

House of Commons
Foreign Affairs Committee

The use of Diego Garcia by the United States

First Report of Session 2014–15



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*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 17 June 2014*

HC 377

Published on 19 June 2014
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated public bodies.

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Summary

In 1966, the UK concluded an Agreement with the United States giving it permission to use the British Indian Ocean Territory, including the island of Diego Garcia, for defence purposes for an initial period of 50 years. Unless the UK or the US takes steps to terminate the Agreement, it will automatically be extended in 2016 for a further twenty years.

The disclosure in 2008 that the US had, contrary to previous statements by the FCO, used facilities at Diego Garcia in the course of rendition since 2001, dented public confidence in the UK's ability to exercise control over its sovereign territory. The credibility of US assurances on its use of Diego Garcia was severely damaged. We believe that the two-year window for discussing the rollover of the 1966 Agreement on the use of Diego Garcia offers an opportunity for the UK to assert more strongly its position that the Territory should not be used for rendition other than with the UK's permission.

We recommend that, if the UK allows the 1966 Agreement to be extended beyond 2016, the text should be revised. It should specify that any extraordinary use of the US base or facilities, such as combat operations or any other politically sensitive activity, requires prior approval from the UK Government; and it should state explicitly that the British Indian Ocean Territory should not be used for rendition unless authority has first been granted by the UK Government, on a case by case basis.

We note reports that the US Senate Select Committee on Intelligence has found that the CIA detained "high-value suspects" on Diego Garcia and that the 'black site' arrangement on the island was made with the "full cooperation" of the British Government. If these reports are substantiated, we would expect to revisit this issue, to assess the implications for the UK and for public confidence in its statements on US use of Diego Garcia.

The use of Diego Garcia for rendition

Introduction

1. This Report concerns future arrangements for the use by the United States of the British Indian Ocean Territory (BIOT), which includes the island of Diego Garcia.

2. The British Indian Ocean Territory (also known as the Chagos Islands) is one of the 14 Overseas Territories for which the UK retains responsibility. Diego Garcia is the largest and most southerly island in the Territory, which is comprised of some 55 islands in the Indian Ocean, south of the Maldives. The Territory has had no permanent population since 1973, when the UK Government completed the clearance of the indigenous population. There is currently “a very limited number of British military personnel” on Diego Garcia;¹ in evidence to the previous Foreign Affairs Committee in 2008, the FCO listed 42 such personnel, led by a Royal Navy commander.² The FCO has confirmed to us that there has been no significant change in numbers of UK personnel on the island.

3. In 1966, the UK concluded an Agreement with the United States giving it permission to use the Territory, including Diego Garcia, for defence purposes for an initial period of 50 years. A further Agreement in 1972 authorised the construction of a “limited naval communications facility”, and a third Agreement in 1976 permitted the development, maintenance and operation of a US Navy support facility.³ When completed in 1986, the facilities at the US base on Diego Garcia included a large aircraft runway and berthing facilities for ships. There are now 16 separate military commands at the base, with the US Navy Support Facility as host command. ‘Tenant’ commands provide logistical support, supply of equipment and munitions, and space surveillance and satellite tracking operations.⁴ The base “facilitates Allied operations across the Middle East and South Asia”.⁵

4. The Exchange of Notes on which the 1966 Agreement is founded specifies that

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.⁶

¹ <https://www.gov.uk/the-permanent-joint-headquarters>

² *Overseas Territories*, Evidence published alongside the Seventh Report from the Committee, Session 2007-08, [HC 147-II, Session 2007-08](#), page Ev 347

³ <https://sites.google.com/site/thechagosarchipelagofacts/diego-garcia/us-uk-agreements>

⁴ US Navy, www.cnrc.navy.mil/regions/cnrj/installations/nsf_diego_garcia/about.html

⁵ *The Overseas Territories: Security, Success and Sustainability*, published by the FCO, June 2012, Command Paper 8374, page 22

⁶ Accessible via <https://sites.google.com/site/thechagosarchipelagofacts/diego-garcia/us-uk-agreements>

Therefore, unless the UK or the US takes steps to terminate the Agreement, it will remain in force for a further twenty years after 2016. The FCO expects to begin “substantive discussions” with the United States on the issue in late 2014, “with the objective of securing agreement in the latter half of 2015”.⁷ We raised this issue with the FCO Minister responsible for the Overseas Territories, both in December 2012 and in December 2013. That evidence has prompted this Report, which seeks to influence the discussions between the UK and the US and to bring about a small but significant change in the terms of the Agreement relating to the use of Diego Garcia by the US, to cover any element of the process of rendition of detainees.

