



International Relations and Defence Committee

Corrected oral evidence: Implications of the transfer of sovereignty of the Chagos Archipelago

Wednesday 11 June 2025

10 am

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Members present: Lord De Mauley (The Chair); Baroness Blackstone; Lord Bruce of Bennachie; Baroness Coussins; Baroness Crawley; Lord Darroch of Kew; Baroness Fraser of Craigmaddie; Lord Grocott; Lord Houghton of Richmond; Baroness Morris of Bolton; Lord Soames of Fletching.

International Agreements Committee members also present: Lord Goldsmith (The Chair); Lord Hannay of Chiswick; Lord Howell of Guildford; Lord McDonald of Salford.

Evidence Session No. 1

Heard in Public

Questions 1 - 23

Witnesses

I: Professor Philippe Sands KC, Professor of the Public Understanding of Law, University College, London (served as legal counsel to Mauritius in its dispute with the UK over the Chagos Archipelago from 2010 to 2024); Professor Richard Ekins KC (hon), Professor of Law and Constitutional Government, St John's College, University of Oxford, and Head of Policy Exchange's Judicial Power Project.

II: Darshana Baruah, Shangri-La Dialogue Senior Fellow for Indo-Pacific Defence and Strategy, IISS-Asia; Cleo Paskal, Non-Resident Senior Fellow for the Indo-Pacific, Foundation for Defense of Democracies; Dr Bryan Wilson, Scientific Adviser to the Chagos Conservation Trust and Research Fellow in Biology, University of Oxford.

III: Professor Alessio Patalano, Professor of War & Strategy in East Asia, Department of War Studies, and Co-Director of the Centre for Grand Strategy, King's College London; Dr Zack Cooper, Senior Fellow, US strategy in Asia, American Enterprise Institute; Dr Thomas Withington, Associate Fellow and expert in electronic warfare and air defence, Royal United Services Institute.



HOUSE OF LORDS

Examination of witnesses

Professor Richard Ekins and Professor Philippe Sands.

Q1 The Chair: Thank you both for coming this morning. We are going to hear today a range of evidence on the implications of the transfer of sovereignty of the Chagos Archipelago, starting with the legal perspective. The session will be streamed live on the Parliament website and a transcript will be taken. Once available, you will both be sent a copy of it and can make small corrections if necessary. Can I issue a reminder that, if anyone has any interests, they should declare them first when speaking?

We have limited time, so we are not going to ask you for opening statements, but please feel free to introduce yourselves briefly and perhaps make some very brief general remarks if you wish. Then we will go straight into questions.

Professor Philippe Sands: Thank you very much for the invitation. I am professor of law at University College London, a barrister, a King's Counsel, and an occasional author. I am speaking to you today in a personal capacity. I wish to declare that, in my professional capacity as a member of the English Bar, I acted as counsel for Mauritius from April 2010 until December 2025.¹ That is all I wish to say by way of introduction.

Professor Richard Ekins: I am a professor of law and constitutional government at Oxford and head of Policy Exchange's Judicial Power Project, in which connection I have jointly authored, with a number of legal and security colleagues, three different papers on the position in relation to the Chagos Islands and the legal foundations of a decision to cede the islands, being critical of those foundations.

The Chair: Let me start, if I may, with a rather long question. How do you assess the UK Government's claim that UK security interests would be jeopardised in the absence of an agreement with Mauritius on the sovereignty of the Chagos Archipelago? A series of reasons have been given by the UK Government as to why, in the end, they would have been forced into doing a deal with Mauritius, including that the ICJ advisory opinion could, over time, lead to a binding outcome for the UK; that the electronic spectrum could have been denied to the UK and/or US, hampering the operations on Diego Garcia; and that contractors were becoming nervous about sending contract staff to support operations there. In your view, was a treaty necessary, or could the UK have continued to resist legal pressure rather than agreeing to transfer sovereignty?

Professor Philippe Sands: There is a bundle of issues there. I will try to be brief. One point, by way of fact and law, is that what has happened with this treaty is not a transfer of sovereignty. It is a recognition of the

¹ Correction: Prof Sands acted as counsel for Mauritius until December 2024.

sovereignty of Mauritius. The legal position under international law, as determined by the International Court of Justice and the International Tribunal for the Law of the Sea, is that the purported excision of the Chagos Archipelago in 1965 was illegal from the outset. Therefore, when Mauritius obtained its independence in 1968, Chagos was already a part of its territory. All that has happened is that the United Kingdom is now recognising that legal situation.

In terms of the history of this story in recent years, it is very important to recognise that there were three separate legal proceedings. I was involved in each of them, so I speak here in a personal capacity, but I think it is all publicly available and people can see. A total of 28 international judges and arbitrators had an opportunity to express a view on the respective claims of Mauritius and the United Kingdom. Out of those 28, not a single one accepted the claim of the United Kingdom. Five of the judges and arbitrators, including two Americans and one British, determined that they had no jurisdiction to express a view. The other 23 all said that Mauritius's claim was completely clear. Of course, in 2021, the International Tribunal for the Law of the Sea ruled, in a binding judgment, that the Chagos Archipelago was part of Mauritius.

In short, in response to your question, sir, the position is that the United Kingdom's situation was untenable. It was in illegal occupation of the territory of the Chagos Archipelago and part of the African continent. That is why all African Union members opposed the United Kingdom's position. Because of that illegality, the situation was one of manifest insecurity. This treaty has created long-term security and stability, in which the military base at Diego Garcia, which was never an issue in any of these proceedings, will be able to continue to operate, as it has for more than 100 years, going forward. That is a very significant achievement.

It is also, finally, important to recognise why the United Kingdom changed position. Its arguments in relation to the Chagos Archipelago prior to 2019, and then 2022 when it changed its position, made its arguments in relation to the South China Sea and China's claim, and then Russia's illegal occupation of parts of Ukraine, completely untenable. That was why Prime Minister Liz Truss, in September 2022, changed position, because it completely undermined the United Kingdom's arguments.

In short, therefore, the treaty has replaced—or will do, if and when it comes into force—the situation of illegality and uncertainty with a situation of legality, certainty and very long-term security for the United Kingdom in terms of defence. That is a very significant and positive achievement, without addressing the right of return of the Chagossians, the recognition of the claim of sovereignty of Mauritius and, of course, the protection of the environment. It is a singular and, in general, positive achievement.

Professor Richard Ekins: It will not surprise you to know that I take a rather different view, but I agree with Professor Sands about the significance of the way in which the treaty is framed. Article 1 does not speak in terms of transfer of sovereignty, but, I think, of recognition of

sovereignty. The treaty is not ratified and has not come into force. Until that time, we remain sovereign over the Chagos Islands.

I do not think—and I will come back to this—that either the International Court of Justice and its advisory opinion, or certainly the International Tribunal for the Law of the Sea, the special panel in 2021, determined that Mauritius is sovereign. The ITLOS special chamber presupposed it on the basis of a misreading and an extravagant reading of the International Court of Justice’s advisory opinion. The International Court of Justice had no authority to determine the dispute between Mauritius and the UK, to which the UK had not consented to accept adjudication, and it was an advisory opinion that is not capable of determining that as an authoritative matter of international law. That is my understanding.

In answer to the question with which you ended, my view would be that the treaty is not necessary and that the UK can and, if the treaty is not ratified, should continue to stand on its legal rights. Indeed, my concern is that agreeing and ratifying the treaty may well come at a considerable cost in terms of the UK’s future security interests, in so far as, after the ratification of the treaty, they will depend in important ways on the good will of future Mauritian Governments.

The situation as I see it, apart from agreeing and concluding the treaty, is that there is a situation of disputed sovereignty. The UK is in possession of the islands and Mauritius has been undertaking a lawfare campaign to force us to relinquish sovereignty. After the treaty is concluded or ratified, it will of course be Mauritian sovereign territory. That is set out in the terms of the treaty very clearly. Mauritian sovereignty is subject to the terms of the treaty as best we can enforce them, which is a point I am sure we will return to.

Mauritian lawfare to date, it seems to me, has not in fact jeopardised UK security interests. It has proven to be more of a nuisance than a menace thus far. The ICJ’s 2019 advisory opinion was of course important and, I think, regrettable, but it did not change our legal position as such. The most that Mauritian lawfare has accomplished to date, in practical terms, has been interfering with civilian mail to and from the British Indian Ocean Territory and intimidating a British-based business that was minting commemoration coins under contract to the Government.

If the treaty is agreed, out of fear of future litigation, as seems to be the case, and ratified, the campaign of lawfare will certainly have been a success. It is worth noting that Mauritius’s willingness to pursue lawfare against the UK, and thus effectively against the US, to threaten the operational effectiveness of the base in future, is relevant to the premise of the Government’s decision to surrender sovereignty, which is that Mauritius is a reliable partner that will not cause difficulty in future years.

It seems to me that there is no prospect of a binding judgment being secured against the UK requiring the UK to surrender sovereignty. To return to the ICJ’s 2019 opinion, it purports to adjudicate a dispute when the UK had not consented to adjudication and yet, at the same time,

disavows any intention of adjudicating that dispute, precisely because consent is required. In relation to the International Tribunal for the Law of the Sea, it seems to me that it has no jurisdiction to determine territorial disputes and cannot lawfully presuppose that the 2019 advisory opinion settled that Mauritius is sovereign. I do not think in fact that the advisory opinion establishes, or purported to establish even, that Mauritius was sovereign. It could not, as a matter of international law, establish it as such. That is my position.

Q2 Baroness Fraser of Craigmaddie: Could I clarify a few things from that? It is my understanding that the UK Government have accepted the jurisdiction of the ICJ only with conditions and exceptions, one of which is with regard to any dispute with the Government of any other country that is or has been a member of the Commonwealth. Professor Sands, you have talked about the concern of binding legal judgments. Professor Ekins, you said that you do not think such a judgment is imminent. Can I ask you, Professor Sands, where such a judgment would come from? Can you explain how a binding legal judgment might happen?

Professor Philippe Sands: As a clarification, the ICJ has two types of jurisdiction. It has a contentious jurisdiction, where one country can go against another country. That is the kind of jurisdiction that you have just referred to, in relation to the exclusion of jurisdiction with members of the Commonwealth or former members of the Commonwealth. It has a second jurisdiction, which is to give advisory opinions. This case went on a request from the General Assembly of the United Nations, by an overwhelming vote, on not the question of sovereignty but whether the decolonisation of Mauritius was completed.

The United Kingdom made the argument before the court that the court should not answer the question because it did not have jurisdiction, since this was a sovereignty dispute, not a decolonisation dispute. The International Court of Justice judges overwhelmingly rejected that argument. That suggestion that the court did not have jurisdiction to do what it did is plainly wrong.

The second point to make is that advisory opinions are not binding as such on states, but they are binding on the United Nations. The immediate effect of the advisory opinion was that the UN and all the specialised agencies of the United Nations changed their maps of the world and treated Chagos as part of Mauritius for fisheries, postal and all sorts of other things.

In relation to binding judgments, I am not sure that Professor Ekins is right, for obvious reasons of not giving away too much. Hypothetically and theoretically, say the United Kingdom had persisted in its position that it had sovereignty, which successive courts have now said it does not and has never had. Just to be clear, Mauritius's position was consistent all the way through the proceedings from 2010 and very publicly stated that the base would always continue to operate. That was never an issue in any of the proceedings. If the United Kingdom today were to try to exercise jurisdiction in relation to the outer islands of the Chagos

Archipelago, Mauritius would now be able to go to the International Tribunal for the Law of the Sea and obtain provisional measures to prevent the United Kingdom exercising jurisdiction over those islands. Those provisional measures would be legally binding.

The matter would then go, on the merits, either to ITLOS or to an Annex VII arbitration tribunal. I have no doubt at all that, in light of everything that has passed, the Annex VII tribunal or ITLOS would determine, as a matter of binding law in respect of the United Kingdom, that it does not have jurisdiction in relation to the outer islands of the Chagos Archipelago, or in relation to any part of the Chagos Archipelago.

We focused on the law here, but, if you put this in the broader political context, in May 2019, the General Assembly addressed the effect of the advisory opinion of the International Court of Justice and voted overwhelmingly to accept the ICJ advisory opinion. It is worth bearing in mind that, out of the entire membership of the United Nations, over 190 states, only four states in the whole world supported the United Kingdom: Australia, Hungary, Israel and the Maldives. The vast majority of the United Kingdom's allies did not support it in relation to its claim. I have heard what Professor Ekins said but, respectfully, this ship has sailed. It is long gone and the issue has been absolutely settled.

