

Islands of Disagreement

3VB/NUS Lecture

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1. Thank you, Catherine, for this kind and generous introduction.
2. It is a pleasure to deliver this distinguished lecture and to follow my friend and long-time collaborator Jorge Viñuales in the series.
3. It is a particular honour that Sir Christopher Greenwood is my responder. Chris' work at the highest level of our profession – as academic, barrister, judge, arbitrator and editor of the *International Law Reports* – has been a source of inspiration ever since I came to the LSE as a student of economics more than 20 years ago. As Head of the Law Department, Chris introduced his students at our graduation with his oratorical skills on full display. How I wished I were his student.
4. Years later, we shared anecdotes on life as young lecturers at Cambridge and our shared appreciation of Sir Eli Lauterpacht.
5. You can see Sir Eli on this slide, on a site visit to the island of Sipadan in the context of the ICJ proceedings concerning Sovereignty over Pulau Ligitan and Pulau Sipadan. On the next slide, you can see Sipadan Island from a distance.

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6. Sir Eli took me under his wing from the moment I arrived in Cambridge from Austria. He supported my career over the next 10 years with his gentlemanly charm and mischievous sense of humour.
7. Yesterday, the Lauterpacht Centre advertised the inaugural Cathy and Sir Eli Early Career Fellow in International Law. I dedicate this lecture to Sir Eli's memory.
8. Thank you for the invitation to 3VB and the National University of Singapore. I am very grateful for the opportunity to pursue my interest in islands further, opening new avenues for future research and blue-sky thinking.
9. For your encouragement and for making this lecture a reality, thanks, Can – my dear classmate from Harvard, Attila, Stavros – breaking new ground at NUS – Catherine and Cameron – part of a group of Australian international lawyers and others, like myself, who flocked to Cambridge in recent decades to learn from the great James Crawford.
10. I am delighted to see many familiar faces in the audience – friends, former students and my family.
11. International lawyers have neglected islands for much of the 20th century. Of more than 1,400 courses published over the Hague Academy's first century¹, only three said much about islands, including Sean Murphy's course in 2016.²
12. In recent years, international lawyers have been discovering islands. Donald Rothwell calls our era the "*age of islands*".³ How times have changed.

¹ Drawing on the dataset compiled for the computational analysis in Damien Charlotin and Michael Waibel, 'A History of the Hague Academy's First Century: Computational Insights from the Recueil des cours' (2025) 36 European Journal of International Law 927–959.

² Sean D. Murphy, *International Law Relating to Islands* (Brill 2019), 16.

³ Donald R Rothwell, *Islands and International Law* (Hart Publishing 2022), XXX.

13. Islands have long had a powerful hold on the human imagination. Celebrated works of literature feature islands, such as Daniel Defoe's *Robinson Crusoe* and Robert Stevenson's *Treasure Island*, with colonial overtones.
14. Some islands are of strategic importance. This is where my title comes in, for which I owe you an explanation: by the term "island of disagreement", I mean islands whose sovereignty is contested between two states.⁴ That contestation can be legal, with each side advancing "specific and argued"⁵ claims grounded in international law, or it can be a political contestation.
15. As a young scholar, I first discovered the fascinating world of British Overseas Territories and the complex legal questions they raise through Sir Michael Wood. Sir Michael encouraged me to write the entries on the Falklands/Malvinas and Gibraltar for the Max Planck Encyclopaedia.
16. My lecture addresses **three questions** that military bases on islands raise.
 1. First, if a third state attacks a military base on an island of disagreement, which state has been attacked: the state that operates the base, the state with title to the island, or both states?
 2. Second, what is the role of **consent** regarding the use of a military base on islands?
 3. Third, if an armed attack emanates from the base, can a state use force in **self-defence** against the base, or even the whole island?
17. I will address these questions in conceptual terms. This conceptual focus is a luxury: Unlike practising lawyers, and especially government lawyers, I do not need to grapple with the facts in any detail. As economists say, my world is one of full information. There is no uncertainty.

⁴ The title is inspired by Gabriella Blum, *Islands of agreement: managing enduring armed rivalries* (Harvard University Press, 2007) – a book that has nothing to do with islands in the geographic sense.

⁵ *Land, Island and Maritime Frontier Dispute*, ICJ 1992, XXX.

