



STATEMENT ON ANGLO-RHODESIAN RELATIONS

DECEMBER, 1966

TO

MAY, 1969

**PRIME MINISTER'S OFFICE,
SALISBURY**

ANGLO-RHODESIAN NEGOTIATIONS FROM DECEMBER,
1966 TO MAY, 1969

INTRODUCTION

1. The British Government have enunciated six principles which they regard as the essential basis for the grant of sovereignty to Rhodesia. These principles are:

First The principle and intention of unimpeded progress to majority rule already enshrined in the 1961 Constitution would have to be maintained and guaranteed.

Second There would also have to be guarantees against retrogressive amendment to the Constitution.

Third There would have to be immediate improvement in the political status of the African population.

Fourth There would have to be progress towards ending racial discrimination.

Fifth The British Government would need to be satisfied that any basis proposed for independence was acceptable to the people of Rhodesia as a whole.

Sixth It would be necessary to ensure that, regardless of race, there was no oppression of majority by minority or of minority by majority.

2. It will be remembered that when the Rhodesia Government indicated their inability to accept the Tiger proposals in their entirety, Mr. Wilson announced in the House of Commons on 20th December, 1966—"Following the approval of the U.N. Security Council and a resolution providing for effective and selective mandatory economic sanctions against Rhodesia, Her Majesty's Government policy is now as set out in paragraph 10 of the communique which was issued at the end of the meeting of Commonwealth Prime Ministers in September . . ."

In this context, the relevant passage reads as follows:

"The British Government will withdraw all previous proposals for a Constitutional settlement which have been made; in particular, they will not thereafter be prepared to submit to the British Parliament any settlement which involves Independence before majority rule."

The matter was placed beyond doubt when immediately after this, Mr. Wilson answered the following question from Major Patrick Wall—"Does that reply mean that the full terms of the communique are now effective and in particular the withdrawal of all previous British offers to Rhodesia; has the Prime Minister finally slammed the door?" Mr. Wilson's reply began—"Yes, Sir. It means precisely what the Hon. gentleman has said . . ."

3. Subsequent to these proceedings, contact of various kinds was made between the Rhodesia and British Governments. These contacts revealed to the full the equivocal position adopted by the British. On the one hand they confirmed their adherence to the

six principles as the basis for a settlement but on the other, as shown in paragraph 2 above, they had withdrawn all previous offers and therefore any conditions attaching thereto. In attempting to pursue these palpably inconsistent policies simultaneously, the British found themselves in a strait-jacket of their own creation during subsequent negotiations. This immediately robbed the negotiations of the flexibility so necessary if the two parties were to settle their differences.

4. An exploratory mission in July, 1967, by Lord Alport to assess the prospects for a settlement was followed by a visit from Mr. Thomson, then the British Commonwealth Secretary, in November of that year. The results of these visits were inconclusive, but in early 1968, Sir Alec Douglas Home, acting on his own initiative, offered to act as an intermediary in an effort to renew the dialogue between the Rhodesia and British Governments. At a later stage, after visits from other British emissaries, there was an exchange of documents between the two Governments. These exchanges led up to a meeting between British and Rhodesian delegations, headed by their respective Prime Ministers, aboard H.M.S. *Fearless*. At this point, the Rhodesia Government's attitude was that, with the withdrawal of the original British proposals, further negotiations would be conducted on the basis of the documents which had passed between the two Governments during 1968. Immediately prior to the *Fearless* conference, the respective positions of the two Governments were as follows:

British position (as publicly stated by the British Government)

- (a) There were three basic issues which, as far as the British were concerned, were non-negotiable, namely:
 - (i) the provision of a blocking quarter of directly elected African members in the Legislature;
 - (ii) the incorporation of a further safeguard for the specially entrenched provisions, e.g. a system of appeals to the Privy Council as set out in the Tiger proposals;
 - (iii) the establishment of a broad-based Government to serve until the new constitution came into force;
- (b) Other points of difference would be negotiable.
- (c) The six British principles must be adhered to.

Rhodesian position

- (a) Any blocking mechanism must provide for equal numbers of elected Africans and Chiefs in the Senate.
- (b) Appeals to the Privy Council were entirely unacceptable.
- (c) An interim broad-based Government could be countenanced if this were not to be part of a so-called "return to legality" as envisaged on H.M.S. *Tiger*.
- (d) Other points of difference would be negotiable.
- (e) The six British principles were of no concern to Rhodesia and were solely a British commitment.

5. To sum up, therefore, the *Fearless* talks commenced in the knowledge that there were three main issues involved, on which

each Government had very firm and divergent views. In addition, there were a number of other matters, agreement upon which was subject to further negotiation.

THE TALKS ABOARD H.M.S. FEARLESS

6. At the end of the talks aboard H.M.S. *Fearless*, the British delegation published a document setting out their terms for a settlement as follows:

I. *The Constitution*

The 1961 Constitution (as amended before November, 1965) with the changes outlined below to meet the first, second, third and sixth principles. Details to be worked out by a joint Working Party of officials as soon as possible.

