

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 LIMITED UNITED STATES NAVAL COMMUNICATIONS FACILITY ON DIEGO GARCIA, BRITISH INDIAN OCEAN TERRITORY (WITH ANNEXED PLAN). LONDON, 24 OCTOBER 1972

Authentic text: English.

Registered by the United Kingdom of Great Britain and Northern Ireland on 11 April 1973.

I

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

FOREIGN AND COMMONWEALTH OFFICE¹
LONDON

24 October 1972

Note No. HKT 10/1

Sir,

I have the honour to refer to the Agreement constituted by the exchange of notes dated 30 December 1966,¹ 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. Pursuant to paragraph 2 (b) of that Agreement, I now convey the approval in principle of the Government of the United Kingdom to the construction of a limited naval communications facility on Diego Garcia 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 construct, maintain and operate a limited naval communications facility on Diego Garcia. The facility shall consist of transmitting and receiving services, an anchorage, airfield, associated logistic support and supply and personnel accommodation. For this purpose immovable structures, installations and buildings may be constructed within the specific area shown in the plan annexed 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.

(b) During the term of this Agreement the Government of the United States may conduct on Diego Garcia such functions as are necessary for the construction, maintenance, operation and security of the facility. For this purpose the Government of the United States shall have freedom of access to that part of Diego Garcia outside the specific area referred to in sub-paragraph (a), but 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.

¹ United Nations, *Treaty Series*, vol. 603, p. 273.

² Came into force on 24 October 1972, the date of the note in reply, in accordance with the provisions of the said notes.

(c) Delimitation of the specific area shall, subject to the provisions of the BIOT Agreement, in no way restrict the Government of the United Kingdom from constructing and operating their own defence facility within that area, provided that no technical interference to existing operations will result from such construction and operation.

(2) *Purpose*

The facility shall provide a link in United States defence communications and shall furnish improved communications support in the Indian Ocean for ships and state aircraft owned or operated by or on behalf of either Government.

(3) *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 state 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 state 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.

(4) *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.

(5) *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.

(6) *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.¹

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

(7) *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

¹ United Kingdom, *Treaty Series*, No. 74 (1961), Cmnd. 1484.

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.

(8) *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. State 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.

(9) *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.

(10) *Royal Navy element*

The Royal Navy 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 Royal Navy element. He shall be the Representative on Diego Garcia of the Commissioner.

(11) *Finance*

The Government of the United States shall wholly bear the cost of constructing, operating and maintaining the facility. The Government of the United Kingdom shall be responsible for the pay, allowances and any other monetary gratuities of Royal Navy personnel, for the cost of their messing, and for supplies or services which are peculiar to or provided for the exclusive use of the Royal Navy or its personnel and which would not normally be provided by the Government of the United States for the use of its own personnel.

(12) *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.

(13) *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.

(14) *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.

(15) *Property*

(a) Title to any movable 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, nor for making any payment in lieu of restoration.

(16) *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.

(17) *Restriction of rights*

The Government of the United States shall not exercise any of the above rights or powers, or permit the exercise thereof, except for the purposes herein specified.

(18) *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.

(19) *Definitions and interpretation*

(a) For the purposes of this Agreement

“BIOT Agreement” means the Agreement referred to in the first paragraph of this note;

“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) 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.

(20) *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.

