



HOUSE OF LORDS

International Relations and Defence Committee

Corrected oral evidence: Chagos Islands: historical context and administration

Wednesday 30 October 2024

10.30 am

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Members present: Lord De Mauley (The Chair); Lord Bruce of Bennachie; Baroness Coussins; Baroness Crawley; Lord Grocott; Lord Houghton of Richmond; Baroness Morris of Bolton; Lord Soames of Fletching; Lord Wood of Anfield.

Evidence Session No. 1

Heard in Public

Questions 1 – 16

Witnesses

I: Professor Peter Clegg, Professor in Politics and International Relations and Head of the School of Social Sciences, University of the West of England; Dr Jamie Trinidad KC, Fellow, Wolfson College Cambridge.

Examination of witnesses

Professor Peter Clegg and Dr Jamie Trinidad KC.

Q1 **The Chair:** This is a one-off evidence session on the history and administration of the Chagos Islands. It is a public session streamed live on the Parliament website, and a transcript will be taken. Professor Clegg and Dr Trinidad, you will be able to review the transcript and if you have some minor disagreements with what we think that you have said, please tell us. If any member has an interest to declare, please declare it when first speaking; it might be a rather remote possibility, but you never know.

Thank you very much for coming. Perhaps I can fire away with the first question: what were the key motivations behind the UK's decision to retain the Chagos Islands as the BIOT when Mauritius gained independence in 1965 and what were the reasons for Mauritius deciding to contest UK sovereignty over the Chagos Islands? Professor Clegg, I will come to you in the first instance.

Professor Peter Clegg: There are three overarching factors: one, of course, is the Cold War was getting hotter. The process of decolonisation was rapidly taking place, and there were some economic problems which, in 1967, led to the devaluation of the pound against the US dollar. As early as 1960-61, there were some discussions between the United Kingdom and the United States about the Chagos Archipelago and its possible use.

This was within the broader context of the idea that British bases east of Suez were perhaps not sustainable longer term, particularly in Singapore and in Aden, which of course is now part of Yemen. Both those areas were moving to independence and the UK forces there were in quite difficult situations, both in Aden and Singapore, battling against local forces in the expectation that independence would soon be achieved. After 1964, the then Defence Secretary, Denis Healey, commented that these bases were becoming increasingly difficult to maintain, and when you are using your troops to defend the bases rather than anything else, it is perhaps time to move on.

The broader context of British policy thinking was that we had limited resources and stretched resources, and we wanted to focus primarily on NATO and the NATO alliance, so could we sustain these bases further east? If so, was there any way of maintaining our interest, in this case in the Indian Ocean? The Chagos Archipelago comes in here as this was at a time when Mauritius was aiming for and moving towards independence. For the UK, it was an opportunity to maintain an interest in the Indian Ocean but allow the United States to take greater control and responsibility in the area.

As a consequence, there was a specific decision taken to split away those islands as well as three islands linked to the Seychelles, which is important to note, and then, as everyone knows, to remove the population in the archipelago because there was a recognition that it

would be simpler, easier and cleaner to not have any population on the archipelago and, more particularly, on Diego Garcia. In short, at a time of retrenchment for the United Kingdom, it was an attempt to allow an interest to be maintained but giving greater responsibility to the United States.

The Chair: What were the reasons for Mauritius deciding to contest UK sovereignty?

Professor Peter Clegg: This is an interesting issue. Over the last few weeks there has been a lot of discussion about why Mauritius took quite a long time to restate its claim over the Chagos Archipelago. There are several reasons why perhaps there was a delay. First, when a newly independent state is established, it is very cautious about its role in the international system and not overextending itself longer term, so it took some time for Mauritius to perhaps gain the confidence to challenge what was negotiated in the mid-1960s.

The Seychelles is another factor, and the three islands which were removed from the Seychelles initially. There was some scoping exercise about whether a US military base could be established there. In the end the decision was made to not do that, so those islands were returned to the Seychelles on its independence in 1976. Perhaps that gives an indication of why there was some fluidity and some question mark over the nature of the use and acquisition of these groups of islands.

Thirdly, there was the language used by the UK Government in the late 1970s and early 1980s, when this issue started to pique international interest again. There were various discussions and questions in Parliament. Margaret Thatcher and others used the term "revert", suggesting that actually this was a temporary measure and once the defence aspect had been utilised these islands would revert to Mauritius. There was some concern in the Foreign Office at the time that this language was not strong enough, rather than to use "secede", for example. So there was a temporariness about this language.