(1) *The Governor*

Governor-General to be appointed on the advice of the Rhodesian Government.

(2) *The Legislature*

The composition to be—

Legislative Assembly

33 "A" Roll seats

17 "B" Roll seats

17 Reserved European seats

Each block of seats to cover the whole country

Senate

The composition to be—

12 European seats (elected by Europeans on the "A" Roll. Six members to represent Mashonaland and six members to represent Matabeleland).

8 African seats (elected by Africans on the "A" and "B" Rolls voting together. Four members to represent Mashonaland and four members to represent Matabeleland).

6 Chiefs (elected by the Chief's Councils—three to represent Mashonaland and three Matabeleland, elected on a provincial basis).

(The British Government are prepared to consider variations in the composition of the legislature, including increased chiefly representation, provided that it secures at all times a "blocking quarter" of directly and popularly elected Africans.)

The qualifications for Senators will be higher than those for members of the Legislative Assembly.

Ministers may be members of either House. A Minister shall have the right to speak but not vote in the House of which he is not a member.

(3) *Franchise*

The "B" Roll franchise—to be extended to include all Africans over 30 who satisfy the citizenship and residence qualifications.

Reserved European seats—to be elected by the European electorate.

Cross voting to be retained at 25 per cent. and applied to all seats in the Legislative Assembly filled by "A" and "B" Roll elections.

(4) *Delimitation*

Alteration in the composition of both Houses and in number of seats to be effected by special entrenchment procedure. But the terms of reference of the Delimitation Commission are to incorporate the agreed formula as follows:

The overriding objective of the Commission is so to divide the constituencies that the proportion of those with a majority of African voters on the "A" Roll at the time of delimitation is the same as the proportion of African voters then on the "A" Roll for the country as a whole.

Subject to this, the Commission is to take into account the factors specified in Section 38.

(5) *Terms of Office of Senators*

20 elected members—as for Legislative Assembly.

6 Chiefs—as for Legislative Assembly although a Chief will vacate his office as a Senator if he ceases to be a Chief.

Chiefs are only to be removed from office on the recommendation of an impartial judicial tribunal.

(6) *Powers of Senate*

The powers of the Senate will be—

- (a) Review of legislation (but no veto).
- (b) Power equally with the Legislative Assembly to initiate legislation, but only in respect of Tribal Land, Law and Custom.

Delaying powers for up to six months in respect of bills on Tribal Land, Law and Custom sent to it by the Legislative Assembly.

- (c) Amendment of Constitution—see below.

(7) *Executive Powers*

The Governor-General will act on Minister's advice in all matters.

(8) *Amendment of the Constitution*

Ordinary amendments of the Constitution will require, as now, a vote of two-thirds of the total membership of the Legislative Assembly.

A bill to amend one of the specially entrenched provisions of the Constitution will require a vote of at least three-quarters of the total membership of both Houses voting together. In addition

there will be a system of appeal against such an amendment either on the ground that it discriminates unjustly or has the effect of discriminating unjustly, between the races, or on the ground that it derogates from the principles of the Declaration of Rights contained in the Constitution. Where the Bill has been adversely reported on by the Constitutional Council on either of these grounds, it will be referred by that Council to the Judicial Committee of the Privy Council and will not come into effect unless and until the Judicial Committee rejects the appeal. Where the Constitutional Council has not made an adverse report, any person who is a citizen of Rhodesia may, within a specified time, ask for a certificate from the Constitutional Council that there is a case for consideration by the Judicial Committee; if the Constitutional Council grants him a certificate he may himself appeal to the Judicial Committee within a specified time and again the Bill will not come into effect unless and until the Judicial Committee rejects the appeal. If, however, the Constitutional Council refuses to grant a certificate, there can be no appeal to the Judicial Committee unless the Committee itself grants an application for special leave to appeal; in that case the Bill may be brought into effect without waiting for the appeal to be determined. This system of appeal will be unamendable for fifteen years from the commencement of the new Constitution; thereafter, it can be modified in the same way as the other specially entrenched provisions.

II. *Fourth Principle (Progress towards ending Racial Discrimination)*

(1) To give effect to the Fourth Principle, a Commission of the necessary independence and high standing will be set up under existing Rhodesian legislation. The terms of reference of this Commission will be agreed with the British Government, who will be consulted on its composition. It will be the Commission's task to study and make recommendations on the problems of racial discrimination, including the Land Apportionment Act, and the possibility of extending the competence of the Constitutional Council to embrace pre-1961 legislation. Thereafter a Standing Commission will be appointed to keep the problems of racial discrimination under regular review.

(2) The Commission will start work as soon as possible after the Test of Acceptability has been completed and the appropriate legislation passed through the British Parliament (see IV and V below).

