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TWENTY-SIXTH PLENARY SESSION

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Twenty-Sixth Plenary Session of the
Conference, Monday 5 November 1979.

Lancaster House
5 November 1979

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UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Lord Harlech

Sir J Graham

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr R D Wilkinson

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe

Mr S V Muzenda

Mr H Ushewokunze

Mr D Mutumbuka

Mr J Tungamirai

Mr E Zvobgo

Mr W Kamba

Mr J M Nkomo

Mr J W Msika

Mr A M Chambati

Mr John Nkomo

Mr S K Sibanda

Mr W Musarurwa

Mr D Madzimbamuto

Miss E Siziba

Bishop Muzorewa and Delegation

Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr S V Mutambanengwe
Mr M A Adam

Secretariat

Mr J M Willson

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The session commenced at 17.54.

THE CHAIRMAN recalled that two papers had been tabled on 2 November, his statement (CC(79)57) and the British Government's proposals (CC(79)56). Both delegations had said that they would look at these and let him have their answers when they were ready. He asked if either delegation would like to speak.

MR MUGABE said that he had understood that matters outstanding would be dealt with first. At the Chairman's invitation, he confirmed that he wished to raise these.

Mr Mugabe, continuing, said that when his delegation had submitted their final position on the Independence Constitution they had made it known that they still had to be satisfied about items, such as the nature of the Services during the transition, before they could be satisfied about them in relation to the constitution. They had therefore been taken aback when the British delegation had proposed tabling their final proposals before these matters had been settled. His delegation accepted the principle that it was the right of the independence government to modify the institutions of government in accordance with its own principles and liking. It seemed, however, that the British delegation wanted to see these institutions adopted intact or in a form they would want to see passed on. The present situation was one of illegality: the defence force, the police force, the public service and the judiciary could not be regarded as legal institutions.

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Part of the exercise of the Conference was the restoration of legality. The British had proposed that the Governor, acting with the powers given him by an Order in Council, should assume control of the institutions. The assumption of control would, he took it, constitute the act legalising those institutions and creating a legal order. In so doing, however, the British would, in his view, be creating institutions which would stand to be inherited by the independence government, thus in a sense deciding issues for that government.

His delegation would be the last to say that these institutions should be discarded but were reluctant that they should be passed on as they were. Doing so would tie the hands of a future government and contradict the principle that nothing should be done to interfere with the right of the future government to modify institutions as they wished. His delegation were concerned that the British had not proposed any modification of these institutions in their document. Did the British intend that they should be inherited unchanged, containing certain highly objectionable elements?

His delegation therefore wished the character of these institutions to be discussed. Such discussion should not however be seen as an acceptance of the context provided in paper CC(79)56 but in the context of his delegation's own document and on the basis of their own proposals for the transitional arrangements.

Mr Mugabe asked that his delegation's position regarding each institution be analysed. The retention of existing institutions and personnel meant that the new government would

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inherit personnel whose positions would be protected under the Independence Constitution. Although the Independence Constitution provided that the Attorney General, the Secretaries to the Ministries, the Secretary to the Cabinet, the Chief Justice and the Commissioner of Police would be appointed by the President on the advice of the Prime Minister, the British Government nevertheless intended to saddle the independence government with the present incumbents. His delegation wanted agreement that certain elements should not be passed on. On the judicature, his delegation had proposed that the Chief Justice and all the judges of the High Court should be deemed to vacate office on the formal installation of the interim Government and be replaced on an acting basis. This would allow the future Government to fulfil the people's choice. They also proposed that the top officers in the law and judiciary, the chief magistrate and regional magistrates, should also vacate their offices and be replaced in the interim by temporary appointees.

On the Public Service, his delegation proposed that existing officers should continue in office, subject to the right of a transitional Public Service Commission to be appointed by the Governing Council to retire any officer in the public interest.

His delegation had already stated sufficiently their position on the armed forces and the police force. Sir Ian Gilmour's reply on auxiliaries, however, suggested that the British Government intended to include notorious auxiliaries, such as the Selous Scouts and Grey Scouts, as well as mercenaries in existing forces - and their counter-

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parts in the police force.

