



Diego Garcia: US and Allied Basing Rights in the Era of Great Power Competition

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Abstract

On June 24, 2020, CNA's Strategy and Policy Analysis program hosted an on-the-record virtual event about Diego Garcia to discuss how developments in sovereignty politics could affect US and allied military basing rights around the world in an era of great power competition. The event featured Mauritius' Permanent Representative to the United Nations, Ambassador Jagdish Koonjul, CNA's vice president and general counsel, Mark Rosen, and CNA's Strategy and Policy Analysis research program director, Nilanthi Samaranayake. Ambassador Koonjul read a prepared statement expressing Mauritius' readiness to permit the US military to maintain its base on Diego Garcia if the Chagos archipelago returns to Mauritian administration. The speakers gave an overview of the current legal and diplomatic situation surrounding the Chagos archipelago and explored whether the US would or should maintain its current position in support of the United Kingdom. They also discussed the challenges and opportunities for future US cooperation with Mauritius in the Chagos archipelago.

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Cover Image Credit: DIEGO GARCIA (Sept. 5, 2011) The Ohio-class guided-missile submarine USS Georgia (SSGN 729) prepares to moor outboard of the submarine tender USS Emory S. Land (AS 39) in Diego Garcia. Georgia is homeported in Kings Bay, Ga., and will undergo a continuous maintenance availability and crew exchange while in Emory S. Land's homeport of Diego Garcia. (US Navy photo by Mass Communication Specialist 2nd Class Chris Williamson), US Navy, https://www.navy.mil/view_imagex.asp?id=107612.

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July 2020

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Discussion Summary

On June 24, 2020, CNA's Strategy and Policy Analysis program hosted a virtual, on-the-record event to discuss the current and future status of Diego Garcia, an island in the Indian Ocean's Chagos Archipelago that hosts a key US military base.¹ This event built on a CNA event last summer that examined the intersection of sovereignty and US basing rights around the world.² The Chagos Archipelago is currently administered by the United Kingdom, but Mauritius has a long-standing claim to sovereignty over the island chain that has been bolstered by international legal developments in recent years. The event featured Mauritius' Permanent Representative to the United Nations, the Honorable Jagdish Koonjul, CNA's senior vice president and general counsel, Mr. Mark Rosen, and Ms. Nilanthi Samaranyake, director of CNA's Strategy and Policy Analysis program. Ambassador Koonjul read prepared remarks (attached as an appendix) elaborating Mauritius' position that permits continued US military presence on Diego Garcia if sovereignty reverts to Mauritius. Panelists engaged in a frank discussion of the United States' continued strategic needs, recent developments in the Mauritius-UK sovereignty dispute, and the future of the US base on a Mauritian Diego Garcia.

- Naval Support Facility Diego Garcia remains immensely valuable to the US's diplomatic and military position amid great power competition. Sitting at the crossroads of the Indian Ocean, the base enables US military operations in both the Middle East and South and Southeast Asia. By enabling US military capacity, Diego Garcia serves a key role in reassuring and supporting both long-standing and new allies and partners in the Indo-Pacific region.
- Mauritius would permit a US base at Diego Garcia if the islands transfer from British to Mauritian control. Ambassador Koonjul stated that Mauritius would "favor the continued operation" of the US base at Diego Garcia if the Chagos Archipelago returns to Mauritian administration. Furthermore, he noted that Mauritius does not intend to resettle Chagossians on Diego Garcia itself, but rather on other islands in the archipelago.

¹ A recording of the CNA event is available at <https://vimeo.com/432245768>.

² Cornell Overfield, *Basing Rights and Contested Sovereignty in Greenland and Diego Garcia: The Impact of Decolonization on US and Allied Access in the Era of Great Power Competition* CNA, DCP-2019-U-021803-Final, 2019, https://www.cna.org/CNA_files/PDF/DCP-2019-U-021803-Final.pdf.

