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P19.

~~RELEASED IN PART~~

STATE 157509 ~~B1, 1.4(B), 1.4(C), 1.4(D)~~

Printed By: Ronald L Thomas 08/17/2000 12:20:38 PM
Subject: LETTER FOR BIOT COMMISSIONER, JOHN WHITE

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	TEDE-00	INR-00	L-00	VCE-00	NEA-00	NSAE-00	P-00
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~~STATE 157509~~ STATE 157509

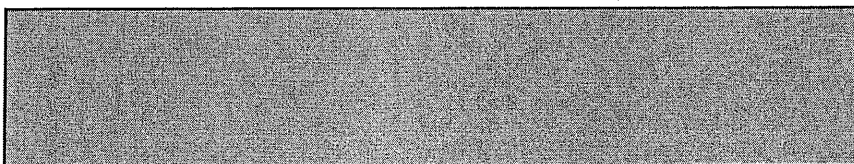
E.O. 12958: DECL: 08/09/2020
TAGS: MARR, MOPS, PREL, UK
SUBJECT: LETTER FOR BIOT COMMISSIONER, JOHN WHITE

REF: A. A) LONDON 5462
B. STATE 123281

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: APPEALS REVIEW PANEL
APPEAL ACTION: ADDITIONAL INFORMATION RELEASE
REASON(S): B1, 1.4(A), 1.4(B), 1.4(D)
DATE/CASE ID: 10 JUL 2007 200503422

CLASSIFIED BY ASSISTANT SECRETARY ERIC NEWSOM. REASON 1.6 X6.

1. (U) THIS IS AN ACTION REQUEST. PLEASE SEE PARA FOUR
BELOW.



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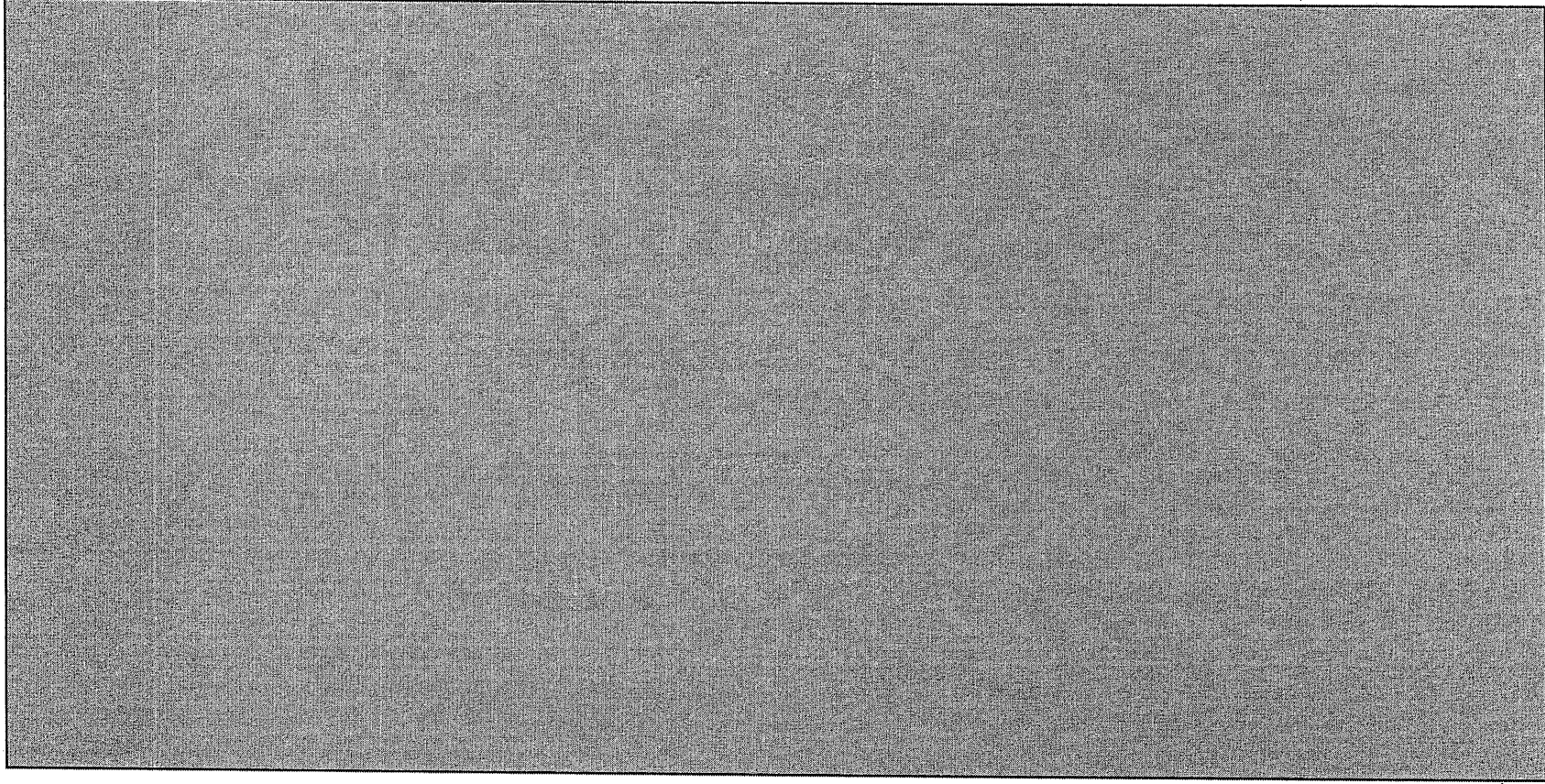
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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: FRANK H PEREZ
DATE/CASE ID: 10 AUG 2006 200503422

