

UNITED STATES
OF AMERICA



Treaty Series No. 19 (1976)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of America

concerning a United States Navy
Support Facility on Diego Garcia,
British Indian Ocean Territory

(The Diego Garcia Agreement 1976)

London, 25 February 1976

[The Agreement entered into force on 25 February 1976]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1976*

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EXCHANGE OF NOTES
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING A UNITED STATES NAVY SUPPORT FACILITY
ON DIEGO GARCIA, BRITISH INDIAN OCEAN TERRITORY

No. 1

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

Note No. DPP 063/530/2

Foreign and Commonwealth Office,
London.

Sir,

25 February, 1976.

I have the honour to refer to the Agreement constituted by 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⁽¹⁾ and to the Agreement constituted by the Exchange of Notes dated 24 October 1972 between the two Governments concerning a limited United States naval communications facility on Diego Garcia, British Indian Ocean Territory.⁽²⁾ 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.

(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

(1) Treaty Series No. 15 (1967), Cmnd. 3231.

(2) Treaty Series No. 126 (1972), Cmnd. 5160.

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, nor 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.

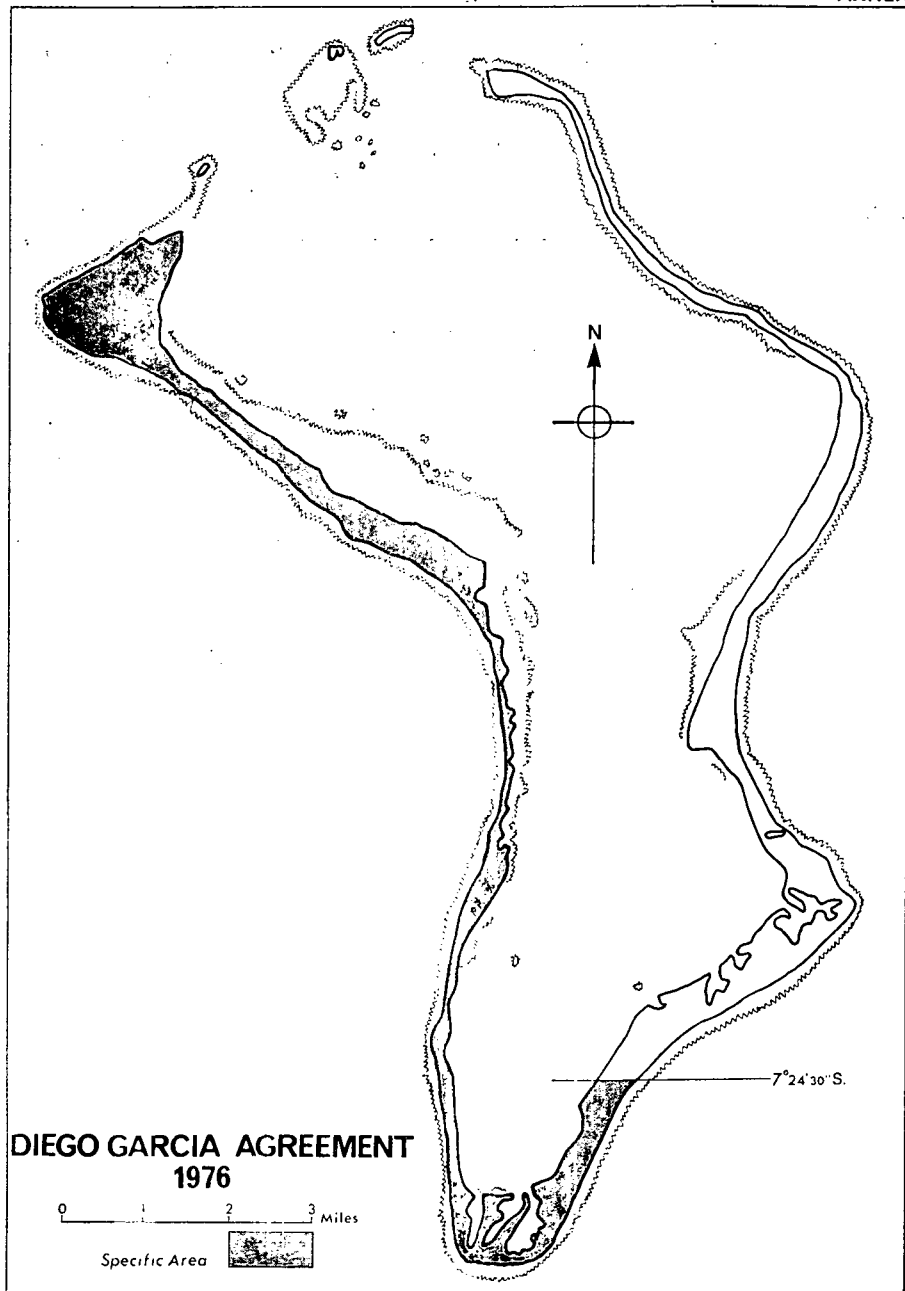
2. If the Government of the United States of America also approves in principle the development of the facility subject to the above terms, I have the honour to propose that this Note and the plan annexed to it, together with your reply to that effect, shall constitute an Agreement between the two Governments 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



