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# WHY THE UK SHOULD NOT CEDE THE CHAGOS ISLANDS TO MAURITIUS

**A Policy Exchange Research Note**

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# Executive Summary

Up until 20 January 2026, the Government thought it was on track to ratify the United Kingdom's agreement with Mauritius "concerning the Chagos Archipelago including Diego Garcia". President Trump's intervention, terming the cession of the Chagos Islands to Mauritius an act of "great stupidity", changed this.

If the Government were to ratify the agreement with Mauritius without first amending the 1966 treaty with the United States concerning the availability of the British Indian Ocean Territory for defence purposes, the UK would be in breach of the 1966 treaty, as well as in breach of Article 7 of the agreement itself (by virtue of which the UK and Mauritius each confirm that the agreement does not conflict with their obligations to any other state).

For the cession of the Chagos Islands now to go ahead, the Government must therefore persuade the Trump Administration to support its agreement with Mauritius and to amend the 1966 treaty. It must also persuade Parliament to enact the legislation that is necessary to ratify the agreement with Mauritius. The Diego Garcia Military Base and British Indian Ocean Territory Bill was due to return to the House of Lords on 26 January but has now been postponed due to the announced change in the Trump Administration's position.

This latest twist in the tortuous process of ratification provides an opportunity to think again about the merits of the UK's agreement with Mauritius ("the Treaty"), which will surrender UK sovereignty over the Chagos Islands and retain use of Diego Garcia for 99 years, with security guarantees in relation to the wider archipelago, in exchange for substantial annual payments.

Policy Exchange has repeatedly argued that ratifying the Treaty and ceding the Chagos Islands to Mauritius would be a serious mistake. Diego Garcia is a vital strategic asset, home to a UK-US air and naval base critical to security in the Indo-Pacific and likely to remain so into the indefinite future. The base is secure if the Chagos Islands remain sovereign UK territory; its fate is uncertain if transferred to Mauritius.

Why does the Government insist that the Chagos Islands be ceded to Mauritius? The Government's main argument is that the UK has no other workable option. According to the Government's lawyers, unless the UK gives the Islands to Mauritius, Mauritius will return to courts or arbitration and eventually will win a binding judgment against the UK that will make it much harder, if not impossible, for the UK and US to continue to operate the base on Diego Garcia.

The spectre of a binding judgment against the UK should be rejected:

- State consent is required for international adjudication. There is no way in which an international tribunal can adjudicate the UK's sovereignty dispute with Mauritius and rule in Mauritius's favour unless the UK chooses to consent to adjudication.

- In 2019, the International Court of Justice (ICJ) issued an advisory opinion that found that the process of decolonisation in the Chagos Islands had not been completed. This advisory opinion could not impose any international legal obligation on the UK; even on its own terms, the opinion did not purport to establish or find that Mauritius was sovereign.

- The International Tribunal for the Law of the Sea (ITLOS) has no power to decide territorial disputes. If an ITLOS chamber were to rule against the UK on the grounds that the advisory opinion establishes that Mauritius is sovereign over the Chagos Islands, then the UK should refuse to comply with the ruling, because Mauritius, if it were to have resorted to ITLOS to seek a sovereignty ruling, would have abused international legal process and ITLOS, if it were to purport to grant Mauritius sovereignty, would have grossly overstepped its judicial function.

The Government also fears that Mauritius might weaponise the 2019 ICJ advisory opinion to interfere with UK-US use of the electromagnetic spectrum and overflight access. These are illusory risks:

- The International Telecommunications Union (ITU) has no capacity to interfere with US-UK use of the electromagnetic spectrum in the Chagos Archipelago, as the Government has in fact admitted to Parliament. Past ITU rulings have been ignored by the United States on national interest grounds without incident.

- The International Civil Aviation Organization (ICAO) will not interfere with aviation in the Chagos Islands. State aircraft, including military flights, are excluded from the ICAO's mandate. In light of the distances and other practical considerations, Mauritius is unlikely to interfere either.

- The only actual consequence arising from Mauritius's campaign of legal harassment in international organisations has been the de-recognition of British Indian Ocean Territory stamps by the Universal Postal Union. As postal services to Diego Garcia are provided by the United States military, this does not affect in any way the operation of the base.

The Government also fears that unless the UK agrees to transfer sovereignty to Mauritius and to make substantial annual payments, Mauritius will accept payments from our adversaries and will authorise them to enter the archipelago, occupy the outer islands and otherwise act in ways that would seriously prejudice the security of Diego Garcia. If Mauritius were to attempt to frustrate UK-US defence interests in these ways, it would be a hostile state and should be subject to sanctions. The answer to Mauritian lawfare is not to negotiate terms of surrender.

It is open to the UK to respond to Mauritian lawfare by consulting the Chagossians and working with them in a way that will bring them justice, such as by instituting a right of return, subject to restrictions to protect the operation of the joint UK-US base. This would draw the apparent sting of the ICJ's advisory opinion without involving a surrender of UK sovereignty.

The Government argues that the Treaty provides much better protection for UK-US defence interests than the status quo in which the UK's sovereignty is disputed by Mauritius. But the protections that the Treaty sets out are much less robust than the Government seems to think and they rely in important ways on the goodwill of future Mauritian governments.

- Neither the UK nor the US will enjoy a veto over Mauritian action that prejudices the operation of Diego Garcia. While the Treaty makes provision for various matters to be subject to joint UK-Mauritius decision, this is not tantamount to a UK veto, not least since the UK has no capacity to enforce Mauritian compliance with the terms.

- If the UK were to attempt to withhold annual payments, in response to Mauritian non-compliance that puts Diego Garcia at risk, this would clearly

breach the Treaty and would be grounds for Mauritius to terminate it altogether – as the Treaty provides in express terms.

The Treaty with Mauritius introduces new legal risks that do not currently exist:

- Article 4 provides that all activities in relation to Diego Garcia must comply with international law. If Mauritius takes the view that UK or US operations out of Diego Garcia are incompatible with the international law governing the use of force – say in relation to operations against Iran – it may allege that the UK is in breach of Article 4. This would enable Mauritius to take counter-measures, including authorising hostile states to build installations on the outer islands or to enter the archipelago.

