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CO-OPERATION BETWEEN THE UNITED NATIONS AND THE ORGANIZATION  
OF AFRICAN UNITY

QUESTION OF SOUTHERN RHODESIA

Letter dated 24 May 1979 from the Chargé d'Affaires a.i.  
of the Permanent Mission of Ghana to the United Nations  
addressed to the Secretary-General

I have the honour to transmit to Your Excellency, on behalf of the African Group, the attached document prepared by the National Bar Association of the United States on recent developments with respect to Southern Rhodesia. The document, which was presented to the African Group on 21 May 1979, has been endorsed by the Group.

It will be highly appreciated if Your Excellency would have the document circulated as an official document of the General Assembly under items 23 and 91 of the preliminary list.

(Signed) J. K. D. FOLI  
Acting Permanent Representative  
of Ghana to the United Nations  
Chairman of the African Group  
for the month of May 1979

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\* A/34/50.

ANNEX

Report of the National Bar Association on recent developments with respect to Rhodesia, submitted to Senator George McGovern, Senator Alan Cranston, Senator Frank Church, Senator Mike Gravel, Senator Patrick J. Leahy, Senator William Proxmire, Senator Edward M. Kennedy, Senator Paul F. Tsongas, Senator Birch Bayh, Senator Mark O. Hatfield, Senator Carl Levin and Senator Donald W. Riegle, Jr. on 8 May 1979

## INTRODUCTION

This report is submitted in response to the 13 April 1979 letter signed by 12 members of the Senate requesting the views of the National Bar Association on various questions pertaining to Rhodesia. The National Bar Association deeply appreciates the opportunity to have its views on this important issue considered by Congress and is willing to assist Congress in any way it can on matters pertaining to the Rhodesian problem in the future.

### Summary

This report addresses the three questions concerning the current state of affairs in Rhodesia that were submitted to the National Bar Association and four other organizations by 12 members of the United States Senate. This report concludes:

1. The United Nations Charter is a binding treaty that imposes upon the United States, and other Member States, an affirmative obligation to co-operate with the enforcement actions of the United Nations Security Council, including the Rhodesian sanctions. A unilateral lifting of those sanctions by the United States would constitute, as a matter of law, a breach of those treaty obligations and would establish a harmful precedent for the breach of other United Nations Charter obligations by other parties.

2. The new Constitution adopted by the white minority of Rhodesia preserves existing power relationships in Rhodesia, and thereby denies majority rule. The white minority is given a grossly disproportionate quota of seats in the legislature that provides them with the power to veto the amendment of important constitutional provisions and other laws. The white minority retains control over important governmental institutions, including the police, armed forces, judiciary and civil service. Equally important, the new Constitution fails to provide for the protection of basic human rights.

3. The elections were conducted in an atmosphere of coercion and intimidation wholly inconsistent with the democratic process. Further, elections held pursuant to a constitution that is undemocratic and unjust, and that was approved by less than 3 per cent of the population, cannot be considered "free and fair" regardless of the alleged size of the voter turnout.

I. WHAT ARE THE INTERNATIONAL LEGAL OBLIGATIONS OF THE UNITED STATES UNDER THE UNITED NATIONS CHARTER AND THE UNITED NATIONS PARTICIPATION ACT OF 1945 WITH RESPECT TO RHODESIAN SANCTIONS?

A. Background of United Nations sanctions

A review of Rhodesia's history reveals that the present tensions there are a direct outgrowth of the subjugation of the African majority since 1890, the date the first major contingent of white settlers arrived under the aegis of the British South Africa Company and its substantial "police" force. Though the Company's charter expired and was replaced by a "constitution" in 1923, the African majority continued to be denied human rights and meaningful participation in the government and economy through such devices as enforced racial segregation, exclusionary franchise qualifications, educational barriers, land ownership restrictions and severe repression by police forces. This pattern has continued under every subsequent constitution, including the present constitution, each of which was adopted exclusively by the white minority.

