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TWENTY-SEVENTH PLENARY SESSION

89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Twenty-Seventh Plenary Session of the
Conference, Tuesday 6 November 1979

Lancaster House
6 November 1979

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PRESENT:

UK Delegation

Sir I Gilmour Bt (in the Chair)

Mr R Luce

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr C D Powell

Mr A M Layden

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

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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 R Cronje
Mr C Andersen
Mr G Pincus
Mr L G Smith
Mr D Zamchiya
Mr S V Mutambanengwe
Mr M Adam
Mr P Claypole

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Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo	Mr R G Mugabe
Mr A M Chambati	Mr S V Muzenda
Mr John Nkomo	Mr J M Tongogara
Mr L Baron	Dr H Ushewokunze
Mr S K Sibanda	Mr D Mutumbuka
Mr W Musarurwa	Mr J Tungamirai
Mr D N Madzimbamuto	Mr E Zvobgo
Miss E Siziba	Mr W Kamba

Secretariat

Mr J M Willson

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The session commenced at 15.07.

THE CHAIRMAN said that at the session on 5 November Mr Mugabe had made a number of points about the interim period to which Lord Carrington had promised a reply. He then delivered a statement, subsequently circulated as Conference Paper GC(79)61, and asked for comments.

MR MUGABE said that, in his view, it was necessary to examine the public service and to attempt to understand the need his delegation felt for modifying it during the interim period. It had supported a rebellion and could not be compared with its British counterpart which switched its allegiance smoothly from an out-going to an incoming government. It had certain undesirable ideological features which had to be transformed or purged. He was not saying that the public service should be abandoned, but those at the top, who had been politically committed to UDI, could not be accepted. Modification would be more difficult after independence. Mr Mugabe concluded by saying that the matter should be discussed.

MR NKOMO wondered whether there was sufficient flexibility within the civil service to allow for change. He also was interested in the Chairman's statement that the present judges had said that, in certain circumstances, they would not wish to remain. He asked what these circumstances were. These matters had to be fully discussed.

THE CHAIRMAN said that he had made a careful statement on the position of the judges and wished to go no further. There had been considerable discussion of the public service institutions.

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There was a difference of philosophy between the British delegation and that of the Patriotic Front; the latter considered that decisions should be taken on these institutions during the interim period. The British delegation's view was that it was for the elected government of the new independent Zimbabwe to take these decisions.

The Chairman commented that the position in Rhodesia was different now from that 15 years ago; this had been reflected in statements made by Dr Mundawarara and members of his delegation. The British delegation accepted that the institutions of the illegal regime in Rhodesia could not be compared to those in Britain. It was for this reason that a Governor would be appointed; to end illegality and to bring Rhodesia to legal independence. The Chairman said that he did not favour the use of the words "ideology" and "purge" in discussion of the public service, but that he would not contest their use by others. He concluded by saying that the British delegation had tried to be as explicit as possible in dealing with the various points raised.

DR MUNDAWARARA said that he did not recall any precedent in the history of decolonisation for the dismantling of existing forces. A state of war had prevailed also in Kenya, for example, but there had been no purge of public institutions there. He therefore wondered why such a course was being suggested for Rhodesia.

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MR MUGABE said that in the case of Rhodesia there was a situation of rebellion. This situation had not existed in Kenya, and that was the difference. His delegation did not question the act of legalising those institutions which were illegal, but wished to take precautions against a possible UDI, subversive activities or sabotage. Racism had been the doctrine and was still the pattern. The present heads of Departments had worked for the regime of Mr Ian Smith. Their outlook had not changed, nor had the structures, and his delegation did not want such a situation to arise with a post-independence government.

THE CHAIRMAN said that Mr Mugabe had referred to a situation of rebellion but in fact the real situation was one of civil war; the British sought to bring this to an end by elections and the Independence Constitution. The British had made proposals to change the constitution and to give the incoming government more power over the civil and other services than existed at present. He thought that this dealt with the Patriotic Front's fears. The British wished to enable the incoming government to change the civil service within acceptable limits; it was wrong to brand everyone serving in the present Government as a racist. MR MUGABE interjected that he had not branded all civil servants as racists, but that there were racists at the top of the civil service.

THE CHAIRMAN replied that the British proposals made provision for the incoming Prime Minister to make changes at the top of the Civil Service.

/MR NKOMO

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MR NKOMO said that he objected to the Rhodesian situation being called a civil war; it was a war against colonialism.

THE CHAIRMAN said that he was not wedded to a particular form of words; the fact was that there was a war which the Conference was seeking to end. MR BARON said that his delegation regarded it as a war of liberation and, in United Nations terms, as an international war.

