

April 13, 1979

## **RHODESIA AND CASE-JAVITS**

### **INTRODUCTION**

On March 28, 1979, the U.S. Senate voted 66-27 to send a team of observers to Rhodesia to monitor the election scheduled for mid-April. The measure was sponsored by Senators Hayakawa and McGovern, both of whom had recently visited Rhodesia. The election will bring into office Rhodesia's first black government. Britain will have to decide if that election meets the final conditions for legal independence and recognition for Rhodesia, but the immediate issue for the U.S. is whether sanctions imposed on Rhodesia by the United Nations in the 1960s will be lifted.

The Senate action arose from an amendment to the International Security Assistance bill passed last fall. The amendment, authored by Senator Clifford Case (R-New Jersey) and Senator Jacob Javits (R-New York), provides that

the Government of the United States shall not enforce sanctions against Rhodesia after December 21, 1978, provided that the President determines that:

- (1) The Government of Rhodesia has demonstrated its willingness to negotiate in good faith at an all-parties conference, held under international auspices, on all relevant issues; and

- (2) a government has been installed, chosen by free elections in which all political and population groups have been allowed to participate freely, with observation by impartial, internationally-recognized observers.

The Case-Javits amendment was passed in August 1978. It vests a vital discretionary authority in the President of the United States, and it imposes no conditions on the behavior of the Rhodesian Government's rival--the Patriotic Front under Joshua Nkomo and Robert Mugabe. But it does raise the possibility of the ending of sanctions against Rhodesia. The Rhodesian Government must meet two standards.

The purpose of the McGovern-Hayakawa resolution was to provide the expert judgment on the Rhodesian election that the second of the Case-Javits conditions requires. The Senate approved by a large majority. The Subcommittee on Africa of the House of Representatives, under the chairmanship of Rep. Steven Solarz (D-New York), then voted unanimously to kill the resolution. The House tacitly endorsed this decision by a narrow 190-180 vote on April 9, 1979. But this vote also involved \$20 million in aid to Rhodesia so the decision did not deal only with sending observers.

Other conditions of the Case-Javits amendment will, therefore, be judged from a distance. Both will be a matter of high controversy. What is the record so far? What should the standard be? This paper examines these questions and other issues involved in the prospective congressional debate over the lifting of sanctions against Rhodesia following the April elections.

## THE ISSUES

On March 3, 1978, one white and three black Rhodesian leaders signed what has become known as the Internal Agreement for majority rule in Rhodesia. The four signatories were Prime Minister Ian Smith, Bishop Abel Muzorewa, the Reverend Ndabaningi Sithole, and Senator Chief Chirau. The agreement provides for a majority black government elected by universal suffrage and for a parliamentary system with a justifiable bill of rights.<sup>1</sup>

The chief criticisms of the agreement are that (a) with only five percent of the population, the Rhodesian whites will have 28 out of 100 seats in the legislative assembly; and (b) that the public and military services will for some time be heavily staffed at the higher levels with whites.

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1. For an analysis of the earlier agreement, see Samuel T. Francis, "Rhodesia in Transition," Heritage Foundation Backgrounder, #62.

In response, it can be argued that the parliamentary formula is required in some degree by the British requirement of adequate minority protections; that it is revocable anyway by a simple majority vote after ten years; that the administrative and military arrangements follow a pattern in British African decolonization and are under black authority anyway; and that the purpose is to provide a reasonable transitional insurance for the economy and the machinery of government and the national security in a continent wracked by poverty and disorder and Cuban foraging. The protections are also clearly designed to prevent the massive white exodus which followed the installation of Marxist regimes in Angola and Mozambique.

The Internal Agreement was a response to the Anglo-American Plan for Rhodesia authored or at least sponsored by British Secretary of State David Owen and American Ambassador to the United Nations Andrew Young. The principal Rhodesian objections to the Plan were that it involved the handing of complete authority over to a British general under the control of the enormously distrusted David Owen, and the dismantling of the Rhodesian armed forces in favor of a new defense establishment incorporating the relatively untrained guerrillas of the Patriotic Front. At one point President Carter appeared to endorse the domination of the new forces by the Patriotic Front, which the internal Rhodesians regard as a prescription for civil and tribal war.