- Backing a handover from the UK to Mauritius could reinforce US claims that it supports a rules-based international order. All three speakers noted that the dispute over the Chagos illustrates the potential influence of international legal actions in shaping an important US security arrangement. The UK has faced mounting diplomatic costs since the International Court of Justice's (ICJ) 2019 advisory opinion.
- Long-term US access to Diego Garcia should not rely on economic benefits alone. If the archipelago comes under Mauritian control, the US should seek to provide more than simply economic benefits for Mauritius, such as security guarantees.
- The time appears ripe for a US realignment. Speakers argued that the United States' long-term interest would best be served by working to find a solution that transfers Diego Garcia to Mauritian legal control but allows the UK to save face legally and politically.

Diego Garcia

Historical context and future importance

Diego Garcia is the largest island in the Chagos Archipelago, a remote chain of islands in the middle of the Indian Ocean. After the UK took Mauritius from France in the wake of the Napoleonic Wars, the UK administered the island as a colony until granting independence in 1968. In 1903, the UK combined Mauritius and the Chagos Islands into a single administrative unit—the Crown Colony of Mauritius. In 1965, with decolonization on the horizon, the UK concluded the 1965 Lancaster House Agreement with local, but unelected, leaders to detach the Chagos from Mauritius. The agreement allowed the UK to establish the Chagos as the British Indian Ocean Territory (BIOT) to serve British defense purposes while permitting Mauritian fishermen to exploit the surrounding waters. Controversially, the UK used travel restrictions, deprivation of services, and deportation to depopulate the Chagos islands to accommodate the base.

Although generally positive, the UK-Mauritius relationship has long been shadowed by disputes over the islands' sovereignty and the welfare of its inhabitants. Since the early 1980s, Mauritius has consistently claimed sovereignty over the archipelago and alleges that the UK's division of the Mauritius Crown Colony in 1965 contravenes the decolonization principle that holds that a colony's territorial integrity should be maintained through independence absent referenda or plebiscites.³ The often-cited Lancaster House Agreement provides a legal basis for the division, albeit a disputed one, since it was concluded with leaders still living under a colonial regime. Furthermore, the agreement required Britain to allow Mauritian fishermen to use the adjacent waters and to return the archipelago to Mauritius when no longer needed for British defense purposes. In 2010, the UK established a marine protection area (MPA) around Diego Garcia, and the primary military beneficiary today is the US, rather than the UK.

Mauritius has leveraged international institutions to build a diplomatic-legal coalition to advance its case. In 2010, Mauritius used the UN Law of the Sea Convention (UNCLOS) to challenge the BIOT MPA. The resulting arbitral tribunal convened under Annex VII of UNCLOS refrained from ruling on the islands' sovereignty, even as it closely referred to the Lancaster House Agreement in its finding that “in establishing the MPA...the United Kingdom breached

³ *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN General Assembly, XV, Resolution 1514, 1960, [https://undocs.org/en/A/RES/1514\(XV\)](https://undocs.org/en/A/RES/1514(XV)).

its obligations.”⁴ In 2017, a coalition of states in the UN General Assembly (UNGA) voted to refer Mauritius’ claim to sovereignty over the island to the International Court of Justice (ICJ). In its subsequent 2019 advisory opinion, the ICJ found in Mauritius’ favor. Meanwhile, the UK protested that the ICJ lacked jurisdiction, since London had not consented to the litigation.⁵ The UNGA welcomed the decision and passed a resolution calling for the UK to leave the island and complete the decolonization process by November 2019.⁶

Nilanthi Samaranyake observed that this history demonstrates the continued importance of small states, even when US strategy focuses increasingly on great powers. Through tenacious legal and diplomatic effort, Mauritius has managed to create a difficult situation for the UK and US. How might other small states generate similar challenges to great power competitors, including through international legal mechanisms?

Diego Garcia became part of the global constellation of US bases in 1971, when the US established a communications base. Over time, the US added maintenance facilities, airstrips, and prepositioned logistics ships capable of responding to contingencies from Korea to Kuwait. Samaranyake noted that this range of access ensures Diego Garcia remains essential for US military and diplomatic posture in an era of great power competition. As Mark Rosen noted, the island underpins operations that reassure allies and enable unique opportunities for cooperation. Furthermore, Diego Garcia’s relative isolation affords the US freedom to launch operations with no effects upon local residents. That same isolation also protects others that live near the archipelago, in the event of an attack on the base.

