



HOUSE OF COMMONS

Foreign Affairs Sub-Committee on the Overseas Territories

Oral evidence: The UK Government's engagement regarding the British Indian Ocean Territory, HC 598

Wednesday 28 February 2024

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Members present: Alicia Kearns (Chair); Dan Carden; Fabian Hamilton; Andrew Rosindell; Henry Smith.

Questions 1-48

Witnesses

I: David Snoxell, Former British High Commissioner to Mauritius, and Dr Walter C. Ladwig III, Senior Lecturer in International Relations at King's College London.

II: Rt Hon Sir Robert Buckland KC MP, former Solicitor General of England and Wales, and Professor Philippe Sands KC, Professor of Law at University College London.

Written evidence from witnesses:

– David Snoxell:

committees.parliament.uk/writtenevidence/127351/html/

– Professor Philippe Sands KC:

committees.parliament.uk/writtenevidence/128059/html/



Examination of witnesses

Witnesses: David Snoxell and Dr Walter C. Ladwig III.

Q1 Chair: Welcome to the first hearing of the Foreign Affairs Committee's Overseas Territories Sub-Committee. We are delighted to be kicking off with our first hearing on the British Indian Ocean Territories. This session is looking at the strategic importance to the UK and its allies of the base on Diego Garcia, the impact of the ICJ ruling, and the UK Government's legal position over administration of the islands.

Ahead of this hearing, we met a number of Chagossian communities and spent time listening to Chagossian voices, which had a real range of views when it came to resettlement, consultation and negotiations, and support for their communities here in the UK. We are also very grateful for the extensive written evidence we have received from Chagossians around the world, and we have noted their views.

Today, we are joined by two very eminent experts, who we are delighted to be hearing from. Could you both kindly introduce yourselves?

Dr Ladwig: Good morning. My name is Dr Walter Ladwig. I am a senior lecturer in international relations in the Department of War Studies at King's College London. A substantial portion of my research focuses on the geopolitics and geostrategy of the Indian Ocean and the Indo-Pacific. I have previously published several articles and book chapters about Diego Garcia.

David Snoxell: I am David Snoxell. I have had a long involvement with the Chagos Islands and Chagos issues, going back to when I was first deputy commissioner of BIOT in the mid-1990s and then, later on, high commissioner to Mauritius. Since then I have kept up my involvement, especially with the all-party parliamentary group on the Chagos Islands/BIOT, which was established in 2008, and we have had 93 meetings to date.

Q2 Chair: Thank you ever so much. Dr Ladwig, can you set the scene for us as to why Diego Garcia matters so much, and particularly what it allows the US to do that it would be unable to do if it lost its ability to operate from Diego Garcia?

Dr Ladwig: It provides a strategic entry point in the heart of the Indian Ocean and bases one third of America's pre-positioned military forces. That basically allows the US Army or the US Marine Corps to surge tanks and other heavy equipment to a contingency location, and you can fly troops in. So it allows a rapid deployment of forces.

The airfield there supports long-range air operations. Again, US forces—in some cases, based in the United States—have routed through Diego Garcia or been based there, and have responded to contingencies in the Middle East and south Asia.



It is important as a communication station and for satellite monitoring. One of the main tracking stations for the GPS network is based there. The central positioning allows naval forces to remain on station for much longer than they would otherwise. The central location supports naval vessels travelling from the Middle East to the Pacific and back, and supports anti-piracy operations that have taken place in the horn of Africa.

The challenge would be that, without that central location, you have to distribute assets and resources in various other places. Djibouti, Oman and, potentially, south-east Asia do not have the centrality of Diego Garcia. Some of them also have potential political challenges. Djibouti has allowed China to open a facility there, and actors within the Gulf have different relationships with Iran, so to speak. So there are political challenges that would come with a change of status.

Q3 Chair: Conversely, for the UK, what would loss of Diego Garcia mean for the Indo-Pacific tilt? What would it mean for our operations and our relationship with the base?

Dr Ladwig: It gives us an element to point to when we discuss the stakes that the UK has in the Indian Ocean and the Indo-Pacific. I do not think it is irreplaceable, given the presence of so many Commonwealth countries and so many historical relationships, particularly with Gulf countries on the western edge of the Indian Ocean, but it certainly is something that the UK can point to.

I would also say that, in so far as the Indian Ocean is very important to the UK economically, because of energy flows and trade flows, having the US there playing the role that it does benefits British interests.

Chair: David, is there anything you would like to add?

David Snoxell: I agree with Dr Ladwig on nearly all he said. I would just point out that the question you put seems to me to be a rather theoretical one that is not likely to arise. Nobody is questioning continuing American and British control over Diego Garcia and the base—that simply does not arise.

The other point I would make—and this emanates from your paper, Dr Ladwig—is that the interest for the UK is very much less than it is for the US. The UK has never run any military operations out of Diego Garcia—it is too far away. One paper claimed that Britain had stores, ammunition and fuel on Diego Garcia. The UK has never had that and could not afford to buy it off the Americans.

One last comment I would make is that, as far as Djibouti is concerned, there are up to 11 military facilities, and that includes France, the US, the UK, Germany, Italy, Russia, China and so on. So it is not a big deal that all these countries have bases cheek by jowl with each other in Djibouti.

Q4 Chair: That is very helpful. Obviously, we are also looking to future-proof; although there may be no question at the moment about UK and US access, the goal of this is to look at future-proofing.



HOUSE OF COMMONS

In terms of the merits and drawbacks of a sovereign base area agreement versus a leasing agreement, where do you sit, Dr Ladwig?

Dr Ladwig: The key point is the exact phrase that you used: future-proofing. We are not talking about risks or challenges today or even tomorrow, but over the long horizon. I completely agree with what David has put in his submission. The relationship of the Government of Mauritius with the United States is excellent. The relationship of the Government of Mauritius with India is excellent. India wants the United States to remain present in Diego Garcia. All that looks very good from our immediate standpoint.

The potential challenge when we look over a long enough time horizon is that low-probability events could come to the fore. One can only look at the Maldives, where India had a long-standing positive relationship with the Government. We then saw parties come into power that were more favourable to China than India. This became domestically politicised, and an Opposition party came in that was India first, and now we have a Government just elected on an explicit “India out” policy. This has unfortunately been replicated in other parts of south Asia, so a future-proofed agreement would be something you would want to hedge against.

On the merits of a sovereign base arrangement versus the kind of lease that would lock that in, I am thinking about the example of the lease undergirding the US naval facility at Guantanamo Bay, Cuba, which is basically breakable by agreement between the two parties or by the US abandoning the site. It has operational control in the hands of the United States while still recognising Cuban sovereignty. The fact that that has held up after 65 years of communist rule might give you an example of a lease arrangement that would be future-proofed and that would provide without necessarily going through this process of sovereignty transfer. But I am not a lawyer, so I cannot really speak to the ins and outs of those.

Q5 **Chair:** That is very helpful. David, what if we took the UK out of this and the US wanted to sign a lease with Mauritius? How do we get to a situation where, essentially, the US has the operational freedom that it says is a necessity, but you also have Mauritius having effective sovereignty over Diego Garcia and the islands?