III. *African Education*

Vigorous further action would be taken to provide such additional facilities for the education and training of Africans in Rhodesia as would enable them to develop their capabilities. This would equip them to take up the greater employment opportunities that would be in prospect and to raise their earning capacities and standards of living, and would enable them to play an increased part in the life and progress of their country. The British Government would provide for this purpose funds of up to £5 million a year for a period of ten years, to be matched against equal sums to be provided by the Rhodesian Government in addition to

currently planned annual expenditure for these purposes. These additional funds would be available for capital and/or recurrent expenditure, and would be used for the improvement of facilities for Africans in the fields of agricultural and technical training, teacher training and training in administration, and of other facilities for primary, secondary and higher education to be agreed upon between the two Governments. There would be early discussions on the ways and means of giving effect to this offer.

IV. Fifth Principle (Test of Acceptability)

(1) The British Government will establish a Royal Commission as soon as possible for the purpose of testing the acceptability to the people of Rhodesia as a whole of a new independence constitution based on this agreement.

(2) In the period before and during the test there will be no renewal of censorship; normal political activities, provided they are conducted peacefully and democratically and without intimidation from any quarter, will be permitted. The Commissioners and their staff will enjoy personal inviolability and freedom of movement; there will be complete immunity for the witnesses heard by them. Radio and T.V. facilities will be provided for opposition opinion to the satisfaction of the Commission.

(3) Continued detention and restriction will not be authorised unless the reviewing authorities (see (4) and (5) below) are affirmatively satisfied, having full regard to past activities, that the persons concerned are likely to commit, or incite or conspire to commit, acts of violence or intimidation.

(4) A review of such cases will be completed in the shortest possible time. In the first instance each case will be reviewed in Chambers by a Judge of the Rhodesian High Court. The Judge's decision that a person should be released will be final and the person will be released forthwith.

(5) Cases in which release is not recommended by the Judge will be referred to an impartial judicial tribunal. This will consist of three members, of whom one will be nominated by the Lord Chancellor and two will be Rhodesian nominees. The tribunal will establish its own procedures and will have the power to secure the orderly conduct of its proceedings. In addition it will have the power to sit *in camera* where it is satisfied that this is necessary on the ground of security of evidence and, though the person concerned or his legal representative will normally be present, the tribunal may, where there are security considerations, decide to take evidence from witnesses in his absence and that of his legal representative.

(6) Persons released from detention and restriction will have full liberty to engage in normal political activities on the same conditions as other persons. The Commissioners carrying out the test of acceptability will have access to those not released.

(7) Rhodesian Africans living abroad may apply to the Royal Commission if they wish to return to Rhodesia during the period

of the test. The Commission will put these cases to the Rhodesian authorities, who will either provide safe conducts or refer them to the judicial tribunal for a decision on whether entry should be allowed. The tribunal will treat these cases on the same basis as cases of detention or restriction inside Rhodesia.

(8) Where a detention or restriction order has been made against a person after the establishment of the tribunal, his case will be referred to the tribunal within fourteen days and considered with all possible speed.

(9) As an additional task the Royal Commission will examine the practical working of the existing arrangements for registration of voters, and will make such recommendations as it judges necessary for improving those arrangements, so that as many qualified persons as possible are in fact registered.

V. Subsequent Steps

(1) If in the light of the report of the Royal Commission it is established that the proposed constitutional settlement is acceptable to the people of Rhodesia as a whole, the following steps will be taken. The British Government will legislate to introduce the Rhodesian independence constitution. Complementary measures will be taken in Rhodesia. On the coming into effect of this legislation the British Government will take all action in their power to bring about an immediate discontinuance of the economic and other sanctions at present in force. Arrangements will be put in hand to settle outstanding financial and other issues and to regularise relations between the two sides. Rhodesian public servants, who have been accepted under the British Government's scheme and who wish to return, will be reinstated in Rhodesia.

(2) If in the light of the Royal Commission's report on the arrangements for the registration of voters it is established that improvements in those arrangements are desirable, the Rhodesian authorities will take urgent steps to effect them, having regard to the Royal Commission's recommendations.

VI. Interim Arrangements

Mr. Smith would form a broad-based administration as soon as possible, including Africans. This would remain in office until the new Constitution had been introduced, elections held under it and a new Parliament convened.

7. The feelings of the British Government towards the Fearless terms have been made known on many occasions. Those of the Rhodesia Government in relation to the negotiations which took place in H.M.S. *Fearless* are set out in the following paragraphs. It must be clearly understood that both sides subscribed to the principle that any agreements arrived at could only be within the context of a package deal; in other words, each item negotiated would have to be part and parcel of such package deal, the essential features of which would have to be the recognition of Rhodesia's independence and the lifting of sanctions.

THE RHODESIAN POSITION ON THE FEARLESS TERMS

The Preamble

8. It was accepted that certain changes to the 1961 Constitution, as overtaken by the 1965 Constitution, were inevitable and would have to be worked out in detail.