18. After addressing these three questions, I conclude with some reflections on how to resolve disputes concerning islands with military bases. Based on my analysis, I underscore the importance of international law constraints to prevent such disputes from escalating to armed conflicts.
19. In the first part of my lecture, I survey selected islands of disagreement.

1. A Brief Survey of Three Islands of Disagreement

20. Over the last century, aerial warfare has taken centre stage. The national security dimension of islands – both offensive, to project air power and defensive, to provide advance notice of incoming aerial threats – has become crucial.
21. Some bases – such as Diego Garcia and Guam are “stationary aircraft carriers”. Military bases on islands have multiplied.
22. My lecture this evening focuses on *five* strategically significant islands with military bases: Diego Garcia as part of the Chagos archipelago; Cyprus; Greenland; the Falklands; and the Kuril Islands/the Northern Territories.
23. Each of these five (groups of) islands has unique features. All are “islands of disagreement”, as I show in my lecture. *Each* raises questions regarding the use of force against or from military bases on these islands.
24. I leave aside various other important islands, such as Cuba and Taiwan. I do not discuss the legality of the ongoing war in the Middle East, nor do I focus on marine protected areas or self-determination.
25. On islands, we often find groups of people with a long, shared history. Often, they claim the right of self-determination, as seen in the cases of Chagos and Okinawa.

26. By partly addressing British Overseas Territories today, I am asking for trouble. I have never been to any of the five islands I discuss this evening. The facts are changing. The status of some overseas territories is fragile. There is a heated debate at home and abroad. The Shadow Foreign Secretary attached the label “surrender treaty” to the treaty. And not only regarding the British Indian Ocean Territory/Chagos. After damage to RAF Akrotiri in March 2026, the President of Cyprus asked for a renegotiation of the Sovereign Base Areas.
27. In early 2026, President Trump threatened to annex Greenland. He made this threat even though Denmark’s title to Greenland has been settled for over 70 years.
28. In 1916, as you can see on this slide, US Secretary of State Lansing confirmed that the United States “will not object to the Danish Government extending their political and economic interests to the whole of Greenland” – the model for the Norwegian Ihlen Declaration 3 years later, which featured centrally in the *Eastern Greenland* case
29. In 1941, the Danish Ambassador in the United States, Henrik Kauffmann, concluded on his own volition and “in the name of the King”, a wartime agreement with the US concerning the establishment of military bases in Greenland. It did not contain a right of termination. German-occupied Denmark tried to relieve him of his position – without success – and branded him a traitor.
30. After World War II, the United States refused to leave Greenland and kept its soldiers there.
31. The 1951 Denmark-US Defence Agreement acknowledged this reality of US soldiers in Greenland. It largely replicates the 1941 agreement. It is premised on Danish sovereignty over Greenland. The 1951 Agreement supplies general Danish consent for the US to use Pituffik Space Force Base. You can see this Pituffik on this slide, the US northernmost base, 1200 km north of the Arctic Circle.

32. I turn to the Sovereign Base Areas of Akrotiri and Dhekelia in **Cyprus**. The UK conditioned independence of the colony of Cyprus on separating the Sovereign Base Areas – 3 per cent of the island – from the territory of the future Republic of Cyprus. The Sovereign Base Areas are nominally UK sovereign territory under the 1960 Treaty of Establishment. The UK pays Cyprus no rent.
33. UK courts treat the Sovereign Base Areas as a British overseas territory of unbroken colonial pedigree.
34. In *R (Bashir) v Secretary of State for the Home Department*, the Court of Appeal held that the Sovereign Base Areas were “*a continuation of the Colony of Cyprus*”.⁶
35. The Cyprus Supreme Court in *Preece* described Akrotiri and Dhekelia as a *sui generis* territorial regime linked to the original decolonisation settlement with the UK. They were not UK territory.⁷
36. Among scholars, Rosalyn Higgins, writing almost contemporaneously, observed that Cyprus “would seem to come very close to the borderline of lack of true independence” on account of the Sovereign Base Areas.⁸
37. I move to the Chagos Archipelago.
38. Diego Garcia is the largest island with an important joint UK-US military base. The 2019 ICJ Advisory Opinion confirmed that Mauritius has title to Chagos. The UK unlawfully excised Chagos from Mauritius on the eve of Mauritius independence.

⁶ *R (Bashir) v Secretary of State for the Home Department* [2017] EWCA Civ 397, [57]-[62].

