STATE CO-OFFENDING: THE CASE OF THE RECOLONIZATION OF THE CHAGOS ARCHIPELAGO AND THE FORCED EVICTION OF THE CHAGOSSIANS

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ABSTRACT

State crime research has included studying the cooperation between states and corporate entities and their interaction with supranational actors. This article extends research on state crime through an exploration of co-offending by multiple powerful state actors—what I refer to here as "state co-offending." The study analyzes the recolonization of the Chagos Archipelago (in the Indian Ocean) and the forced eviction of its Indigenous population as a type of state crime that involved the collusion of two powerful countries. The case study explores the conspiracy between the United Kingdom and the United States to recolonize the archipelago and depopulate the Chagos Islands, identifying behavior that violated international law and illuminating the scale of collaboration between the two governments. The article explores how such behavior was normalized, causing extensive social harm to an entire Indigenous population and disrupting—and discouraging—adherence to international norms.

INTRODUCTION

Between 1967 and 1973, the entire Indigenous population of the Chagos Archipelago (located in the Indian Ocean, south of the Maldives) was forcibly evicted by the British government; most were left homeless and destitute in Mauritius, while some were moved to the Seychelles. This act of involuntary exile was a consequence of separating the Chagos Archipelago from Mauritius and re-naming it the British Indian Ocean Territory (BIOT) before granting Mauritius independence. Today, the main island in the archipelago, Diego Garcia, is home to a United States Naval Communication Station (Naval Support Facility Diego Garcia) with over 4000 troops and international support staff (Pilger 2006). The naval base is seen as the "single most important facility … a vital and indispensable platform for global operations" (*R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* [2006] EWHC 1038 ¶96 ["*Bancoult* 2006"]). Chagossians are prohibited from returning to the island, even as employees of the military base (Bowman and Lefebvre 1985).

On February 25, 2019, the International Court of Justice (ICJ) delivered its advisory opinion on the separation of the Chagos Archipelago from Mauritius. In an overwhelming majority of 13-1, the ICJ held that the process of decolonizing Mauritius was not completed lawfully and

that the United Kingdom (UK) is under an obligation to end its occupation of the archipelago (ICJ 2019). On May 22, 2019, the United Nations (UN) General Assembly (GA) gave the UK six months to end its colonial administration of the BIOT—a deadline that has now passed without any notable action (UN 2019).

The purpose of this article is to examine how two powerful countries—the UK and the United States (US)—cooperated in a deviant enterprise to recolonize the island chain and displace the entire Indigenous population during a time of decolonization. To provide context for the analysis, the article begins with a brief overview of the development of the state crime concept and introduces the concept of "state co-offending."

STATE CRIME AND CO-OFFENDING BETWEEN COUNTRIES

The concept of state crime was introduced to the criminology lexicon as early as 1898 by Louis Proal in his work on "political crime." Others, such as DuBois (1899), acknowledged that the criminal justice system affords immunities to the wrongdoing of the privileged. The most well-known contribution to this subject was by William Chambliss who, in his Presidential Address at the Annual Meeting of the American Society of Criminology in 1988, introduced the term "state-organized crime" as "acts defined by law as criminal and committed by state officials in pursuit of their jobs as representatives of the state" (1989: 184).

State crime research is concerned with "state organizational deviance involving the violation of human rights" (Green and Ward 2004: 2). This involves studying governments as entities that pursue conforming and/or deviant goals for the benefit of the state as a whole (Green and Ward 2004). State crimes incorporate a wide variety of acts and omissions "committed by government agencies or caused by public policies whose victims suffer harm as a result of social, political, and economic injustice … racial, sexual, and cultural discrimination [which are] abuse of political and/or economic power" (Barak 2011: 36).

Despite more criminologists undertaking research on state crime in the last few decades, the subject matter remains under-studied (Green and Ward 2004; Rothe and Kauzlarich 2016). This is unfortunate because a disproportionate focus on the study of the powerless essentially serves the interests of the powerful and privileged classes, perpetuating many forms of oppression and injustice (Rothe and Kauzlarich 2016). The increasing attention and recognition of the subject by international institutions, such as the UN, and the creation of bodies, such as the International Criminal Court, provide indisputable evidence that states, just like individuals and corporations, are capable of engaging in deviant behaviors (Green and Ward 2004). These developments lend support to the argument that not only should criminologists dedicate more time to exploring and explaining state crimes, but that as a discipline, criminology is uniquely suited for this type of research. The knowledge that has been amassed in studying crimes of the powerless is valuable and often applicable to studying the crimes of the powerful. In this article, one such application is explored—the co-offending by separate nation-states.

State crime research has included the study of government interactions with other institutions. Michalowski and Kramer (2006) describe "state-corporate crime" as political institutions

cooperating with corporations to perform illegal or socially injurious actions. Building on the state-corporate model, some scholars (e.g., Friedrichs and Friedrichs 2002; Rothe and Friedrichs 2014) have put forth the idea of "crimes of globalization" to refer to policies that stem from the interaction of states with corporations and international financial institutions that pursue common goals without due regard for human rights. While such terminology is helpful, an area largely neglected in state crime research has been an examination of the deviant cooperation *between* nation-states. "State co-offending" describes cooperative behavior between two or more sovereign nations that knowingly seek to circumvent established legal and/or human rights standards and cause social harm.