The Governor

9. This matter was not discussed in detail because the British Government indicated that there were complications in relation to the Queen, the Commonwealth and the question of Republican status for Rhodesia.

10. *The Legislature*

	<i>Fearless terms</i>	<i>Rhodesian first preference</i>	<i>Rhodesian second preference</i>
<i>Legislative Assembly</i>			
"A" Roll seats	33	35	35
"B" Roll seats	17	15	15
Reserved European seats	17	15	15
<i>Senate</i>			
Europeans	12	12	12
Chiefs	6	12	6
Elected Africans	8	Nil	6

By offering their second preference, the Rhodesia Government had moved towards the British position on the first of the latter's "non-negotiable" points of difference. Moreover, the Rhodesia Government indicated that if the other issues were settled, particularly that of the second safeguard, they believed that they could come to some accommodation with the British Government on the question of the blocking quarter of elected Africans.

Franchise

11. The Rhodesia Government wished to see the cross-voting influence reduced from 25 per cent. to 10 per cent. in view of the proposed debasement of the "B" Roll qualifications and the undesirability of giving voters with such debased qualifications so great an influence in elections for "A" Roll constituencies.

Delimitation

12. At the conference aboard H.M.S. *Tiger*, the Rhodesian delegation had opposed the special entrenchment of Chapter III of the 1961 Constitution, and more particularly, section 37 which dealt with the numbers of constituencies and electoral districts and the manner of delimitation. In an attempt to achieve a compromise between the British and Rhodesian positions at the time, a Working Party proposed a formula, referred to as the "over-riding objective formula", the intention of which was to allow for an increase in the size of Parliament to meet normal expansion in a growing and developing country without going through an entrenched procedure. The Rhodesian delegation was prepared to accept the entrenchment of section 37, provided the formula allowed for an increase in the size of Parliament without going through the entrenched procedure.

However, as Mr. Thomson stated in the House of Commons on 18th November, 1968, the British now saw in this formula the

opportunity of ensuring that, as the number of Africans on the "A" Roll increased, so "the Africans' chances of capturing "A" Roll seats should increase proportionately". This interpretation introduced the entirely novel concept of an unorthodox type of proportional representation operating to the great advantage of the Africans by accelerating their advancement at a rate far in excess of any reasonable understanding of the term "unimpeded progress". Therefore, the purpose for which the formula had been originally conceived was completely distorted. Accordingly, the Rhodesia Government at the Fearless talks rejected the formula and their position by the end of those talks was that they preferred to return to the original British proposition of entrenchment of section 37 of the 1961 Constitution and forego the suggestion that there should be a special procedure for normal expansion.

13. *Terms of Office of Senators* } The Rhodesia Government
Powers of Senate } accepted the principles set out
Executive Powers } in the Fearless document.

Amendment of the Constitution

14. The Rhodesia Government had no objection to the procedure for amending ordinary provisions of the Constitution, nor to the necessity for a vote of at least three-quarters of the total membership of the two Houses voting together on amendments to specially entrenched provisions. They were convinced that an additional safeguard was not necessary and, in particular, objected strongly to an external safeguard which detracted from the sovereignty of Parliament. In the Rhodesian view, the provision of a "blocking quarter" would provide a more than adequate protection when amendments to the specially entrenched provisions of the Constitution were being made. The difficulty of securing a two-thirds, let alone a three-quarters, majority in a Parliament comprising Europeans and Africans, elected members and Chiefs, representing diverse political and other interests, need hardly be stressed.

The Rhodesia Government rejected the proposals which sought to put the Judicial Committee of the Privy Council in the position of passing political judgment on the legislation of an independent nation. The Rhodesia Government saw this as an unwarranted interference with the sovereignty of the Rhodesian Parliament, and a negation of independence.

Therefore, at this stage, an impasse was reached over the second of the three major points of difference with which the conference had been concerned.

Progress towards ending racial discrimination

15. The Rhodesia Government failed to see the necessity for the appointment of a commission to study and make recommendations on problems of racial discrimination. However, they were prepared to accede to the British demands for this commission.

African education

16. The Rhodesia Government were prepared to accept, in principle, the British offer of financial assistance on the understanding that the education programme thus financed was geared

to Rhodesia's manpower requirements and economic capability and was not intended merely to assist people to acquire qualifications for enrolment as voters.

Test of acceptability

17. Subject to minor details for negotiation, the Rhodesia Government were prepared to accept the broad principles contained in this section.

Subsequent steps

18. The Rhodesia Government accepted in principle the steps outlined, save that the question of reinstatement of public servants who had defected had not been discussed.

Interim arrangements

19. On the understanding that such a concession was in no way regarded as any part of the "return to legality" procedure originally insisted upon by the British at the conference aboard H.M.S. *Tiger*, the Rhodesia Government were prepared to examine the possibility of extending the present administration by the inclusion of two Africans in order to meet the British demands.