David Snoxell: I would actually now argue—I have given a lot of thought to this over the past 30 years—that the best solution would be for the UK, which has no military interest in Diego Garcia, to hand it over to the United States and allow the US to negotiate an agreement with Mauritius. We would escape a lot of responsibilities—we would be passing them on to Mauritius and the United States. Our budget at the moment for BIOT is up to £20 million a year. When I was dealing from the Foreign Office on the issue, it was £2 million a year. That budget is going up exponentially all the time for a whole range of reasons, so there is an interest for the taxpayer not to continue paying that large sum of money and to allow the United States to run it. That is an idea only from me. It does not represent any of the participants’ views, and I have no idea what they think about it.



HOUSE OF COMMONS

I just wanted to mention that it is not only a sovereign base; it could be a solution, but it is also the handover of Diego Garcia—the base.

One last point: we must make a distinction between Diego Garcia and the outer islands. The 56 outer islands, which are 130 miles away from the base, can be treated quite separately, and that is where you could do resettlement. The United States has no problem whatsoever with resettlement on the outer islands, and I do not think we really have a problem with it either.

Q6 Chair: Before I hand over to Henry, is there anything you want to add, Dr Ladwig, around the idea of the US negotiating a lease with Mauritius?

Dr Ladwig: Again, I do not know the legal ins and outs of how that transfer would take place. Right now, the US position is that we support and encourage the two parties to reach an outcome that is both doing the right thing and putting this particularly important facility on a long-term solid basis.

Chair: Essentially, the US wants it put to bed and wants some assurance and certainty.

Q7 Henry Smith: Dr Ladwig, what evidence is there of Chinese state activities in the Indian Ocean? What does the pattern look like?

Dr Ladwig: Considerable, and China has definitely been putting more focus on the Indian Ocean over the last decade. It is pretty easy to understand why, when you look at their dependence on the energy flows transiting from the Gulf, and also the fact that the reverse flow is the way that manufactured goods from East Asia make their market to Africa, the Middle East and, in some cases, Europe. Interestingly, China is the only major power that has embassies in all six Indian Ocean island states—France doesn't; the UK doesn't; the US doesn't.

Since 2008, China has begun sending its warships to take part in anti-piracy operations off the Gulf of Aden. After 2014, they started sending submarines along with those. I am not really clear why you need submarines to fight pirates, but a lot of people do see these as shakedown cruises and efforts to develop a longer-range power-projection capability. That has been accompanied by the deployment of a number of oceanographic and hydrographic survey vessels that are linked to the PLA, so there has been extensive surveying and mapping of sea floors, which would facilitate subsurface warfare.

We have discussed already the opening of China's first overseas base in Djibouti in 2017—their first overseas presence. Among scholars who specialise in the Indian Ocean—I am thinking of people such as Darshana Baruah of Carnegie—they would argue that it is only a matter of when, not if, China opens a second facility, and the western Indian Ocean is widely expected to be where that takes place.

Then, if we step from the military standpoint to the economic, it will not surprise you to know that China is the No. 1 trading partner for most Indian Ocean littoral states. However, there has also been a real big push,



HOUSE OF COMMONS

through the belt and road initiative, towards development loans that lead to infrastructure. You have major port projects in Pakistan, in Sri Lanka, in Oman, in the UAE, in Djibouti, and then all down the African coast—in Kenya, in Tanzania and in Mozambique. The military and economic presence has expanded tremendously in the last 10 to 15 years.

Q8 Henry Smith: Thank you very much. That is very clear in terms of that significant Chinese presence in the Indian Ocean. You mentioned that it is the only state to have missions in all of the Indian Ocean countries; how would you characterise specifically the relationship between China and Mauritius? How involved is China in Mauritius, whether through the belt and road initiative or in other ways? How would you see that relationship developing between China and Mauritius, and what sort of access might Mauritius give to the Chinese?

Dr Ladwig: Let me just step back, before I answer that specifically, by talking about Mauritius's relationship with India, because it is a very close and very important partnership. Since the mid-1980s, the Mauritian national security adviser has been either a retired or serving Indian official. The Governments are very close, and Mauritian Governments have been on record saying that they would never take any actions that undercut Indian interests in the region.

That being said, on the economic front, Mauritius has been the recipient of about \$1.4 billion in Chinese development finance, about \$1 billion of which has been loans mostly linked to the belt and road initiative. That is about 12% of Mauritian GDP. Just to put that into context, with Sri Lanka, which ended up turning over a port and an airport, and, at one point was the poster child for the sort of debt-trap diplomacy, their exposure to Chinese development finance was about 22% of GDP. Therefore Mauritius is not by any means in that category, but there is some exposure there. There is also the fact that Mauritius was the first African country to sign a free trade agreement with China, and a lot of the expectation around that is about Mauritius as a gateway to the rest of the continent so that goods and things would flow through there. Therefore this could potentially become a very important component of the Mauritian economy.

That then gets to this question—I am going to speak as an academic very briefly to say that we debate and argue this in international relations—of, “At what point, and in what circumstances, does economic dependence lead to political compliance?” Simply because you owe somebody debt, and simply because they are a big trading partner, that does not mean that they can snap their fingers and you jump to and do everything they say, but it is a risk.

Then, going back to the Chair's comments about future proofing, something that needs to be taken very seriously in negotiations is developing an agreement and a settlement such that, if a future Government were more inclined towards China—where perhaps relations with China and India become domestically politicised in Mauritius, as they have in other countries—the agreement would stand up in the face of that. That is one of the future-proofing scenarios. Although it seems very



HOUSE OF COMMONS

unlikely at present, we need to take those seriously enough as we plan for the long, long term.

Q9 **Henry Smith:** Just briefly, what sort of military involvement occurs right now, in terms of the Chinese and Mauritius, and what would you potentially envisage?

Dr Ladwig: I am not aware of any right now. Given the position of Mauritius with respect to India in the near term, it is hard to see. Alternative locations such as the Comoros look a lot more vulnerable and/or friendly, depending on your perspective, to Chinese involvement.

Q10 **Henry Smith:** Mr Snoxell, following on from that, how do you see the relationship between China and India developing with regard to the Indian Ocean area? Do you think that there could be risks? Obviously, the relationship between India and Mauritius is very close right now, but as we heard a few moments ago, the Maldives used to have a close relationship with India. How do you see the dynamic of that developing?

David Snoxell: That is a good question. I start by saying that I do not agree with some of what you have said, simply because your actual submission talks about the Chinese focus being not on the Indian Ocean but on the south Pacific. It is very clear what you say there, and I agree with that: it is not, at the moment, in the Indian Ocean. I have been dealing with Mauritian Governments since about 2000. I have just been in Mauritius, and I called on the President. I had an hour with the Prime Minister, the Cabinet Secretary, the negotiating team, Olivier Bancoult and the Chagos Refugee Group and so on. The purpose of my visit was basically a holiday, so there was no involvement of the Government of Mauritius in who I saw or what I did. My take on Mauritius is that they are appalled and shocked by the suggestions that they want the islands in order to be able to hand over another island, or even Diego Garcia, to China. These are quite shocking allegations, and they have no substance whatever in terms of the Mauritian Government.