The study of co-offending has a rich history in street crime research (Albanese 2007; Reiss 1986; Warr 2002). The literature provides key insights that can be applied to state co-offending. Co-offending refers to two or more actors collaborating in the execution of a crime (Felson 2009; Reiss 1986). The decision to co-offend is grounded in pragmatic reasons, such as making the action easier, more profitable, or less risky (Felson 2009; McCarthy et al. 1998; Tremblay 1993). A co-offender may be necessary because of knowledge or access. These reasons are likely to be similar for co-offending among states, where one country has knowledge or access that makes an action easier, more profitable, or less risky for the other. Weerman (2003) explains co-offending as a social exchange which provides additional rewards that may be material or immaterial. That is, rewards may be measurable economic ones or less conspicuous social advantages. Among nations, the rewards of such a social exchange would allow for various economic and political benefits.

The social network of an offender plays a critical role in selecting a co-offender and in the choice of behavior. A co-offender is one with which the actor already has a prior relationship (Cressey 1969). The preexisting relationship can be based on ethnicity, geography, ideology, or kinship (Reiss and Farrington 1991). Relationships can also be based on a legitimate business association that drifts between non-criminal and criminal behaviors (Malm et al. 2011). It is hypothesized that nations are more likely to act within preexisting relationships. State power is enabled and sustained through social networks which have been created in an historical context. Rothe and Kauzlarich (2016: 4) explain that "power exists through social relationships and is historically and culturally specific, … it is produced and reproduced within social structures." Therefore, countries and their representatives sustain the status quo through collaboration with other key actors in their social network of allied countries. The US and the UK have been known to have a "special relationship"— especially in terms of military cooperation (Dumbrell 2004). This relationship has been particularly long-lived and has been explained, in part, by the countries' shared culture (Marsh and Baylis 2006).

Conduct is also influenced by social networks (Erickson and Jensen 1977), and choice of offense is often dependent on acts that are normalized in the group (Vaughan 1996). Behaviors are defined as appropriate and acceptable when they conform with the norms established within the in-group. Much like deviance, which is accepted within institutions and organizations, certain conduct is normalized within networks of countries. This is heightened when normative constraints are reduced and conduct becomes accepted culturally (Kramer and Kauzlarich 2011; Passas 2005). State behaviors are reinforced in a culture and environment where actors can rely on each other as partners and as accomplices that ensure impunity. States can then drift between legitimate and illegitimate behaviors.

Studying co-offending between states needs to be undertaken in an historical context in order to understand the related circumstances and the factors that connect countries. This includes

taking account of interstate alliances that allow political geographies of hegemony to evolve and maintain social structures despite changing norms. For this reason, the study of the establishment of the BIOT requires an understanding of decolonization and the establishment of US military bases around the world.

DECOLONIZATION AND THE DEVELOPMENT OF MILITARY BASES

Decolonization refers to the dissolution of European empires that created newly independent countries across the developing world.[1] Article 73(b) of Chapter XI of the Charter of the United Nations (1945) (the "Charter") mandated that colonial powers "develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions." In 1960, UN Resolution 1514 (XV) reaffirmed the commitment of the international community to assist territories seeking independence. In the resolution, the GA welcomed the emergence of newly independent countries but recognized that other dependent territories were still struggling to gain freedom. The resolution declared that "repressive measures of all kinds directed at dependent peoples shall cease" (UN Resolution 1514 (XV) 1960). The Special Committee on Decolonization was created to oversee the implementation of the UN Resolution 1514(XV) and all remaining non-self-governing territories were listed under Article 73(e) of the Charter. Countries were and continue to be required to report on the "economic, social and educational conditions in the territories for which they are responsible" (UN Resolution 66(I) 1946). Among these remaining territories is the BIOT. International law requires countries to abide by the rules created in these instruments.

Britain, which, at its height, was the largest empire in history, had a daunting decolonizing charge (Ferguson 2004). British Prime Minister Clement Attlee (1961: 1) declared:

> without external pressure or weariness at the burden of ruling, the ruling people has voluntarily surrendered its hegemony over subject peoples and given them their freedom, where also the majority of the people so liberated have continued in political association with former rulers. This unique example is the British Empire.

The reality was somewhat less benign as has been revealed by incriminating British Foreign Office documents on the decolonization process (Cobain 2016). Despite international treaties and resolutions, relinquishing dependent territories was fiercely contested and often accompanied by violence (Kennedy 2016). Decolonization happened faster than expected and undermined British expectations that with some administrative and political changes, the colonial system would be reinvigorated and continue after the World War II (Kennedy 2016).

In fact, decolonization was accompanied by large-scale changes in the global order. World War II created two new superpowers to rival the supremacy of previous colonial powers—the US and the Union of Soviet Socialist Republics (USSR). Although both were ideologically opposed to colonialism,[2] they were keen to expand their spheres of influence. The result was

[1] Decolonization can also refer to the devolution of dependent territories in earlier times, such as in the Americas (1776–1820) and in Europe (1917–1920) (Kennedy 2016).