On January 30, 1979, the white voters of Rhodesia, by over five to one, endorsed the internal agreement and thus majority rule. The Rhodesian Government then renewed its former request to Britain and the United States to send observers to the April elections. The Rhodesians followed the long-standing custom of asking the American ambassador in Pretoria, South Africa, to relay the request to Washington. On this occasion the American ambassador refused to accept the message. The request to Britain has been refused in advance.

The Case-Javits amendment--and presumably the spirit of the Congress--is, therefore, in opposition to the official stance of the British and American Governments. It is directed only at the ending of sanctions, but that would be a most important act of possibly multiple consequences.

#### GOOD FAITH NEGOTIATIONS

The mandate of Case-Javits dates from August 1978 until the installation of a new government in Rhodesia. The elections were postponed on administrative and security grounds from December 31, 1978 to April 17-28, 1979. The issue is the conduct of the Rhodesian Government during that time.

In October 1979 in response to an invitation authored by Senator S. I. Hayakawa (D-Calif.), the four members of the Rhodesian Executive Council (Smith, Muzorewa, Sithole, and Chirau) visited the United States to present their case to the Congress and the public. They were refused a meeting with President Carter, but did meet with Secretary of State Cyrus Vance.

On October 20 the Rhodesian Executive Council, while in Washington, informed the State Department that the Transitional (i.e., present) Rhodesian Government was willing to attend an all-party conference with the Patriotic Front without preconditions. The State Department confirmed the offer.

Smith, it should be noted, had already met with Nkomo in Lusaka in August but without result. Nkomo later said of that meeting that "the other people (i.e., on the Executive Council) are not important. The important thing is that power be transferred to the Patriotic Front." The Transitional Government then announced it would not attend any conference "the sole purpose of which was to transfer power to the Patriotic Front and to install Joshua Nkomo as a dictator." It did say, however, that it was willing to talk to "any interested party on the future of our country."<sup>2</sup>

"We have agreed at this meeting," Smith announced after a two-hour discussion with British and American officials, "to five basic points with which this (coming) conference will be associated...." A State Department official confirmed that the five issues were: (a) provisions for holding free and fair elections, (b) arrangements for a ceasefire, (c) arrangements for a transitional administration, (d) formation of armed forces for an independent government, and (e) the principles of an independent constitution, including guarantees for human rights.<sup>3</sup>

Nkomo reiterated his opposition to an all-party conference. On September 11 in Lusaka he had said that such a conference was "dead and buried," that it was now "war to the finish." On October 20, after Smith's announcement in Washington, Nkomo described the proposal for an all-party conference as "nonsense... humbug."

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2. See London Times, September 4, 1978. Sunday Mail (Rhodesia), September 17, 1978. London Times, September 18, 1978.

3. See London Times, October 16 and 17, 1978. London Daily Telegraph, October 21, 1978. International Herald-Tribune, October 21-22, 1978.

Mugabe also said that he would not accept any further United States participation in Rhodesian matters because it had allowed Smith to visit the country and was no longer "impartial." (Both Mugabe and Nkomo had been to the United States and conferred with American and U.N. officials.) Mugabe did not agree with Nkomo that an all-party conference was "dead and buried," insisting only that it be on his terms.

On November 1, Mugabe's representative in New York told the U.N. Decolonization Committee that the standing precondition laid down by the Patriotic Front for an all-party conference was that "the entirety of the Salisbury regime must go and the enemy forces must be completely dismantled." The agenda would be limited to the terms of capitulation.