I do accept that, just because that has been the position of the last five Governments of Mauritius, it will always remain that way, but that is really what the population think. Whoever I talk to—whether in the economy, managers of hotels, or anything—they were all just appalled by these suggestions. Mauritius does not have the sort of a close relationship with China that it has with France in particular, the UK to a slightly lesser extent, or India and Australia. It has much, much closer relations and it is just inconceivable that it would set that aside. In any case, if you want to keep Mauritius in the western alliance, the best and only way of doing that is ensuring that you have an agreement on the future of Diego Garcia. If you do not want to, then you could possibly drive a future Government into the arms of China.

Henry Smith: That was a busman's holiday, David.

David Snoxell: Yes.



HOUSE OF COMMONS

Dr Ladwig: Just to clarify, my submission said that the US was more focused on the Pacific than the Indian Ocean. I agree that the South China Sea and Taiwan is a primary focus for China. That was not in my submission, but the Indian Ocean presence has grown dramatically in the last decade.

Q11 **Chair:** David, would you accept that 20 years ago none of us would have thought that Sri Lanka would essentially, in effect, lose its sovereignty to China? Perhaps, therefore, on the requirement of something that has such a fundamental security footprint for the UK and US—and you argue, therefore, for all our allies and all those that we show support to—it is important that we do ask these questions, even if they may be deemed to be offensive.

David Snoxell: Yes, I agree with you. Those questions should always be asked, but I do not feel that I am in a position to comment on our relationship with Sri Lanka at any particular stage, because I have never been close to that. I am sorry, but I do not feel that I am expert enough to be asked.

Chair: None of us would have said 20 years ago that we expected Sri Lanka to lose its sovereignty. That was not really on the cards but, devastatingly, that seems to be the situation that we are in at the moment.

Q12 **Dan Carden:** David, what do you think the diplomatic challenges are of the various court rulings and UN resolutions for US and UK foreign policy?

David Snoxell: I am sad to say that the UK's reputation internationally—on the international stage, with the international courts and tribunals, with the UN General Assembly and so on—is at its lowest ebb. One of the main reasons for that is the position we have taken on the ICJ advisory opinion. For as long as we stay in that position, we will not get British judges and experts elected to international courts or expert bodies in the UN.

It may come as a surprise to members of the Committee that there are 10 human rights treaty bodies in the UN and Britain used to be a member of almost all of them, but we are no longer a member of any of them. There are 276 expert groups in the entire UN system. Britain used to have membership of many of them; we no longer have membership of any of them. That sends a very strong signal about where Britain's reputation now stands.

We have a chance to redeem some of the UK's lost reputation by respecting, implementing and agreeing with Mauritius the implementation of the ICJ advisory opinion, and the UN General Assembly resolution that endorsed it. I believe the issue of Chagos is absolutely fundamental to where Britain stands in the international stage. Our position on Ukraine and on Palestine is greatly undermined by our position on Chagos. In other words, we are saying that international law applies to Russia, Israel and other countries, but it doesn't apply to the UK in the case of Chagos.

Q13 **Dan Carden:** If we do not get an agreement, what do you see as the



consequences?

David Snoxell: The consequences will be a continuing deterioration in Britain's standing in the world. It can only be reversed by being seen to implement the decisions of international courts—not just the ICJ, but the International Tribunal for the Law of the Sea, the arbitral tribunal and various other courts.

Q14 **Dan Carden:** Dr Ladwig, how do you see the effect of this reputational risk in the US?

Dr Ladwig: I think there are growing pockets of concern in the US. For the longest time, there was a bit of a hands-off approach, where we viewed this issue as something that needed to be worked out between Mauritius and the UK, which does not really have anything to do with us, but I think some are now starting to feel, as David said, that it creates challenges for the US. At this stage, for the United States, at least, I think it still is largely in the realm of what-aboutism, so people who are just looking for an excuse to deflect or a reason to pull back will talk about something like this. I do not think it ever really comes up as a substantive issue. But we have seen the way the issue has grown and taken on life in this country; I would conjecture that there will be a similar development over the next 20 years in the US if the issue is not put to bed.

Q15 **Andrew Rosindell:** Good morning, Dr Ladwig and Mr Snoxell. This is a mess. It really is. It has been a mess from day one. My concern has always been the welfare and the rights of the Chagossian people. We are now in a situation whereby they have been dispersed to the UK, Seychelles and Mauritius. They do not seem to have a say in any of this. We are talking about the US; we are talking about Mauritius. I'm concerned about the rights of the Chagossian people. I believe they can return and settle in the outer islands, for certain—I have actually been there—although it is remote and needs a lot of infrastructure. Mr Snoxell, you referred to our obligations and the legalities of all this. Do you not think that we, the United Kingdom, have a moral obligation? We were the country that ejected those people from their homeland in the first place. Surely it is our responsibility to give those people and their descendants the right to go back to live, visit and settle in their homeland.

David Snoxell: May I answer that?

Andrew Rosindell: You can both answer that.

David Snoxell: I will go first. I agree entirely with you, Andrew. I have always, right from when I first was involved in '95, advocated that the Chagossians should be allowed to return. Our biggest problem, which sort of answers your question, is the fragmentation of the Chagossians. There are up to nine Chagossian groups. When I was high commissioner we had three, and they took it in turns to demonstrate against the high commission. I have just been in Mauritius, and I have been talking to the Chagos Refugees Group committee and Olivier Bancoult. I met them all one evening. I'm afraid they do not agree with Chagossian Voices, which they regard as a third or fourth-generation group that has come about



HOUSE OF COMMONS

since 2020, whereas they have been there since 1982. This has always been a huge problem. I have to say, sadly, that I think officials in Governments have exacerbated that division and fragmentation by siding with one group at some stage and then another group at another, and so it has gone on. It is very difficult for a Government to decide.

Yes, I fully accept that there is a very important moral dimension to this and we should make resettlement possible. It nearly came about. It could easily have come about in 2002 after the first feasibility study, but the officials dealing with it felt that it was all too exhausting and wearing and all the rest of it, and they brought in evidence that was highly questionable. The feasibility study was flawed from the start. It could have happened again in 2010 and in 2015 at various stages. There has never been a reason why we should not have done an experimental resettlement on the outer islands. All sorts of reasons have been thrown up, including cost, which is always hugely exaggerated, as you know. I believe that we should tomorrow announce that we are withdrawing the Orders in Council of 2004, which banned the Chagossians from returning to their homeland.

Dr Ladwig: The only thing I have to add to that is that in my view as an academic, from the time I started following and studying these issues I have never understood why the US Government can fly in and employ Filipino contractors to run dining facilities and other ancillary support things on Diego Garcia and not upskill and train, if required, members of the community who would want to have those roles. You can vet them, you can do security clearance, and you can do whatever you need to do. I have never understood why that has never been done.

David Snoxell: There always have been Chagossians working on the base since 2006. The Americans do allow it, but they could do a great deal more to help it. The reason why Chagossians do not want to work on the base is the very low pay that the Filipinos get. Also, they are not allowed to take their families with them. For both of those reasons, they do not want to work on the base.

Q16 **Andrew Rosindell:** I want to talk about the effects at the United States, its military base and the outer islands if the Chagossians are allowed to go back. Where I am coming from on this is that had the United Kingdom not removed those people from these islands in the first place, we would not be having this debate.