There was also a growing international recognition of the issue; the Organization of African Unity and the Non-Aligned Movement made statements around this issue in the early 1980s.

Finally, the Prime Minister of Mauritius, Ramgoolam, who had negotiated the agreement in 1965, lost the election in 1982. This was the first time in over 15 years there were new politicians, maybe a new generation of politicians, coming into Mauritius thinking they could lay claim, which was what happened in 1982. Then, in 1992 when Mauritius became a republic, it was inserted into the new constitution that Mauritius would now lay claim officially to the Chagos Archipelago.

The Chair: Dr Trinidad, do you have anything to add?

Dr Jamie Trinidad: I would just add that the last point about the internal politics of Mauritius is crucial. The first Prime Minister of

Mauritius, Ramgoolam, was involved in the negotiation of what was effectively an agreement by Mauritius to the detachment of the archipelago. It has subsequently been held that the Mauritian consent was not validly obtained, but it would have been quite unusual for Ramgoolam to argue against a deal that he had ostensibly concluded with the UK. So, once Mauritian politics moved on and became post-Ramgoolam, it was much easier to start making the claim.

Q2 **Baroness Morris of Bolton:** Thank you very much for coming here to give evidence and for setting that fascinating historical context. I would like to move on to administration and perhaps Dr Trinidad this is for you in the first place: how does the administration of the British Indian Territory differ from that of other overseas territories and why?

Dr Jamie Trinidad: The British Overseas Territories are all administered differently. They are all very different in their own rights; some have a larger measure of internal self-governance than others and there are constitutional quirks in some territories which do not appear in others. For example, the governor sits in Cabinet in Bermuda and does not sit in Cabinet in other territories. Even making allowances for the fact that all the territories are different and administered very differently, the British Indian Ocean Territory stands as a case quite apart and is really quite unique. What makes it unique is the fact that it has a constitution, the 2004 constitution, which, among other things, is designed to prevent the return of the Chagossians who were covertly expelled from the islands in the 1960s and 1970s. It is not the only uninhabited British Overseas Territory, but it is certainly the only one that has had a population that has been forcibly expelled and then prevented from returning.

That constitution was promulgated using the Royal Prerogative, so the UK's constituent power does not derive from an Act of Parliament, which is another unusual thing about the British Indian Ocean Territories. Only Gibraltar is in a similar boat; other overseas territories have constitutions which are underpinned by Acts of Parliament. In the case of BIOT, this 2004 constitution was promulgated without the involvement of Parliament. It was subsequently upheld by a bare majority of the Judicial Committee of the House of Lords as being validly made.

Another key aspect is the base on Diego Garcia, which influences the way that the territory is administered from London by British civil servants—there is a commissioner, a deputy commissioner and an administrator, but the institutions of BIOT are largely paper institutions. So recently, when the Supreme Court of BIOT sought to hold a hearing on Diego Garcia in relation to some Tamil asylum seekers, the US blocked the hearing and said that it would not be allowed to happen unless the US's security concerns were allayed. So it is a highly unusual form of administration.

Professor Peter Clegg: Jamie is right, but there are some equivalents to those other territories that are not inhabited. South Georgia and the South Sandwich Islands and the Sovereign Base Areas have a similar, at least administrative, structure in terms of having an administrator or a

commissioner who often has a different role. For South Georgia and the South Sandwich Islands, it is the Falkland Islands governor. In the Sovereign Base Areas, it is the head of the army in Cyprus. So, Jamie is right in terms of the specificities around BIOT, but there are similarities in terms of the administrative structures elsewhere across the overseas territories.

Q3 Lord Houghton of Richmond: Thank you very much for coming along and giving us some background on all this. I have no commercial interests at all in the British Indian Ocean Territories, but I have a professional interest in that when I was chief of joint operations—I am an ex-CDS—I had the delegated authority for the administration of all our overseas bases. In that context, what importance has the US historically attached to UK sovereignty of the Chagos Islands, and Diego Garcia in particular? We do not have the detail of the treaty before us yet, but one benefit, if you like, of sovereignty was that it gave us some sort of red card or a lever over the Americans' use of the base in offensive operations projected from Diego Garcia into Afghanistan and Iraq, and it was strategically vitally important to America. We had that red card.