5. We are aware that there is no established, internationally-accepted definition of the term “rendition”; but in this report we use it in its most general sense, meaning the transfer of a person or property from one jurisdiction to another. “Rendition” encompasses “extraordinary rendition”, which is generally understood to mean a transfer of a detainee to a place where personal rights are not protected by due process and where the detainee may be exposed to torture or cruel, inhuman or degrading treatment.

6. We have purposely kept the subject matter of this Report narrow: we do not express a view about the use by the US of rendition, or about the principle of US use of Diego Garcia for defence purposes. That would involve a much wider study taking into account aspects of the US-UK defence relationship, environmental factors, and the possibility of resettling the Territory. Our recommendation is predicated on a decision by the UK and the US to allow the 1966 Agreement to be extended.

7. We also make no comment on possible resettlement of the islands which make up the Territory. We note that the Foreign Secretary has authorised a feasibility study to examine the factors which might affect any decision by the UK to permit resettlement of the Territory: that study is expected to be completed before the end of 2015.⁸ The UK’s view has consistently been that any large scale resettlement in the Territory “is likely to be precarious and costly”, and the UK also recognises “significant security concerns that the US is likely to have” about resettlement.⁹ The previous Foreign Affairs Committee considered in some detail the case for resettlement and concluded that there was “a strong moral case for the UK permitting and supporting a return to the British Indian Ocean Territory for the Chagossians”.¹⁰ Our recommendation in this Report would apply whatever outcome is reached on resettlement.

⁷ [Letter from Robert Hannigan](#), Director General, Defence and Intelligence, FCO, to Tom Kelly, Acting Assistant Secretary for Political-Military Affairs, dated 18 October 2013, attached to a letter from Mark Simmonds MP to the Committee Chair dated 6 February 2014

⁸ [Letter from Robert Hannigan](#), Director General, Defence and Intelligence, FCO, to Tom Kelly, Acting Assistant Secretary for Political-Military Affairs, dated 18 October 2013, attached to a letter from Mark Simmonds MP to the Committee Chair dated 6 February 2014

⁹ [Letter from Robert Hannigan](#)

¹⁰ [Overseas Territories, Seventh Report from the Committee](#), Session 2007-08, HC 147-I, paragraph 69

History

8. Claims that the US had used Diego Garcia in its post-2001 rendition programme date back to 2002. At various times, it was alleged that rendition flights had stopped on the island; that ships in Diego Garcia territorial waters or operating from Diego Garcia had been used to facilitate rendition, for instance by holding detainees; and that the island itself had been one of the CIA's so-called 'black sites' (detention centres used to hold prisoners).¹¹

9. In January 2006, the Government's position on use of UK territory or airspace by the US for rendition was set out by the then Foreign Secretary, the Rt Hon. Jack Straw MP, as follows:

We have found no evidence of detainees being rendered through the UK or Overseas Territories since 11 September 2001.

We have found no evidence of detainees being rendered through the UK or Overseas Territories since 1997 where there were substantial grounds to believe there was a real risk of torture.

There were four cases in 1998 where the US requested permission to render one or more detainees through the UK or Overseas Territories. In two of these cases, records show the Government granted the US request, and refused two others.¹²

Since before September 2001 we have worked closely with the US to achieve our shared goal of fighting terrorism. As part of that close co-operation, we have made clear to the US authorities, including in recent months:

- that we expect them to seek permission to render detainees via UK territory and airspace (including Overseas Territories);
- that we will grant permission only if we are satisfied that the rendition would accord with UK law and our international obligations, and
- how we understand our obligations under the UN Convention Against Torture.