David Snoxell: No, they would still be there.

Andrew Rosindell: In every other British overseas territory, the inhabitants have a say about where they belong and where they want to be. Had they been allowed to stay there in the first place, as with Gibraltar and the Falkland Islands and all the other British overseas territories, the people would still be living there and therefore would have the right to a say over the destiny of their territory. Mr Snoxell, who is to blame for this? You served in the Foreign Office. You know what has been going on all these years. Who is to blame for this catastrophic embarrassment by Her Majesty's Government at the time? Who has been



HOUSE OF COMMONS

puppeteering the American view? I have been to Washington with this Committee and raised it at very high levels in the State Department, and nobody has ever said to me that they objected to the Chagossians going back. However, when I come back here and raise it with Foreign Secretaries, Ministers, civil servants and officials, they say that the Americans object. Whenever I have raised it with them, they have not objected. Who has been puppeteering this whole mess from day one?

David Snoxell: It has to be officials to start with. Officials brief Ministers and make recommendations to them, and Ministers then make decisions on the policy recommended. Ministers cannot escape the responsibility, but it is officials who write the briefs. If you were to go back almost to colonial days, you would find that the Foreign Office in the late 1960s and early '70s was driven by a colonial zeal, which was one of the reasons they wanted the islands depopulated. The Americans never asked for that; they asked only for, as they put it, a clean sweep of Diego Garcia. They never required or asked for the islanders to be removed from all the other islands; it was British colonial zeal that went ahead with that. Why? Because by doing it that way, having created an overseas territory, we could escape observation and inquiry by the UN General Assembly and Special Committee of 24 on Decolonisation, on which I sat in 1969. They escaped it completely.

I must admit that officials are largely to blame. However, in my own defence, may I say that when I was deputy commissioner for the islands, between '95 and '97, I was barely aware of what had happened to the Chagossians? That may seem strange to members of the Committee, but it never came up in my time, and it never went to Ministers. We never put anything to Ministers. There were just three officials working to me on BIOT and then the commissioner, my boss. We made all the decisions without feeling the need to clear them with Ministers.

Chair: I think you are going down a dangerous route telling us that, but go on.

Q17 **Andrew Rosindell:** Going back to Dr Ladwig, islands such as Peros Banhos are quite a long way from Diego Garcia. It is quite clear that there was never any valid reason to depopulate those islands. What if, as Mr Snoxell suggested, we were to remove those Orders in Council and allow the Chagossians back? They clearly could not go back immediately, because there is not the infrastructure. However, if we were to do the morally right thing and start the process of making arrangements to allow them to go back if they decide or choose to do so, at least with a small settlement to start with, how would that affect the Americans? Would they support that? Would they assist with that? It clearly could be done only with their co-operation, because Diego Garcia would be so pivotal in helping to rebuild that community. Do you think that we could rely on the Americans to be enthusiastic about this? Why do we need to wait for some kind of agreement with Mauritius? Why can't we get on with this now? Why do we have to wait for the long and drawn-out discussions about how this will end? No one knows where this will end. Surely our priority in the United Kingdom should be to put right the wrong and do



HOUSE OF COMMONS

everything we possibly can to start the process of allowing the Chagossians to begin to make their way back to their homeland.

Dr Ladwig: I would start by saying that I have had a very similar experience to you in being told here that resettlement was anathema to the US position on this, then never being able to track down anyone in the US Government who would tell me that position. I believe that if that was the position once upon a time, it no longer is, or perhaps it never was. It is the case that the outer islands, provided that they are economically sustainable and viable, would be possible. There would probably be some marginal increase in security costs to guard against whatever potential risks were perceived, but particularly the Biden Administration want to do the right thing. They want the facility on a long-term, secure basis, but they also want to do the right thing. It is not just one: it is both. I would think that that would fall under the "do the right thing" component of how they would like to see this ultimately settled.

David Snoxell: And we need to do this before the American election.

Dr Ladwig: Ideally.

David Snoxell: For obvious reasons.

Andrew Rosindell: Thank you.

Q18 **Chair:** We do not have much time, but I have two more questions. Dr Ladwig, is the US pulling its weight when it comes to Diego Garcia? They are refusing to help with resettlement, they do not pay any costs in terms of the access that they have and they pay no rent. Every time we ask them to engage with us they essentially say, "That is for the UK to do." Although we benefit enormously from the security value of it, we are not equal partners in any way on the islands. So is the US pulling its weight?

And David, forgive me, I am not a legal expert, so I recognise this may sound bizarre, but there are no conversations in this entire discussion about Chagossian rule of the Chagos Islands. It is always either Mauritian rule or UK rule, or the US leasing in some way. Why is there no discussion of that, given that the Chagossian people are so distinct from the Mauritian people and the treatment that they receive in the Mauritian islands is not always what I think it should be? Why are they missed out altogether?

David Snoxell: Shall I answer that part of your question first? It is because, as Andrew Rosindell said, if we go back to before the BIOT was created in 1965, the people on the Chagos Islands, known as the Ilois, as on the other islands that surround Mauritius, particularly Rodrigues, were part of Mauritius. They are regarded in international law as basically being Mauritians of Chagossian origin today. When it comes to self-determination, the ICJ and all the other courts have decided that self-determination applies to the entire people of Mauritius, not just the Chagossians themselves.

Q19 **Chair:** Is that not wrong?



HOUSE OF COMMONS

David Snoxell: It may be. You are saying "Is international law wrong?" by asking that question.

Q20 **Chair:** Sometimes international law is wrong, which is why we have arbitration and we discuss and debate things and we take cases.

David Snoxell: So far international law has been comprehensive on this particular issue.

Q21 **Chair:** But do you agree with that, because you are clearly an advocate for the Chagossian people?

David Snoxell: I am, most definitely.

Q22 **Chair:** No Chagossian that we met identified as being of Mauritian descent in any way, or is happy with the way Mauritius has treated them and their ancestors.

David Snoxell: But there is no Mauritian descent. They are all peoples that came from—

Q23 **Chair:** They were brought there by the French as slaves.

David Snoxell: They have a huge Creole population in Mauritius, or they came from India later on.

Q24 **Chair:** That is the point I am making. So why is international law ignoring the fact that these people are not Mauritian by descent?

David Snoxell: Because that is what it says in the UN charter, article 76, which we are all signed up to—and in many other areas. Could I just make the point that it was me, in November 2000, who asked the Chagossians to come and see me? I had only been in the office six weeks, and it was me who told them that they could now return to the Chagos Islands following the High Court judgment of 5 November 2000. I believed in that at the time, and then later on the Foreign Office was to override all that—our commitments to the Chagossians—and use this parallel system of parliamentary government called the Privy Council. They put through a Privy Council order, which Jack Straw appended his name to, banning their returning. That was a colossal blow to all of us who really wanted to see resettlement taking place.

Q25 **Chair:** Dr Ladwig, you have the last word on my question.

Dr Ladwig: You could certainly construct an argument in an abstract sense about the US operations and costs of being there and its contribution and benefits, but from the narrow standpoint of the operations of the facility, there is a lot of free riding. It is the UK that bears the political and financial costs. There are other basing arrangements in Japan and Korea in which the local government picks up some of the financial cost or has to deal with an unhappy population because Marines are flying jets late at night or early in the morning, and things like that—so it is not unheard of.



