

UNITED
STATES



Treaty Series No. 15 (1967)

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 the Availability for Defence Purposes of the British Indian Ocean Territory

London, 30 December 1966

[The Agreement entered into force on signature]

*Presented to Parliament by the Secretary of State for Foreign Affairs
by Command of Her Majesty
April 1967*

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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 THE AVAILABILITY FOR DEFENCE PURPOSES
OF THE BRITISH INDIAN OCEAN TERRITORY**

No. 1

*The Ambassador of the United States of America to the Secretary
of State for Foreign Affairs*

Note No. 25

Sir,

London, 30 December 1966

I have the honor to refer to recent discussion between representatives of the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the availability, for the defense purposes of both Governments as they may arise, of the islands of Diego Garcia and the remainder of the Chagos Archipelago, and the islands of Aldabra, Farquhar, and Desroches constituting the British Indian Ocean Territory, hereinafter referred to as "the Territory". The United States Government has now authorized me to propose an Agreement in the following terms:

- (1) The Territory shall remain under United Kingdom sovereignty.
- (2) Subject to the provisions set out below the islands shall be available to meet the needs of both Governments for defense. In order to ensure that the respective United States and United Kingdom defense activities in the islands are correlated in an orderly fashion:
 - (a) In the case of the initial United States requirement for use of a particular island the appropriate governmental authorities shall consult with respect to the time required by the United Kingdom authorities for taking those administrative measures that may be necessary to enable any such defense requirement to be met.
 - (b) Before either Government proceeds to construct or install any facility in the Territory, both Governments shall first approve in principle the requirement for that facility, and the appropriate administrative authorities of the two Governments shall reach mutually satisfactory arrangements concerning specific areas and technical requirements for respective defense purposes.
 - (c) The procedure described in sub-paragraphs (a) and (b) shall not be applicable in emergency circumstances requiring temporary use of an island or part of an island not in use at that time for defense purposes provided that measures to ensure the welfare of the inhabitants are taken to the satisfaction of the Commissioner of the territory. Each Government shall notify the other promptly of any emergency requirements and consultation prior to such use by the United States Government shall be undertaken as soon as possible.

- (3) The United Kingdom Government reserves the right to permit the use by third countries of British-financed defense facilities, but shall where appropriate consult with the United States Government before granting such permission. Use by a third country of United States or jointly-financed facilities shall be subject to agreement between the United Kingdom Government and the United States Government.
- (4) The required sites shall be made available to the United States authorities without charge.
- (5) Each Government shall normally bear the cost of site preparation, construction, maintenance, and operation for any facilities developed to meet its own requirements. Within their capacities, such facilities shall be available for use by the forces of the other Government under service-level arrangements. However, there may be certain cases where joint financing should be considered, and in these cases the two Governments shall consult together.
- (6) Commercial aircraft shall not be authorized to use military airfields in the Territory. However, the United Kingdom Government reserves the right to permit the use in exceptional circumstances of such airfields, following consultation with the authorities operating the airfields concerned, under such terms or conditions as may be defined by the two Governments.
- (7) For its defense purposes on the islands, the United States Government may freely select United States contractors and the sources of equipment, material, supplies, or personnel, except that—
 - (a) the United States Government and United States contractors shall make use of workers from Mauritius and Seychelles to the maximum extent practicable, consistent with United States policies, requirements and schedules; and
 - (b) the appropriate administrative authorities of the two Governments shall consult before contractors or workers from a third country are introduced.
- (8) The exemption from charges in the nature of customs duties and other taxes in respect of goods, supplies and equipment brought to the Territory in connection with the purposes of this Agreement by or on behalf of the United States Government, United States contractors, members of the United States Forces, contractor personnel or dependents, and the exemption from taxation of certain persons serving or employed in the Territory in connection with those purposes, shall be such exemption as is set out in Annex I to this Note.
- (9) The arrangements regarding the exercise of criminal jurisdiction and claims shall be those set out in Annex II to this Note.
- (10) For the purpose of this Agreement:
 - (a) "Contractor personnel" means employees of a United States contractor who are not ordinarily resident in the Territory and who are there solely for the purposes of this Agreement;