- Annex 1 of the Treaty requires the UK expeditiously to inform Mauritius about the use of force originating from the base on Diego Garcia. If the UK only provides notice *after* an operation has been launched, Mauritius may claim that the UK is in breach of its obligations and thus that its sovereignty over the Chagos Islands is not being respected, which it may say warrants counter-measures or renegotiation of the terms.

- Under the Treaty of Pelindaba, Mauritius "undertakes to prohibit, in its territory, the stationing of any nuclear explosive device." If the Chagos Islands are ceded to Mauritius, this obligation will extend to Diego Garcia. It is unclear how Mauritius will act if or when US-UK operations on Diego Garcia place it in breach of this obligation. Diego Garcia would be much less strategically valuable if it became a nuclear weapon-free zone.

So, the Treaty with Mauritius is significantly worse than the status quo. The Chagos Islands are needed for defence purposes for an indefinite period, yet the Treaty confers rights only for 99 years (the limited right to extend will prove ineffective in practice).

Under the terms of the Treaty, the future operation of the base will be vulnerable to the actions of the Mauritian government, which is likely to be a target for Chinese subversion. Ceding sovereignty to Mauritius gives away the UK's sovereign rights, which are an indispensable foundation to the UK-US joint base. The protections provided by the Treaty are no substitute for sovereignty and the Treaty introduces new, far-reaching risks.

In addition to the risks to UK-US security interests that arise from the Treaty, ceding the Chagos Islands to Mauritius may result in an environmental catastrophe. The Chagos Islands are a unique and priceless marine environment, robustly protected by the UK as things stand. Mauritius has a terrible environmental track record and no capacity to police the waters. The Treaty imposes no meaningful environmental obligations on Mauritius, and the UK will have no leverage.

Why is the Government determined to cede the Chagos Islands to Mauritius? It may have persuaded itself that the security risks arising from Mauritian lawfare are real. But the Government also clearly seems to think that surrendering sovereignty is a test of its respect for the international rule of law. The Government may wrongly take the ICJ's 2019 advisory opinion to be binding; it certainly seems to be surrendering pre-emptively to Mauritian lawfare and abuse of international adjudication.

The Government should stand firm on the UK's sovereign rights and, with American support, resist lawfare that attempts to strip the UK of its rights and thus undermine the joint UK-US base on Diego Garcia, which is vitally important to the collective defence interests of the UK and the US.

# Introduction

On 22 May 2025, the UK Government signed an agreement with Mauritius "concerning the Chagos Archipelago including Diego Garcia" ("the Treaty"). The Treaty has yet to be ratified. Parliament is considering the Diego Garcia Military Base and British Indian Ocean Territory Bill, which is a Bill to "[g]ive effect to, and make provision in connection with [the Treaty]". The Government cannot lawfully ratify the Treaty until the Bill is enacted. The main provisions of the Bill come into force when the Treaty is ratified, at which point the UK's sovereignty over the Chagos Islands will come to an end.

The Bill was to have returned to the House of Lords on 26 January. However, President Trump's intervention on 20 January, terming the cession of the Chagos Islands to Mauritius an act of "great stupidity", has put the process of ratification in doubt. While the Prime Minister, Sir Keir Starmer, decried President Trump's intervention as an attempt to put pressure on the UK to abandon its support for Greenland, other parliamentarians asked whether the Government would – or could – go ahead and surrender the Chagos Islands in the face of American opposition.

Peers questioned whether ratifying the agreement with Mauritius was compatible with the 1966 US-UK 1966 treaty "concerning the availability of the British Indian Ocean Territory for defence purposes". The Government postponed the Bill's return to the House of Lords and seems now to have accepted that another condition on ratification is amendment of the terms of the 1966 US-UK treaty. Article 1 of the 1966 treaty provides that "The Territory shall remain under United Kingdom sovereignty." What this means is that the consent of the United States is required before the UK Government ratifies the Treaty and surrenders sovereignty over the Chagos Islands to Mauritius.[1] If the Government were to ratify the Treaty before the 1966 treaty was amended, the UK would transfer sovereignty to Mauritius in breach of the 1966 treaty.

[1] See further Richard Ekins KC, "How Trump could block the Chagos deal", *Spectator*, 23 January 2026

It remains to be seen whether the United States will consent to amendment of the 1966 treaty.[2] No doubt the Government will aim to persuade the Trump Administration that an agreement with Mauritius is required to protect the future operation of the UK-US joint base on Diego Garcia.

This effort at persuasion should fail, because the Government's case for the Chagos deal is weak, as Policy Exchange has explained in a series of papers, beginning in October 2023,[3] when the then Conservative Government began negotiating with Mauritius about sovereignty.[4] This research note considers the case for ceding the Chagos Islands to Mauritius and shows it to be wanting.

[2] The suggestion made by some commentators that Secretary of State Rubio's statement in May 2025, welcoming the agreement between the UK and Mauritius, amounts to American consent is wrong. The United States has not waived its rights under the 1966 treaty, which has yet to be amended. The Government has made clear that discussions about amending the 1966 treaty have not been completed. Unless and until the 1966 treaty is amended, the United States has not given its consent. As Conservative peers have pointed out, the ratification of an amendment of the 1966 agreement would also itself require completion of the Parliamentary processes required by the provisions of the Constitutional Reform and Governance Act 2010 that gave statutory effect to the so-called Ponsonby convention.

[3] Yuan Yi Zhu, Tom Grant and Richard Ekins KC, *Sovereignty and Security in the Indian Ocean: Why the UK should not cede the Chagos Islands to Mauritius* (Policy Exchange, October 2023). This report provides a full review of the legal, historical, political and moral issues.

[4] The other five papers are: (1) Marcus Solarz Hendriks, Yuan Yi Zhu, Tom Grant and Richard Ekins KC, *Averting a Strategic Misstep: Why the Government should walk away from its draft agreement to cede the Chagos Islands to Mauritius* (Policy Exchange, January 2025); (2) Yuan Yi Zhu, Marcus Solarz Hendriks, Tom Grant and Richard Ekins KC *The Chagos Debacle: A Critique of the Government's Shifting Rationales* (Policy Exchange, February 2025); (3) Richard Ekins KC and Yuan Yi Zhu, *Parliament's role in ratifying the UK-Mauritius Agreement concerning the Chagos Islands* (Policy Exchange, June 2025); (4) Richard Ekins KC and Marcus Solarz Hendriks, *The Attorney-General, the Iran-Israel War and the Future of Diego Garcia* (Policy Exchange, June 2025); and (5) Yuan Yi Zhu, *Averting an Environmental Catastrophe in the Chagos Archipelago* (Policy Exchange, January 2026).