[2] Despite the US and the USSR becoming post-World War II superpowers, neither viewed colonialism favorably. For the USSR, colonialism was counter to Soviet ideology of defending the international proletariat and achieving communism. For the US,

the development of alternatives to traditional colonialism. The USSR absorbed territories in a federated constitutional structure and acquired "client states" in Eastern Europe (Kennedy 2016). The US became a "base nation," building an empire through the expansion of military bases around the world and creating a war economy (Boggs 2016; Davis 2011; Vine 2015). Militarism became a fundamental influence on US culture, as well as on its economy, institutions, and policies (Boggs 2003; Immerwahr 2019). The pursuit of the American imperial agenda is well disguised in a rhetoric of democracy, human rights, and rule of law, which belies the human cost of US actions and which has been underpinned by white supremacist ideas (Boggs 2016; Immerwahr 2019).

By the end of World War II, the US had 30,000 military installations across 100 countries (Lutz 2009). This number has shrunk over time due to growing resistance from countries exerting their sovereignty (Blaker 1990), as well as from social movements that have curtailed the types of military exercises permissible (McCaffrey 2002). This has prompted the US to pursue locations that would be "immune to local political developments" (Johnson 2004: 221), such as the Indian Ocean island of Diego Garcia. At the time that the US was demonstrating its opposition to colonialism by granting its largest colony, the Philippines, independence, it was shoring up its superpower role by gaining access to and recolonizing small, remote islands (Immerwahr 2019). Academics have suggested that the number of US foreign military bases today is between 800 and 1000 (Johnson 2004; Lutz 2009; Vine 2015). This includes military and espionage installations in the UK which are disguised as Royal Air Force bases (Johnson 2004).

Bases are vital to US hegemony—"legitimate and necessary instrument[s] of US power, morally justified and … rightful symbol[s] of the US role in the world" (Blaker 1990: 28). The international network of bases not only benefits US defense and intelligence interests but also provides profits for US civilian industries (Boggs 2003; Johnson 2004). The bases facilitate and enforce economic and political interests abroad, ensuring support for US policies and corporate interests (Lutz 2009). In many ways, the US has merged the interests of the state with those of US corporations and has used its superior military power to ensure economic success (Boggs 2016).

At base locations, US military personnel and host countries interact directly, creating jobs and revenues for local businesses (Lutz 2009). It is estimated that the Department of Defense employs nearly 45,000 local foreigners (Johnson 2004). Bases, however, also bring crime, curtail land access, dislocate local populations, and contaminate the environment (McCaffrey 2002; Davis 2011; Vine 2015). In the case of the BIOT, the entire Chagossian population was evicted by force.

FORCED EVICTION IN INTERNATIONAL LAW

Forced eviction runs afoul of the right to adequate housing codified across several international legal instruments.[3] Two of these, the Universal Declaration of Human Rights

colonialism conflicted with the ideals of a sovereign republic formed after the American Revolutionary War (Immerwahr 2019; Kennedy 2016).

[3] Art 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination 1965; Articles 2.3, 12.1, and 26 of the International Covenant on Civil and Political Rights 1966; Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women 1979; Article 27 of the Convention on the Rights of the Child 1989; and Article 7 of the Rome Statute of the International Criminal Court 1998.

1948 (UDHR)[4] and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR),[5] were in force and applied at the time of the forced eviction of the Chagossians.[6] The Committee on Economic, Social, and Cultural Rights (CESCR), which monitors the implementation of the ICESCR, defines "forced eviction" as "the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (CESCR 1997: ¶3). Forced evictions are usually state crimes—either state-initiated or state-facilitated—where the government either pursues dispossession directly or allows it to occur without adequate protections. Displacement becomes forced eviction when it is decided, planned, and carried out in a manner that causes unnecessary harm to the community affected (UN Habitat 2014).

Not all evictions are prohibited by international law. When relocation is unavoidable, states are obligated to protect vulnerable populations. First, states need to consider all alternatives to relocation and conduct an eviction impact assessment (UN Habitat 2014). If relocation remains necessary, states are required to consult with the affected communities and ensure their cooperation and participation. States also have to provide adequate notification of the impending relocation as well as provide for administrative and legal recourse (UN OHCHR 2011). The relocation cannot result in homelessness or the deterioration of housing and living conditions—meaning that plans for relocation and compensation must be provided in advance of the removal procedure (UN Habitat 2014).

Forced eviction disproportionally affects poor, minority communities. Marginalized populations make easier targets of discriminatory state policies, often leaving individuals and communities without any compensation or substitute housing (UN Habitat 2007). The practice serves to further immiserate the poor and re-victimize vulnerable populations as it advances marginality, territorial stigmatization, and social exclusion (Green et al. 2015).

Forced evictions are often caused, directly or indirectly, by development projects. These development-based evictions can occur in order to make way for mega events (such as the Olympics), urban renewal projects, or for acquisition of land for national or global industries. In what UN Habitat calls "bulldozer governance," governments often use forced eviction as a method to pursue policies for development under the pretext of serving the public good (UN Habitat 2014: 13). A lesser discussed development-based eviction has been the establishment of military bases, often requiring the dislocation of communities.