⁷ *Graham Thomas Preece v Estia Asfaltiki* (1991) 1 CLR 568 (Supreme Court of the Republic of Cyprus).

⁸ Rosalyn Higgins, *The development of international law through the political organs of the United Nations* (Oxford University Press 1963), 34 (borderline character of Cypriot statehood presented no obstacle to Cyprus’s admission to the United Nations).

39. Under the 2025 treaty, signed on May 22 2025, the UK recognises Mauritian sovereignty over Chagos; it leases Diego Garcia back from Mauritius for 99 years; the UK undertakes to pay rent in return for the unconstrained use of the military base, jointly with the US (without the need for Mauritius to provide consent to future military operations). India welcomed the treaty as the “culmination of the process of decolonisation of Mauritius”.
40. The UK has yet to ratify the treaty. It was not found in today’s King’s Speech.
41. I now turn to my first question: if a third state attacks a military base on an island of disagreement, which state has been attacked: the state that operates the base, the state with title to the island, or both states?

2. Armed Attacks on Military Bases on Islands

42. Imagine an armed attack on Pituffik Space Base in Greenland.
43. The island of Greenland is Danish. The military base belongs to the United States.
44. Who has been attacked?
45. Both states, I argue: Denmark, as the state with title to Greenland, and the US, as the State whose base the attack targets.
46. That the armed attack is against two states does not mean that a mutual defence obligation is triggered. This depends on the precise terms of the agreement.⁹ For example, as regards Japan,

⁹ E.g., Article 5 of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan covers only “territories under the administration of Japan” (excluding hence the Northern territories that Japan claims but that Russia controls); the Mutual Defense Treaty between the United States and the Republic of Korea refers to “territories now under their respective administrative control, or hereafter recognized by one of the Parties as lawfully brought under the administrative control of the other”. The US Senate added the qualifier that the mutual defense obligation covered only “territory which has been recognized by the United States as lawfully brought under the administrative control of the Republic of Korea”.

the US defence obligation is limited to “territories under the administration of Japan”. It therefore excludes the Northern Territories.

47. I move to the UK’s Sovereign Base Areas on Cyprus.

48. An armed attack against these bases is an armed attack against both Cyprus and the UK.

49. Why is it an armed attack against Cyprus, too, despite the UK’s far-reaching sovereign rights?
This is because the armed attack has spill-over effects on Cyprus’s territorial integrity and its population.

50. One important implication is that the UK must immediately notify Cyprus of armed attacks against the Sovereign Base Areas.

51. Granted, the Treaty of Establishment contains no express obligation for the UK to notify Cyprus immediately.

52. Notwithstanding, the Treaty of Establishment implies such a duty of notification. Like most treaties, it is an incomplete agreement.

53. Importantly, it satisfies all four conditions for an implied treaty term according to Cameron Miles’s prize-winning, recent framework published in the *American Journal of International Law*.¹⁰

54. First, the duty of notification derives from express terms (the four-party “consult and co-operate” duty and cooperation on base security); second, it does not contradict express terms; third, it is necessary. The consult and co-operate duty would otherwise be incomplete, considering the more than 10,000 Cypriot civilians resident on the bases; fourth, it is consistent

¹⁰ Cameron Miles, ‘Implied Terms in Treaties’ (2025) 119 *American Journal of International Law* 57, 96-104.

with the treaty's character of a constitutional settlement at independence for ongoing cooperation between Cyprus and the United Kingdom.

55. More generally, in the case of islands of disagreement, the armed attack is directed against *any* state with “specific and argued”¹¹ claims to the island concerned.
56. This conclusion applies even to the claimant state with no physical presence on the island.
57. Examples include the Falklands/Malvinas and the Kuril Islands/Northern Territories. An armed attack against both these islands is directed against the UK and Argentina, as well as against Russia and Japan.
58. There is one exception to my proposition that there are two victim states. This exception is for armed forces unlawfully present on an island of disagreement.
59. The exception only applies subject to stringent conditions: namely, if the Security Council or the ICJ has determined that the presence of a state's armed forces materially breaches the stationing agreement¹² or that their presence is otherwise unlawful.
60. In accordance with the 2019 Chagos advisory opinion, the UK's continuing administration of Chagos is unlawful. For the time being, an armed attack on Diego Garcia cannot be considered an attack against the UK.
61. This exception applies if the host State uses military force. It *may* even apply if a third State uses military force against the military base.