Mauritius would permit a continued US military base at Diego Garcia

In his prepared remarks, His Excellency Jagdish Koonjul explicitly recognized Diego Garcia’s place in the security needs of the US. He noted that Mauritius favors continued operation of the

⁴ *Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* United Nations General Assembly, 73, 73/295, 2019, <https://undocs.org/en/A/RES/73/295>.

⁵ Stephen Allen, “The Chagos Advisory Opinion and the Decolonization of Mauritius,” *American Society of International Law Insights* 23, no. 2 (2019), https://www.asil.org/insights/volume/23/issue/2/chagos-advisory-opinion-and-decolonization-mauritius#_edn11.

⁶ *The Republic of Mauritius versus the United Kingdom of Great Britain and Northern Ireland*, (Annex VII Tribunal Convened under the UN Convention on the Law of the Sea at the Permanent Court of Arbitration 2015). <https://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>.

US base on Diego Garcia and is willing to enter into a 99-year lease with either the US alone or both the UK and US. This reinforces Mauritian Prime Minister Pravind Jugnauth's May 2019 comments that indicated a willingness to negotiate with the US.⁷ Finally, Ambassador Koonjul pledged that Mauritius' commitment to resettling Chagossians will not entail resettling on Diego Garcia. Instead, Chagossians would be resettled elsewhere in the Archipelago, on islands at least 100 miles away from the US base. In Mauritius' vision, the US will retain both the base and its isolation.

Ambassador Koonjul also made the case that Mauritius will be as effective and reliable a local partner as the UK. He emphasized Mauritius' stable democracy, vibrant economy, and commitment to the rule of law as evidence of its reliability. Furthermore, as he observed, all parties in Mauritius are committed to both reestablishing Mauritian control over the Chagos Archipelago and permitting a long-term US military presence via a 99-year lease. Responding to questions about whether Mauritius might be pressured by China, whether with debt-trap diplomacy or changing political winds, Ambassador Koonjul asserted that Mauritius pursues an independent foreign policy and wishes to pursue a relationship with the US.

As a party to the African Nuclear-Weapon-Free-Zone Treaty (ANWFZ), also known as the Treaty of Pelindaba, Mauritius is bound to not station or permit the stationing of nuclear weapons anywhere on its territory. Ambassador Koonjul confirmed that nuclear weapons could not be stationed on a Mauritian Diego Garcia. However, he observed that ships bearing nuclear weapons or propulsion could call on ports at Diego Garcia and transit through its associated waters under the treaty's terms. As a declared nuclear weapons state, the US has also signed the ANWFZ Treaty as a Protocol Party. Even though Senate ratification has not occurred, the US is bound to not take any action under international law to defeat the treaty's object and purpose. If sovereignty shifted, the US would be prohibited from taking any action that would conflict with Mauritius' obligation to prevent the stationing of nuclear weapons on its territory since Mauritius is a treaty party to ANWFZ.

Upholding the rules-based order

Diego Garcia presents difficult choices for the US in maintaining its claim to be a champion of the rules-based international order. The UK is a long-standing US ally, but has made no move to comply with the ICJ's advisory opinion. Meanwhile, the US has reaffirmed its support for the

⁷ United Nations General Assembly, "General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization," United Nations, May 22, 2019, <https://www.un.org/press/en/2019/ga12146.doc.htm>.

UK's position.⁸ Both the ICJ and the UNGA have clearly supported Mauritius' claim. UK domestic politics further complicate matters. UK courts have upheld past UK actions by a slim majority. The UK Labour party and some members of parliament, however, have signaled their willingness to recognize the ruling and complete decolonization.⁹ This raises the prospect of a UK reversal if Labour forms a government in the coming years.

In her opening remarks, Samaranayake asked whether the UK's continued administration of the Chagos Archipelago undermines the utility of international institutions. Other speakers argued that the UK is already facing clear repercussions. Ambassador Koonjul noted that in the 2017 ICJ elections, the UK's candidate, Christopher Greenwood, lost his reelection bid to an Indian challenger because of the UK's refusal to complete decolonization and hand the Chagos Archipelago to Mauritius. Looking ahead, Rosen noted that the ICJ's advisory opinion is binding on UN agencies, which may limit their cooperation with the UK so long as the UK maintains its presence in the BIOT.