On November 2, Prime Minister James Callaghan of Britain informed the press that he doubted if the will for an all-party conference existed. Prime Minister Smith replied:

I was taken aback, especially in the light of our recent agreement with the United States and the British Government to attend all-party talks without preconditions, that the British Prime Minister should now say he doubts whether the will for an all-party conference exists. As the governments of the United States, Britain and Rhodesia have agreed to the conference, on whose part is there unwillingness to attend?....The Rhodesian Government is standing by ready to attend the all-party conference. We hope the British Government will not evade its responsibility.

On November 13, 1978, Mugabe's headquarters in Maputo, Mozambique, issued in his name a death list of black Rhodesian leaders to be executed if they did not resign their positions by specified dates. The list included the three black members of the Executive Council and some 50 other prominent African supporters of the Internal Agreement, describing them as "black bourgeoisie, traitors, fellow travellers and puppets of the Ian Smith regime, opportunistic running-dogs and other capitalist vultures...."<sup>4</sup> "The guerrillas," the Times of London said, "will kill anyone supporting the interim Salisbury regime, white or black, civilian or combatant, adult or infant, they can lay hands upon."<sup>5</sup>

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4. J. M. Edison Zvobgo, "For Black Zimbabwean Traitors, This is a Time of Crisis and Decision," Maputo, Mozambique, November 13, 1978. Zvobgo was deputy secretary for information and publicity for Mugabe's Zimbabwe African National Union.

5. The London Times, November 17, 1978.

A few days later State Department spokesman Hodding Carter announced that because of Rhodesian raids against Patriotic Front camps in Zambia and Mozambique and because of the Rhodesian postponement of the December 31 election, the British and American governments were abandoning their efforts to convene an all-party meeting. (Rhodesian raids had increased after Nkomo's forces shot down a Rhodesian civilian aircraft with a heat-seeking missile-- the first such incident in aviation history; the crash killed 38 passengers, 10 of the surviving 18 being massacred by terrorists.) The State Department did not explain why the postponement of the election justified abandoning efforts to call a conference. The British and American Governments asked for such a postponement three months later in order to permit the calling of a conference.

The Rhodesian Government then announced its intention of proceeding with the April 20 elections, saying "we stress again that everybody who is prepared to participate in peace will be welcome to take part in free and fair elections. We are excluding nobody. Furthermore, as we have repeatedly said, we will welcome international observers to satisfy themselves that elections are free and fair to all."

#### THE FAILURE OF THE BRITISH DIPLOMATIC INITIATIVE

During October the proposal had been made that Prime Minister Callaghan preempt the Rhodesian issue from David Owen (and by inference from Andrew Young), call a meeting of the Rhodesian Government and the Patriotic Front, proceed with those who attended, insist on majority voting in the deliberations, press to an agreement, reduce the powers of the proposed British Resident Commissioner, and proceed to a free and fair election and a ratifiable independence. The proposal was supported by the conservative opposition in the British Parliament.<sup>6</sup>

Callaghan then dispatched Cledwyn Hughes, M.P., the chairman of the Parliamentary Labour Party, to southern Africa to make soundings on the proposal. The appointment of Hughes was greeted with optimism on both sides of the House, since Hughes was widely respected as a moderate with no known biases on Rhodesia, and due to retire anyway at the end of the sitting Parliament.

Hughes visited South Africa and Nigeria as well as Rhodesia and the "front-line" states, and in January 1979, submitted a report to Callaghan. "Dear Jim," he wrote in a covering letter:

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6. John Hutchinson, "Mr. Callaghan Holds the Key to Rhodesian Peace," The London Times, October 11, 1978.

/A/fter the most careful consideration, I cannot advise you that a sufficient basis exists at the present time to justify you convening an all-party meeting....I am deeply aware of the suffering caused by the conflict, and the implications of its continuation, but an unsuccessful conference would also have grave consequences....

Callaghan had asked Hughes to respond to two questions. Would all the parties to the Rhodesian conflict attend a meeting called by Callaghan to consider negotiations for peace? If so, was there a reasonable chance of a successful outcome? Hughes concluded that the parties would probably attend, but that the talks would probably fail and therefore should not be called.