- (b) "Dependents" means the spouse and children under 21 years of age of a person in relation to whom it is used; and, if they are dependent upon him for their support, the parents and children over 21 years of age of that person;
 - (c) "Members of the United States Forces" means
 - (i) military members of the United States Forces on active duty;
 - (ii) civilian personnel accompanying the United States Forces and in their employ who are not ordinarily resident in the Territory and who are there solely for the purpose of this Agreement; and
 - (iii) dependents of the persons described in (i) and (ii) above;
 - (d) "United States authorities" means the authority or authorities from time to time authorized or designated by the United States Government for the purpose of exercising the powers in relation to which the expression is used;
 - (e) "United States contractor" means any person, body or corporation ordinarily resident in the United States of America, that, by virtue of a contract with the United States Government, is in the Territory for the purposes of this Agreement, and includes a sub-contractor;
 - (f) "United States Forces" means the land, sea and air armed services of the United States, including the Coast Guard.
- (11) The United States Government and the United Kingdom Government contemplate that the islands shall remain available to meet the possible defense needs of the two Governments for an indefinitely long period. Accordingly, after an initial period of 50 years this Agreement shall continue in force for a further period of twenty years unless, not more than two years before the end of the initial period, either Government shall have given notice of termination to the other, in which case this Agreement shall terminate two years from the date of such notice.

If the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honor to propose that this Note and its Annexes, 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.

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

DAVID BRUCE.

ANNEX I

CUSTOMS DUTIES AND TAXATION

1. *Customs Duties and other Taxes on Goods*

(1) No import, excise, consumption or other tax, duty or impost shall be charged on:

- (a) material, equipment, supplies, or goods for use in the establishment, maintenance, or operation of the facilities which are consigned to or destined for the United States authorities or a United States contractor;
- (b) goods for use or consumption aboard United States public vessels or aircraft;
- (c) goods consigned to the United States authorities or to a United States contractor for the use of or for sale to military members of the United States Forces, or to other members of the United States Forces, or to those contractor personnel and their dependents who are not engaged in any business or occupation in the Territory;
- (d) the personal belongings or household effects for the personal use of persons referred to in sub-paragraph (c) above, including motor vehicles, provided that these accompany the owner or are imported either—
 - (i) within a period beginning sixty days before and ending 120 days after the owner's arrival; or
 - (ii) within a period of six months immediately following his arrival;
- (e) goods for consumption and goods (other than personal belongings and household effects) acquired after first arrival, including gifts, consigned to military members of the United States Forces, or to those other members of the United States Forces who are nationals of the United States and are not engaged in any business or occupation in the Territory, provided that such goods are:
 - (i) of United States origin if the Commissioner so requires, and
 - (ii) imported for the personal use of the recipient.

(2) No export tax shall be charged on the material, equipment, supplies or goods mentioned in paragraph (1) in the event of reshipment from the Territory.

(3) Article 1 of this Annex shall apply notwithstanding that the material, equipment, supplies or goods pass through other parts of the Territory en route to or from a site.

(4) The United States authorities shall do all in their power to prevent any abuse of customs privileges and shall take administrative measures, which shall be mutually agreed upon between the appropriate authorities of the United States and the Territory, to prevent the disposal, whether by resale or otherwise, of goods which are used or sold under paragraph (1)(c), or imported under paragraph (1)(d) or (1)(e), of Article 1 of this Annex, to persons not entitled to buy goods pursuant to paragraph (1)(c), or not entitled to free importation under paragraph (1)(d) or (1)(e). There shall be cooperation between the United States authorities and the Commissioner to this end, both in prevention and in investigation of cases of abuse.

2. *Motor Vehicle Taxes*

No tax or fee shall be payable in respect of registration or licensing for use for the purposes of this Agreement in the Territory of motor vehicles belonging to the United States Government or United States contractors.