# The risks of not ceding the Chagos Islands to Mauritius have been exaggerated

The Government's fundamental argument for the Treaty is that unless it is ratified Mauritius will resume its campaign of lawfare against the UK, which would be likely to result in a binding judgment against the UK and would make continued operation of the UK-US joint base on Diego Garcia impossible or at least much more vulnerable.

### *The prospect of a binding judgment being made against the UK*

It is an elementary principle of public international law that an international court or tribunal does not have jurisdiction over an international dispute unless the states involved agree to confer jurisdiction on the court or the tribunal. Because of this, unless the United Kingdom consents – and there are no reasons why it should consent – there is no prospect of an international tribunal making an authoritative ruling that Mauritius is sovereign over the Chagos Islands, a ruling that would place the UK under an obligation in international law to recognise Mauritian sovereignty and to bring to an end its, by hypothesis, unlawful occupation of the Islands.[5]

In 2019, the International Court of Justice (ICJ) issued an advisory opinion that stated that the decolonisation process in relation to the British Indian Ocean Territory had not been completed and said that the UK "has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible". However, this was not an authoritative ruling by a tribunal with jurisdiction to adjudicate the dispute between Mauritius and the UK. ICJ advisory opinions are exactly that – advisory. They do not purport to be binding determinations of a dispute.[6] In the Chagos advisory opinion, the ICJ did not purport to hold that

[5] See further *Sovereignty and Security in the Indian Ocean* (October 2023), n3 above, and *The Chagos Debacle* (February 2025), n4 above.
[6] There are exceptions in the case of some United Nations organisations, but these exceptions do not apply in this case.

Mauritius was sovereign over the Chagos Islands; even if the UK was to accept the ICJ's advisory opinion, which the UK should not, it would not follow that the Islands must be "returned" to Mauritius.

It is not possible for an international tribunal to adjudicate the UK's dispute with Mauritius about sovereignty over the Chagos Islands without the UK's consent. While the UK has accepted the compulsory jurisdiction of the ICJ, it has maintained a reservation in relation to disputes with members of the Commonwealth or former members of the Commonwealth, which includes Mauritius. So, unless the UK consents to adjudication, there is no way in which the ICJ can ever make a binding judgment against the UK in relation to sovereignty over the Chagos Islands.

However, the Government's main fear does not seem to be that the ICJ itself will make a binding ruling in relation to the UK-Mauritius sovereignty dispute. Its fear seems instead to be that the ICJ's 2019 advisory opinion will be taken by *other* tribunals or international bodies as having established that Mauritius is sovereign over the Chagos Islands, which may result in a binding judgment against the UK in some other forum and/or in actions or decisions being taken by other international bodies that hamper the operation of the US-UK joint base on Diego Garcia.

The Government's concern seems to be that a Chamber of the International Tribunal of the Law of the Sea (ITLOS) will make a binding ruling against the UK in litigation initiated by Mauritius. In advance of a hearing, and before any binding ruling is made, the ITLOS chamber might indicate provisional measures (interim relief), which would bind the UK as a matter of international law. These provisional measures and any eventual ruling might limit the UK's freedom to operate freely in the waters of the archipelago, including lawfully to exclude foreign vessels or other craft. The Government's fear is that a future ITLOS chamber would repeat the reasoning that was displayed by an ITLOS chamber in 2021, in a dispute between Mauritius and the Maldives, where the chamber reasoned that the ICJ's advisory opinion had established that Mauritius rather than the UK was sovereign over the Chagos Islands.

The 2021 ITLOS chamber clearly misread the 2019 ICJ advisory opinion, which held no such thing, not least because it would clearly have had no authority to do so. The principle of state consent to adjudication is fundamental to international law. In issuing the advisory opinion at all (in the face of opposition from the UK,

the US and other states) the ICJ undermined this principle; its advisory opinion was an abuse of its jurisdiction to issue advisory opinions. However, it would be a total repudiation of the principle of state consent for states or international tribunals to go further and to take an advisory opinion to establish a state's obligations in international law.

In any future litigation before an ITLOS chamber, the UK should remind ITLOS of its own past decisions holding that it has no power to decide a dispute which is chiefly a dispute over territorial sovereignty. If a future ITLOS chamber were to flout this limit and to repeat the fallacious reasoning of the 2021 chamber, then the UK would be faced with an attempt to violate its sovereignty over the Chagos Islands in a way that circumvents the principle of state consent. The proper course of action for the UK in those circumstances would be to refuse to accept the relevant ITLOS ruling, which would have been issued in abuse of adjudicative authority. Such an ITLOS ruling would have presupposed Mauritian sovereignty over the Chagos Islands, when there is an ongoing dispute between Mauritius and the UK about sovereignty, a dispute that is not subject to adjudication by any international tribunal without state consent.

The Government might argue that one advantage of ratifying the Treaty, and amending the 1966 treaty to make this possible, is that the alternative is that the 1966 treaty will soon be undermined by binding rulings against the UK, rulings that will mean, in effect, that the UK no longer enjoys sovereignty over the Chagos Islands, in breach of Article 1 of that treaty. This argument would not be sound.

If a future ITLOS chamber were, perversely, to assume that Mauritius was sovereign, and rule against the UK in a dispute about the waters of the archipelago, this would not undermine the 1966 treaty. The UK would retain sovereignty over the Chagos Islands, sovereignty that would continue to be challenged by Mauritius, which (in defiance of its own prior agreements with the United Kingdom) has been waging a campaign of lawfare against the UK. Again, it is not possible for an international tribunal to make a binding judgment against the UK in relation to the UK's sovereignty dispute with Mauritius. It would only be if an international tribunal had jurisdiction to adjudicate this dispute that there would be any prospect of a binding judgment against the UK and of Article 1 of the 1966 treaty being undermined because the UK would no longer be sovereign as a matter of international law. In entering into the 1966 treaty, the US accepted what was demonstrably true: that the UK was sovereign over the Chagos Islands.

The United States has never accepted that the UK's sovereignty over the Islands has somehow been lost and on the contrary has firmly supported the UK in resisting Mauritian lawfare, including before the ICJ.