No. 2

*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.*

Sir,

25 February 1976.

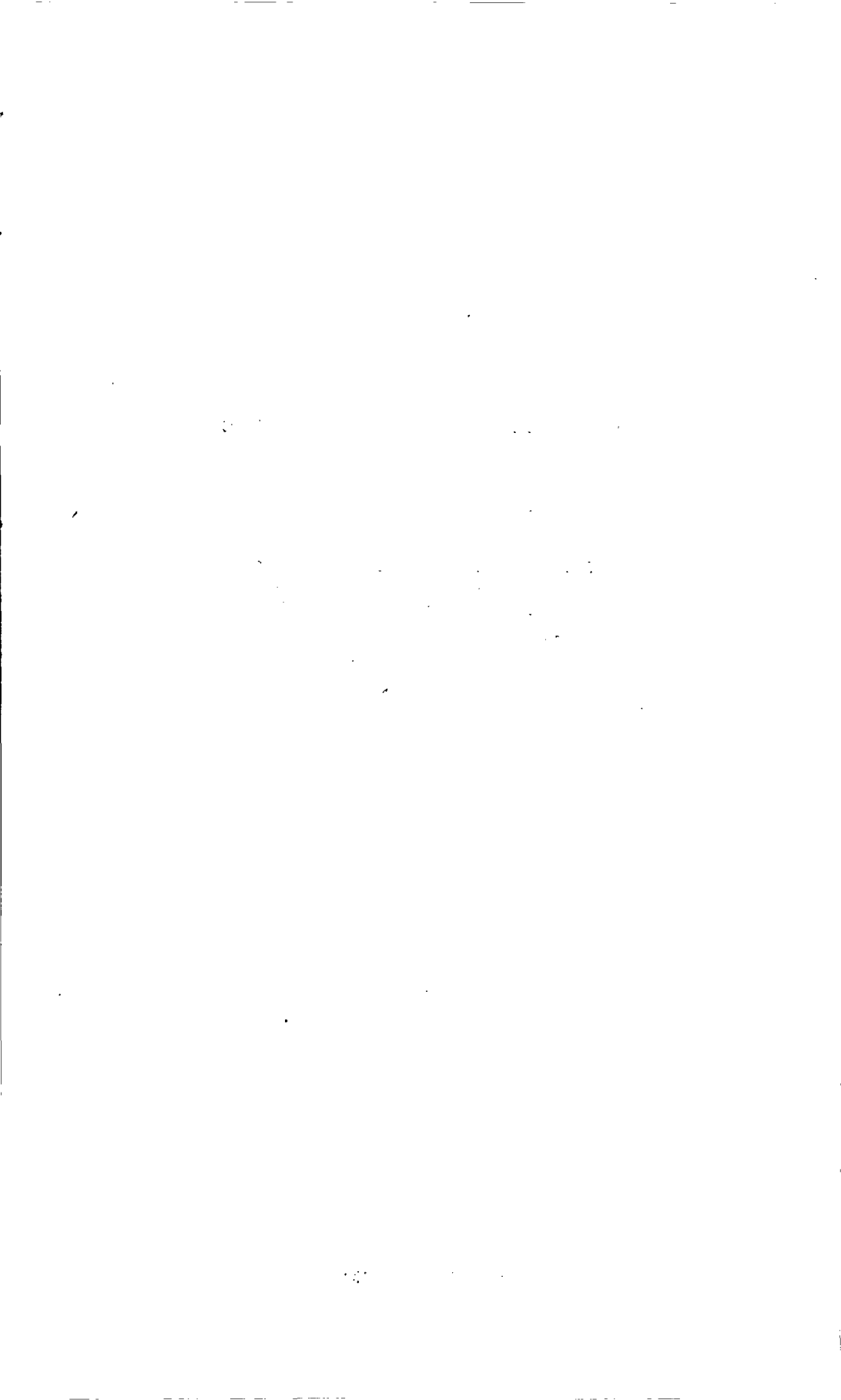
I have the honor to acknowledge receipt of your Note No. DPP 063/530/2 of 25 February 1976, which reads as follows:

[As in No. 1]

I have the honour 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



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