¹¹ *Land, Island and Maritime Frontier Dispute*, ICJ 1992.

¹² In relation to the host state only. UNGA Resolution 3314 (XXIX) Annex, art 3(e). When the host state and the sending State disagree, the exception does not apply. It is available only when the breach has been authoritatively adjudicated, expressly conceded, or is otherwise undisputed. See further on the relationship between the lawfulness of military presence and the availability of self-defence, Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018)

62. On 20 March 2026, Iran fired two ballistic missiles at the joint UK-US military base on Diego Garcia from a range of approximately 2,500 miles – the first known strike against the base. US air defences reportedly intercepted one missile; the other failed mid-flight; there were no reported casualties.¹³
63. This specific use of force against Diego Garcia, on its own, was only directed at Mauritius. Assuming that Iran was the state launching an armed attack, it did not trigger a UK (or US) right of self-defence.
64. The 2025 treaty would change this position. Once it is in force, such an attack would count as an armed attack against three states: Besides Mauritius, it would also be an armed attack against the UK and the US, on account of their now lawful presence on Diego Garcia.
65. I reach this conclusion through opposite inference. The general rule is that a state's armed forces benefit from the right to self-defence, regardless of their location: whether they find themselves on their state's territory, on another state's territory, or in areas beyond national jurisdiction such as the high seas.
66. As Judge Greenwood stated in his 2011 Max Planck Encyclopaedia entry on self-defence: "an attack upon units of the armed forces of a State lawfully stationed or operating in the territory of another State can constitute an armed attack upon the State of those forces (the sending State) as well as the State on whose territory the attack occurs (the host State)".¹⁴
67. The precondition for self-defence to be available is the lawfulness of the forces' presence.
68. In sum, when a military base on an island is attacked, which state is attacked?

¹³ 'U.K. confirms Iran fired two missiles at UK-US base in Indian Ocean, which failed to reach their target' CNBC (22 March 2026); 'Did Iran launch missiles at US-UK base on Diego Garcia? Here's what to know' Al Jazeera (22 March 2026); Markus Schiller, 'What does the reported attack on Diego Garcia tell us about Iran's missile capabilities?' SIPRI Topical Backgrounder (2026).

¹⁴ Christopher Greenwood, 'Self-defence' (2011) Max Planck Encyclopedia of Public International Law.

1. First, the State with title to the island
2. Second, all States with “specific and argued” claims over the island
3. Third, the State which lawfully operates the military base
4. Fourth, any State which lawfully uses the military base

69. I now move to my second question: What role does consent play regarding the use of a military base?

3. Consent for Using Military Bases

70. On March 1, 2026, the UK authorised the use of some UK bases by US forces against Iran, including Chagos and the Sovereign Base Areas on Cyprus. The authorisation was conditional and limited to “*specific and limited defensive purposes*”.¹⁵ Prime Minister Starmer described this authorisation as allowing for the destruction of “*the [Iranian] missiles at source*”.

71. Three weeks later, the UK broadened this authorisation to operations “*to degrade the missile sites and capabilities being used to attack ships*”, in the Strait of Hormuz.¹⁶

72. It is precisely because of those limits that the use of the bases for offensive operations in general would exceed the UK’s consent.

73. For Diego Garcia specifically, the UK, currently, as long as the 2025 treaty is in limbo, is incapable of consenting to even a defensive use of force.

¹⁵ M Milanovic, ‘The Legality of the UK Interception of Iranian Missiles and Permitting a Limited US Use of British Bases’ (*EJIL: Talk!*, 2 March 2026) <<https://www.ejiltalk.org/the-legality-of-the-uk-interception-of-iranian-missiles-and-permitting-a-limited-us-use-of-british-bases/>> accessed 11 May 2026.

¹⁶ M Milanovic, ‘The Legality of the UK Permitting the US to Use British Bases to Stop Iranian Attacks on Shipping in the Strait of Hormuz’ (*EJIL: Talk!*, 21 March 2026) <<https://www.ejiltalk.org/the-legality-of-the-uk-permitting-the-us-to-use-british-bases-to-stop-iranian-attacks-on-shipping-in-the-strait-of-hormuz/>> accessed 11 May 2026.