¹¹ See for instance written evidence from Reprieve to the Foreign Affairs Committee's inquiry into *Overseas Territories*, published as [HC 147-II, Session 2007-08](#), pages Ev 203 to 219; see also <http://www.theguardian.com/world/2007/oct/19/alqaida.usa>

¹² Two flights, each carrying one detainee to the United States, landed in the UK to refuel, at Prestwick Airport and Stansted Airport respectively. In both cases, ministerial approval was granted because the detainees were en route to stand trial. In the two other cases, flights carrying detainees were denied permission to refuel at Akrotiri airbase and Prestwick Airport respectively. See [Rendition](#), report by the Intelligence and Security Committee, Cm 7171, page 16

We are also clear that the US would not render a detainee through UK territory or airspace (including Overseas Territories) without our permission. As noted above, the US has sought such permission in the past.¹³

10. These assurances by the Government proved to be based upon inaccurate information. In February 2008, the then Foreign Secretary, the Rt Hon David Miliband MP, announced that the US had disclosed that it had used the US facility at Diego Garcia as part of its post-2001 rendition programme, and that two US flights, each with a single detainee on board, had refuelled at Diego Garcia in 2002. The US had said that neither detainee had left the plane, and that it had never held detainees on the island. An “error in the US records search” was to blame for the failure to supply accurate information to the UK.¹⁴

11. Our predecessor Committee was strongly critical of this lapse, describing it as “deplorable”.¹⁵ It later concluded that “the basis of trust in subsequent US assurances about the use of BIOT [had] been undermined” and that the use of Diego Garcia for US rendition flights without the knowledge or consent of the British Government raised “disquieting questions about the effectiveness of the Government’s exercise of its responsibilities in relation to this territory”.¹⁶ In response, the Government denied that its exercise of its responsibilities in relation to Diego Garcia had been ineffective. It said that the US Administration had stated that, “should there be any doubt as to whether an operation falls inside or outside the Exchange of Notes that governs the use of Diego Garcia, then the US Government would consult the UK Government”.¹⁷ Dr Peter Hayes, the FCO’s Director for the Overseas Territories, told us in December 2013 that there was “an annual process of reaffirmation of our position [on rendition] and reaffirmation of the US position that it has not been using [Diego Garcia] in that way”.¹⁸ We note the following recent statement by the Government:

There are no detainees on Diego Garcia and the British Government is aware of no evidence that US detainees have been held on Diego Garcia since September 2001.¹⁹

The future

12. The UK Government sees the US as “our closest ally” and it has made it clear that it wishes to see a continuation of the US presence on Diego Garcia beyond 2016.²⁰ We asked

¹³ [HC Deb 20 Jan 2006, col 38WS](#).

¹⁴ HC Deb, 21 February 2008, [col 547-548](#)

¹⁵ Foreign Affairs Committee, Seventh Report of Session 2007-08, [Overseas Territories](#), HC 147-I, para 70

¹⁶ Foreign Affairs Committee, Seventh Report of Session 2008-09, [Human Rights Annual Report 2008](#), HC 557, para 30

¹⁷ FCO, [Seventh Report from the Foreign Affairs Committee, Session 2008-09, Annual Report on Human Rights 2008: Response of the Secretary of State for Foreign and Commonwealth Affairs](#), Cm 7723, paragraphs 7 to 9

¹⁸ [Overseas Territories](#) oral evidence to the Committee on 17 December 2013, Q 77

¹⁹ [HC Deb 10 June 2014 col 91W](#)

²⁰ [Letter from Mark Simmonds MP to the Committee](#), 3 February 2014

the FCO whether aspects of the current arrangements for US use of Diego Garcia would be reviewed before the UK agreed to any rollover beyond 2016. Dr Hayes²¹ told us that there would be a “process for discussing with the US the possibility of a roll-over of the use of Diego Garcia”: that process would be “broad-ranging and will cover the detail of what exactly the US is doing on Diego”, and it would be informed by the resettlement feasibility study currently under way. The “window” for discussions would run from December 2014 to December 2016.²²

Our view

13. The disclosure in 2008 that the US had, contrary to previous statements by the FCO, used facilities at Diego Garcia in the course of rendition since 2001, dented public confidence in the UK’s ability to exercise control over its sovereign territory. The credibility of US assurances was severely damaged.

14. Our aim in this Report is to restore confidence in the arrangements by which the US has use of Diego Garcia, by signalling more clearly to the US Administration, the British public and others, that the UK will not countenance use of the island by the US for rendition without prior permission. We note the reaffirmation process described by Dr Hayes, but we believe that the two-year window for discussing the rollover of the 1966 Agreement on the use of Diego Garcia offers an opportunity for the UK to assert more strongly its position that the Territory should not be used for rendition other than with the UK’s permission.