In the case of Diego Garcia, the US appears caught between supporting a close ally and championing the rules-based international order. Defending this order would require the US to respect the ICJ's advisory ruling and pressure the UK to transfer sovereignty over the Chagos to Mauritius. Yet the special relationship has long served the US, and critics might suggest that undermining the concrete benefits of the US-UK relationship is not worth the softer advantages of championing international law. Samaranayake touched on this dilemma when she asked whether there comes a point when the US could stop backing its closest ally over Diego Garcia and instead cooperate with Mauritius, or whether this is not even an option to consider due to the alliance. Further complicating matters is India's long-standing support for Mauritius and the possibility that future US policies towards over Diego Garcia could either bolster or undermine the rapidly developing Indian-US partnership.

Notwithstanding historical US concerns over formal international adjudication schemes, Washington has much to gain from championing international law. Not only has the US invoked a favorable arbitration decision on the South China Sea to repudiate China's expansive claims there, but the US ought to welcome states using the law to resolve disputes. As Rosen remarked last year "Smaller states have to use the rule of law; they don't have large armies. And we want

⁸ Morgan Ortugas, "The United States Recognizes the United Kingdom's Continued Sovereignty over the British Indian Ocean Territory," May 6, 2019, <https://www.state.gov/the-united-states-recognizes-the-united-kingdoms-continued-sovereignty-over-the-british-indian-ocean-territory/>.

⁹ "Labour Would Return Chagos Islands, says Jeremy Corbyn," *The Guardian*, November 22, 2019, <https://www.theguardian.com/world/2019/nov/22/uk-set-to-defy-un-deadline-to-return-chagos-islands>.

them to use the rule of law.”¹⁰ Championing the rule of law, whether domestically or internationally, requires accommodating both favorable and unfavorable court decisions.

Ensuring long-term US access

Looking ahead to the possibility of Mauritian control over Diego Garcia, the audience probed Mauritius’ reliability as the sovereign and landlord. The discussants offered thoughts on how the US can ensure long-term access that will be minimally subject to Mauritian whim or politics.

Ambassador Koonjul emphasized that Mauritius was motivated not by the prospect of lease payments from the US, but rather full sovereignty for Mauritius and restitution and resettlement for dislocated Chagossians. However, he also noted that the US could use Chagossians resettled on nearby islands as local labor on the base. This echoes previous observations at similar CNA events, where panelists commented that using local labor, even if more expensive than imported labor, should be seen as the cost of doing business and key to building goodwill and buy-in from local communities.

While agreeing that economic rationales can be powerful glue, Rosen argued that the US would be ill served by relying on purely economic incentives alone to secure long-term US access to the base. He observed that the United States’ experience in the Philippines serves as a cautionary tale. The government of the Philippines frequently tried to revise the lease terms and raise rent after base upgrades. These disputes culminated in a breakdown in the basing arrangement.

Rosen offered several recommendations to US negotiators aiming to avoid similar pitfalls. First, he suggested that the US should aim for a treaty-level agreement with Mauritius. This would entrench US basing rights at the highest level of law and make Mauritian revision or withdrawal more difficult. Second, he suggested that the US should find ways to make the base valuable for Mauritian security as well. Finally, he noted that the best defense against payment disputes is to “fuse” the Mauritian and US communities through business and economic ties associated with operating the base going forward.

Find a face-saving solution

By remaining committed to UK ownership, the US risks charges of hypocrisy, alienating potential partners in the international community (such as India), and being caught out by a change of government or position in the UK. For this reason, Rosen called for the US to seize

¹⁰ Overfield, *Basing Rights and Contested Sovereignty*, 10.

the opportunity presented by last year's international legal and diplomatic developments and press the UK to find a solution that transfers control of the Chagos Archipelago to Mauritius but allows the UK to save face.

