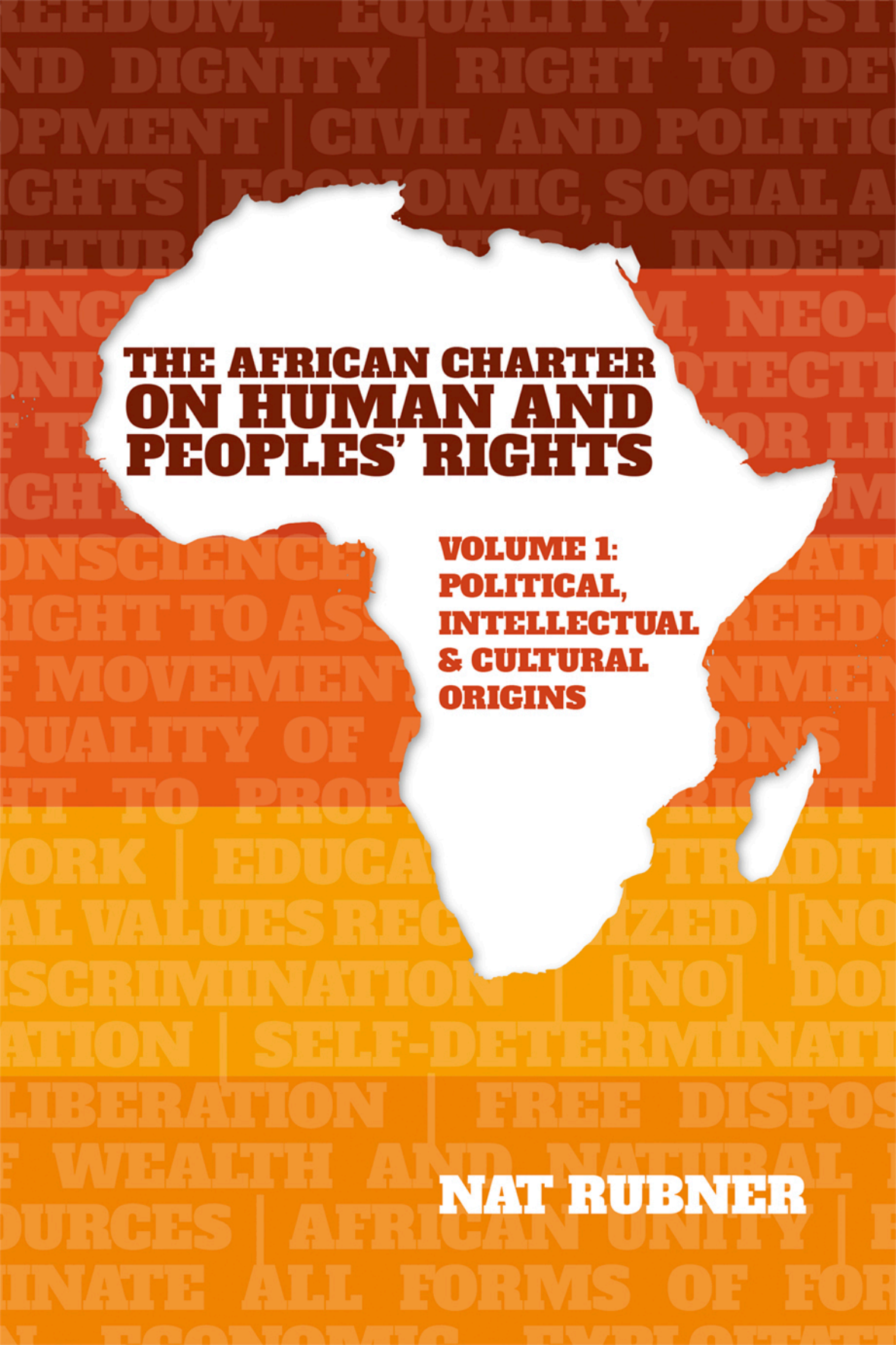
THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS



VOLUME 1: POLITICAL, INTELLECTUAL & CULTURAL ORIGINS

NAT RUBNER

The African Charter on Human and Peoples' Rights

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Volume 1: Political, Intellectual and Cultural Origins

Nat Rubner

JAMES CURREY

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Illustration

Figure 1. Emperor Haile Selassie of Ethiopia with the other African heads of state, Heads of State conference, Addis Ababa, 25 May 1963. (Anonymous/AP/Shutterstock) 241

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Note on Bibliography

Please note that a Bibliography covering both volumes is included in Volume 2.

Abbreviations

AACC	All Africa Conference of Churches
AAPC	All-African People's Conference
ABA	African Bar Association
ACHPR	1981 African Charter on Human and Peoples' Rights
ACHR	1969 American Convention on Human Rights
ACOMHPR	African Commission on Human and Peoples' Rights
AEF	French Equatorial Africa
AHSG	OAU Annual Heads of State and Government Meeting
AI	Amnesty International
AOF	French West Africa
CHOGM	Commonwealth Heads of Government Meeting
CHR	UN Commission on Human Rights
CIAS	Conference of Independent African States
CID	UK Committee of Imperial Defence
CO	UK Colonial Office
CoM	OAU Council of Ministers
Decision 115	Decision of the 1979 Monrovia AHSG to prepare draft of the ACHPR
ECA	Economic Commission for Africa
ECHR	1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	UN Economic and Social Council
EEC	European Economic Community
FCO/FO	UK Foreign and Commonwealth Office/Foreign Office
H.M.G.	UK His/Her Majesty's Government
HRC	UN Human Rights Committee
IAUL	Inter-African Union of Lawyers
ICJ	International Commission of Jurists
ICOJ	International Court of Justice
ICCPR	1966 International Covenant on Civil and Political Rights
ICESCR	1966 International Covenant on Economic, Social and Cultural Rights (together with the next above, 'International Covenants')
KAU	Kenya African Union
MDRM	Mouvement démocratique de la rénovation malgache

MoI	UK Ministry of Information
NAC	Nyasaland African Congress
NCNC	National Council of Nigeria and the Cameroons
NGO	Non-governmental organisation
NIEO	New international economic order
OAU	Organisation of African Unity
OAU Charter	1963 Charter of the Organisation of African Unity
PWE	UK Political Warfare Executive
RDA	Rassemblement démocratique africain
SOE	UK Special Operations Executive
TAA	Tanganyika African Association
UDHR	1948 UN Universal Declaration of Human Rights
UGCC	United Gold Coast Convention
UN	United Nations
UN Charter	1945 Charter of the United Nations
UNDHR	United Nations Division of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
WASU	West African Students' Union
WCC	World Council of Churches

Abbreviations for archive sources cited in footnotes

CSLA	Commonwealth Secretariat Library and Archives, London
ICJ	International Commission of Jurists, Geneva Office and Archive
MPP	Kéba M'baye Private Papers, Dakar and Fondation Kéba Mbaye, Dakar
NA	UK National Archives, London
OAU	AU Archive Centre, Addis Ababa
OAU (L)	AU Legal and Secretariat Department Archive, Addis Ababa
UN (G)	UN Archives and Library, Geneva
UN	UNBISNET online archives and UN Depository Libraries, London, New York
UNESCO	UNESCO online document centre and Archive Library, Paris
WJB	Papers of William J. Butler, Robert S. Marx Law Library, College of Law, University of Cincinnati

References to 'quoted by' are to secondary sources. All other sources are direct. In the case of 'reference from', the source is direct but identified from a secondary source.

Timeline

1935	
October	Italian invasion of Ethiopia
1939	
September	Britain and France declare war on Germany
1940	
June	France signs armistice with Germany and Italy
1941	
January	President Roosevelt's 'Four Freedoms' State of the Union Address
August	Atlantic Charter announcement
1942	
May	British invasion of Madagascar – Operation Ironclad
November	US Operation Torch landings in French North Africa
1943	
May	The Second World War on the African continent ends
1945	
April/June	Founding conference of the UN, San Francisco
1948	
December	UN Universal Declaration of Human Rights
1955	
April	Asian-African Conference, Bandung

1957	
March	Independence of Ghana
1958	
April	First 'Conference of Independent African States', Accra
September	French Community constitutional referendum
October	Independence of Guinea
1960	
	Independence of French colonial territories
June	Second 'Conference of Independent African States', Addis Ababa
December	UN Declaration on the Granting of Independence to Colonial Countries and Peoples
1961	
January	International Commission of Jurists (ICJ) 'African Conference on the Rule of Law', Lagos
1963	
May	Founding conference of the OAU, Addis Ababa
1966	
December	Adoption by the UN of International Covenants
1974	
April	Carnation revolution in Portugal
1976	
September	ICJ Seminar 'Human Rights in a One-Party State', Dar es Salaam
1978	
September	ICJ Colloquium 'Development and Human Rights', Dakar

1979	
July	Decision 115, OAU Monrovia Annual Heads of State and Government Meeting (AHSG)
September	1979 UN Monrovia Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa
November/ December	OAU Meeting of Experts, Dakar
1980	
March	OAU Inquorate Ministerial draft review meeting, Addis Ababa
June	OAU First Banjul Ministerial Meeting
1981	
January	OAU Second Banjul Ministerial Meeting
June	Adoption of ACHPR, OAU Nairobi AHSG
1985	
December	ICJ Conference 'Human and Peoples' Rights in Africa and the African Charter', Nairobi
1986	
October	ACHPR comes into effect

Introduction

Proposed in 1979 and adopted in 1981, the African Charter on Human and Peoples' Rights (ACHPR) finally came into effect on 21 October 1986 three months after a simple majority of OAU member states had deposited their instruments of ratification with the Organisation of African Unity (OAU) Secretary-General.[1] With Africa essentially absent in 1948 when the Universal Declaration of Human Rights (UDHR) was adopted, the ACHPR thereby represented the first official statement of an African human rights perspective; and also the first non-Western declaration of human rights. It will become increasingly evident as the account of its origins unfolds that the ACHPR was quite deliberately intended as an explicit political and cultural reproach to the Western conception of universal human rights. For that reason alone, it is undoubtedly one of the most important documents in modern African history and a significant moment in Africa's relentless confrontation with neo-colonialism in all its forms and the assertion of an African self-identity and personality.