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B1

(U) THE 1976 AGREEMENT, DONE EXPLICITLY PURSUANT TO PARAGRAPH TWO (B) OF THE 1966 BIOT AGREEMENT, AND WHICH PERMITTED THE EXPANSION OF THE COMMUNICATIONS FACILITY TO A NAVAL SUPPORT FACILITY, COMPLIED WITH THE REQUIREMENT ALLUDED TO IN THE AGREED MINUTE OF THE SAME YEAR. THUS, AS THE CONSTRUCTION CURRENTLY BEING PROPOSED DOES NOT GO BEYOND THE SCOPE OF THE 1976 AGREEMENT, THE REQUIREMENT OF THE AGREED MINUTE OF 1966 HAS BEEN MET, AND THE TWO GOVERNMENTS NEED NOT CONCLUDE YET ANOTHER AGREEMENT SPECIFICALLY TARGETING THE PROPOSED CONSTRUCTION...

(U) RECALL THAT THE 1966 AGREEMENT PERMITTED ONLY A SMALL COMMUNICATIONS FACILITY, AND REQUIRED ADDITIONAL AGREEMENT BEFORE USES COULD BE EXPANDED. THAT ADDITIONAL AGREEMENT FOR EXPANDED USES WAS ACCOMPLISHED IN 1976. IN THE NEGOTIATIONS WHICH LED TO THE 1976 AGREEMENT PERMITTING THE EXPANSION OF THE SMALL COMMUNICATIONS FACILITY TO A LARGER NAVAL SUPPORT

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FACILITY, THE ISSUE OF USE OF THE FACILITY AS AN AIR STAGING BASE WAS EXPLICITLY CONSIDERED AND IMPLICITLY AGREED TO. FURTHERMORE, HISTORICAL PRACTICE OF USE OF THE FACILITY SINCE 1976 FOR PRECISELY THAT PURPOSE, THAT IS, AS AN AIR STAGING FACILITY, CONFIRMS THIS. THUS, THE 1966 MINUTE IS INAPPOSITE TO THE CURRENT ISSUE. THE 1976 AGREEMENT IS THE CONTROLLING DOCUMENT.

(U) BY THE 1976 AGREEMENT, HER MAJESTY'S GOVERNMENT GRANTED TO THE UNITED STATES GOVERNMENT THE RIGHT TO DEVELOP FACILITIES ON DIEGO GARCIA AS "A SUPPORT FACILITY OF THE UNITED STATES NAVY AND TO MAINTAIN AND OPERATE IT." THE CHOICE OF THE NAME OF THE FACILITY, AS A "NAVAL" SUPPORT FACILITY, IS NOT DISPOSITIVE OF THE USE FOR WHICH IT MAY BE PUT.