Going forward, have we chosen to abandon that form of leverage, and will that form of leverage potentially rest with the Government of Mauritius? What sort of clauses might be in the treaty that we need to study and look for which show what apparently seems to be the giving away of a remarkably important element of foreign policy leverage power for no apparent gain?

Professor Peter Clegg: As the UK largely left the region, the US wanted to come in. There were concerns about greater Soviet influence and interest in the region. The United States was concerned about having bases on the mainland, for example, for many of the same reasons that the UK moved out of its own bases east of Suez. There was something called the strategic islands concept which was developed in the early 1960s to investigate opportunities for US bases off the mainland. So the UK and US interests coalesced quite nicely at this time. The UK retaining sovereignty over the archipelago was thought to be very important—a trusted ally in terms of stability. Within all those issues, it was really important at that time for the United States and the UK to have this kind of arrangement.

Since then, and certainly over the last decade or so, the inviolability of UK sovereignty has been challenged—maybe you will ask something about that a little later—but the nature of UK sovereignty and how it was being challenged posed a threat, potentially, to Diego Garcia going forward. So, the issue of sovereignty has been diluted and has been challenged. As a consequence, that concerned the United States in terms of the potential future of Diego Garcia going forward.

It is interesting in terms of the red card and the leverage issue: 10 or so years ago the House of Commons Foreign Affairs Committee looked at the issue in terms of how much leverage the UK did actually have over Diego Garcia, and it felt that it was quite limited and that actually there

was a strong degree of autonomy for the United States to act. It is by far the largest presence on Diego Garcia, so the UK interest is relatively small. In the circumstances you set out, there were concerns about whether the United Kingdom would actually have that force of influence to prevent something from happening.

Looking back, maybe the issue of leverage was not as strong as one might at first think, and going forward to when the treaty is published, there will be questions to answer about the relationship between the United States, Mauritius and the UK within the context of Diego Garcia. For example, there is a treaty covering the Indian Ocean in relation to not having nuclear weapons in the region. At the moment, because of a deal done in the mid-1960s as the territory was being established, BIOT is exempted from that. Under any new situation, would that exemption continue? Would Mauritius have an issue in relation to, for example, nuclear-powered submarines or nuclear-tipped missiles being kept on Diego Garcia? There are some serious questions to answer about what the transition means in terms of level of oversight and authority that presently exists in relation to the base.

Dr Jamie Trinidad: I agree with what Peter has said. From a purely security and military point of view, the current arrangement with the US is due to expire in 2036. It was extended by 20 years in 2016. The UK has made an undertaking to hand the territory back when it is no longer required for defence purposes, and an arbitral tribunal has held that that is a binding undertaking. We will have to see what the agreement says about the long lease and what sort of rights the UK and the US have under it. We cannot really speculate here as to what it will say, but that is definitely something that you will need to look at the detail of. I would say that, relative to the status quo, which is actually quite a precarious position, if it provides for a strong UK-US presence on Diego Garcia for the next 99 years, that would probably be a security and military win for the UK.

Lord Houghton of Richmond: Are you suggesting that the United States might emerge from this treaty in a far stronger position to exercise freedom of action than it is in at the moment?

Dr Jamie Trinidad: I would say so.

Professor Peter Clegg: It is about looking at the cost and benefits. There is a question mark around the role and position of Mauritius, but it has agreed to go into this treaty in good faith, so, certainly for the medium term, it would abide by that. The longevity of the agreement does provide greater security, and it clears up the issue of sovereignty, which was becoming increasingly difficult for the UK to defend. Probably, on balance, it will be advantageous to the United States going forward.

Q4 **Baroness Coussins:** I just have a quick follow-up in relation to what you touched on to do with security: you have said that all the overseas territories are very different from each other, but are there any where you could identify a similar level of interest from China as there seems to

be in the Chagos Islands going to Mauritius?

Professor Peter Clegg: I would say not, but I would also say that this issue of the role of China and the role of India within the context of the decision is probably something that the committee could look at in more detail. There has been a degree of hyperbole around the Chinese position; it has economic interests and trade interests in the region, but in terms of its military interest, its capability to have a significant interest militarily in the Indian Ocean is more limited. That is interesting when you talk about the costs and benefits of this agreement; looking in more detail at the role and interest of China would be worthwhile.

