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B1, 1.4(A), 1.4(B), 1.4(D)

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E.O. 12958: DECL: 1.6X5,X6 (END OF BRITISH OVERSEAS TERRITORIES)
TAGS: MARR, MOPS, PREL, PHUM, SENV, UK, IO, MP
SUBJECT: BRITAIN LOSES, WILL NOT APPEAL, DIEGO GARCIA COURT
DECISION

REF: A. LONDON 3261
B. PORT LOUIS 1919 (NOTAL)
C. PORT LOUIS 1932

CLASSIFIED BY DCM GLYN DAVIES FOR REASONS 1.5 (B) AND (D).

1. (U) THIS IS AN ACTION TELEGRAM. ACTION REQUEST PARA 13.

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SUMMARY

2. (C/NF) THE UK GOVERNMENT HAS ACCEPTED THE NOV. 3 DECISION OF THE HIGH COURT THAT BRITAIN ACTED ILLEGALLY IN 1971 BY EXPELLING ROUGHLY 850-1500 ILOIS FROM THE BRITISH INDIAN OCEAN TERRITORY (BIOT), NOW HOME TO THE UK AND U.S. MILITARY BASE AT DIEGO GARCIA. FOREIGN SECRETARY COOK, A LABOUR BACKBENCH CRITIC IN THE 1970'S OF THE REMOVAL OF THE POPULATION, IMMEDIATELY ANNOUNCED THAT HMG WOULD NOT APPEAL. FCO SCRAMBLED TO ISSUE THE REQUIRED NEW IMMIGRATION REGULATIONS, WHICH PERMIT THE RETURN OF ILOIS TO ANYWHERE IN THE CHAGOS ARCHIPELAGO EXCEPT FOR DIEGO GARCIA AND ITS "TERRITORIAL SEAS" (A 3-MILE LIMIT). NON-ILOIS WILL STILL NEED BIOT GOVERNMENT (I.E., FCO) PERMISSION TO VISIT OR RESIDE IN BIOT. THERE ARE NOW SOME 3,800 CHAGOS ISLANDERS LIVING IN MAURITIUS AND ANOTHER 500 IN THE SEYCHELLES. IT IS

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UNCLEAR HOW MANY WILL WISH TO RETURN, OR WHAT COSTS BRITAIN WOULD INCUR TO PROVIDE HOUSING, A DOCK, CLINIC, SCHOOLS, POLICE, AND OTHER PUBLIC SERVICES ON WHAT ARE REMOTE AND DESERTED ISLANDS. IT IS ALSO UNCLEAR WHAT ECONOMIC ACTIVITY WOULD PROVIDE A LIVING TO ANY RETURNEE INHABITANTS.

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END SUMMARY.

COURT DECIDES AGAINST EXPULSION

3. (SBU) IN PROTEST AGAINST THEIR 1971 EXPULSION FROM THE INDIAN OCEAN CHAGOS ARCHIPELAGO THAT IS NOW HOME TO THE UK AND U.S. MILITARY BASES AT DIEGO GARCIA, THE FORMER ISLANDERS, THE ILOIS, SUED HMG. CONCLUDING A MARATHON CASE, THE UK HIGH COURT IN ITS NOVEMBER 3 JUDGMENT (FAXED TO EUR/UBI) SIDED WITH THE ILOIS PLAINTIFFS. IN BRIEF, THE COURT FOUND THAT THE EXCLUSION ORDINANCE, I.E., THE ORDER DEPORTING THOSE ON THE ISLANDS TO MAURITIUS, WENT BEYOND THE ORDER IN COUNCIL SETTING UP THE BRITISH INDIAN OCEAN TERRITORY (BIOT).

4. (C) [REDACTED] ITS
DECISION NOTED THAT THE BIOT COMMISSIONER (HISTORICALLY, AN FCO OFFICER) COULD "IN THE NAME AND ON BEHALF OF HER MAJESTY...MAKE LAWS FOR THE PEACE, ORDER AND GOOD GOVERNMENT OF THE TERRITORY" AND ADMITTED THOSE WORDS "CONNOTE, IN