In 1964, Great Britain granted independence to Malawi and Zambia, former members of the Federation of Rhodesia and Nyasaland founded upon constitutions providing for actual majority rule. However, the third Federation member, Southern Rhodesia, rejected British efforts to bring about a peaceful transition to majority rule and self-determination under democratic terms and, in 1965, unilaterally declared itself independent. These developments, coupled with Britain's admitted inability to influence the government of the entrenched minority, led to the imposition by the United Nations Security Council of selective mandatory sanctions in 1966 (resolution 232 (1966)) and more comprehensive economic sanctions in 1968 (resolution 253 (1968)).

B. The nature of the obligations

The Constitution of the United States provides in Article VI, paragraph 2, that treaties made under the authority of the United States shall be "the supreme law of the land ...". The United Nations Charter is a binding treaty of the United States. The Charter was submitted to the Senate for ratification as a treaty and was considered a treaty in the ensuing debates. (see e.g. 91 Congressional Record 7119 (1945)). Various articles of the Charter provide that resolutions of the Security Council are binding on all Member States. For example, Article 25 provides that the Members "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter". More specifically, Article 2, paragraph 5, provides that: "All Members shall ... refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

Such preventive or enforcement action is authorized under Article 41, the basis for the Rhodesia sanctions, which provides:

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

(See also Art. 48, para. 1, and Art. 49). The United Nations Charter provisions expressly vest authority in the Security Council to impose economic embargoes. Pursuant to this authority, the Security Council has enacted resolutions mandating comprehensive economic sanctions against Rhodesia. The federal courts of this nation have found these resolutions to constitute binding treaty obligations of the United States. (see e.g. Diggs v. Schultz, 470 F.2d 461 (D.C. Cir.), cert. denied, 411 U.S. 931 (1972)).

### C. The specific content of the obligations

The Security Council, pursuant to the Charter of the United Nations, adopted resolution 253 (1968) on 29 May 1968. In that resolution the Security Council in mandatory and unambiguous terms, called upon all Member States to: (a) prevent the import of all Rhodesian commodities and products; (b) prevent any activities by their citizens which promote Rhodesian exports as well as any dealings in exported Rhodesian products, including the transfer of funds to Rhodesia for such purposes; (c) prevent shipment of Rhodesian products in their registered carriers, in carriers registered to their nationals, as well as the carriage of Rhodesian products across their territories; (d) prevent the sale or supply of all but a few categories of commodities (i.e., medical and humanitarian goods) to Rhodesia; (e) restrict investments in and other capital transfers to Rhodesia; and (f) carry out these sanctions in accordance with Article 25 of the Charter, with special emphasis upon compliance by Member States with primary responsibility under the Charter (i.e., permanent Security Council members such as the United States), for the maintenance of international peace and security.

To further aid the implementation of binding international legal obligations under the United Nations Charter and to set forth a comprehensive framework for United States participation in the United Nations, the United States Congress in 1945 passed the United Nations Participation Act, 22 U.S.C. § 287 a-e. Section 5 of that Act grants express authority to the President of the United States to implement, through orders, rules and regulations, Security Council measures enacted under Article 41 of the United Nations Charter. That article as stated above, pertains to the use of economic sanctions rather than armed force. The Executive branch has implemented the Rhodesian sanctions, with the aid of the United Nations Participation Act, through Executive Orders and regulations administered by the Treasury and Commerce Departments. It is through these channels that the United States has met its international legal obligations to impose economic sanctions against Rhodesia - except for the brief period during which this country imported Rhodesian chrome under the Byrd Amendment.

D. Breach of the obligations

Should the United States now choose to unilaterally cease its participation in the Rhodesian sanctions programme prior to a Security Council determination to end such sanctions, such action clearly would contravene the affirmative obligation of all Member States (under Charter provisions discussed above) to refrain from economic dealings with Rhodesia while Security Council sanctions are in effect. United States courts previously have determined that such dealings with Rhodesia would constitute a breach of United States treaty obligations. (See Diggs v. Schultz, supra.)

The consequences of a complete breach of the sanctions by the United States, in our view, are very serious. The United Nations was established following the Second World War principally to meet the obvious need for a permanent international organization with the mandate to assist in the settlement of disputes threatening the security of the international community. The Security Council was vested with authority to use both military and non-military means to fulfil this purpose. Aside from the Rhodesian problem, the Council has employed its enforcement powers to resolve armed disputes principally through military means - through the use of United Nations peace-keeping forces.