Q5 Lord Bruce of Bennachie: Thank you very much for coming and giving us the background to this. This is all fairly recent really. Mauritius got its independence, and there is no previous history of the Chagos Islands being part of Mauritius; it has sort of evolved. First, why is that? What is Mauritius's interest? Obviously others will pursue this, but the Chagos Islanders were kicked out mostly to Mauritius—although some are apparently in Crawley and Manchester, which are not quite as comfortable as Mauritius—so they have an interest, but how did this emerge? Why has it felt it has the right to do this, and what does it want to do with it if there is going to be a 99-year agreement for the US base? What is the benefit for Mauritius?

Professor Peter Clegg: It is true that some would argue that the history between Mauritius and the Chagos Archipelago is relatively tenuous. Going back to the handover of Mauritius and the archipelago in 1814 by the French, the Chagos Archipelago was seen to be a dependency of Mauritius. There were occasions in the 1880s where Mauritius police forces were based in the Chagos Islands for a short time, then administratively and formally in 1903 the United Kingdom brought Mauritius and Chagos Archipelago together.

Jamie can probably say more about this, but the issue is in relation to the nature of how the BIOT was formed very close to Mauritius's independence. There is something about territorial integrity within the context of the United Nations—the colony moving towards independence should retain that territorial integrity. There is a real question mark over whether that was the case in relation to BIOT and the language around the fact that once the defence use had been utilised it would be handed back to Mauritius. So, there are elements that could defend the position that there are quite important links between Mauritius and the archipelago.

Dr Jamie Trinidad: There is a strong legal basis for Mauritius's claim on the basis of territorial integrity. The well-established rule of international law is that a colony is entitled to come to independence with its colonially administered borders intact. Conversely, there is an obligation on colonial powers not to interfere with the territorial integrity of the colony as it comes to independence. Mauritius was administered by the UK. Mauritius, together with the Chagos Archipelago, was administered as one unit by the UK. There is a very good reason why international law does not allow

colonial powers to interfere with the territorial integrity of its former colonies and why these colonies should come to independence intact.

Thinking about the extent to which the UN has grown and the number of new post-colonial states; if all these had come to independence with active arguments about ethnic regions, linguistic or religious groups wanting to secede and form their own political units, it would have been a recipe for international fragmentation and disorder. So, the territorial integrity principle is a vital principle for the stability of international relations. It is what Mauritius has relied on, as well as the fact that Mauritius has said that when it purported to give consent to the detachment of the archipelago in 1965 in Lancaster House, it did not give its consent validly because the UK made Mauritian independence conditional to the detachment of Chagos, and so the ICJ subsequently held that Mauritius did not give its consent properly.

Q6 **Baroness Coussins:** You might have just covered some of what I am about to ask, Dr Trinidad, but what are the implications of recent international court judgments, such as from the ICJ—although I appreciate that was just an advisory opinion—on the International Tribunal on the Law of the Sea? You might also want to comment on what the UN General Assembly has said in that legal-ish context.

Dr Jamie Trinidad: There are three key decisions. In 2015, before the ICJ, there was an arbitral tribunal that was constituted under the UN Convention for the Law of the Sea which found that the designation of a marine protected area by the UK around the Chagos Archipelago had not been lawfully done because Mauritius was not properly consulted during the process. It also found that the UK's undertaking to hand the territory back when it was no longer required for defence purposes was a legally binding undertaking. Two of the five arbitrators made points about the sovereignty of Mauritius as the coastal state, but the tribunal as a whole decided not to address that particular question. Then the question was addressed head-on by the International Court of Justice in 2019, which found that the detachment of the Chagos Archipelago in 1965 had been unlawful, that it had breached the right of Mauritius to self-determination and territorial integrity, and that when Mauritius purported to consent to the detachment of the archipelago, the consent had not been validly made and therefore, the UK was unlawfully in the Chagos Archipelago and had to leave as soon as possible.

There was a decision in 2021 by the International Tribunal for the Law of the Sea which was a preliminary decision where it decided that, on the basis of what the ICJ had said, it was willing to treat Mauritius as the coastal state for the purpose of a maritime delimitation between Mauritius and the Maldives. However, the key decision is the ICJ's decision in 2019. It is not legally binding, as you say: it is advisory, but it is not the type of decision that can be very easily ignored. For a start, it was a decision that was made by consensus. There was one dissent by the US judge but that was on procedural grounds; she did not dissent to the substantive point that the separation of the Chagos Archipelago had been unlawful.