Although, therefore, it might be thought that an appreciation of the origins of the ACHPR was essential to even the most basic commentary on the ACHPR, it is an appreciation that most African human rights commentators, that is commentators on African human rights, have nonetheless been largely happy to sidestep. In the main, their preferred areas of focus have been legal and comparative analysis and critiques of the ACHPR's legal and operational effectiveness. As a result, notwithstanding several book-length treatments of the ACHPR by Bello, Jallow, Kufuor, Murray, Nmehielle, Ouguergouz, Umozurike and Yemet,[2] and

1 OAU (L) AHG/Dec.115 (XVI) Rev.1 and OAU (L) 'Report of the Secretary-General on the draft African Charter on Human and Peoples' Rights', OAU CM/1149 (XXXVII) Annexe III: Draft African Charter on Human and Peoples' Rights, OAU CAB/LEG/67/3/Rev.5.

2 E.G. Bello, 'The African Charter on Human and Peoples' Rights: A Legal Analysis', *Academie de Droit International Recueil des Cours,* 194 (1985), 13–268, H.B. Jallow, *The Law of the African (Banjul) Charter on Human and People's Rights* (Victoria, 2007), K.O. Kufuor, *The African Human Rights System: Origin and Evolution* (Basingstoke, 2010), R. Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge, 2004), V.O. Orlu Nmehielle, *The African Human Rights System: Its Laws, Practice, and Institutions* (The Hague, 2001), F. Ouguergouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (The Hague, 2003), U.O. Umozurike, *The African*

specific chapters on its origins by Baricako and Kannyo,[3] more than thirty-five years after it came into force no comprehensive investigation aimed primarily at identifying a detailed narrative of how and why the ACHPR came into being has even been attempted.

To the extent that the origins of the ACHPR are described, an explanation of the 'how' is usually limited to a cursory outline of the political process. Invariably, this outline opens with Decision 115 of the 1979 Monrovia OAU Annual Heads of State and Government Meeting (AHSG), which called on the OAU Secretary-General to 'organise as soon as possible … a restricted meeting of highly qualified experts to prepare a preliminary draft of an "African Charter on Human and Peoples' Rights"', and concludes with the adoption of the ACHPR by the 1981 Nairobi AHSG after two years of drafting and political review.

Much the same cursory approach is adopted towards an explanation of the 'why'. Typically, the ACHPR is attributed to what is described as the human rights *zeitgeist* of the 1970s. As Mutua, for example, points out: 'The African Charter is not an accident of history. Its creation by the OAU came at a time of increased scrutiny of states for their human rights practices, and the ascendancy of human rights as a legitimate subject of international discourse.'[4]

The agency through which the human rights *zeitgeist* gave birth to the ACHPR is variously attributed to three elements: International pressure in the form of threats by Western governments to withdraw aid, resolutions and investigations in the UN and publicity by international human rights non-governmental organisations (NGOs) of human rights violations; African public opinion; and African political leaders themselves appalled by the human rights violations committed, in particular, by President Amin (Uganda), Emperor Bokassa (Central African Empire)[5] and President Nguema (Equatorial Guinea). Udombana, for example,

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Charter on Human and Peoples' Rights (The Hague, 1997) and V.E. Yemet, *La Charte Africaine des Droits de l'Homme et des Peuples: Étude comparative* (Paris, 1996).

3 G. Baricako, 'Introductory Preface: The African Charter and African Commission on Human and Peoples' Rights', M. Evans/R. Murray (eds), *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006*, 2nd edn (Cambridge, 2008), 1–19 (added to 2nd edn) and E. Kannyo, 'The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background', C.E. Welch, Jr./R.I. Meltzer (eds), *Human Rights and Development in Africa* (Albany, 1984), 128–151. The most extensive analysis of the ACHPR's origins is provided by Chapter 1: The genesis of the African Charter, F. Ouguergouz, *The African Charter on Human and Peoples' Rights*: it comprises some 30 out of its 1,000 or so pages.

4 M. wa Mutua, 'The African Human Rights System: A Critical Evaluation', 4, https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1015&context=other_scholarship, last accessed 13 March 2023.

5 Bokassa proclaimed himself Emperor in December 1976 and was crowned in December 1977; accordingly the Central African Republic (CAR) became the Central African Empire (CAE).

concluded that: 'In 1981, in response to growing human rights pressure at home and from abroad, African heads of state adopted the African Charter on Human and Peoples' Rights';[6] Kisanga, a long-standing Commissioner of the African Commission on Human and Peoples' Rights (ACOMHPR), similarly described 'growing demands by African peoples for the protection of human rights not only at the national and international levels but also at the regional level … in particular, African peoples and governments expressed deep concern … against the gross violations of human rights which were being committed in some of the African countries';[7] and Wohlgemuth and Sall asserted that the ACHPR was finally adopted 'after strong pressure from the African public, NGOs and the international community'.[8] One of the few dissenting voices is that of Kufuor who firmly dismissed the possibility that President Carter (US), the Uganda/Tanzania war or the human rights abuses by President Amin, Emperor Bokassa and President Nguema played a substantial part in bringing about the ACHPR.[9]

Further, considerable, significance as to the 'why' is also attached to a litany of pedagogic African human rights conferences organised by the UN and international NGOs. They commence with the 1961 International Commission of Jurists (ICJ) 'African Conference on the Rule of Law', Lagos (1961 ICJ Lagos conference), the first occasion on which a call was made for an African regional human rights convention, and end with the 1979 UN Monrovia Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa (1979 UN Monrovia Seminar), which is usually intimated as having inspired the ACHPR, although it post-dates Decision 115 by several months. Last, but not least, almost all African human rights commentators have also considered it significant that most African constitutions of the period either expressed adherence to the UDHR/the Rights of Man or incorporated a Bill of Rights. This, it is suggested, is meaningful evidence of an underlying African empathy with the UDHR and human rights more generally to which adoption of the ACHPR is thereby deemed to be an obvious corollary.

Although there may be a modicum of truth in some of these explanations, they are essentially specious, superficial at best, and little more than over-exuberant wishful thinking by human rights advocates. They bring to mind Dongala's

6 N.J. Udombana, 'Towards the African Court on Human and Peoples' Rights: Better Late than Never', *Yale Human Rights and Development Law Journal,* 3 (2000), 46.

7 R.H. Kisanga, 'Fundamental Rights and Freedoms in Africa: The Work of the African Commission on Human and Peoples' Rights', C.M. Peter/I.H. Juma (eds), *Fundamental Rights and Freedoms in Tanzania* (Dar es Salaam, 1998), 26.

8 L. Wohlgemuth/E. Sall, 'Introduction: Human Rights, Regionalism, and the Dilemmas of Democracy in Africa', L. Wohlgemuth/E. Sall (eds), *Human Rights, Regionalism, and the Dilemmas of Democracy in Africa* (Dakar, 2006), 4.

9 K.O. Kufuor, *The African Human Rights System: Origin and Evolution*, 16–35.

wonderfully evocative observation in his satirical novel: 'After slavery, colonialism, neocolonialism, and scientific socialism, democracy descended upon us one August morning, in the middle of the dry season.'[10] What is absent from such explanations – beyond the general, non-specific, intimations – is, firstly, a detailed explanation of the agency, a linking of the dots, by which, jointly or severally, these various elements brought about the ACHPR; secondly, a more precise explanation of why it was that, after so many years of absolute opposition, in an apparent Damascene conversion, African political leaders abruptly accepted the idea of the ACHPR; and, thirdly, why it should be imagined that African political leaders were any more committed to the ACHPR than they had been to the human rights declarations and obligations in their national constitutions.

In the first instance, this indifference to the origins of the ACHPR can largely be attributed to the overweening preoccupation of the human rights and international law specialists, who dominate African human rights studies, with the praxis of human rights. More fundamentally, though, it has been fostered by a pervasive, pre-emptive presumption that in a rather general and convenient manner locates the origins of the ACHPR in, what is predicated as, an inexorable universal human rights tradition of several thousand years and an aspiration to emulate the universal paradigm of the UDHR.

One of the most all-embracing expressions of this universalism was rendered by Ramcharan, who was an Assistant to van Boven, Director of the United Nations Division of Human Rights (UNDHR), at the time of the political process of the ACHPR. He described 'the rolling history of the global development of human rights in which different societies have learnt about law, justice, and human rights from each other' and therefore asserted that: 'The idea of human rights is not a Western one, but is rather part of the intellectual patrimony of human-kind'. More specifically, he claimed that the UDHR 'drew upon the intellectual well-springs of Africa, the Americas, Asia, and Europe in a distillation of universal rights' and, in its turn, 'inspired regional instruments to protect human rights … all of which have reaffirmed its precepts. This may be seen in the constitution of the OAU … the African Charter on Human and Peoples' Rights'.[11] A rather similar conclusion was drawn by Vincent who asserted that the ACHPR should be understood in terms of the process by which 'human rights arrange-

10 E. Dongala (trans. J. Rejouis/V. Vinokurov), *Little Boys Come from the Stars* (New York, 2002), 155.

11 B. Ramcharan, *Contemporary Human Rights Ideas* (London, 2008), 2, 58 and 'Human Rights: Universality and Cultural Diversity', F. Coomans *et alia* (eds), *Rendering Justice to the Vulnerable: Liber Amicorum in Honour of Theo van Boven* (The Hague, 2000), 239–240. However, UNESCO, *The Birthright of Man: A Selection of Texts Presented under the Direction of Jeanne Hersch* (Paris, 1969), which sought 'to assemble a collection anticipating the philosophy implicit in the Universal Declaration of 1948', does not include a single sub-Saharan African text.

ments at the regional level are made to carry global standards … The United Nations … encouraged the establishment of European, American, Arab and African institutions for this purpose, and, for their part, the regions have seen themselves as the local carriers of a global message.'[12] Morsink, in his exegesis of Vincent's assertion, would gushingly observe that: 'The "global message" and "universal standard" … must be that of the Universal Declaration.'[13]

Vincent's sense was also taken up by Reus-Smit who describes an evolving 'global ecumene' in human rights in which 'cultural particularism' gives way to a 'negotiated universalism'. He denounces 'a given in most of the literature' that the 'international human rights regime' was a 'Western project' on the basis that this misrepresents the UDHR's drafting process, which was 'a deliberate, if nonetheless flawed, exercise in intercultural dialogue'. Moreover, that 'it also sits uncomfortably with the diversity of states that negotiated the International Covenants'. Indeed, the participation of the 'newly independent postcolonial states … had a profound effect on the resulting treaties' and led to 'the universality of the resulting norms, and the issue of implementation'. More specifically, that 'colonial peoples played a key role' in universalising individual rights by 'contributing first to the strong international codification of civil and political rights and second to fighting the idea that there could be imperial zones of the international system in which such rights did not apply'.[14] As will become evident, this analysis is not borne out by the facts.