In addition to diplomatic developments, cultural and social forces make now an opportune time for the US to support the UK in making right by Mauritius and Chagossians. Rosen noted that the intersection of the Black Lives Matter movement and the moral force of Mauritius' decolonization claims cannot be ignored. This builds on previous comments at CNA's 2019 event on basing and sovereignty, where Ms. Rachel Ellehuus noted, with reference to Greenland, that the US ought not ignore indigenous voices, but instead engage with them.¹¹

One potential concern for UK officials is whether transferring the Chagos Archipelago would set an undesired precedent for other contentious UK possessions, such as the Falkland Islands and Gibraltar. In the Falklands, however, local populations are strongly in favor of continued UK governance, making a decolonization-based argument for transfer to Argentina ineffective.¹² British officials might also be concerned that transferring the BIOT to Mauritius would undermine the current government's Global Britain messaging. This concern could be assuaged by a multilateral US-UK-Mauritian basing agreement that preserves the UK's military presence on Diego Garcia.

¹¹ *Ibid.*, 3.

¹² "Falklands referendum: Voters choose to remain UK territory," *BBC*, March 13, 2013, <https://www.bbc.com/news/uk-21750909>.

Conclusion

This timely discussion offered a clear conclusion: Diego Garcia remains essential to US security, but a change in ownership need not threaten US basing rights. By supporting a transfer, whether behind the scenes or publicly, the US has an opportunity to signal commitment to the rules-based international order and foster goodwill with a growing partner, India. However, there are some unanswered questions: How exactly can a deal allow the British to save face? How can the United States support Mauritius to minimize the threat of Chinese pressure?

The event was designed to offer expert appraisals of the challenges presented by the tension between the United States' strategic and operational military needs in a new era of great power competition and its commitment to championing a rules-based international order. For more information on this event or CNA's Strategy and Policy Analysis program (www.cna.org/strategy), please contact Ms. Nilanthi Samaranayake (nilanthi@cna.org).

Appendix: Remarks by Ambassador Jagdish Koonjul

I propose to make 5 points in my presentation.

1. First I wish to emphasize that Mauritius is the legitimate sovereign over the Chagos Archipelago.

International law on decolonization explicitly prohibited disruption or destruction of the territorial integrity of a colony, absent the express will of the people exercised through an election or plebiscite. In 1965, the UK violated this law by excising the Chagos Archipelago from Mauritius unilaterally, against the will of the people of Mauritius and forcibly displaced the Chagossian population of some 3,000 people who had lived there for generations, to Mauritius and Seychelles. Since then it has systematically prevented their return through various means. In 2010, it unilaterally designated an MPA around the Chagos Archipelago, which in their own words leaked by Wiki Leaks, was meant to put an end to any possible resettlement on those islands.

Mauritius has all along asserted its sovereignty over Chagos Archipelago, and sought to regain its possession, by:

- Consistently protesting Britain's unlawful administration, and seeking to engage the UK government in dialogue to arrange the transfer of administrative control to Mauritius.
- Raising the issue repeatedly at the United Nations, including at the UNGA.
- Raising the issue before other international bodies, including the AU, NAM and G77 which have all given their full support to Mauritius.

In June 2017, the UN General Assembly requested an Advisory Opinion from the ICJ on whether the decolonization of Mauritius was lawfully completed when it was granted independence following the separation of the Chagos Archipelago from Mauritius in 1965 and on the lawfulness of the continuing British occupation of Chagos Archipelago.

The ICJ by a near unanimous decision confirmed the unlawful excision of the Chagos Archipelago by the UK, declaring that the Archipelago is and has always been an integral part of the territory of Mauritius. The Court also considered that UK's continued administration constituted a wrongful act of a continuing character, which entails the international responsibility of that State and required the UK to withdraw its administration from the Chagos Archipelago, as rapidly as possible

In May last year the UN General Assembly by a majority of 116 to 6 adopted resolution 73/295 affirming the findings of the ICJ and demanding the UK to withdraw from the Chagos Archipelago no later than 6 months after the adoption of the resolution, that is, by 22 November 2019. The resolution also required all UN Member States to support the completion of the decolonization of Mauritius and all UN Agencies and Specialized bodies to refrain from taking any action that would give recognition to the so called 'B.I.O.T'

A number of UN Bodies have already started implementing that resolution. The UN has revised its world map, which now clearly depicts the Chagos Archipelago as part of Mauritius.