(U) INDEED, A U.S. DEPARTMENT OF STATE MEMORANDUM FOR THE RECORD DATED MARCH 14, 1974, IN DISCUSSING THE NEGOTIATIONS THAT PRODUCED THE 1976 AGREEMENT, NOTED THAT "THE UK DELEGATION EMPHASIZED REPEATEDLY THROUGHOUT THE NEGOTIATION THAT THEIR LANGUAGE PREFERENCES (WHICH INCLUDED NAVAL SUPPORT FACILITY RATHER THAN THE U.S. PREFERRED "GENERAL MARITIME AND AIR SUPPORT FACILITY") WERE MOTIVATED BY THEIR DESIRE TO MINIMIZE OPPORTUNITIES FOR CRITICISM OF THE DIEGO GARCIA EXPANSION AND WERE NOT INTENDED TO RESTRICT USG RIGHTS." THE REFERENCE TO THE FACILITY AS A "NAVAL" FACILITY MERELY DESCRIBED IT BY REFERENCE TO THE U.S. AGENCY THAT WAS TO HAVE ADMINISTRATIVE RESPONSIBILITY FOR ITS OPERATION. IT WAS NOT INTENDED TO PURPORT TO DESCRIBE THE NATURE OF THE FUNCTIONS THAT MAY BE PERFORMED THERE OR TO LIMIT THE KINDS OF FORCES IT MAY SUPPORT. THE LATTER SUBJECTS ARE DEALT WITH BY PARAGRAPH (2) (PURPOSE) AND (3) CONSULTATION.

(U) THE PURPOSE OF THE FACILITY, ACCORDING TO PARAGRAPH (2) OF THE 1976 AGREEMENT, INCLUDED FURNISHING "SUPPORT FOR SHIPS AND AIRCRAFT OWNED OR OPERATED BY OR ON BEHALF OF EITHER GOVERNMENT." PARAGRAPH (4) (B) PROVIDES THAT AIRCRAFT "OWNED OR OPERATED BY OR ON BEHALF OF EITHER GOVERNMENT MAY FREELY USE THE . . . AIRFIELD." PER PARAGRAPH (3), IN NORMAL CIRCUMSTANCES, EACH PARTY IS TO INFORM THE OTHER OF INTENDED MOVEMENTS OF SHIPS AND AIRCRAFT, AND "IN OTHER CIRCUMSTANCES THE USE OF THE FACILITY SHALL BE A MATTER FOR THE JOINT DECISION OF THE TWO GOVERNMENTS." THE TWO GOVERNMENTS HAVE, ON MANY OCCASIONS SINCE 1976, AGREED TO THE USE OF THE NSF IN SUPPORT OF U.S. AIR FORCE OPERATIONS, UNDER THE AUSPICES OF THE 1976 AGREEMENT.

(U) RATHER THAN REQUIRING A NEW OR SUPPLEMENTAL AGREEMENT FOR THE APPROVAL OF THESE INITIATIVES BY HER MAJESTY'S GOVERNMENT, THE APPROPRIATE MECHANISM FOR APPROVAL IS THAT EXISTING PER PARAGRAPH (1) OF THE 1976 AGREEMENT. THE CURRENT PROPOSAL DOES NOT CONTEMPLATE THE CONSTRUCTION OF

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4

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A NEW FACILITY, NOR DOES IT INVOLVE CONSTRUCTION OUTSIDE THE SPECIFIC AREA SHOWN IN THE PLAN ATTACHED TO THE 1976 AGREEMENT, WHICH SHOWS THE SCOPE OF THE UNITED STATES NSF. PER PARAGRAPH (1) (A) OF THE 1976 AGREEMENT, "IMMOVABLE STRUCTURES, INSTALLATIONS AND BUILDINGS FOR THE FACILITY MAY, AFTER CONSULTATION WITH THE APPROPRIATE ADMINISTRATIVE AUTHORITIES OF THE UNITED KINGDOM, BE CONSTRUCTED WITHIN THE SPECIFIC AREA SHOWN IN THE PLAN ATTACHED TO THIS NOTE." THE 1976 AGREEMENT EXPLICITLY AUTHORIZED THE FACILITY TO CONSIST OF "AN ANCHORAGE, AIRFIELD, SUPPORT AND SUPPLY ELEMENTS AND ANCILLARY SERVICES, (AND) PERSONNEL ACCOMMODATION" THE PROPOSED CONSTRUCTION WILL SUPPORT THESE AGREED USES, DOES NOT CHANGE THE FUNDAMENTAL NATURE OR CHARACTER OF THE AGREEMENT, AND IS CONSISTENT WITH THE INTENT AND PRACTICE OF BOTH GOVERNMENTS. GIVEN THESE FACTS, THERE IS AMPLE LEGAL BASIS FOR APPROVAL OF THE PROPOSED CONSTRUCTION AFTER CONSULTATION AT THE APPROPRIATE ADMINISTRATIVE LEVEL.

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