He said that the Salisbury Four seemed to believe that the white referendum on January 30 on the Internal Agreement and the general election in April would gain them the confidence of the Rhodesian people and encourage acceptance of the Internal Agreement by the international community. He added that the Rhodesians had given no important consideration to the updated Anglo-American proposals sent to them in October. The Anglo-American Plan had been tentatively revised to decrease the powers of the Resident Commissioner but also to give equal representation to the Rhodesian Government and the Patriotic Front on a governing Representative Council. Both the Rhodesian Government and the Patriotic Front had reacted unfavorably toward the revised proposal, but Hughes offered no criticism of the Front. However, Hughes said that the Rhodesian Government had continued to affirm its readiness to attend an all-party conference.

On the other hand, Hughes said, Nkomo has told him it was now for the "generals" to bring about a settlement--meaning that only a military solution was available. Nkomo continued to reject an all-party conference, just as previously he had refused to participate in elections until after he was in office.

Mugabe, Hughes said, insisted as a precondition of negotiations the prior acceptance of demands "which we know to be wholly unacceptable to the Salisbury parties." (Mugabe's often-stated goal is a one-party Marxist state.) Hughes nevertheless concluded that the Patriotic Front would attend an all-party conference if one was called, although he offered no evidence.

The point was moot. Hughes advised Callaghan against calling a conference because he thought it would fail. "All the parties would come to the conference," he said, "with profound reservations. Each side in the war is convinced that it can reach its goal--or at least not lose--by continuing to follow its policies....The chief motive at the moment of each side in the negotiations will, I am

afraid, not be to seek an understanding but rather to demonstrate that the other is unreasonable and intransigent...."

A conference which was a failure, Hughes said, would solidify the existing positions of the parties, make it difficult to call a later meeting, cause trouble for Britain in Africa, and encourage the Patriotic Front and the front-line presidents to turn "more and more" to the Soviet Union for help.

He also thought that the rapidly changing circumstances (including what he believed was a deteriorating military situation) might induce South Africa "to influence Mr. Smith to negotiate constructively and in good faith before 20 April." He did not say in what way Smith had been unconstructive, or how similar constraints might be imposed on the Patriotic Front, which had since August been the refusing party. The constraints he sought--at an unspecified price--from South Africa were evidently to be imposed on the side which alone had shown the willingness to negotiate.

Hughes submitted his report to Callaghan on January 16, 1979. Callaghan said that he and President Carter--whom he had just met in Guadeloupe--would continue to work together for a peaceful solution in Rhodesia, but took no further steps.

#### THE COMING OF THE APRIL ELECTIONS

Shortly after the referendum of whites, Asians and coloreds in Rhodesia on January 30, a Rhodesian official informed the New York Times that the Transitional Government "would be prepared to consider concessions" if the British and American Governments revived direct or indirect negotiations with the Patriotic Front.<sup>7</sup> The Rhodesian Executive Council also again asked Britain and the United States to send observers to monitor the April elections.

A month later--and only a month before the Rhodesian elections--American Secretary of State Vance declared that the election offered no hope for settling the Rhodesian conflict, and joined with David Owen in proposing that both sides in Rhodesia open negotiations for elections to be supervised by the United Nations. (Not a Case-Javits condition.)

The Executive Council rejected the proposal. There was no apparent response from the Patriotic Front. "This transparently dishonest offer" the London Daily Telegraph stated, "has been rightly rejected...first because Dr. Owen knows that the Patriotic Front has consistently refused all-party talks and Mr. Nkomo for one will not agree to universal-suffrage elections because he knows he would lose them. Secondly, because strings would be attached to any United Nations 'supervision,' as we are indeed now seeing in the case of South West Africa."<sup>8</sup>

7. New York Times, February 4, 1979.

8. London Daily Telegraph, March 20, 1979.



Meantime the poorly-concealed divisions in the Patriotic Front--sometimes involving fighting between the Nkomo and Mugabe factions--came into the open. In February, Mugabe announced that he would not negotiate with Smith and his three black colleagues, adding that Nkomo's forces had done so little fighting that they could not "reap the rewards of victory".