20. The results of the Fearless talks may therefore be summed up as follows:

On the three major points of difference

- (a) The Rhodesia Government had indicated that the blocking quarter would not be a stumbling block should agreement be reached on the other points.
- (b) No agreement had been reached over the second safeguard.
- (c) The Rhodesia Government had indicated they were prepared to meet the British Government in principle on the issue of a broader-based interim administration.

On the remaining matters

- (i) The position of the Head of State required further examination.
- (ii) The composition of the Legislature remained open for further negotiation.
- (iii) Cross-voting would be accepted in principle by the Rhodesia Government, with the details still to be negotiated, provided that to the extent the franchise was debased the cross-voting influence would be correspondingly reduced.
- (iv) The Rhodesia Government were prepared to accept the entrenchment of section 37 of the 1961 Constitution, and by so doing, remove the need for the "over-riding objective" formula.
- (v) The reinstatement of civil servants and the question of safe conducts for persons wishing to return for the test of acceptability had yet to be discussed.

Apart from these matters all others had been accepted in principle by the Rhodesia Government.

FROM H.M.S. FEARLESS TO THE THOMSON TALKS

21. On the 22nd October, 1968, the Rhodesia Government accepted the British Government's offer to send Mr. Thomson to Rhodesia. They did so because they believed that only one major stumbling block remained to be overcome, that of the difference of opinion over the need for a second safeguard. It seemed probable that the remaining points of difference, which were of lesser importance, would not be insurmountable.

22. Following further communications, and in an effort to pave the way for a final and satisfactory conclusion to the talks, the Rhodesia Government took further positive steps towards the British position in a number of important respects, namely:—

Blocking quarter

The principle of a blocking quarter being in the hands of directly and popularly elected Africans was accepted.

As provided for in the *Fearless* document, further discussion on the composition of the Legislature would take place.

Broad-based Government

The formation of a broader-based interim administration to serve during the period of the test of acceptability was accepted on the basis that this would be achieved by the addition of two Africans.

23. At the same time, the Rhodesia Government made it clear that they were not prepared to accept the procedure for appeals to the Privy Council against amendments to specially entrenched provisions of the Constitution. Moreover, they were satisfied that the "over-riding objective" formula had fallen away in view of the Rhodesia Government's acceptance of the special entrenchment of section 37 of the 1961 Constitution. It was also pointed out that safe conducts and the return of civil servants had yet to be discussed.

24. Therefore, by the time Mr. Thomson arrived, there remained only one major obstacle to be overcome, that of the second safeguard.

THE SALISBURY TALKS WITH MR. THOMSON

25. It was during these talks from 4th to 16th November, 1968, which the Rhodesia Government thought would be the final round leading to a settlement, that the British demonstrated to the full the extent to which they had circumscribed their negotiating powers through their elaboration of their six principles and their commitments to NIBMAR, the Commonwealth and the United Nations. As a result, agreement proved possible on only one other matter, that of the issue of safe conducts to persons wishing to return to Rhodesia during the test of acceptability. On other matters affecting the Constitution proper, as well as short-term

issues relating solely to the interim position prior to implementing the Constitution, the British adopted a rigid and negative attitude incompatible with the proper conduct of negotiations. This is clearly illustrated in the paragraphs which follow.

Second Safeguard

26. Soon after the talks commenced, the Rhodesian delegation was informed that the British had an alternative proposal for a second safeguard, but before it was revealed all the remaining points of difference would have to be settled. When finally agreement was not reached on these remaining points of difference, the British produced their new scheme. The principal features are set out below and, as can be seen, the Judicial Committee of the Privy Council was retained in a key role in relation to the specially entrenched provisions and for ordinary judicial appeals. Furthermore, final decisions were left outside the walls of Parliament and in the hands of the electorate, the majority of whom would be on the "B" Roll with its debased qualifications and in no position to form a responsible opinion on the issues involved. This scheme was as follows:—

(1) A Bill to amend an entrenched provision would require a three-quarters majority at the Second Reading.

(2) It would be open either to eight Members of the Legislative Assembly or eight Senators or a combination of both, or to the Constitutional Council, to demand a referendum.

(3) Such a demand would be referred to the Judicial Committee of the Privy Council which would determine whether the objection was frivolous or of substance. Grounds of substance to warrant a referendum would be that the Bill—

- (a) imposed unjust discrimination; or
- (b) was an amendment of or in conflict with the Declaration of Rights; or
- (c) impeded progress to majority rule.

(4) If the Judicial Committee ruled that the objection was frivolous, the Bill would be returned to Parliament and would require a three-quarters majority at the Third Reading before being submitted for assent.

(5) If the Judicial Committee ruled that the objection was of substance, a separate referendum of each of the "A" and "B" Roll voters would be held. If a two-thirds majority of those registered on each Roll (**not, it will be noted, two-thirds of those actually voting**) was not obtained, the Bill would automatically lapse. If such a majority on each Roll were obtained the Bill would be returned to Parliament where, after a three-quarters majority at the Third Reading, it would be submitted for assent.