The effect of such universalism has been to appropriate the ACHPR as, essentially, a human rights text and only incidentally an African political and cultural text, and, thereby, subvert the need for, or value in, a more detailed consideration of the particularities of the ACHPR's African origins. With good reason, therefore, Shivji, in his critique of African human rights commentaries, has pronounced that: 'The Human Rights Discourse on and in Africa is intellectually backward.'[15]

The main aim of this book is, therefore, to investigate what has hitherto been of simply marginal interest and, consequently, of neglect with a view to presenting an interpretation of the ACHPR process that incorporates a more detailed and broader account of 'how' and a more considered appreciation of 'why' the

12 R.J. Vincent, *Human Rights and International Relations* (Cambridge, 1986), 101.

13 J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia, 1999), 20.

14 C. Reus-Smit, 'Human Rights and the Social Construction of Sovereignty', *Review of International Studies,* 27/4 (2001), 519–538, 'Human Rights in a Global Ecumene', *International Affairs,* 87/5 (2011), 1205–1218 and 'Roundtable: The International Rule of Law, International Law and the Mediation of Culture', *Ethics & International Affairs,* 28/1 (2014), 76–77. I am grateful to Peter Brett, Queen Mary, University of London, for pointing me in the direction of Reus-Smit.

15 I.G. Shivji, *The Concept of Human Rights in Africa* (London, 1989), vii.

ACHPR came into being; and thereby also of how it ought to be understood. This requires a repositioning of the ACHPR process within an African context so as to better understand the issues that gave it rise and why it should be viewed as primarily a pivotal African political text asserted by African political leaders, whose significance extends far beyond human rights, and not simply an inevitable Whiggish step in the continuum of a so-called universal human rights tradition. In essence, to identify the African question to which the ACHPR can be said to be the African answer.

As to the approach adopted, it is undoubtedly the case that without the UDHR there would have been no ACHPR. Nevertheless, it still needs to be said that the origins of the ACHPR can only be located in a context drawn from the African political and cultural womb which gave it birth. If, therefore, a coherent or discernible path is to be identified, the crucial primary lines of enquiry are necessarily likely to be found rather more in African attitudes towards human rights and the UDHR, and the wider African political and cultural currents and ideas of the time, than in a dubious global human rights tradition stretching back several thousand years to the Code of Hammurabi or Antigone. To borrow from a nineteenth-century British Foreign Minister, the new world, Africa, must be called into existence to redress the balance of the old.[16] To that end, the aim is to let Africa speak for itself so as to establish how Africans, and in practice that ultimately meant African political leaders, understood the process and the issues involved. As to how the terms 'Africa' or 'African' are to be understood, a question still widely debated within African studies, they are simply assumed from the self-definition of the OAU.

The book is in two volumes, and four parts, framed by Chapter 1 (Volume 1) and the Conclusion (Volume 2), arranged largely on a thematic basis but following, in as far as possible, a chronological order so as to track the path along which the ACHPR process moved. This format was essentially dictated by the need, set out in the first two parts, to identify the dominant African political and cultural ideas of the time, the principles and politics upon which the OAU was founded and functioned and African attitudes towards human rights domestically and internationally, most particularly at the UN. Without an appreciation of that fundamental context, the political account of the ACHPR process and a sense of how the ACHPR should be understood, set out in the fourth part, would otherwise be scarcely intelligible. The third part looks at Africa's international relations with Western governments, the UN and NGOs in order to establish definitively why it is that, contrary to the view put forward by many African human rights commentators, they played almost no part in the ACHPR process.

16 Secretary of State Canning, House of Commons 12 December 1826; of course, the context was the US not Africa. Unless indicated otherwise, all questions or speeches in the House of Commons are referenced from https://api.parliament.uk/historic-hansard/sittings/C20, the official historic Hansard website.

Chapter 1 and Parts One and Two are set out in *Volume 1: Political, Intellectual and Cultural Origins*. Parts Three and Four and the Conclusion with the Appendices and Bibliography in *Volume 2: The Political Process*.

As most historians will attest, origins are notoriously open-ended. How far back and how wide-ranging is it necessary to go to establish origins? In as much, therefore, as it is possible to locate a starting point, Allied and Vichy France wartime propaganda, most notably the 1941 Atlantic Charter, is posited as ground zero of the ACHPR process. Why that particular moment? As described in Chapter 1, the contradiction inherent in that propaganda served to unmask the clear political disconnect between the assertion that the war was being fought for the freedom, or benefit, of all and the actual racial discrimination practice on the ground. Moreover, it did so at a moment in time in which the possibilities for change were suddenly everywhere in the air and historic political relationships fragile. A disconnect, therefore, that led to an increasing clamour within Africa for a major reassessment of the existing basis of colonial relations and a corresponding significant potential for resentment were such aspirations to fall on stony ground.

It is also, it is suggested, the effective take-off point of an, albeit already immanent, movement of African awakening and disalienation determined to rise up against the commanding heights of Western universalism. That is, a far broader existential resentment arising out of a growing sense among educated African opinion that Western universalism devoid of African input or perspective was being foisted on Africa and that Africa must therefore speak out in its own defence. It would be precisely that sense of exclusion and impelling need to speak out that would eventually prove to be the one unifying theme that would bind the ACHPR process together and dominate discussion of the idea and content of the ACHPR.

How this political disconnect and emerging resentment went forth and multiplied is described in Part One: The Origins of the ACHPR (Chapters 2 to 4), a survey of the political, intellectual and cultural development of African revanchism. In so doing, it illuminates the context in which the ideas and hence much of the content of the ACHPR were conceived and nurtured and the constricting and faction-riven OAU path that the ACHPR process would then be obliged to follow, and therefore the window through which it should be viewed.

As the Second World War was coming to an end in Africa, self-determination increasingly emerged as the central question of African political life. Chapter 2 therefore describes how African demands for a substantive change in the basis of colonial relations, invariably grounded in the encouragement seemingly held out by Point 3 of the Atlantic Charter, were rebuffed – in the first instance, by the paltry response of the colonial powers to African aspirations for political advance leading to self-government and independence. But also, and significantly for the ACHPR process, by the failure of the post-war international settlement, not least the UDHR, to take African aspirations and interests

into account. Above all by its continuing accommodation of colonialism. Even worse, whereas in other parts of the world colonial territories were moving fast towards independence, Africa was being left behind. It was hard therefore for Africans to conclude that such treatment was anything other than the result of Western racial prejudice thereby fuelling not only more emboldened demands for political independence but also a broad-based African intellectual and cultural revanchist resentment. Africa would not forget and that memory would inform the process and content of the ACHPR.

Fifteen years later, with many of the African colonial territories now independent, or on the path to independence, that pent-up dam of existential resentment broke and began to spill out. On the one side, as described in Chapter 3, the march of African political and economic revanchism sought to confront and then overturn the post-war international settlement. The sine qua non and fulcrum of that revanchism, after several years of false starts, was to be the OAU. At the UN and in its committees and agencies, the African states came together as a bloc and, together with the Soviet bloc and that of the other lesser-developed countries, demanded their right to a level of representation proportionate to their numbers. The levers of representation were then deployed to rewrite the post-war international settlement, primarily in respect of the colonial arrangements and in furtherance of their demand for economic development support.

On the other side, the creation of the OAU also meant that it became the acknowledged forum in which any discussion of African-wide policy would have to take place and find acceptance. As such, the OAU's founding principles, *modus operandi* and divisions would become the obstacles which would threaten the path of the ACHPR process, and thereby also influence the philosophy underlying the content of the ACHPR itself. The most important of those founding principles were: Non-interference in member states' internal affairs (from whatever source); that Africa's problems must be resolved by Africa alone through the medium of the OAU, and not the UN; and the primacy of the OAU AHSG in the decision-making process of the OAU, a primacy that would, of necessity, have to be incorporated into the operational mechanism of the ACHPR. The content of the ACHPR would also be decisively determined by the need to propitiate the ideological divisions within the OAU, centred on the Cold War, without which it would be impossible for the necessary consensus for Decision 115 and final adoption of the ACHPR to be reached at the OAU AHSG.

The flip side of the coin of African political revanchism was African intellectual and cultural revanchism, which was equally eager to confront the commanding heights of Western universalism. The breadth and symbiotic nature of that revanchism are illustrated in Chapter 4 by reference to the specific examples of the African religious reformation, African literature and African socialism. This tidal wave of revanchism dominated not only the thinking of educated African opinion but also African political leaders who, as described, gave it political expression in the importance they placed on the promotion of African art and

in the 1976 Cultural Charter for Africa. It even permeated the mindset of the less intellectual second generation of African political/military leaders who would have to support the ACHPR in the OAU AHSG if it was ever to have a chance of being adopted. That was essential as, in due course, the arguments put forward in the various strands of those confrontations would also dominate the arguments later identifiable in the possibility and content of the ACHPR.

In this context, it may be helpful to explain the use of the term 'revanchism', a term more usually associated with the political movement in France after the 1870–71 war with Prussia that sought the recovery of the 'lost' territories of Alsace-Lorraine. Herein, it is intended to convey the depth and intensity of black Africa's obsession with 'recovery': Initially, the political recovery of lost territories, as expressed in political independence. Thereafter, in Africa's struggle against what was termed neo-colonialism – the recovery of economic independence and the recovery and assertion of an identity, heritage and culture hitherto denied by Western universalism. This sense of recovery would be described by, for example, Achebe as 'the reclamation of the power of self-definition to recast Africa's … image' and of 'the need for blacks who had been victims of historical dispossession to appreciate and elevate their cultures'.[17] A similar image of recovery was also employed by OAU Secretary-General Kodjo (Togo) in his opening address to the 1979 Dakar Meeting of Experts, which had been assigned the task of preparing the first draft of the ACHPR. Borrowing from Césaire, the Martinique poet and originator, together with President Senghor (Senegal), of the concept of *négritude*, he advised the experts that the task before them was 'to liberate the people … to crown the process of self-assertion, "of the revival of heritage fallen and of the awareness of lost kingdoms"'.[18]

How that revanchist resentment was echoed directly in the African approach to human rights and the UDHR specifically in, respectively, the domestic and international spheres, and the extent to which that approach can then be said to inform or anticipate the ACHPR process, is described in Part Two: The OAU and Human Rights (Chapters 5 and 6).