The British delegation had resisted the efforts of his delegation to discuss the four essential services (the Army, the Police, the Judiciary and the Public Service) during the discussions on the Independence Constitution, saying that the proper time to do so was during discussions on the interim period. THE CHAIRMAN said that this was not the case; the British had said the institutions should be discussed during the talks on the Constitution, but that otherwise they were matters to be settled by the new independent government.

MR BARON disagreed; and said that his delegation had constantly been prevented from discussing the transitional provisions and the interim arrangements during consideration of the Independence Constitution. They could not judge the effect of the independence provisions until they knew who was going to man the institutions in question because some of the machinery proposed was very restrictive. For example, in the case of the army and police the British had provided for the removal of the Commanders by the President on the advice of the Prime Minister. In the case of the public service, retirement /provisions

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provisions for senior personnel were different and would be subject to a decision by a Public Service Commission. For the judiciary the restrictiveness was complete. He said it was necessary for his delegation, if they were to assess the effect of the proposed independence provisions, to know what people they were being asked to inherit.

On 2 October they had raised this matter at a bilateral meeting; Mr Fifoot had said that "in general we conceive that existing officers would carry over save for top appointments and the Chief Justice".

His delegation had not been told which top appointments the British had in mind for each of the four institutions. These were all separate questions and should not be dealt with on a composite basis. THE CHAIRMAN reiterated that the British view was that public officers should continue to serve in the interim period during which they would be responsible to the governor and subject to his authority. Their position after independence would be for the elected government to decide.

MR NKOMO said that his delegation did not seek to move people from their jobs wholesale, but the constitution provided protection for the civil service and judiciary in such a way that the position of these men would remain entrenched. The Patriotic Front did not wish to remove people unnecessarily but to be able to remove those who made it impossible for government to function.

THE CHAIRMAN said that anyone who did this would surely

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have broken the regulations of his office and would be subject to dismissal. No Government could be obliged to continue such a person in office. With regard to the public service as a whole, the current regulations (which would be continued in force) provided in certain circumstances for senior officials to be asked to resign in the public interest. The Independence Constitution provided that the Commissioner of Police and the Commander of the Defence Forces could be removed by the President on the advice of the Prime Minister.

MR BARON asked about the position of those below the level of the Commanders. He considered that removing the commanders of these forces would have comparatively little effect. The position of the judiciary was clear; there was no doubt about the inability of any future government to remove a judge. The British had said that during the interim period existing officers would continue to serve the Governor and that after independence it would be up to the new government to make whatever changes were permitted by the law. His delegation wanted to know what would be the legal position under the transitional provisions at midnight prior to day one? What would be the automatic effect of the transition from dependence to independence?

THE CHAIRMAN said that Mr Baron had said his delegation wanted to look further down the structure, but that seemed to go against what Mr Nkomo had said earlier - that he did not want wholesale dismissals for dismissals' sake. Mr Baron seemed to be close to advocating an old fashioned spoil system on the

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American model, with an incoming government bringing in all its own people. That was not what the British envisaged at all. MR BARON said that they did not want wholesale replacements, but the legal power to remove individuals at that level.

THE CHAIRMAN said any public servant acting in contravention of his terms of service could expect action to be taken against him, as was normal under any civil service procedures.

MR MUGABE sought clarification of Mr Fifoot's reported remarks on that point at an earlier bilateral meeting. MR FIFOOT said that he had not looked at the British record of the meeting but that he recalled having said that the British view was that those in office on Day minus 1 would be continued in office on Day 1 of independence. He would consult the record to discover what else he had said.

MR KAMBA said that under the Independence Constitution it was prescribed that the President would appoint the Attorney General and Secretaries to Ministries on the advice of the Prime Minister. If on Day 1 of independence the existing Attorney General and Secretaries to Ministries were retained, would the incoming government be able to replace these officials? MR FIFOOT replied that under the constitution the Attorney General was a specially protected officer. The Secretaries of Ministries were not, and were subject to the possibility of removal in the public interest under the existing Civil Service rules.

THE CHAIRMAN remarked that it seemed that the debate on the Constitution was now being reopened when the Conference was in fact

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discussing the interim arrangements. He suggested that detailed legal questions should be submitted, preferably in writing, for answer by the British delegation. The Conference owed it to the people of Rhodesia and of the neighbouring countries to make progress and to move to a successful conclusion.