(6) No amendments could be made to the specially entrenched clauses nor could a referendum be held until there were at least 200,000 people on the "B" Roll register.

(7) The procedure set out under (1) to (5) above would be dependent upon Rhodesia accepting the Judicial Committee of the Privy Council as the final court of appeal in ordinary cases, which would include an appeal, as of right, on the following matters:—

- (a) whether ordinary legislation is invalid in terms of the Constitution;
- (b) whether amendments to the Constitution are invalid by virtue of their not having been passed in the prescribed manner.

It is significant that, when Mr. Thomson outlined this procedure in the House of Commons, he omitted to mention some of its more objectionable features such as:—

- (i) a two-thirds majority of those registered, not of those voting, being required;
- (ii) the procedure not to take effect until at least 200,000 people are on the "B" Roll;
- (iii) the effect being that the Constitution would be unamendable.

From the Rhodesia Government's point of view, despite their preparedness to consider proposals for a second safeguard, the type of proposal put forward by the British was obviously not acceptable.

Privy Council appeals

27. The British Government insisted that the Judicial Committee of the Privy Council should sit as Rhodesia's final court of appeal for ordinary judicial cases as well as in a quasi-political role in respect of issues arising from amendments to the specially entrenched provisions. The Rhodesia Government, on the other hand, having undertaken a detailed examination into the reasons which prompted the rejection of the Privy Council by many other Commonwealth countries, concluded that it would be against the interests of Rhodesia to accept the Privy Council as her final court of appeal. The grounds on which this conclusion was based include:—

- (1) Incompatibility with the dignity of a mature and independent sovereign state;
- (2) the great expense and delay involved in taking appeals to London from distant places;
- (3) unfamiliarity with local law and conditions, which sometimes leads to unrealistic decisions and a lack of uniformity in the interpretation of the law;
- (4) the fact that Roman-Dutch is the law of Rhodesia and the desirability of maintaining uniformity in the interpretation of this law, without involvement in any other system of law;
- (5) the existence of a legal schism which militated against any return to the system of appeals to the Privy Council. In particular, for the reinstatement of the Privy Council as the final court of appeal, it would be necessary for

the British Government to enact legislation giving "blanket" validation to every law, order, regulation, by-law, financial, judicial and administrative measure passed or done in Rhodesia since 11th November, 1965. To date the British Government have given no indication that they would be prepared to do this.

It is also significant that such countries as Canada, Ghana, India, Pakistan, Nigeria, South Africa and Eire have abolished the Privy Council as the final court of appeal. Despite these arguments, Mr. Thomson insisted on presenting this issue to the House of Commons as a major point of difference.

Period of state of emergency

28. This is the first of six further points of difference which Mr. Thomson described to his Parliamentary colleagues as being "major disagreements". During his visit, Mr. Thomson refused to face the necessity, which had been clear in Rhodesia for a long time, for periods of public emergency to be extended from three to twelve months. This extended period was necessary to meet the terrorist threat which would not diminish even if a settlement with Britain were to be reached. The Rhodesia Government's view was that the length of a period of public emergency was a matter dictated by the primary needs of the State for its own protection and one which, since the Rhodesia Government alone were responsible for governing the country, was a matter entirely for the latter to determine. The Rhodesia Government noted that Britain had granted independence to other states with periods of emergency very much longer than three months and that in the case of:—

- (1) Barbados, Botswana, Lesotho, Trinidad and Tobago, Uganda and Zambia, an emergency could be authorised for a period of up to six months by a simple majority in Parliament;
- (2) Jamaica, an emergency could be authorised for a period not exceeding twelve months by a simple majority in Parliament;
- (3) The Gambia and Sierra Leone, an emergency could be authorised for a period not exceeding twelve months by a two-thirds majority in Parliament;
- (4) Guyana, an emergency could be authorised for a period not exceeding two years by a two-thirds majority in Parliament;
- (5) Barbados, an emergency could be authorised for an indefinite period by a two-thirds majority in Parliament.

Composition of the Legislature

29. In his report to the House of Commons, Mr. Thomson stated that the Rhodesia Government "wish to alter the composition of the Legislature as proposed in the *Fearless* document . . . we (the British) could not accept this". The Rhodesia Government, however, had relied on the following extract from the *Fearless*

document for their assumption that this issue would be negotiable:—

"(The British Government are prepared to consider variations in the composition of the Legislature, including increased chiefly representation, provided that it secures at all times a 'blocking quarter' of directly and popularly elected Africans)."

To the Rhodesia Government, the words in parentheses meant that the "blocking quarter" was precisely that and not anything in excess of a "blocking quarter". In this connection, the Rhodesian view was supported by the following extracts from the Debates of the House of Commons:

On the 22nd October, 1968, Mr. Wilson said—

"By a 'blocking quarter' I mean a figure which, when the total representation is divided by four, gives a clear blocking mechanism to directly elected Africans who have been elected by Africans".