74. The state with the title – in this case, Mauritius – needs to consent to the continued existence and operation of the UK-US joint base on its territory, absent a specific agreement to the contrary (which the 2025 treaty would provide).
75. In general, the host state's consent provides the foundation as well as the limits for the establishment and lawful operation of a military base on an island. The host state may condition and limit the use of military bases on its islands generally, or on a case-by-case basis.
76. The conditioning of consent in general and in specific cases operates within general international law, including and especially the peremptory rule of the prohibition against the use of force and the right to self-determination.
77. A military base may be used in a way that goes beyond what the host state generally permits in specific cases.
78. For the 1986 US strike against Libya, Prime Minister Thatcher conditioned permission for US use of UK bases by the United States on the strike being “*directed against specific Libyan targets demonstrably involved in the conduct and support of terrorist activities.*”
79. Judge Greenwood observed at the time that “*if the United States was guilty of aggression in carrying out the attack, the United Kingdom also incurred international responsibility for this violation*”.¹⁷
80. If the state hosting a military base participates in the armed attack directly, it becomes a co-party to the armed conflict.¹⁸

¹⁷ Christopher Greenwood, ‘International Law and the United States’ Air Operation against Libya’ (1987) 89 West Virginia Law Review 933.

¹⁸ Christopher Greenwood, ‘Scope of Application of Humanitarian Law’ in D Fleck (ed), *The Handbook of International Humanitarian Law* (2nd edn, OUP 2008), 58 (“direct support to the military operations of one of the belligerents’ would suffice, provided that it is ‘directly related, i.e. closely related in space and time, to measures harmful to the adversary’”); Alexander Wentker, *Party Status to Conflict in International Law* (OUP 2024) (analysing the conditions under which a State becomes a party to another State’s armed conflict by virtue of its support).

81. The same conclusion applies if the host State is complicit in the armed attack, that is, it aids and assists in the commission of the armed attack.¹⁹
82. This rubric covers the case when the host state makes its territory available for carrying out the armed attack and knows about the wrongfulness of the attack. These are the two easier cases.
83. The harder case is if the attacking State exceeds the bounds of the host state's general and specific consent in launching the armed attack. For instance, if the host state's consent is limited to "defensive operations" and the sending state carries out "offensive operations".
84. In such cases, the host state with effective control of the territory and knowledge of the international wrongful act can only avoid responsibility alongside the attacking state if it takes all available, non-forcible steps to ensure that the other state complies with the conditions.
85. As a final resort, the host state must revoke its general consent for the military base if case-specific limitations are to no avail.²⁰
86. Responsibility does not result from inability. It results from an unwillingness to ensure that the attacking state respects the prohibition on the use of military force.
87. The obligation is one of due diligence, and hence one of conduct, not of result: a state with effective control of the island must take in good faith all available non-forcible measures to bring the attacking state into compliance with the prohibition on using force.

¹⁹ ILC, Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in Yearbook of the International Law Commission, 2001, vol II Part Two (UN Doc A/56/10), arts 16-18 (aid or assistance, direction or control, and coercion in the commission of an internationally wrongful act); UNGA Res 3314 (XXIX), 'Definition of Aggression' (14 December 1974) UN Doc A/RES/3314(XXIX), art 3(f).

²⁰ *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4, 22 (every State's obligation "not to allow knowingly its territory to be used for acts contrary to the rights of other States"); *United States Diplomatic and Consular Staff in Tehran (United States v Iran)* [1980] ICJ Rep 3 (host-State responsibility for failure to take available non-forcible measures); Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter: *Evolutions in Customary Law and Practice* (CUP 2010); Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018), chs 4-5.

88. A host state that tries but fails is not responsible. Only a host state with the means to act but fails to do so is.²¹
89. Consider the application of this proposition to **Diego Garcia**.
90. If an armed attack were launched from Diego Garcia today, Mauritius would not become internationally responsible. While Mauritius has title to Diego Garcia, it lacks the capacity to rein in the use of that military base by the UK and the US (only the UK has that capacity, both practically and in legal terms).
91. How does consent and responsibility work for military bases on islands of disagreement?
92. Let's consider two islands of disagreement, namely the Falklands/Malvinas and the Kuril Islands/Northern Territories.
93. Both islands lack what makes Chagos unique: an authoritative determination by the ICJ (or theoretically, the Security Council) that the controlling State's continued administration is unlawful.
94. A state with "specific and argued" claims to the island over which it lacks control – in these two cases, Argentina and Japan – does not incur responsibility for the unlawful use of the base. As a rule, a state without control is unable to rein in the use of the military base. It is unable rather than unwilling.