Baroness Fraser of Craigmaddie: Professor Ekins, can I ask you to respond to that? Also, can I ask you to confirm whether I am right that the ITLOS judgment refers to the Maldives and not to the UK, and that there are no proceedings currently underway at ITLOS?

Professor Richard Ekins: It is certainly true that the ITLOS preliminary ruling in 2021 was between Mauritius and the Maldives, and the UK was not a party. I am not aware of any proceedings underway, although it is possible that they may have been initiated very recently, but I do not think so, and that is pretty unlikely in view of the ongoing negotiations.

To respond, yes, the International Court of Justice has an advisory jurisdiction. The advisory jurisdiction should not be used to settle a dispute to which parties have not consented. As you noted, we have a reservation in relation to the jurisdiction of the court when Commonwealth and former Commonwealth states are concerned. We have not given our consent to this dispute being adjudicated. The International Court of Justice's advisory opinion was an abuse, as I say, of its advisory jurisdiction. It was regrettable and likely to bring international law into disrepute.

I do not think that one determines the sovereign rights of states by counting heads in the General Assembly. In fact, the General Assembly does not have authority to decide that point as such, and the advisory opinion does not confer upon it any legal power that it does not otherwise have. The UK's initial position in response to that advisory opinion, which was, "Thank you, but we disagree and we are not taking this as dispositive", was correct. The ITLOS ruling in 2021 misread the advisory

opinion and wrongly took it to have settled a dispute that was not open to it to resolve.

Yes, the legal question involves the completion of decolonisation with a view to settling a sovereignty dispute. There was, and perhaps still is—although it is in the process of being settled as we speak, I suppose, subject to your views and other parliamentarians’—a dispute between the UK and Mauritius as to sovereignty. That cannot lawfully be circumvented in the way that was undertaken. It is very clever but, with respect, not a tactic the UK should view as acceptable, because it does violence to the integrity of the international legal order. That is my view.

Relatedly, there is no prospect of getting the International Court of Justice, in terms, to conclude that Mauritius is sovereign and require either transfer or concession of sovereignty to Mauritius. ITLOS is a more real threat in terms of live litigation, but, again, ITLOS does not have authority—at least that is my understanding—to settle territorial disputes. The premise is that ITLOS would simply take the 2019 opinion as having settled the dispute. That is the premise that we should not accept, to my mind.

Q3 Lord Hannay of Chiswick: I should declare an interest, in that I was head of the Middle East department of the Foreign and Commonwealth Office in 1979 for three months, at which point the British Indian Ocean Territory was part of my responsibilities. Am I correct in understanding that you are saying that a whole succession of British Governments got the law wrong, not just one, not just the Government today, who have concluded this treaty, but the Governments who preceded it, who entered into negotiations of a similar nature?

Professor Richard Ekins: No, that is not my position, although I have suspicions, without knowing the inside details, of course. If I knew them, I would not reveal them. Without knowing that detail, it seems to me that some legal mistakes may have been playing a role here. Even when Liz Truss’s Government initiated negotiations, the Government did not concede that Mauritius was sovereign. The Government that followed under Rishi Sunak did not concede that either. The present Government have not conceded until agreeing the terms of the treaty that is before us. I do not know, as I say, with authority what was being thought, but, in so far as successive governments have thought that the advisory opinion in 2019 imposes a legal obligation on the UK to surrender sovereignty to Mauritius, they would have been mistaken.

I am not sure that they have thought that. They may have thought instead that the Mauritian campaign of lawfare is scoring some success. The 2019 opinion is obviously significant. The 2021 ITLOS ruling is obviously notable too. They may have taken the view that it is not going to get better and thus thought, “We should negotiate and find a way out”. Without knowing the full detail of their thinking, that may have been what they were reasoning.

As for the stated position by the present Government, who are obviously the ones who have concluded these negotiations and signed a treaty, subject to ratification, the rationale they seem to have given publicly, which I have addressed in Policy Exchange papers in the not-so-recent past, seems to be premised on a misconception that the ICJ opinion entails future binding judgment against the United Kingdom. That seems to be premature and, in a sense, to sacrifice some of the UK's procedural protections and the arguments yet to be had on speculation about what the likely outcome would be. In relation to the International Court of Justice in particular, it is wishing away, if you like, or simply not paying due focus to, the very strong procedural protection we have, which is that we have to consent to adjudication.

Professor Philippe Sands: Could I come in on that question in answer to Lord Hannay? The answer is clearly yes. From 1965 onwards, the British Government proceeded on the basis of a legal argument that they knew to be unsound. I set it out in my book, *The Last Colony*. I give you all the relevant material, but it was also before the International Court of Justice.

In 1965, as this issue was being addressed, the United Kingdom Government received legal advices from at least two very distinguished lawyers at the Foreign Office. One of them said that the proposal by the United Kingdom to dismember the colony of Mauritius was illegal as a matter of international law and could not be done. That was not the advice that the British Government then went with. It went with other advice given, justifying the actions.

The evidence makes clear that, since 1965, the British Government have known that they were on very weak ground on their arguments in relation to Chagos. The reality is—and I think Professor Ekins is aware of this, although he has not said it—that the Foreign Office lawyers, who really are an incredibly impressive bunch of individuals, with whom I have worked for more than 30 years, were absolutely clear that the United Kingdom Government's argument in law was untenable. That was one of the reasons for the change of direction.

Q4 **Lord Darroch of Kew:** Can I change the focus a little? The Government's position, publicly stated, is that the agreement guarantees full continued UK control of Diego Garcia for the next 99 years and beyond. If you look at the wording of article 13, it does not seem that this is entirely in the British Government's gift, because it indicates that any decision such as that needs the future agreement of Mauritius, as well as that of the UK. Any extension needs Mauritius to agree. Is there any reason why the UK could be completely confident that this Mauritian agreement would be forthcoming? How enforceable is the provision on the UK's right of first refusal upon the termination of the agreement?

Professor Richard Ekins: The UK can have, at this point, no confidence that it will be renewed in 99 years. I do not mean that we should be confident that it will not be renewed. We simply do not know. Ninety-nine years is a long time. There is no right of renewal. There is the opportunity

to negotiate an extension on new terms. I expect that, in 99 years, if this agreement goes ahead and the agreement has not been terminated otherwise in advance of that point of time, there will be an attempt to renew, assuming it remains a very significant strategic asset, but we have no assurance of renewal. The extent to which one should be confident is a matter of contingent diplomacy and politics, which will change significantly, I am sure, in some way or other in the next 99 years.

In relation to the right of first refusal, it seems to me not straightforward to see how that is enforced. At the expiry of the 99-year period, if it were clear that Mauritius was about to conclude an agreement with a third state, the UK could insist that it would not leave Diego Garcia and not abandon its exclusive occupation until it had been presented with the opportunity to agree to the same terms, hence the right of first refusal. If the agreement comes to an end, which it will naturally at the end of 99 years if there is no agreement to extend, the UK will be required to relinquish exclusive occupation. The right of first refusal holds for 40 years after that, but, clearly, if the UK has left Diego Garcia, insisting on that right of first refusal is not straightforward at all if some other state is in occupation. There is no machinery for us to enforce it. There is no legal machinery so to do.

In addition, it might be worth noting that of course there is a risk in 99 years or after termination that a hostile third state would try to make use of the islands for its own defence purposes. Perhaps more likely, I think, although it is speculation, is that a hostile third state would attempt simply to deny the island to our use, and that would not necessarily trigger a right of first refusal. Imagine an extensive development agreement that does not involve the state making use of the island in place of the United Kingdom and the United States.

Professor Philippe Sands: The language of article 13 plainly envisages that there will be a renewal. It is certainly correct that that renewal may not proceed, but, if it does not proceed, the United Kingdom has a right of first refusal. To all practical purposes, the island reverts to its natural use as a nature park, or maybe the Chagossians return, or it is extended. It does not go to a third state. That is very clear.

It is really important in this regard to address a lot of the disinformation about Mauritius. It is a remarkably stable country. It is a democracy. It has a very close relationship to the United Kingdom. It has a very close relationship to India, both in geographic proximity and in historical, ethnic and religious terms. The idea that somehow Mauritius would make Diego Garcia available to a hostile third state, at least as things stand now, seems really, as Professor Ekins said, to be in the realms of speculation.

This is an agreement that has been signed off not only by the United Kingdom, but by successive US Administrations: the Biden Administration and the Trump Administration. That says a great deal about the reality of the situation. This is a long-term agreement and one premised on a very

close relationship between Mauritius, the United Kingdom and the United States.

To the point that we have been reading about in the press that Mauritius might one day give this island of Diego Garcia to China, Mauritius has many other islands that it could give to China. I can tell you that there is zero prospect of any of those islands being made available to China for the very simple reason that this is something India would under no circumstances tolerate. It is just not going to happen. The whole Chinese thing in relation to this area is a nonsense, having regard to the relations between Mauritius and, respectively, the United Kingdom, the United States and India. This is a long-term agreement and will run for the long term, I suspect, without any difficulties at all.

Q5 **Baroness Coussins:** Earlier this morning, the BBC News website published a report that a UN panel has urged the UK to suspend the deal, go back to the drawing board and renegotiate the treaty on the grounds that currently it fails to guarantee the rights of the Chagossian people. Could you say whether this UN panel has any legal bearing at all on the situation? More broadly, whether for this reason or for any other reason, were the treaty not to be ratified, what would be the main legal risks to the UK in that situation? How would the UK be able to defend its position legally?

Professor Richard Ekins: I have seen a summary of the press report but have not read the substantive report you refer to. The short answer is that it has no legal effect, but obviously it seems a significant intervention and worth attending to on the merits. In relation to the provision that the treaty makes for the Chagossians, the answer is that it makes no provision for them. Its concern is a restoration, if you like—that is how it is seen from the Mauritian side—of Mauritian sovereignty and the Chagossians are not protected thereunder, hence the concern.

To circle back round to your main line of questioning as to what the principal legal risk is, as Professor Sands alluded to, it probably is ITLOS and the United Nations Convention on the Law of the Sea. As I say, we have strong arguments in so far as ITLOS should not be adjudicating territorial disputes and should not be taking an advisory opinion to have settled a dispute when one of the parties has not consented to the adjudication of that dispute. That is a strong argument on the merits. It does not mean that it will succeed, but it is a strong argument.

To link the two up, though, and maybe this is what you had in mind, the one important way in which the UK could strengthen its legal position and draw some of the sting from the critique it has been under is to work much more closely with the Chagossians, who, as far as I can tell, have been largely excluded from the negotiations and this process, and many of whom clearly are unhappy with the resolution that has been reached. I do not know what they all think but I have seen some reports to the extent that especially those who have a connection to Britain, which I think is very many of them, have very strong concerns about their exclusion from the treaty.

The UK has missed several opportunities to work more closely with the Chagossians in a way that could arrive at a resolution of some of the concerns and controversies that have been raised, which would involve the Chagossians remaining in close association with the United Kingdom. I do not think that the 2019 advisory opinion, as I say, requires a transfer of sovereignty to Mauritius or recognition that Mauritius is already sovereign. Other options would be open, even if one took the advisory opinion at face value, so to speak. We have entertained some of these in past Policy Exchange papers.

Professor Philippe Sands: Thank you for that question. I am very glad you have asked about the Chagossians. In relation to the risks of the treaty not going forward, there is the legal risk to which I referred. The bigger risk, honestly, is the political risk. Britain has positions on China and the South China Sea. It is a case I know well. I was lead counsel for the Philippines against China on the South China Sea. In relation to Russia and Ukraine, I am working very closely with Ukraine and the British Government on their position. To go back to the situation that pre-existed is to undermine Britain's political position in relation to the South China Sea and Russia. That is the reality, and it undermines the relationship with the whole of Africa. I really do not know quite why you would do that or what is motivating those who wish to return to that kind of situation, when you had cross-party support for two years or more to resolve this matter by reference to a treaty of the kind that was adopted.

In relation to the matter reported today, like Professor Ekins I have not seen the details. My understanding, but please forgive me if I am wrong, is that this relates to a concern that the agreement will not allow the Chagossians to return as residents to Diego Garcia. Article 6 of the agreement says that Mauritius is free to implement a programme of resettlement on the islands of the Chagos Archipelago other than Diego Garcia, and that is inherent in the deal. That is the quid pro quo for moving forward in this way. The deal is that the base will continue. That means that Chagossians could work at the base, but they will not be able to return to Diego Garcia as residents. I completely understand and respect the bitterness, hurt and upset of those Chagossians who were forcibly deported from Diego Garcia, wish to return and will not be able to return.