### *The electromagnetic spectrum, overflight access and civilian contractors*

The Government has suggested that it fears that Mauritius might rely on the ICJ's 2019 advisory opinion in other ways to frustrate US-UK operations out of Diego Garcia. It has noted the possibility of (a) interference with the electromagnetic spectrum, (b) limitations on overflight access, and (c) deterrence of civilian contractors from third countries. These are phantom fears.[7]

The International Telecommunications Union (ITU) has no capacity to interfere with US-UK use of the electromagnetic spectrum in the Chagos Archipelago, as the Government has admitted to Parliament.[8] The ITU simply does not have the power to prevent the UK and the US from using the radio spectrum associated with the British Indian Ocean Territory, and it does not have mechanisms to enforce its decisions. The ITU does not physically control any radio spectrum but is rather in the nature of a clearinghouse which depends on the goodwill of states. In the past, ITU rulings have been ignored by the United States on national interest grounds, to no consequences whatsoever.

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[7] For further detail, see *The Chagos Debacle* (February 2025), n4 above.
[8] On 12 February 2025, the Minister of State for Data Protection and Telecoms, Sir Chris Bryant MP, gave this answer to a parliamentary question (emphasis added):

> "Individual countries have the sovereign right to manage and use the radio spectrum, within their borders, the way they wish, subject to not causing interference with other countries.
>
> "This right is recognised in the Radio Regulations. The Radio Regulations are the international framework for the use of spectrum by radiocommunication services, defined and managed by the International Telecommunications Union (ITU**). Individual countries, not the ITU, make their own sovereign spectrum assignments in accordance with the Radio Regulations. The ITU has no legal authority over these assignments regardless of the country's civilian or military classification of spectrum.**
>
> "The ITU cannot challenge the UK's use of civilian or military spectrum. It is possible that one country could challenge another's spectrum use, for instance if it should cause harmful interference across borders, and if unresolved bilaterally could seek arbitration through an ITU body (Radio Regulations Board)."

For the UK to undertake to follow all ITU decisions, no matter how groundless, would be to significantly undermine national security and to set a very dangerous precedent. On this approach, if the United Nations General Assembly asked the ICJ to issue an advisory opinion, the ICJ and the ITU could purport to outlaw, for example, the transmission of military information on satellites. There is no sound basis in international law for any such approach, which if it were attempted the UK should firmly rebuff.

The absurdity of surrendering national security to the ITU is confirmed by the fact that the agency has been the target of institutional capture efforts from illiberal regimes, notably China, which now seeks to use the ITU to advance its Belt and Road Initiative and measures such as greater governmental control over the Internet. To surrender the Chagos Islands to a foreign power in anticipation of possible future ITU action would only embolden China to continue to infiltrate multilateral bodies.

It has been suggested that the International Civil Aviation Organization (ICAO) may interfere with civilian aviation activities in relation to the Chagos Islands. As a military base, Diego Garcia sends and receives few, if any, flights that are not military or otherwise in government service. Flights to and from the base are excluded from the scope of the ICAO's purview, as the organisation only deals with civilian aviation. The Convention on International Civil Aviation defines any "aircraft used in military, customs and police services" as "state aircraft", which are excluded from the ICAO's mandate. Thus, even chartered civilian planes, if used for a military purpose, are not affected by ICAO regulations.

As to civilian overflights, since the BIOT is far away from major air routes, the number of such overflights must necessarily be limited; and as Diego Garcia is an active military base, the likelihood of issues arising from some sort of ICAO derecognition of the BIOT is minimal. The idea that civilian air operators will refuse to obtain overflight clearances from the BIOT authorities, which control the territory's only airstrip and all the region's air navigation equipment, and instead apply to the Mauritian authorities, is far-fetched, to say the least.

It is unclear how Mauritius could weaponise either the advisory opinion or potential future pronouncements of international tribunals to deter civilian contractors from supporting US-UK operations. Mauritius might attempt to enact criminal legislation to intimidate civilian contractors who work on Diego Garcia – just as it attempted to intimidate British civil servants and others who maintained

the UK's sovereignty over the Chagos Islands.[9] Enacting such legislation would be a breach of comity and a hostile act – and the UK and the US should respond accordingly.

***The risk that Mauritius might work with our adversaries***

The Government has argued that if the UK does not reach an agreement with Mauritius that involves the UK making substantial annual payments, Mauritius might reach agreements with other states about the Chagos Islands, which would be contrary to US-UK defence interests. In an article in *The Times*, Stephen Doughty MP, Minister of State for the FCDO, put it this way:[10]

> *"A financial element was crucial. If we don't pay, someone else will. Our adversaries would jump at the chance to establish outposts on the outer islands, with a guise of legality on their side, we would have no basis to remove them and efforts to do so could spark a serious confrontation."*

The Minister's reasoning seems to be that if the UK transfers sovereignty over the Chagos Islands to Mauritius but does not agree to make financial payments, then this would open the door to other states to "establish outposts" on outer Chagossian islands – in other words, that Mauritius would likely violate the terms of the agreement reached with the UK. By this logic, the Minister concedes that any deal which involves the transfer of sovereignty jeopardises the future of the base, as Mauritian compliance is contingent on sufficient financial inducement – and Mauritius, if the Minister is correct, may constantly revisit and redefine how much shall suffice, in line with its unprincipled conduct in relation to the Chagos Islands and Islanders since 1982.

The Government may fear that if the Treaty is not ratified Mauritius would accept payments from our adversaries to establish outposts on the outer islands, which would then have "a guise of legality on their side". If the UK has not surrendered sovereignty to Mauritius, the UK and the US would certainly have grounds in international law on which to remove them, namely defence of sovereign UK

[9] See further Yuan Yi Zhu, *Intimidation as Foreign Policy: How Mauritius has attempted to criminalise UK sovereignty over the Chagos Islands* (Policy Exchange, January 2024).
[10] "Chagos Islands deal will prevent serious confrontation, says minister", *The Times*, 11 February 2025.

territory, territory that is jointly used by the US and the UK for defence purposes. Removing an outpost established by an adversary might spark a wider confrontation, but the willingness of the US and the UK to defend the islands would likely deter such.