²¹ The formulation tracks the territorial due-diligence doctrine: *Trail Smelter Arbitration (United States v Canada)* (1938 and 1941) 3 RIAA 1905, 1965 ("no State has the right to use or permit the use of its territory in such a manner as to cause injury ... in or to the territory of another"); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43 [430] (obligation of conduct, not of result, "to be discharged in good faith with all means available"); *Armed Activities on the Territory of the Congo (DRC v Uganda)* (Judgment) [2005] ICJ Rep 168 [277]-[301]. On the cognate "unwilling or unable" test in the self-defence-against-non-state-actors context, see Daniel Bethlehem, 'Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors' (2012) 106 American Journal of International Law 770; Christian J Tams, 'The Use of Force against Terrorists' (2009) 20 European Journal of International Law 359.

95. Moreover, the state in control of an island of disagreement cannot allow a third state to establish a military base on the island, or consent to a third state's use of its military base on the island. The state with "specific and argued" claims needs to consent as well.
96. For example, the UK must not allow a French military base on the Falklands/Malvinas, or the use of RAF Mount Pleasant by France; Russia must not allow a Chinese military base on the Kuril Islands/Northern Territories or allow China to use its military base.
97. Both Russia and the UK, as the states in control of the Falklands/Malvinas and the Kuril Islands/Northern Territories, maintain military bases. The UK built Fortress Falklands and RAF Mount Pleasant in 1985, three years after Argentina invaded the Falklands/Malvinas.
98. The UK was plainly entitled to ensure that Argentina would not launch another armed attack.
99. An international legal obligation to demilitarise an island requires a specific agreement (e.g., Svalbard). There is no such specific agreement for the Falklands/Malvinas and the Kuril Islands/Northern Territories.
100. In sum, consent is foundational: without the host's general and specific consent, a military base on another State's island cannot lawfully operate. Consent is bounded by scope: the host can limit what the user does.
101. Who needs to consent depends on which state has title.
102. Where the question of title over an island is unsettled law, neither the state exercising factual control nor the other state claiming title can give consent to a third state for the use of the island for military purposes.
103. I now turn to my third question: in case of an armed attack emanating from the base, can a third state use force in self-defence against the military base or even the whole island?

104. **Armed attacks emanating from military bases on islands**

105. Assume that State A launches an armed attack against State C from a military base on an island to which State B has title. State B does not know about the armed attack and is not involved in carrying it out.

106. **Can State C use force in self-defence against A's base on B's territory, or even the island as a whole?**

107. My answer is that State C may use force in self-defence, though subject to strict conditions.²²

108. What are those strict conditions?

109. Article 21 of the Articles on State Responsibility qualifies lawful self-defence as a circumstance precluding wrongfulness. The Articles left "*open all issues of the effect of action in self-defence vis-à-vis third States*".

110. On two of these open issues regarding third states, my answers are as follows.

1. First, the incidental breach of the third State's territorial integrity can be excused in narrow circumstances.

Article 51 of the UN Charter – the primary rule – confers the right to use force in self-defence – individually and collectively – against the perpetrator of the armed attack.

²² In the US-Israel-Iran War in 2026, many countries underscored the illegality of Iran striking third countries. E.g., Joint Statement (Bahrain, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates ("targeting civilians and countries not engaged in hostilities is reckless and destabilising"); "Finland condemns Iran's unjustifiable and indiscriminate strikes on the countries in the region".

The secondary rule in Article 21 of the Articles on State Responsibility can preclude the wrongfulness of C's exercise of self-defence provided the effects on State B, a non-party to the armed conflict, are genuinely incidental.

2. Second, necessity and proportionality apply with heightened rigour.

A defending State with alternative means available to use force in self-defence must prefer them, for example, against the attacking State's territory.

Using force on the territory of an innocent host state is a last resort: only when alternative means of exercising self-defence, for example against State A's territory, are unavailable or have failed to repel the attack.

Other factors are also important for necessity and proportionality, such as the conditions that the host states provide for use of the military base and whether the island hosts only the military base (e.g., Diego Garcia) or also a civilian population (e.g. Cyprus).

111. The combined effect of these two propositions is that State C can use force in self-defence only against the military base, and at most against the island.

112. By contrast, State C cannot use force in self-defence against B's remaining territory or B's armed forces in places other than the island concerned.

I now move on to my reflections on dispute settlement.