MR ZVOBGO said that his delegation had reserved its position on these four institutions, and had said that it would reopen them if it was not satisfied. It was now clear that the British delegation wanted the present judges to continue on Day 1 of independence, and the new government would be helpless to effect changes. The same applied to the other three areas; for example, General Walls had stated in London that there would be no change in the defence forces. THE CHAIRMAN said that he had nothing to add regarding judges. As for General Walls' statement, Mr Mugabe had said, and all delegations had accepted, that nothing said outside the Conference was relevant inside the Conference. There was justifiable impatience at the slow progress of the Conference. Any new points would, of course, be dealt with.

MR MUSARURWA said that his delegation would not be stampeded into making decisions which would afterwards be regretted. The Salisbury delegation's decision to accept the British proposals was now being used to pressurise the Patriotic Front delegation. The so-called internal settlement had been concluded only after four months of negotiation. The Conference was now discussing complicated issues which could not be decided quickly. THE CHAIRMAN agreed that well-considered
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decisions were needed for a successful outcome to the Conference. MR LUCE said that it was proper to raise or even to reiterate anxieties. But the people of Rhodesia would not understand if delegates talked round subjects endlessly with no movement towards an end to the conflict. With regard to the question of public servants, in a situation of mutual distrust and antagonism, the assumption must be that all those in positions of responsibility, whether in the Civil Service or in the political field, would stick to the agreement once it was reached. They would bear a very grave responsibility for the consequences of any infringement. Public servants who transgressed would be subject to dismissal by the Governor under the transition or by the new government after independence. There came a time when the assumption had to be made that everyone involved would wish to make the agreement work.

DR MUNDAWARARA said that there was no benefit in repeating arguments. The Conference could not proceed aimlessly. If a public servant was to be replaced for his ideological views, the person replacing him could well hold opposing ideological views. This was not the way to maintain an apolitical Civil Service.

THE CHAIRMAN recalled a remark of Oliver Cromwell, that a public servant should be judged by his actions and not by his opinions.

MR NKOMO said that what was at issue was the racist structure and manning of the public institutions. His delegation wanted to return to their country, but only if those evils which had

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brought them to the Conference had been righted. He asked that the Chairman should explain to the Conference the provisions of the proposed Orders-in-Council. If the other delegation had made the right decision on 3 April, there would have been no need for a Conference.

MR MUGABE said that he would like to make clear the point that, when the Independence Constitution had been discussed his delegation had wished to discuss the four institutions not only in relation to the independence period but also in relation to the interim period. However, the British Government had felt that the transitional arrangements should not be dealt with at that time. That was why his delegation had reserved their position on these areas - so that they could subsequently discuss their nature and character during the transition.

DR MUNDAWARARA said that if Bishop Musorewa's delegation had not wished to discuss those matters they would not have been present at the Conference. Such matters were usually discussed only once, however, unless there was provision for coming back to them. How could someone say they accepted the constitution and then say they still wished to discuss it?

THE CHAIRMAN said that all present had strong feelings on the matter. He said he had given a clear statement of the British Government's views earlier that afternoon, the main points of which he would summarise. These were:

1. The time for change was after independence;
2. the existing officials should continue to serve during the

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interim period; the time to replace them was after independence, and the machinery to do so existed;

3. the position on the judiciary was given in his statement in a way which was intended to be helpful.

He then asked if there were any more specific questions which could be put either verbally or in writing.

DR USHEWOKUNZE said that they had come to negotiate; they had waited 89 years for independence. What was a paltry 9 weeks in this context? He asked the British to be patient with his delegation. THE CHAIRMAN said that he thought they had been very patient. They had produced and had secured agreement (subject to agreement on the interim arrangements and a cease-fire) on an Independence Constitution which would lead to genuine majority rule. It was not helpful therefore to suggest that any new government which came to power after independence was not going to enjoy majority rule. MR MADZIMBAMUTO repeated that his delegation had reserved their position on the four institutions. Would the public service in the interim period be that of the old régime?

THE CHAIRMAN said that the Conference had now been discussing the the public service, the army, the police and the judiciary for one and three quarter hours and he had given the British Government's position. Perhaps those present would like to reflect on what had been said, and meet again the following morning. He also hoped that the Patriotic Front's reaction to the British proposals (CC(79)56) would be available soon.

/MR BARON

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MR BARON said that the British had said that if a senior civil servant were to act in a manner contrary to the terms of his employment he could be dismissed. This had not turned out to be the case in Zambia in the post-independence period. The expatriate civil servants had hindered the advancement of Zambians. He considered that there were greater risks of such a situation arising in Zimbabwe, where those in official positions were Zimbabweans whose interest would be to remain in their posts. In practice it was very difficult to get rid of a public servant. He was not talking of subversive action, but of obstruction, go-slows, losing papers etc.

The meeting ended at 16.53.

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