

The Chagos Islands Case, WikiLeaks and Justice

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Let this be a lesson to its detractors, doubters and stuff shirts of the secrecy establishment: the documents sourced from WikiLeaks can have tangible, having significant value for ideas and causes. They can advance matters of the curious; they can confirm instances of the outrageous and they can add to those fabulous claims that might change history. While Julian Assange and the publishing organisation have been sniped at for being, at various instances, dangerous, unduly challenging and even less than significant (odd no?), its documentary legacy grows.

Nowhere has there been a tangible demonstration of this than the issue of litigation. With gradual but relentless commitment, advocates and activists have been introducing documents obtained from WikiLeaks into court proceedings. The judicial benches have not always been consistent on how best to cope with the adducing of such matters. Would, for instance, a document obtained improperly still be relevant in proceedings? Or should be excluded on grounds of confidentiality? This state of affairs sits oddly with reality, but then again, the law is more often a fiction that resists reality.

The technological imperative here should be obvious. Such documents lose their factual character of confidence the moment they appear on the website, however obtained. Millions have the means to access it, even if, legally, the document might retain a certain character. In this regard, state officials remain jealous of their secrets and their correspondence, keen to ensure that prying publics are kept in the necessary dark.

The case of removing the inhabitants of the Chagos Archipelago is a particularly ugly one, deeply mired in political considerations and diplomatic intrigue. The islands, located some 1,800 kilometres from Mauritius, became part of an arrangement between Britain and the United States, the latter particularly keen to acquire a military base in the area, the former keen to be in the good books as Greek advisor to all-powerful Rome.

In 1965, with cards firmly kept to their chests, British diplomats disaggregated the Chagos Islands from Mauritius. Mauritius, in turn, received four million pounds for the favour. This underhanded arrangement became the prelude for the removal of all 3,000 occupants from the Islands. The UK Permanent Under-Secretary overseeing the sordid business was [intent](#) on being brutal, suggesting in 1966 with all the crudeness of an ethnic cleanser that Britain be “tough about this. The object of the exercise was to get some rocks which will remain ours; there will be no indigenous population except seagulls who have not yet got a Committee (the Status of Women does not cover the rights of Birds).”

The hand written note appended by D.A. Greenhill on August 24, 1966 on the same document was filled with lashings of vulgarity: “along with the birds go some few Tarzans or Men Fridays” who had to be moved on. Once done, “we must be very tough and a

submission is being done accordingly.” What followed was a forced eviction of the inhabitants and the construction of the US base on Diego Garcia.

This nastiness proved perennial. The Chagossians took up their claims of return, including unacknowledged fishing rights, badgering the UK government repeatedly in their efforts. One ploy adopted by the good officials in Her Majesty’s Government was its attempt to turn the area of claim, known as the British Indian Ocean Territory, into a marine park or reserve.

This is where WikiLeaks proved particularly valuable, with cables clearly outlining the improper and frustrating motive of UK officials. This wily and heinous move, went [one summary](#) on May 15, 2009 of a discussion conducted by US political counsellor Richard Mills at the Foreign Office, would make it “difficult if not impossible, to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve.” The assent of the United States would also be required – a mere formality.

That cable in question became the subject of a legal claim by the Chagossians that wound its way through the British legal system, culminating in two approvals of the use of WikiLeaks cables, the first being the [Court of Appeal](#) in 2014, and the second being before the UK Supreme Court in 2018. The latter duly [acknowledged](#) that the principle of inviolability would normally “make it impermissible to use such documents or copies in a domestic court of the host country” except in extraordinary circumstances or instances of a waiver by the mission state. In this case, the cable in question did not form part of the London Embassy archive, meaning it could be used in court proceedings. Even more significantly, the very fact that it came into the public domain “even in circumstances where the document can be shown to have been wrongly extracted from the mission archive” destroyed its inviolability.

Such proceedings formed part of a momentum that saw the UK referred to the International Court of Justice via vote in the United Nations in 2017. Many European states that might have voted for the UK decided to abstain, a result of Brexit fever. The ICJ duly [found](#) that “the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago.” Accordingly, the UK was “under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.”

The UK Foreign Office has been snooty in [response](#). This island dot continues to irk, worry, and gets under the skin of the establishment. “This is an advisory opinion, not a judgment.” Besides, “The defence facilities on the British Indian Ocean Territory help to protect people here in Britain and around the world from terrorist threats, organised crime and piracy.” When in a tight corner, always aspire to universal relevance and importance. In the meantime, the fortunes of the Chagossians, and international opinion, have turned.

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