Earlier, on the 14th March, 1968, Mr. Wilson said—

"He (referring to Sir Alec Douglas Home) will recall that I said to him that if Mr. Smith is prepared to accept a 'blocking quarter' why not let us have a figure which is a quarter of the total?"

And on the 17th June, 1968, Mr. Thomson said—

"The great advantage of the 'blocking quarter' is that it is not really a matter of political judgement . . . about which the British Government might disagree with Mr. Smith. The 'blocking quarter' is a quarter; it is a matter of arithmetic, not politics . . ."

Every suggestion made by the Rhodesia Government in regard to the composition of the Legislature, each of which provided a blocking quarter of directly and popularly elected Africans, met with a negative response from the British delegation. The latter continued rigidly to adhere to their own terms for a settlement, despite the various undertakings set out above.

Franchise

30. At the outset of the talks with Mr. Thomson, the Rhodesia Government accepted with reservations the extension of the "B" Roll franchise to include all Africans over 30 who satisfied the citizenship and residence qualifications. What was of concern to the Rhodesia Government was the fact that a vast number of virtually illiterate Africans were to be given the power to have a 25 per cent. influence on the votes cast by the educated section of the community registered on the "A" Roll. Here again, the Rhodesia Government provided several alternative proposals, all of which related the level of the cross-voting influence to the degree of literacy required of the "B" Roll voter. In terms of these proposals, the cross-voting influence would be 25 per cent. if the present qualifications for the "B" Roll were retained and, by means of a sliding scale, would be reduced to 10 per cent. if a debased "B" Roll qualification, involving no more than the ability to sign a name, were adopted.

All the Rhodesian alternatives were rejected by the British delegation who expressed the opinion that a mass of almost com-

pletely illiterate voters should have a direct and important influence on the government of the State.

Delimitation

31. As previously explained, the British had, at the opening of the *Fearless* talks, insisted on retaining the "over-riding objective" formula in order to introduce a form of unorthodox proportional representation which would provide accelerated advancement to majority rule (as opposed to maintaining unimpeded progress to majority rule set out in their first principle). What Mr. Thomson failed to point out in the House of Commons was that the formula would result in either the creation of tiny constituencies in which a mere handful of African voters would comprise the majority of the constituents or the threading together into constituencies of pockets of African voters in dispersed areas of the country. The principle of reasonable equality in the number of voters for each constituency, fundamental to Rhodesian or, indeed, accepted constitutional practice, would be over-ridden. Nor did Mr. Thomson inform the British Parliament of the Rhodesian preparedness to revert to the original British requirement of entrenchment of section 37 of the 1961 Constitution, nor of the refusal of the British delegation to return to this original proposal.

Grounds for continued detention and restriction

32. In terms of paragraphs IV (3) to (5) of the *Fearless* document, as set out in paragraph 6 of this paper, the grounds for continued detention and restriction were:

"Continued detention and restriction will not be authorised unless the reviewing authorities are affirmatively satisfied, having full regard to past activities, that the persons concerned are likely to commit or incite or conspire to commit acts of violence or intimidation."

The Rhodesian delegation considered that these grounds were too narrow to cover the activities of certain hard-core detainees and restrictees, and wished to add the following words to the section quoted above:

"or that acts of violence or intimidation are likely to occur as a result of their release".

In the light of past experience, the Rhodesia Government were convinced that if such persons were released there was a likelihood of serious injury or death to innocent persons, with grave internal consequences. This would endanger the calm and peaceful atmosphere necessary for the conduct of a genuine test of acceptability.

The effect of the additional ground for detention or restriction would have been to give to the reviewing authority, which would have been an independent judicial tribunal, a wider discretion in examining the cases of detainees and restrictees. The impartiality of this tribunal, which would have included a Judge of the High Court and a nominee of the British Government, would have been an adequate safeguard.

The British Government were well aware of the past activities and methods of operation of certain detainees and restrictees. Equally, they were aware of the protection afforded by the impartial review tribunal. Nevertheless, the Rhodesian proposal was rejected.

Return of Public Servants

33. The sixth of Mr. Thomson's "major disagreements" related to a number of public servants, including members of the British South Africa Police and the Armed Forces who, after Rhodesia's Declaration of Independence, left the service of the Rhodesia Government. Clearly, the British had all along been in a dilemma about these people to whom a number of vague public promises had been made. They were not prepared to disclose the names of the 33 who, they alleged, wished to return to the service of the Rhodesia Government, yet, as Mr. Thomson said in the House of Commons, they expected the Rhodesia Government, as part of the process of "wiping the slate clean", to reinstate these people. Into the *Fearless* document, the British had inserted, without any discussion with the Rhodesian delegation, a condition that such persons should be returned if they so wished to their former posts in the Rhodesia Government Service. This was unacceptable to the Rhodesia Government. The Rhodesian case for refusing to agree to the principle of accepting back these people en bloc was based on practical realities. It was known that there would be widespread opposition, especially in the Public Service, to their return. Secondly, the posts formerly occupied by these people had long since been filled and under no circumstances would the Rhodesia Government be prepared to lower the morale and efficiency of its Public Service and Uniformed Forces by ousting persons already occupying these posts.