The Chagossian community is a marvellous community. It has many views. Some in Crawley would like Chagos to remain part of the United Kingdom. Most in Mauritius and the Seychelles have made very clear, through the Chagos Refugees Group and the incredible work of Monsieur Bancoult, that they wish this deal to go ahead, provided that it is made clear that they will be able to resettle in the outer islands other than Diego Garcia. That is the nature of the deal that was done.

To be clear, it is not the case that Chagossians had no role in the negotiations. I can tell you that the Chagossians in Mauritius and Seychelles were deeply involved in consulting with successive Prime Ministers of Mauritius. They attended the hearings at the International

Court of Justice. There was one tragedy for me. I remember that, during the hearings in The Hague in September 2018, there were many Chagossians on the Mauritian delegation. As we entered the courtroom, the Peace Palace in The Hague, I was met by a number of Chagossians living in Crawley, now British nationals, who said, "The British Government have not allowed us in. They have not put us on their delegation". It is the case that the United Kingdom did not find space for the Chagossians on their delegations, but Mauritius did.

Mauritius consulted very extensively. I personally consulted with the Chagossians throughout the entire 15-year process. I really want to knock on the head this idea that all the Chagossians were not involved in the various processes. That is simply not true. It is true, however, that the Chagossian community is divided, and I respect that division. There can be no difficulty. It is not lawfare for the Chagossians to go off to a UN body and raise their concerns. They are perfectly entitled to do that. That body will come to understand that this treaty is a political settlement as well as a legal settlement. There are advantages and disadvantages to all concerned in relation to that settlement, like any treaty.

Q6 Lord Howell of Guildford: I declare an interest as, for three years, the Minister for the Commonwealth, defending the then Foreign Office and government position on the Chagos Islands and the importance of, as it were, the realpolitik and security side of the whole position in Diego Garcia. Also, over the years, I have taken an intimate interest in trying to strengthen the Commonwealth Network as a sort of forum in which some of these very bitter disputes, where real injustice has taken place, can be resolved, or at least examined. I am glad to hear the word "Commonwealth" mentioned, as it has been already, but we have not heard very much about that. Perhaps in the future there is a role to think about of a more intense kind than we have so far.

I would like to ask Professor Ekins what his real assessment is of this obvious clash between the realpolitik of the past and the very reassuring comments of Professor Sands that the Chinese can be held at bay. That is not the opinion of a lot of people, particularly in the United States. We do not know, and we are going to discuss later, the degree to which the present Oval Office is occupied by someone who does not care and is ready to go along with it. They have ideas about different key pivot points in the entire global security system now that warfare has changed totally, and technology as well.

All this will come in our discussions in a moment, but the international rule of law is not looking too good worldwide, is it? It is being broken and challenged openly by China, but by many other countries as well. All sorts of positions that are illegal, and may continue to be ruled illegal by the present structures that create international law, will persist, but will no doubt remain unresolved. It is impossible to predict precisely, but can we have an assessment of whether the powers of international law are sufficiently strong today—they do not look very strong—to hold this position and justify what the Government are proposing to do?

Professor Richard Ekins: To clarify, do you mean in terms of enforcing the terms of the treaty that we are about to agree?

Lord Howell of Guildford: Yes.

Professor Richard Ekins: I am sure you will hear from others later this morning who are true specialists in the geopolitics of the region and so on, so I will not say much more about that. I will link it to the legal question that you have posed. The essence of the agreement, which we have talked about already, is that it recognises Mauritius as sovereign, provides the UK with exclusive use of Diego Garcia, and then provides various other assurances and conditions.

The agreement makes provision for how this agreement is to be enforced. The provision, straightforwardly, is negotiation. In the event of disagreements about whether Mauritius, say, is performing its side of the agreement, there will be a process by way of the joint commission for negotiation that can then be elevated to a higher level if need be. There is no further legal machinery beyond that to conclude that Mauritius is in violation of its obligations under the agreement, if that is the concern in relation to security in particular. There is a possibility of arbitration, but it is narrow, which is that the UK can choose to initiate arbitration in the event that Mauritius terminates the agreement.

The UK is undertaking, as part of this agreement, to make somewhat substantial annual payments. I do not think that it is open to the UK—it is my reading and I could be wrong about this—to withhold those payments because it thinks that Mauritius is not honouring the agreement or is misinterpreting it and so on. That would be, in one sense, an obvious lever for enforcement, but is not really a viable prospect. If we withhold an annual payment, we trigger a Mauritian right to terminate the agreement. That is what I should say about that question.

Lord Howell of Guildford: I rather wish we had Henry Kissinger here, because this obviously is the clash. There are the experts in the Foreign Office Professor Sands talks about. All I can say is that their views that we were on the wrong side and it was untenable, which sound very robust indeed, never reached my brief.

There was a view, and it is around still, as we know, about the question of the desirability of the international rule of law. Of course, it is unquestioned. It is wonderful and we should do our best to maintain it in a very dangerous world, but the pressures of constant change and constant evolution of the entire structure of international forces and the attitudes that certainly I have encountered in brief exchanges with Chinese officials, where we are allowed and permitted, are quite different from what we have heard this morning.

It is of supreme interest to China to see that the small islands are well stocked with promises, bags of gold, all kinds of infrastructure and military aid. There are spaces in the officers' training place out in Nanjing for people from these islands. No doubt this would include what we are

looking at now. There are two worlds here and we are making a judgment between them that is very difficult.

Professor Richard Ekins: May I just add that I certainly do not think that the UK is in the wrong as a matter of law now? That is not my position and I hope I made it clear earlier. Legal order in the international realm is obviously very important and valuable. It is put in doubt partly by, as I see it, the abuse of the advisory jurisdiction on the part of the ICJ and then, relatedly, a misreading of the significance of that and an attempt to leverage that into a circumvention of the UK's dispute with Mauritius. That is one reason why I think, partly as a commitment to legal order, the UK should not lightly tolerate that.

Professor Philippe Sands: There is, of course, another way of looking at this. Britain's standing, I would say, has been very significantly enhanced by the way it has addressed this issue. It has been enhanced in Africa. It is been enhanced, I can tell you from my own experience, around the South China Sea by those countries that oppose China's expansive policy.

I know that it is not very fashionable to congratulate Prime Minister Liz Truss for anything much these days, but she effected a very significant change. She did so in circumstances in which Britain's place in the world was under challenge. This whole episode has enhanced the standing of the United Kingdom as a country that is committed to the ideal of the rule of law. Of course, it is not perfect in all respects and you are absolutely right to recognise that the rule of law right now is under serious challenge in many places in the world. By moving forward in this way, the United Kingdom has undoubtedly enhanced its role.

My world is not, like Professor Ekins's, that of constitutional law and public law domestically. I deal with the world. I am working with over 40 countries around the world right now. I can tell you, from personal experience and direct comments from countries, ambassadors, Prime Ministers and Presidents around the world, that this is seen as Britain back in the world, acting honourably and decently, protecting its interests and safeguarding something that many countries around the world care deeply about at a difficult time, which is the idea and the ideal of the rule of law. I take a very different view from the naysayers. This is exactly the opposite. This will enhance Britain's position in the world.

Q7 **Lord Houghton of Richmond:** Can I move back to a more legally defined question, if you like? It is to do with what the United States freedom of operational action will be when the treaty is ratified. Can you confirm that the treaty allows the United States to enjoy the legal freedom to prosecute targets, both pre-cleared and time-sensitive, from Diego Garcia without formal clearance from the Government of Mauritius? Could there subsequently be some higher level of international law that would trump—misuse of the word—or would negate what is in the treaty at the moment, so that the United States will be denied the freedom of action it thinks the treaty will give it?

Professor Philippe Sands: This will have been, no doubt, a very central issue in the negotiation of the treaty. To my reading of the treaty, and from the fact that both President Biden and President Trump, and their Administrations, have accepted the treaty, there is plainly no problem from their perspective. Article 4 on international law provides security for Mauritius. It commits each party to ensure that, in the implementation and application of this agreement, there shall be compliance with international law. Assuming that there is compliance with international law, there will be no difficulties at all. The treaty provides elsewhere that, for obvious reasons, the base shall not be used to attack Mauritius, along with related matters.

If you go through the annex on defence and security, you will see that, in essence, the base will continue to operate exactly as it has operated up until now, and in accordance with international law. That is, I think, what has provided the United States with so much security in going forward. Let us remember, there are not British planes and submarines there. They are US planes and submarines. The agreement between the United Kingdom and the United States, which will be consequential upon this agreement, will be significant.

As you will know, my Lord, the position currently is that, if the United States wants to use military force on a third state from the base, it needs the support and authorisation of the United Kingdom. That became clear in relation to the use of the base during the war in Iraq in 2003, and that will continue. In essence, things will continue just as they have always operated. That is the bottom line. That is what the United Kingdom wanted and is what the treaty provides for.

Q8 Lord Goldsmith: I declare that I am here because I am the chairman of the International Agreements Committee, which is the committee responsible for scrutinising all treaties that fall within the Constitutional Reform and Governance Act, so we have charge of this treaty as well. I am very grateful to Lord De Mauley and his committee for allowing me and other members of my committee to attend here to ask questions.

I want to ask a little bit about enforceability. Professor Ekins, you identified that the potential for legal action to enforce the terms of the treaty are very limited. I think you said that there is a narrow possibility of arbitration, but really nothing more than that, other than negotiation and escalating negotiation to another level. Professor Sands, what rights do you think the United Kingdom would have to enforce the terms of the treaty, in particular the operation of the base? That is, as Lord Houghton has rightly pointed out, a very critical issue.

Please could you answer that by reference to the legal possibilities and rights, and not in terms of what you may think the probabilities are today, tomorrow or next year? We all know that Governments and Administrations change, so I am not sure how much reliance we can place on that. Can you look at it, please, in terms of the legal rights to enforce these terms? I am going to ask Professor Ekins too, please.

Professor Philippe Sands: Thank you for that very specific question. I want to be very careful here, because, having been involved in aspects of this matter, I have information that is privy to me in a professional capacity that I cannot go into, so I am going to go into only what is publicly available.

What is publicly available is the text of the treaty itself. The text of the treaty itself deals with settlement of disputes and, in particular, the submission of disputes to a joint commission, ultimately going up to an appropriately high level, says article 14, paragraph 2. The treaty does not provide for recourse to international arbitration or the International Court of Justice. One has to assume that that was because, ultimately, any such provisions would have been available to both states, and that was deemed not to be acceptable. Ultimately, you have a series of procedures set out in article 14, and subsequently, of the treaty that fall short of binding dispute settlement.

In the context of the application of those provisions under article 14, you have the political reality of the presence of the United States and the United Kingdom at the base, and, shall we say, a degree of unequal power between those two states on the one hand and Mauritius on the other, which is going to have a necessary impact. The provisions are as they are set forth in the treaty. The ability to go outside of the treaty to have recourse to binding dispute settlement cannot be excluded, but this would have to be addressed by other means, and I have not turned my mind to that. My understanding is that there was a desire to exclude that and to channel all dispute settlement within the means provided by the treaty. Those are set forth in article 14.

Lord Goldsmith: To summarise that, you teased us a little bit to begin with by talking about things you knew but you cannot tell us about. Is the bottom line, from what you have just said, that there is no provision for a binding dispute settlement if the United Kingdom were to find that aspects of this treaty were, in its view, not being complied with? Is that the position?

Professor Philippe Sands: I think you understand that it was not a tease. I am just trying to be very careful here in terms of my professional obligations. The text is as it is in article 14.

Lord Goldsmith: Could you answer my question, please, Professor Sands? Have I correctly summarised your opinion?

Professor Philippe Sands: My opinion is that the treaty does not provide for binding dispute settlement except, in exceptional circumstances, as provided for by the treaty.

Lord Goldsmith: If, for example, Mauritius were to allow the waters around the base to be used by a hostile state, is there anything the United Kingdom could do about that in a legal way?

Professor Philippe Sands: Yes, it would have access to the provisions under article 14 in relation to the settlement of disputes. That would take the matter to a joint commission and then to an appropriately high level, as the treaty says. At that appropriately high level, one has to assume that the matter would be sorted out.

Lord Goldsmith: There would be no way of getting it dealt with by a binding dispute settlement process, a court or arbitration.

Professor Philippe Sands: No. It seems that both states, as you correctly imply, did not wish to include in the treaty recourse to binding settlement of disputes in relation to that kind of dispute or other kinds of disputes, but it limited it, as Professor Ekins said, in relation to a very small category of disputes.