As many African human rights commentators like to emphasise, most African independence constitutions included a Bill of Rights and/or a commitment to the UDHR/Rights of Man. Chapter 5 therefore looks closely at the drafting process of the African independence constitutions. How exactly did such inclusions come about? What clearly emerges is a pattern of form over substance in which commitments to a Bill of Rights or adherence to the UDHR/Rights of Man are largely a function of historic colonial relations, that is, whether the colonial power was Britain or France or, later, Portugal. Human rights

17 C. Achebe, *There Was a Country: A Personal History of Biafra* (London, 2012), 163–164.

18 OAU (L) OAU Secretary-General Kodjo's opening address to the 1979 Dakar Meeting of Experts, CAB/LEG/67/4, 2.

considerations are almost always absent from the discussions of the drafting process, and rarely deployed as justification for independence. The main political consideration in Africa was power and this left no room for human rights. Concerns for human rights seemingly expressed in African constitutions simply amounted to a veneer of respectability or the price for obtaining independence. Indeed, as the evolution of, and political compliance with, those commitments unfolds, it is evident that they were invariably honoured in the breach or simply excised. In several cases, African political leaders drastically amended their constitutions on the basis that human rights had been foisted upon them by the colonial power, in effect the British; in the case of the former French colonial territories, they simply excised their initial adherence to the UDHR. Far, therefore, from signifying empathy with human rights in the Western universalist sense, the African approach essentially portended the continuing reluctance of African political leaders to contemplate any human rights mechanism that might limit the scope of their dominance – a dominance they felt no qualms in reinforcing after independence. That approach would, of course, filter its way into the content of the ACHPR which would not have been acceptable to African political leaders if control over any adverse findings proposed by the ACOMHPR had not been assigned to the OAU AHSG.

As to the UDHR, as described in Chapter 6, the African states always remembered that they had not participated in its drafting and that it had therefore not only accommodated colonialism but had also failed to include many of the 'rights' which they felt were equally necessary or appropriate to the African way of life. Although, therefore, some pre-OAU inter-African conferences included an adherence to the UDHR, that was soon watered down so that, at best, adherence was now merely to the principles of the UDHR. This was most noticeable in the wording of Decision 115 which clearly felt that it was politically feasible to mention the UDHR only by reference to the watered-down commitment in the OAU Charter.

Similarly, on the international stage, particularly at the UN, the primary international relations aims of the African states were to denounce the application of the UDHR to Africa, other than in relation to the remaining colonial territories of Portugal and South Africa, and to demand Western support for economic development. Moreover, if at all, the African states' choice of human rights weapon was the Charter of the United Nations (UN Charter) which, unlike the UDHR, had at least expressed a commitment to develop self-government in the non-self-governing territories.

As the political and intellectual background presented in these first two Parts hardly suggests an environment conducive to the adoption of an African human rights system, who or what then was likely to initiate the first steps towards an African human rights system that, in any event, would most likely fail to secure a sufficient degree of support in the OAU AHSG, the only forum with the authority to speak for Africa? Nor was it obvious, in the unlikely event that a consensus

could after all be reached within the OAU AHSG, what form such an African human rights system might take or with what powers of enforcement, if any, it would be endowed. The main aim of Volume 2 will therefore be to answer those questions and the corollary, how therefore the ACHPR that emerged should be understood.

Part Three: The Influence of the Outsiders (Chapter 1) will therefore first take a look at the frequently alleged outside influence over the ACHPR process by, respectively, Western governments, the UN and NGOs. Thereafter, Part Four: The Political Process (Chapters 2 and 3) will describe the political process which brought the ACHPR into being and the content of the ACHPR itself, supported by a Postscript to Chapter 2 illustrating the subsequent failure of implementation and compliance following adoption of the ACHPR in 1981 and its ratification in 1986. It is at that point that the narrative of the origins comes to a close as the subsequent history of the ACHPR has to be understood in terms of quite a different set of issues and political questions. Finally, the Conclusion weaves together the findings and suggests that the ACHPR should be understood not only on its own terms as an African political document but also as a reproach to the concept of universal human rights.

Although the research and writing of this book has been a labour of love for over fifteen years, it has nonetheless to be acknowledged that several research gaps remain over and beyond those which are merely the result of personal failings. First, as all African researchers know, post-colonial research in Africa is invariably limited by the paucity of original sources. It is not simply that African archives are poorly funded but that most official material never makes its way to the national archives. For example, despite several research visits to the AU and the Senegalese Embassy in Ethiopia, the National Archives and Ministry of Foreign Affairs in Senegal and interviews with former OAU Secretary-General Kodjo in Togo, former President of Senegal Diouf in Paris and Tanor Dieng, a foreign affairs adviser to President Senghor, it has still not been possible to identify even the possible location of two critical sets of documents: Firstly, the 1979 correspondence between President Senghor, OAU Secretary-General Kodjo and the Senegalese Embassy in Addis Ababa. Secondly, the memorandum from Tanor Dieng and First President of the Supreme Court of Senegal M'baye to President Senghor describing the position taken by each OAU member state at the less-than-successful June 1980 Banjul Ministerial Meeting, which met to review the draft ACHPR drawn up by the Meeting of Experts. Without any doubt, these documents would have proved invaluable in identifying much of the detail to the background of President Senghor's decision to sponsor Decision 115 at the 1979 Monrovia AHSG, and opened up a more definitive understanding of the political process and of the development of the ACHPR text.

Some of these gaps have been filled by research in the UK National Archives, which has valuable information and insights from British diplomats on the spot, but which, at the same time, has therefore also to be treated with some

circumspection. However, this work has benefited above all from the interviews with many of the participants in the process, although, in several cases, time had taken a toll on their memory of events. This would seem an appropriate point at which to express my appreciation for their generosity in agreeing to share their recollections and thoughts directly or in correspondence – the names, dates and places of the interviews and correspondence are reported in the Bibliography. It is also worth pointing out that several interviewees reported, as would be expected, that they too had filed reports on the drafting meetings they attended but, as with the Tanor Dieng and M'baye memorandum, these too have proved equally elusive.

Secondly, due to my limited language skills, difficulties of access and financial constraints, there are gaps in North African, local African and French sources of information. There are also gaps in the various sections where space did not permit coverage of the entire African polity and a selection of individual African states had therefore to be made. It is to be hoped that other researchers may be encouraged to take up the mantle of research to fill in the gaps.

It is also fitting to acknowledge at the outset that, inevitably, several areas of African history, particularly in the early pre- and post-independence periods, have necessarily relied on the work of more specialised African historians, though the application of that research to commentary on African human rights is my own.

Finally, it should be stressed that the ACHPR process presented is necessarily a political account in which the main players, with the primary exception of OAU Secretary-General Kodjo, M'baye and ICJ Secretary-General MacDermot, are the African heads of state and government. This is because educated African opinion played only a small walk-on part, the broader mass of African people, still predominantly engaged in agriculture at that time, almost none. This was brought home early on in the research process in the interview with former OAU Secretary-General Kodjo. He explained that, while M'baye was an important figure in the process, indeed he acknowledged the valuable role he had played, nonetheless, what was absolutely critical if the ACHPR was ever to be taken up was the support of leading African political leaders; in particular, support offered up in the bear pit of the OAU AHSG debates.[19] It was an assessment with which Wako, an expert from Kenya and Kenya's Attorney General from 1991 to 2011, who was most vocal in the pre-1979 African human rights debate and the drafting process of the ACHPR, would concur. As he candidly admitted, African jurists were able to do little more than shout from the outside at African political leaders. As will become most evident, the ACHPR was therefore, to all intents and purposes, a charter of the heads of state, by the heads of state and for the heads of state.[20]

19 Interview with Edem Kodjo, 10 December 2007, Lomé.

20 Interview with Amos Wako, 23 July 2012, Geneva.

Chapter 1

The Emergence of African Discontent

When the Second World War broke out in Europe in 1939 there were barely two independent countries in Africa – Egypt and Liberia. In both cases, though, it was an independence that was significantly circumscribed. In the case of Egypt, although the 1936 Anglo-Egyptian Treaty had nominally brought to an end the British occupation, it nevertheless also provided for a residual presence for a further period of twenty years of up to 10,000 British troops and 400 British airmen together with their 'necessary ancillary staff'. Their residual presence was demanded on the basis that the strategic international waterway of the Suez Canal had to be protected.[1] As for Liberia, it was independent de jure but otherwise heavily dependent on US economic support, in particular on the rubber plantations of the Firestone Company. Politically, too, it was also almost the exclusive preserve of the descendants of its mid-nineteenth century African-American founders, further diluting the practical significance of independence for the majority of its population.

A third country, Ethiopia, was also independent de jure. However, in 1935 it was occupied by Italy and, even after 1941, notwithstanding Emperor Haile Selassie's return, it was largely administered by its British 'liberators'. Ethiopia would only regain its formal, though still limited, independence late in 1944.[2] It could perhaps be argued that South Africa was also an independent country but, as the majority black population was under minority white rule, this independence, too, could hardly be regarded as anything more than a fiction.

1 HMSO Cmd. 5270, *Egypt No. 1 (1936), Treaty of Alliance between His Majesty, in respect of the United Kingdom, and His Majesty the King of Egypt [with an Agreed Minute thereto, three Notes, Notes exchanged in Egypt on August 12, 1936, and an Oral Declaration made by the President of the Egyptian Council of Ministers on August 10, 1936] and a Convention concerning the Immunities and Privileges to be enjoyed by the British Forces in Egypt; London, August 26, 1936* (London, 1936).

2 HMSO Cmd. 6584, *Ethiopia No. 1 Agreement between His Majesty in respect of the United Kingdom and His Imperial Majesty the Emperor of Ethiopia, Addis Ababa, 19th December, 1944* (London, 1945).

The two main colonial powers were Britain, whose colonial territories ranged across the whole continent, and France, whose colonial territories were predominantly in North and West Africa but also included Madagascar and French Somaliland (Djibouti) in East Africa. Other colonial powers included Portugal, which controlled several colonial territories, notably Angola, Guinea-Bissau and Mozambique, Belgium, which controlled the colonial territories of the Congo and Rwanda/Burundi, and Spain, which controlled the colonial territories of the Spanish Western Sahara and Equatorial Guinea. As both Portugal and Spain were neutral throughout the Second World War, as regards the ACHPR, their historical significance only comes into play after the other African colonial territories had gained their independence in the late 1950s and early 1960s.