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5. (SBU) HOWEVER, THE JUDGE CONCLUDED THAT SUCH LAWS COULD ONLY BE MADE FOR THE BENEFIT OF THE INHABITANTS. THE INHABITANTS ARE TO "BE GOVERNED, NOT REMOVED...I CANNOT SEE HOW THE WHOLESALE REMOVAL OF A PEOPLE FROM THE LAND WHERE THEY BELONG CAN BE SAID TO CONDUCE TO THE TERRITORY'S PEACE, ORDER AND GOOD GOVERNMENT....I ENTERTAIN CONSIDERABLE DOUBT WHETHER THE PREROGATIVE POWER (I.E., IN AMERICAN TERMS, THE EXECUTIVE BRANCH WITHOUT SPECIFIC STATUTE) EXTENDS SO FAR AS TO PERMIT THE QUEEN IN COUNCIL TO EXILE HER SUBJECTS FROM THE TERRITORY WHERE THEY BELONG....IT WOULD BE ONE THING TO SEND A CHAGOS BELONGER TO ANOTHER PART OF THE QUEEN'S DOMINIONS, AND QUITE ANOTHER TO SEND HIM OUT OF THE QUEEN'S DOMINIONS ALTOGETHER. I WOULD CERTAINLY HOLD THIS LATTER ACT COULD ONLY BE DONE BY (PARLIAMENTARY) STATUTE....TACITUS...SAID: THEY MAKE A DESERT AND CALL IT PEACE....HE MEANT IT AS AN IRONY; BUT HERE, IT WAS AN ABJECT LEGAL FAILURE."

6. (SBU) THE COURT MADE PASSING REFERENCE TO THE JUNE 21

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LETTER FROM PM A/S NEWSOM TO HMG AND THE MILITARY IMPORTANCE
OF DIEGO GARCIA, BUT DID NOT FIND THEM COMPELLING. " (THE
REMOVAL) HAS BEEN DONE FOR HIGH POLITICAL REASONS, GOOD
REASONS, CERTAINLY, DICTATED BY PRESSING CONSIDERATIONS OF
MILITARY SECURITY. BUT THEY ARE NOT REASONS WHICH MAY
REASONABLY BE SAID TO TOUCH THE PEACE, ORDER AND GOOD
GOVERNMENT OF BIOT...IN SHORT, THERE IS NO PRINCIPLED BASIS
UPON WHICH THE (EXCLUSION) ORDINANCE CAN BE
JUSTIFIED...BY...THE BIOT ORDER."

COOK DECIDES AGAINST APPEAL

7. (SBU) JUST HOURS AFTER THE COURT ANNOUNCED ITS JUDGMENT,
FOREIGN SECRETARY ROBIN COOK ANNOUNCED THAT HMG WOULD NOT
APPEAL THE CASE. "THIS GOVERNMENT HAS NOT DEFENDED WHAT WAS
DONE OR SAID THIRTY YEARS AGO...AS LORD JUSTICE LAWS
RECOGNISED, WE MADE NO ATTEMPT TO CONCEAL THE GRAVITY OF WHAT
HAPPENED. I AM PLEASED HE HAD COMMENDED THE WHOLLY ADMIRABLE
CONDUCT IN DISCLOSING MATERIAL TO THE COURT AND PRAISED THE
OPENNESS OF TODAY'S FOREIGN OFFICE."

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IMPLICATIONS FOR THE UK

10. (SBU) HMG NOW MUST FACE THE ISSUE OF HOW TO SUPPORT AN ILOIS RESIDENT POPULATION. IT IS UNCLEAR HOW MANY OF THE 4,300-PLUS ILOIS (INCLUDING DESCENDANTS) WILL WANT TO RETURN AND HOW BRITAIN WILL FINANCE ROADS, SCHOOLS, CLINICS, DOCKS, AND OTHER PUBLIC SERVICES ON ABANDONED, OVERGROWN ISLANDS. IT IS ALSO UNCLEAR HOW ISLANDERS WILL EARN A LIVING AND WHAT LEVEL OF SOCIAL WELFARE SERVICES THEY WILL GET. THE COPRA INDUSTRY WAS ALREADY IN SERIOUS DECLINE IN 1971; THE EXTREME REMOTENESS OF THE ISLANDS ARGUES AGAINST TOURISM, FISHERIES OR AGRICULTURE.