Q9 **Lord Grocott:** I have one observation and one question, given that we can get some legal advice here. It seems to me, as a layman, that article 1 on sovereignty in the treaty could not be clearer. Mauritius is sovereign over the Chagos Archipelago in its entirety, including Diego Garcia. Then article 6 basically says that it does not have sovereignty over Diego Garcia in crucial respects such as resettlement of Chagossians, should they wish to go there. I cannot quite think easily, although I am sure you could give me examples, of a sovereign state that, in the exercise of its sovereignty, is told that parts of its territory are not subject to its authority. That is just an interested bystander's comment.

The more political question is about the Chagossians, which so badly gets neglected and has done historically. We have discussed it here. It is simply to ask this. In the remaining pieces of the British Empire, after 90% of it came to an end and independence was secured for all the members, it seems to me that the one characteristic that governs the UK views of what should happen to the various islands and small territories that remain, if anything, is the principle of self-determination, notably, obviously, in the Falklands and Gibraltar.

I want to ask about whether that principle of self-determination applies here. I would not be very happy with a reply that said that it is a question for the whole of Mauritius, including Diego Garcia and the Chagos Islands. Is it an applicable principle?

Sorry, this is one further addendum. As in any group of people, as Professor Sands has already said, you are not going to get absolute unanimity among the Chagossians as to whether it should be Mauritian, British or whatever. You will not in any group of people anywhere, but sooner or later someone has to make a decision as to what the view is. That is decided by arithmetic. Which is the dominant view as to the future of the country? I would love you to reflect and answer some questions in that territory.

Professor Philippe Sands: The position under international law, and it is subject to critique, is that the right of self-determination accords to the entire population of the colony at the time it is going to obtain

independence. That was what the International Court of Justice determined and it is what most writers recognise. It was for the people of the whole of Mauritius to make a determination, not the people of a part of Mauritius, including, in this case, the Chagos Archipelago.

That principle, the right of self-determination, which accords in relation to the Falklands, Gibraltar and other places, is a general rule of international law. It is also the same right of self-determination that means that the people of Quebec cannot secede from Canada without the approval of all the people of Canada. It is the same rule that means that the people of Scotland cannot secede from the United Kingdom without the approval of all the people of the United Kingdom, presumably through the Westminster Parliament. That is how the right of self-determination works, warts and all.

To be crystal clear, the Chagos situation is completely different from any other British overseas territory. This is the only one in which, at the time of independence, a part of the former colony was dismembered. That was what gave rise to the issue and its characterisation as completion of the decolonisation of the former colony of Mauritius, rather than a dispute over sovereignty. I understand that it is complex and it may be unacceptable to some people to have that right of self-determination, but that is consistently what national and international courts have ruled is how the right of self-determination works in practice.

Professor Richard Ekins: If Mauritius becomes sovereign over the Chagos Islands, it can certainly choose, as it will by agreeing these terms, to allocate very extensive, exclusive control to the United Kingdom over Diego Garcia. The position in relation to Diego Garcia itself is quite different from the 12 to 24-nautical-mile space and the outer islands. In the outer islands, it will be Mauritius that calls the shots, subject to negotiation.

I do not think that the principle of Chagossian self-determination has informed this treaty. It seems to me demonstrable from its terms. Mauritius has a liberty in consequence of the treaty to resettle Chagossians, but no duty. Only a very small fraction of the monies involved seems to have a connection to the Chagossians, namely a trust fund for their benefit to be distributed by Mauritius. The Mauritian record on that is not good, it seems to me, if you look back across the last 50 or so years. I do not think that it has informed it. That is a missed opportunity on the part of the Government, namely, as I said before, to strengthen the UK's position by taking the Chagossians seriously, rather than, more or less, excluding them and viewing this as a way of sorting out a dispute with Mauritius.

Q10 **Baroness Fraser of Craigmaddie:** For clarity, Professor Sands, as a Scot, I can correct you that, if the Scottish people had voted for independence in the 2014 referendum, Scotland would be independent without the rest of the UK having to say anything else. Can I pick you up on something you said at the beginning, for clarity? You said that you were engaged as a legal counsel from April 2010 to December 2025

[clarification from **Professor Philippe Sands:** 2024]. Can you confirm that you hold Mauritian citizenship?

Professor Philippe Sands: Can I come back to your first point on Scotland?

Baroness Fraser of Craigmaddie: We are short of time and it is not particularly relevant.

Professor Philippe Sands: The Westminster Parliament has to decide that the Scottish people can decide on a referendum. That is clearly the position.

Baroness Fraser of Craigmaddie: I would have to beg to differ, because in 2014 it ceded that to Holyrood.

Professor Philippe Sands: Yes, indeed, I was given Mauritian nationality in October 2020, when the hearings were held at ITLOS during Covid. The Covid restrictions meant that I would have to do 14 days in quarantine to attend for a three-day hearing. There was no way around that rule in Germany unless I went in on a Mauritian diplomatic passport. I said that I was perfectly happy to do the case by Zoom. I was told that, no, the Government wanted me there. In those circumstances, they accorded me Mauritian nationality for the purpose of attending the hearing. Yes is the answer to your question.

Baroness Fraser of Craigmaddie: I just wanted to be clear for the record and for information. Presumably, you were remunerated by the Mauritian Government for your legal counsel work. Is the amount publicly disclosed anywhere?

Professor Philippe Sands: I do not know. I was remunerated, as I am for almost all my cases. It was not done pro bono. I do not know whether in Mauritius it is subject to public government disclosure. I assume I was paid for by the Treasury in Mauritius.

Q11 **Lord Goldsmith:** I have one very short question. Annex 1, paragraph 2 provides that the United Kingdom “agrees to expeditiously inform Mauritius of any armed attack on a third state directly emanating from the base on Diego Garcia”. Can you confirm that that does not mean there has to be advance notice to Mauritius of any armed attack coming from Diego Garcia and it means only after the event?

Professor Philippe Sands: I can confirm that the words “agrees to expeditiously inform Mauritius”, et cetera, allow for a reading which is that such information is to be provided after the event, not necessarily before the event.

Lord Goldsmith: Do you agree with that reading? That is a rather cautious way of answering my question.

Professor Philippe Sands: Lord Goldsmith, you have plenty of experience in negotiating agreements. It says what it says. It is a form of words that leaves open presumably different interpretations. The

interpretation that you have put to it is plainly one that can be sustained by the text of the treaty.

Professor Richard Ekins: I read the agreement as requiring notice only after the fact. I might be wrong about that, but that is how I read it.

The Chair: Thank you very much, gentlemen. That was extremely helpful.

Examination of witnesses

Darshana Baruah, Cleo Paskal and Dr Bryan Wilson.

Q12 **The Chair:** Good morning, all three of you. Thank you so much for coming to see us today. The session that we are engaged in will be streamed live on the Parliament website and a transcript will be taken. Once available, you will be sent a copy for minor corrections, if you wish.

As you well know, we have limited time. We are not going to ask for opening statements. If we may, we will leap straight into the first couple of questions because Ms Baruah has to leave us. To the other two, if you want to introduce yourselves briefly, we can do that when she has gone, in view of time.

The first question is this. How critical is and will be for the foreseeable future the UK-US base on Diego Garcia to broader western security strategy in the Indo-Pacific, particularly in light of rising tensions with China and increasing competition in the Indian Ocean?

Baroness Crawley: My question is about the influence of China on Mauritius. Mauritius has very strong economic relations with China. There is a national Chinese New Year in Mauritius. A significant part of the population are Mauritian-Chinese. What are the pros and cons of that influence?

Darshana Baruah: Thank you for the opportunity and the invitation to speak to you about this issue. Those are two really straightforward and important questions.

To the first question, how critical is the UK-US base on Diego Garcia to broader western security strategy? Just generally for Indian Ocean security and the strategic landscape, Diego Garcia is an important military presence in both the Indian Ocean and the wider Indo-Pacific. It will continue to be an important component of military strategy for the region.

I just wanted to take a minute to place this a little bit in context. As members will know, the negotiations and the agreement for the base between the United States and the United Kingdom emerged with Her Majesty's Government's decision to withdraw from the east of Suez in 1971. That happened in the context of emerging competition between the United States and the USSR. The base was and is an extremely important

development for the US and UK's management of competition generally in the Indian Ocean region, although the players have changed now.

However, after the disintegration of the Soviet Union, the primary use of the base shifted from Indian Ocean geopolitics and became focused more on engagements in support of America's military priorities in the region in a series of conflicts from the Gulf to Afghanistan. Although the base emerged for Indian Ocean competition, its strategic value, particularly for extended air cover into the Gulf, the Middle East, south Asia and the western Pacific, has been demonstrated pretty strongly in the last couple of decades. The US today is less engaged in the Indian Ocean region, but it remains of particular importance to the United Kingdom.

To go straight to the question, in light of the rising tensions with China, it is my assessment that a stronger China in the Indian Ocean region will lead to an even stronger China in the Pacific. Therefore, should the United States and the UK decide to strengthen their own Indian Ocean region strategy in support of a stronger Indo-Pacific strategy or presence, Diego Garcia will be a critical logistical piece of the puzzle.

Coming to the question on where China fits in, in terms of the geopolitics around it, or China's relationship with Mauritius and its economic and political alignment, the most important implication of China's increasing economic and political engagement in the Indian Ocean region is a continued, engaged and sustained Chinese presence. That will be the most important development, if China is able to sustain itself for longer periods, which it already does now, remarkably so since the 1970s, when the base came up.

I also want to note that China's presence in the Indian Ocean region is not a new development. In fact, China is the only country that has a diplomatic mission in every sovereign island nation in the Indian Ocean region. No other Indian Ocean security provider, whether it is the United Kingdom, the United States, India, France, Australia or Japan has that level of diplomatic presence in the Indian Ocean region. China is not a new player diplomatically, politically or economically.

What is new is the military ambition and ability to sustain itself. What China lacks is military capacity and capability in the Indian Ocean region. The western defence presence remains unmatched, including by others in the region.

The other point is that every nation in the Indian Ocean region has strong economic ties to China. Of the 33 nations that border the Indian Ocean region, China is the only one with a diplomatic mission in each one of them. Of the 33 that border the Indian Ocean region, China is a key trading partner for almost all of them, either in the top five in imports or exports, or generally as an economic partner.

The concern that a stronger Chinese engagement with Mauritius could lead to a challenge in access for Diego Garcia is secondary. China is already in the Indian Ocean region. It already has Djibouti. I would argue

that if China wanted another facility in the Indian Ocean region—it is my assessment that it does and we can expect to see another Chinese facility come up in the Indian Ocean region—it would perhaps go to other strategically located places and islands. It would be much more expensive and complicated to envision a scenario where China could take over Diego Garcia in the current context. It would be much more plausible for China to acquire another facility, perhaps closer to Diego Garcia, in the south-west or central Indian Ocean.

Therefore, western defence engagement in the Indian Ocean region will depend more on the UK's own threat assessment and priorities in the Indian Ocean region and less on Mauritius's economic engagement. A defence strategy in the Indian Ocean region will have to take into consideration a continued economic engagement with China and other competitors. This will arise regardless of the country in play. However, Diego Garcia is and can become a critical pillar in the Indian Ocean region.

Cleo Paskal: Thank you for holding the hearing. I will just introduce myself. I am a non-resident senior fellow with the Foundation for Defense of Democracies, which is based in Washington DC. I am also a columnist with the *Sunday Guardian* newspaper in India. I am from Quebec, so I will see your Scottish self-determination and raise you one.

I am currently in Yap in the Federated States of Micronesia, which is a location that saw this exact same problem. The US had the same problem with the Trust Territory of the Pacific Islands that you are seeing now. They dealt with it in a very different way, which we can get to a little later on if you want.

How important is Diego Garcia? I would double down again on Ms Baruah's framing. This is a free and open Indo-Pacific question. This goes well beyond just the Indian Ocean or western security. It is critical. Its islands have become again, like they were during World War II, absolutely essential for defensive power projection and all that sort of stuff. We saw it in the Falklands. The Falklands could not have been successful without Ascension. Where else could the UK operate from in the region? From a US perspective, especially after the loss of Bagram, it is incredibly important. The next session will go into more details. It is one of the only places where the subs can be reloaded. The heavy bombers can operate from it quite easily. There are pre-positioning ships there.

Just to understand the US perspective now, if such a thing is possible, while there has not been any objection from the Trump Administration, key people within the Trump Administration, before they entered the Trump Administration, went on the record as being very concerned about the agreement, including Mike Waltz, who said, "Should the UK cede control of the Chagos to Mauritius, I have no doubt that China will take advantage of the resulting vacuum". Senator Rubio said that the deal "poses a serious threat to our national security interests in the Indian

Ocean". Senator John Kennedy gave a long talk in the Senate where he said the deal would make Xi Jinping "as happy as a gopher in soft dirt".

