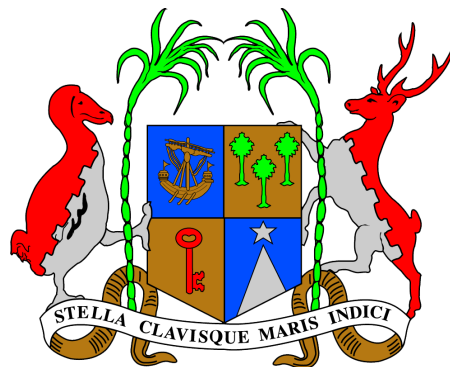


ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF MAURITIUS

v.

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**



MEMORIAL OF THE REPUBLIC OF MAURITIUS

VOLUME II

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1 August 2012

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Concerning the Availability for Defence Purposes of the “British
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ANNEX 46

No. 8737

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
UNITED STATES OF AMERICA**

**Exchange of notes constituting an agreement concerning the
availability for defense purposes of the British Indian
Ocean Territory (with annexes). London, 30 December
1966**

Official text: English.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
22 August 1967.*

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
ÉTATS-UNIS D'AMÉRIQUE**

**Échange de notes constituant un accord en vue de rendre
disponible, à des fins de défense, le Territoire britannique
de l'océan Indien (avec annexes). Londres, 30 décembre
1966**

Texte officiel anglais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le
22 août 1967.*

ANNEX 46

No. 8737. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ 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

I

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

Note No. 25

London, 30 December 1966

Sir,

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

¹ Came into force on 30 December 1966 by the exchange of the said notes.

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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.

ANNEX 46

(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.

ANNEX 46

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 I 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.

ANNEX 46

(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.

ANNEX 46

(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

ANNEX 46

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

ANNEX 46

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.

ANNEX 46

290

United Nations — Treaty Series

1967

II

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:

[*See note I*]

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

ANNEX 47

UK Mission to the United Nations, New York, Telegram No. 60 to
the UK Foreign Office, 21 April 1967

Mr. Bailloud

This point may be worth
noting by you - there is no Charter
requirement
applicable to
Mauritius & Seychelles
BY BAG

Mr. Holden
26
SAVING TELEGRAM 7iv

John
Is he confusing 1514 &
the Charter, or is there a
Charter requirement?
Article 2(4) of
32

NEW YORK (U.K. MISSION TO THE U.N.) TO FOREIGN OFFICE

Telno. 60 Saving 21 April, 1967

UNCLASSIFIED
BUILD

Mr. Braden
28/4
copy (B.I.O.T.) Mr. B.

Mr. 2(4): but this
depends on a confusion between
"state" and "territory" or "people"

Addressed to Foreign Office telegram No. 60 Saving of which we are
21 April, repeated for information Saving to Governor Mauritius air pails
No. 3, Governor Seychelles No. 3, New Delhi No. 6 and Washington to avoid
No. 165.

My telegram No. 56 Saving: Committee of 24: Sub-committee I -
Mauritius, Seychelles, St. Helena.

At yesterday's meeting Diakite (Mali) questioned the assertion
that constitutional progress in the territories represented even
partial implementation of Resolution 1514. The Charter require-
ment of respect for territorial integrity had not been observed.
The decision of the Mauritius Conference had imposed unnecessary
delays and conditions before independence (e.g. elections and a
resolution of the new house). The electorate was only a small
proportion of the population, the high proportion of persons under
age 21 being disenfranchised. The electoral system contained
unusual features whose real object seemed to be to distort
election results.

Mr. B
16/5

2. Miss Sinegiorgis (Ethiopia) said little had been done to
implement numerous United Nations resolutions. Delays in holding
elections in Mauritius were regrettable and she appealed to the
United Kingdom to hold these elections forthwith. There was
hardly any political or economic advance in the other two terri-
tories. The Deverell report on the Seychelles wrongly excluded
independence as a potential final status since the people of
Seychelles were anxiously awaiting full independence.

3. Jouejati (Syria) requested more information about the kilowatt
output and uses of hydro-electric stations in Mauritius. Why
should there be unemployment when a vast development programme
could employ everyone? On BIOT he asked if the so-called facil-
ities which had been constructed had the truly free consent of
the Mauritian people who owned the islands. Was there wage
discrimination between Europeans and indigenous inhabitants?

4. In reply Shaw (United Kingdom) made the following points:-

(a) The need for elections before a decision on independence
in Mauritius stemmed from disagreement between Mauritian
parties at the 1965 Conference about the desirability of
independence and the need for popular consultations on
this issue.

(b) The delay

Mr. B
7/5

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A. S. No. 3
- 3 MAY 1967
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U.K. Mission New York telegram No. 60 Saving to Foreign Office

- 2 -

- (b) The delay in elections resulted mainly from disagreement over the electoral system. On timing of elections he quoted the joint statement of 20 December 1956.
 - (c) On the voting age in Mauritius he recalled that the 1965 Conference had agreed to keep the existing franchise qualifications unchanged. This was thus a decision of the elected leaders in Mauritius. 21 was an accepted minimum age for the franchise in many parts of the world.
 - (d) On possible wage discrimination he pointed out that there were no indigenous peoples, and no such distinction between sections of the population.
 - // (e) No decisions had been taken on facilities in BIOT.
5. Diakite repeated his objections to any precondition for independence which looked like a manoeuvre for delay. Independence could have been granted straight after the Conference. The exclusion of voters under 21 favoured the Europeans and thus the PMSD which opposed independence.
6. In reply Shaw again explained the justification for requiring elections in Mauritius before a decision on independence and pointed out that the PMSD derived support for its anti-independence platform from those of African descent as well as from Europeans and others. A resolution by the legislature was a normal democratic procedure when a country was deciding its ultimate status.
7. Ustinov (USSR) supported Mali's points especially on the voting age. The United Kingdom had obviously not decided to abandon its military plans for BIOT and these were causing growing concern in many countries including India.
8. Shaw commented that the voting age was less important than the fact that the people of Mauritius enjoyed a choice of candidates and alternative party policies. It was for the Indian delegation to make known the Indian Government's views.

Lord Caradon

Recd. 22 April

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ANNEX 48

Minute dated 12 May 1967 from the Secretary of State for Defence
to the Foreign Secretary, FO 16/226

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MINISTRY OF DEFENCE

MAIN BUILDING, WHITEHALL, LONDON, S.W.1

TELEPHONE WHITEHALL 7022

OC 10/4

FOREIGN SECRETARY

RECEIVED IN ARCHIVES No. 56 13 JUN 1967 Dy 6/2/1.
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When the British Indian Ocean Territory was set up in November 1965, we made arrangements to compensate Mauritius for the separation of Chagos Archipelago, and to build an airfield in Seychelles in respect of the separation from it of the other islands which comprise B.I.O.T. These two items and the purchase of land, and the resettlement of the inhabitants, and other contingent expenses were estimated to come to about £10 million. The U.S. Government was approached by us with a view to making a contribution, and in the summer of 1965 they agreed to waive a payment due by us to them in connection with the development of Polaris - up to £5 million or half the costs incurred, whichever was the less. But they insisted that their contribution should be kept secret, since they said that public knowledge that a U.S. subsidy was being made in respect of a British Colonial Territory would embarrass them in Congress. We accepted this, and have faithfully observed it. We and the Americans have just (simultaneously) published the White Paper (Cmd. 3231) on the availability of B.I.O.T. for defence purposes. It contained no mention of any American payment or contribution.

2. In the course of preparing joint press briefing with the Americans for the White Paper it emerged that whereas we would propose, if pressed, to maintain the firm line that there has been no American contribution, the U.S. were not prepared to go thus far. They told us that they would be prepared to say in public that no payment had been made, but that, if pressed, they would have to admit a contribution. They think they would have to disclose this because some U.S. scientists seem to be aware of the U.S. financial participation and have mentioned a figure of \$14 million. (We had assumed that their information arose from a recent disclosure but it is possible that they recalled a reference to a U.S. contribution for B.I.O.T. in a May 1965 article in the Washington Post.) Our Embassy advises that there is no hope of securing American agreement to going beyond this position.