Then, as you allude to, there is the fact that the UN General Assembly overwhelmingly endorsed the ICJ's advisory opinion with only six states voting against it, and this had consequences on the international plain for the UK. For example, it meant that the UN maps changed; instead of referring to BIOT (UK), they started to refer to the Chagos Archipelago as part of Mauritius. The Universal Postal Union decided that it would stop issuing stamps for BIOT. UN agencies then decided this was binding; this opinion was not formally binding, but it was going to be treated as binding on the General Assembly and with all the consequences that then ensue from that.

The UK, at least in very formal terms, could have just doubled down and said it was non-binding and it would not accept the advisory opinion. But what would the consequences be for the UK's own position when, for example, it is trying to invoke the international rule of law in the South China Sea? Will it take a principled stance in relation to similar principles of international law playing out elsewhere in the world, and what would that mean for the UK's own authority if it had just ignored the advisory opinion?

Q7 The Chair: At the beginning, you referred to Mauritius's disagreement to the establishment of the Marine Protected Area. What do you expect to happen to the MPA now?

Dr Jamie Trinidad: We do not know what the agreement will say yet as we have not seen the text, but it has been said in the communiqué that there will be a Mauritian MPA. I do not know any more than that.

Professor Peter Clegg: No, at the moment there are no local fishing rights, so that will be an interesting issue. Not all MPAs exclude fishing rights that have been established.

The Chair: Not entirely, no.

Professor Peter Clegg: So that would be an interesting area to consider going forward.

Lord Soames of Fletching: Chairman, they might consider it in the same way as the Falklands fisheries deal, which took an enormous amount of effort and heaving to get there, but it works quite well. It is a template that works in a very tricky situation.

Q8 Lord Grocott: We have not yet discussed the situation in respect of the people who lived on the islands. That would seem to be a pretty central consideration to any person coming new to this discussion, not least because of the fact that in this extraordinary period of decolonisation—barely 30 years when the whole of what was the British Empire was involved in the granting of independence to no end of countries—the cardinal principle was the wishes of the people who were there. We only gave independence because people wanted to be independent, with the exception of Hong Kong, which we all know is a different situation.

First, how many people are there who could sensibly claim to be

inhabitants of the island before they were expelled? That would have to include their descendants as it is so long since then, so just a numerical answer to that. Secondly, how much do we know of their views about the decisions that are currently being made about them and their homeland, if I can describe it in that way?

Professor Peter Clegg: The numbers are a little sketchy in terms of the original decision, but 1,000 to 1,500 Chagossians were ultimately removed from the archipelago, of whom possibly 300 to 400 survive today, and then several thousand of second and third generation Chagossians. So we are probably thinking in those terms.

The tragedy of what happened back in the 1960s was that Chagossians did not have a voice in terms of international law; Jamie can say more on that. So it is the decision regarding the breakup of the territory just prior to independence being achieved which is the most important international legal question. If that separation had not taken place, the Chagossians would now have been part of an independent Mauritius, which is unfortunately the nub and rub of this question in terms of international law.

The power of the British Government to use Orders in Council to originally remove the population, as was alluded to earlier, has been tested a number of times in the British courts, and on all occasions the Chagossians have ultimately lost those cases. So unfortunately the legal and historical set of events is not in the Chagossians' favour. Now of course there is absolutely a moral argument here, and part of what is in the treaty and what will be discussed with the potential handover will be key. So again, maybe not so much the response of the Chagossians to what is being suggested, but how they will be treated and how they will be supported going forward will be most important for the committee to look at.

Lord Grocott: We are at an awkward boundary between legality and morality at this point, are we not? We had an earlier discussion about the extent to which these Indian Ocean territories are different from other overseas territories, and it shouts at me that the key difference is that pretty well everywhere else, massively and demonstrably so in the Falklands and in Gibraltar, the wishes of the inhabitants have trumped everything else, which we can probably all understand and support.

It is difficult to say what a neutral observer would feel here, but it seems to me that almost anyone looking at this would say that the views of the people who lived there and live there now should be a very significant factor in any decision that is reached. So, I just repeat the question I asked before: what do we know about the views of the people and their descendants who were, I would say, shockingly expelled from where they lived?