Mugabe was asked if he would negotiate with a moderate black government after the April election. "Of course not", he said. "All that will have happened is a change of heads--a black head for a white head but with the body still the same...." He discounted any attempt by Nkomo to fight him in his final struggle for power. "I don't think", he said, "Nkomo will go to the extent of pitting his forces against the will of the people". He also said that Smith and his colleagues were responsible for a "fascist" regime and would be brought to trial.<sup>9</sup>

On March 21, 1979, the Rhodesian Government issued a statement on the matter of the Case-Javits requirements:

On 20th October, 1978, at a meeting with British and American representatives at the State Department in Washington, the four members of the Executive Council confirmed their readiness to attend all-party talks without preconditions. A five-point agenda for the talks was proposed by the Anglo-Americans and accepted by the Executive Council.

At that meeting the Executive Council drew attention to the dangers of an escalating war and urged the American and British Governments to call for a cease-fire in order to bring an end to the fighting and to the high toll of civilian casualties. The Anglo-American representatives replied that they could not do so in advance of an all-party conference, but indicated their intention to call such a conference as a matter of great urgency.

Since that meeting five months have passed, during which time the fighting has escalated and the civilian casualties have increased. Yet the two Governments have failed to convene a conference which five months ago they regarded as a matter of great urgency. It is clear that the reason for this failure is the refusal of the Patriotic Front to attend such a conference except on their own terms.

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9. New York Times, February 7, 1979.

The Transitional Government has, therefore, had no alternative but to proceed with the full implementation of the March 3rd agreement. Since that meeting in Washington, all racially discriminatory laws have been repealed and the new constitution and Electoral Act have been passed by Parliament and promulgated....

The question of international observers to monitor the elections was discussed fully at the Washington meeting....The verbatim record produced by the State Department shows that Secretary (Donald) Newsom said that there was general agreement that there should be international observers to testify to the impartiality of the elections and that United Nations observers would have the greatest international credibility. In reply, the Executive Council confirmed that U.N. observers, or any other international observers, would be welcome at the first general election to be held on the basis of universal suffrage. That remains the position of the Executive Council."

The election is proceeding as scheduled. The U.N. has not sent observers. The United Kingdom will not send observers, nor will the United States Government. There will be a parliamentary group of observers from London and possibly from France and West Germany.

While there will be no official U.S. delegation, numerous unofficial observers will travel to Rhodesia, including a ten-man delegation from Freedom House, the New York-based organization that regularly monitors civil and political liberties throughout the world.

Meantime the British and American Governments have re-asserted their neutrality as between the Rhodesian Government and the Patriotic Front, while sanctions imposed by the United Nations at British request remain in force against Rhodesia, and while the Patriotic Front is financed and supplied by the Soviet Union and supported by Cuban and East German soldiery. The air of Western detachment lost much credibility by David Owen's recent indication that sanctions against Rhodesia would be intensified, or by Andrew Young's declaration that the only people who supported the Rhodesian Internal Agreement were "neo-fascists." <sup>10</sup>

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10. Seriatim Daily Telegraph, February 5 and January 18, 1979.

## FREE AND FAIR ELECTIONS AND CASE-JAVITS

The phrase now in common use about the Rhodesia election is that it must be "free and fair." What factors should be borne in mind?

1. The Rhodesian Government has frequently invited the Patriotic Front to participate in the election, offering most recently to declare a general amnesty "in a spirit of reconciliation." The Patriotic Front has rejected all such offers, vowing instead that it will disrupt the election by force of arms.
2. No political groups have been barred from participating in the election.
3. There is genuine competition for office between some half a dozen parties.
4. The balloting will be secret.
5. The Rhodesian Government has asked Britain and the United States and a number of other countries, and also the United Nations, to send representatives to observe the Rhodesian elections. The British and American Governments have declined to send observers. So has the United Nations. However, parliamentary observers will be sent from Britain and other European countries and, observers from various organizations will come from the United States.