The current case study explores the forced eviction of an entire Indigenous population after their homeland was recolonized and reclassified as "uninhabited." The aim is to gain a deeper understanding of the process involved in this forced eviction and to expose how two powerful countries co-offended, causing willful social harm to the Chagossians—harm that endures to this day.

[4] Ratified by all 192 member states of the UN.

[5] Signed and ratified by 150 countries including Mauritius and the UK. The US signed the ICESCR in 1977 but has yet to ratify it.

[6] Forced eviction also violates the right to security of the person; rights to education, food, health, home, information, participation and self-expression, water, work/livelihood; freedom from cruel, inhumane and degrading treatment; and freedom of movement.

METHODS

A case study investigates "a contemporary phenomenon within its real-life context" (Yin 2003: 13), and this case study includes identifying the *how* and the *why* of a contemporary event with historical roots (Yin 2003). Case studies are not limited to a single type of data. Although this case study used primarily legal and government document analysis, it benefited from a wide array of original and secondary sources. Documents consulted included prosecution materials, as well as letters, memoranda, and other original documents from national archives, the UN, and the ICJ. These were supplemented with open-source journalistic and academic material. These supplemental materials included reports by reputable news outlets (such as *The Guardian*), historical analysis by academics from various disciplines, as well as books, blogs, and websites written by Chagossians. The selection of documents was determined by the reliability of the source and the relevance of the information. Data collection was then organized chronologically to build a timeline of the process and to construct the context for the recolonization and forced eviction. The data were coded and categorized into themes that allowed for a more accurate and dispassionate understanding of the patterns and propositions found.

Case studies do not allow findings to be generalizable; in fact, the aim of a case study is to understand a singular phenomenon (Stake 1995). That said, case studies allow for intellectual generalization (Donmoyer 2008)—using a process which is identified in one case to illuminate other cases of similar experience and to discover a new perspective on those experiences (Butler-Kisber 2010). The aim, therefore, is to "capture and report … the uniqueness, the essence, of the case in all its particularity and present this in a way we can all recognize, [so] we will discover something of universal significance" (Simons 2014: 466).

RECOLONIZATION

The acquisition of Diego Garcia was a direct response to the wave of decolonization sweeping the Global South after World War II. The future of US bases, created after World War II, became uncertain (Bandjunis 2001). In 1958, Stuart Barber, a US Navy long-range planning officer, identified locations in the southern hemisphere that were remote and sparsely populated that could be acquired for future bases, including sixty strategic islands (Bandjunis 2001). Diego Garcia was considered particularly desirable because of its location, its natural harbor and protected lagoon, its size (sufficient for a large airstrip), and, importantly, a small population of people that could be removed easily (Vine 2009).

In 1960, the US initiated the process of procuring Diego Garcia, initially in secret conversations with the UK and then in formal negotiations between the US Secretary of Defense Robert McNamara and British Minister of Defense Peter Thorneycroft (US State Department 2000). From the outset, it was clear that the base needed to be free from any limits set by a new nation. Testimony in *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* [2000] EWHC Admin 413 ("*Bancoult* 2000") showed that:

> it would be unacceptable to both the British and the American defense authorities if facilities of the kind proposed were in any way subject to political control of a newly emergent independent state… it is hoped that the Mauritius Government may agree to the islands being detached and directly administered by Britain. [*Bancoult* 2000: ¶11]

Both governments were aware of the problematic nature of such an endeavor. A British memorandum, dated May 11, 1964, acknowledged "the difficulties we are likely to have to face in the United Nations if these proposals become known at the present time" (*Bancoult* 2000: ¶9). To evade its domestic policies, the BIOT was created using an "Order in Council." An Order in Council falls under Royal Prerogative: it does not require the usual parliamentary procedure that provides democratic oversight, and thus it allows the process to be concealed from external scrutiny (Vine and Jeffery 2009). The US was also adamant that the agreement circumvent the approval of Congress.

The negotiation of the detachment of Chagos from Mauritius was undertaken, while Mauritius was still a British colony seeking independence. In what has become known as the Lancaster House Agreement, Mauritius agreed to relinquish the Chagos Islands and other islands for defense purposes with the understanding that the islands would be returned to Mauritius when they were no longer needed for defense purposes (ICJ 2019: 3). On November 8, 1965, the Chagos Islands and the islands of Aldabra, Farquhar, and Desroches (part of Seychelles) made up the new freestanding colony, the BIOT. Seychelles, which was also a British colony seeking self-determination, was provided a promise of a new airport in Mahé (Vine 2004: 120).

In 1966, the UK and the US used an Exchange of Notes (EoN) to legalize the use of the BIOT for US defense purposes (EoN 1966). The EoN was offered by the US and accepted by the UK, indicating the origins of the endeavor. The use of an EoN, rather than a treaty, allowed both countries to bypass the domestic legislative approval (Allen 2007). The EoN made the entire Chagos Archipelago and the three Seychellois islands available to the US for a fifty-year period with a twenty-year extension unless notice was given (Article 11 of the EoN). Moreover, the territory was made available to the US without charge (Article 4 of the EoN). Secretly, the US agreed to pay half the costs of the detachment of the archipelago from Mauritius and for the removal of the inhabitants of the islands—a total of US$14 million at the time (Bandjunis 2001). A 1971 internal British Treasury letter stated the US payment would be made indirectly in the form "of a reduction of UKP 5 million in the research and development surcharge due from Britain for the Polaris missile" (Brack 1971).