On the Axis side, whereas Germany's colonial territories had been confiscated after its defeat in the First World War, Italy controlled the colonial territories of what is now Libya and Eritrea and also Italian Somaliland. In pursuit of Mussolini's ambition to create an Italian East African colony of Greater Somalia, Italy invaded Ethiopia in 1935 and then British Somaliland and the Northern Frontier District of Kenya in 1940. That ambition was soon crushed as by 1941 the British had not only recovered control over their occupied colonial territories but had also 'liberated' Ethiopia. The Italians were also ejected from Eritrea, which the UN would award to Ethiopia in 1950, and Italian Somaliland, which was returned to Italian control in 1950 when Italy was appointed trustee of the UN Trust Territory of Somaliland. In 1960, the British and Italian Somaliland territories were united to create the independent state of Somalia.[3] However, once the fire of Somali ambitions for a Greater Somalia had been lit, it could not so easily be extinguished and would be pursued by an independent Somalia at the 1963 founding conference of the OAU and again during the drafting process of the ACHPR – and also, notably, in the 1977–78 war with Ethiopia. As for the Italian colonial territories in North Africa, in 1949, the UN decided that the several provinces should come together to form an independent Libyan state. Libya would thereupon become an independent state in late 1951.[4]

The notion, all too tempting, that the origins of African anti-colonialism are located in the Second World War is, in itself, a somewhat over-simple narrative that is, at one and the same time, both impertinent and misleading. Impertinent on the one side because, as can be imagined, in many colonial territories, colonial rule upheld by the gun was never accepted, it was merely tolerated perforce. Moreover, as Rotberg has observed, the pre-war 'gentle murmurs of early protest' and 'the hesitant early manoeuvrings' would seem 'as much a part of the total process as the more obvious final phase'. Misleading on the other side because it largely fails to account for the endurance of post-war acquiescence to

3 UNGA 390/5 (Eritrea) and 442/5 (Somaliland) 2 December 1950 and UN A/1285 (Eritrea) and A/1294 (Somaliland) (1950).

4 UNGA 289/4 21 November 1949.

colonial rule in other colonial territories, not least as expressed by the French colonial territories in the 1958 French Community referendum.[5]

Yet, if the more complex question of origins can be set aside, there can otherwise be no doubt that both the paths and trajectories of African anti-colonialism were profoundly transformed and, to a significant degree, largely shaped by the political, economic and social tensions fomented and exacerbated by the Second World War. As General de Gaulle pointed out to the 1944 Brazzaville Conference, which was deliberating on French post-war policy in respect of its African colonial territories: 'As always, war itself brings about evolution … every people, every population, every individual raise their heads, look beyond the moment and contemplate their destiny.' ['*Comme toujours, la guerre elle-même précipite l'evolution … chaque peuple, chaque population, chaque individu, lève la tête, regarde au delà du jour et s'interroge sur son destin.*'][6]

At the very heart of this transformation was a gathering political disconnect that was increasingly emerging as the primary focus of a rising class of educated African opinion that was about to take political centre stage. A political disconnect arising out of the oft-repeated professions of Allied wartime propaganda that the Second World War was being fought for the freedom, or, in the case of Vichy France wartime propaganda, for the benefit, of all. It was a refrain that was encapsulated above all in the commitment seemingly pledged by Point 3 of

5 R.I. Rotberg, 'African Nationalism: Concept or Confusion?' *Journal of Modern African Studies,* 4/1 (1966), 39–40; see also T. Hodgkin, *Nationalism in Colonial Africa* (London, 1956), 20–25, M. Perham, 'The Psychology of African Nationalism', *Optima,* X/1 (1960), 27–36, R.I. Rotberg, 'The Rise of African Nationalism: The Case of East and Central Africa', *World Politics,* 15/1 (1962), 75–90, J. Lonsdale, 'The Emergence of African Nations: A Historiographical Analysis', *African Affairs,* 67/266 (1968), 11–28, F. Cooper, 'Possibility and Constraint: African Independence in Historical Perspective', *Journal of African History,* 49/2 (2008), 167–196 and A.W.M. Smith/C. Jeppesen, 'Introduction: Development, Contingency and Entanglement: Decolonization in the Conditional', A.W.M. Smith/C. Jeppesen (eds), *Britain, France and the Decolonization of Africa: Future Imperfect?* (London, 2017), 1–14.

6 General de Gaulle, Opening Speech to the Brazzaville Conference 30 January 1944, quoted by UDMA document, F. Abbas, *Du Manifeste la Republique Algérienne* (Algiers, 1948), 72 (reference from S. el Din el Zein el Tayeb, 'The Europeanized Algerians and the Emancipation of Algeria', *Middle Eastern Studies,* 22/2 (1986), 219); author translation, as are all following unless otherwise noted. However, the official record, '*Le discours de Brazzaville (30 Janvier 1944)*', https://mjp.univ-perp.fr/textes/degaulle30011944.htm, last accessed 13 March 2023, does not include '*chaque peuple, chaque population*' although a contemporary report in the local Brazzaville French press and the UK Consul General's English translation do include '*chaque population*' (see BBC Monitoring Service 30 January 1944, NA FO 371/42216) as does *Ministère des Colonies, Conférence africaine française, Brazzaville, 30 janvier 1944 – 8 février 1944* (Paris, 1945), 29.

the Atlantic Charter, 'the right of all peoples to choose the form of government under which they will live'.

Set against these professions of democratic virtue was the reality of colonial rule on the ground, starkly exposed by the conduct of colonial governments throughout the war and soon to be abetted by the clear post-war reluctance of the colonial powers to concede not much more than a modest step in African political advance; a refusal that would shortly be endorsed by both the UN Charter and the UDHR. Moreover, and significantly, it was a political disconnect that educated African opinion would increasingly come to conclude could only be understood in terms of a deep-seated Western mindset of racial superiority and, its corollary, racial discrimination.

Wartime propaganda in the British colonial territories

In Britain, the Ministry of Information (MoI) was only officially established at the outbreak of the Second World War although secret preparations for a 'shadow' MoI, one of several 'shadow' Ministries set up in anticipation of the war, had already been in hand since 1935.[7] This need for secrecy reflected in part the considerable distaste with which the concept of a 'propaganda' ministry was still held in most British political circles in the 1930s. Indeed, such was the extent of the political distaste that Prime Minister Chamberlain thought it expedient to be evasive in his answer to parliamentary questions from the few MPs pressing for a more proactive government response to anti-British German propaganda.[8]

It was only in June 1939 that Prime Minister Chamberlain finally disclosed limited details of the secret preparations. He advised that the government 'have recently given attention to the question whether a further development of present methods of publicity during peace time is required'. Although it was 'not their intention to set up a Ministry of Information or Propaganda … at the present time … In the event of this country ever becoming engaged in a major war, it

7 C. Larson, 'The British Ministry of Information', *The Public Opinion Quarterly,* 5/3 (1941), 412–431, P.M. Taylor, '"If War Should Come": Preparing the Fifth Arm for Total War 1935–1939', *Journal of Contemporary History,* 16/1 (1981), 27–51, C.R. Cole, 'The Conflict Within: Sir Stephen Tallents and Planning Propaganda Overseas before the Second World War', *Albion: A Quarterly Journal Concerned with British Studies,* 14/1 (1982), 50–71, T. Willcox, 'Projection or Publicity? Rival Concepts in the Pre-War Planning of the British Ministry of Information', *Journal of Contemporary History,* 18/1 (1983), 97–116 and M. Balfour, *Propaganda in war 1939–1945: Organisations, Policies and Publics in Britain and Germany* (London, 1979).

8 Henderson MP, Question to Prime Minister Chamberlain, House of Commons 29 November 1938 and Evans MP, Question to Prime Minister Chamberlain, House of Commons 29 March 1939 (references from C. Larson, 'The British Ministry of Information', 413–415).

would be the intention of the Government to set up at once a Ministry of Information'. Finally, he disclosed that preparatory work had already commenced and that 'the Home Secretary has … undertaken the responsibility of preparing the necessary plans'.[9]

It is of course possible to conceive of this MoI as the direct descendant of the first MoI which had been set up briefly in 1918. However, its origins can more accurately be located in the preparatory discussions of wartime censorship in the Committee of Imperial Defence (CID), an advisory committee with specific responsibility for research on questions of military strategy. Its procedure required that as and when a topic was proposed a sub-committee would be appointed to prepare the initial analysis and make recommendations to the CID.[10]

The idea of a new MoI first emerged in July 1935 in the Interim Report of the CID sub-committee considering a general policy on broadcasting in time of war. It proposed that the Foreign Secretary should be designated as Minister for Propaganda pending the establishment of a MoI. Its final report further recommended that a separate sub-committee should be set up 'to prepare plans for the establishment on the outbreak of war of a Ministry of Information'. The significance of this sub-committee was reflected in the heavyweight composition of its membership, which included the permanent heads of department of the Treasury, Foreign Office, Dominions and Home Office. Its eventual July 1936 report, designated by the CID as the basic planning document for the 'shadow' MoI, laid down that the MoI's terms of reference would be to 'present the national case to the public at home and abroad' in wartime.[11] Thereafter, detailed planning was assigned to a standing sub-committee of officials tasked with selecting its

9 Fletcher MP and Lipson MP, Question to Prime Minister Chamberlain, House of Commons 15 June 1939 (references from C. Larson, 'The British Ministry of Information', 413–415).

10 F.A. Johnson, *Defence by Committee: The British Committee of Imperial Defence, 1885–1959* (London, 1960).

11 CID Sub-Committee on General Policy of Broadcasting in Time of War, Report 9 December 1935 B.W. 17, Appendix B CID Paper No. 213A approved by CID at its 271st Meeting, NA CAB 16/120, CID Minutes of 271st Meeting 14 October 1935 and 281st Meeting 30 July 1936, NA CAB 2/6, CID Sub-Committee to prepare plans for the establishment of a Ministry of Information: Composition and Terms of Reference, Hankey to Prime Minister 15 October 1935 and Hankey to Fisher 16 October 1935, NA CAB 104/84, CID Sub-Committee to prepare plans for the establishment of a Ministry of Information, M.I.C.1 Composition and Terms of Reference 18 October 1935, M.I.C.2 Memoranda on the creation of a Ministry of Information in war, C.P. Robertson, Press Section, Air Ministry 12 September 1935, M.I.C.5 Revised Draft Report 3 July 1936 and M.I.C.7 Report 27 July 1936, NA CAB 16/127 and Note of a meeting which took place between Sir Thomas Inskip, Secretary, and all Assistant Secretaries on Monday 27th July, 1936, NA CAB 21/473.

key personnel, identifying premises and negotiating prospective working relationships with other Ministries.[12]

From the outset, planning was beset by a series of conflicts which would eventually compromise much of the MoI's operational effectiveness in the first years of the war and establish its reputation as a dysfunctional and unloved organisation. The key issue was the ingrained distaste in which the concept of 'propaganda' was held by both politicians and officials alike, which even the exigencies of war could not overcome. As a result, many highly qualified prospective officials were disinclined to associate themselves with the MoI. Even within the MoI there was a high turnover of officials as major disagreements over the scope of its mandate and the approach that should be taken resulted in a rolling succession of senior-level resignations.