4. Resolving Disputes over Islands of Disagreement

113. The influential political scientist Robert Gilpin wrote, "throughout history, states have had the principal objective of the conquest of territory in order to advance economic, security and other interests".²³

²³ Robert Gilpin, *War and Change in World Politics*, 1981, 23.

114. Over the last hundred years, islands have become much more important to this core objective. Islands of disagreement have multiplied.
115. The *Islands of Palmas* arbitration a hundred years ago provides some ground for cautious optimism about the prospects for settling a dispute concerning islands: one declining imperial power – the Netherlands – was successful with its claim against a rising great power – the United States. The good news is that territorial dispute resolution can work. On this slide, you see the location of the island; on the next slide, you see the Island of Miangas, today part of Indonesia, with a runway almost the length of the island.
116. The caveat is that this coconut-strewn island had no strategic significance at the same time.
117. Chagos offers a more cautionary tale.
118. For islands of disagreement with strategic significance, the peaceful settlement of territorial demands requires much of the states and their populations.
119. The long, hard work of diplomatic negotiations and treaty implementation rarely moves in straight lines.
120. If a treaty settling a territorial dispute does not make it across the finishing line, the disputing parties could be estopped from going back to their starting positions.
121. Mauritius can invoke an estoppel in respect of some, but by no means all, aspects of the 2025 treaty with the UK. The UK is estopped from going back on its repeated representations since 2019 that Mauritius has title to the Chagos Archipelago. Mauritius has detrimentally relied on these representations, just like it did in the 1960s on the Lancaster House undertaking prior to its independence, as the UNCLOS Annex VII tribunal, on which Judge Greenwood served, confirmed in 2015.

122. Naturally, neither Mauritius nor the UK is entitled to the performance of the treaty pending its ratification.
123. Nevertheless, Mauritius is entitled to the minimum equity necessary to avoid the detriment that Mauritius would otherwise suffer.²⁴
124. **Estoppel operates primarily as a shield, not a sword.** This means, for example, that the UK is not obliged to pay Mauritius rent for Diego Garcia until the treaty is in force. At the same time, the UK has no right to operate the military base. This is the quid pro quo at the heart of the 2025 treaty.
125. Still, much of the 2025 treaty depends on treaty ratification and implementation: the security arrangements concerning Diego Garcia, the creation of the Chagos Archipelago Marine Protected Area (CAMPA) and the return of Chagossians to the outer islands of the archipelago.
- It is time to conclude.**
126. No issue is more likely to stimulate nationalist sentiments or lead to armed conflict than territorial disputes. And once a state uses force in a territorial dispute – or threatens to use force – chances of settling the dispute through negotiations or adjudication decline steeply.
127. An example of the corrosive effect of armed force on territorial disputes is the threats by President Trump to annex Greenland. As a result, chances of dispute settlement between Denmark and the US appear remote. Even a Hong Kong-style solution appears out of the question because of the US threat to use force.
128. The Falklands/Malvinas offer a second example. The history of the Falklands/Malvinas could have been different.

²⁴ Cf. in the commercial context, *High Court of Australia, Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387. See further Sarah Worthington, *Equity* (2nd ed. edn, Oxford University Press 2006), iv.

129. This propensity of territorial disputes to descend into violence and armed conflicts makes constraints crucial. Constraints on armed conflict make armed conflict less likely.
130. In my lecture, I argued in favour of some international legal constraints that reduce the propensity of territorial disputes to descend into violence.
131. The real practical value of the constraints is that they make armed conflict less likely. The constraints I suggested this evening include that armed forces unlawfully present on an island do not benefit from the protection of self-defence; the need for consent by the State with title for use of the base; the responsibility of the state in control; the prohibition for third states to establish military bases on islands of disagreement, or use a military base established by the state in control of the island; and a strict proportionality test for assessing the use of force in self-defence against islands with military bases.
132. Territorial disputes can fester for a long time, as the example of the Kuril Islands/Northern Territories shows. There is still no peace deal between Russia and Japan, 80 years after World War II.
133. Territorial disputes come with high opportunity costs for a state's reputation and security, but also for the livelihoods of the people concerned. Domestic political incapacity to negotiate concessions in territorial disputes can sometimes help to break the impasse through formal dispute settlement.
134. Tempering and restraining the principal objective of states that Gilpin identified is a formidable task for international law and international lawyers in our times.