The Government's case for transferring sovereignty over the Chagos Islands to Mauritius is in effect that the alternative is that Mauritius will continue, or somehow intensify, its campaign of lawfare against the UK and will attempt to interfere with operations out of the joint US-UK base on Diego Garcia. The willingness of Mauritius to act in this way – directly contrary to US-UK defence interests – undermines the Government's case that Mauritius will be an excellent, trustworthy Commonwealth partner. If Mauritius did attempt to act in this way – purporting to lease Diego Garcia or outer islands to China for example or sailing through the archipelago in defiance of UK sovereignty – the US and the UK would have good reason to treat Mauritius as a hostile state and to impose sanctions.

***The option of working with the Chagossians***

While it is understandable that the Government wishes amicably to resolve the UK's sovereignty dispute with Mauritius, it is wrong for the Government to assume that the only options are either to transfer sovereignty to Mauritius, on such terms as can be negotiated, or to persist with an unchanged status quo. It has always been open to the Government to work with the Chagossians, many of whom are now British citizens and oppose the transfer of sovereignty to Mauritius. If the Government consults the Chagossians about their wishes, it may respond to the 2019 advisory opinion other than by handing over the Islands to Mauritius, an outcome that will draw the sting from the claim that the UK is somehow complicit in an ongoing postcolonial wrong against the self-determination of peoples. The central premise of the ICJ's advisory opinion – that it was for Mauritius alone, and in particular not the inhabitants of the Chagos Archipelago, to exercise the relevant right – was out of line both with historical truth and present realities.

Consultation with Chagossians during the Treaty's negotiation process has been so minimal as to be non-existent, since both governments have taken the view that they should not be represented in the negotiations. It is likely that many Chagossians were deterred from speaking out by fear that they would be

persecuted by application of repressive Mauritian criminal law forbidding denial of Mauritius's sovereignty claim. The financial provisions made for the Chagossians under the Treaty –£40m – are a tiny fraction of the payments to be made to Mauritius, and the Chagossians may have little or no control over the monies that are nominally allocated for their welfare.

The UK Government insists that there are some Chagossians who welcome the Treaty, as indeed is the case, but it seems likely that the majority are opposed. They have made their views clear through protests, petitions, a plebiscite organised on an unofficial basis, and through the emigration of many Chagossians in Mauritius to England. It is on this basis that the House of Lords inserted an amendment to the legislation now before Parliament, delaying ratification until a plebiscite could be held in which the views of Chagossians could be ascertained. Strikingly, the Government has used its majority in the lower house to strip the amendment out.

Mauritius has leveraged the poor treatment endured by the Chagossians, for which it is partly responsible, to support its claim for sovereignty over the Chagos Islands. The UK Government has failed adequately to challenge this misleading narrative, but has an opportunity now to do so, consulting the Chagossians and outlining how, if it retains sovereignty, it will address their concerns and help mitigate their plight. Misgivings about the morality of ceding the Chagos Islands to Mauritius in the face of opposition from the Chagossians is not limited to Parliament. The United Nations Committee on the Elimination of Racial Discrimination has recently decried the Treaty on the grounds that it denies Chagossians the exercise of their basic rights.

Most Chagossians are not opposed to the base staying in Diego Garcia. Many – very likely a majority – want the UK to remain sovereign, subject to greater rights in relation to their former home. There are ways to reconcile better treatment of the Chagossians with the security of the Diego Garcia base. Many Chagossians wish to work on the base, where there are thousands of contractors in well paid positions, but so far, the general attitude towards their employment has been negative. The Treaty gives preference to suitably qualified nationals of Mauritius – most of whom are not Chagossians – for employment on the base. If the UK retains sovereignty, it could ensure that preference for employment is given to suitably qualified Chagossians.

Further, the Government could use some of the money it will save by scrapping the Treaty to implement a program of resettlement on the outlying islands. Such a program has been repeatedly ruled out by the UK Government on costs grounds; yet it would only represent a small fraction of what it now wants to pay to Mauritius by way of rental fee for a base it already owns. It would be far better for some of this money to be dedicated to the welfare of Chagossians.

The Treaty makes little to no provision for the Chagossians and there are strong reasons to doubt that Mauritius would make decent provision for them if the Treaty is ratified. If the UK retains sovereignty over the Islands, as it should, it has an opportunity to make better provision for the Chagossians than the Treaty requires or Mauritius is likely to undertake. This will not compromise the security of Diego Garcia but would address historic wrongs and would help calm international criticism in relation to the Chagos Islands, much of which gives prominence to the Chagossians's plight.

# The significant security risks that arise in proceeding with the Treaty

The Government argues that the Treaty will provide significant protections for the future operation of the joint US-UK military base on Diego Garcia. Close analysis of the Treaty's terms shows that in fact the Treaty introduces new legal and operational risks and disarms the UK (and thus the US) from answering them adequately.[11]

If the Treaty is ratified, Mauritius will be sovereign over the Chagos Islands. The Treaty grants the UK certain rights in relation to Diego Garcia and the 12-mile zone around the island. In the archipelago outside Diego Garcia, the Treaty makes provision for some matters to be decided jointly by the UK and Mauritius and for some matters to be decided by Mauritius alone, after consulting the UK. The Treaty does not empower the UK to enforce the security assurances that Mauritius will nominally be undertaking and the future security of the base on Diego Garcia will be reliant in important ways on the goodwill of future Mauritian governments.

The Treaty has a 99-year term. There is no right to renew and the UK's right of first refusal is practically unenforceable. The Treaty introduces new legal risks to the future operation of Diego Garcia, risks that may result in Mauritius challenging UK-US use of the base and/or attempting to extort increased payments, or better terms, in the future.

### *The limits of the protections set out in the Treaty and the difficulty of enforcing them*

Annex 1 of the Treaty sets out various undertakings and procedures in relation to defence and security. The Annex distinguishes between (1) Diego Garcia, which includes the island and a 12-mile nautical zone around the island, and (2) the Chagos Archipelago beyond Diego Garcia. The UK is also required to

[11] See further *Parliament's role in ratifying the UK-Mauritius Agreement concerning the Chagos Islands* (June 2025), n4 above.

"expeditiously inform Mauritius of any armed attack on a third State directly emanating from the Base on Diego Garcia." It is unclear whether this notice has to be given before or after the attack.