Moreover, although the political decision to set up the MoI had been taken some years earlier, it did little to deter continual outside sniping. For example, it was still argued that the very existence of a propaganda ministry would jeopardise the deemed reliability of all government news releases. When, therefore, in July 1941, Bracken was appointed as the fourth and effectively last Minister of Information, Beaverbrook, the wartime Minister of Supply (and Minister of Information himself in 1918), wrote to him: 'In the ordinary way it would be looked on as sarcastic or even an unfriendly act to offer a man congratulations upon becoming Minister of Information.'[13]

The most critical of the problems confronting the MoI was the division of responsibilities with the individual 'client' government departments. Understandably, no government department was keen to lose control over policy and news flow and it was for this reason that so many of the permanent heads of department had sought representation on the 1935 CID Sub-committee. In the event, the division of responsibilities took several years of administrative in-fighting to resolve. The War Ministry and Foreign Office were especially hostile and possessed the clout to retain control over their respective content and information flow, but other government departments were also unhappy and straining at the leash. Such was the strain of the struggle between the MoI and the 'client' departments that in June 1941 the turf war was referred to the War Cabinet for arbitration. Cooper, the Minister of Information, posed the question whether the MoI was to be charged with the conduct of political warfare with control over all propaganda and publicity or merely to serve at the direc-

12 The minutes of the sub-committee's Planning sub-committee are in NA CAB 16/128.

13 Beaverbrook to Bracken 21 July 1941 and Bracken to Beaverbrook 29 July 1941, House of Lords Records Office BBK, C/56, quoted by R. Cole, *Britain and the War of Words in Neutral Europe 1939–45: The Art of the Possible* (New York, 1990), 83 Note 2.

tion of the other Ministries as essentially the liaison with the press and the BBC. Unsurprisingly, the decision duly went against the MoI which had few friends. Although, therefore, the MoI would retain its role in the creation and dissemination of news and propaganda in support of government policy, the other Ministries were to have a right of veto over the content, albeit that the veto was not to be unreasonably exercised.[14]

In the case of propaganda targeted at the British colonial territories in Africa, the MoI's 'client' department was the Colonial Office. Unsurprisingly, the Colonial Office was nervous about the nature and quality of the propaganda that might emerge from the MoI which, it felt, had little expertise in the detail of individual colonial territories or of colonial administration in general. Colonial Office officials also shared in the aristocratic disdain in which propaganda generally was held and throughout the war they had difficulty in shaking off that disdain which was therefore invariably, though often justifiably, reflected in their carping assessment of the MoI's publicity material. However, it also meant that, for much of the early part of the war, the Colonial Office had little inclination and few positive ideas to offer the MoI as to a more appropriate propaganda strategy. In January 1940, for example, an internal Colonial Office minute emanating from Colonial Secretary Macdonald suggested Colonial Office officials should be more proactive in putting forward their own ideas to the MoI rather than just reviewing the MoI's output; his suggestion seems to have had little immediate effect.[15]

Because of its concerns, the Colonial Office was most reluctant to cede control to the MoI but, as it did not enjoy the same level of political clout as the Foreign Office, it was less able to swat the MoI away. It was only after considerable thought that the Colonial Office finally came up with an argument that allowed it to recover a measure of control. It argued that as colonial Governors carried constitutional responsibility for the colonial territories, and they reported to the Colonial Secretary in turn, final responsibility for propaganda had necessarily to reside with the Colonial Office. In October 1939, therefore, Colonial Secretary Macdonald was able to negotiate a *modus vivendi* with then Minister of Information Macmillan whereby the MoI would have final authority on all issues of propaganda, but the Colonial Office was entitled to be heard and its advice accepted where local considerations applied. In this way, the MoI, with access to funding, would be responsible for the preparation of propaganda material but the Colonial Office would have a right of review and veto on any material

14 War Cabinet WP (41) 139 Future of the Ministry of Information, Memorandum by the Minister of Information 24 June 1941, WP (41) 142 Information and Propaganda, Note by the Prime Minister 26 June 1941 and WP (41) 147 Information and Propaganda, Bracken 28 June 1941, NA PREM 4/99/3.

15 Carstairs to Sabine 11 January 1940, NA CO 323/1740/62.

considered unsuitable. The Colonial Office would also carry the responsibility for the appointment of local Information Officers on the ground.[16]

Although this was a stunning victory for the Colonial Office, there was still the problem that at working level there was little meeting of minds and therefore continuing, probably unavoidable, tensions between the two sets of officials. The problem was simply that Colonial Office officials had little respect for the MoI team. In a note to his team, Colonial Office Deputy Under-Secretary of State Shuckburgh advised: 'No doubt the Colonial Section of the Ministry of Information is rather tiresome, but after all we have got to live with them.'[17]

Within the MoI, operational responsibility for the colonial territories was assigned to the Empire Division, headed by Hodson, formerly Editor of *The Round Table*, a journal promoting closer cooperation between the UK and the self-governing 'white' Dominions. Reporting to Hodson, as the head of the Empire Division's Colonial Section, was Harlow, previously Rhodes Professor of Imperial History at King's College, London. Both were looked on with undisguised contempt by Colonial Office officials for being too academic. In internal Colonial Office minutes, for example, the Colonial Section was described as a 'little group of professors and amateurs' and Harlow as enthusiastic but a 'misfit' and 'a professor, high-minded, bookish and inexperienced'.[18]

Although, by 1942, both Hodson and Harlow would be reassigned, ten years later, Harlow's reputation, he was then Professor of History at the University of Oxford, did not preclude him from being brought in by the Sudanese colonial government as an independent legal adviser to the Sudan independence constitution negotiations (see page 386 below).

An early sense of the Colonial Office's concerns is most strikingly illustrated in the review carried out by its officials of the proposed *War Publicity Handbook* drafted by the MoI under Harlow's direction in September 1939. It was compiled with the rather pompous view as to 'suggested lines of approach which may be of use to Officers of the Colonial Services when they are called upon to explain and discuss the objectives and implications of the war to various types of people under their charge'. In the specific case of the African colonial territories, the *Handbook* advised that attention should be drawn to: Britain's historic role in abolishing slavery and the slave trade; an appreciation that 'The British Empire is the Guardian of Freedom'; and the somewhat double-edged rallying cry 'We are fighting an enemy of Christianity.' To promote economic production, Africans

16 Macdonald to Macmillan 16 October 1939, NA INF 1/28, Macmillan to Macdonald 27 October 1939 and Dawe 4 November 1939, NA CO 323/1615/11.

17 Shuckburgh to Parkinson 5 July 1940, NA CO 323/1740/62.

18 Note by Mr Seel 2 October 1939 and Dawe 1 June (*sic.* July) 1940, NA CO 323/1740/62, Dawe 22 September 1939, NA CO 323/1660/15 and R. Smyth, 'Britain's African Colonies and British Propaganda during the Second World War', *Journal of Imperial and Commonwealth History,* 14/1 (1985), 66–67.

were to be advised that: 'Slackness … was … a direct assistance to the enemy … On the other hand, efficient and enthusiastic work would be a real contribution … to the gaining of victory.'[19]

As the *Handbook* was drafted at a time when the Colonial Office's right of review had not yet been negotiated, it was only with some difficulty that at the last moment the Colonial Office was able to agree some oversight review of the proposed *Handbook*. This was perhaps just as well as its assessment was scathing and only served to justify its worst fears. Senior officials minuted that 'boosting the virtues of British rule may have the opposite effect to that intended. Alien rule is hard to bear: and it is not always politic for the ruler to ooze with smug self righteousness'; 'Backward people may be ignorant but they are often very shrewd. They can see where our high principles are only a cloak to our material interests'; and: 'Talk about freedom, especially political freedom, is dangerous stuff which could play into the hands of counter-propagandists. The pathetic appeal for … more intensive economic effort is not very tactful. The answer is "very well, give us better wages, working conditions and more share in the capitalistic concerns profiting from our labours"'. It was also observed that words such as 'freedom' and 'war of liberation' might act as an 'inconvenient boomerang' as the recipients might rather conclude that they had little freedom to defend. As a result of such criticism, as a minute to the Colonial Secretary recorded, 'at the eleventh hour we were able to stop it being set up in print and distributed'.[20]

Colonial Office officials were also troubled by what they regarded as the MoI's over-emphasis in its propaganda material on Nazi evil. On a practical level, it was seen as woefully misguided: 'The Englishman takes it for granted that the power of good will triumph over the forces of evil … The native assumes the opposite proposition.' It had to be appreciated that 'we are dealing not with the man in the street, but the man in the bush hut … what is good for the Englishman may have exactly the opposite effect on the African.'[21] These cultural differences would be clearly evident in the content of various rumours reported to be circulating at this time. Most probably reflecting a combination of German counter-propaganda, misunderstood news flow and wishful thinking, in Nigeria there was gossip that Hitler was black, that he was married to a black woman and

19 Secret, Ministry of Information, Memorandum No. 323, *War Publicity Handbook* (1939), NA CO 323/1660/15 (reference from R. Smyth, 'Britain's African Colonies and British Propaganda during the Second World War', 73–74); see also K. Morris, *British Techniques of Public Relations for Mobilizing East and Central Africa during World War II* (Lewiston, 2000), 38–40).

20 Poynton to Antrobus 14 September 1939, Keith 16 September 1939, Dawe 22 and 29 September 1939 and Minute to Secretary of State through Lord Dufferin 23 September 1939, NA CO 323/1660/15.