A unilateral breach of these sanctions by the United States would have, by virtue of the important role of this country in the maintenance of international peace, security and the rule of law, a tremendous precedential impact. As indicated above, the Security Council is the principal dispute settlement organ of the United Nations and, throughout that organization's history, has had primary responsibility for the maintenance of international peace and security. A unilateral breach of sanctions would voice to the world that the United States considers meaningless Charter provisions binding United Nations Members to comply with mandatory economic sanctions - the most important peace-keeping action which can be undertaken by the Security Council barring the use of force - and thereby would undermine the ability of the United Nations to fulfil one of its most important functions.

II. DOES THE CONSTITUTION APPROVED BY THE WHITE ELECTORATE OF RHODESIA ON 30 JANUARY MEET THE DEFINITION OF THE TERM "MAJORITY RULE" WITHIN THE INTENT OF PERTINENT RESOLUTIONS OF THE UNITED NATIONS ESTABLISHING A PROGRAMME OF SANCTIONS?

The central theme of recent Rhodesian history has been the attempt by the white minority to retain control over the country in blatant disregard for the interests and rights of the overwhelming black majority of the population. The Security Council adopted the Rhodesian sanctions for the purpose of bringing this history to an end, and to enable the people of Rhodesia to attain all powers of self-determination - that is, to freely determine their political status and to freely pursue their economic, social and cultural development without any distinctions as to race, creed or colour. General Assembly resolution 1514 (XV) was referred to in Security Council resolutions 217 (1965), 232 (1966) and 253 (1968). Sanctions may be lifted only after the Security Council determines that these conditions have been achieved.

The issue to be addressed in this section is whether and to what extent the above-mentioned conditions of majority rule and self-determination are attainable under the new Rhodesian Constitution drafted by the Smith régime (hereinafter referred to as the "Smith Constitution"). The real effect of the recent elections in Rhodesia must therefore be evaluated in the context of the Constitution that authorized them.

The National Bar Association's views regarding the Smith Constitution are summarized as follows: the Smith Constitution makes it extremely unlikely that self-determination for the majority of the people will ever become a reality in Rhodesia. Under its terms, the white minority, comprising no more than 3 per cent of the population, is given perpetual control over several critical institutions of power, including the police, the armed forces, the civil service and the judiciary. Furthermore, the 3 per cent white minority must be given 28 of the 100 seats in the House and 10 of the 30 seats in the Senate. The effect of these provisions is to prevent the black majority, that comprises over 97 per cent of the population, from having any meaningful control over its economic, social or political destinies. Not surprisingly, only the white minority was allowed to vote in the 30 January 1979 referendum held for the purpose of approving the Smith Constitution.

Equally disturbing, the Smith Constitution does not allow for the protection of basic human rights. Although the document summarizing the Smith Constitution entitled "Proposals for a New Constitution for Rhodesia", that was prepared and distributed by the Smith government, claims to promulgate a "Declaration of Rights", an examination of the full text of the Smith Constitution reveals that each of those rights is riddled with so many fundamental exceptions as to render them virtually meaningless.

A. The Smith Constitution denies majority rule

First, and most important, the Smith Constitution creates a power of the 3 per cent white minority indefinitely. Of the 100 seats in the House, 28 must be held by whites; of the 30 seats in the Senate, 10 must be held by whites. Moreover, only the white population can vote for the white-only seats. In contrast, both black and white voters participate in the election of the remaining representatives. This quota system will remain in effect for 10 years and continue thereafter unless a commission composed of the Chief Justice (who, because of the required qualifications, will be white), two persons selected by the 28 white members of the House and two persons selected by the President recommends that it be revised or abolished. The Constitution seems designed to preserve the 10-to-1 voting power of whites indefinitely.

Second, the limitation of black representatives to 72 seats was intended to provide a white veto over any significant changes in the Smith Constitution. Any changes in the provisions that ensure white control (as discussed below) over the judiciary, armed forces, police, civil service, various regulatory commissions, land reform, as well as the constitutional provision preserving the 28 white seats, must be approved by at least 78 members of the House. Since 28 of the 100 seats in the House must be held by whites, it necessarily follows that the white minority has a veto over any attempt to alter those provisions, which the Smith Constitution refers to as "entrenched".