In relation to Diego Garcia, per Article 2, Mauritius agrees that the UK shall have unrestricted access to Diego Garcia and extensive rights to enable the continuing operation of the joint UK-US base. In relation to the Chagos Archipelago beyond Diego Garcia, the position is more complex. Mauritius agrees that UK-US vessels and aircraft shall have unrestricted access. The agreement then makes provision for various matters to be jointly decided by the UK and Mauritius, including: (a) management and use of the electromagnetic spectrum, (b) permission for the presence of security forces from states other than the UK, US and Mauritius, and (c) the construction or emplacement of any maritime installation, sensor, structure or artificial island between 12-24 miles of the island of Diego Garcia. Finally, the agreement provides that Mauritius shall conduct a security review (to which the UK may contribute information) before approving a proposal for (a) the construction of any maritime installation, sensor, structure or artificial island beyond 24 miles of the island of Diego Garcia or (b) development in the land territory of the archipelago.

Thus, one needs to distinguish between matters in relation to which the UK has been granted rights of exclusive control, matters requiring joint decision, and matters in relation to which Mauritius retains exclusive control but agrees to hold a security review and consult the UK.

Important questions arise as to how or whether the UK can enforce the requirement that certain matters be taken only by joint decision. Under the terms of the Treaty, the UK will clearly have no legal right, in the Chagos Archipelago beyond Diego Garcia, to exclude vessels or aircraft, including those belonging to the military forces of a third state, even if their entry has been undertaken without Mauritian authorisation or pursuant to Mauritian authorisation in breach of the Treaty, which requires joint decision. Likewise, the UK will have no legal right to remove, demolish or disable maritime installations, sensors, structures or artificial islands constructed in breach of the requirement that any such construction is authorised by joint decision. This stands in sharp contrast to the status quo now, without the Treaty, in which the Chagos Islands are sovereign UK territory, which means that the UK and US have complete freedom to exclude vessels or aircraft from other states and to control the outer islands.

If the Treaty is ratified, it is also unclear how or whether the UK can respond to Mauritian actions, say in relation to construction outside the 24-mile zone, that the UK reasonably fears will prejudice the security of the base on Diego Garcia. By agreeing that Mauritius is sovereign, the UK will forswear all legal rights, beyond those assured by the Treaty, to take the action that it judges necessary to protect the operation of Diego Garcia. The UK's only recourse will be negotiations.

In addition, under the Treaty, the UK will clearly have no rights, and Mauritius undertakes no obligations, in relation to civilian shipping in the Chagos Islands beyond Diego Garcia. For the foreseeable future, Mauritius has no capacity to police the waters of the archipelago. This opens up security risks to the UK-US that may arise from the misuse of apparently civilian shipping.

The legal position after the Treaty is ratified and enters into force will be that Mauritius is sovereign over the Chagos Islands, but grants various rights to the UK, for 99 years, subject to renewal, which is not guaranteed.[12] The Treaty will bring the dispute about sovereignty to an end, because the UK will be accepting Mauritius's claim. But accepting that Mauritius is sovereign exposes the operation of the base on Diego Garcia to the risks arising out of the actions of future Mauritian governments, which may be more or less supportive of or hostile to the continuing UK-US presence and/or may wish to renegotiate the terms of the agreement, whether to increase annual payments or otherwise. Acquiring sovereignty over the archipelago – and the terms of the Treaty – provides future Mauritian governments with considerable leverage. This in turn makes the Mauritian government an attractive target of subversion by foreign states, most notably China, which will be able to misuse this leverage in future.

Mauritius has limited rights of termination, which are subject to a UK right to initiate arbitration. But the counterpoint is that the UK has very little capacity to enforce the Mauritian undertakings in the Treaty. It cannot withhold annual payments without risking termination. While the UK can and should maintain its

[12] The UK has the right of first refusal if Mauritius offers Diego Garcia to a third party. However, there is no obvious means to enforce this provision, which in any event requires the UK to be willing to match *whatever* terms Mauritius offers to another state to occupy Diego Garcia. Further, it will clearly be open to a third party at this juncture to agree terms with Mauritius that deny the UK continuing use of Diego Garcia without triggering the right of first refusal. For example, a state might agree with Mauritius a foreign investment agreement for development of Diego Garcia that does not involve, at least at first, use of the island as a military base.

rights under the Treaty in relation to the occupation and use of Diego Garcia itself, it can only protest against Mauritian breach of its assurances under the Treaty in relation to the Chagos Archipelago beyond Diego Garcia. The requirement for joint decision is not enforceable save by negotiation, and decisions about construction outside the 24-mile zone are for Mauritius alone to make, subject to a UK right to be informed and to make submissions. Some critical matters, such as regulation of civilian shipping, are not expressly regulated at all, which means they will be entirely for Mauritius as sovereign to decide, subject only to a general obligation not to prejudice the operation of the base on Diego Garcia.

The point is that after the Treaty is ratified, critical decisions will be for Mauritius alone to make, or for Mauritius to make nominally "with" the UK but where the UK has no recourse in the event of Mauritian unilateral action. As a practical matter, future Mauritian governments will have leverage from which to extract UK agreement to amendments to the Treaty that worsen our position further.

In deciding how to operate across the 99-year term of the Treaty, Mauritius will, understandably enough, consider its own economic and foreign policy interests, which may involve moving closer to China or other third states that are hostile to the continuing UK-US presence or maximisation of the economic return from the archipelago, whether by way of increased payments from the UK or by development of the islands, fishing, and deep-sea mining. The premise on which the agreement has been made is that Mauritius will be a reliable partner for the next 99 years and beyond and that its interests will align with the UK's interests such that it will not take advantage of the terms of the agreement and the UK's limited capacity to enforce them.

This is a shaky premise indeed, not least since even if future Mauritian governments prove reliable, which is a gamble, it is entirely foreseeable in 99 years that Diego Garcia (and indeed the whole archipelago) may remain critically important to UK security interests, not to mention their environmental importance. Moreover, the fact that Mauritius agreed to sell the Chagos Islands to the United Kingdom, only to change its mind decades later and try to reclaim them, pursuing a campaign of lawfare to this end, speaks to the unreliability of Mauritius as a long-term partner over the use of the Chagos Islands.

