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MINUTE BY THE FOREIGN OFFICE LEGAL ADVISER

The trouble seems to have arisen from the fact that the instructions sent to Lord Lothian on August 8th, which would have been all right if they had been acted on then, had, owing to the development of events, become inappropriate when Lord Lothian acted on them on September 26th; this difficulty is, however, to some extent diminished by the fact that Lord Lothian had previously made a communication to the United States Government on August 8th.

There is nothing in the exchange of notes of September 2nd which commits H.M. Government to the use of the areas in question for any other purpose than as naval and air bases. There is equally nothing which prevents us from agreeing to the use of some of these areas for civil aviation purposes if the United States Government ask for it, but this would be a matter of negotiation and agreement. The most I think which can be said of Lord Lothian's communication of September 26th is that it might reasonably have led the Americans to suppose that H.M. Government were prepared to contemplate that in certain cases areas leased as bases might also be used for purposes of civil aviation, in which case those facilities would have to be made available for British interests. It is moreover clear from the terms of the instructions sent to Lord Lothian on August 8th that what we had then in mind was not the leasing of areas which would be developed and operated by the United States Government themselves, but facilities which would be worked "through Pan American Airways", and, at any rate if this part of our instructions was embodied in Lord Lothian's letter of August 8th, it would be open to us to argue that the situation had been so profoundly modified by the subsequent development of the negotiations into the Bases Agreement that any request by the United States Government for facilities for American commercial aviation in the areas must be considered de novo and not on the basis that we were already committed to agreeing to such facilities. This might at any rate enable us to reduce any facilities which we may find ourselves compelled to agree to within limits which should meet the preoccupations of the Air Ministry.

FOREIGN OFFICE,
30th October 1940.