While I am not quite sure how the decision is being seen within the Oval Office, there are a lot of people who will be around for a long time in the US policy community who are not fans of this deal. Unlike what we heard in the first panel, I think it definitely affects the way that the UK is being seen, and perhaps not in a positive way.

I will move on to the very important question about China's role in Mauritius. The way that China operates is through political warfare. That includes things that you see in Mauritius, such as a large number of very effective elite massage parlours, which all have video facilities in them. There is money laundering with tracking of who is laundering whose money. There is narcotics. The money laundering is a symptom of criminality. There is quite a lot of criminality that runs through Chinese organised crime.

This all goes to China being in a position to exert influence in ways that are difficult to necessarily see or counter. You are dealing with a decision-maker who gets a call saying, "Look at this nice video of you that we have. Do you want your family to see it or not?" That penetration is already there. This deal has just made Mauritius one of China's major targets for more political warfare operations. It will put everything that it has into trying to destabilise Mauritius, to get in leadership who are going to be against the deal and to undermine it from within.

It will not necessarily look like you would expect. It is not necessarily just going to be Government-to-Government conflict. It could be demonstrations popping up or things on social media. For all the reasons that I just described, the leadership within the US says that this is important. It is just as important for China to get rid of the base and for it to have freedom of operations across the Indian Ocean. The operations that are going on in Mauritius are heavily advanced, and they will now be increased.

The Chair: Over the medium and longer term, how might shifting regional alliances and economic pressures influence Mauritius's long-term commitment to the safeguards included in the treaty designed to ensure the operational security of the base on Diego Garcia?

Can I just add to that? Ms Baruah, you suggested that China was already well represented around the Indian Ocean and therefore might not feel the need to take over Diego Garcia. That was the implication of what you were saying. None the less, would it not very much like ultimately to expel the UK and the US from there, so that the UK and the US had minimal influence in the region?

Darshana Baruah: I will talk about shifting regional alliances but, just for the record, I want to note that the treaty is a very positive and important development in Indian Ocean regional geopolitics. I understand that my statements might stand out in today's hearing. From a regional

point of view, from many angles—I do not want to go into the legal and other aspects of it—it is a very strategically clever approach by the UK Government to secure it for the next 99 years and take away the legal basis to confront it.

When we talk about China being able to take over Diego Garcia, you are really talking about the long term. The treaty says 99 years, plus additional years. Once this goes through and is ratified, under the current circumstances, we are really talking about a moment where China is militarily capable of hostility and military strength, and is able, either directly or via Mauritius, to threaten the United States and the United Kingdom in the Indian Ocean region. If you are really looking at that kind of situation for western defence strategy, capacity and capability, it will be a whole different conversation for the Indo-Pacific. If China is able to threaten the United States and the United Kingdom in the Indian Ocean to such a level that it could forcibly take Diego Garcia—that is one scenario in which it could happen—we are really talking about a significantly declined capacity and capability of the European players and their partners.

I would love to go into how the role of India could have an impact, given India's engagement and political closeness with Mauritius, and its growing relationship with the United States in the Quad and other aspects. That could be a factor in this.

Coming to your question on whether China would try to expel the US and the UK, I do not believe that China's near to mid-term goal is the protection of sea lines of communication. It does not want to be the security guarantor of the Indian Ocean region. Its primary theatre is the western Pacific. The Indian Ocean is a secondary area, in which it needs to secure its energy lines, starting in the Middle East and going through the Straits of Malacca. It needs to be able to protect the SLOCs from any disruption from the United States and the United Kingdom.

You could imagine a Taiwan Strait contingency and the possibility of an Indian Ocean aspect to that. In the short to medium term, they are not going to be able to reach that capacity to expel the United States and the United Kingdom. Their focus will be on securing additional presence or on a way to increase their presence. Their focus is not going to be on expelling the US and the UK. Their focus is going to be on how to protect themselves from the US and the UK in the Indian Ocean region.

As a researcher who is working on this, for me the research question is, "How do the UK and the United States use Diego Garcia to strengthen their own defence arrangements, security priorities and investments in the Indian Ocean region?" There is a really weak Indian Ocean component in the Indo-Pacific strategy for most of the Governments involved, even the United States. When it says "Indo-Pacific", it is really talking about the Pacific.

This is where the United Kingdom has a significantly important role to play in this alliance and to take into the conversation and the debate on

what needs to happen and what defence arrangement needs to come up in the Indian Ocean region. That conversation perhaps needs to happen now. This is a good moment for this to be happening.

If China were to try to get access to a base, it would seek something else in the Indian Ocean region. There are plenty of options. Perhaps there would be other co-ordination, but I see less of a chance of it taking over Diego Garcia.

I also want to note that the conversation among partners and players in the Indian Ocean region or the Indo-Pacific who question the agency of island nations and say that the islands would, at the drop of a hat, for a little bit of money, give away sovereign territories to others, without considering the national security strategy, goes against the views of players in-country. Colonialism plays very deeply in a lot of the islands. In terms of negotiating for land to go from one power to another, I see that happening less today.

I agree that this opens up an avenue for more intense competition with China in the Indian Ocean in a way that the United Kingdom perhaps had not experienced before, but I would say this is the moment to revisit why Diego Garcia came up in the beginning. I have had the good fortune of going through the UK archives to understand why the United Kingdom looked at Diego Garcia. I am afraid that its strategy has shifted from why it first came up, with what has happened in the last couple of decades. This is the moment for UK to come back and debate what more Diego Garcia can do to secure against Indian Ocean security threats in the 21st century.

Cleo Paskal: I have two points. First, I would reiterate that the warfare that is going on now is political warfare. It is highly advanced. You are talking about a 100-year timeframe here. It is helpful to look at where some of these Chinese operations are more advanced to see what you might be seeing in the region.

Here in Yap, for example, Secretary Hegseth just announced a \$2 billion military investment to expand the runway and do all sorts of other things. Former President Panuelo of the Federated States of Micronesia put on the record a couple of years ago that there was Chinese backing for independence movements here in Yap and probably in Chuuk to destabilise those sorts of agreements. At the same time, just not that far away, the Chinese are rebuilding a civilian airport in a different part of the state of Yap, which is about 670 kilometres from Guam.

There is a very active island game going on. The Indian Ocean has not been immune. Take a look at what happened in Sri Lanka or the Maldives. India has been very active at trying to counter the political warfare and the attempts to emplace in ways that might look civilian but definitely have at minimum dual-use and, I would argue, triple-use capabilities. They have a so-called commercial frontage, which is the justification for going in. For example, they put in a commercial port, but the port just happens to have specs that are practical for PLA navy

vessels to come in. There is always this third component, this criminal component, which is heavily corrosive for the domestic population and destroys societies from within. It is a form of entropic warfare, which makes it easier for Chinese influence operations to be effective.

We tend to think of and talk about states as countries, not as individuals, but Chinese political warfare operations are targeted specifically at key individuals. They go all the way up and down the decision-making chain. It could be somebody in local customs, who is the one who can approve a container coming in without being inspected. You do not know what is on the container. It is heavily advanced. You can see it in the western Pacific. It is not to be dismissed. The political warfare is there in order to ease the positioning for eventual kinetic warfare, if necessary. It may not become necessary because the political warfare is so effective to begin with.

To answer the specific question, just as a fun thought experiment, the question as it is written is, "How might shifting regional alliances and economic pressures influence Mauritius' long-term commitment to safeguards?" Let us replace the word "Mauritius" with "the UK". If I were China, I would be funding demonstrations and operations within the UK to say, "This is a continuing colonial experiment. We have no money. Why are we giving money to Mauritius? Is there another solution?" The agreement stops if the UK stops paying.

From my perspective, that would be the leverage point. Get the UK to a position where it stops paying and feels morally correct about not paying, and the treaty falls apart. There might be a bunch of different ways of killing this treaty, but the UK may be one of the weak points in the chain, especially over the next 10, 20 or 30 years.

When the US set up its compacts of free association, it had the same problem with the old Japanese mandate territories. Yap was controlled by the Spanish, the Germans, the Japanese and then it became a UN trust territory. The US convened a congress of Micronesia. People from across the region came together to determine their own future. As part of it, the Commonwealth of the Northern Mariana Islands decided to join the US. The other three went independent. This is the separating off that I am being told is not possible, but it happened during the trust territory time. Palau became independent; FSM became independent; Marshall Islands became independent. They then signed compacts of free association with the US.

I do not quite understand why that was not done with the Chagossians. Give them a referendum. Let them choose. Do they want to go independent? Do they want to compact with the UK? Do they want to compact with the US? Do they want to join India? As was brought up, they are physically much closer to India than they are to Mauritius. The lack of imagination in solving this problem, especially given the precedents that you can see in the western Pacific and the central Pacific, which are similarly strategically crucial, is a little perplexing.

- Q13 **Baroness Blackstone:** My question is for Cleo Paskal. You have already said quite a lot about how China has reacted to the UK Government's recognition of Mauritian sovereignty and continued military presence in Diego Garcia. Could you just say a little more, quite briefly perhaps, on what this signals for India?

Cleo Paskal: India is very important. To be blunt, the Indian position is that there should be no British colonialism. That is all they really care about. That is the starting point. They are very aware, especially the strategic community, of the Chinese penetration of Mauritius. The strategic community is certainly not averse to having the base there. There would be a desire to expand it potentially to a Quad-plus-UK base.

The discussions are very stuck in correcting some pretty horrible things that happened before, such as the moving of the Chagossians, without thinking about how to reimagine a future where what we see happening over the next 10, 20, 30 or 50 years can be mitigated for the benefit not only of Indo-Pacific regional security and freedom, but of the Chagossians.

For example, the agreement specifies that Mauritians should be employed, if possible, on the base. It does not specify that Chagossians should be employed potentially on the base. The agreement is, in essence, one colonial power handing it over to the other. The Indians are very aware of that. If a referendum were possible, other options could be included. Including India in the decision-making might have a longer-term strategic benefit by pulling India into a stronger Quad association, which would bulk up the free and open Indo-Pacific profile of the base and give more options for Chagossians.

- Q14 **Lord Hannay of Chiswick:** I notice from your presentation that you have made a lot of very good points about the way that the Chinese operate and the risks from them. Would that method of operating not be even more likely to be effective, if this agreement were not entered into?

Cleo Paskal: Something needs to be done. Something definitely needs to be done, but there are other options that give more legitimacy. One of the things that the Chinese Communist Party hates is democracy. This agreement is a Government-to-Government agreement that did not involve the self-determination of the people involved or the sovereignty of the individual. There has been a lot of talk about land but not a lot of talk about people. If the people are involved in the decision-making, that makes it very difficult for the Chinese. It hurts their narrative warfare on this discussion.

Apart from being morally and, I would argue, legally the correct thing to do, as we saw with the winding down of the trust territory in the Pacific, it has resulted in a sustained and healthier relationship with the people of the Pacific Islands, who fundamentally do not want to be part of a Chinese vassal state. The Chagossians would not want to give over a newly won self-determination to the Chinese Communist Party. They would want to be part of a free and open Indo-Pacific.

I do not see the choice as this deal or the way it was before. There is an opportunity to create an agreement of the sort that we have seen successfully implemented for several decades in the Pacific, which satisfies several criteria, including the argument that democracy, transparency, accountability and the rule of law is a better system than what the Chinese Communist Party has on offer.

- Q15 **Lord Goldsmith:** I want to turn to you, Dr Wilson. You have been sitting there very patiently. I want to ask you what your expectation is about how sovereignty coming to Mauritius will impact the protection of the island's environment. Can I focus on two aspects of that? First, I want to understand what monitoring, enforcement and resource capacity Mauritius has effectively to manage wildlife and marine protection across the archipelago. Secondly, what is its record on environmental protection? Could you focus on those two particular specific points?

Dr Bryan Wilson: I am a research fellow in biology at the University of Oxford and a scientific adviser to the Chagos Conservation Trust. I realise that time is very much against us. If I may be permitted, I would like to express my sincere appreciation to the committee for even including a brief discussion on the environment of the Chagos Archipelago, especially given how little of the treaty refers to it.

It seems that all environmental negotiations have been left until post signature. A recent House of Lords discussion made no mention whatsoever of the global importance of this near-pristine and extraordinary region, possibly the most important reef wilderness on the planet. This is also the first large-scale marine protected area (or MPA) in the world to change sovereignty. It is absolutely essential that we get this right.