It would be misleading to assert that the UK has a veto over the presence of foreign military forces in the archipelago or over developments in the archipelago that could undermine the security of the base. What the UK will have are assurances from Mauritius which cannot effectively be enforced. The UK cannot withhold annual payments in the event that Mauritius fails to comply with its obligations. If the UK were to withhold annual payments, this would trigger Mauritius's right to terminate the Treaty, at which point the UK and US would have no right to operate the joint base out of Diego Garcia. Thus, the protections that the Treaty purports to provide are considerably worse than the status quo, in which the UK is sovereign. Further, these are protections that by hypothesis are only necessary because of Mauritian lawfare, a fact which should raise serious concerns about the reliance that the Treaty places on the goodwill and trustworthiness of future Mauritian governments over the next century. If the UK ratifies the Treaty, with American consent as is required by the 1966 treaty, then the UK and the US will have exchanged the security of UK sovereignty for the insecurity of Mauritian sovereignty subject to the terms of the Treaty, many of which cannot effectively be enforced in the event of any future dispute.

***The new legal risks that the Treaty introduces***

Setting aside failure to make annual payments, there are three main grounds on which Mauritius may allege that the UK is in breach of the Treaty.

The first concerns UK compliance with Article 4. If Mauritius takes the view that UK or US operations out of Diego Garcia are not compatible with the international law governing the use of force, then it may allege that the UK is in breach.

While the Treaty is not yet in force, the controversy about American military intervention in the Israel-Iran conflict raises this prospect. If the Treaty had been in force, and the UK Government had given permission to the US to use Diego Garcia to mount strikes on Iran – in defence of Israel against ongoing Iranian aggression or to disarm Iran from becoming a nuclear armed power (with clear genocidal intent) – then Mauritius might well have claimed that the UK was in breach of the Treaty. The same is true if the UK Government were to give permission to the US to use Diego Garcia to mount strikes on Iran to support the Iranian people against the murderous regime.

If Mauritius were to claim the UK was in breach of Article 4, this would not trigger a right to terminate. However, it could be grounds for Mauritius to take counter-measures (actions that would otherwise breach the treaty, but which are not legal breaches because they are in response to the other party's alleged breaches of the treaty) against the UK, involving action that would otherwise be proscribed by the Treaty, for example, in relation to the presence of other countries' armed forces, or construction of installations that pose a security risk to the base on Diego Garcia.

As Field Marshal Lord Houghton of Richmond noted:

> *"…if Mauritius is the sovereign power [over Diego Garcia], it cannot alienate its responsibility under international law for itself being happy that the United States is conducting an operation or conducting a strike in accordance with international law. These are matters of sensitive judgment and it might reach a judgment that is contrary to the United States judgment on whether such things as proportionality and military necessity are being met in one of the targets that it is conducting an offensive strike against."*[13]

The second legal risk concerns compliance with the provision in Annex 1 which requires the UK expeditiously to inform Mauritius about the use of force originating from the base on Diego Garcia. While this provision could certainly be read, and may be understood by the UK, to require notice only *after* an operation has been launched, it could also be read, and might be claimed by Mauritius, to require notice *before* an operation has been launched. The latter reading would obviously pose a threat to the security of the base and to the effectiveness of UK or US military action. But there is a clear risk that Mauritius will insist on such a reading, claiming that the UK is in breach of its obligations and thus that its sovereignty over the Chagos Islands is not being respected under the terms of the Treaty, which warrants counter-measures or renegotiation of the terms.

The third ground on which Mauritius may allege that the UK is in breach concerns the Treaty of Pelindaba,[14] which creates an African Nuclear-Weapon-Free Zone. Under this treaty, Mauritius "undertakes to prohibit, in its territory, the stationing

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[13] Corrected oral evidence, *Implications of the transfer of sovereignty of the Chagos Archipelago*, International Agreements Committee and International Relations and Defence Committee, House of Lords, 17 June 2025.
[14] African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba).

of any nuclear explosive device." This is binding in international law, and if Mauritius allows the stationing of a nuclear weapon on its territory it would be in breach of international law. Signatories can only withdraw from the Treaty of Pelindaba if "it decides that extraordinary events, related to the subject-matter of this Treaty, have jeopardized its supreme interests."

Platforms capable of delivering nuclear weapons are regularly based on Diego Garcia; and nuclear weapons are widely understood to be, or have been, stored on Diego Garcia. If the transfer of sovereignty takes place, Diego Garcia will become sovereign Mauritian territory, and Mauritius will be required, as a matter of international law, to prohibit nuclear weapons from being stored or held ready at the base. It goes without saying that the usefulness of Diego Garcia will be enormously diminished if it becomes a nuclear weapon-free zone.

The Government has dismissed these concerns, while refusing to explain its confidence. Giving evidence to the International Agreements Committee of the House of Lords on 17 June 2025, Stephen Doughty MP, Minister of State to the FCDO, brushed away a question about the applicability of the Treaty of Pelindaba. After having stated that Mauritius is a party to the treaty and the UK is not, he went on to say that "I will not go into further details than that but we are confident that those concerns have been met."[15]

The Minister's answer may have been an allusion to Article 7, the third clause of which provides that:

> *"The Parties agree that nothing in this Agreement shall subject either Party to any obligation arising under a treaty to which it is not a party or which, in respect of its own treaty obligations, is not applicable to the territory covered by this Agreement."*

The UK is not a party to the Treaty of Pelindaba, and hence the Minister may have intended to convey, without quite spelling out, that the agreement with Mauritius would not make the UK subject to an obligation under that Treaty. But this is not the issue. The question is whether Mauritius is subject to such an obligation and

[15] Corrected oral evidence, *Implications of the transfer of sovereignty of the Chagos Archipelago*, International Agreements Committee and International Relations and Defence Committee, House of Lords, 17 June 2025.

how it will act if or when US-UK operations on Diego Garcia place it in breach of this obligation – or when Mauritius's breach comes to international attention.

It is no comfort that the first clause of Article 7 provides that:

> *"Each Party confirms that none of its existing international obligations or arrangements now in force or effect between it and any third party is in conflict with the provisions of this Agreement, and that nothing in this Agreement shall affect the status of existing international obligations or arrangements except as expressly provided for in this Agreement."*

This provision confirms the problem. True, Mauritius should not be entering into this agreement: for even if "the provisions of the Agreement" are not themselves in conflict with Mauritius' existing obligation to prohibit the stationing of nuclear devices on its territory, the operations of the UK-US in reliance on the Agreement are notoriously likely to involve such stationing and ought accordingly to be prohibited by Mauritius – all of which is so obvious that it is unclear how Mauritius can be both acting in good faith and complying with its existing obligations under the Treaty of Pelindaba.