3. This is

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TOP SECRETU. EYES ONLY

3. This is embarrassing because we took steps to secure the agreement of the Comptroller and Auditor General that there was no need to draw Parliament's attention to the transaction. There is no record of it in the Navy and (now) Ministry of Technology Votes, as, in effect, we simply reduced some of our Polaris payments. Furthermore, when the Prime Minister saw the Premier of Mauritius in September 1965 he made the point as a counter to suggestions that U.S. were involved in these defence arrangements and that they should therefore help Mauritius and Seychelles, that this was a matter between Britain and Mauritius. (The issue of compensation has since grown larger in Mauritius politics and if the U.S. contribution became known there might not only be charges of bad faith, but also requests for further compensation.) Also Mr. Mayhew knew of this when he was Minister (RN) and told me of his misgivings about the secret arrangement. The situation is therefore potentially so embarrassing, if it breaks on either side of the Atlantic, that we must have a clear understanding with the U.S. Government as to how we handle it.

4. The approach to the U.S. Government has not yet been made at a very high level. I would like to suggest that this now be done, on the basis that either

a. we stick to the agreed line, which is literally true, that there has been no American payment. (We should make clear that in this country no payment would be taken to mean no contribution.)

Or

b. If the Americans are not prepared to accept and adhere firmly to this line, then we should not wait until either Government is questioned on the project but should both volunteer agreed statements. The timing and content of the statement would need careful consideration but so far as we are concerned I think the best course would be to describe the arrangement in full since any half measures would expose us to the risk of having to disclose further information piecemeal under pressure. We should also have to explain why the arrangement had not been published earlier and on this we should have to look to the Americans to provide the explanation.

5. The approach

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TOP SECRETU. K. EYES ONLY

5. The approach to the Americans will have to be carefully presented and I attach a possible form of words which might go to our Embassy at Washington. I hope you will agree to this course. If so, perhaps you would instruct our Embassy in Washington accordingly.
6. I have sent copies of this minute to the Prime Minister, Chancellor of the Exchequer, Commonwealth Secretary, Minister of Technology, and Sir Burke Trend.

Dwy.

12th May, 1967.

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DRAFT TELEGRAM TO: WASHINGTON FROM FOREIGN OFFICE.

B.I.O.T. Financing.

Personal for Ambassador.

I am still concerned about the American attitude. For your personal information, in order to meet the American request for secrecy over the financial agreement, we made arrangements, with the consent of the Comptroller and Auditor-General, to exclude any reference to the remission of part of a Polaris payment, in the relevant votes submitted to Parliament. Furthermore, in pursuance of the thesis that there was no U.S. contribution the Prime Minister had to uphold this line in rejecting Mauritian demands for increased compensation. You will see therefore that the issue is one of immense potential embarrassment.

While I do not wish you to go into these details with the U.S. Government, I would nevertheless like you to see Dean Rusk personally and say that if the Americans under pressure reveal the existence of the financial agreement then we should be in acute Parliamentary and constitutional difficulties. If the Americans are prepared to stick to the line that "there has been no American payment", we can accept this, but only on the understanding that it is equivalent in this country to saying that there has been no American contribution. This last we are also prepared to say.

If the Americans feel that they cannot stick to this line under pressure, then our view is that we should both volunteer agreed statements at a time to be agreed. We should not repeat not wait until one of us is under pressure to reply to questions. As regards the contents of the statement, our preference would be to reveal the arrangement in full since any half-measures would run the risk of our both having to disgorge further information piecemeal under pressure. We should look to the Americans to provide the explanation of why the arrangement had not been revealed earlier.

/As

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As regards American anxiety about the knowledge displayed by U.S. scientists, we have recently learnt of an article by Easterbrook in the Washington Post on 9th May 1965 (repeat 9th May 1965) which specifically refers to the possibility of a U.S. contribution, and mentions the total figure of 28 million dollars. It is possible that the scientists obtained their figure from this source, although we cannot rule out the disturbing possibility of a more recent leak.

ANNEX 49

Minute dated 22 May 1967 from a Colonial Office official, A. J. Fairclough, to a Minister of State, with a Draft Minute appended for signature by the Secretary of State for Commonwealth Affairs addressed to the Foreign Secretary, FCO 16/226

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6/2/1 (A9)

Minister of State

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ARCHIVES No. 56
24 MAY 1961

B.I.O.T.

Angle-U.S. Defence Agreement
Secret financial arrangements

You are already aware I believe, that there has recently been correspondence with the Americans about what should be said in reply to questions about the existence of a United States contribution towards the costs involved in establishing British Indian Ocean Territory. This has revealed a serious disagreement between ourselves and the Americans on the extent to which the secret American contribution should be concealed. The Americans, it seems, are not now prepared in all circumstances to deny that they have contributed to the cost (up to £5m. or half the cost whichever is the less) of establishing B.I.O.T.

2. The Americans have from the beginning attached the greatest importance to the maintenance of secrecy about this arrangement and the fact that they now seem to be changing their attitude is not only surprising but must be seriously disturbing for Ministers. The Minister of Defence, whose departmental votes benefit from the American contribution, is directly involved. So too, for reasons I will develop, are the Prime Minister and our Secretary of State.

3. The Secretary of State for Defence has sent the attached minute dated May 12 to the Foreign Secretary. Paragraph one of the note gives the background to the U.S. contribution and refers to some evidence that there may already have been a leakage. The likely consequences of disclosure of the American contribution are set out in paragraph 3 of the note, which in our view provides a fair though not a very full assessment of the more damaging results which may be expected.

4. From the D.T.D. point of view the following considerations need to be borne in mind.

(A) The fact that what amounted to the final acquiescence of Mauritius to the terms of the B.I.O.T. financial settlement occurred at a discussion between the Prime Minister and Sir Sesoosagur Ramgoolam in September 1963. The record of the discussion is attached.

/(B)

cc. to
S. of S.'s
Pts. Off.
Sir S.
Garner
Sir A.
Galsworthy
Mr. Trafford
Smith
Gen. McNeill
Mr. K.C.
Christofas
Mr. Fair-
clough

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- (B) The political repercussions in Mauritius of disclosure, which could be very serious indeed. The compensation agreement, although in its early stages negotiated by the M.L.P. and P.M.S.D. leaders when both were in coalition, eventually was the rock on which the alliance was wrecked. It was precisely because they held that compensation was set too low at \$3m. and should have been supplemented by the Americans, that the P.M.S.D. broke with the M.L.P. to go into opposition at the end of 1965.
- (C) The considerable likelihood of a demand for substantial additional compensation following disclosure together with, in all probability, renewed pressure from Mauritius on the Americans for sugar and immigration quotas.

5. In paragraph 4 of his minute the Secretary of State for Defence proposes that the Americans should be urged to agree either to continued secrecy in all circumstances, or to full admission of the facts by both Governments at their own time in voluntary statements to be agreed between them. This represents in effect an ultimatum to the Americans to agree to nothing less than a 100% denial in all conceivable circumstances. If the apparent brutality of this choice forces the Americans to agree unreservedly to secrecy all should be well. But it seems probable that the Americans would be quite unprepared to agree to an cut and out denial and might prefer disclosure.

6. The line taken by the Secretary of State for Defence may well be sound in its assumption that there is no suitable middle course between concealment and truth. If, however, following this uncompromising line leads in the end to disclosure (and this seems likely in view of the American attitude) then we must clearly do all we can to ensure that the adverse effects of disclosure, so far as Mauritius and Seychelles are concerned, are mitigated so far as this is possible.

7. It is extremely difficult to suggest means whereby, if in the end of the day full disclosure is decided upon, the adverse consequences in Mauritius (and to a lesser extent Seychelles) can be avoided. It would in any case be essential that before any disclosure were made something should be said to the Premier of Mauritius Sir Seewoosagur Ramgoolam. Bearing in mind the vehemence with which he, together with

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his ministerial colleagues, argued at the time (in September 1965) for very much larger compensation for the separation from Mauritius of the Chagos Archipelago, and bearing in mind also that the then All-Party Government broke up over the very question of the quantum of compensation, one is forced to the almost inevitable conclusion that the only way of making palatable a disclosure that in fact H.M.G. had been assisted as to 50% by the Americans would be to offer additional compensation. If this were not done, then the Premier would be held up to ridicule in the forthcoming election campaign for having been "gagged" by the British and would again be attacked for having sold Chagos too cheaply in order to secure the agreement of the British Government that Mauritius should proceed to independence.