Dr Jamie Trinidad: I will just address some legal aspects of this, because they are important. By the UK's own admission, the Chagossians have been treated shamefully, but the people with the right to self-

determination—the entity with the right to determine the future status of the territory—are defined by reference to the whole of the territory. So on that understanding, the Chagossians are part of the people of Mauritius in a formal legal sense.

The position in international law is then highly unsatisfactory as far as the Chagossians are concerned, because in a moral sense it is not justified to talk about them as a mere subset of the people of Mauritius. They have been treated despicably. Part of the reason they have been treated despicably is that the pre-independence Mauritian Government cooked up a deal with the UK, albeit with a gun to its head, proverbially speaking. So even though the Chagossians may not have the right to decide the future sovereignty of the territory, they have a right to be consulted in a meaningful way, in my view. This right goes beyond a moral right, actually; as the indigenous population of the territory, they have a right to be consulted about the use of the land and maritime spaces of the territory.

In fact this was the basis for a claim that was brought by a group of Seychellois Chagossians when they tried to intervene before the International Tribunal for the Law of the Sea in the Mauritius/Maldives maritime delimitation. I acted for them in that case, and the whole nub of their case was, “We are not a mere subset of the people of Mauritius, we have distinct rights, and we need to have those rights taken seriously”. One thing that the Chagossians in the UK have complained about in particular is the tokenistic way in which they have been consulted in relation to this whole agreement. I do not know the full details of the consultation process, but it does seem to me that perhaps they have a legitimate grievance in the sense that they should have been involved in a richer, more meaningful way throughout.

Lord Grocott: I am still going on about the question: do we have any idea at all, among the people we have been talking about, what their preference would be in terms of sovereignty?

Dr Jamie Trinidad: There are different groups. The Chagossians have splintered into a few groups with different opinions about what should happen to the territory: some do not want a deal to happen at all, some were fully behind the Mauritian efforts and even went to the ICJ with the Mauritian delegation and gave evidence saying how they supported the return of sovereignty to Mauritius. So they are not speaking with a unified voice, and I do not really feel capable of giving a fair representation of the proportions of Chagossians who support the deal or not. I am just not sure.

The Chair: The fact is that the question has not been asked, democratically.

Dr Jamie Trinidad: It has not been asked democratically, and a democratic asking of that question would then raise the question of who should legitimately be consulted. Clearly the group who call themselves the Natif, the people who were actually physically expelled from there;

how many of their descendants should be consulted as part of such a process?

The Chair: We have quite a lot of supplementary questions: Trish, do you want to start?

Baroness Morris of Bolton: I just wanted to clarify: the Chagossians were not stateless, they became full citizens of Mauritius; is that right?

Dr Jamie Trinidad: Some Chagossians were displaced to Mauritius, some to the Seychelles and some to Crawley, because it is near Gatwick Airport. I am not sure how many are Mauritian citizens, but I know that a number of them are not, including some Seychellois.

Baroness Morris of Bolton: So are they are stateless? What would their passports say?

Dr Jamie Trinidad: Some have British passports, some have Mauritian passports. I do not know whether any are strictly stateless.

Professor Peter Clegg: I do not think they are stateless, but certainly scattered and adopting the nationality of where they were originally placed.

Lord Soames of Fletching: Are there not very strict UN rules about stateless people?

Dr Jamie Trinidad: But I cannot say as a matter of fact whether any of the Chagossians, or the number of whom, may not be citizens of a state. I just do not have that information.

Lord Soames of Fletching: Has the UN expressed a view on this?

Professor Peter Clegg: I do not think it has, specifically related to the Chagossians; it is about the issue of sovereignty.

Lord Soames of Fletching: Exactly, and do they have sovereign rights?

Professor Peter Clegg: No, they do not.

Q9

Baroness Crawley: We were told in our briefing that the Chagossians continue to experience chronic impoverishment in Mauritius, and they have largely remained at the bottom of Mauritian society since their arrival on the island. Would you expect the treaty to have anything in it that would strengthen the economic rights of Chagossians in Mauritius?

Professor Peter Clegg: Ultimately it is a sovereign decision for Mauritius. But that is a key element of the potential financial package which might come with the treaty in terms of the level of support they might receive going forward, in addition to what they have received in the past. That is probably the extent of my answer, unfortunately.

Dr Jamie Trinidad: If I recall correctly, there was something in the communiqué about supporting Chagossians and assisting with their right

to visit the islands, and possibly with resettlement. But I agree with Peter, this is ultimately something for the detail of the treaty.