The recolonization of Chagos occurred despite UN Resolution 1514(XV), which was aimed at preventing colonial powers from disrupting the national unity and territorial integrity of a country. The agreement between the US and the UK separated Chagos from Mauritius. In response, the UNGA passed another UN Resolution (2066 1965) stating,

> that the administering Power has not fully implemented Resolution 1514(XV)… any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration.

The UNGA issued two subsequent resolutions (UN Resolution 2232(XXI) of 1966 and 2357(XXII) of 1967) to curtail the actions of the UK. Nevertheless, the new colony was created in 1966.

In 2017, UN Resolution 71/292 requested that the ICJ, which is the principal judicial organ of the UN, provides an advisory opinion on whether the process of decolonization of Mauritius was completed lawfully—with specific consideration of the prior detachment of the Chagos Archipelago (ICJ 2019). The ICJ was also asked to explain the international legal

consequences of the continued administration of the BIOT by the UK. To make its assessment, the ICJ used the rules applicable during the time of detachment and recolonization but also included in its consideration "the evolution of the law on self-determination since the adoption of the Charter of the United Nations and of UN Resolution 1514 (XV)" (ICJ 2019: 34).

In February 2019, the ICJ (2019: 41) issued its advisory opinion, which stated that:

> Having reviewed the circumstances in which the Council of Ministers of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago on the basis of the Lancaster House agreement, the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned… The Court concludes that, as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.

The ICJ determined that the UK needed to end its administration of the archipelago because the continued administration of the BIOT constituted a wrongful act (ICJ 2019: 42). A few months later, the UNGA issued UN Resolution 73/295, stating that the UK has to "withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than 6 months" (UN Resolution 73/295 2019: article 3)—by November 22, 2019. To date, the UK has not fulfilled this obligation under international law and the Chagossians remain a dispossessed people.

FORCED EVICTION

The 1960 secret agreement between the US and the UK included another important requirement—depopulation (Bandjunis 2001). A communication between British government officials makes clear their intention for the islands:

> The primary objective in acquiring these islands from Mauritius and the Seychelles to form the new BIOT was to ensure that Her Majesty's Government had full title to, and control over, these islands so that they could be used for the construction of defense facilities without hindrance or political agitation and so that when a particular island would be needed for the construction of British or United States defense facilities Britain or the United States should be able to clear it of its current population. The Americans in particular attached great importance to this freedom of maneuver, divorced from the normal considerations applying to a populated dependent territory. [*Bancoult* 2000: ¶14]

As noted above, the archipelago was chosen for its small Indigenous population. The Permanent Under-Secretary of State for the Colonies, Sir Hilton Poynton, stated in a 1966 memorandum that, "The object of the exercise was to get some rocks which will remain ours; there will be no indigenous population except seagulls" (*Bancoult* 2000: ¶13). Sir Denis Greenhill, the Deputy Under-Secretary for Foreign and Commonwealth Affairs echoed, "Unfortunately along with the Birds go some few Tarzans or Men Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius etc." (*Bancoult* 2000: ¶13). A letter from the British Minister of State for Foreign Affairs Baron Chalfont to the US

Ambassador David Bruce confirmed that the UK would depopulate any islands that the US wished to use (Chalfont 1966).

Under international law (UDHR 1948; ICESCR 1966) and the British constitution (Blackstone 2009), the Chagossians, as British and colonial subjects, are protected from forced exile. In order to circumvent international and domestic law, the Chagossians were essentially erased: no longer referred to as "inhabitants," they were now "migrant laborers." This was done intentionally in a letter from June 1966 to the Colonial Office. Here, the BIOT Commissioner explained:

> [we] wish to avoid using the phrase 'permanent inhabitants' in relation to any of the islands in the territory because to recognize that there are permanent inhabitants will imply that there is a population whose democratic rights will have to be safeguarded and which will therefore be deemed by the UN Special Committee on Decolonization to come within its purview. [*Bancoult* 2000: ¶13]

Both countries were aware of the need to conceal these acts. In a 1968 telegram, US Secretary of State Dean Rusk explained that the removals need to be hidden so as not arouse public attention (Rusk 1968). The same year, Anthony Aust, a British Foreign Office legal adviser, proposed creating a fiction that the inhabitants of Chagos were a "floating population":

> There is nothing wrong in law or in principle to enacting an immigration law which enables the Commission to deport inhabitants of BIOT. Even in international law there is no established rule that a citizen has right to enter or remain in his country of origin/birth/nationality etc. …we are able to make up the rules as go along and treat the inhabitants of BIOT as not belonging to it in any sense. [*Bancoult* 2000: ¶16]

As a result, population data compiled by colonial officials were manipulated to support this fiction and avoid responsibilities under the Charter (Gifford and Dunne 2014). This fiction was repeated both in the UK and in the US (Vine 2009: 102).