8. In all the circumstances, and if disclosure is decided upon, the only course which seems likely to avoid a major row with the present Mauritius Government and a major electoral set-back for the Premier and his Party is that he should be approached ahead of any announcement and informed that we have been able to secure agreement to some American contribution to the cost of establishing the British Indian Ocean Territory and that in these circumstances we are glad, in agreement with the Americans, to be able to go somewhat further to meet the representations made by the Premier when the matter was negotiated for a larger quantum of compensation. Since, if there were full disclosure, it would become known that the United States had in fact contributed 50% of the total costs, there is no doubt that the Premier (who very reluctantly accepted £3m. when he thought that Britain was paying in full) would expect this to be at least doubled.

9. As to Seychelles, there would also be difficulties although they would not be likely to be so acute. By way of compensation for the Seychelles island forming part of the British Indian Ocean Territory we offered to build Seychelles an airfield. We had in mind at the time a total cost of £3½m. although no figure was mentioned to Seychelles. We still have not got firm estimates for the cost of building an international airfield in the Seychelles (the report of an M.P.E.W. Survey party is awaited) but the strong probability ^{now seems to be} is that the total cost would be more like double this figure. The Ministry of Defence, who bore all the establishment costs of British Indian Ocean Territory on their Vote (and also received the relief from the American contribution) have so far firmly insisted that their contribution to the cost of the /airfield

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airfield is limited to £5½m. Our view has been that they should meet the full costs of building whatever airfield is decided upon but we have refrained from doing battle with them on this pending the receipt of the Survey Party's report and reliable estimates of cost. If the cost of building the fullscale airfield we should like to see constructed is indeed, as we expect, something of the order of £6m. to £7m., then a possible line with unofficial members of the Executive Council in Seychelles would be to say that when we offered to construct an airfield by way of compensation for their agreement to the separation of former Seychelles islands to form part of B.I.O.T., we had envisaged that this could be done at a cost of some £3m. We have now ^{think however} found that the cost is ^{likely} going to be *considerably* more than double this. We have however been fortunate in securing an American contribution towards the cost of establishing B.I.O.T., and in view of this will still be able to proceed with the construction of the airfield despite its greatly increased cost.

10. I am convinced that if we are to avoid strongly adverse reactions in Mauritius and Seychelles, in the event of disclosure, including plausible accusations of bad faith on the part of the British Government also (from Mauritius) on the part of the Prime Minister, we must:-

- (a) inform the two governments in advance of disclosure of the situation, and
- (b) offer increased compensation to them in view of the American contribution taking the form of additional cash to Mauritius and, in the case of Seychelles, continued willingness to build the airfield despite its greatly increased cost.

11. I suggest that the Secretary of State should be invited to comment on the minute of 12 May by the Secretary of State for Defence as in the attached draft.

12. In view of the absence of Sir Arthur Galsworthy and Mr. Trafford Smith and of the urgency of the matter I am submitting direct to you. I am sending copies at the same time to Defence Department and to the Secretary of State's Private Office.

(A. J. Fairclough)

Dependent Territories Division
Pacific & Indian Ocean Department
22 May, 1967

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DRAFT MINUTE

(For signature by
the Secretary of
State for
Commonwealth Affairs)

FOREIGN SECRETARY

I am very concerned at the proposal made in paragraph 4 of the minute addressed to you on 12 May by the Secretary of State for Defence about the arrangements for compensation to Mauritius and Seychelles in connection with the establishment of the British Indian Ocean Territory. I foresee acute embarrassment in our relationship with Mauritius (which, depending upon the outcome of the forthcoming election, is likely to become a full member of the Commonwealth) and, to a lesser extent, with Seychelles, if there is disclosure of the 50% American contribution to the establishment costs of British Indian Ocean Territory.

2. My predecessors and I and officials both in the territories and in the then Colonial Office insisted throughout in discussions on the question of compensation that this was a matter between the territories and the British Government. This insistence was in the face of quite understandable demands that, since the United States was to benefit from the British Indian Ocean Territory and since both Mauritius and Seychelles were in considerable need of assistance of various sorts, the Americans should be pressed to contribute. We resisted this strongly and, as the Secretary of State for Defence points out, the Prime Minister himself flatly told the Premier of Mauritius that the

/matter

Copies to:

Prime Minister
Chancellor of the
Exchequer
Secy. of State for
Defence
Minister of
Technology
Sir Burke Trend
Sir Arthur Galworthy
Mr. Trafford Smith
Mr. Fairclough

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matter was one between Britain and Mauritius. There is no doubt that the Premier believed that the full amount of the compensation paid to Mauritius was being found by Britain.

3. Subsequently the Premier was vigorously attacked by the present opposition party in Mauritius for having agreed to the separation of Diego Garcia for far too little by way of compensation and the then All-Party Government finally broke up over this point. The critical election which will determine whether or not Mauritius is to become independent is due within the next few months and the question of the amount of compensation for the Chagos Archipelago is likely to be raised by the opposition party as one of the matters on which they will attack the Premier's record. If, particularly at this time therefore, it were to be disclosed that the United States had in fact indirectly met half of the establishment cost of British Indian Ocean Territory, there would be bound to be a major row with the present Mauritius Government which would certainly find such a disclosure extremely embarrassing electorally. It is wellnigh certain that accusations would be made that the British Government and the Prime Minister personally, had deliberately deceived the Mauritius Government in order to secure their agreement to the separation from Mauritius of the Chagos Archipelago at a low level of compensation.

4. For these reasons I should very much prefer to see the line so far of keeping the American contribution to the establishment costs of B.I.O.T. completely secret firmly adhered to. If however the Americans are unwilling to agree to stick to this in all circumstances, then I am inclined to agree with

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the Secretary of State for Defence that half-measures would be liable to get us into even greater complications and that in the circumstances we should try to persuade the Americans to agree to a voluntary disclosure of the arrangements. If however this were to be tolerable from the point of view of our relations with Mauritius and Seychelles, I am convinced that certain actions relating to these territories would be essential.

5. Against the background of pressure at the time on the part of Mauritius for greater compensation, the situation could in my view only be made tolerable, in the circumstances of disclosure, if additional compensation were offered. Since it would become plain that half the costs were being met by the United States, and since Mauritius only agreed with the utmost reluctance to compensation limited to £3m. when it was thought that Britain was meeting the full amount, I cannot see that anything less than a doubling of the compensation paid to Mauritius would have any chance of avoiding the adverse consequences referred to above.

6. It would be essential that the Governors of the two territories should be authorised to speak to the unofficial members of their governments before any disclosure were made. I envisage that the approaches - which would need to differ as between the two territories - should be on the following lines:-

- (a) Seychelles. Unofficial members of the Executive Council should be reminded of the agreement on the part of the British Government to construct an airfield in Seychelles. At the time that this
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offer was made it was envisaged that the cost of doing so might be of the order of £3m. It now seemed likely - although precise estimates were not yet available - that the cost would be very considerably greater. We had now however been fortunate in securing a 50% American contribution to the establishment costs of British Indian Ocean Territory which was to be announced shortly and were glad to be able to confirm that, despite the greatly increased estimated cost, construction of the airfield would proceed as planned.

- (b) Mauritius. The Premier should be reminded that Britain had not felt able to meet his demand for compensation of the Chagos Archipelago beyond the amount of £3m. agreed in September 1965. At that time we had expected that it would be possible to construct the airfield which we had undertaken to provide by way of compensation for Seychelles for about the same sum. We had however been fortunate in securing United States agreement to a 50% contribution to the establishment costs of British Indian Ocean Territory and this fact was to be announced shortly. At the same time the likely costs of the Seychelles airfield had mounted considerably. In the light of these factors we had been giving further consideration to the situation

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and to the level of compensation and were glad to be able to tell the Premier that in all the circumstances we were now able to increase the amount to £6m.

