

No. 17216

**UNITED STATES OF AMERICA
and
AUSTRALIA**

Exchange of notes constituting an agreement relating to the establishment, maintenance and operation of a solar observatory at Learmonth, Western Australia. Canberra, 14 and 27 October 1977

Authentic text: English.

Registered by the United States of America on 24 November 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
AUSTRALIE**

Échange de notes constituant un accord relatif à la création, à l'entretien et au fonctionnement d'un observatoire solaire à Learmonth, Australie-Occidentale. Canberra, 14 et 27 octobre 1977

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 24 novembre 1978.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN
THE UNITED STATES OF AMERICA AND AUSTRALIA RELATING
TO THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF
A SOLAR OBSERVATORY AT LEARMONTH, WESTERN
AUSTRALIA

I

The American Embassy to the Australian Department of Foreign Affairs

Note No. 127

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and has the honor to refer to recent discussions between representatives of our two governments concerning the establishment, maintenance and operation of a solar observatory at Learmonth, Western Australia (in this Note referred to as "the Observatory"). The Observatory will be equipped with an optical telescope and a radio telescope and will complement other similar observatories in a worldwide network. Its function will be to provide continuing observation of and timely reporting of data on solar activity, for the purpose of ionospheric predictions.

The Embassy has the honor to propose an Agreement for the establishment, maintenance and operation of the Observatory in accordance with the following provisions:

(1) Unless otherwise agreed, the United States Air Force (in this Note referred to as "USAF") and the Australian Department of Science (in this Note referred to as "DOS") shall be the cooperating agencies of the United States Government and the Australian Government respectively, and shall be responsible for giving effect to the provisions contained in this Note.

(2) The Observatory shall be established by the United States Government at or near Learmonth and it is intended that it shall be operational by January 1979. The Observatory shall be operated under the joint management of the cooperating agencies. The United States Government shall install and check out equipment and establish and update, as necessary, the operating procedures. The Australian Government shall provide qualified manning to the maximum extent practicable to manage, operate and maintain the Observatory. The qualifications and numbers of Australian personnel shall be mutually agreed between the cooperating agencies. The cooperating agency of the United States Government shall continue to provide operational requirements, technical advice and assistance to the cooperating agency of the Australian Government. United States military and civilian personnel may continue to participate in management, operation and maintenance of the Observatory as necessary to ensure fulfillment of requirements.

(3) The operation of the Observatory and scientific data collected by it shall be unclassified. Data shall be available to the national and international scientific communities. Access to the Observatory shall be permitted to the scientific communities subject to non-interference with operational requirements of the Observatory.

(4) The United States Government shall provide spare parts, materials and replacement equipment required for the operation of the Observatory. Should the situation arise in the future where the United States Government no longer required operation of the Observatory, arrangements for the disposition of excess spare parts, materials and equipment at the Observatory owned by the United States Government shall be made in accordance with the Exchange of Notes of 9 November

¹ Came into force on 27 October 1977, the date of the note in reply, in accordance with the provisions of the said notes.

1973¹ constituting an Agreement concerning the Disposal of United States Government Excess Property in Australia.

(5) (1) The Agreement concerning the Status of United States Forces in Australia signed at Canberra on 9 May 1963² ("the Status of Forces Agreement"), other than Articles 9, 10, 20 and 24 and subject to modifications set out in sub-paragraph (3) of this paragraph, shall be deemed to apply to the activities conducted for the purposes of this Agreement and shall be read as if incorporated herein.

(2) For the purposes of the following provisions of this paragraph and sub-paragraph (16)(a) below, a United States civilian employee means a civilian employee of the United States Government who does not qualify as a member of the civilian component under the provisions of sub-paragraph (a) of Article 1 of the Status of Forces Agreement, and who is employed in Australia solely for the purposes of this Agreement and is not a citizen of, or ordinarily resident in, Australia.

(3) For the purposes of the application of the provisions of the Status of Forces Agreement in accordance with sub-paragraph (1) of this paragraph, it is agreed that, as between the Governments:

- (a) Other than for the purposes of Articles 6 and 7 of the Status of Forces Agreement, a United States civilian employee shall be regarded as a member of the civilian component and the provisions of that Agreement applicable to this Agreement shall be applied to that employee accordingly;
- (b) Property owned by either Government and used in Australia for the purposes of this Agreement shall be regarded as being used by its land, sea or air armed forces and paragraph (1) of Article 12 of that Agreement shall be applied accordingly;
- (c) Damage caused by a United States civilian employee or by a civilian employee of the Australian Government in the performance of duty for the purposes of this Agreement shall be regarded as having been caused by an employee of the armed forces of the United States Government or of the Australian Government, as the case may be, in the performance of his official duties and paragraph (1) of Article 12 of that Agreement shall be applied to that damage accordingly;
- (d) Vehicles owned by the United States Government and used in Australia for the purposes of this Agreement shall be regarded as official vehicles of the United States Forces and paragraph (5) of Article 12 of that Agreement shall be applied to those vehicles accordingly;
- (e) An act or omission of a United States civilian employee done in the performance of duty for the purposes of this Agreement shall be regarded as an act or omission of an employee of the United States Forces done in the performance of official duty and paragraph (7) of Article 12 of that Agreement shall be applied accordingly; and
- (f) United States personnel referred to in Article 21 of the Status of Forces Agreement shall be regarded as including United States civilian employees who are in Australia for the purposes of this Agreement.