If you have not yet seen it, I implore the committee to watch Sir David Attenborough's "Ocean" film, which was released a month ago to coincide with his 99th birthday. It is an emotionally raw tour de force that documents vividly the potential threats to the Chagos Archipelago, should environmental protections not be enshrined in this treaty.

I study the world's rarest coral, which is perilously close to extinction and only found in these islands. The archipelago is quite simply the most special place I have ever travelled to. It is a refuge for nature from the chaos and exploitation of humankind and a part of the world that needs protecting for all generations to follow, not least the Chagossian peoples who used to call it home.

In respect to your questions, I will be much more concise with my answers. If Mauritius commits to an ambitious marine protected area and can manage the environment, with the UK and international support, it might well improve on the existing MPA set-up. We know that Mauritius does not recognise the MPA in its current form and is planning on creating a new MPA. If, however, Mauritius does not, we might expect significant environmental impacts, with increased illegal, unreported and

unregulated fishing activity and worse, if extractive activities such as deep-sea mining and commercial fishing are permitted.

However, in early 2024 Mauritius did outline plans for this new MPA under the International Union for Conservation of Nature criteria, which is potentially a huge positive step forward for the islands. The plans do still need some tweaking. As this was done under the previous Government, we have no idea whether the current Government will accept these plans.

A very salient point that needs making is regarding the UK Government's single patrol vessel out there, which is overwhelmingly stretched to protect such a vast area.

Lord Goldsmith: Could you focus for a moment, please, on what resources are available and what the track record of Mauritius is, so we can understand what effect the movement of sovereignty will have on this area?

Dr Bryan Wilson: Their capacity is very limited. The Chagos Archipelago is a huge area. Very few nations have had to look after and enforce protections in an area like this. Mauritius has an enormous task ahead of it. The capacity is limited. As far as I am aware, it has two oceangoing vessels and two small aircraft. Those aircraft have a range that does not allow them to reach the Chagos Archipelago from Mauritius. As we well know, there are no opportunities within the Chagos Archipelago to restock or refuel those planes.

Its environmental record on land is very good. It has led a number of wonderful island recovery programmes, as well as programmes on threatened bird species, such as the Mauritian pink pigeon and the Mauritius kestrel, which are very rare species. However, its record on the marine environment is very poor. I do not know whether the committee remembers the Wakashio oil spill of 2020. It was an environmental tragedy. Mauritian peoples protested on the streets because the Government at the time were not perceived to have done enough to protect the environment. It was, in fact, local fishers, NGOs and divers who launched the first campaigns to clean up this environment.

As far as monitoring the islands is concerned, Diego Garcia is a very extreme case. It is a marine protected area within a marine protected area. I have been working in the Chagos Archipelago for the last six years and I have travelled out there every single year to study the environment. We are often based in Diego Garcia. The environment around it is very much more protected than the more remote northern atolls.

Of course, a low-impact and very careful presence in the remote atolls—the obvious option would be the resettlement of Chagossians—would certainly help enforcement of illegal fishing.

Q16 **Lord Soames of Fletching:** Can I direct this question first of all to Cleo Paskal and then to Dr Wilson? How and in what forum can the UK and

Mauritius best collaborate to respond to transboundary environmental threats of the type that we all know and recognise as being such a threat, such as illegal fishing and oil spills in the Indian Ocean?

Cleo Paskal: We could start by rebuilding the British Navy. That would probably be helpful. It is a straight-up capacity issue. What you do not need is more workshops. You can have as much maritime domain awareness as you want, but, if you do not have maritime domain enforcement, it does not really mean anything. Again, this is something that we have seen in the Pacific Islands.

If Chinese influence increases in Mauritius, you are also probably going to see low-level blockages of the ability to collaborate. We saw this with a US Coast Guard vessel that tried to come into the Solomon Islands. It was on an illegal fishing patrol. It was supposed to come in to refuel. It could not get permission to land. It just got timed out and eventually had to move on to Fiji. The same thing happened in Vanuatu.

It is not a denial. It is nothing that reaches the threshold where you can go, "They are doing it because of Chinese influence", but it just does not happen. Again, you are not operating in an environment where all parties necessarily want these things to happen. You will have somebody behind them, perhaps at a very low level in the bureaucracy, who has been identified by China in this case, or even Russia or Iran—none of those guys wants this base to be in operation—and who will not pick up the phone when you need them to pick it up, so then something does not happen.

Unless you have an effective counter-political warfare operation at the same time as you have the capacity to deliver an alternative, it becomes very difficult.

Dr Bryan Wilson: First, I would suggest that a significant portion of the funds that the UK has promised to Mauritius should in fact contribute to environmental protections and ways of responding to these things that we talk about. From discussions among my colleagues, one-third of that money would be an appropriate sum.

Knowledge exchange from scientists and technical experts, and data-sharing from the UK on illegal fishing, would be a wonderful first step, building on our existing collaborations with Mauritius—we have a very long-term relationship, going back over 30 or 40 years—such as those historically championed by the Zoological Society of London.

Legislation should be agreed to prevent commercial exploitation either by fishing or mining everywhere, of course with exceptions for subsistence fishing by Chagossian resettlement on those remote northern islands.

We should rewild the islands and eradicate rats. That is a flagship campaign of the Healthy Islands, Healthy Reefs project launched by the Chagos Conservation Trust.

Finally, the UK should ratify the High Seas Treaty, which Mauritius has already signed and ratified, but embarrassingly the UK has only signed. Of course, I have heard today that it is going to be ratified by the United Kingdom at the United Nations Ocean Conference ongoing in Nice at the moment, which is wonderful last-minute news.

This place is utterly unique. As the late great Professor Charles Sheppard once said, "every ocean needs a Chagos Archipelago".

- Q17 **Lord Bruce of Bennachie:** I just wondered whether I could pursue what you were saying about Chinese influence in Mauritius. Mauritius, the Maldives and the Seychelles are all part of the Commonwealth. Why are we not engaged? I do not mean aid, but trade and investment. We have the capacity to do all these things. You are giving us the scare stories of the undercover way in which the Chinese are manipulating. Is there not some responsibility on us to use our constructive engagement to do that? Would that not be helpful?

To Dr Wilson, is it too late to try to make Mauritius, the UK, and possibly the US, defenders of the Chagos islands environment and build that into part of the benefits of this agreement? It seems to me that that would help to demonstrate that this agreement is a more positive thing that stands up rather more positively to counter the Chinese behaviour.

Baroness Blackstone: Can I just add my question, because it is relevant? The question that has been put to you both is about the UK, but can we expect any meaningful collaboration with the US on environmental issues in this region, particularly given what the President of the United States said yesterday about deep-sea fishing?

Cleo Paskal: There is lots that could be done. The advantage that the free world has is that it has truth on its side. The local populations do not like their corrupt officials. They want, for the most part, democracy, transparency, accountability and the rule of law. In many cases, they are fighting hard to try to get the truth out about what the problems are domestically. This is where investigative reporting, money laundering investigations and all that sort of stuff can happen. In a lot of cases, people will take the Chinese money, the Russian money, the Iranian money or whoever's money it is, but they do not want to spend it domestically. They want to spend it in London, New York or Miami. There is a lot that can be done by the free world to help clean up these systems.

Somebody was telling me that they were talking to a Chinese operator in Africa, who said, "We are going to win because we have an unlimited bribery budget". The answer to that is, "We do not have an unlimited bribery budget, but we have 100 very good prosecutors and investigators who will make it very difficult for people to continue to take your money and provide for their families in other ways". We have truth on our side, and we have all the tools available, if we want to start to use them, to go after what is known as strategic corruption. It is a whole field, the strategic corruption field.

Yes, you are right: I gave you the scare stories. There are options for dealing with this. It can be incredibly effective. It can turn the tide very quickly. You just have to change the cost-benefit analysis of the individual in taking the Chinese money. It is more difficult when videotapes and that sort of stuff are involved. If they are doing that sort of thing, there is probably a money trail to other things as well, which can be looked at.

Dr Bryan Wilson: In answer to your question, Lord Bruce, I certainly hope not. As David Attenborough said in "Ocean", places such as this, which are out of reach of human exploitation, are so bewilderingly few. There have been impacts. We have seen substantial illegal fishing in the Chagos Archipelago. In fact, COVID was particularly hard. Enforcement was compromised within the archipelago and we saw a 20-fold increase in poaching incidents. Shark populations, which were already beleaguered, crashed dramatically. There is a real worry among my colleagues that, if at any time during the handover there is not enforcement, that will play catastrophically into the hands of illegal fishers.

The Chagos environment does stand out globally. We see bleaching on coral reefs all over the world. The Chagos Archipelago has bleached, but it has been seen to recover up to three times more quickly than almost any other reef on the planet. Those impacts are felt so keenly by other reefs around the world because they have human population centres close to them, but the reefs in the Chagos Archipelago can recover so much more quickly.

We believe—this is a key message in Attenborough's "Ocean" film—that, if we let these areas recover, they will rebound startlingly. Again, I reiterate that, no, it is not too late. Given the chance, I really hope this treaty recognises that the archipelago is a unique place in the world.

Baroness Blackstone, the current US Administration aside, on which I could not possibly comment professionally—personally, I would certainly have my own comments—at least 50% of the population of the US are probably very supportive of the US environment. Our colleagues from the US in Diego Garcia are incredibly passionate about the environment there. They even realise, potentially without an education in biology or the like, how special it is to be out there. One thing that they are constantly warned about is the fact that they cannot dive, but we can. One of the reasons that has been given is that, beautifully for a marine biologist, there are so many sharks out there. That is an extraordinary thing to have. There are so few places in the world like that.

Every time we are present on the US military base, I give a talk about my work. The military personnel there are incredibly passionate about what we do. Of course, they professionally cannot state that claim, but we have extraordinary support from the US military there. Diego Garcia continues to be, as I said, a marine protected area within a marine protected area.

The Chair: Thank you both very much indeed. That was very interesting.

Examination of witnesses

Dr Zack Cooper, Professor Alessio Patalano and Dr Thomas Withington.

Q18 **The Chair:** Welcome, Professor Patalano, Dr Cooper and Dr Withington, to the meeting. Thank you very much indeed for making the time. This session will focus on the defence implications for the UK and the US of the handover of sovereignty over the Chagos Archipelago to Mauritius and the security of base operations on Diego Garcia. The session will be streamed live on the Parliament website and a transcript will be taken. Once it is available, you will each be sent a copy with the opportunity for minor corrections, if necessary.

We have, as you are already well aware, limited time. We are not going to ask specifically each of you for an opening statement, but, if you would like to introduce yourselves when you first speak, that would be extremely helpful.

If I may, let me kick off with the first question. How critical is the base on Diego Garcia to UK defence and security interests? Does the transfer of sovereignty to Mauritius materially alter the strategic value or operational independence of the base on Diego Garcia from the perspective of UK defence planning and, if so, how?

Professor Alessio Patalano: Thank you very much for the privilege of being here today. I am a professor of war and strategy in east Asia at the department of war studies at King's College London and one of the co-directors of the Centre for Grand Strategy, now the Centre for Statecraft and National Security.

The answer to your question starts with the strategic defence review. The SDR, which came out last week, told us at page 79 that, as part of the integrated global defence network, UK overseas bases are a fundamental piece to enable British military operations, in terms of the key role of defending UK territory and nationals, deterring major crises harming UK interests and shaping regional environments.

Specifically within this context, there is reference to Diego Garcia. It is framed as a bulwark of that particular construct. In particular, the framing relates to the importance that the base has to US-UK military relations as well as the UK shaping a capacity to address stability at the regional level in the Indian Ocean region as part of the broader Indo-Pacific construct.

Within this context, let me just give you a couple of references for those who are less familiar with comparative geography. Diego Garcia is relatively far off in the Indian Ocean. The Indian Ocean is a maritime-centric theatre that is quite large. From an operational perspective,

though, you have to understand its cruciality as an enabler both in shaping and in responding to crises.

Going towards the Middle East and the Gulf space, for example, Diego Garcia is roughly 5,000 kilometres from places such as Iran. Going towards Western Australia, it is about the same distance to Perth. It is a critical component, if you want, of other partners' and allies' enabling capabilities in the region. To put that into perspective, the distance is like from here to Bermuda. That is not a very long distance. It is wide, but it is not impossible. Operationally, it is a key enabler. It is the same thing going upwards, if you are going towards Sri Lanka or Comoros. The Comoros Islands are about the same distance as it is from London to Ukraine. For Sri Lanka, it is the distance from here to Spain.