7. There is a further important consideration which arises and that is the question of possible international reactions if disclosure is decided upon and if, following on this, there are strongly adverse reactions from Mauritius and Seychelles. It has throughout been a central point in our defence of the arrangements made in the establishment of the British Indian Ocean Territory that the separation from Mauritius and Seychelles of the islands now forming part of the Territory was done with the agreement of the Governments of Mauritius and Seychelles. Even so, we met, and have continued to meet ^{some will} (strong) opposition to the whole enterprise in Commonwealth and foreign countries and in the United Nations. If, following on disclosure, there were strongly adverse reactions in Mauritius and Seychelles, we should be in a much worse position than we have so far in handling matters concerning British Indian Ocean Territory on the international scene. This is an added reason why in my view action on the lines recommended above would be necessary if disclosure of the American contribution is eventually decided upon.

8. I have not so far consulted the Governors of Mauritius and Seychelles on this matter but I think it essential to do so before any approach to the Americans on the lines of the draft attached to the minute of 12 May by the Secretary of State for Defense is made. Before doing so however, I felt it right to inform my colleagues of my views as to

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the financial implications of disclosure if serious adverse consequences in the territories (particularly Mauritius) and the resulting international embarrassment to Britain and the United States are to be avoided.

9. I have sent copies of this minute to the Prime Minister, the Chancellor of the Exchequer, the Secretary of State for Defence, the Minister of Technology and Sir Burke Trend.

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ANNEX 50

Letter dated 12 July 1967 from the UK Commonwealth Office to
the Governor of Mauritius, FCO 16/226

ANNEX 50

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7/1
our Ref. MIC/58/21

COMMONWEALTH OFFICE
Dependent Territories Division,
Curtis Green Building,
LONDON, S.W.7.

12 July, 1967.

Will you please refer to correspondence ending with your savingram No. 641 of the 16th November about fishing in the Chagos Archipelago.

2. The enquiry in our telegram No. 305 was related to the undertaking given to Mauritius Ministers in the course of discussions on the separation of Chagos from Mauritius, that we would use our good offices with the U.S. Government to ensure that fishing rights remained available to the Mauritius Government as far as practicable in the Chagos Archipelago. It seems certain that there would have to be restrictions on the extent to which either our own or American defence authorities would agree to fishing rights being retained by the Mauritius Government once defence installations have been developed on any of the islands of the Chagos Archipelago but as we see it, these need not necessarily be such as to deny fishing rights altogether. The best way of dealing with the matter and at the same time fulfilling our Ministers' undertaking to Mauritius Ministers may well be that during the period before defence installations are introduced into any of the islands of the Chagos Archipelago, an attempt should be made to clarify the arrangements which would govern access by fishing vessels once any of the islands of the Archipelago are actually taken for defence use.

3. As we see it a reasonable arrangement might contain the following elements:-

- A. That there should be unrestricted access throughout the Archipelago during the period before any of the islands are taken over for defence uses and cleared of population.
- B. Once one or more of the islands has been taken over and cleared of population, the following arrangements would apply -
 - (i) Mauritius fishing vessels would of course have unrestricted access to the high seas within the Archipelago (of which it seems from such maps as we have there must be a considerable amount).

/(ii)

Sir John Rennie, K.C.M.G., O.B.E.,
Government House,
MAURITIUS.

RECEIVED IN ARCHIVES No. 56 14 JUL 1967 DD 6/2/1.
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- (ii) They would likewise have unrestricted access to islands not specifically excluded for defence reasons and also to the territorial waters surrounding them.
- (iii) The possibility of limited access for fishing in the waters surrounding those islands excluded for defence use would be considered as and when the situation arises by the British and U.S. Governments, but would of course have to be subject to their overriding defence needs.

Would a proposition on these lines (and we should clearly have to fill in the details in consultation with the Americans) be likely to be acceptable to your Ministers?

4. Two matters to which more thought will have to be given are related questions of territorial waters and fishing limits. These two are not necessarily the same thing. If current U.K. law were extended to the B.I.O.T., the effect would be that the Territory would

- (a) adopt a twelve miles fishery limit drawn from base lines in accordance with the 1958 Territorial Sea Convention, granting "habitual fishing rights" between the six and twelve lines to Mauritius and to any other states whose vessels had fished in the area during the preceding ten years, and
- (b) retain a three-mile territorial sea limit drawn from the same base lines.

5. It is however possible, as matters stand at present, that the U.K. could declare an exclusive fishing zone up to 9 miles beyond the three-mile belt of territorial sea. This would mean that Her Majesty's Government by exercising exclusive control of the fishing rights in this zone would retain the right to decide who should be permitted to fish in the area. Rights could thus be given e.g. exclusively to fishermen from Mauritius and Seychelles; or e.g. to any other country whose fishermen had operated in the area before; or on any other basis. However we understand that a similar exclusive fishery zone established in the waters of a Commonwealth country is possibly to be challenged in the International Court of Justice. If the Court's decision upheld this challenge the value of such a zone for B.I.O.T. would be greatly reduced and we cannot therefore place too much reliance on this possibility.

6. Your savingram under reference supplied the details we requested at the time, but before entering into further discussions here, we are very much concerned to keep in mind the importance of the fishing grounds to Mauritius, for instance the possible importance of fishing in Chagos as a source of food, in view of the rapidly increasing population. In view of the uncertainty of

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The position over fishing limites, as described above and of paragraph 4(a) above, it would be convenient to be able to base any special arrangements made for Mauritius (and Seychelles) on habitual or traditional fishing arrangements, provided that no other countries can claim similar use in the past. In these circumstances past and present performance is of considerable importance. We should therefore be grateful for any further information about the present activities of Mauritius companies at Chagos and also of the present activities (or future intentions) of fishing vessels of other countries (e.g. Japan). This will affect our discussion of this matter with the Americans and also be of importance in the context of possible protection of vested Mauritian rights against foreign interlopers.

7. I am sending a copy of this letter to Hugh Norman-Walker and shall be grateful for similar information and for any comments he may wish to make.

(C.A. SELLER)

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ANNEX 51

United Nations General Assembly Resolution 2357 (XXII),
19 December 1967

including the drawing up of an electoral law and of an independence constitution;

7. *Requests* the Secretary-General to take appropriate action, in consultation with the administering Power and the Special Committee, to ensure the presence of the United Nations in the Territory for the supervision of the preparation for, and the holding of, the election envisaged in paragraph 5 (b) above and to participate in all other measures leading towards the independence of the Territory;

8. *Further requests* the Secretary-General to transmit the present resolution to the administering Power and to report to the Special Committee on its implementation;

9. *Decides* to maintain the question of Equatorial Guinea on its agenda.

*1641st plenary meeting,
19 December 1967.*

2356 (XXII). Question of French Somaliland

The General Assembly,

Having considered the question of French Somaliland (Djibouti),

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and its resolution 2228 (XXI) of 20 December 1966,

Having considered the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to French Somaliland (Djibouti),²⁷

Considering the circumstances in which the referendum organized by the administering Power took place on 19 March 1967,

1. *Reaffirms* the inalienable right of the people of French Somaliland (Djibouti) to self-determination and independence in accordance with General Assembly resolution 1514 (XV);

2. *Regrets* that the administering Power has not co-operated with the United Nations in the application of resolution 1514 (XV) and did not implement General Assembly resolution 2228 (XXI);

3. *Calls upon* the administering Power to create the political conditions necessary for accelerating the implementation of the right of the people to self-determination and independence, including the full exercise of political freedoms, and to allow the return of all refugees to the Territory;

4. *Urges* the administering Power to co-operate fully with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and with the United Nations in accelerating the process of decolonization in the Territory and to grant independence to the inhabitants at an early date;

5. *Requests* the Special Committee to continue its consideration of the situation in French Somaliland (Djibouti) and to report thereon to the General Assembly at its twenty-third session;

6. *Decides* to keep the question of French Somaliland (Djibouti) on its agenda.