Once the US confirmed that Diego Garcia would function as a naval base, it set into motion plans to begin the resettlement (*Chagos Islanders v. The Attorney General and Her Majesty's BIOT Commissioner*. No. HQ02X01287 [2003] EWHC 2222 (QB) ¶ 16 ["*Chagos Islanders* 2003"]). The US insisted that Chagossians needed to be resettled outside of the BIOT altogether (Rusk 1968). With approval from the UK Prime Minister, the Chancellor of the Exchequer, and the Secretary of State for Defense, the US and UK agreed that the entire archipelago would be depopulated, ensuring that there would be no reporting obligations under the Charter (*Chagos Islanders* 2003). As Aust explained in a 1970 letter:

> the longer that such a population remains, and perhaps increases, the greater the risk of our being accused of setting up a mini-colony about which we would have to report to the UN… Therefore strict immigration legislation giving such laborer's and their families very restricted rights of residence would bolster our arguments that the territory has no indigenous population. [*Bancoult* 2000: ¶18]

The final authorization for construction of the naval base was provided by US Congress in December of 1970, followed by a notice to the UK that Diego Garcia had to be evacuated by July 1971 (*Chagos Islanders* 2003: ¶31).

The UK initiated steps toward depopulating Diego Garcia with the 1967 Compulsory Acquisition of Land for Public Purposes Ordinance No. 1. This ordinance mandated the purchase of all privately held land in the archipelago, effectively taking control of all copra plantations, which provided livelihood to Chagossians. The island was then depopulated in four stages.

The first stage prevented reentry of those who left the island temporarily (*Bancoult v. McNamara*, 227 F. Supp. 2d 144 (D.D.C. 2002) ["*Bancoult* 2002"]). Chagossians who left for a short time ended up stranded in Mauritius, suffering uncertainty and homelessness (Gifford and Dunne 2014). The second stage restricted imports to the island, creating a scarcity of basic goods. This forced another wave of people off the island (*Bancoult* 2002). The third stage involved threats and coercion from British officials with the support of US officers (Vine 2009: 112). Although no physical violence was used against the Chagossians, these tactics caused fear and distress (*Chagos Islanders* 2003: ¶331). US officers then demolished Chagossian homes (*Chagos Islanders v. The United Kingdom*. No. 35622/04 ECHR 2012 ["*Chagos Islanders* 2012"]). BIOT Commissioner Sir Bruce Greatbatch ordered the extermination of all dogs on Diego Garcia—first with the help of US Naval Construction Battalions who shot them with M16s, then through poisoning, and finally with capturing, gassing, and burning the dogs (*Chagos Islanders* 2003: ¶36).

The final stage of the depopulation was the 1971 Immigration Ordinance No.1, which made it unlawful to enter or remain in the BIOT (Section 4). All remaining Chagossians were transported to Mauritius and Seychelles in cramped and unsanitary conditions on small vessels (*Chagos Islanders* 2012). As Pilger (2006: 27) remarks, "[Greatbatch] insisted that the horses took pride of place on deck of the *Nordvaer*. For five days, the horses were fed and the people were not." Individuals were allowed to take only a small case and a bed mat; the rest of their belongings had to be left behind (Vine 2009: 113). The last 125 Chagossians were removed on May 26, 1973 (*Chagos Islanders* 2003: ¶49). According to an independent review, the number of Chagossians exiled totaled between 1560 and 1754, of which 232 were sent to Seychelles and the rest to Mauritius (Gifford and Dunne 2014). Essentially, the Chagossians were thrown from a modest but comfortable life into abject poverty, where they lived in dilapidated shacks in slums, unable to obtain employment, and subject to marginalization from the local population (Vine and Jeffery 2009). The resulting insecurity, hopelessness, and trauma has affected generations of Chagossian islanders: "The scars of this traumatic experience of living in enforced exile are still visible in our community today" (Chagos Islanders Movement 2020).

Chagossians fought the decision in both British and American courts, as well as in the European Court of Human Rights (ECtHR) on the grounds of forced relocation, racial discrimination, and negligence. In the US, it was decided the issue was outside the subject matter jurisdiction of the federal court and that the statute of limitations had expired (*Bancoult* 2002). The United States District Court for the District of Columbia also stated that federal officers were immune from any wrongdoing while acting within the scope of their employment due to sovereign immunity (*Bancoult* 2002: 148). In the UK, the lower courts found in favor of the plaintiffs on the grounds that the ordinances were passed in the interest of the US and the UK and not the Chagossians (*Chagos Islanders* 2003). On appeal, however, the decisions were overturned, stating that the government was entitled to legislate for a colony, even if "the removal and resettlement of the Chagossians was accomplished with a

callous disregard of their interests" (R (Bancoult) v. Secretary of State for foreign and Commonwealth Affairs [2008] UKHL 61 ¶ 10 (["*Bancoult* 2008"]).