It is important to note that the Case-Javits requirement is procedural, or at least not quantitative. The election must be seen to be "free;" this is all; there is nothing about electoral turnout. The problem is one of standards, preferably sanctioned by experience. There are, however, no precedents for Rhodesia.

The continental African experience is unhelpful. During the process of decolonization hardly any election was itself a precondition of legality or acceptability; rather there were usually a series of elections as part of an already irreversible process; neither the legitimacy nor the consequence of the electoral contests was at issue. In any case the turnout was highly variable, ranging from comfortable majorities in Nigeria to "an abysmally low poll" in Ghana, where Kwame Nkrumah came to power with the support of one vote in six of the electorate.<sup>11</sup>

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11. Ruth First, Power in Africa (New York: Random House, 1970) Ch. 4; on the "front-line states see: Samuel T. Francis, "The Front-Line States: The Realities in Southern Africa," Heritage Foundation Background #78.

John F. Burns, correspondent writing for the New York Times, has noted the apparent disparity of election standards for Rhodesia and those for the Front Line States supporting the Patriotic Front. He writes:

(A)s for self-rule, many find British and American standards unusually exacting. Zambia's President Kenneth Kaunda recently won re-election after barring his leading rival by amending the election rules. Tanzanian President Julius K. Nyerere is notorious for the political detainees in his prisons. Neither Angola nor Mozambique, both Marxist, hold free elections. Whatever its failings, the April election in Rhodesia is likely to be freer than many others and the new Rhodesian constitution contains broader protections of human rights than those of most African states.<sup>12</sup>

Experience from countries around the world concerning voting turnout yields little meaning. Communist countries regularly report near-unanimous votes in "elections" devoid of choice. Western European nations are composed of highly literate electorates accustomed to ballot-box elections, while most Rhodesians have different experiences and qualifications. The United States has abysmally small turnouts: in the last congressional election the turnout was some 35 percent; in President Carter's home state of Georgia it was 18.7 percent.

But the one feature that unites virtually all elections in all countries is that they are held under conditions of peace at home. That is not the case with Rhodesia. The April election will be held under conditions of considerable physical hazard for Rhodesian voters, particularly black voters. Large areas of the country are subject to terrorist intimidation; in consequence large areas are under martial law. The Patriotic Front, after refusing to participate in the election, has sworn to murder voters at the polls.

Indeed it is doubtful whether any country in history has ever been required, as Rhodesia is being required, to conduct a "free and fair" election in such unfavorable circumstances as a condition of minimal international acceptance or respect. It can, of course, be argued that conditions in Rhodesia simply do not permit the holding of a free and fair election, in which case the Case-Javits condition cannot be met; but that cannot possibly have been the intention of the authors of the Amendment, since they could not have expected and did not require a substantial change of circumstances in Rhodesia by the time the election took place. The December 31 election was already scheduled when the Case-Javits Amendment was passed.

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12. New York Times, February 25, 1979.

The essential principal is that the election be free and fair. The essential civil and military circumstances of the election are implicit in the Case-Javits Amendment. One assumes that the principal and the circumstances will be considered together.

#### RHODESIAN AND AMERICAN LAW

Senator Edward Kennedy and others have raised the legal issues involved in the abrogation by domestic law of an international commitment, i.e. the ending of U.N. sanctions against Rhodesia by action of the President acting under congressional authority. On April 4, 1979, Senators McGovern and Kennedy indicated in a letter to their fellow senators that they were sending a list of questions concerning the legal obligations of the U.S. under the U.N. to various groups including the American Bar Association and the U.N. Association.

