"Military bases on disputed islands are a threat to international peace and security". Discuss.

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I. Introduction

The United Nations Security Council has come close to using the words of this question about foreign forces on a disputed island once, and it did so about Cyprus in July 1974, following an invasion.[1] It has never used them about the Spratly Islands, Diego Garcia, or about the military camp Nicaragua built on ground the International Court of Justice (ICJ) later held to be Costa Rican. Neither the ICJ nor any tribunal has used them. So either the proposition is false, or it's true under conditions that have not yet been met.

I argue the second, that militarising a disputed island can threaten international peace and security. The capacity is real but conditional, and the conditions can be plainly stated. Two functions cross the threshold, the first being denial, where an installation gives its holder the practical power to exclude others from waters or airspace they are entitled to use. The second is entrenchment, where militarisation may consolidate a contested claim against a legal determination that has already been made. If neither is present, what exists is a territorial dispute with soldiers in it, a lesser thing and treated as such. The absence of any finding of threat is evidence not that the proposition fails, but about institutions, as the Security Council (UNSC), which alone can make that determination, cannot do so in the cases that matter most, and the ICJ and arbitral tribunals which can act have granted relief without needing to make it.

My argument runs in four steps. It asks what militarisation means in law. It explains why the three leading situations have produced no finding of threat. It sets out the conditions under which they would, and proposes criteria, testing them against those same situations.

II. What constitutes a base

The question assumes that we recognise a military base when we see one. However, law is more particular, with the demilitarisation treaties supplying a definition by prohibition. The Antarctic Treaty bars 'any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons'.[2] The Outer Space Treaty repeats this list almost exactly for celestial bodies.[3] The Svalbard Treaty prohibits naval bases and fortifications and any warlike use while the Åland

[1] UNSC Res 353 (20 July 1974) UN Doc S/RES/353(1974), preamble.
[2] *Antarctic Treaty* (signed 1 December 1959, entered into force 23 June 1961) 402 UNTS 71, art 1.
[3] *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies* (opened for signature 27 January 1967, entered into force 10 October 1967) 610 UNTS 205, art IV.

Convention obliges Finland not to fortify the archipelago, neutralising it under the wider regime confirmed by the Convention.[4] [5]

The four recurring elements are fortification, a permanent establishment for armed forces, the emplacement of weapons, and the conduct of manoeuvres, each being measured against peaceful purposes. The Svalbard regime particularly provides an important distinction. Norway is prohibited from building bases or fortifying, but not from performing military transit and patrols, casting presence and base as separate concepts in law.[6] A base is therefore identified by permanence, fortification and the capacity to project or deny force, rather than by the sight of uniforms. A tented camp on a contested island is therefore not a base, while a hardened runway with a deep water harbour, radar and missile shelters is a base whatever the constructing state calls it.

A second assumption in the question requires the same treatment, this being the category of a disputed island since it runs across a spectrum. At one end lies a sovereignty dispute over formed territory whose insular character is not in issue. Toward the centre lies a dispute about the entitlement a feature generates. And at the far end lies a dispute about whether it is an island at all. The distinction is not academic since a feature like a low-tide elevation is not capable of appropriation, meaning an installation built upon one is not a base on a disputed island but a structure on a submerged feature lying within another state's continental shelf, with the Annex VII tribunal for the South China Sea holding that the construction at Mischief Reef breached the articles of UNCLOS governing artificial islands.[7] Of the three situations below, only Diego Garcia is definitively an island. The category relied on by the question is unstable before the questions of international peace and security are reached.

UNCLOS cannot resolve this since it reserves the high seas for peaceful purposes and requires states to refrain from the threat or use of force, and leaves unsettled the meaning of 'peaceful purposes'.[8] The former Soviet Union and several developing states took it as excluding military activity altogether while Western maritime powers took it as barring only those uses inconsistent with the Charter, leaving Article 88 with modest independent work to do.[9] As such, the concept of a base must be built from demilitarisation regimes, and the definition given above is the one I shall use.

III. Why no finding of threat has been made

Of the four reasons behind the silence, none is that basing is harmless. The first is that the UNSC sets its own trigger at hostilities rather than fortification, with every determination in the

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[4] *Treaty concerning the Archipelago of Spitsbergen* (signed 9 February 1920, entered into force 14 August 1925) 2 LNTS 7, art 9.