In 2008, David Miliband, the UK Foreign Secretary, stated, "the Government regrets the way the resettlement of the Chagossians was carried out in the 1960s and the 1970s and at the hardship that followed for some of them. We do not seek to justify those actions and do not seek to excuse the conduct of an earlier generation" (quoted in Lunn 2012: 9). Nevertheless, the forced eviction was rationalized by the British government in the name of defense and economic needs not only by the British government of the time, but also subsequent governments, including three prime ministers and thirteen cabinet ministers who, despite knowing the facts of the case, did not raise any objections (Martin and Pilger 2004). These domestic decisions were made despite obligations under the Charter, which obliges a colonial government, such as the UK, to protect the human rights of all its subjects.[7]

The ECtHR decided that the European Convention on Human Rights does not extend to the BIOT. The UK failed to notify the Secretary General of the Council of Europe of the territorial application of the convention to the BIOT when it was created (*Chagos Islanders* 2012). Effectively, the ECtHR decision allowed a colonial power to exclude the application of human rights to the population of its dependencies. Together, these decisions by domestic and regional courts "interpreted the respective laws within the confines of state sovereignty and existing power relations, rather than in the support of universal human rights" (Twyman-Ghoshal and Passas 2015: 116).

The ICJ deemed the issue of resettlement a matter "relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius" (ICJ 2019: 43). This would require an assessment of the necessity for resettlement and the process of depopulation. International law allows resettlement of a population in *unavoidable* circumstances (UN Habitat 2014). In such instances, humanitarian law requires the state to consult with the affected population and provide adequate notification and recourse. Chagossians were not informed or consulted about the recolonizing of the archipelago or the plans for their resettlement.

Assessing the reparations due to the Chagossians has been challenging. From 1967 to 1973, when the islanders were abandoned in Port Louis and Mahé, they were not given any resettlement assistance from the UK or Mauritius (Vine 2009). This occurred despite negotiations with Mauritius on the terms of resettlement, which began in 1965. When the Lancaster House Agreement was signed in 1972, the UK and Mauritius agreed that Mauritus would receive £650,000 in March 1973 from the UK to cover the costs of islanders (*Chagos Islanders* 2003: ¶43). Funds were not distributed until after lengthy litigation in Mauritius in 1977 and 1978, however. Due to the high rate of inflation, Chagossian families ultimately received funds of reduced value that did not cover adequately the harm caused (*Chagos Islanders* 2003: ¶51; *Bancoult* 2008: ¶11). After further litigation in Mauritius, the UK agreed to pay another £4 million as full and final settlement of the compensation claims of the Chagossians (ICJ 2019: 3). This payout provided around £1000 per person (Pilger 2006: 32). Despite these payouts, Lord Hoffman admitted that, "For the most part, the community was left to fend for itself in the slums of Port Louis" (*Bancoult* 2008: ¶10). Those in Seychelles

[7] The definition of the term, "British subject," has changed over time. At the time the Charter came into force, it referred to the citizens of the British Empire (with the exception of protectorates and protected states). After 1949, the term was used to designate a Commonwealth citizen. Therefore, Chagossians are considered British subjects throughout the process of recolonization and forced eviction.

received no financial support. An independent review of the reparations due, assessed using a human rights damages model, suggested that Chagossians are still owed between US$5.4 and $13.2 billion in uncompensated damages (Vine et al. 2012).

Chagossian claimants have asserted the right to return to their homeland. By and large, the courts have stated that the question of return is outside their jurisdiction because it was "a function of economic resources and political will, not of adjudication" (*Bancoult* 2008: ¶22). Although the US pledged that it would make use of workers from Mauritius and Seychelles in Diego Garcia (EoN 1966: article 7a), Chagossians are not permitted to work on or visit Diego Garcia (*Bancoult* 2002). The US has also been unequivocal that it was unwilling to allow resettlement to *any* of the islands in the archipelago (*Chagos Islanders* 2012: ¶21).

In 2000, the UK issued a revised Immigration Ordinance which allowed Chagossians to visit the outer islands of the archipelago with the exception of the main island, Diego Garcia (*Bancoult* 2008: ¶18). The same year, the Foreign Secretary initiated a feasibility study for repatriation. Initially, it suggested that there was no reason that the islands of Peros Banhos and Salomon in the archipelago could not be resettled, but then suggested it would be precarious and expensive to do so due to the effects of climate change (*Chagos Islanders* 2012). Claims that the islands will be rendered uninhabitable due to climate change have been questioned by the National Oceanography Center (Pearce 2011) and by academics claiming that the UK is invoking an environmental concern in order to commit human rights violations (Sand 2012). Moreover, according to an inactive US Navy (2008) webpage for visitors to Diego Garcia, the islands are "continuously experiencing rapid growth and changed. … Living and working conditions are outstanding. … Recreational opportunities are numerous and we are constantly expanding facilities to make life more comfortable."

In 2004, an Order in Council issued by the Queen prohibited repatriation (Allen 2008). This was cemented in 2010, when the UK established a marine protection area (MPA) around the entire archipelago, under the pretext of protecting the environment (Sand 2012). The MPA was created using the royal prerogative, again circumventing parliament. Particularly odious was the fact that the MPA was created without consultation with Mauritius or the Chagossian population, intentionally making permanent habitation on the islands impossible (*The Guardian* 2010). The MPA banned all commercial fishing in the BIOT but excluded Diego Garcia and the military base from the protected zone (Lunn 2012). This occurred despite the US Department of Defense being the "single largest institutional producer of greenhouse gases in the world" (Crawford 2019: 2)—a consequence of its military bases, wartime operations, and non-war exercises.