Third, the Smith Constitution preserves the existing judiciary and legal system. The qualifications for judges (persons presently judges or who have been attorneys for 10 years in a Roman-Dutch common law system in which English is an official language), and for membership on the Judicial Service Commission, which recommends judicial appointments, guarantees that the bench will remain overwhelmingly composed of present members or other whites for decades. Moreover, under the Smith Constitution, judges have no authority for a period of 10 years to enforce the Declaration of Rights in relation to existing discriminatory laws, which laws will remain in effect in the absence of legislative repeal. Finally, the Constitution provides no basis for redress of de facto discrimination, which is an integral part of the Rhodesian social and economic system, because the Declaration of Rights prohibits only discrimination pursuant to written law.

Fourth, the Smith Constitution ensures that other government institutions, including the civil service, police force and the armed forces, remain indefinitely under white minority control. By constitutional design, the qualifications for membership on the commissions that regulate these institutions ensure that the majority of their members will remain white.

Fifth, the Smith Constitution places severe restraints on the power of the government to acquire land for "settlement purposes," i.e., land reform. Government acquisition of agricultural land for such purposes is allowed only with respect to land not substantially used for agricultural purposes (i.e., land that is idle) for a continuous period of at least five years, with periods of disuse due



to "public disorder" being disregarded. In effect, this provision eliminates any possibility of significant land reform, which is badly needed, since Rhodesia's most fertile land is largely held and actually farmed by the small group of white settlers.

#### B. The Declaration of Rights

The Declaration of Rights is a shocking document. Although it purports to provide 12 basic rights to the citizens of Rhodesia, in fact, the majority of its text is devoted to enumerating exceptions to those rights. The result is a declaration of rights eviscerated beyond meaning.

The shocking quality of the Declaration of Rights is exposed by examining any of the 12 rights. We have selected two sections for an extended discussion: the protection of right to life and the protection from inhuman treatment. The deceptive summary of those rights, made available by the Smith government, provided no elaboration of the scope of those rights whatsoever. However, when the full text of those rights is consulted, an altogether different picture emerges.

The "Protection of right to life", section 120 of the Smith Constitution, provides as follows:

- "(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offense of which he has been convicted.
- "(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable in the circumstances of the case -
  - (a) For the defence of any person from violence or for the defense of property; or
  - (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
  - (c) For the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or
  - (d) In order to prevent the commission by that person of a criminal offense; or
  - (e) If he dies as the result of a lawful act of war.

"(3) It shall be sufficient justification for the purpose of subsection (2) in any case to which that subsection applies if it is shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the fixed date."

The meaning of section 120 is apparent and abhorrent. Whatever "right" is contained in subsection (1) of section 120 is totally gutted by the numerous exceptions subsequently contained in subsections (2) and (3). Subsection (2) of this section authorizes the use of deadly force in almost every conceivable set of circumstances. And, if that were not enough, subsection (3) authorizes the use of deadly force under any circumstances in which it would have been lawful under prior Rhodesian law.

The "Protection from inhuman treatment", section 123, provides:

- "(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.
- "(2) No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of subsection (1) on the ground that it is degrading.
- "(3) Nothing contained in or done under the authority of any written law shall be held to be in contravention of subsection (1) to the extent that the law in question authorizes the doing of anything by way of punishment or other treatment which might lawfully have been so done in Zimbabwe Rhodesia immediately before the fixed date."

Again, the pattern is clear: what is provided in subsection (1) of section 123 is gutted by the exceptions contained in subsections (2) and (3). Thus, while subsection (1) of section 123 states that no one shall be punished in a degrading manner, subsection (2) states that no degrading punishment shall be held to contravene this right as long as the degrading punishment is employed to prevent a person from escaping. Further, subsection (3) states that no punishment authorized by Rhodesian law in effect immediately before the Smith Constitution went into effect will ever be held to contravene the right not to be subjected to torture or other inhuman or degrading punishment or treatment.

These are by no means the worst of the "rights" contained in the Declaration of Rights. The entire Declaration, contained in chapter VIII of the Smith Constitution, should be examined. However, we briefly note the following:

(a) The "Protection of right to personal liberty" (Section 121) is not contravened by preventive detention, which detention is reviewable only by a tribunal whose majority will be white.