The issue seems to have been disposed of in 1972, after Representative Charles Diggs challenged in court the propriety of the Byrd Amendment, which permitted the importation of Rhodesian chrome despite the ban imposed by the U.N. boycott of Rhodesia. The court ruled that in such cases American domestic law prevailed over treaty obligations under the "later-in-time" rule. Any American obligation to observe the U.N. boycott of Rhodesian chrome was ended by the Byrd Amendment.<sup>13</sup>

There is also the issue of due process. The argument is made that "the rule of law" requires American respect for U.N. sanctions against Rhodesia as a matter of treaty obligation. But the rule of law requires due process. That is precisely what has been denied to Rhodesia. Without evident exception the U.N. Security Council has denied every Rhodesian request for a hearing, usually on the ground that Rhodesia is not in international law a sovereign state. Yet, the Security Council has heard such non-sovereign entities as Hyderabad and pre-independent Indonesia, and such private organizations as the PLO, SWAPO and the Patriotic Front. Only last year it granted a hearing to Joshua Nkomo while denying one to Bishop Muzorewa.

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13. Diggs v. Shultz, 470 F. 2d 461 (D.C. Cir. 1972), cert. denied, 411 U.S. 931 (1973). Ronald A. Brand, "Security Council Resolutions: When Do They Give Rise to Enforceable Rights? The United Nations Charter, the Byrd Amendment, and a Self-Executing Treaty Analysis," Cornell International Law Journal, Vol. 9, No. 3 (July 1973).

On Rhodesia, that is to say, the Security Council--not to speak of the more hostile General Assembly--has acted as both prosecutor and judge. The other side has not been heard. There has been no due process. The rule of law does not require or permit its denial.<sup>10</sup>

It is proper to conclude that the United States and Britain are free to legislate for themselves on the matter of Rhodesia, that any U.N. jurisdiction can be retrieved through metropolitan legislation and authorized executive act. That is certainly the operational assumption of Case-Javits. The United States does not need the permission of the Security Council--both the State Department and the British Foreign Office have implied that it does--to abandon sanctions against Rhodesia. It can act on its own. Any reprisal by the Security Council can then be vetoed by any permanent member of the Security Council. Otherwise the Soviet Union would have a permanent veto over a peace it does not want which presumably neither Britain nor the U.S. would welcome.

#### CONCLUSION

Since the enactment of the Case-Javits Amendment, Rhodesia has on the record shown itself ready to commit itself to good faith negotiations with the Patriotic Front under international auspices, while the Patriotic Front has not. The fact that Rhodesia's commitment has not been tested in actual negotiations would seem to be the fault of Britain and the United States, who have declined to convene such negotiations. The President of the United States might properly hesitate to condemn Rhodesia for failing to meet a test he himself refused to administer.

It is not open to reasonable doubt, further that Rhodesia has shown a clear intent to hold free and fair elections by repeatedly asking Britain and the United States to send observers to the April election. Those observers will not be sent. The Case-Javits requirement will have to be considered by the President of the United States against evidence provided by others. What has been cast in doubt, both in Rhodesia and among a growing number of critics outside Rhodesia, is the ability of both the Carter Administration as well as the Labor Government in Britain to give Rhodesia a fair hearing.

With the holding of a bona fide election Rhodesia will have arguably met all reasonable requirements for legal independence. There will be a black government and a black legislature; all racially discriminatory laws have been repealed; and, while, the minorities will be protected, the majority will govern the country.

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14. Michael Stephen, "Natural Justice at the United Nations: The Rhodesia Case", American Journal of International Law, Vol. 67, No. 3 (July 1973).

Yet, there is a fear in Rhodesia and elsewhere that nothing Rhodesia can do will please; that the more it meets external demands the more those demands increase; that there is a bias within the British and American administrations in favor of the Patriotic Front; that the British-American purpose in Rhodesia is retribution rather than liberation; and that some excuse will be found to bar the road that the Case-Javits Amendment has laid open.

Thus, after the election there may indeed be a third principle to Case-Javits, a final test. The formal conditions for the lifting of sanctions are the willingness to negotiate and the holding of a free and fair election. The third condition might be the ability of the Carter Administration to look at the evidence in proper detachment, to stand in fair judgment on Rhodesia. The question now uppermost in the minds of Rhodesians is whether--no matter how hard they have tried to meet the Case-Javits condition --they have already been judged to have failed.

Written at the request of  
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