# The risks to the environment

The Chagos Archipelago is one of the richest, natural marine environments remaining anywhere in the world.[16] Due to the very low levels of human activity in the Chagos Islands and its geographic isolation, the Chagos has exceptional levels of biodiversity. It is home to almost 800 species of fish, at least 300 types of coral, 280 species of plants and fern, and some 50 species of birds. Many cannot be found anywhere else. As of 2010, 76 species that are present in the Chagos Archipelago are threatened with extinction.

The exceptional environmental significance of the archipelago is robustly protected by a total UK ban on fishing and on developments on the outer islands. All this is set to change if the Treaty is ratified and the Chagos Islands become Mauritian territory. Mauritius has an appalling environmental record and lacks the capacity to protect the environment of the Chagos Islands, which are after all a very long way indeed from Mauritius. It lacks the capacity and it very likely also lacks the will.

While the UK Government has paid lip service to the importance of the environment, the environmental provisions of the treaty are so weak as to be meaningless. Article 5 requires the United Kingdom to "provide support and assistance to Mauritius in the establishment and management of its Marine Protected Area (MPA) in the Chagos Archipelago, in accordance with terms to be agreed between the Parties by a separate written instrument." Yet, the Government has invited Parliament to authorise cession to Mauritius before this separate instrument has been agreed and certainly before it has been shared with or approved by Parliament.

The Treaty does not oblige Mauritius to establish or to maintain an MPA. Indeed, the Treaty gives Mauritius carte blanche to conduct environmentally destructive activities in the Chagos Islands, so long as it does not conflict with the other provisions of the agreement. The substantial annual payments that the UK will make to Mauritius under the terms of the agreement cannot be withheld if

[16] See further *Averting an Environmental Catastrophe in the Chagos Archipelago* (Policy Exchange, January 2026), n4 above, and Richard Ekins, "The Chagos Islands deal is even worse than it looks", *The Critic*, 5 January 2026.

Mauritius fails to protect, or actively damages, the marine environment. In other words, the Government has reached an agreement that does not impose meaningful obligations on Mauritius and which the UK lacks any leverage to enforce.

Putting the point at its lowest, transferring sovereignty to Mauritius clearly weakens environmental protection, for even if Mauritius was as committed as the UK to high environmental standards, it simply lacks the capacity to act. And if Mauritius proves as uninterested in conservation as its record suggests is likely, or if a future Mauritian government decides that the waters of the archipelago are a resource to exploit, then an environmental catastrophe may unfold. For some supporters of the Treaty, this is all beside the point. The Chagos Islands belong to Mauritius, the UK is in unlawful occupation, and it is time to give them back. This legal analysis should be firmly rejected, for the reasons that Policy Exchange has set out in a series of reports.

The UK has a responsibility to protect the oceans from exploitation and degradation. It fails to act responsibly if it hands over the archipelago to a state that is uninterested in or incapable of protecting them from harm.

# Conclusion

The Government reached an agreement in principle with Mauritius in October 2024, signed the Treaty in May 2025, and has been working towards its ratification ever since. This has clearly been a major priority for the Prime Minister and others in government. For the reasons set out above, and in considerable detail in earlier Policy Exchange reports, the Government's determination to cede the Chagos Islands to Mauritius is wholly misconceived. The UK has no obligation in international law to surrender the Islands to Mauritius and there is no prospect of the UK being forced to do so by an international tribunal. The UK can and should stand on its sovereign rights.

President Trump's intervention on 20 January provides an opportunity for the Government to think again. In view of the 1966 US-UK treaty, American consent is a legal requirement as well as a political requirement for the UK to ratify the Treaty with Mauritius. If the UK were to press ahead and surrender the Islands despite American objections, which should be politically unthinkable, it would breach the 1966 treaty and be in breach of Article 7 of the Treaty with Mauritius. The Government should take this opportunity to walk away from the Treaty and should not devote diplomatic capital to persuading the United States to acquiesce. The Government should instead resolve to maintain UK sovereignty over the Chagos Islands and to resist Mauritian lawfare.

The risks of walking away from the Treaty and maintaining UK sovereignty have been greatly exaggerated. No international tribunal has authority to rule that Mauritius is sovereign over the Chagos Islands or to require the UK to cede the Islands to Mauritius. If any international tribunal in some other context, such as the law of the sea, takes for granted that Mauritius is sovereign, its ruling will be fundamentally misconceived – and the UK should refuse to comply. There is no real risk to the operation of the electromagnetic spectrum, overflight access, or civilian contractors. If Mauritius were to attempt to frustrate US-UK defence interests in these ways – or were to take payments from our adversaries to enable their incursion into the archipelago – it would be a hostile state and should be treated as such, which should discourage it from acting recklessly.

The risks of ratifying the Treaty and ceding the Chagos Islands to Mauritius have been greatly underappreciated. While the Treaty makes provision for some decisions to be made jointly by the UK and Mauritius, this does not provide the UK with a veto and the UK will have no recourse, save negotiations, if Mauritius fails to comply with its obligations or takes a different view to the UK and the US of its obligations. If the Chagos Islands are Mauritian territory, Mauritius will almost certainly become an even more attractive target for Chinese subversion. The Government's case for the Treaty is grounded in unjustified confidence in the goodwill of future Mauritian governments. The Treaty introduces significant new legal risks in relation to compliance with international law, the duty to give notice about operations, and Mauritius's obligations to prohibit the stationing of nuclear weapons on its territory, which after cession would include Diego Garcia. While Mauritius may have limited capacity to eject the US and UK within the 99-year term of the Treaty, it can take counter-measures that would have a very significant negative impact on our defence interests.

In addition, surrendering the Chagos Islands to Mauritius compounds rather than addresses the historic injustices done to the Chagossians. It also makes likely an environmental catastrophe in the Indian Ocean, with a priceless marine environment set to be exploited and degraded.

These are very good reasons not to cede the Chagos Islands to Mauritius. The Trump Administration would be well within its rights – and would be acting prudently to vindicate joint US-UK defence interests – if it refused to consent to the amendment of the 1966 treaty. The UK Government would be acting responsibly if it recognised that the Treaty with Mauritius is a bad mistake, that US-UK defence interests would be much more secure if the UK retained sovereignty and that for many other reasons – financial prudence, fairness to the Chagossians, environmental protection – handing over the Chagos Islands to Mauritius would be a decision to regret.