*1641st plenary meeting,
19 December 1967.*

²⁷ *Ibid.*, chapter XII.

2357 (XXII). Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands

The General Assembly,

Having considered the question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands,

Having examined the chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to these Territories,²⁸

Recalling its resolutions 1514 (XV) of 14 December 1960, 1654 (XVI) of 27 November 1961, 1810 (XVII) of 17 December 1962, 1956 (XVIII) of 11 December 1963, 2066 (XX) of 16 December 1965, 2069 (XX) of 16 December 1965, 2189 (XXI) of 13 December 1966, 2232 (XXI) of 20 December 1966 and 2288 (XXII) of 7 December 1967,

Noting the constitutional changes that were introduced in February and March 1967 in the Territories of Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla and St. Lucia and that are envisaged for the Territory of St. Vincent,

Noting further the decision taken by the Special Committee that General Assembly resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples and other relevant resolutions continue to apply to these Territories,

Deeply concerned at the information contained in the report of the Special Committee on the continuation of policies which aim, among other things, at the disruption of the territorial integrity of some of these Territories and at the creation by the administering Powers of military bases and installations in contravention of the relevant General Assembly resolutions,

Deploring the attitude of some administering Powers which continue to refuse to allow United Nations visiting missions to visit these Territories,

Conscious that these situations require the continued attention and assistance of the United Nations in the achievement by the peoples of these Territories of their objectives, as embodied in the Charter of the United Nations and in the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Aware of the special circumstances of geographical location and economic conditions of some of these Territories,

1. *Approves* the chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of In-

²⁸ *Ibid.*, chapters XI, XIV to XVIII, XX and XXIII.

dependence to Colonial Countries and Peoples relating to these Territories;²⁹

2. *Reaffirms* the inalienable right of the peoples of these Territories to self-determination and independence;

3. *Calls upon* the administering Powers to implement without delay the relevant resolutions of the General Assembly;

4. *Reiterates* its declaration that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and

²⁹ The President of the General Assembly, before putting the text of the present resolution to the vote, pointed out that, in approving chapter XI of the Special Committee's report, relating to Swaziland, the Assembly would be deciding that, subject to the consent of the donor Governments, the contributions so far made to the Fund for the Economic Development of Basutoland, Bechuanaland and Swaziland, established under General Assembly resolution 2063 (XX) of 16 December 1965, would be transferred to the United Nations Development Programme.

the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV);

5. *Urges* the administering Powers to allow United Nations visiting missions to visit the Territories and to extend to them full co-operation and assistance;

6. *Decides* that the United Nations should render all help to the peoples of these Territories in their efforts freely to decide their future status;

7. *Requests* the Special Committee to continue to pay special attention to these Territories and to report to the General Assembly at its twenty-third session on the implementation of the present resolution;

8. *Requests* the Secretary-General to continue to provide all possible assistance in the implementation of the present resolution.

1641st plenary meeting,
19 December 1967.

*
* *

Other decisions

Report of the Trusteeship Council (Item 13)

At its 1641st plenary meeting, on 19 December 1967, the General Assembly, on the recommendation of the Fourth Committee,³⁰ took note of paragraphs 10 to 15 of the special report of the Trusteeship Council on its thirteenth special session,³¹ regarding the composition of the Council.

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Item 23)

At its 1594th plenary meeting, on 3 November 1967, the General Assembly took note of the decision of the Fourth Committee³² to transmit to the Chairman of the Sixth Committee, in connexion with that Committee's consideration of item 87 (Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations), the statements made at the 1697th and 1704th meetings of the Fourth Committee, on 19 and 27 October 1967, by the representative of South Africa.

At its 1613th plenary meeting, on 30 November 1967, the General Assembly, on the recommendation of the Fourth Committee,³³ adopted the following text as representing the consensus of the members of the Assembly:

"Having considered the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to Aden,³⁴ including the report of the United Nations Special Mission on Aden,³⁵ the General Assembly takes note of that report and expresses its appreciation of the work done by the Special Mission. In wishing peace and prosperity to the Territory on its accession to independence, the General Assembly reaffirms the unity and territorial integrity of the whole Territory, including all the islands as prescribed in General Assembly resolution 2183 (XXI) of

³⁰ *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 13, document A/7009, para. 14.

³¹ *Ibid.*, document A/6926.

³² *Ibid.*, agenda item 23, document A/6884, para. 11.

³³ *Ibid.*, document A/6920, para. 9.

³⁴ *Ibid.*, addendum to agenda item 23 (A/6700/Rev.1), chapter VI.

³⁵ *Ibid.*, chapter VI, annex III.

ANNEX 52

Despatch dated 28 April 1969 from J. W. Ayres, Foreign and Commonwealth Office to J. R. Todd, Administrator, "BIOT",
FCO 31/2763

CONFIDENTIAL

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MUS 9/527/1

Aviation, Marine & Telecommunications Department,
Foreign and Commonwealth Office
London S.W.1

28 April, 1969.

BIOT Fishing Limits

The charts of the new limits produced by the Naval Hydrographer have been despatched to you by sea bag.

2. As you know, it was decided at a meeting at the Foreign and Commonwealth Office on 4 February attended by the retiring Commissioner of British Indian Ocean Territory, Sir Hugh Norman Walker, and the present Commissioner, Mr. Greatbatch, that the fishing limits for BIOT should be promulgated simultaneously with the legislation establishing the Seychelles fishing limits. We understand that it is likely that this will take place sometime in the autumn.

3. We should be grateful if the BIOT Legal Adviser would therefore prepare a draft Ordinance by the BIOT Commissioner setting out the fishing regime that it is proposed to establish for British Indian Ocean Territory. The regime will be familiar to you from the past correspondence (and I enclose a copy of the Ordinance used in the case of the Bahamas) but it may be useful if I recapitulate the principal points here:

- (a) a 12 mile fishing zone to be established around BIOT islands composed of an inner 3 mile zone and an outer 9 mile zone.
- (b) the outer 9 mile zone will be open for a phase out period of a year to any foreign fishing vessels who have established habitual fishing rights in BIOT waters. (We understand the only foreigners who may have done so are the Japanese and Taiwanese.)
- (c) Seychelles fishing vessels will be granted fishing rights within both inner and outer zones except that the Commissioner of BIOT may at any time after the expiry of the phase out period place restrictions on their fishing activities within the inner 6 mile zone.
- (d) Mauritian fishing vessels will likewise be granted fishing rights within both inner and outer zones around the islands of the Chagos Archipelago (ex-Mauritius) except that the BIOT Commissioner may at any time after the expiry of the phase out period place restrictions on their activities within the inner 6 mile zone.

/(e)

J.R. Todd, Esq.,
Administrator,
BIOT,
Victoria,
Seychelles.

-1-

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(e) it is intended that the restrictions on Seychelles and Mauritian fishing vessels will only be made in the immediate vicinity of islands which might in future be used for defence purposes by either ourselves or the Americans and would be kept to the minimum compatible with our security requirements. The Americans have however requested (Washington telegram No. 3129 of 22 October, 1968) that references to defence arrangements and security requirements should not be included in the Ordinance.

4. As the proposed fishing regime for British Indian Ocean Territory is somewhat complicated and because of Anglo-American defence interest in the islands, we should be grateful if the draft BIOT fishing Limits Ordinance could be sent to us for approval after it has been drafted. We shall wish to submit it to Ministers for their endorsement before it is promulgated.

5. We should be grateful if you would let us know as soon as possible of the approximate date in the autumn that you expect that the Seychelles Fishing Limits Legislation will be enacted. We need to keep the Americans informed, and we shall also have to give the Mauritian Government advance warning in good time of what we intend regarding BIOT fishing limits. Guidance may also be necessary for our missions in New Delhi, Tokyo and Tamsui.

Yours sincerely,

J. W. Ayres

(J.W. AYRES)

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ANNEX 53

“British Indian Ocean Territory” Proclamation No. 1 of 1969

Proclamation No. 1 of 1969.

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

&c., &c., &c.,

Commissioner.