HOUSE OF COMMONS

But the simple answer to your question is no, it is probably not doing as much as it could do, and it is convenient to allow the political slings and arrows to be directed this way rather than towards Washington.

Andrew Rosindell: One final thing. The right hon. Member for Islington North is here; the all-party parliamentary group was set up by Jeremy, Henry is now chairing it, and I chaired it in the interim as well. It has played a huge part in bringing this whole issue to the table and in the cross-party nature of this. It is vital that the Foreign Affairs Committee now really makes something of this. I think it is a huge stain—the way the United Kingdom has handled something so important that has affected so many people in a such a detrimental way. I really hope that as a result of this Committee being established by the FAC, the Government will be put under pressure to do morally the right thing: to allow the Chagossian people their rights and to give them the opportunity to go home to where they originate from, which is a basic right of all human beings.

David Snoxell: Could I add just one word to what Andrew said?

Q26 **Chair:** You have only 20 seconds. I am sorry, but we have another panel.

David Snoxell: I agree entirely that the APPG has held the feet of Governments to the fire on Chagos over the last 15 years.

Chair: Thank you both ever so much.

Examination of witnesses

Witnesses: Philippe Sands KC and Sir Robert Buckland MP.

Q27 **Chair:** Welcome back to this hearing of the Foreign Affairs Committee on the British Indian Overseas Territories. For our second panel, we are joined by Professor Sands—welcome and thank you for joining us. Can you kindly introduce yourself?

Philippe Sands: Thank you for the invitation to the sub-Committee. I am Philippe Sands; I am professor of law at University College London. I am a barrister at 11 King's Bench Walk, and since April 2010, I have been counsel for Mauritius on matters relating to Chagos. However, I am speaking in a personal capacity as an academic in this context.

Q28 **Chair:** Brilliant, thank you. Can you start by setting out the political and legal implications of the 2019 ICJ ruling, please?

Philippe Sands: The advisory opinion determined that the excision of the Chagos archipelago from the colony of Mauritius in 1965 was unlawful, and that it has no legal effect. It then determined that the United Kingdom must end its unlawful administration of the Chagos archipelago forthwith.

Three months after the advisory opinion, it went to the General Assembly, which voted by an overwhelming majority—I think that only four countries joined the United Kingdom and the United States, out of 200 or so, in



HOUSE OF COMMONS

opposing the vote—that the United Kingdom must leave by November 2019. It determined that the Chagos archipelago is and has always been a part of the territory of Mauritius. It confirmed that all the Chagossians—and I have just been listening to the conversation—who wish to go back have a right to return.

Q29 **Chair:** That is very helpful. If ownership of the islands was to move back to Mauritius, would there be an obligation on the Mauritians to allow resettlement, should administration be transferred to them?

Philippe Sands: Just to be pedantic, it is not a question of ownership being transferred. The islands belong to Mauritius today, and they have always belonged to Mauritius. That is the view of pretty much every country in the world except for the United Kingdom, the United States and four others, a couple of which have now changed their minds. The issue is about the United Kingdom recognising the realities and then moving forward on that basis.

The Mauritian position—I listened to High Commissioner Snoxell—has been exactly the same ever since I have been involved, for three successive Governments of Mauritius. It is that the Chagossians will be able to return. Just to give you a very brief anecdote, in 2015 Sir Anerood Jugnauth, a member of the English Bar, became Prime Minister for a third time. He was the last living person who had been at the Lancaster House meeting in 1965. He, like his predecessor, Prime Minister Ramgoolam, and his successor—his son, Pravind Jugnauth—is committed to the return of Chagossians and next generation Chagossians who wish to be able to return.

Q30 **Chair:** Have they set out a plan for how they would do that, how it would be financed, the way in which it would function, the employment opportunities, the way of life and freedoms? Would it operate as a devolved federal area? How would it operate?

Philippe Sands: Indeed, that is under way right now, as we speak, and has been ever since the advisory opinion. Indeed, the meeting that is taking place over three days in Mauritius right now is on environmental conservation, which is a very important issue and a matter on which the UK and Mauritius are in very close sync. That has included a discussion on resettlement and the balance between resettlement and conservation. The Zoological Society of London is very actively involved in this meeting; in fact, it is co-hosting the meeting, which I am very pleased is the case. Those conversations are actively under way.

Of course, one of the big questions that we do not know the answer to is how many people actually want to go back, when push comes to shove. We are talking now, I think, about at least four generations. For the first generation—those who were forcibly deported—there are quite a few who say they want to go back, but of course they are quite elderly now, and conditions will not be ideal. I think quite a few will want to go back. The more interesting question is how many of the second, third and fourth generations, when push comes to shove, actually want to go back?



HOUSE OF COMMONS

Q31 **Chair:** Given how big the community is in the UK now, do you expect that those who would go back would rescind British citizenship or keep British citizenship?

Philippe Sands: At this point in the United Kingdom and in Mauritius, dual or triple nationality is not prohibited, so there is no question of people being made to abdicate one or other of their nationalities in order to go back, as far as I know. What would have to happen—it is quite interesting—is that, for those in the second and third generations, who are not currently of Mauritian nationality, Mauritius will have to amend its immigration laws. This is an issue, of course, that the United Kingdom has faced in terms of second and third generation individuals being able to come and live in the United Kingdom. That obviously would have to happen. But Mauritius, through its Prime Minister, has made very clear that it will do everything it can to make sure that it happens. Its stated policy is that, if you want to be able to go back and you have a Chagossian connection, you will be able to go back.

Q32 **Chair:** Thank you. Before I turn to Andrew, in terms of the African Union, can you set out for us—*[Interruption.]* Sir Robert, please do come and join us. Could you set out the view of the African Union on this dispute? What impact is it having on the UK's relationship with African Union nations?

Philippe Sands: The African Union has supported Mauritius from the get-go—for more than 40 years—in calling for full respect of the sovereignty of Mauritius over the entirety of its territory, including the Chagos archipelago, and there have been consistent resolutions. I think this may be the first time in history that every African country has supported the resolutions at the General Assembly, the referral of the questions to the ICJ and then the subsequent question. There is absolute unity, and indeed a declaration has been adopted just in the last few days encouraging Mauritius and the United Kingdom to bring the negotiations, which are under way, to a hasty conclusion. So it is a very strong relationship.

As you know, and has already been said, Britain's reputation in Africa has been damaged, I regret to say, by what has happened. I can explain that most clearly with an anecdote that was given to me recently by an ambassador of South Africa in Belgium, who explained to me how he and his colleagues have been approached in relation to the Ukraine-Russia situation. They were invited to assist the United Kingdom and the United States in removing Russia from its illegal occupation of parts of Ukraine—activity that I am, of course, strongly supportive of. Their response was, "That's interesting. Let's see if we have understood this. You, who are currently illegally occupying a part of Africa, are asking us to help you to remove another country from its illegal occupation of Ukraine? We don't think so. You need to get your house in order." So this is a very real issue.