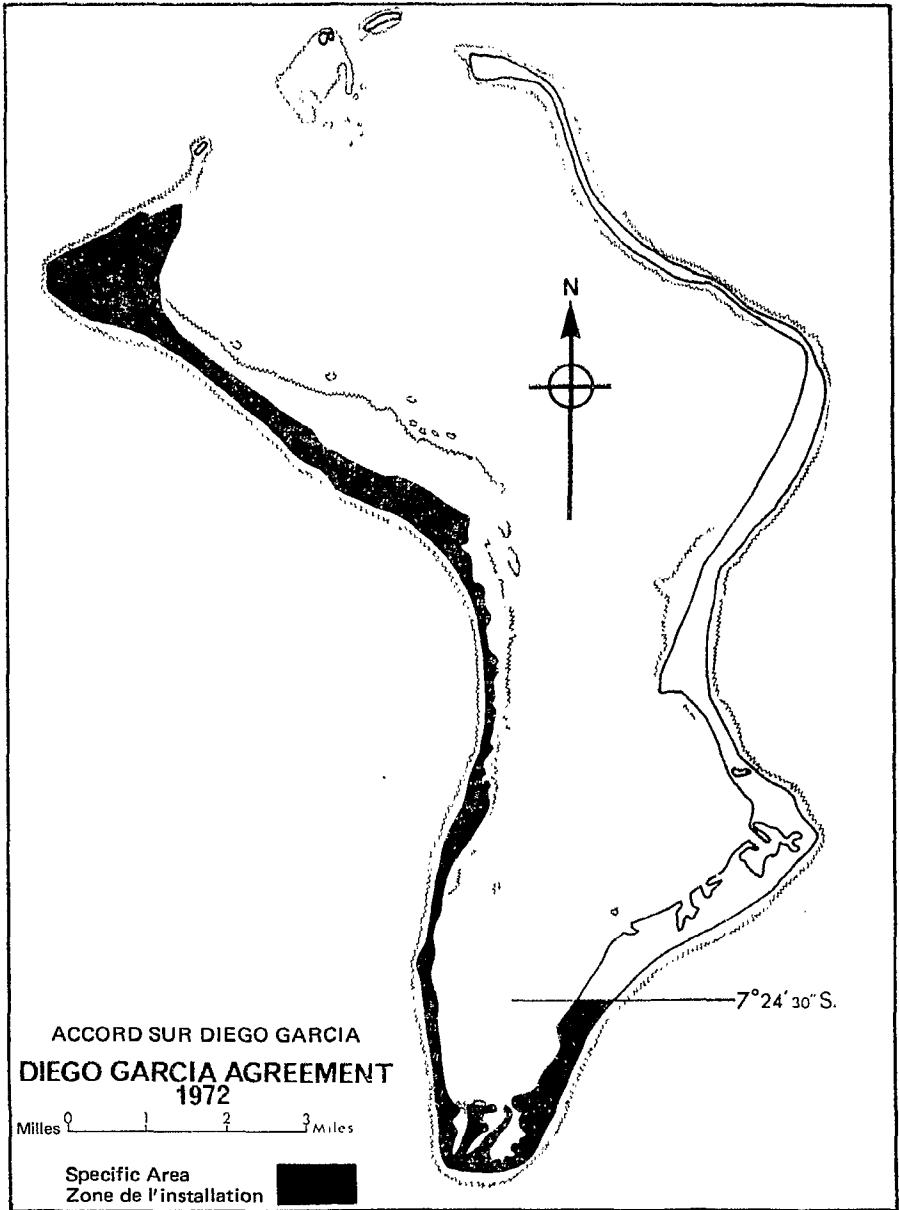
2. If the Government of the United States of America also approves in principle the construction of the facility subject to the above terms, I have the honour to propose that this note and the plan annexed to it, together with your reply to that effect, shall constitute an agreement between the two Governments which shall enter into force on the date of your reply and shall be known as the Diego Garcia Agreement 1972.

I have the honour to be with high consideration, Sir

For the Secretary of State:

ANTHONY KERSHAW

ANNEX



3057x (b)

TREATY NO.A-8737 (VOL.866)

II

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

EMBASSY OF THE UNITED STATES OF AMERICA
LONDON

October 24, 1972

No. 22

Sir,

I have the honor to acknowledge receipt of your note No. HKT 10/1 of October 24, 1972, 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 construction 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 1972.

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

EARL D. SOHM
Chargé d'affaires ad interim