(b) The "Protection from slavery and forced labor" (Section 122) does not apply to persons lawfully detained but not convicted of any crime - e.g. preventive detention.

(c) The "Protection from arbitrary search or entry" (Section 125) is not contravened by any action taken in the interests of defense, public safety, public order, public morality, public health or town and country planning, or for the purpose of protecting the rights or freedoms of other persons.

(d) The provision that guarantees due process and fair trial, referred to as "Provisions to secure protection of law" (Section 126), is not contravened by secret hearings or testimony, or the prevention of certain witnesses from giving testimony.

(e) The "Protection of freedom of conscience" (Section 127) is not contravened by any action taken "in the interests of defence, public safety, public order, public morality or public health".

(f) The "Protection of freedom of expression" (Section 128) and the "Protection of freedom of assembly and association" (Section 129) are not contravened by any action taken, "in the interests of defence, public safety, public order, the economic interests of the State, public morality or public health".

(g) The "Protection of freedom of movement" (Section 136) is not contravened by preventive detention.

(h) The "Protection from discrimination" (Section 131) does not apply to "the appropriation of public revenues or other public funds".

(i) Finally, during periods of public emergency, the Declaration of Rights has no effect whatever (Section 132).

In sum, the Smith Constitution clearly does not provide a foundation for self-determination for the majority of the Rhodesian people. Under the Smith Constitution, blacks will make up the majority of a virtually powerless legislature, while whites will continue to control the essential governmental machinery, including the civil service, the armed forces, the police and the judiciary. It could not be more clear that this Constitution was drafted for the purpose of continuing a status quo which the privileged minority has enjoyed for nearly 90 years.

Two conclusions follow: (a) from the standpoint of the majority of Rhodesian citizens, the elections under the Smith Constitution were (and any future elections under this constitution must be) a largely meaningless exercise; and (b) the basic circumstance which triggered the imposition and continuation of United Nations sanctions (i.e., the historical unwillingness of the minority to concede genuine power to the majority through peaceful means) has not changed.

- III. DO THE PROVISIONS OF THAT CONSTITUTION AND THE ELECTORAL LAWS, REGULATIONS AND PROCEDURES ESTABLISHED BY THE GOVERNMENT OF RHODESIA PERMIT A FREE AND FAIR ELECTION IN WHICH:
- A. ALL POPULATION AND POLITICAL GROUPS ARE PERMITTED TO PARTICIPATE FREELY?
  - B. EQUAL REPRESENTATION IS ACCORDED TO ALL CITIZENS REGARDLESS OF RACE, ETHNIC BACKGROUND OR POLITICAL AFFILIATION?
  - C. EQUAL VOTING RIGHTS ARE PROVIDED FOR ALL CITIZENS, REGARDLESS OF RACE, ETHNIC BACKGROUND OR POLITICAL AFFILIATION, ON THE PRINCIPLE OF ONE CITIZEN, ONE VOTE?

In addressing Question III and its subparts, the National Bar Association has assumed that the reference to "free and fair election" is intended to raise the issue of whether or not the recent elections in Rhodesia satisfied the requirements of the Case-Javits Amendment. We will first address why the elections failed to satisfy those requirements and then address the specific questions raised in your letter.

Section 27 of the International Security Assistance Act of 1978 (the "Case-Javits Amendment") requires the President to lift sanctions only upon the fulfilment of two conditions:

"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."

With respect to the first requirement, it is our judgement that the Rhodesian régime has never committed itself in good faith to an all-parties conference under international auspices, on all relevant issues. In September of 1978, Smith publicly stated his willingness to negotiate without pre-conditions.

These utterances, however, were not accompanied by actions conducive to settlement talks. Days after his "without pre-conditions" statement, the régime conducted a series of devastating raids on refugee and base camps in Zambia and Mozambique, killing approximately 1,200 men, women and children. These raids which have continued, are utterly inconsistent with an offer of negotiation and, in our view constitute a repudiation of any such offer. Further, since the Smith statement, the régime has not taken any steps of which we are aware to prepare for a conference under international auspices.

The second requirement of section 27, the installation of a government based on free elections, has not yet been and, under present conditions, cannot be fulfilled by the recent elections. First, the elections were held pursuant

to a constitutional scheme that has been accepted by less than 3 per cent of the population and that is, as elaborated above, designed (like previous constitutions adopted by the white minority) to ensure the continued political and economic subjugation of the black majority.