Q33 **Chair:** But can I ask this, Professor Sands? We get told repeatedly that it has caused enormous reputational damage, yet last year the Committee was in South Africa and Mozambique. I was in Somalia and Ethiopia, crucially, and I had bilats with six further African countries, and not one



HOUSE OF COMMONS

of them has ever raised this, despite us talking to them about Ukraine, Israel/Gaza and everything else. It seems slightly odd that in not one of our 12-plus engagements with African countries has it ever been raised with us.

Philippe Sands: I fully respect that that is your situation. That has not been my situation. I suspect that if you were to raise it, it would come up. The proof is in the voting. To take one example, to my great regret, Britain lost its judge at the International Court of Justice for the first time in 100 years, and in large part that was because of the position on the Chagos archipelago. It followed the resolution in the General Assembly, and all the African countries for the first time failed to support a UK candidate. I don't think there is any inconsistency in our positions. If I don't raise it, people don't raise it with me, but the moment it comes up, it produces a very strong reaction. I don't think there is an inconsistency in the positions.

Q34 **Chair:** But you just acknowledged that it is when you bring it up that it comes out as a core issue. When we travel to different countries, we know exactly what the issues we want to raise with them are. We have a list of 12 to 20 issues, and obviously we have to prioritise. It seems slightly odd that it is not being raised proactively with us. Maybe I should bring you in there, Sir Robert; thank you ever so much for joining us. We know you were chairing your Committee this morning.

Sir Robert Buckland: Thank you, and it is good to see Philippe online.

Philippe Sands: It is lovely to be with you again.

Q35 **Chair:** Maybe not quite in the same situation. Sir Robert, is this a storm worth weathering for the strategic advantages that Diego Garcia gives us? Do you agree about the reputational impact to the UK as a result of our position on Diego Garcia?

Sir Robert Buckland: Look, I hear what Philippe says, and we can't ignore other countries' observations, but I strongly feel that strategically it is right for the United Kingdom to maintain its presence in the British Indian Ocean Territory, the Chagos Islands.

There are a couple of things going on here. There has been a sustained campaign by Mauritius over the years to use legitimate international forums to raise their objections to and concerns about this issue. Of course, that has not always been the case. I am not going to rehearse the arguments that Philippe and I had back in the ICJ in 2018, but the evidence is the evidence. It remains the case that minds and opinions developed over time with regard to Mauritius's attitude towards the Chagos, to the extent that it has now become an international campaign, and through their use of domestic criminal law there is a worrying trend of stifling and preventing legitimate debate about the future of the archipelago.

I think the extraterritorial reach of the new legislation that has been passed by Mauritius is deeply worrying. This Committee should be rightly



HOUSE OF COMMONS

concerned about attempts to criminalise legitimate debate and questions about Mauritius's claim to BIOT. I do not think that their claim is merited. The ICJ's judgment was advisory. This is in effect a bilateral dispute and I think that the way to deal with it is indeed through political negotiation.

I think that some clarity from the UK Government is necessary with regard to their intention here. We had the statement last year from the then Foreign Secretary; there are perhaps differing noises emanating now. Put simply, this is a political dispute. It is not, I think, of a degree or nature that should serve to inhibit or undermine the United Kingdom's work in other vital areas. And as you say, this is not being proactively raised in a way that should cause us the gravest of concern and therefore I think we need to put this issue in its proper context.

This is an issue about international security and defence first and foremost, and therefore I think that it is now in danger of achieving a status that it does not deserve, mainly engineered, I am afraid to say, by the activities of the Mauritian Government.

Chair: Henry wanted to bring up that exact issue with you, so I will go to him.

Q36 **Henry Smith:** Thank you very much, Sir Robert. Actually, I would like to put my question to Professor Sands. We have just heard about the Mauritian law where questioning sovereignty is a criminal offence; indeed, that law has extraterritorial extent. So, if I in this forum or anywhere else—for example, writing in an article—were to say that the Chagos Islands are under British sovereignty and should remain under British sovereignty, and if I then subsequently travelled to Port Louis I could be arrested, couldn't I?

Philippe Sands: No, absolutely not. And I fear that Sir Robert and the drafters of the report that he wrote the foreword to really haven't read the law very carefully.

I was involved in the drafting of the law. You probably know, Mr Smith, that I was president of English PEN for five years. I am a passionate believer in freedom of expression and no one who expresses those kinds of views—that Chagos or Bassas or whatever you want to call it belongs to X, Y or Z—would be prosecuted.

What the law was intended to do and what it does is criminalise under the law of Mauritius anyone who purports to engage in certain activity: issuing coins; issuing official maps; or doing scientific research on the territory of Mauritius. And the United Kingdom has got exactly the same provisions. If someone in Mauritius were to start issuing coins for the United Kingdom, you and I would be the first in saying, "You can't do that." If someone in Mauritius were to authorise scientific research on the territory of the United Kingdom, the British Government would say, "You can't do that", and if they persisted in doing it, they would be referred to prosecutors.

So, there is an absolute balance in the situation, and the situation changed after 2019, when the United Nations and the General Assembly, and



HOUSE OF COMMONS

subsequently the International Tribunal for the Law of the Sea, recognised, or confirmed, that Chagos is part of the territory of Mauritius.

Therefore, all that law does is to prohibit and then criminalise activity that is official activity supported by a third state. If you want to say the kinds of things you want to say, you are perfectly entitled to say them under Mauritian law and English law. The law has been misunderstood and misconstrued, and I think—frankly—wilfully by the drafters of that report.

- Q37 **Henry Smith:** I understand, from your introduction, that you are at an environmental conference in Mauritius at the moment and there will be potentially people who are involved in the administration of the marine protected area that the United Kingdom established in the late 2000s over the Chagos archipelago. If somebody is engaged in administering that marine protected area on behalf of the United Kingdom, they would be committing an illegal act, according to Mauritius.

Philippe Sands: Indeed, just as it would be in relation to the opposite situation. There are, I think, about 85 people at this workshop, a great number of whom are from the United Kingdom. They engage in scientific research in the Chagos archipelago, which they now do through the Zoological Society of London and other universities precisely because they have asked for authorisation from the Mauritian authorities to be able to do so. Of course, Mauritius has said, “Absolutely. You are welcome to carry out your scientific research. We support what you have done in the past, and we support your continued activity.” They are here, and I can assure you none of them has been arrested and none of them will be arrested.

- Q38 **Henry Smith:** Sir Robert, continuing on this theme, is your understanding that the Mauritian law is restricted, as Professor Sands suggests, to things like issuing stamps and coins, or is it actually having the effect of depressing free speech when it comes to the issue of sovereignty over the Chagos Islands?

Sir Robert Buckland: Context is everything here. If Philippe was talking about the passage of this legislation after this issue had been fully resolved, that might be another matter entirely, but it is not. I am delighted to hear that we have oceanographers and researchers carrying out important work in a protected maritime area, and that they are talking to the Mauritians about it, but they don’t need the permission of the Mauritian authorities to do that; this is still an unresolved issue, at the very least. I would say that the passage of this legislation is, to put it politely, premature. In the context of this ongoing issue, I am afraid, it can only send a message from legislators and the Government of Mauritius that they are hostile to any further discussion of this matter.