By His Excellency Sir Bruce Greatbatch, Knight Bachelor, Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order, Member of the Most Excellent Order of the British Empire, Commissioner for the British Indian Ocean Territory.

I, Bruce Greatbatch, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State do hereby proclaim and declare that—

1. There is established for the British Indian Ocean Territory a fisheries zone contiguous to the territorial sea of the British Indian Ocean Territory.

2. The said fisheries zone has as its inner boundary the outer limits of the territorial sea of the British Indian Ocean Territory and as its seaward boundary a line drawn so that each point on the line is twelve nautical miles from the nearest point on the low-water line on the coast or other baseline from which the breadth of the territorial sea is measured.

3. Her Majesty will exercise the same exclusive rights in respect of fisheries in the said fisheries zone as She has in respect of fisheries in the territorial sea of the British Indian Ocean Territory, subject to such provisions as may hereafter be made by law for the control and regulation of fishing within the said zone.

4. In this Proclamation "the British Indian Ocean Territory" means the islands of the British Indian Ocean Territory set out in the Schedule to this Proclamation.

GOD SAVE THE QUEEN

Given at Government House, Mahé, Seychelles this tenth day of July, 1969.

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SCHEDULE

The Islands of the British Indian Ocean Territory

The Farquhar Islands
The Island of Desroches

The Chagos Archipelago consisting of :

Diego Garcia	Three Brothers Islands
Egmont or Six Islands	Nelson or Legour Island
Péros Banhos	Eagle Islands
Salomon Islands	Danger Island

The Aldabra Group consisting of :

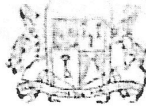
Middle Island	Cocoanut Island
West Island	Polymnie Island
South Island	Euphratis and other small Islets

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ANNEX 54

Note Verbale dated 19 November 1969 from the Prime Minister's Office (External Affairs Division), Mauritius to the British High Commission, Port Louis, No. 51/69 (17781/16/8)

No. 51/69(17781/16/8)



19th November, 1969

①

PRIME MINISTER'S OFFICE
MAURITIUS

The Prime Minister's Office (External Affairs Division) presents its compliments to the British High Commission and has the honour to refer to the agreement between the Government of Mauritius and the British Government whereby the Chagos Archipelago was excised from the territory of Mauritius to form the British Indian Ocean Territory.

This excision, it will be recalled, was made on the understanding, inter alia, that the benefit of any minerals or oil discovered on or near the Chagos Archipelago would revert to the Government of Mauritius.

The Government of Mauritius intends introducing, in the very near future, legislation vesting in its ownership the sea-bed and the sub-soil of the territorial sea and the continental shelf of all the islands under its territorial jurisdiction. The Government of Mauritius wishes to inform the British Government that it will, at the same time, vest in its ownership any minerals or oil that may be discovered in the off-shore areas of the Chagos Archipelago.

The Government of Mauritius also wishes to inform the British Government that it will, in the near future, issue licences for the exploration and prospecting of minerals and oil in the off-shore areas of the Chagos Archipelago.

The Prime Minister's Office (External Affairs Division) avails itself of this opportunity to renew to the British High Commission the assurances of its highest consideration.



The British High Commission,
Corné House,
PORT LOUIS.

cc to Oil, esp
AMTD
UND
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Legal Adv.
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ANNEX 55

Note Verbale dated 18 December 1969 from the British High Commission, Port Louis to the Prime Minister's Office (External Affairs Division), Mauritius

CONFIDENTIAL

The British High Commission present their compliments to The Prime Minister's Office (External Affairs Division) and have the honour to refer to their Note No. 51/69 17781/16/8 dated the 19th of November, 1969, regarding one of the understandings reached between the British Government and the Government of Mauritius in 1965 when the Chagos Archipelago ceased to be a part of Mauritius.

2. The understanding in question was that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Government of Mauritius.

3. The British Government note that the Government of Mauritius intend introducing, in the very near future, legislation vesting in their ownership the seabed and subsoil of the territorial sea and the continental shelf of all the islands under their territorial jurisdiction. The British Government further note that the Government of Mauritius intend at the same time to vest in their ownership any minerals or oil that may be discovered in the off-shore areas of the Chagos Archipelago, and to issue licences for exploration and prospecting for minerals and oil in such off-shore areas. It appears that the references to the off-shore areas of the Chagos Archipelago are intended to refer to the seabed and the subsoil of the territorial waters appertaining to the islands of the Archipelago and to the continental shelf of the Archipelago.

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4. The Sovereignty of the United Kingdom over the Chagos Archipelago extends to the territorial waters of the Archipelago including the seabed and subsoil under those waters. The United Kingdom is also entitled to exercise, in accordance with Article 2 of the Convention on the Continental Shelf drawn up at Geneva in 1958, exclusive Sovereign Rights over the continental shelf of the Archipelago for the purpose of exploring it and exploiting its natural resources. In the absence of an agreement to the contrary, the enactment of legislation or issue of a licence by another State which purports to relate to the ownership, exploration or exploitation of minerals and oil in these areas would be an infringement of the Sovereignty or Sovereign Rights of the United Kingdom. The British Government feel bound to state that they consider that the Government of Mauritius have misconstrued the understanding set out in the second paragraph of this Note, which was only to the effect that the Government of Mauritius should receive the benefit of any minerals or oil discovered in or near the Chagos Archipelago. It is not considered that the wording of the understanding can be construed as indicating any intention that ownership of minerals or oil in the areas in question should be vested in the Government of Mauritius or that the Authorities of Mauritius should have any right to legislate with respect to or otherwise

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Government of Mauritius will not proceed with the proposed actions.

The British High Commission avail themselves of this opportunity to renew to The Prime Minister's Office (External Affairs Division) the assurance of their highest consideration.



British High Commission,
Port Louis.

December, 1969.

Handled over on 18.12.69.

MEMOIRE

- 1) The British Indian Ocean Territory islands (including the Chagos group) are Sovereign British territory and the British Government are alone entitled to issue licences for oil and mineral exploitation.
- 2) As the Mauritius Government were informed at the time of the setting up of the British Indian Ocean Territory, the British Government have no intention of allowing prospecting for minerals or oil while the islands are reserved for Defence purposes.
- 3) Article (11) of the U.S./U.K. Exchange of Notes of December 1966 (Command 3231) states "The United States Government and the United Kingdom Government contemplate that the islands shall remain available to meet the possible Defence needs of the Government for an indefinitely long period. Accordingly, after an initial period of 50 years this Agreement shall continue in force for a further period of 20 years unless, not more than 2 years before the end of the initial period, either Government shall have given notice of termination."
- 4) For the duration of the Anglo-American Agreement on the British Indian Ocean Territory a decision by the British Government that the B.I.O.T. islands are not required for Defence purposes will therefore require the concurrence of the United States Government.

ANNEX 56

Pacific and Indian Ocean Department (Foreign and Commonwealth Office), Visit of Sir Seewoosagur Ramgoolam, Prime Minister of Mauritius, 4 February 1970, Speaking Note, 2 February 1970

⑦

VISIT OF SIR SEEWOOSAGUR RAMGOOLAMPRIME MINISTER OF MAURITIUS4 FEBRUARY, 1970SPEAKING NOTEA. Exploration for oil in the Chagos Archipelago

[If Sir S. Ramgoolam contests our interpretation of the legal position.]

Our position was made perfectly clear in the Note handed to your government in mid-December. We consider it incontestable that as stated in that Note "The Sovereignty of the United Kingdom over the Chagos Archipelago extends to the territorial waters of the Archipelago including the sea bed and sub-soil under those waters. The United Kingdom is also entitled to exercise ... exclusive sovereign rights over the continental shelf of the Archipelago for the purpose of exploring it and exploiting its natural resources." I regret that we are unable to agree that the Mauritius Government have retained any rights over any minerals there may be in the Chagos Archipelago or its off-shore areas.

2. [It is probable that Sir S. Ramgoolam, while conceding our sovereign rights over the islands, may urge that we permit exploration for oil in the Chagos in the context of the Mauritius economy and the need for Mauritius to have any benefits now from oil or mineral resources found there.]