- Q10 **Lord Bruce of Bennachie:** The Chagos Archipelago has a big base on it; what are the sort of distances involved? America has said it does not want people anywhere near it, but is there a practical agreement that could allow some part of the archipelago to be resettled without compromising America's security? In other words, is America just being precious, as opposed to being genuinely concerned about security?

Dr Jamie Trinidad: I expect that it will allow Chagossians to visit and allow resettlement of the outer islands—not including Diego Garcia—which they cannot currently do.

Professor Peter Clegg: That is an important change in terms of how things have been perceived between the 1960s and today; the attitude of the United States, and the general attitude, has changed in that regard. Of course there is the issue of economic viability, and there were questions around that in the 1960s as well, but maybe that is another issue.

- Q11 **Baroness Crawley:** My question is to Dr Trinidad in the first instance: do you foresee an agreement with Mauritius that will have any implications for other overseas territories where UK sovereignty is contested at present?

Dr Jamie Trinidad: Sorry to sound like a broken record, but I have not seen the deal and we will have to see the detail before we can draw strong conclusions about this.

In a very general sense, it makes people in some overseas territories—especially Gibraltar and the Falklands—nervous to see something like this happening: the UK handing sovereignty over British territory to another state. So the optics are not fantastic. Some could see it as a symptom of the UK's waning power and influence in the world, and when the UK is your major guarantor of your rights and interests on the international plain, it is going to make you nervous. There have been some nervous views expressed in Gibraltar and the Falklands.

At the same time, just in a legal sense now and with my lawyer's hat on, there is no read-across: they are different types of territorial situations. The Argentine claim to the Falklands, for example, is a 19th century claim subject to international law, as it was in the 19th century before these rules of self-determination crystallised from 1960 onwards, so it is a very different type of claim. Argentina will say that there are parallels and that this is as much about Argentine self-determination as the Chagos issue is about Mauritian self-determination, but I do not accept that those arguments are well founded.

In Gibraltar, there is a territorial cession from 1713 where the territory was ceded in perpetuity. There is no parallel with the Chagos Islands and in fact the Chief Minister of Gibraltar was recently in the UN General Assembly Fourth Committee stating in terms that there is no read-across.

Perhaps the only vaguely or loosely analogous situation is that of the Sovereign Base Areas in Cyprus, although they are not actively claimed by Cyprus. In its pleadings before the ICJ in the Chagos case—though it did not make the case specifically—Cyprus said that its continuing consent was necessary for the continued British presence in the Sovereign Base Areas, implying that if it were ever to withdraw its consent, Cypriot self-determination would require the UK to withdraw. The ICJ did not say anything about that point but, as a loosely analogous situation, the Sovereign Base Areas were excised from Cyprus when Cyprus attained its independence in 1960. Now Cyprus gave its consent, but then again Mauritius gave its consent, although that consent has subsequently been held to be invalidly given. So the Sovereign Base Areas are not actively contested by Cyprus, but I would just say that it is the only vaguely analogous situation I can think of.

Professor Peter Clegg: The Sovereign Base Areas example is an interesting one for the reasons Jamie has given, but there was no forced displacement of the local population. Since then, a number of side agreements have been signed between the UK and Cyprus about the operation of the Sovereign Base Areas. It is helped greatly by the application of EU law in relation to the Sovereign Base Areas: there are no customs barriers, there is free movement of people, there is very close co-operation between Cypriot and UK authorities when it comes to crime and security arrangements.

So I would agree that that was probably the closest example to BIOT, but there are still very significant differences and, despite the caveats that Jamie talked about, Cyprus in fact agreed in perpetuity to hand the Sovereign Base Areas over to the UK. So again there are quite significant differences there.

Lord Houghton of Richmond: It is also fair to say there are some historic political offers of elements of the Sovereign Base Areas being surrendered in the context of the reunification of the island.

Professor Peter Clegg: That is correct, yes.

Q12 **Lord Wood of Anfield:** It is a difficult question to answer, but with the UK being in opposition to rulings from the ICJ, the International Tribunal for the Law of the Sea and the UN position, do you get a sense, either from the legal community or from the Government, that that anomalous position has consequences for the UK's position in other cases? In other words, was there a reason to resolve this to enable Britain to have a better standing in international law across a range of other issues? Or is it a stretch to think of that as a motivation?