[5] *Convention relating to the Non-Fortification and Neutralisation of the Åland Islands* (signed 20 October 1921, entered into force 6 April 1922) 9 LNTS 211, arts 1 and 3.

[6] Andreas Østhagen, 'The Myths of Svalbard Geopolitics: An Arctic Case Study' (2024) 167 Marine Policy 106183.

[7] *South China Sea Arbitration (Philippines v China)* (Award, 12 July 2016) PCA Case No 2013-19, 415, para 1043, and *United Nations Convention on the Law of the Sea* (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, arts 60 and 80.

[8] UNCLOS (n 7) arts 88 and 301.

[9] Francesco Francioni, 'Peacetime Use of Force, Military Activities, and the New Law of the Sea' (1985) 18 Cornell International Law Journal 203, and Boleslaw A Boczek, 'Peaceful Purposes Provisions of the United Nations Convention on the Law of the Sea' (1989) 20 Ocean Development & International Law 359.

record following an outbreak of armed conflict. It determined breaches of the peace after the June 1950 attack in Korea,[10] after the Argentine invasion of the Falklands,[11] and a breach of international peace and security after the invasion of Kuwait by Iraq.[12] Cyprus is an instructive near miss where the Council recorded grave concern at a situation which had led to a serious threat to international peace and security and requested the withdrawal of foreign military personnel, but made no determination under Article 39.[13] Its wide discretion and its practice have expanded the concept of a threat to peace to cover internal conflicts, so the restraint is a choice rather than a limit.[14] On the record the Council responds to fighting and not to building.

The second reason is the veto. The UNSC agenda has never addressed the South China Sea or Diego Garcia as each involves a permanent member. Article 94(2), which allows a party to seek Council enforcement of a judgment, has never succeeded. The single attempt confirming this pattern is Nicaragua's request which produced a draft resolution vetoed on 28 October 1986, resulting in a General Assembly resolution instead.[15] The peace and security frame is least available where basing is most contested and that is a fact about forum rather than conduct.

Regional bodies do characterise such conduct. Within days of Nicaragua's 2010 incursion into Costa Rica, the Permanent Council of the Organization of American States called on both states to avoid the presence of military or security forces in the area, where their existence might rouse tension.[16] The characterisation is available and made, with the missing component being a Security Council to attach consequences to it.

The third reason is that the ICJ and arbitral tribunals have granted complete relief without the label. At Isla Portillos, the ICJ held that Costa Rica had sovereignty, that Nicaragua had breached it by excavating and by establishing a military presence, and that, having found those activities unlawful, it would not further consider whether they had violated the prohibition of the threat or use of force or given rise to a military occupation.[17] The ICJ later held that maintaining a military camp on Costa Rican territory violated sovereignty and ordered its removal, and a claimant who obtains a complete removal order need not argue anything harder.[18] The wrong found in Chagos was an incomplete decolonisation and a continuing wrongful act, but not the presence of a base, which was not addressed by the ICJ.[19] Before the Annex VII tribunal in the South China Sea Arbitration, the Philippines argued entitlement, environmental harm and safety of navigation

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[10] UNSC Res 82 (25 June 1950) UN Doc S/RES/82(1950).
[11] UNSC Res 502 (3 April 1982) UN Doc S/RES/502(1982), preamble and para 2.
[12] UNSC Res 660 (2 August 1990) UN Doc S/RES/660(1990), preamble.
[13] UNSC Res 353 (n 1) paras 3 and 4.
[14] *Prosecutor v Tadić (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)* IT-94-1-AR72 (2 October 1995) paras 28 to 31.
[15] *UN Charter*, art 94(2). See UNSC Draft Res S/18428 (28 October 1986), vetoed by 11 votes to 1, with 3 abstentions, and UNGA Res 41/31 (3 November 1986) UN Doc A/RES/41/31, adopted by 94 votes to 3, with 47 abstentions.
[16] OAS Permanent Council Res 978 (1777/10), 'Situation in the Border Area between Costa Rica and Nicaragua' (12 November 2010) OEA/Ser.G CP/RES. 978 (1777/10).
[17] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)* (Merits) [2015] ICJ Rep 665, para 97.
[18] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v Nicaragua)* (Judgment) [2018] ICJ Rep 139, para 205(3)(a) and (b).
[19] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 95, paras 177 and 183(3).

and won on each, with the confrontation at Second Thomas Shoal completely excluded from jurisdiction as a quintessentially military situation.[20] The security frame was unavailable there in law, and unnecessary in practice elsewhere.