(6) Except as may be otherwise agreed between the two Governments the United States Government and its contractors and sub-contractors shall retain title to equipment, materials and other moveable property brought into or acquired in Australia by them or on their behalf for the purposes of this Agreement. Consistently with this Agreement, the United States Government and its contractors and sub-contractors may remove such property at any time from Australia at their own expense and free from export duties and related charges.

(7) The Australian Government shall, in accordance with its laws, regulations and procedures, facilitate the admission into and exit from Australia of contractors and sub-contractors of the United States Government and their employees required in Australia for the purposes of this Agreement, and dependents of these categories of persons.

¹ United Nations, *Treaty Series*, vol. 938, p. 375.

² *Ibid.*, vol. 469, p. 55.

(8) (1) The Australian Government shall in accordance with its laws, regulations and procedures facilitate the admission into Australia of all equipment, spare parts, materials and other property provided by or on behalf of the United States Government in connection with the Observatory. No duties, taxes or like charges shall be levied on such property which is certified by the United States Government to be imported for the purposes of this Agreement and which it certifies at the time of entry is, or is intended to be, the property of the United States Government.

(2) Exemption from sales tax shall be allowed by the Australian Government in respect of equipment, spare parts, materials and other property purchased in Australia which is certified to be used for the purposes of this Agreement and not for resale, provided that such property shall become the property of the United States Government prior to use in Australia.

(9) The cost of the establishment, operation and maintenance of the Observatory and necessary incidental items such as training shall be met by the United States Government for the duration of the Agreement: except that the Australian Government shall meet the costs of maintaining any personnel it requires at the Observatory for its own purposes and shall also meet the additional cost of any scientific operation of the Observatory that is exclusively for its purposes.

(10) Any action required to be taken by either Government or the cooperating agencies under the provisions of this Agreement shall be subject to the availability of appropriated funds.

(11) (1) The Australian Government at its own expense shall provide such land, easements and rights of way as are required for the purposes of the Observatory. All land, easements and rights of way so provided shall be vested in the Australian Government and shall for the duration of this Agreement be made available for the Observatory on terms and conditions to be agreed between the cooperating agencies.

(2) When land areas or improvements utilized by the United States Government for the purposes of this Agreement are no longer required by it, they shall be relinquished in good order and condition as may be agreed by the cooperating agencies and without cost to the Australian Government.

(12) Consistently with this Agreement, access roads, buildings, installations, utilities and other facilities and structures necessary to the establishment, maintenance and operation of the Observatory shall be constructed in accordance with arrangements to be agreed by the cooperating agencies consistent with paragraph nine (9) of this Note.

(13) Appropriate arrangements may be made between the cooperating agencies to ensure adequate physical security of the Observatory.

(14) (1) The communications services of the Australian Government and its instrumentalities shall be used, to the maximum extent practicable, for the purposes of this Agreement in accordance with arrangements to be made between the cooperating agencies. Such arrangements shall be subject to the approval of the appropriate Australian authorities.

(2) The use of radio frequencies, powers and band widths of the radio services for the Observatory shall be in accordance with arrangements to be made between the cooperating agencies. Such arrangements shall be subject to the approval of the appropriate Australian authorities.

(15) At all stages in the establishment and maintenance of the Observatory, the maximum practicable use shall be made of Australian resources. Arrangements for giving effect to this paragraph may be made from time to time by the cooperating agencies.

(16) In accordance with Australian laws and regulations the Australian Government shall exempt from Australian income tax:

- (a) The official salary of, and income derived from sources outside Australia by a United States civilian employee;
- (b) The income derived from contracts in connection with the Observatory by United States contractors or sub-contractors to the extent provided by the Convention between the Australian Government and the United States Government for the Avoidance of Double Taxation and

the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington on 14 May 1953¹ (“the Double Taxation Agreement”); and

- (c) The salaries of the personnel of United States contractors or sub-contractors derived in connection with the Observatory to the extent provided by the Double Taxation Agreement.

(17) (1) The following persons who are in Australia for the purposes of this Agreement and who live at the township of Exmouth shall be authorized to utilize the existing United States Commissary at North-West Cape:

- (a) Members of the United States Forces;
 (b) Members of the civilian component; and
 (c) The dependents of any of the above listed persons.

(2) For the purposes of this paragraph, the terms “Members of the United States Forces”, “member of the civilian component” and “dependents” shall be as defined in Article 1 of the Status of Forces Agreement.

(18) The cooperating agencies may make implementing arrangements for the purpose of carrying out the provisions of this Agreement.

The Embassy proposes that, if the foregoing proposals are acceptable to the Australian Government, this Note and the Department’s reply to that effect shall constitute an Agreement between the two Governments which shall enter into force on the date of the Department’s reply for a period of ten years and thereafter shall continue in force until terminated. After the Agreement has been in force for a period of nine years either Government may at any time notify the other Government in writing that it desires to terminate the Agreement in which event the Agreement shall terminate twelve months after such notice has been given.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.

Canberra, October 14, 1977.

Embassy of the United States of America

II

The Australian Department of Foreign Affairs to the American Embassy

AUSTRALIA

The Department of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy’s Note No. 127 of 14 October 1977, regarding the proposed Agreement concerning the establishment, maintenance and operation of a solar observatory. That Note reads as follows:

[See note I]

The Department of Foreign Affairs has the honour to inform the Embassy that the foregoing proposals are acceptable to the Australian Government, which agrees that the Embassy’s Note and this reply shall together constitute an Agreement between the two Governments, which shall enter into force on today’s date.

The Department of Foreign Affairs takes this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Canberra, A.C.T., 27 October 1977.

¹ United Nations, *Treaty Series*, vol. 205, p. 253.