From a geographical point of view, you can therefore understand how significant Diego Garcia is for enabling UK-US operations. That is on top of everything else that has been said this morning.

To what extent does the agreement change that picture? Within 12 nautical miles around the islands, the agreement protects anything that concerns defence and security of the base and operations from the base. If nothing else, it provides a framework that maximises the potential operational uses of the base. It allows planners at MoD and in the US, on the basis of the framework, to red team any instance in which any impediment might come to them.²

However, I would perhaps dissent from some of the legal observations made in the first panel, in so far as one significant change does not exist in the peacetime or contested peacetime operational planning and conduct of activities. The challenge is in relation to article 15 and, in particular, article 15(1)(b) about "a serious threat" to the "supreme national interests" of Mauritius and how that allows Mauritius to initiate a termination of the agreement.

This goes to your point earlier about the compulsory arbitration in case there is a disagreement between the two Governments. An armed attack against the territory of Mauritius directly emanating from the base on Diego Garcia would represent grounds for Mauritius to terminate the agreement. If we are considering that the geopolitical space, in a contested time leaning toward open conflict between the United States and China, would present Diego Garcia, for the reasons I just explained, as a problem to Chinese operations, you could foresee a situation in which the Chinese might threaten an armed attack against Mauritius.

In that sense, from a Mauritian perspective, what is the most important thing to deal with? Certainly, the idea of terminating the pact comes back into the equation. Again, I trust the fact that this has been dealt with in the preparation of the writing of the agreement in the MoD.

² 'Red teaming' is an established Ministry of Defence practice to stress test a concept, ideas or specific situations—like the one created by the new agreement—to ensure risks are identified and challenges addressed or mitigated.

From my perspective, as someone who does not deal with the politics of peacetime but has to look at the potential geopolitical and strategic implication of wartime, I have to flag up that we have a clause there that provides to an adversarial power a potential option for trying to weaken the position of the UK and the US to use operationally Diego Garcia's provisions and facilities.

Dr Thomas Withington: Good morning, everyone. Just quickly to introduce myself, I am a writer and analyst specialising in electronic warfare, military communications and radar. I am a research associate at the Royal United Services Institute, a senior non-resident fellow at the NATO Defense College and the electronic warfare editor for the defence publication *Armada International*.

Your question was about the criticality of the base on Diego Garcia to UK defence and security interests. From my perspective, in terms of electromagnetic spectrum operations, my considered opinion—I would caveat this by adding that I am not a lawyer or a specialist in international law—from the strategic perspective regarding the electromagnetic spectrum and UK/US use of it, the transfer of sovereignty will not greatly affect the UK and US's ability to use that spectrum on the island unhindered.

I will qualify why that is the case. At the end of the day, without getting too much into the physics of all this—we could spend several hours talking about that, but I do not want to put you all to sleep—generally speaking most radio signals travel in line-of-sight range. If you are performing surface-to-surface communications from Diego Garcia to, let us say, a warship that is in the Indian Ocean, if you have a transmitter that is about 30 meters high, you will get around 24 nautical miles of range out of that. That range increases the higher the antenna is placed. It is the same principle as standing on a hill. Generally speaking, you can see further than when you are standing in a valley.

Short of anybody being able to position any jamming equipment, most likely on a ship, within the proposed exclusion zone that was mentioned around Diego Garcia, which was about 24 nautical miles, the ability of a hostile power to interfere with the use of the spectrum by jamming electromagnetically dependent systems on the island, satellite communications, radar and military communications is relatively limited. It would need to move a platform, possibly a ship or an aircraft. It could be done from an aircraft, but an aircraft would also presumably be violating any airspace restrictions that were positioned around Diego Garcia. I imagine some are already in place or certainly will be in place in the future.

To summarise, the ability of a foreign power to interfere with that spectrum usage and its strategic value is limited purely on account of how physics and radio waves ultimately behave.

Dr Zack Cooper: Thank you so much for the opportunity to speak with you this morning. I am a senior fellow at the American Enterprise

Institute. I also teach at Princeton and I used to work in the Pentagon and the White House.

Very briefly, I will talk about why Diego Garcia is so critical to US-UK co-operation. The bottom line is that Diego Garcia is the pivot point for the United States between the Middle East and the Indo-Pacific theatres. It is vital for both the US and the UK to operate around the Indian Ocean. This is why you see so many American ships and aircraft rotate through Diego Garcia and operate from there. It is vital both for resupplying ships and refuelling aircraft. This is going to continue for decades, I hope, down the line.

In terms of the agreement itself, the view of most Americans will be that what is critical is continued US access to the facility. Doing that in a politically sustainable way is probably the most important thing. To the extent that the agreement and its annexes codify a more sustainable political solution, you will see support, as you have seen from President Trump, for the agreement.

There are going to be some concerns about whether there could be limitations on US operations out of the facility. The US Government will probably want to know exactly how long they need to notify the Government before or, more likely, after their operations. That would include strikes on third countries.

The other thing that was raised in the previous panel is the question about potential Chinese efforts to gain intelligence from operating around the facility at Diego Garcia. I personally do not see anything in the agreement that fundamentally changes China's ability to do that already.

Let me just make one last comment. From the American point of view, again, what is most critical is the long-term sustainability of this plan. I am not a lawyer, however, as Dr Withington said. The legal announcements from the American side are probably going to be a little different from the strategic announcements, which is really where I am focused.

Q19 Baroness Coussins: Dr Cooper, you have just answered most of the question that I was about to ask about the critical importance to the US of Diego Garcia, but could you perhaps just expand on whether the transfer of sovereignty to Mauritius would make any difference to the strategic value of the base from the perspective of the US?

Could you also comment on whether, if it is equally critical to the defence and security interests of the US as it is to the UK, it would be reasonable for the US to contribute to the cost of leasing back the Diego Garcia military base? The trust fund elements are absolutely the responsibility uniquely of the UK, but, in terms of the leasing back elements, if it is equally important to the US, why are they not chipping in on paying the costs? It may well turn out to be one of the elements in the treaty that arouses some opposition, or at least concern.

Dr Zack Cooper: Thank you for those wonderful questions. On the first one, there are some absolutely critical elements of Diego Garcia that are not replicated in other facilities. For example, the ability to base a US aircraft carrier and have it pull into port requires a very long wharf, which is something that exists at Diego Garcia. It does not exist elsewhere in the region. Also, the length of the airfield is very advantageous.

As you noted, none of those things are going to change with this agreement. The way that I would think about this is that the United States is, essentially, worried about both the short term and the long term at Diego Garcia. In the short term, it would probably be ideal for the UK Government to continue to have complete control over what happens at Diego Garcia, and in the air and water surrounding it.

The concern, however, would be whether that is sustainable over the long term. A lot of Americans will be willing to accept some risk in the short term that Mauritius gaining control over Diego Garcia will lead to some short-term constraints on US operations, in exchange for some long-term commitment that the US will be able to continue operating there along with the UK.

On the question of funding, this is a discussion that some US Governments would probably be willing to have with the UK. I doubt that the Trump Administration would be willing to discuss this. I say that based on two viewpoints. First, the US already has a number of facilities that it is providing substantial support for in the Pacific. We have three major areas where we have compacts of free association, and we provide substantial support in those regions. It has been very difficult to get congressional support for that funding, and the Trump Administration have questioned, to some extent, whether the US should continue to do so.

Secondly, as you will all be well aware, the Trump Administration tend to see foreign contributions as too low and, therefore, will push, if anything, European allies—and especially the UK—to do more on their own and want to piggyback on those contributions rather than making large US contributions themselves. That would be a very difficult discussion with the Trump Administration and with the Congress.

Q20 Lord Hannay of Chiswick: Looking now in a slightly more granular way at the risks, do you foresee any operational or strategic risks arising from the rights and guarantees set out in annex 1 of the treaty, particularly in relation to the long-term security and flexibility of UK-US activities on Diego Garcia? In particular, what is your assessment of, first, the risk that a hostile power could use, for example, boats masquerading as fishing vessels to watch and eavesdrop on activities and communications to and from Diego Garcia, and, secondly, the provisions for the 12-to-24-nautical-mile exclusion zone surrounding Diego Garcia, within which Mauritius and the UK have to jointly agree on the construction of any maritime installations, sensor, structure, or artificial island?

Professor Alessio Patalano: Thank you kindly for the question, which allows us to get more into the practicalities of the types of risks and challenges. First of all, I will make a general observation, two specific observations and three points to my answer.

The general observation is that we live in a contested age that is much more volatile and in which the everyday is much more problematic. Something that Zack mentioned earlier is that we need to assume that some of the risks that we are discussing here and now will probably be there regardless of whether the agreement is in place. That is the nature of where the geopolitics of the broader Indo-Pacific are going, and certainly, given the UK's close relationship with the United States, it raises a question for UK national security, regardless of the agreement.

In terms of the two observations, one is about good faith, particularly in the 12-to-24-nautical-mile special zone. A lot of the disagreement has to be sorted out in the joint commission, which the agreement sets out as the place where the UK and Mauritius come together to find a solution to any type of disagreement or implementation of additional sensors and capabilities. There is an assumption about good faith. Is there a possibility to always find an answer to that question? It depends really on the Governments of the day and how they manage to get along. My feeling would be that an institutionalisation of the process of interaction will inevitably have a greater and more harmonious relationship to begin with, but it is an assumption that we need to carry on in the conversation.

The second is specifically about the provisions that underwrite the maritime order as we know it, whether it is general frameworks such as UNCLOS or specific additions to it, such as the International Court of Arbitration award in 2016 in favour of the Philippines against China in the South China Sea, or special provisions around areas such as Taiwanese waters. They all point towards one fact, which is that grey zone operations—those that try to create coercive action and make it difficult for the party at the receiving end to react to it—thrive in a legally defined environment. The agreement in itself is an opportunity for adversarial powers to start thinking, "What can I do about this?"

However, it is also an advantage. From my perspective, it creates an opportunity for the UK and the US to red-team all sorts of issues that might emerge, because, in that legal framework, you know where the cracks could be. It cuts both ways.

On the basis of these two preliminary observations, there are three points to make. Strategically, the focus on the 12 to 24 miles has to be put in the context of what are three broader observations. First, Diego Garcia is a relatively isolated space, so any type of activity, whether it is aircraft or surface vessels, fishing or non-fishing, will be more easily monitored, provided that the capabilities are present, which they are, around Diego Garcia. This is not like someone hiding in a forest where it is going to be complicated. This is a different type of environment in that sense. That goes also for undersea surveillance systems.

Perhaps we need to strategically think about the fact that part of the challenge is related also to how the PRC develops its own presence in the broader western Indian Ocean region. This is not about the Chinese convincing Mauritius to give them Diego Garcia. This is also about how, perhaps predominantly in the medium to short term, China expands its own influence in areas such as Kenya, Tanzania and the Comoros Islands, and how that enables it to develop a potential military presence that would allow it to deploy capabilities to more continuously and regularly monitor and surveil what happens around Diego Garcia.

In that sense, the agreement is not an impediment to anything, because, from within the space of the 12 nautical miles and the base facilities, you can develop capabilities to understand that, and the strategic picture is predominantly about politics.

Secondly, operationally, this is not an ideal environment to take advantage of that space of 12 to 24 nautical miles. However, technology is making this a bit easier. For example, you can deploy, from outside the 24-nautical-mile limit, undersea gliders. We are doing this as part of the SDR Atlantic Bastion principle. There is no reason why potential adversarial powers are not thinking about doing the same.³

This raises a point that Cleo Paskal mentioned earlier about how part of reinvesting in British defence also becomes a sense of there being a commitment, because of the existence of the agreement, to improve capabilities that help us provide better surveillance within the spaces that the UK has exclusive use of, and to be proactive with the Mauritian Government in terms of defining what kinds of agreements we want to have in areas beyond that space.

The final observation to make is very much about restating the broader point about where you stand on the matter in terms of the agreement itself. From a military and a defence and security perspective, it is both a challenge and an opportunity. Here, I want to echo your reference to Henry Kissinger—where is Henry when you need him? On this particular point, we should look at the agreement as an opportunity, because it allows a clear pathway to working together with the United States in increasing and targeting particular capabilities that would enhance our capacity within the 12 nautical miles to have a precise type of ISR in relation to Diego Garcia, and, beyond that, to work with the Americans in applying technology and capabilities to continue to perform that duty in areas, limiting the challenge that the natural agreement presents for the grey zone activities that I mentioned earlier.