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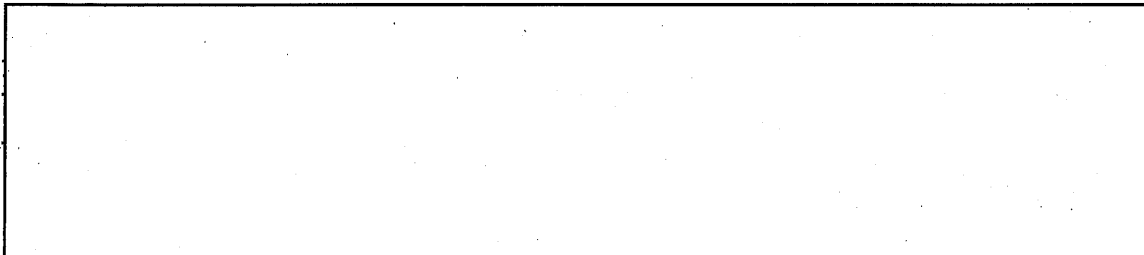
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SELECTED EXCERPTS FROM COURT DECISION

14. (SBU) AS NOTED ABOVE, THE COURT, AND SUBSEQUENTLY MUCH

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OF THE UK MEDIA IN ITS COVERAGE, QUOTED HMG DOCUMENTS FROM
THE 1960'S AND 70'S ABOUT HMG'S DECISION TO REMOVE THE
POPULATION. SELECTED EXCERPTS FOLLOW. "IT WOULD BE HIGHLY
EMBARRASSING TO US IF, AFTER GIVING THE AMERICANS TO
UNDERSTAND THE ISLANDS IN BIOT WOULD BE AVAILABLE TO THEM FOR
DEFENCE PURPOSES, WE THEN HAD TO TELL THEM THAT THEY FELL
WITHIN THE PERVIEW (SIC) OF THE UN COMMITTEE OF TWENTYFOUR."
SOME OF THE BRITISH RECORDS OF THE TIME ARE, THE MEDIA NOTED,
LOADED WITH RACIST AND CRASS COMMENTS: "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 COMMITTEE DOES NOT
COVER THE RIGHTS OF BIRDS)....UNFORTUNATELY ALONG WITH THE
BIRDS GO SOME FEW TARZANS OR MEN FRIDAYS WHOSE ORIGINS ARE
OBSURE AND WHO ARE BEING HOPEFULLY WISHED ON TO MAURITIUS,
ETC...WE MUST BE VERY TOUGH." THE QUOTED DOCUMENTS GO ON TO
SAY "THE PRIMARY OBJECTIVE...WAS (SO) THESE ISLANDS...COULD
BE USED FOR THE CONSTRUCTION OF DEFENCE FACILITIES WITHOUT
HINDRANCE OR POLITICAL AGITATION AND SO THAT WHEN A
PARTICULAR ISLAND WOULD BE NEEDED FOR THE CONSTRUCTION OF
BRITISH OR US DEFENCE FACILITIES BRITAIN OR THE UNITED STATES

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SHOULD BE ABLE TO CLEAR IT OF ITS CURRENT POPULATION. THE AMERICANS IN PARTICULAR ATTACHED GREAT IMPORTANCE TO THIS FREEDOM OF MANOEUVRE, DIVORCED FROM THE NORMAL CONSIDERATIONS APPLYING TO A POPULATED DEPENDENT TERRITORY....WE COULD NOT ACCEPT THE PRINCIPLE GOVERNING OUR OTHERWISE UNIVERSAL BEHAVIOUR IN OUR DEPENDENT TERRITORIES, E.G., WE COULD NOT ACCEPT THAT THE INTEREST OF THE INHABITANTS WERE PARAMOUNT." THE COURT RECORD ALSO NOTED THAT TO EASE THEIR REMOVAL, HMG QUIETLY CLASSIFIED THE POPULATION AS CONTRACT LABORERS, NOT PERMANENT INHABITANTS, WHICH ONE UK OFFICIAL PRIVATELY ADMITTED AT THE TIME WAS A "WHOPPING FIB."

15. (SBU) IN REACHING ITS DECISION, THE COURT CONSIDERS AT LENGTH VARIOUS OTHER LEGAL ARGUMENTS, INCLUDING AN APPEAL TO THE MAGNA CARTA. FOR HMG, THE COURT'S MOST IMPORTANT DECISION MAY BE THAT, AT LEAST IN THE CASE WHERE AN OVERSEAS TERRITORY GOVERNMENT WITH NO INDEPENDENT COURT SYSTEM DEPORTS THE WHOLE POPULATION AT THE ORDER OF THE FCO, ENGLISH COURTS DO HAVE JURISDICTION OVER THAT OVERSEAS TERRITORIAL GOVERNMENT'S DECISION. AS NOTED EARLIER, THE COURT CONSIDERED BUT ULTIMATELY REJECTED GOING FURTHER TO APPLY THE "WITHAM" PRECEDENT TO OVERSEAS TERRITORIES.

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