300 square feet
Recreational facilities	(Scope to be determined)
Shed storage	7,100 square feet
Flammable storage	2,700 square feet
Navy exchange warehouse	5,400 square feet
Crash fire station	7,300 square feet
Structural fire station	3,000 square feet
Aircraft washrack	(Scope to be determined)
Aircraft ready issue refueler	(Scope to be determined)
Public works shops	16,600 square feet

The foregoing would be in addition to construction for the limited naval communications facility presently on Diego Garcia, regarding which information has previously been provided to United Kingdom authorities.

In the event that further construction should be planned for the facility, it would, of course, be understood that such construction would be subject to the provisions of paragraph 2(b) of the BIOT Agreement as well as paragraph 1 (a) or 1 (b), as appropriate, of the Diego Garcia Agreement 1976.

Accept, Sir, the renewed assurances of my highest regard.

RONALD I. SPIERS

The Rt. Hon. Roy Hattersley, M.P.
Minister of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
London, S.W.1

February 25, 1976.

II

FOREIGN AND COMMONWEALTH OFFICE
LONDON

25 February 1976

Sir,

I have the honour to acknowledge receipt of your letter of today's date concerning your Government's plans for construction in connection with the development of the present limited naval communications facility on Diego Garcia as a support facility of the United States Navy.

I note the additional construction planned by your Government and your statement concerning further construction. I confirm that your statement is in accordance with the understanding of my Government.

I have the honour to be with high consideration, Sir, Your obedient Servant

[Signed — Signé]¹

The Honourable Ronald I. Spiers
Embassy of the United States of America
London

¹ Signed by Roy Hattersley — Signé par Roy Hattersley.