Dr Thomas Withington: Regarding annex 1, and particularly the operational and strategic risks concerning electromagnetic spectrum access, as you all know, annex 1 gives the UK, effectively, spectrum ownership on Diego Garcia, which is an important point. The UK will

³ Post-meeting witness addition: "Yet, I would submit that the type of challenges to be faced beyond the 12 miles limit will be there whether one has control over the 12-24 nautical miles space or not."

continue to control the spectrum and use it how it wishes on that territory within the confines of International Telecommunication Union regulations.

The 24-nautical-mile exclusion zone arguably takes care of one signals intelligence gathering risk, which is, as you mentioned in your question, that you could have a disguised fishing boat or cargo vessel that sails into those waters and begins covertly collecting signals intelligence from emitters, radio, satellite communications or radar that are on Diego Garcia. As the professor mentioned just now, one would hope that patrolling that exclusion zone would, first of all, dissuade nefarious actors from taking such a course of action, particularly if the patrols were very overt. Secondly, it would give a means of response should that happen, so the EZ does take care of one risk.

What it is not able to do is, for instance, prevent the collection by airborne platforms—signals intelligence gathering aircraft—of signals intelligence coming from Diego Garcia. It is debatable whether it would be able to do that, as signals intelligence aircraft operating perfectly legally in international airspace, possibly 100-plus nautical miles away from Diego Garcia, still have the capability to Hoover up, if you will, significant amounts of signals intelligence from that island.

That remains the case, for instance, for the signals intelligence flights that the UK and the US do around the Baltic regions, around the Black Sea, and around areas of concern that we have in Europe and elsewhere. That is something that we are doing perfectly legally, and we can expect that actors, nefarious or otherwise, will do the same around Diego Garcia. To be frank, I do not think that there is a huge amount that we can do about that.

That is also the case for maritime-based signals intelligence collection. I would caveat that, however, by saying that, once you get beyond 24 nautical miles, short of having a huge and very tall antenna on a surface ship that is already going to arouse suspicions, your ability to collect signals intelligence from beyond the horizon becomes very difficult, purely due to how radio waves behave and the tyranny of physics, if you like.

There is another risk that we should also talk about, which is that of space-based signals intelligence over Diego Garcia. We are all aware, I am sure, that a number of states are investing in comparatively low-cost, space-based signals intelligence collection capabilities, focused on things such as CubeSats or low Earth orbit satellites that are coming down in cost, and proliferating. Once again, there is very little that we can do about the use of space for those purposes, and I suspect that that is a risk that we would simply have to accept and to take. It is the risk for the UK. It is the risk for the UK on Diego Garcia. It is the risk for all states.

Once again, to summarise, the EZ takes care of one risk, but, in terms of the other signals intelligence gathering risks, we arguably have very little room for manoeuvre in terms of what we could do about those.

Lord Hannay of Chiswick: Dr Cooper, you gave a very discouraging answer to an earlier question about a US financial contribution to Diego Garcia. Presumably, the United States incurs very considerable costs from operating the base on Diego Garcia, which it assumes entirely on its own. Could you give any idea of how big those are?

Dr Zack Cooper: On the initial question, I was going to say the same thing that Dr Withington said about space-based surveillance. That is something that is going to change the dynamics substantially, and means that China and other actors are probably going to have real-time surveillance of most activities at Diego Garcia going forward. That does not necessarily mean signals intelligence.

The other risk that we have to acknowledge is that there might be unmanned systems launched, if you can imagine, such as what Ukraine did against Russia. This can be done off of ships and could target assets on Diego Garcia. There is nothing in the agreement that makes that impossible, and there is nothing that could, because, as others have said, you can operate from international waters and still attempt to conduct those types of attacks if the unmanned systems have sufficient range.

We will have to see additional point defences and other air defences go into Diego Garcia over time to deal with those risks, and I do not see anything in the agreement that constrains the UK's or the US's ability to do that.

On the funding question, my personal view here is that the US should take a different approach on funding with foreign facilities. In fact, if you calculate the amount of money that the US pays at most foreign facilities, the US is getting a good deal. If you look at facilities in the UK, Germany, Japan and South Korea, it is cheaper for the US to put forces abroad than it is to keep them at home, because many of the costs of those forces are borne by the host countries.

I do not think that there is a public assessment anywhere of the exact costs of Diego Garcia from an American point of view. I doubt that the US Government would pick up those costs under the Trump Administration, but, under a different Administration, this is probably something that could be up for consideration.

The final thing that I would say on this is that the way that the Trump team often talks about this is almost as if any US forces that are deployed on territory abroad are defending that territory for that ally or partner, and so it is the ally or partner that should be paying for that facility. I am not suggesting that that is the right approach. The US gets tremendous benefits from operating from Diego Garcia and elsewhere, but given that that is the approach that the Trump Administration have taken, it would be very difficult to get them to agree to additional expenditures at Diego Garcia, because it would set a precedent that it would generally oppose in other regions.

Q21 **Lord McDonald of Salford:** Time is now very short, and, between you,

you have answered the questions about the electromagnetic spectrum. If I could go on to the next question, one of the justifications for this deal, Dr Withington, is that, in its absence, the International Telecommunication Union could have assigned bandwidth elsewhere, which would have threatened the usefulness of Diego Garcia to the UK and the US. Is that true?

Dr Thomas Withington: Thank you very much for that question. The issue of bandwidth assignment by the ITU is a complex one. Generally speaking, again, we come back to the tyranny of physics with this. Let us suppose for one moment that a chunk of spectrum was assigned to Mauritius, for whatever purposes—perhaps most likely to expand cellular communication services.

First, that assignment of spectrum would have to be within a waveband that the UK wanted to use for whatever purpose it might be. The ITU protects the use of various frequencies for various purposes. Again, without getting too much into the equations and deep into the weeds of the physics, if we take X-band, for instance, which has a frequency range of roughly eight gigahertz to 12 gigahertz, there are sections of X-band that are protected for things such as the use of radar or satellite communications. Military users are big X-band users.

It seems likely that, should, for instance, Mauritius make a request to use part of X-band for cellular communications, this is likely to be unsuccessful, because it would be impinging on other spectrum use cases that are already provided by the ITU. Mauritius can request uses and assignments of the spectrum within the confines of the international radio regulations, which, if you like, act as the rules of the road. That is the bureaucratic standpoint.

Again, going back to the physics, as I mentioned, if this happens, it would only adversely affect UK use of the spectrum if there was any electromagnetic contamination that was bleeding over into Diego Garcia, on to that territory, and preventing the UK from using that spectrum as it wished. Looking at the map, the nearest point in the Chagos Islands archipelago to Diego Garcia is 100-plus nautical miles away, and possibly further. The bleed-over from, for instance, an assignment of spectrum to cellular communications in the Chagos Archipelago to affect the use of, let us say, X-band on Diego Garcia would be very minimal to non-existent.

To use an example that you all might be familiar with, if you have ever been on a boat and have wanted to use your mobile phone, you notice that, the further away from the shore you get, the weaker the signal becomes, and that, eventually, you have no signal. That is what I mean by the bleed-over and the ability of signals to contaminate other signal usage.

When you are in an urban area, that becomes a big problem. We have radio regulations, for instance, to prevent pirate radios and that kind of thing, in order to ensure that everybody gets a fair use of the spectrum.

When you are dealing with the distances involved in the Indian Ocean around Diego Garcia, Mauritius and the Chagos Islands, I would argue that that becomes less of a concern.

Q22 **Baroness Morris of Bolton:** You have touched on some of the broader aspects of this, but how might the agreement specifically affect the UK's broader defence posture in the Indo-Pacific?

Professor Alessio Patalano: That is a wonderful question, because it allows us to place the agreement into this broader strategic context. There are two points to make here. One has been mentioned before. It is very clear in the SDR and in many of the statements by the Prime Minister and the Defence and Foreign Secretaries in terms of how the UK is a serious stakeholder in maintaining the rule of law in an international sense, and particularly from a maritime order perspective.

The agreement certainly showcases how the UK is willing to engage with other parties and, therefore, reinforces the Government's narratives, especially in the Indo-Pacific, that the UK stands for a positive, free and open Indo-Pacific that stands for a proper application of the rule of law.

I would, however, point out that there was a comment made in the very first panel by one of the legal experts around the fact that there was some sort of moral comparison between China in the South China Sea and the UK around Diego Garcia, which is a relatively inappropriate consideration to make. Whereas the UK is having a disagreement with Mauritius over how you apply international law, what happens in the South China Sea—and we know this because the award in 2016 says so—is China behaving about the maritime order, using principles that do not exist in current frameworks such as UNCLOS.

This raises a subsection of this point on the rule of law and that narrative. It is very important for the UK Government to communicate what the agreement is about to the communities in the Indo-Pacific, but also multilaterally at the UN and all the committees that deal in particular with maritime aspects, from maritime protection to the broader maritime order, noting that, just across the river, we have the International Maritime Organisation. These are points that are worth restating.

It is also important—and this is something that was mentioned earlier—to communicate within the Commonwealth, which includes a number of large ocean states in which understanding the protection of and operating within the rule of law is absolutely crucial. That is a powerful element of the story that needs to be communicated.

Operationally, it also reinforces our links with the United States, first and foremost, for the reasons that I mentioned earlier, when it comes to the Indo-Pacific, because it allows for the creation of a space for the United States and the UK to have a much more robust conversation, from the management of the electromagnetic spectrum to the conduct of operations, as well as the challenges in difficult moments, as I say, such as the article 15 termination of the agreement. These are important

conversations that we need to have, precisely because of the geopolitical times in which we live.

It also reinforces operational links with India, Australia and France. These are all major regional powers in the Indian Ocean, which have been cautiously and carefully cheering for the UK to conduct this process, because it enhances the regional reputation, but also provides an opportunity for the UK to work more closely with France, India and Australia in the western Indian Ocean, and together with all of them, in terms of implementing a particular version of regional stability that is compliant with the rule of law and in a way that is based on a clear understanding of the operational challenges and risks that unfold from implementing this type of agreement.

Q23 Lord Howell of Guildford: Lord McDonald has gone now, but his question really raises fundamental, wider questions, which perhaps we need to focus on more. I really worry when I hear about this 100-year lease when, in 10 years' time, and possibly five, it may be that the whole Diego Garcia concept is completely and totally technologically redundant. We are talking about intelligent aircraft. What about satellites? Satellites have long since taken over all roles of huge bombers flying around the world and taking photographs. That has gone.

Our friends in Ukraine were showing us the other day that you need only a lorry with a few trunks in it and the use of a local telephone system to inflict enormous damage on your enemy, in ways that were completely failed to be understood by the military authorities, and certainly were failed to be understood by the planners in China and the United States, although some of us have been writing about this for 30 years.

Can we, as a separate country from America and China, just contemplate that, as the small and agile nation as we are, it may be that there are cleverer ways of positioning ourselves for a dangerous world ahead than getting caught up in this technology, which is not quite antique but is looking very out of date and was designed for a completely different world and defence technology of 30, 40 and 50 years ago?

Should we not be a bit more agile in our own approach to what is needed, and perhaps learn from our Ukrainian friends a bit more of how you conduct wars in the future, and from our own technical brilliance, which is great, so that we can manage the bandwidths and all the rest without necessarily tying ourselves for 100 years to something that may be absolutely useless in five?

Professor Alessio Patalano: If I may, I will just make a quick point, because you raise a very good question. How does the experience that we are living in Ukraine, in which technology is so central to thinking about the battle spaces of the future, translate in a place such as the Indian Ocean and, in particular, Diego Garcia? One thing is that you cannot beat geography. The weather conditions, weather patterns and distances in the Indian Ocean are nothing like the Black Sea or indeed the land-centric element of the war in Ukraine. Therefore, you cannot

sustain operations over long cycles and periods of time with the distances, the technology that we have and the weather patterns and conditions in the Indian Ocean.

It is unlikely to change fundamentally even in five or 10 years' time. It is going to be longer than that. There is no replacement for an unsinkable aircraft carrier, as it were. There is so much that technology can do in such a difficult maritime-centric environment, save perhaps the space intelligence component, which has been mentioned and which I completely agree is going to be important. Let us not forget that it is a maritime-centric strategic environment in which geography matters and articulates itself in terms of weather conditions and patterns, and this affects the type of operations that you can plan and execute in that particular space.

Dr Zack Cooper: If I could make one very brief addition to that, land access is more and more important going forward, because projecting power from naval and air platforms is incredibly difficult to do in a sustainable way. Even though there are many new technologies that are coming online that will change the value of Diego Garcia, the value of Diego Garcia both to the UK and to the US in coming decades might grow rather than decrease.

The Chair: Thank you, all three of you, very much indeed. That was very informative indeed.