I fully appreciate how important it would be for the economy of Mauritius if oil were to be discovered in marketable quantities in any of the territories or off-shore areas which belong to her.

/I

I can sympathize therefore with your desire that exploration should be permitted in the Chagos Archipelago in the hope that, under the understanding arrived at in the Lancaster House talks in 1965, Mauritius would receive the benefit of any oil discovered there while the Archipelago remains under United Kingdom sovereignty. I must remind you, however, that it was made absolutely clear at the discussions over the setting up of the British Indian Ocean Territory that as the islands were required by us for defence purposes there was no intention of permitting prospecting for minerals or oil on or near them. The question of any benefits arriving from oil exploration, it was pointed out, should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.

3. This was fully understood by yourself and the Mauritian Government at that time. In fact it was officially stated in the Legislative Assembly on 21 December, 1965, "The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes". This remains the position today. As long as the islands are reserved for defence purposes (and this is likely to be the case for many years to come) I am afraid that there can be no question of our permitting exploration for oil or minerals in the Chagos Archipelago.

4. [If Sir S. Ramgoolam argues that the grant of oil exploration licences in the off-shore areas would not interfere with the use of the islands for defence purposes.]

/We

We have, I assure you, already given very full and careful consideration to this possibility but are, with great regret, unable to agree. The grant of exploration licences would, if oil were found in marketable quantities, necessarily entail the grant of production licences, and oil production with all the staff, machinery and shipping involved would render the islands quite useless for the defence purposes for which they are needed. In fact, it was to ensure that we had the sole undisturbed use of the islands that we paid the Mauritius Government £3 million compensation for their cession to us in 1965.

Pacific and Indian Ocean Department,
2 February, 1970.

VISIT OF SIR SEEWOOSAGUR RANGCOLAM

PRIME MINISTER OF MAURITIUS

4 FEBRUARY, 1970

BACKGROUND NOTE

EXPLORATION FOR OIL IN THE CHAGOS ARCHIPELAGO

A. General

British Indian Ocean Territory was established in November, 1965 as a Crown Colony by the transfer of certain small islands previously administered as parts of Mauritius (Chagos Archipelago including Diego Garcia) and the Seychelles (Aldabra, Farquhar and Desroches). This was with the full agreement of the Mauritius and Seychelles Government to whom full compensation was paid (£3 million paid to Mauritius and a civil airfield which is being built in the Seychelles).

2. B.I.O.T. has always been envisaged as providing potential sites for transit, communications and support facilities and under an Exchange of Notes of December, 1966, published in April, 1967, (Cmd. 3231) the territory was made available for a period of fifty years for the defence purposes of both the United States and British Governments.

Oil Exploration in B.I.O.T.

3. After discussions earlier in the year the British Government's proposals for the creation of the B.I.O.T. were finally put forward in Colonial Office Despatch No.423 of 6 October, 1965,

/to

to which was attached the agreed record of a meeting with Mauritian Ministers on 23 September, 1965. Together these constituted the British Government's definitive proposals. The record contained the following reference to oil:- "para 22(viii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government".

4. On 5 November, 1965, the Governor reported (Mauritius telegram No.247) that the Mauritian Council of Ministers agreed to the detachment of the Chagos Archipelago on the understanding that (with reference to para 22(viii) of the record) "'in or near' means within the area within which Mauritius would be able to derive benefit but for change of sovereignty". In part reply to this telegram the Governor was informed (C.O. tel.298) "The islands are required for defence facilities and there is no intention of permitting prospecting for minerals or oil on or near them. The points set out in your para 1 should not therefore arise, but I shall nevertheless give them further consideration in view of your request.". In Colonial Office telegram 313 of 19 November, 1965, it was stated: "As stated in para 2 of my telegram No.298, there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.".

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5. The reply appears to have been accepted by Mauritian Ministers as fully satisfying the conditions they had put forward. In December the Governor cleared with the Colonial Office a draft answer to a Question put down in the Mauritius Legislature and, at the suggestion of the Colonial Office, a reference in the draft to possible mineral benefits reverting to the Government of Mauritius was omitted, thus reflecting the line noted in telegram 313. The answer to the Question as delivered by Mr. Forget (on behalf of the Premier and Minister of Finance) on 21 December, 1965, contained the following: "(1) The Hon. Member's question is, again, a hypothetical one and I should make it clear that there has never been any indication of minerals in the Chagos Archipelago, which is a string of coral atolls. The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes".

6. Thereafter the question of oil exploration in the Chagos half of British Indian Ocean Territory remained dormant until late 1968/early 1969 when three U.S. oil companies submitted applications to the Commissioner of British Indian Ocean Territory (who is in fact the Governor of the Seychelles) for permission to explore for oil in the Chagos Archipelago. The views of the U.S. Administration were sought about these applications in August, 1968. H.M.G. had, in accordance with the US/UK Exchange of Notes of 1966, approved in principle the establishment of a modest refuelling and communications facility at Diego Garcia in the Chagos Archipelago. The Americans suggested initially that we might permit exploration

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of the Chagos Archipelago for minerals excluding only Diego Garcia and on certain conditions. We thought however this policy would soon become untenable. Should oil or minerals be discovered in the Chagos we might well come under pressure to allow exploration of Diego Garcia also. Moreover it would prove difficult to refuse to allow the exploitation of any resources discovered in other islands or to insist that it be discontinued if the islands were subsequently needed for defence purposes; the oil companies could be expected to exert heavy pressure on us in this respect.

7. On 21 April, 1969, the Secretary of State therefore sought (and obtained) the agreement of the Prime Minister and other Ministerial colleagues to the continuance for the present of our policy of refusing all exploration for oil and minerals in the Chagos Archipelago. The U.S. Administration were again consulted in July and have confirmed that they accept and will support H.M.G.'s policy.

Revived Mauritian Interest

8. We have known for some time that Mauritius has been receiving enquiries from oil companies and oil exploration companies (which are not quite the same thing). The applications have been in respect of the Saya de Malha Bank and the Nazareth Bank, which are banks of shallow water stretching in an arc between Mauritius and the Seychelles, and which are deemed to belong to Mauritius under the terms of the Geneva Convention of 1958 on the Continental Shelf. We know that these companies have also made enquiries about the

/Chagos

Chagos Archipelago and they have also applied direct to the Commissioner of the British Indian Ocean Territory. Many of the firms ^{probably} hoping to buy up concessions cheaply and sell to big companies at a premium, either before exploration or after an exploration has shown possibilities. According to our latest information two of these applicants have now withdrawn and Sir S. Ramgoolam is anxious to conclude agreements with the others before they too pull out. As far as we know, none of these banks have yet been properly surveyed and the key question of whether they are part of an anticline has yet to be determined.

9. On 19 November the Mauritius Government sent a Note to our High Commission in Port Louis referring to the Understanding reached between H.M.G. and the Government of Mauritius on 23 September, 1965, that "the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Government of Mauritius"; as the Note said, this Understanding was part of the Government of Mauritius' voluntary cession of the Chagos Archipelago, to form part of the British Indian Ocean Territory. The Note went on to say that the Mauritius Government intended to pass legislation shortly vesting its ownership in the sea bed of its territorial sea and continental shelf, and that the Chagos Archipelago would be included in the legislation and that the Government of Mauritius would shortly be issuing licences for oil exploration in the Chagos Archipelago. On instructions, our High Commission delivered a reply Note to the Government of Mauritius on

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ANNEX 56

17 December, saying that in H.M.G.'s view the Mauritius Government were not legally entitled to take the steps they intended in respect of the Chagos Archipelago as the islands were now under British Sovereignty. We said that the Government of Mauritius must have misconstrued the Understanding, that this relates to the benefits of any oil discovered, not the ownership or rights of exploitation. Full copy of our Note is at Flag A.

10. The Chagos Archipelago will revert to Mauritius whenever we and the U.S. decide that the islands are no longer required for defence purposes.

Pacific and Indian Ocean Department,
2 February, 1970.

FLAG A

(12) (62)

TOP COPY H/N 12/1

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CYPHER/CAT A
 PRIORITY FOREIGN AND COMMONWEALTH OFFICE
 TELEGRAM NUMBER 264

TO PORT LOUIS
 15 DECEMBER 1969
 (E. AFR.)