15. Recent developments have once again brought into question the validity of assurances by the US about its use of Diego Garcia. In April 2014, it was reported that the US Senate Select Committee on Intelligence had found—as a result of its four-year inquiry into the CIA’s post-2001 torture and rendition programme—that the CIA had detained “high-value suspects” on Diego Garcia and that the ‘black site’ arrangement on the island was made with the “full cooperation” of the British Government. The Senate Committee voted on 3 April 2014 to recommend declassification of parts of the report’s executive summary, findings and recommendations. That recommendation by the Senate Committee is currently being assessed.²³ If the reports of the Senate Committee’s findings are substantiated, we would expect to revisit this issue, to assess the implications for the UK and for public confidence in its statements on US use of Diego Garcia.

16. We note the following statement by the FCO in evidence to our predecessors:

A wide range of activities are conducted by US personnel on Diego Garcia which are routine in nature and are covered by entries in the Exchange of Notes. These activities are not normally supervised by UK personnel, nor at

²¹ Director for Overseas Territories at the FCO

²² *Overseas Territories* oral evidence to the Committee on 17 December 2013, Q 73 to 76

²³ <http://www.theguardian.com/world/2014/apr/13/cia-black-site-diego-garcia-uk-role>;
<http://www.theguardian.com/world/2014/apr/11/cia-white-house-pressure-leaked-senate-report>;
<http://www.bbc.co.uk/news/world-us-canada-26879335>

42 personnel is there capacity to do so. Any extraordinary use of the US base or facilities, such as combat operations or any other politically sensitive activity, requires prior approval from Her Majesty's Government and would attract a greater level of involvement by UK personnel both on Diego Garcia and in the UK.²⁴

While the 1966, 1972 and 1976 Agreements relating to use of Diego Garcia impose obligations on the US relating to use of the Territory²⁵ and make provision for (amongst other things) the exercise of criminal jurisdiction, employment of personnel, customs duties, access to the island, and conservation of flora and fauna, they do not impose any clear requirement upon the US to seek permission for a highly sensitive activity such as rendition, or even to support combat operations. The requirement which the FCO referred to in the extract from evidence to the previous Committee, cited above, appears to be entirely informal. This seems to us to be an unsatisfactory gap in the UK's formal oversight of the use of Diego Garcia by the US for defence purposes.

17. We believe that steps need to be taken to restore public confidence that the UK exercises effective control over the British Indian Ocean Territory. We recommend that, if the 1966 Agreement on Availability for Defence Purposes of the British Indian Ocean Territory is to be rolled over from 2016, the text of the Agreement should be revised. It should specify that any extraordinary use of the US base or facilities, such as combat operations or any other politically sensitive activity, requires prior approval from the UK Government; and it should state explicitly that the British Indian Ocean Territory should not be used for rendition unless authority has first been granted by the UK Government, on a case by case basis.

²⁴ *Overseas Territories*, Evidence published alongside the Seventh Report from the Committee, Session 2007-08, [HC 147-II, Session 2007-08](#), page Ev 346

²⁵ For instance, the US is required to obtain the UK's approval in principle of a requirement for any facility, before construction or installation begins. Parallel obligations apply to the UK.

Formal Minutes

Tuesday 17 June 2014

Members present:

Sir Richard Ottaway, in the Chair

Mr John Baron
Sir Menzies Campbell
Ann Clwyd
Mike Gapes

Mark Hendrick
Andrew Rosindell
Sir John Stanley

Draft Report (*The use of Diego Garcia by the United States*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 15 read and agreed to.

Paragraph—(*Ann Clwyd*)—brought up and read, as follows:

Further to these reports and to the FCO's recent response to a Parliamentary Question that the UK Embassy in Washington has met with the Senate Select Committee on Intelligence to discuss its work, including in relation to the detention and interrogation programme,²⁶ we would ask the FCO to clarify whether these specific findings have been or will be raised with the Senate Select Committee on Intelligence and/or the relevant authorities in the US Government.

Question proposed, That the paragraph be read a second time.

Paragraph, by leave, withdrawn.

Paragraph 16 agreed to.

Paragraph 17 read.

Amendment proposed, in line 9, at end, to add:

We also recommend that the UK Government consider putting in place some form of Parliamentary oversight in connection with any prior approval or authority it is to give for the extraordinary use of the US base or facilities.—(*Ann Clwyd*.)

Question proposed, That the Amendment be made.

Amendment, by leave, withdrawn.

Paragraph agreed to.

Summary read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

²⁶ HC Deb 9 June 2014, col 45W, and HC Deb 10 June 2014, col 90W

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 24 June at 1.45 pm]