The UK, under its present Conservative government, continues to violate international law, and to ignore the ICJ's ruling and the pertinent UNGA resolutions. It faces growing international isolation, as reflected in the recent ICJ elections, where the UK's candidate for reelection to the Court was defeated. Elections of UK nationals on other UN bodies may also suffer the same fate. Within the UK however, the Labor party, and many Tory backbenchers, oppose the official policy and favor returning possession of the Archipelago to Mauritius.

2. My second point concerns Security and stability in the Indo-Pacific region

Mauritius is fully conscious of the important issue of security in the region.

Diego Garcia, the largest island of Chagos Archipelago plays a vital role in contributing to peace and stability and keeping the oil routes safe. This is important to the US and we all benefit from that.

That is why Mauritius has publicly stated that it favours the continued operation of the U.S. military base in Diego Garcia and that it is willing to enter a long-term arrangement with the US that will ensure its operations unhindered. The current lease arrangement between the UK and the US will end in 2036 and a renewal would lack legal status and would be in violation of international law.

Mauritius on the other hand has publicly said that we are prepared to give a 99-year lease—better than what the UK has and can offer. This brings me to the third point.

3. Mauritius is an excellent and genuine regional partner for United States.

We reject the notion that peace and stability in the region can only be guaranteed with UK's control over the Chagos Archipelago.

Mauritius is a stable and democratic country, respectful of the rule of law and human rights, a living example of peace and tolerance, in a multiracial society, with a vibrant private sector which contributes to its advanced economy.

The Constitution of Mauritius provides for the clear separation of powers and prohibits discrimination on the basis of race, sex and religion. Mauritius ranks 13th in the World Bank's

list on Ease of Doing Business and within Africa, it has held the first position for a number of years.

Mauritius is keen to strengthen its cooperation with the US and the continuation of the base in keeping with our desire to expand our trade, security and cultural outreach with the US. We share common ideals and we support actions such as combatting terrorism, piracy, illicit trafficking in goods and people as well as other maritime security tasks where we can collaborate closely.

Mauritius is a very close partner of India and the growing partnership between India and the US will make the Mauritius-US partnership more viable than ever before. Mauritius will not do anything that would affect India's security interests in our region.

4. The fourth point I wish to address is the type of arrangement Mauritius seeks to have with the US.

Mauritius does not intend to impose itself in Diego Garcia or the running of the base there, but it does seek to have its rights restored as the sovereign out of a matter of principle and national fulfilment. We are confident that it will be possible, on this basis, to reach an agreement that will be beneficial for all.

Let me also emphasize that, Mauritius would be open to entering into an agreement with the UK and the US jointly, should they agree to share the base, again provided that Mauritius' sovereignty is respected. Except for the issue of Chagos Archipelago, Mauritius and the UK have excellent relations.

5. Resettlement

The last point I wish to make concerns the strong commitment of Mauritius to facilitate the resettlement of those Chagossians who wish to return to their birthplace in the Chagos Archipelago. At the same time, we are conscious that it would not be realistic to expect any resettlement on Diego Garcia. But Chagos Archipelago is made up of some 60 scattered islands, three of which can sustain economic life. As such, Peros Banhos and Solomon Islands, which are at least 100 miles away from Diego Garcia, would be considered for active resettlement.

The Chagossians have suffered terribly on account of their forcible displacement in horrendous conditions. They deserve our attention and indeed the world's attention, especially at a time when the world is focused on racism against people of color.

Let me conclude by emphasizing my bottom line upfront points:

- The ICJ has brought to light a powerful legal reality and that is continued colonization of the Chagos Archipelago is an offence to all countries. Supporting decolonization is both ethically and morally the right thing to do. It will also

enhance US' moral grounds to demand that other countries respect ICJ rulings and international law.

- The current political and legal status of Chagos Archipelago is becoming unsustainable in UK and at international level.
- The long-term interests of the US would be best served with the US working with Mauritius to ensure the continued operation and longevity of the base.

Mauritius stands ready to be the reliable and trustworthy partner to the US.

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This report was written by CNA's Strategy, Policy, Plans, and Programs Division (SP3).

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