The explanation is completed by a fourth tactical reason, which belongs to claimants rather than to institutions. A claimant who characterises conduct as military invites the respondent to do the same, and UNCLOS allows states to exclude disputes concerning military activities from compulsory settlement.[21] In the South China Sea, that exclusion did not shield the construction because China insisted that the works were civilian, and the tribunal declined to treat as military what the constructing state denied was such.[22] The pleadings in the reported cases reflect such calculations, with the resulting silence on peace and security demonstrating litigation strategy and not danger.

IV. Denial of passage as the first condition

Navigation is different in kind from title as the injured interest belongs to every state instead of to a rival claimant alone. In Corfu Channel, the ICJ held that in peacetime states may send warships through straits used for international navigation without prior authorisation, and that the coastal state has no right to prohibit such passage.[23] That position was hardened by UNCLOS, as innocent passage may be temporarily suspended where essential for security,[24] and transit passage through straits may not be suspended at all, and coastal states bordering straits must not hamper it.[25]

Such asymmetry is why denial can convert a bilateral quarrel into a situation which every user state may treat as one of security. The practice of the UNSC reflects this as it affirmed the right of free navigation and commerce in international waters during the Iran-Iraq war,[26] authorised action against Somali piracy under Chapter VII,[27] and underscored navigational rights and freedoms while demanding the attacks by the Houthis in the Red Sea cease, although in that instance not acting under Chapter VII or determining a threat to peace.[28] An ordinary territorial dispute has never been treated so seriously.

There are two counters, the first being that no installation has yet closed a sea lane and such interference as has been proved has come from vessel conduct rather than structures. The Annex VII tribunal found that Chinese law enforcement vessels manoeuvred dangerously near Scarborough Shoal, breaching international collision regulations and UNCLOS.[29] The condition is unsatisfied in the South China Sea today and what has changed is that the capacity now exists, and whether it is exercised is a matter of politics and decision rather than law.

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[20] *South China Sea Arbitration* (n 7) para 1161.
[21] UNCLOS (n 7) art 298(1)(b).
[22] *South China Sea Arbitration* (n 7) paras 1163 to 1164.
[23] *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4, 28.
[24] UNCLOS (n 7) art 25(3).
[25] ibid arts 38(1) and 44.
[26] UNSC Res 540 (31 October 1983) UN Doc S/RES/540(1983), para 3.
[27] UNSC Res 1816 (2 June 2008) UN Doc S/RES/1816(2008), and UNSC Res 1851 (16 December 2008) UN Doc S/RES/1851(2008).
[28] UNSC Res 2722 (10 January 2024) UN Doc S/RES/2722(2024), paras 2 and 3.
[29] *South China Sea Arbitration* (n 7), findings on Submission 13.

The mechanism by which capacity becomes exercise is already evident as in November 2013 an air defence identification zone was declared by China over the East China Sea, covering the disputed Senkaku and Diaoyu Islands. This required transiting aircraft to identify themselves and follow Chinese instructions on pain of defensive emergency measures.[30] Such zones are not regulated by either UNCLOS or the Chicago Convention, and their legality is disputed, regarded as permissible where overflight freedoms are not impeded by Dutton and as unable to be reconciled with those freedoms by Su.[31] Neither the Security Council, the General Assembly nor the International Civil Aviation Organization (ICAO) condemned the Chinese declaration. The flying of military aircraft through this zone by the United States, Japan and South Korea without complying also tells against treating such a zone as a threat to peace in itself.[32] To be more than a declaration, such a zone requires the capacity to detect and intercept, which is what a fortified feature astride a sea lane supplies.

The second counter is that unused capacity threatens nothing, which fundamentally underestimates how threat operates. A stated readiness to use force unlawfully is prohibited where the envisaged use would be unlawful, with effect given to such a statement by credibility.[33] [34] A declaration closing a lane would supply the rest, bringing the matter within the language of the question.