Nevertheless, while not accepting that defecting public servants had any claim, legal, moral or financial, the Rhodesia Government were prepared to consider the payment of compensation in appropriate cases to be fixed in the context of a general financial settlement. This offer was rejected by the British Government.

Public Statement on Progress to Majority Rule

34. Mr. Thomson had pressed for the insertion in the final conference document, if a settlement were announced, of a statement to the following effect:

"The new constitution makes the same provision as the 1961 Constitution for steady advancement to majority rule, and ensures that no impediment shall be placed in its way. The date when majority rule will be attained depends on many things, not least the readiness of the Africans in Rhodesia to take full advantage of the opportunities it offers them."

The Rhodesia Government refused to be associated with such a statement. If the British wished to make a statement on these lines that was a matter for their own decision, but they must not expect the Rhodesia Government to subscribe to it. Such a statement had no appeal for Rhodesians, whose sole concern was to obtain a constitution for the government of Rhodesia.

Summary of Position

35. At the beginning of the talks with Mr. Thomson, therefore, there were grounds for optimism based on the prospect of resolving the one major disagreement and the other issues of lesser significance outstanding. **By the end of the talks, and despite further movements by the Rhodesia Government towards the British viewpoint, by virtue of his uncompromising attitude, Mr.**

Thomson had succeeded in converting one important issue of dispute into no less than nine. Moreover, Mr. Thomson stated that on these issues the British Government were not prepared to give way, thus implying that the Rhodesia Government would have to give way completely to the British terms on every point.

SUBSEQUENT PROCEEDINGS

36. Following the return of Mr. Thomson to the United Kingdom, the Rhodesia Government further analysed the position which the negotiations had reached. From this, it seemed clear that the British Government were adhering rigidly to the Fearless document and were not prepared to negotiate in the real sense of the term. Despite this uncompromising attitude of the British Government, the Rhodesia Government decided to make a further effort to reach agreement.

37. The British Government have publicly claimed on a number of occasions that the Rhodesia Government have produced no constructive proposals of their own. The falsity of this claim has been amply demonstrated by this document. Moreover, even since Mr. Thomson's visit to Salisbury, the following further constructive proposals have been made by the Rhodesia Government.

Second Safeguard

38. In view of the failure of the British Government to produce a form of second safeguard which would meet basic Rhodesian objections, the Rhodesia Government were prepared to strengthen the blocking mechanism in Parliament by acceding to a blocking quarter plus one of elected African members, in addition to the six Chiefs in the Senate.

Composition of the Legislature

39. Still relying on the British undertaking, in terms of the Fearless document, to consider variations in the composition of the Legislature, the Rhodesia Government offered an alternative proposal, the details of which are set out below:

Chamber	Type of Seat	Rhodesian Alternative Proposal	Fearless Proposal
Legislative Assembly	"A" Roll	33	33
	"B" Roll	17	17
	Reserved European	17	17
Senate	European	14	12
	African	14 —(8 Elected and— 6 Chiefs)	14
Total Legislature		95	93
Blocking quarter provided		31 —(25 Elected and— 6 Chiefs)	31
No. required for blocking quarter		24	24

This proposal had the advantage of securing equality between Europeans and Africans in the Senate. In all other respects, the

figures were precisely the same as the Fearless figures, and the blocking mechanism would still have had the same arithmetical effect.

Franchise and cross-voting

40. The following new proposal was offered to the British Government:

The "B" Roll should be extended to all Africans over 30 years of age with no literacy test whatsoever. This "B" Roll would be divided into two sections, a higher section with qualifications at the existing level and a lower qualification for the remainder. The cross-voting influence would be retained at 25 per cent. for those holding the higher standard of qualification while cross-voting would not be exercised by those enrolled with the lower standard of qualification.

By retaining the 25 per cent. cross-voting influence for those with existing qualifications the pace of African advancement, as envisaged in the 1961 Constitution, would be maintained. Enrolment of a large number of Africans would give that race an immediate improvement in their political status while at the same time the Rhodesian objection to unsophisticated and illiterate voters being allowed to influence the "A" Roll seats would be met.

Return of Public Servants

41. The Rhodesia Government would be prepared to examine on their merits applications from individuals seeking reinstatement.

CONCLUSION

42. The facts set out in this document show that the Rhodesia Government have throughout sought earnestly to negotiate a settlement. In their final replies, the British dismissed out of hand these further proposals. They refused to negotiate further on the Fearless terms and insisted that these terms, as they interpreted them, be accepted in their entirety by the Rhodesia Government.

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