I suppose it would be a bit like the United Kingdom, after the independence of the Republic of Ireland, deciding to produce maps, currency and other documents that somehow incorporated the Republic into the jurisdiction of the United Kingdom. It would clearly be wrong and inappropriate, and an insertion of domestic law into a fiercely contested issue—an issue, in fact, that had been resolved in favour of the Irish



Republic. Therefore the context, I'm afraid, is important. The message that has been sent has been chilling. That is why I thought the report was necessary. I thought it was a timely intervention, and a reminder that we all have a responsibility to look at the context within which we pass legislation, as well as the precise wording of it.

- Q39 **Andrew Rosindell:** Good morning, Sir Robert and Professor Sands. As you will know, the United Kingdom is responsible for 21 different territories, some of which are overseas territories, some of which are Crown dependencies. If a precedent was set over the British Indian Ocean Territory, and the sovereignty of those islands was handed over to Mauritius without the consent of the people of the Chagos Islands, notwithstanding the fact that they are not actually living on those islands—but we have a very clear principle of self-determination, do we not? If we did not get that consent, would not that be a breach of that principle? Perhaps Professor Sands would like to go first.

Philippe Sands: I will answer that straight away, Mr Rosindell, but just in response to Sir Robert, who says that matters are not resolved—I am afraid, Sir Robert, as you well know, it is resolved as a matter of international law. Twenty-eight international judges and arbitrators have now had a chance to express a view on this matter, and not one has supported the British claim. Twenty-three have made it clear that Chagos belongs to Mauritius, and the other five have expressed no view about it because it does not fall within their jurisdiction. The International Tribunal for the Law of the Sea determined that the maritime boundary of Chagos is between Mauritius and the Maldives, and that was because the UN and the ICJ had definitively resolved the dispute. There is no claim. There is no legal issue. It is gone—it belongs to Mauritius.

Sir Robert Buckland: I do not agree.

Philippe Sands: On Mr Rosindell's question, it comes back to a point made, I think, by the Chair—how does the law of self-determination work? It is certainly the case that there is confusion in public discourse, which is understandable. The way international law works, as Mr Snoxell explained it, is that the right to self-determination accords principally to a population within a recognised state. For example, if the people of Scotland wished to exercise self-determination and gain independence, under international law, they could not do that unless the United Kingdom as a whole gave them the right to do so. The same thing happens with Quebec. You remember that, when Quebec wanted to secede from Canada, the Canadian Supreme Court applied international law and said, "You can't do that unless the Canadian Parliament allows you to do that, and the Canadian Parliament has not allowed you to do that." It is exactly the same in relation to Mauritius and Chagos.

Chagos was found by the International Court of Justice to be a part of the former colony of Mauritius for more than 150 years. On that basis, it is for the people of Mauritius as a whole to determine who governs the Chagos archipelago. If the Government of Mauritius want to say, "We hand it over to the Chagossians to run," that is a matter for the Government of



HOUSE OF COMMONS

Mauritius. They have not done that, and until they do that, the right of self-determination vests not in a part of the population of Mauritius, or the United Kingdom or Canada, but on all of the population. That is why, warts and all, the law on self-determination applies in that way. There are critiques of how it works, but the United Kingdom for obvious reasons is a very strong supporter of that kind of approach right now.

- Q40 **Andrew Rosindell:** Professor Sands, you should know that Quebec is part of Canada. The British overseas territories are not part of the United Kingdom, so it is a very different situation. You are talking about a part of a nation state separating from that nation state. Colleagues here will know that the British Indian Ocean Territory has no representation in this Parliament. It is effectively a colony. Do you not believe in decolonisation and allowing those being decolonised the right to make their own decisions about where they belong?

Philippe Sands: With the greatest respect, you are proceeding on the same misapprehension of the legal situation as Sir Robert. The British Indian Ocean Territory does not exist in international law. It exists in British law, but it is no longer recognised under international law. The Chagos archipelago has been determined definitively, authoritatively and permanently, as a matter of law, to be part of Mauritius. Very frankly, what the United Kingdom wants in relation to the Chagos archipelago is, in a sense, neither here nor there.

- Q41 **Andrew Rosindell:** I want Sir Robert to come in because he has not had a chance. Before that, surely the precedent you are setting therefore is that the ICJ could decide that the Falkland Islands, for example, do not actually belong to the United Kingdom and are not sovereign? If the ICJ can make those kind of rulings, you are effectively saying that, one by one, territories can all be separated and taken away. That is what you are really saying.

Philippe Sands: No, I am not—

Chair: I think we are bringing in Sir Robert at this point, please.

Sir Robert Buckland: I am sorry to disagree with my friend and colleague Professor Sands. This has not been resolved. The ICJ was used to resolve what was a bilateral dispute, and I am afraid that is not an appropriate use of that court. It is an advisory opinion. This is a bilateral dispute now between the United Kingdom and Mauritius. That is why we have heard noises about negotiation. Clearly, in the context of that, the views of the Chagossians become very important. The history of this is a very sad one. It is very sad for the people from that archipelago who left, who did not want to leave but were made to, and to whom reparation has rightly been paid.

We forget, do we not, that if we have these sorts of high arcane arguments at a certain level, we are forgetting that there are real lives involved here and people's views. I am afraid that is why you cannot separate out the way in which we approach the British Indian Ocean Territory, an overseas territory of the United Kingdom, and the



responsibilities that we have for other overseas territories. We cannot pick and mix and take a bespoke approach to each area. I think we owe a duty to get this right, and self-determination has to be a part of that. This is a delicate matter. This is not some sort of 19th century argument where the United Kingdom is seeking to impose its view. It is a reflection of the difficult history of this archipelago, the proper resistance to a specious claim to it by Mauritius, and the resolution of what is a dispute that needs to be dealt with politically. Using the ICJ in that way and allowing that to become a precedent does no service to that important tribunal whatsoever.

Q42 **Chair:** Professor Sands?

Philippe Sands: Well, you have heard what I said. Coming back to Mr Rosindell's question, of course you should ask yourself the question: what is the precedential consequence, if any, of the decision of the International Court of Justice or the outcome of the future negotiations? The answer, very simply, is none, because the Chagos archipelago is in a category of one in its situation. It is the only one of the overseas territories that was excised from a former British colony, and that was the only reason that the International Court of Justice could exercise the jurisdiction that it did. The Falkland Islands, Gibraltar and Cyprus are all completely different situations. They are not decolonisation situations like Mauritius. They were not cut off from another part of a former colony. That is why they do not go to the International Court of Justice: they are situations that are factually and juridically different. It is very troubling to hear a mixing up of apples and oranges in this way, because the facts of each overseas territory are particular and must be recognised as particular.

Q43 **Andrew Rosindell:** Of course, the Cayman Islands were part of Jamaica, and they decided to separate from Jamaica when it became independent. However, the people there decided that. What you are saying, Professor Sands, is that the value of the Chagossians is zero and their views are zero, but other territories can have a say. There is an example of part of a previous colony that has separated and remained a British overseas territory. Sir Robert, what will be the implications of this for the United Kingdom and our 21 different territories, for which we still have ultimate responsibility, if it goes ahead without the Chagossian people having any say whatsoever?