3. *Taxation*

(1) No members of the United States Forces, or those contractor personnel and their dependents who are nationals of the United States, serving or employed in the Territory in connection with the facilities shall be liable to pay income tax in the Territory except in respect of income derived from activities within the Territory other than such service or employment.

(2) No such person shall be liable to pay in the Territory any poll tax or similar tax on his person, or any tax on ownership or use of property which is situated outside the Territory or situated within the Territory solely by reason of such person's presence there in connection with activities under this Agreement.

(3) No United States contractor shall be liable to pay income tax in the Territory in respect of any income derived under a contract made in the United States in connection with the purposes of this Agreement, or any tax in the nature of license in respect of any service or work for the United States Government in connection with the purposes of this Agreement.

ANNEX II

JURISDICTION AND CLAIMS

1. (a) Subject to the provisions of sub-paragraphs (b) to (d) of this paragraph,

(i) the military authorities of the United States shall have the right to exercise within the Territory all criminal and disciplinary jurisdiction conferred on them by United States law over all persons subject to the military law of the United States; and

(ii) the authorities of the Territory shall have jurisdiction over the members of the United States Forces with respect to offenses committed within the Territory and punishable by the law in force there.

(b) (i) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offenses, including offenses relating to security, punishable by the law of the United States but not by the law in force in the Territory.

(ii) The authorities of the Territory shall have the right to exercise exclusive jurisdiction over members of the United States Forces with respect to offenses, including offenses relating to security, punishable by the law in force in the Territory but not by the law of the United States.

(iii) For the purposes of sub-paragraphs (b) and (c), an offense relating to security shall include:

(aa) treason; and

(bb) sabotage, espionage or violation of any law relating to official secrets or secrets relating to national defense.

(c) In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(i) The military authorities of the United States shall have the primary right to exercise jurisdiction over a member of the United States Forces in relation to

(aa) offenses solely against the property or security of the United States or offenses solely against the person or property of another member of the United States Forces; and

(bb) offenses arising out of any act or omission done in the performance of official duty.

(ii) In the case of any other offense the authorities of the Territory shall have the primary right to exercise jurisdiction.

(iii) If the authorities having the primary right decide not to exercise jurisdiction, they shall notify the other authorities as soon as practicable. The United States authorities shall give sympathetic consideration to a request from the authorities of the Territory for a waiver of their primary right in cases where the authorities of the Territory consider such waiver to be of particular importance. The authorities of the Territory will waive, upon request, their primary right to exercise jurisdiction under this paragraph, except where they in their discretion determine and notify the United States authorities that it is of particular importance that such jurisdiction be not waived.

(d) The foregoing provisions of this paragraph shall not imply any right for the military authorities of the United States to exercise jurisdiction over persons who belong to, or are ordinarily resident in, the Territory, or who are British subjects or Commonwealth citizens or British protected persons, unless they are military members of the United States Forces.

(e) (i) To the extent authorized by law, the authorities of the Territory and the military authorities of the United States shall assist each other in the service of process and in the arrest of members of the United States Forces in the Territory and in handing them over to the authorities which are to exercise jurisdiction in accordance with the provisions of this paragraph.

(ii) The authorities of the Territory shall notify promptly the military authorities of the United States of the arrest of any member of the United States Forces.

(iii) Unless otherwise agreed, the custody of an accused member of the United States Forces over whom the authorities of the Territory are to exercise jurisdiction shall, if he is in the hands of the United States authorities, remain with the United States authorities until he is charged. In cases where the United States

authorities may have the responsibility for custody pending the completion of judicial proceedings, the United States authorities shall, upon request, make such a person immediately available to the authorities of the Territory for purposes of investigation and trial and shall give full consideration to any special views of such authorities as to the way in which custody should be maintained.