21 Wilson 19 June 1941 and Edmett 8 July 1941, NA CO 875/9/13.

that the Germans had invaded Lagos.[22] Another, worrying, report, from Kenya, noted that some Africans were suggesting that 'all Europeans are alike and that anyhow German rule cannot be worse than the British'.[23] In Northern Rhodesia, a public opinion assessment report would note that a District Commissioner had been asked by African schoolboys whether 'Hitler treated his white slaves any better than Europeans treat Africans here'.[24] While, in the Gold Coast, a 1940 public opinion assessment report would also record a lively public discussion on the extent to which the Second World War should be considered the apocalypse prophesised in the Book of Revelation and, accordingly, whether it portended the end of the world. One year later, that same official would go on to protest in exasperation against MoI efforts to portray Hitler as a beast of prey on the basis that African reaction to such a portrayal was invariably more one of fear than of disgust.[25]

From a longer-term perspective, Colonial Office officials were also particularly concerned that:

> in Africa there is a possibility that the emotions generated against one set of human beings may be diverted against another. Once an appetite for hatred is created, it is not so easily allayed. When the excuse for hating the Germans has been removed, the sentiment may be transferred to what is uppermost in the minds of all Africans as they attain political and social consciousness, naturally the colour question. In propaganda it is easy to see the beginning of a train of action, but not always easy to see the end.[26]

In order, therefore, to facilitate liaison between the two Ministries, already in 1939 Seel was seconded by the Colonial Office to the MoI to serve as the MoI's liaison officer (or mole) with the Colonial Office and in July 1940 Sabine was appointed as the Colonial Office's first public relations officer. Nonetheless, in June 1940, as a result of continuing tensions, Hodson and Shuckburgh felt it appropriate to meet again in order to reaffirm the ministerial understanding that

22 'Rumours in Nigeria 1939–42', District Officer Pedraza personal papers, quoted by C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration in Nigeria, 1939–51' (unpublished PhD thesis, University of Cambridge, 1986), 36–38, 49–50.

23 Davies to Chief Secretary, Nairobi, Propaganda for Africans 15 October 1941, NA CO 875/9/13.

24 Barotse Province Public Opinion Report, February/March 1942, quoted by R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', *African Affairs,* 83/332 (1984), 353.

25 Report on public opinion in the Gold Coast, Wilson, Information Officer 18 July 1940, NA CO 323/1746/8 and Wilson 19 June 1941, NA CO 875/9/13.

26 Colonial Office Public Relations Memorandum, undated (probably August 1941) and unsigned, NA CO 875/5/6 (reference from C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration in Nigeria, 1939–51', 39).

had been reached in October 1939.[27] This was clearly just a temporary sticking plaster as in October 1941 simmering Colonial Office objections to the quality of the MoI's mass-produced propaganda material finally boiled over. The solution agreed by Harlow and Sabine was for weekly joint meetings in which the Colonial Office's views as to what material was considered acceptable could be made known to the MoI at an earlier stage in the process thereby lessening the need for a Colonial Office veto at the final review stage.[28] As a result, in April 1942, when inter-departmental tensions threatened once again to boil over, Sabine felt able to advise his superiors that relations with the MoI were in fact good, 'even cordial, due to the weekly meetings.[29]

It was, though, only after the MoI had belatedly established its Overseas Planning Committee in December 1941 that propaganda began to take on a more professional *mien*. This was largely due to the procedure eventually laid down in May 1942 which required that the propaganda review for each colonial region should be determined on the basis of a three-part planning assessment: Appreciation, Plan of Aims and Objectives, and Channel Paper. The input into these papers would initially be provided by the Colonial Office, especially its Information Officers on the ground, and this undoubtedly led to more professional and focused propaganda in a variety of media such as articles, broadcasts, pamphlets and mobile film units.[30]

Notwithstanding this greater professionalism, as an August 1942 survey of propaganda in British West Africa nonetheless pointed out, there was a limit as to what might practically be achieved. It noted that: Information Officers had little experience of this kind of work, were grossly under-staffed and ill-equipped for the responsibilities to which they had been assigned and were, at the same time, confronted by the growing social and political strains on the African population arising out of the war.[31] Picking up on these observations, Swinton, the British Resident Minister in West Africa, followed up with a further report expressing concern that not enough propaganda was being directed at the illiterate population.[32] The problem, noted by many Overseas Planning Committee papers,

27 Hodson to Shuckburgh 24 June 1940 and Shuckburgh to Sabine 26 June 1940, NA CO 323/1740/62.

28 Sabine, Note of meeting with Harlow 8 October 1941, NA CO 875/5/6.

29 Sabine to Sidebotham, Gent and Gater 27 April 1942, NA CO 875/14/12.

30 Overseas Planning Committee, Office Circular No. 117 5 December 1941 and Overseas Planning Committee Paper No. 134 12 May 1942, NA INF 1/69.

31 Evans to Pedler 31 August 1942 enclosing Preliminary Survey of Propaganda in British West Africa, NA CO 875/9/4.

32 West African War Council August 1942, Propaganda in West African Colonies, Memorandum by the Resident Minister, NA CO 875/9/4; see also War Cabinet, Functions of the Minister Resident in West Africa, Directed by the Prime Minister 19 May 1942, NA CO 967/110.

was that the illiterate population largely took its lead from the 2–3 per cent of educated or semi-educated public opinion:

> The Educated Africans exercise an influence … out of all proportion to their numbers, because they are the intellectual leaders of the community … they think in political terms, particularly the relationship with Britain … Africa for Africans conditional support for the war … no illusion of what Hitler victory would mean but still think of it as a 'white man's war'.[33]

There was, though, the comforting thought, observed by Governor Waddington of Northern Rhodesia, that the Africans do not understand the war but believe the British will win 'as they always do'.[34] This view was supported by a West African Conference of Information Officers in February 1942 and the August 1942 survey of propaganda in West Africa which argued that the vast majority of Africans in the rural areas were largely untouched by information and in any event viewed the war as a 'white man's war' and believed, based on their own experience, in a British victory.[35]

All the same, understandably, the main concern of the wider population was economic and across Africa they would therefore act to protect their interests by strikes in response to forced cuts in real wages or a shortage of consumer goods brought about by the more pressing priorities of the war. It was a concern that the Colonial Office understood and had already flagged, but was not easily able to control. As one of the responses to the ill-fated 1939 *War Publicity Handbook* had pointed out, 'the best propaganda we can use is to keep wages up and bellies full'. Between 1943 and 1948, therefore, as the African population fought back there were major strikes across the African colonial territories.[36]

However, looking forward, it was not the wider, largely illiterate and agrarian, population that was likely to be the source of political problems for the Colonial Office. The problems would come from the new emerging class of educated African opinion. While the African chiefs were largely pro-British, as an Appreciation plan in October 1943 noted, their support owed much to their realisation

33 Overseas Planning Committee, Plan of Propaganda to British West Africa (Nigeria, Gold Coast, Sierra Leone & Gambia) First Review of Appreciation Paper No. 410B 1 October 1943 and Second Revise of Aims and Objectives No. 514 1 July 1944, NA INF 1/559; see also review of propaganda activities by Sir John Shuckburgh, Colonial Office, *Colonial Civil History of the War Vol. 4* (1949), 183–202.

34 Governor to Secretary of State for the Colonies, Public Opinion in Northern Rhodesia 28 July 1942, NA CO 875/7/12.

35 Report of Conference of Information Officers held at Accra in February, 1942 and Evans to Pedler 31 August 1942 enclosing Preliminary Survey of Propaganda in British West Africa, NA CO 875/9/4.

36 Moore 19 September 1939, NA CO 323/1660/15 and T.S. Oberst, 'Cost of Living and Strikes in British Africa c.1939–1948: Imperial Policy and the Impact of the Second World War' (unpublished PhD dissertation, Columbia University, 1991), 348.

that the system of indirect rule served as much to sustain their power and to block the political prospects of the more radical up-and-coming generation of educated African opinion as it did to sustain colonial rule.[37] It was, to that extent, a mutually beneficial relationship that colonial governments and African chiefs were invariably equally keen to maintain. In contrast, as Kakembo, a returning Ugandan soldier, would shortly point out in a book that was widely praised within the Colonial Office, and as would come to pass: 'The young African, and especially the widely travelled soldier, will no longer tolerate the old out-of-date chiefs. They must give room to the young generation.'[38] The critical question that the Colonial Office would therefore face, and its response would necessarily vary between one colonial territory and another, was at what point would there be a direct challenge to the traditional right of the chiefs to represent African opinion. The significance being that this challenge would be at the same time a challenge to the authority of the colonial government.

The Colonial Office was all too mindful of this looming problem. Indeed, again, as the Colonial Office's response to the *War Publicity Handbook* had demonstrated, it was also only too well aware that there was a fundamental flaw at the heart of the propaganda approach and that this flaw would not go unnoticed by an emerging educated African opinion. Although the immediate aim of wartime propaganda was, by necessity, 'to maintain (or, where it does not exist, to create) a frame of mind in which Colonial people want us to win the war, think we can win, will help us to win and will accept any necessary sacrifices to do so', this could be no more than a short-term objective that reflected the critical situation of the early years of the war.[39] Worryingly, it quite obviously carried in its baggage the far more damaging longer-term encumbrance that its principal call to arms – the Second World War as a war fought for the freedom for all – served rather more to draw discomfiting attention to the moral shortcomings of colonialism. A Colonial Office policy paper, for example, portended with some considerable prescience the coming reality that: 'War propaganda may be necessary to win the war, just as an operation may be necessary to save a man's life (but) will never provide a basis on which to reconstruct the world of the future. It may win the war, but it will not win the peace.'[40] The same official,

37 Overseas Planning Committee, Plan of Propaganda to British West Africa (Nigeria, Gold Coast, Sierra Leone & Gambia) First Review of Appreciation Paper No. 410B 1 October 1943, NA INF 1/559.

38 R. Kakembo, *An African Soldier Speaks* (London, 1946), 44 ; a draft of Kakembo's pamphlet and comments by Colonial Office officials, for example Pedler 4 May 1945 and Sabben-Clare 5 June 1945, are in NA CO 822/118/4.

39 Colonial Office Public Relations Memorandum, undated (probably August 1941) and unsigned, NA CO 875/5/6.

40 Colonial Propaganda – II Aims and Policy, Edmett 6 August 1941, NA CO 875/11/1 (reference from R. Smyth, 'Britain's African Colonies and British Propaganda during the Second World War', 73). K. Morris, *British Techniques of Public Relations*

in his review at this time of a draft MoI propaganda pamphlet, would also observe that: 'The words "free people throughout the globe" will not strike the same chord in the Colonies as it would in this country.'[41] A further warning came in a Colonial Office memorandum on imperial propaganda which argued that, although the MoI's primary objective was to 'sell the war', this necessarily had to be understood as a dangerous short-term policy which potentially shackled any future policy.[42]

Yet, notwithstanding the insight of Colonial Office officials as to the direction in which wartime propaganda would inexorably lead, it is difficult to imagine on what other basis African support for the war might have been sought if political advance to self-government was not an option that could be contemplated. For example, Sabine would warn in his analysis of the post-war policy approach which the Colonial Office should adopt that:

> We are bound to get a handsome crop of very difficult political and social problems after the war in many colonies … demands for increased political responsibilities which may be considered premature … I think it will further be agreed that it will not be possible at any time in the immediate post-war future to grant any considerable degree of self-government to most of the colonies.[43]

The main focus of Colonial Office attention would therefore necessarily have to shift increasingly onto the political management of educated African opinion.