STATE CO-OFFENDING MOTIVATION

In the case of the BIOT, evidence shows that co-offending occurred between the UK and the US. The two countries had distinct and common motivations for the creation of the BIOT. Co-offending was a pragmatic solution to the means-ends discrepancies created by the decolonization process (Twyman-Ghoshal and Passas 2015). The US, in its quest to maintain and expand its sphere of influence through a new form of empire, was motivated to establish strategic island bases (Bandjunis 2001; Johnson 2004; Vine 2009). Since World War II, the US has gained experience in managing foreign bases, including dealing with local opposition (Blaker 1990; McCaffrey 2002). Barber (1960 (quoted in Vine 2015:65)) explains that the US imagined bases on "relatively small, lightly populated islands, separated from major

population masses, [that] could be safely held under full control of the West." The UK had unique access to potential base locations and the power to negotiate favorable terms with states seeking independence. In the case of the BIOT, the UK was able to ensure favorable terms with Mauritius, one of its colonies.

The motivation for the UK came from a precedent established during World War II. While suffering severe cash shortages due to the enduring war, the UK sought military assistance from the US. On September 2, 1940, the two countries signed the "Destroyers-for-bases Agreement" (*BBC* 2003). This granted the US access to UK colonies in the Caribbean for the use as naval and air bases in exchange for US naval destroyers (Lutz 2009). The lease for these base locations was rent-free for 99 years. For the US, this was the beginning of its military base empire outside the continental US (Vine 2015). Meanwhile, the UK was using its colonial legacy as currency to buy military assets. The agreement creating the BIOT enabled the British government to continue to use its colonial legacy as currency—in this case, for a Polaris missile (BIOT 1966: 2).

The scale of the collaboration between the UK and the US as they conspired to create the BIOT and to depopulate the islands constitutes an example of state co-offending. Both actions were contrary to international law of the time. Although the actions were undertaken mostly by the UK, the benefit was shared with the US. Both countries had distinct motivations that were achieved through shared action. The added benefit was that the UK's hegemony was able to evolve and transfer to a trusted partner, which maintained global power structures despite changing norms. This is explored further in the next part.

DISCUSSION AND CONCLUSION

The harmful and illegal behavior of recolonization and forced eviction occurred due to co offending between two powerful countries. US aspirations for becoming a world power were achieved due to a critical partner (the UK) and despite the impediments of international law. Their shared history explains the choice of co-offender and behavior.

The US and the UK had a prior trusting relationship that provided both sides with desired benefits—a relationship based on shared culture and kinship (Cressey 1969; Dumbrell 2004). In this social exchange, both countries gained material and immaterial rewards, which they would not have been able to obtain without collaboration (Weerman 2003). This special relationship played an important role in the maintenance of Western geopolitical interests beyond the decolonization period. Rothe and Kauzlarich (2016: 4) explain that "power is exercised, obtained, legitimated, and maintained through capital accumulation of varying types from economic, military, and political to social status, discourse, and knowledge." At a time when European hegemony was being curtailed through colonial independence movements, the location of the island of Diego Garcia was an important access point for the US.[8] The UK was able to provide support to an allied country while pursuing its own goals. Together, they were also able to maintain Western economic advantage.

The US and the UK relationship also guided the choice of deviant behavior (Erickson and Jensen 1977). For a colonial power, such as the UK, exerting unilateral control over a

[8] The naval communications facility was needed because, at the time, radio and espionage bases in western Australia were not able to cover the entire Indian Ocean (Immerwahr 2019). The base on Diego Garcia has since grown and was vital in the recent invasions of Afghanistan and Iraq (Vine 2004).

foreign-dependent territory and its peoples was acceptable and normal imperial behavior. This was also normalized behavior for the US; the first US bases were established by White European settlers across the American West, where the US exerted unilateral control over Indigenous land (Lutz 2009). Likewise, racial discrimination has been an enabler in the forced eviction of the Chagossians (MRGI 2016).

Despite changing international norms, white supremacist behavior has continued with impunity as domestic and regional trials have maintained the status quo and rejected the enforcement of fundamental human rights. Although the UNGA attempted to curtail the creation of the BIOT, without the will of nations to abide by international norms, the UN remains powerless in the face of state crime. When powerful countries co-offend, they normalize human rights violations under the guise of security and public good. These narratives become more readily accepted when countries, especially powerful ones, act in concert. The result is a culture of impunity, which reduces the effectiveness of the UN that was established by nation states to maintain international peace and security by "solving international political, economic, social, cultural and humanitarian problems and in promoting and encouraging respect for human rights and for fundamental freedoms for all" (Article 1 of Chapter 1 of the Charter).

Although this case was unique in the criminal behaviors exhibited, it offers insights into the modus operandi of co-offending between powerful countries. Today, increased media attention on collusion between governments (Graham 2018) provides added urgency to research state co-offending. Knowledge that has been amassed from studying the powerless allows application to deviance of an entire governance apparatus, including when two countries conspire to circumvent human and environmental rights. When countries conspire in socially harmful acts, the normalization of the behavior is accelerated.

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