- (f) (i) To the extent authorized by law, the authorities of the Territory and of the United States shall assist each other in the carrying out of all necessary investigations into offenses, in providing for the attendance of witnesses and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authorities delivering them.
- (ii) The authorities of the Territory and of the United States shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

(g) A death sentence shall not be carried out in the Territory by the military authorities of the United States.

(h) Where an accused has been tried in accordance with the provisions of this paragraph and has been acquitted or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offense within the Territory. Nothing in this paragraph shall, however, prevent the military authorities of the United States from trying a military member of the United States Forces for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of the Territory.

(i) Whenever a member of the United States Forces is prosecuted by the authorities of the Territory he shall be entitled

- (i) to a prompt and speedy trial;
- (ii) to be informed in advance of trial of the specific charge or charges made against him;
- (iii) to be confronted with the witnesses against him;
- (iv) to have compulsory process for obtaining witnesses in his favor if they are within the jurisdiction of the Territory;
- (v) to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the Territory;
- (vi) if he considers it necessary, to have the services of a competent interpreter; and
- (vii) to communicate with a representative of the United States and, when the rules of the court permit, to have such a representative present at his trial which shall be public except when the court decrees otherwise in accordance with the law in force in the Territory.

(j) Where a member of the United States Forces is tried by the military authorities of the United States for an offense committed outside the areas used by the United States or involving a person, or the property of a person, other than a member of the United States Forces, the aggrieved party and representatives of the Territory and of the aggrieved party may attend the trial proceedings except where this would be inconsistent with the rules of the court.

(k) A certificate of the appropriate United States commanding officer that an offense arose out of an act or omission done in the performance of official duty shall be conclusive, but the commanding officer shall give consideration to any representation made by the authorities of the Territory.

(l) Regularly constituted military units or formations of the United States Forces shall have the right to police the areas used by the United States. The military police of the United States Forces may take all appropriate measures to ensure the maintenance of order and security within these areas.

2. (a) The Government of the United States of America and the Government of the United Kingdom respectively waive all claims against the other of them—

- (i) for damage to any property owned by it and used by its land, sea or air armed services if such damage—
 - (aa) was caused by a member of the armed services or by an employee of a Department with responsibility for the armed services of either Government in the execution of his duties or
 - (bb) arose from the use of any vehicle, vessel or aircraft owned by either Government and used by its armed services provided either that the vehicle, vessel or aircraft causing the damage was being used in connection with official duties, or the damage was caused to property being so used.
 - (ii) For injury or death suffered by any member of its armed services while such member was engaged in the performance of his official duties.
 - (iii) For the purpose of this paragraph “owned” in the case of a vessel includes a vessel on bare boat charter, a vessel requisitioned on bare boat terms and a vessel seized in prize (except to the extent that the risk of loss or liability is borne by some person other than either Government).
- (b) (i) The United States Government shall, in consultation with the Government of the Territory, take all reasonable precautions against possible danger and damage resulting from operations under this Agreement.
- (ii) The United States Government agrees to pay just and reasonable compensation, which shall be determined in accordance with the measure of damage prescribed by the law of the Territory, in settlement of civil claims (other than contractual claims) arising out of acts or omissions of members of the United States Forces

done in the performance of official duty or out of any other act or omission or occurrence for which the United States Forces are legally responsible.

- (iii) Any such claim presented to the United States Government shall be processed and settled in accordance with the applicable provision of United States law.

No. 2

The Secretary of State for Foreign Affairs to the Ambassador of the United States of America

Foreign Office,

London, 30 December, 1966

Your Excellency,

I have the honour to acknowledge receipt of your Note No. 25 of the 30th of December, 1966, which reads as follows:

[As in No. 1]

I have the honour to inform Your Excellency that the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who therefore agree that Your Excellency's Note, together with the Annexes thereto and this reply, shall constitute an Agreement between the two Governments which shall enter into force on this day's date.

I have the honour to be, with
the highest consideration,
Your Excellency's obedient Servant,
(For the Secretary of State)

CHALFONT.

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