V. Entrenchment against a determination as the second condition

The second route runs through the prohibition on acquiring territory by force, with no territorial acquisition resulting from the threat or use of force recognised as lawful.[35] Both military occupation, however temporary, and the continued presence of forces in another state beyond the termination of the agreement permitting them are treated as qualifying acts by the Definition of Aggression.[36] Militarisation of this kind attacks both the other claimant and the mechanism by which claims are resolved, which is why it engages a wider interest.

The ICJ acted on it and created a provisional demilitarised zone in Preah Vihear, ordering both parties to withdraw their military personnel from it and to refrain from any military presence within it.[37] Notably, several judges including the President of the court dissented, with Judge Al-Khasawneh considering such a zone excessive where an order to refrain from military activity may have sufficed.[38] And while the disagreement is instructive, the majority position stands and disposes of any notion that courts cannot reach military presence on disputed ground. They can,

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[30] Ministry of National Defense of the People's Republic of China, 'Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone' (23 November 2013) <https://amti.csis.org/counter-co-east-china-sea-adiz/>.
[31] Peter A Dutton, 'Caelum Liberum: Air Defense Identification Zones Outside Sovereign Airspace' (2009) 103 AJIL 691, and Jinyuan Su, 'Is the Establishment of Air Defence Identification Zones Outside National Airspace in Accordance with International Law?' (2021) 32 EJIL 1309. See *UNCLOS* (n 7) arts 58 and 87.
[32] Gregory B Poling, 'The Sky's the Limit: Comparing China's ADIZ Intrusions' (*Asia Maritime Transparency Initiative*, Center for Strategic and International Studies 2024).
[33] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, para 47.
[34] ibid para 48.
[35] UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625(XXV).
[36] UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314(XXIX), annex, arts 3(a) and 3(e).
[37] *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v Thailand) (Provisional Measures)* [2011] ICJ Rep 537, paras 62 and 69(B)(1).
[38] ibid, Dissenting Opinion of Judge Al-Khasawneh.

and without pronouncing on peace and security. The UNSC has used the same remedy in establishing a demilitarised zone along the Iraq-Kuwait boundary once the Gulf hostilities had ended.[39] Demilitarisation is the standard response from judicial and political organs alike.

Recent practice has shown the same remedy under strain. The ICJ ordered Venezuela to refrain from any action modifying the situation in which Guyana administers the disputed territory, and the parties undertook not to escalate.[40] [41] Venezuela nonetheless legislated to create a state over the area and Guyana returned to the ICJ alleging non-compliance, showcasing entrenchment at its clearest.

The condition also operates on disputed islands. Although China and the ASEAN member states had undertaken to refrain from inhabiting uninhabited features,[42] China built upon seven Spratly features while the arbitration was pending, and the Annex VII tribunal held that in doing so it aggravated and extended the dispute contrary to Articles 279, 296 and 300 of UNCLOS.[43] This is entrenchment by construction against a body already seised of the question.

The picture is completed by two comparisons. Nigeria withdrew from Bakassi under a negotiated agreement after judgment,[44] which shows entrenchment is a choice and that where it runs the other way no threat arises. Chagos runs the same way but for a separate reason, that being whatever force the argument from continued presence without valid consent once had, the 2025 Agreement provides that Mauritius is sovereign and its preamble ties the base to the protection of international peace and security.[45] Where the sovereign consents the condition falls away, and the parties have cast the base as an instrument of security rather than a danger to it. Notably, the authority of the ICJ's 2019 advisory opinion is itself contested as the Special Chamber of the International Tribunal for the Law of the Sea treated its determinations as having legal effect and the UK's continued claim as no more than an assertion.[46] Thin regards this as an unwarranted extension of advisory findings into proceedings between parties one of which never consented, an objection Judge Donoghue had made to the advisory jurisdiction itself and which is defended by Milanović as a legitimate exercise of a function conferred by the Charter.[47] [48]