Further, there have been reports from a wide range of reliable sources - including the Parliamentary Human Rights Association of the United Kingdom, Professor Claire Palley, University of Kent at Canterbury, the Catholic Commission for Justice and Peace, and numerous press reports from Salisbury - indicating the elections were held in an atmosphere charged with violence and intimidation that is not conducive to the democratic process. These reports provide factual documentation that (a) the private armies of the internal settlement members intimidated dissenters and even ordinary citizens who did not actively support the Smith régime; (b) the Smith régime employed, and continues to employ, various coercive tactics ostensibly to "protect" the population from exposure to guerrillas, including the herding of masses of citizens into "protected villages", which have been described as concentration camps; (c) the Smith régime reportedly has a "starvation policy" that restricts the movement of food in order to coerce citizens to move to protected villages; and (d) the Smith régime subjects to severe censorship any information (including press reports) considered adverse to the internal settlement plan; (e) 90 per cent of the land is under martial law; (f) the two principal opposition parties, the Zimbabwe African National Union (ZANU) and the Zimbabwe African Peoples Union (ZAPU), have been banned and were not allowed to participate in the election; and (g) the elections took place without advance registration of African voters, thereby maximizing the possibility for abuse and manipulation of the voting process.

As stated above, the second requirement of the Case-Javits Amendment is that the elections be "fair". It is clear that the terms of the Smith Constitution, as well as the conditions prevailing in Rhodesia today, preclude any possibility that the elections can be deemed fair.

In sum, our response to the specific questions posed in this section is as follows:

(a) ZANU and ZAPU were banned by statute from participating in the elections and, therefore, it cannot be said that the entire population and all political groups were permitted to participate freely in the elections;

(b) The requirement of the Smith Constitution that 28 of the 100 seats in the House and 10 of the 30 seats in the Senate must be held by whites, thus giving 28 per cent of the House and 33 per cent of the Senate to 3 per cent of the population, is fundamentally incompatible with one man, one vote and majority rule. Under no formula can this be said to accord equal representation to all citizens of Zimbabwe regardless of race, ethnic background or political affiliation;

(c) White Rhodesians were permitted to vote twice - once for white representatives to the House and Senate, and once for black representatives to the House and Senate. On the other hand, Black Rhodesians were permitted to vote only for black representatives to the House and Senate. It cannot be disputed that this formula violates the principle of one person, one vote.

As a final matter, we note that the question whether the recent elections in Rhodesia were free and fair is premised on an invalid assumption: that there is a relationship between the voter turnout and whether or not the black majority approve of the Smith Constitution. The two have literally nothing to do with each other. If the Smith government wanted to determine whether or not the black majority approved of the Smith Constitution, it would have submitted that document to the black majority for its approval. No such approval was sought because, in fact, no such approval would have been given.

The recent voting in Rhodesia was in regard to approved political parties, not the Smith Constitution. When similar elections are held in the Soviet Union, and virtually every other communist country, the voter turnout is always overwhelming. Yet, the United States routinely rejects efforts to see those high voter turnouts as indicia of the approval of the form of government under which they were held.

There are three basic reasons for such rejection: (1) the question of approval of the form of government was not put to the voters, (2) certain political parties were banned from participation in the elections, and (3) the vote took place in a context of coercion.

All three apply to Rhodesia. The Smith Constitution was not voted on by the black population. ZANU and ZAPU were banned from participation in the elections. And coercion was employed to get black voters to the polls. For example, the Parliamentary Human Rights Association, a group accredited by the British Government, reports that large numbers of Rhodesians were forcibly transported to polling places in trucks and buses. The report also details coercion by forces stationed in protected villages and by employers on farms and in work places. In addition, a similar account of villagers being forcibly transported to polling places is documented in the 23 April 1979 Christian Science Monitor. Thus, the voter turnout was attributable to the desperate efforts of the Smith régime to force its black population to the polls, in the belief that the world would equate high black voter turnout with approval of the Smith Constitution.

For all the reasons cited above, the recent elections cannot be considered free and fair within the meaning of the Case-Javits requirements.

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