What therefore did the British proposals seek to pass on to an independence government? Should these ugly and vicious elements be allowed to see the dawn of independence?

His delegation wanted discussion to centre on these four areas so that these services could be made acceptable to the people of Zimbabwe. His delegation wanted these issues clarified; it was necessary that their own position on the areas of power on which they had reserved their position be made clear.

Mr Mugabe continued that the question of elections, especially the registration of voters, required further discussion. Sir Ian Gilmour had said that some consideration would be given to this but discussion on it had not transpired.

It was necessary to examine the character of, and elements within, these institutions. If the Conference was going to agree to a process legalising those institutions, it also had to take cognizance of those elements within them wholly unacceptable to his delegation. His delegation did not intend to lengthen debate but these matters had not been discussed. Perhaps they had been reserved for discussion under the Order in Council; they also raised the importance of the Conference discussing the main aspects of the Order in Council.

MR NKOMO said that the position of his and Mr Mugabe's delegation had been outlined and that it was important that the nature of the institutions during the transition to independence be looked at so that British intentions could be clarified.

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Would they be discussed when presenting the second Order in Council? Any initial Order in Council should indicate British intentions towards the institutions of Government. His delegation's position had been made clear in discussion of the Independence Constitution but could not be complete until the Order in Council had been made clear and discussed. The contents of the latter needed to be known: if the new Government was to inherit personnel, these needed to be investigated.

THE CHAIRMAN asked whether Dr Mundawarara wished to speak. DR MUNDAWARARA then delivered a statement which was subsequently circulated as Conference Paper CC(79)59.

THE CHAIRMAN said that he was very conscious of the compromises which Bishop Muzorewa's delegation had made in accepting the British proposals, and was most grateful for their prompt response. He asked whether Mr Mugabe's and Mr Nkomo's delegation wished to raise any further points of clarification on the British paper tabled on 2 November (CC(79)56).

MR MUGABE said that the matter he had raised needed to be concluded; the British paper wrongly assumed that everything had been discussed and concluded. However, there were no further points he wished to raise on the British proposals: his delegation would react in due course.

THE CHAIRMAN said that a full answer would be provided the following day to the points raised by Mr Mugabe, although some had already been discussed. He noted that there were no other questions Mr Mugabe, Mr Nkomo and delegation wished to

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ask on the British paper (CC(79)56), which had been tabled on 2 November. Recalling that the Conference had now entered its 9th week, the Chairman noted that there had been repeated discussion of most of the points at issue and that the time had come to take decisions. He therefore appealed to Mr Nkomo and Mr Mugabe and hoped that they would not take too long in deciding whether they could accept the British proposals. He hoped that they would be able to accept them very shortly. The British delegation wanted, and had genuinely tried to achieve, a fair compromise between the positions of the two sides. In the Chairman's view, it would not be possible to achieve agreement between all the delegations on a basis other than that offered in the British proposals.

MR MUZENDA asked when sanctions had been imposed on a democratically elected government of Rhodesia. There seemed to be conflicting statements as to the legality of the Government in Rhodesia. THE CHAIRMAN said that it was open to both sides to put their point of view and to challenge any delegate's remarks. He, as Chairman, did not necessarily agree or disagree with views expressed.

MR MUGABE referred to the Chairman's repeated references to the sacrifices that the Salisbury delegation had had to make. He questioned whether a return from illegality to legality could be regarded as a sacrifice. The Salisbury delegation had made no sacrifices: rather it was his delegation which was making them.

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MR NKOMO looked forward to receiving the British reply to the points raised by Mr Mugabe. He hoped that this would not be a point by point answer, but would accept that what was needed was a full discussion of the issues which had been raised, which were of great importance for the future of his country. These issues involved the position of people and needed to be fully and clearly discussed.

THE CHAIRMAN then suggested an adjournment until the following day.

The session ended at 18.30.