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[39] UNSC Res 687 (3 April 1991) UN Doc S/RES/687(1991), para 5.
[40] *Arbitral Award of 3 October 1899 (Guyana v Venezuela) (Provisional Measures, Order of 1 December 2023)* [2023] ICJ Rep 668.
[41] Department of Public Information (Guyana), 'The Joint Declaration of Argyle for Dialogue and Peace Between Guyana and Venezuela' (14 December 2023) <https://dpi.gov.gy/the-joint-declaration-of-argyle-for-dialogue-and-peace-between-guyana-and-venezuela/>.
[42] ASEAN, 'Declaration on the Conduct of Parties in the South China Sea' (4 November 2002) para 5 <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/>.
[43] *South China Sea Arbitration* (n 7) paras 1169 to 1181.
[44] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening) (Merits)* [2002] ICJ Rep 303, and Greentree Agreement (signed 12 June 2006).
[45] Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia (signed 22 May 2025, not yet in force), preamble and art 1.
[46] *Dispute Concerning Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives) (Preliminary Objections)* (Judgment of 28 January 2021) ITLOS Case No 28, paras 243 and 246.
[47] Sarah Thin, 'The Curious Case of the "Legal Effect" of ICJ Advisory Opinions in the Mauritius/Maldives Maritime Boundary Dispute' (*EJIL:Talk!*, 5 February 2021). See also *Chagos* (n 19) (Dissenting Opinion of Judge Donoghue).
[48] Marko Milanović, 'ICJ Delivers Chagos Advisory Opinion, UK Loses Badly' (*EJIL:Talk!*, 25 February 2019).

VI. Criteria

Four questions ultimately determine whether the threshold is crossed, all being cumulative in weight rather than individually sufficient. The first is function, determining whether the installation confers a practical capacity to exclude others from what they are lawfully entitled to use. Fortification combined with position on a route others must take is what matters, since a garrison on an isolated feature excludes no one.

The second is object, establishing whether the militarisation is directed at consolidating a claim against a determination already made, or at defeating the machinery of settlement. Here conduct after a judgment or award is worse than conduct before.

The third is reversibility, asking whether the construction destroys the thing in dispute or the evidence of its natural condition. The Annex VII tribunal found severe harm to the reef environment and observed that a fait accompli had been created at Mischief Reef.[49] The damage runs beyond ecology, as construction destroys the evidence of a feature's natural condition, upon which entitlement under UNCLOS depends, so the building done by a state may foreclose the determination that would resolve the dispute. The Chinese Society of International Law's attack on the Annex VII tribunal's entitlement test as applied to Itu Aba serves to compound the difficulty, since a contested test applied to obliterated evidence cannot be repeated.[50]

The fourth is trajectory, asking whether the conduct is a single episode or a series calibrated to stay below the level that would provoke response. The ICJ has left open whether minor incidents may be taken cumulatively.[51]

When applied, the criteria discriminate. Isla Portillos fails all four, since a camp confers no power to exclude, the position was reversible and the episode singular, confirming removal as the correct remedy. Diego Garcia fails the first two, since the base excludes nobody from passage and the sovereign now consents, though this would change if the UK had fortified in defiance of the 2019 opinion. The Spratly features satisfy the second, third and fourth outright, and the first in capacity if not yet exercise. This leads to the uncomfortable result that the situation that comes nearest the threshold is the only one of the three which the UNSC cannot reach.

VII. Conclusion

Military bases on disputed islands are capable of threatening international peace and security, the answer to the question being a qualified yes. The qualification is not evasion but the denial of passage and entrenchment against a determination. These are the functions that carry a basing dispute beyond the bilateral, with the four criteria identifying the presence of either. Absent both, the correct response is the one given thus far by the ICJ and Annex VII tribunal, that being to decide title, order removal where due, and avoid the mention of peace.

The analysis exposes a mismatch in which the criteria are most nearly satisfied by the situations least susceptible to the finding, making the frame unavailable the moment it becomes

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[49] *South China Sea Arbitration* (n 7) paras 983 and 1177.
[50] Chinese Society of International Law, 'The South China Sea Arbitration Awards: A Critical Study' (2018) 17 *Chinese Journal of International Law* 207.
[51] *Oil Platforms (Islamic Republic of Iran v United States of America) (Judgment)* [2003] ICJ Rep 161, para 64.

apt. The UNSC took no issue in speaking in 1974 because no permanent member's base was in question. And therefore the question worth pressing is not whether such bases threaten peace, which they most certainly may, but which institution is competent to say so when they do.

Generative AI Declaration

I used generative AI responsibly in preparing this essay, in line with the Bar Council's guidance on its use. My primary use was to accelerate legal research through semantic search queries, helping me locate relevant material more efficiently. I also used AI to support formatting and to identify areas where the word count could be reduced. All substantive legal analysis and argument are my own, and every authority cited has been independently verified against the primary source.