Dr Jamie Trinidad: I definitely think that was part of the Foreign Office's thinking on this, and I made the point earlier about China's maximalist claims in the South China Sea, which are not supported by international law. The UK has an interest in rebutting those claims, but it does not want Chagos thrown back in its face if it does so. In the situation the UK found itself in, with these court decisions against it, with international

opinion very resoundingly against it and the international position being quite clear, it is in the UK's own strategic interest as a promoter of the international rule of law to be seen to be a consistent and not a hypocritical promoter of international law.

Professor Peter Clegg: And for the United States, and probably India as well in that region, to be associated with that adherence to international law.

Q13 **The Chair:** Do you have a feel about the likely timing of the laying of the treaty before Parliament?

Professor Peter Clegg: It is likely to be before Christmas, so in the next few weeks, and things will probably move quite quickly into 2025.

Dr Jamie Trinidad: I checked the Government website yesterday and saw a statement that said that they would look to pursue signature and ratification in early 2025, so it may be after Christmas.

Q14 **The Chair:** If you were in our position, what would be the specific things you would be looking out for?

Professor Peter Clegg: We have covered quite a few of them: the overall cost-benefit analysis of the deal diplomatically, economically and strategically; the future of the marine protected area and the implications for that; the rights and economic standing of the Chagossians; issues around the role of China; and the African Nuclear Weapon-Free Zone treaty which Diego Garcia is presently exempt from, as we discussed earlier. So those are probably the issues that should be considered. And possibly not to go back too much into the history of the situation; it is contested, and it can be discussed, but where we legally stand right now and the direction of travel are relatively clear. So I would encourage the committee to look forward rather than backwards.

Q15 **Lord Grocott:** One factor is the rights of the Chagossians, as I keep coming back to. If we do not know what rights they would choose for themselves, how can that be taken into account in assessing any treaty? Is there any mechanism for which there is any precedent for doing what most people probably think ought to have been done at some stage: find out what their views are? I am a politician: it is no use saying a few think that and a few think that and a few think that. You come to numbers of how many think that at some stage, and there will always be divisions, but the majority wins.

When making a decision of this magnitude about someone else and their future and their rights, with no reference to their views at all, the legal position is the easy bit in many respects, is it not? I am not saying it is a simple issue, but at least there are rules you can apply and work out from and say what is legally right and wrong. But what mechanism can there be, or should there be, or would be acceptable under UN precedents or whatever, for finding out the answer to that, in my view, fundamental question? The numbers are small—it is not like trying to find the views of Americans on who should be their President—so it is

manageable.

Dr Jamie Trinidad: There have been consultations of the Chagossians during the treaty negotiations, but I have heard from various Chagossian sources that they are not happy with the way that those consultations were conducted. Some were online, I do not think they were properly minuted and there are certainly no public minutes of them. The allegation made by some Chagossians is that they were tokenistic in the sense that they felt that the UK was just ticking that box saying it had consulted the Chagossians and somehow factored their views into this negotiation.

It will be interesting to see the extent to which Chagossian views are factored into an eventual deal and what the treaty will say about the Chagossians. That is something that your committee and Parliament in general should keep a very close eye on, alongside the security and defence dimension which is also crucial. The nature of the UK and the US's ongoing rights in Diego Garcia is a matter of key concern, but so is the position of the Chagossians.

Q16 **Lord Bruce of Bennachie:** You said in passing that the interests of China had been overblown; given that there is an election coming up in Mauritius, is this an issue that is exercising Mauritians very significantly? And to what extent do you think the possibility of Chinese interests will be actually referenced in the treaty? In other words, if there is a 99-year agreement, the reality is it presumably does not give China much space. We will not know until we see the details, but how big an issue is it? The population of Mauritius has strong Chinese connections, but also huge Indian connections, and India and China are not known to be blood brothers.

Professor Peter Clegg: I am not an expert on Mauritian domestic politics, but that is the rub really: the power relationship between India and China. That is reflected in the approach of Mauritius as well, which is economically very closely aligned with China but, in terms of security, much more aligned to India and the West. So there is a whole range of opinions within Mauritius.

One issue which is important is about those outer islands and how well they are guaranteed, how well they will be protected in the future with the new treaty. At least initially it is probably about the more peripheral concerns around greater Chinese interest and involvement rather than anything more profound at this stage.

The Chair: Thank you so much, we are very grateful to you for your presentation.