Sir Robert Buckland: I think it is disturbing. It does not give any encouragement to indigenous peoples in other parts of the world that their voices will be heard. This is 2024, not 1824, and the voices of the inhabitants of our overseas territories are of paramount importance. The idea that the United Kingdom just wants to cling on to bits of the world because we want pink bits on the map belongs in the archives. This is now all about our responsibilities, historical though they might be, to real people and real communities living in these areas now. That is why, having worked extensively when I was Solicitor General with fellow attorneys and solicitors and Law Officers from other overseas territories, I gained a very useful understanding of the nature of that responsibility.



That is why, in the case of BIOT, I am afraid that we have to hold firm and be very clear that to separate out this particular case, as Professor Sands suggests, and say that it is sui generis, is not right. We should therefore, I feel strongly, maintain our stance with regard to this territory and remind the world that there is no long-term, absolute must for the United Kingdom to remain in possession of and responsibility for BIOT. However, at the moment, bearing in mind everything that I see, I do not think that those criteria are met, and while political negotiation is entirely in order if respective Governments want to do that, that is the forum to resolve these matters, not by using the ICJ in this way.

- Q44 **Fabian Hamilton:** Sir Robert, what are the legal implications of the ruling by the International Tribunal for the Law of the Sea that the coastline of the Chagos Islands is Mauritian? Does that tribunal ruling pose challenges to the UK in the enforcement of the marine protected area and effective control over the island?

Sir Robert Buckland: I think the ruling is significant. In many ways, it is more significant than the ICJ advisory opinion in 2018, because it relates to a hard and fast issue relating to the coastline. That is probably why the Foreign Office was influenced to start seeking to discuss and negotiate the matter. That is realpolitik—it is an aspect of international law that clearly is relevant. However, to say that that is determinative of an important issue of fundamental sovereignty is, I think, to overstate the matter, which is why, when I heard what Professor Sands said about permission being given for oceanographers to enter the marine area—I don't think it's strictly necessary, but I certainly think that dialogue and discussion with the Government in Mauritius is entirely appropriate. Like everything, the situation continues to evolve, and I would say that that judgment was an element in it that the UK Government do have to have regard to.

- Q45 **Fabian Hamilton:** Professor Sands, would you agree with that?

Philippe Sands: I think it is determinative. It is a binding judgment between Mauritius and the Maldives. It has changed the world maps of the International Maritime Organisation and other entities. It is absolutely dispositive. To be able to delimit the maritime boundary, the International Tribunal for the Law of the Sea went through an exercise of assessing the authority and effect of the International Court's advisory opinion, and it concluded that it was dispositive. It said, in terms, the UK has no right to sovereignty; it does not even have a claim to sovereignty. The matter is over; it is resolved. That was a unanimous judgment of the International Tribunal for the Law of the Sea. As a matter of international law, it is over.

The issue now, realistically, is for two countries, Mauritius and the United Kingdom, which are really good allies, to negotiate. I listened to the previous panel with great interest. The idea that Mauritius would go off and cut a deal with another country, China, is just extraordinary for us to hear. I have worked for the Government of Mauritius for 15 years. It is clear that Mauritius's closest ally is India. The idea that Mauritius would do such a thing—it's just not going to happen.



The issue now is to resolve the long-term security of the base, and Mauritius has made it absolutely crystal clear that the base stays and continues to operate exactly as it has operated since it was first established. The second issue is the return of the Chagossians. The third issue is conservation of the environment, and it thrills me that British and Mauritian scientists are working together to take forward that protection. So this is a win-win-win situation for everybody. My fervent personal hope is that the negotiations produce a sensible outcome, so that everyone can just move on from these issues and deal with much more significant matters.

- Q46 **Fabian Hamilton:** Sir Robert, some legal experts have criticised the ICJ for giving an opinion on a bilateral dispute—we have already exercised this issue this morning—without the agreement of both parties, and said that the opinion has been incorrectly used subsequently. I know that our panel members disagree about this, but do you think that these are legitimate complaints according to the mandates of the ICJ and ITLOS, and does this change the value and effects of the judgment?

Sir Robert Buckland: Entirely. I was candid about the differing nature of the International Tribunal for the Law of the Sea judgment and the binding nature of it. I have to make that concession. The preliminary argument that we lodged with the ICJ was that this was not a suitable issue to result in an opinion from it, because this was a bilateral sovereignty dispute; this was not a dispute that we had consented to resolve. Remember that where you have these important and useful and vital international tribunals, the consent of parties lies at the heart of it, so that we can resolve issues. We are talking here about two democracies, entirely able, by consent, to negotiate, to disagree where appropriate, to resolve or perhaps not to resolve.

For the Court to have ended up, in effect, inserting itself in this way, because one party wanted it and the other didn't, was wrong, I thought. It flew against the evidence. The advisory opinion, when you read it, bears no relation at all to the submissions or the evidence that was put before it. The British representations that I helped to lead contained a whole litany of documents—Cabinet minutes and other documents, going right back to the '60s, that were the only available record of what happened. Some of those documents did not reflect very well on the British Government. Some of the phraseology in the documents was not good; it was embarrassing. Some of the conduct of the British Government was embarrassing and merited an apology to the Court. But we were frank and full in our disclosures, and I'm afraid that evidence did not show in any way the consistent line of argument that the Mauritians sought to put.

They did not consider this issue as in any way relevant or important until the 1980s. This was not even on the table in the 1960s. Whatever one can say about alleged inequalities of bargaining power, which I accept that you can say exist in an era of colonialism—even taking all that into account, I fail to see that this judgment, not following the evidence, that is advisory, should then be allowed to, if you like, build a political campaign. I will say this: the courts are there to resolve matters of law and interpretation and



HOUSE OF COMMONS

where parties consent to resolve disputes. They should not be used as a vehicle for political campaigning. That is what has happened in this case: a sustained campaign by one country to use valid and important tribunals to establish a specious claim.

- Q47 **Fabian Hamilton:** Finally, Professor Sands, I am sorry that we have almost run out of time, but I just want to insert one more comment: where is the voice of the Chagossians in all this?

Philippe Sands: Yes, indeed. I am very grateful to you for asking that because here I am sitting in Mauritius. I have broken out from the workshop. There are 85 people here and about 15 or 20 of them are Mauritians. We are sitting in a room talking about the conservation of the environment and the traditional knowledge of the Chagossians to ensure that the conservation arrangements are fully taken into account, which is something the UK did not do in 2010. The plan is for an assessment—

- Q48 **Chair:** Forgive me, Professor Sands. You have just said that 15 of them are Mauritians. Are any of them Chagossians?

Philippe Sands: I am so sorry, I meant Chagossians. There are many more Mauritians. I would say probably about 35 people out of the total are Mauritian and about 15 are Chagossian. Mr Bancoult is here. Many of his colleagues are here. The discussion is on a conservation arrangement in which they are fully involved in its design and implementation. The next assessment mission to Chagos has been prepared. They will be on that mission, and they are going to go back and resettle. I have to say that I listened to Sir Robert plead for the Chagossians, but the United Kingdom has had 50 years to get them back to Chagos. Mauritius has acted within a couple of years of the advisory opinion, and the return is now foreseen.

Chair: I am afraid that, with that, we have to wrap up because we have three minutes until Prime Minister's questions, but we thank you both ever so much for making the time and for coming to see us. You are of course very welcome to send us further written evidence, should you wish. With that, I conclude the session.