CONFIDENTIAL

ADDRESSED TO PORT LOUIS FCO TELEGRAM NUMBER 264 OF 15/12

(61A) FOLLOWING IS TEXT OF NOTE REFERRED TO IN MIPTJ

'HER MAJESTY'S HIGH COMMISSION PRESENT THEIR COMPLIMENTS TO THE PRIME MINISTER'S OFFICE (EXTERNAL AFFAIRS DIVISION) AND HAVE THE HONOUR TO REFER TO THEIR NOTE (NO. 51/69 (17701/16/0)) DATED THE 19TH OF NOVEMBER, 1969, REGARDING ONE OF THE UNDERSTANDINGS REACHED BETWEEN THE BRITISH GOVERNMENT AND THE GOVERNMENT OF MAURITIUS IN 1965 WHEN THE CHAGOS ARCHIPELAGO CEASED TO BE A PART OF MAURITIUS.

2. THE UNDERSTANDING IN QUESTION WAS THAT 'THE BENEFIT OF ANY MINERALS OR OIL DISCOVERED IN OR NEAR THE CHAGOS ARCHIPELAGO SHOULD REVERT TO THE GOVERNMENT OF MAURITIUS'.

3. THE BRITISH GOVERNMENT NOTE THAT THE GOVERNMENT OF MAURITIUS INTEND INTRODUCING, IN THE VERY NEAR FUTURE, LEGISLATION VESTING IN THEIR OWNERSHIP THE SEABED AND SUBSOIL OF THE TERRITORIAL SEA AND THE CONTINENTAL SHELF OF ALL THE ISLANDS UNDER THEIR TERRITORIAL JURISDICTION. THE BRITISH GOVERNMENT FURTHER NOTE THAT THE GOVERNMENT OF MAURITIUS INTEND AT THE SAME TIME TO 'VEST IN THEIR OWNERSHIP ANY MINERALS OR OIL THAT MAY BE DISCOVERED IN THE OFF-SHORE AREAS OF THE CHAGOS ARCHIPELAGO', AND TO ISSUE LICENCES FOR EXPLORATION AND PROSPECTING FOR MINERALS AND OIL IN SUCH OFF-SHORE AREAS. IT APPEARS THAT THE REFERENCES TO THE OFF-SHORE AREAS OF THE CHAGOS ARCHIPELAGO ARE INTENDED TO REFER TO THE SEABED AND THE SUBSOIL OF THE TERRITORIAL WATERS APPERTAINING TO THE ISLANDS OF THE ARCHIPELAGO AND TO THE CONTINENTAL SHELF OF THE ARCHIPELAGO.

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1. THE SOVEREIGNTY OF THE UNITED KINGDOM OVER THE CHAGOS ARCHIPELAGO EXTENDS TO THE TERRITORIAL WATERS OF THE ARCHIPELAGO INCLUDING THE SEABED AND SUBSOIL UNDER THOSE WATERS. THE UNITED KINGDOM IS ALSO ENTITLED TO EXERCISE, IN ACCORDANCE WITH ARTICLE 2 OF THE CONVENTION ON THE CONTINENTAL SHELF DRAWN UP AT GENEVA IN 1958, EXCLUSIVE SOVEREIGN RIGHTS OVER THE CONTINENTAL SHELF OF THE ARCHIPELAGO FOR THE PURPOSE OF EXPLORING IT AND EXPLOITING ITS NATURAL RESOURCES. IN THE ABSENCE OF AN AGREEMENT TO THE CONTRARY, THE ENACTMENT OF LEGISLATION OR ISSUE OF A LICENCE BY ANOTHER STATE WHICH PURPORTS TO RELATE TO THE OWNERSHIP, EXPLORATION OR EXPLOITATION OF MINERALS AND OIL IN THESE AREAS WOULD BE AN INFRINGEMENT OF THE SOVEREIGNTY OR SOVEREIGN RIGHTS OF THE UNITED KINGDOM. THE BRITISH GOVERNMENT FEEL BOUND TO STATE THAT THEY CONSIDER THAT THE GOVERNMENT OF MAURITIUS HAVE MISCONSTRUED THE UNDERSTANDING SET OUT IN THE SECOND PARAGRAPH OF THIS NOTE, WHICH WAS ONLY TO THE EFFECT THAT THE GOVERNMENT OF MAURITIUS SHOULD RECEIVE THE BENEFIT OF ANY MINERALS OR OIL DISCOVERED IN OR NEAR THE CHAGOS ARCHIPELAGO. IT IS NOT CONSIDERED THAT THE WORDING OF THE UNDERSTANDING CAN BE CONSTRUED AS INDICATING ANY INTENTION THAT OWNERSHIP OF MINERALS OR OIL IN THE AREAS IN QUESTION SHOULD BE VESTED IN THE GOVERNMENT OF MAURITIUS OR THAT THE AUTHORITIES OF MAURITIUS SHOULD HAVE ANY RIGHT TO LEGISLATE WITH RESPECT TO OR OTHERWISE REGULATE MATTERS RELATING TO THE OWNERSHIP, EXPLORATION OR EXPLOITATION OF SUCH MINERALS OR OIL. NOR IS IT BELIEVED THAT THE CORRESPONDENCE AND DISCUSSIONS WHICH TOOK PLACE IN 1965 CONTAINED ANYTHING TO SUGGEST SUCH AN INTENTION ON THE PART OF THE BRITISH GOVERNMENT. INDEED IT WAS MADE CLEAR TO THE GOVERNMENT OF MAURITIUS THAT THERE WAS NO INTENTION ON THE PART OF THE BRITISH GOVERNMENT OF PERMITTING PROSPECTING FOR MINERALS AND OIL ON OR NEAR THE ISLANDS OF THE ARCHIPELAGO AND THAT THE QUESTION OF ANY

CONFIDENTIAL

/BENEFITS

FCO TELNO. 264 TO PORT LOUIS

CONFIDENTIAL

-3-

BENEFITS ARISING THEREFROM WAS NOT THEREFORE LIKELY TO ARISE UNLESS AND UNTIL THE ISLANDS WERE NO LONGER REQUIRED FOR DEFENCE PURPOSES AND WERE RETURNED TO MAURITIUS. THE BRITISH GOVERNMENT HAVE NO INTENTION OF DEPARTING FROM THE UNDERTAKING THAT THE GOVERNMENT OF MAURITIUS SHOULD RECEIVE THE BENEFIT OF ANY MINERALS OR OIL DISCOVERED IN THE CHAGOS ARCHIPELAGO OR THE OFF-SHORE AREAS IN QUESTION IN THE EVENT OF THE MATTER ARISING AS A RESULT OF PROSPECTING BEING PERMITTED WHILE THE ARCHIPELAGO REMAINS UNDER UNITED KINGDOM SOVEREIGNTY. AT THE SAME TIME THE BRITISH GOVERNMENT WISH TO STATE THAT THEY FULLY RESERVE THEIR RIGHTS UNDER INTERNATIONAL LAW WITH REGARD TO THE REGULATION OF EXPLORATION FOR AND EXPLOITATION OF SUCH MINERALS AND OIL. THEY CONSIDER THAT THE GOVERNMENT OF MAURITIUS ARE NOT ENTITLED UNDER INTERNATIONAL LAW TO TAKE THE ACTIONS RELATING TO SUCH MINERALS AND OIL OF WHICH THEY INFORMED THE BRITISH GOVERNMENT IN THE NOTE OF THE 19TH OF NOVEMBER, 1969, AND THEY THEREFORE TRUST THAT THE GOVERNMENT OF MAURITIUS WILL NOT PROCEED WITH THE PROPOSED ACTIONS.

THE BRITISH HIGH COMMISSION AVAIL THEMSELVES OF THIS OPPORTUNITY TO RENEW TO THE PRIME MINISTER'S OFFICE (EXTERNAL AFFAIRS DIVISION) THE ASSURANCES OF THEIR HIGHEST CONSIDERATION.

STEWART

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