Educated African opinion, although much less compliant in its relations with the colonial government, was generally aware of the objective need to support the war effort in view of Hitler's racial ideology, and therefore of their potential

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for Mobilizing East and Central Africa during World War II, 48 gives a biographical note on Edmett, one of the more interesting and outspoken Colonial Office officials. There is also a hint in a private letter from Wilson to Sabine 19 June 1942, NA CO 875/6/8 that Edmett, may have had to retire from the Colonial Office due to his 'peculiar mental condition', which may account for his biting commentary.

41 Edmett to Usill 25 July 1941, NA CO 875/5/6. S. Nicholas, '"Brushing Up Your Empire": Dominion and Colonial Propaganda on the BBC's Home Services, 1939–45', *Journal of Imperial and Commonwealth History,* 31/2 (2003), 212–213, 220 quotes a 22 July 1940 talk by Lord Halifax, the Foreign Secretary, describing the war as 'this crusade for Christianity … four-square against the forces of Evil' and suggesting that: 'The peoples of the Commonwealth will never accept this new world of Hitler's: Free men, not slaves. Free nations, not German vassals' ('The Spirit in Which We March', *The Listener,* 25 July 1940, 115).

42 Memorandum, Imperial Propaganda undated (probably August 1941) and unsigned (possibly Sabine), NA CO 875/5/6.

43 Note on the perpetuation, on a peace-time basis, of some of the publicity services at present supplied to the Colonies in collaboration with the Ministry of Information, Sabine 17 February 1942, NA CO 875/20/8.

fate in the event of a German victory. This point would be specifically recognised by both Busia, subsequently Prime Minister of Ghana, and Kakembo by references in their wartime publications to Hitler's description of Africans as 'semi-apes'.[44] But they were also mindful of the need for caution, not to overstep the bounds of restrictions on wartime political activity and government criticism, and, on the other side, of their need to build a broader domestic base of political support before a greater measure of political advance would ever be conceded by the colonial government.

Nonetheless, as the Colonial Office grasped, this emerging group of future African political leaders were also equally aware of the contradictions inherent in Allied wartime propaganda and therefore increasingly outspoken in their demands for political advance. Already, early on in the war, in Nigeria, for example, they began to ask awkward questions about British intentions after the war as, in effect, the price or reward for Nigerian support for the war. In his response, Governor Bourdillon (Nigeria) opted to base his otherwise reluctant put down on the mutuality of interests noting that it was 'unusual for a man to expect a reward for failure to cut his own throat'; and that British policy and intentions towards Nigeria were independent of the war.[45] A somewhat similar argument, with the added ubiquitous and double-edged reference to 'freedom', was made by Governor Waddington (Northern Rhodesia) in an effort to counteract African apathy towards what they perceived as a foreign and remote war: 'It is your war as well as our war, for the precious things for which Europeans are fighting, namely freedom in all its aspects, are just as precious to Africans.'[46] Even as late as April 1943, Swinton, in his speech to a Provincial Council of Chiefs in Nigeria, also made it clear that it should be understood that 'this is your war as much as ours … between the forces of freedom and slavery'.[47] The African perspective may possibly be found in the response of an East African army brigade which in February 1942 refused to board ship so as to take part in the invasion of

44 K.A. Busia, *West Africa and the Issues of the War* (London, 1942), 11 and R. Kakembo, *An African Soldier Speaks*, 8–9 (both references from R. Smyth, 'Britain's African Colonies and British Propaganda during the Second World War', 78 Note 94); see also P.B. Clarke, *West Africans at War 1914–1918, 1939–1945: Colonial Propaganda and its Cultural Aftermath* (London, 1986), 39–40.

45 Governor's Christmas Message, *Daily Times,* 24 December 1940, quoted by G.O. Olusanya, *The Second World War and Politics in Nigeria 1939–1953* (Lagos, 1973), 55–56 (it has not proved possible to locate the quotation in that edition of the *Daily Times*).

46 *Mutende* 7 October 1943, 2, quoted by R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 354 (though the reference seems inappropriate to the text which dates Governor Waddington's exhortation to Christmas, 1940).

47 Swinton, Speech to Eastern Province Provincial Council of Chiefs 27 April 1943, NA CO 875/9/5.

Madagascar on the basis that 'you Europeans say you help us. But do you? It is us black men who help you. We have not got an Empire to defend. You have.'[48]

Notwithstanding such high-level admonitions, as the war in Africa was coming to an end, and as the corresponding need to restrain political activity was therefore no longer as justifiable or pressing, those awkward questions became increasingly more insistent, particularly in the more politically advanced colonial territories of West Africa. What had hitherto been thought of as no more than post-war concerns were therefore now emerging as a more immediate reality that the Colonial Office would either have to appease or confront. In terms of its propaganda approach, the Colonial Office's response was therefore to recalibrate its policy aims so as to focus not only on the goals of the present, to maintain confidence in victory and loyalty to Britain, but also those of the future, the priorities of the peace.

The revised August 1943 plan of propaganda for West Africa therefore argued: 'On a longer term view, our propaganda must support governmental policies designed to further the well-being of the West Africans and their capacity to take a fuller share in the government of their countries.' A review of an October 1943 Appreciation Paper followed that up by recording what it regarded as the disturbing trend in West Africa of the tendency of the local press 'to clamour for immediate rewards for West Africa's contribution to "Britain's War"', which was perceived as 'merely the defence of a *status quo* with which they are by no means satisfied'. This trend served to prompt a further revision in September 1944 of propaganda aims and objectives so as to incorporate the additional aim 'to develop among West Africans the conviction that the development and welfare of their country depends to a very considerable degree on themselves'.[49]

In East Africa, a similar updating in 1943 of the plan of propaganda reiterated the previous aims of maintaining and strengthening loyalty to Britain, maintaining the contribution to the war effort and overcoming a sense of remoteness from the war, but also added the new longer-term aim of explaining the policies of the colonial government 'to further the well-being of the peoples in East Africa, and their capacity to take a further share in the progress of their countries'.[50]

48 Petition of the 442 Motor Transport Company February 1942, Kenyan National Archives, quoted by T. Parsons, 'The Military Experiences of Ordinary Africans in World War II', J.A. Byfield/C.A. Brown/T. Parsons/A.A. Sikainga (eds), *Africa and World War II* (Cambridge, 2015), 16.

49 Overseas Planning Committee, Plan of Propaganda to British West Africa (Nigeria, Gold Coast, Sierra Leone & Gambia) First Review of Policy Plan Paper No. 411A 18 August 1943, NA INF 1/558 and No. 411D 1 October 1943, NA CO 875/9/7, First Review of Appreciation Paper No. 410B 1 October 1943, Addendum to Appreciation Paper No. 513A 6 September 1944 and Second Review of Aims and Objectives Paper No. 514A 6 September 1944, NA INF 1/559.

50 Overseas Planning Committee, Plan of Propaganda to British East Africa (Kenya,

By this time, though, it was becoming increasingly apparent that in several West African colonial territories educated African opinion could no longer be placated by words alone. More tangible measures of political advance were already being loudly demanded and, understandably, refusal was being interpreted in largely racial terms. Concessions would have to be made.

Wartime propaganda in the French colonial territories

As a result of a rather different approach to colonial governance, a quite different set of political factors and, in due course, the misfortunes of war, propaganda directed at the French colonial territories in terms of its objectives, and therefore content, had little in common with that directed at the British colonial territories. At first, such propaganda was the sole province of the French government. However, after the fall of France in June 1940, it was also opened up to propaganda from the British and Free French and, following its entry into the war in December 1941, also the United States. Each of these players would operate under quite separate propaganda priorities and goals.

Initially, the creation of a Ministry of Information in France followed along much the same path albeit at a less urgent pace than that in Britain. Again, the notion of propaganda and of a Ministry of Information was viewed by respectable French political opinion with distaste and as contrary to French republican political traditions. Nevertheless, as in Britain, as a reaction against the tide of German propaganda, attempts were made, both from within the government and in the *Chambres des Députés*, to persuade the French government to establish an 'information' agency that would support a more effective presentation of foreign policy. As a result, in October 1936 an inter-ministerial commission of representatives from twelve ministries was set up to coordinate the efforts of all ministerial departments responsible for functions aimed at influencing France's foreign relations and the dissemination of the French outlook.

It was a modest beginning but further steps were taken in March 1938 with the appointment of a Minister of State for Propaganda and in July 1938 when, with war tensions mounting in Europe, France finally adopted a law providing for preparations for war to be accelerated. Those war preparations begat the *Service général d'Information*, a more substantial inter-ministerial agency with the mandate to take charge of information and propaganda during a time of war.[51]

Tanganyika, Uganda, Zanzibar, Northern Rhodesia & Nyasaland) Paper No. 392A 2 July 1943, NA CO 875/9/21.

51 *Journal officiel de la République française*: *Débats parlementaires: Chambre des deputes* 15 December, 1933, 4663–4664, 28 March 1935, 1433, 7 June 1936, 1345 and 8 August 1936, 2567, and *Journal officiel de la République française: Lois et décrets*, *'Décret instituant à la présidence du conseil une commission interministérielle pour l'action et l'information françaises à l'étranger'* 17 October 1936, 10874 and *'Loi sur l'organisation*

Despite these further measures, it was evident that even these preparations were likely to prove inadequate in the event of a war which, by then, was becoming increasingly likely. In July 1939, therefore, barely a month before the war started, yet another agency, the Commissariat général à l'Information (CGI), was created to take responsibility for the organisation and coordination of all information services; but even then its organisational structure was only formalised in November 1939. The final step, a fully fledged Ministère de l'Information, would only be taken in April 1940 just as the phoney war with Germany ended and as Prime Minister Daladier was forced to give way to Prime Minister Reynaud and France was about to collapse.[52]

Amaury's scathing commentary makes clear that, throughout its short existence, the CGI was spectacularly inefficient, largely due to the failure of pre-war preparations and its incompetent staff. It had been headed by Giraudoux, a senior civil servant at the Foreign Ministry but far better known as a novelist and playwright, who was completely unsuitable. As a result, when finally the Ministère de l'Information was established, it was placed under the charge of a politician not a civil servant: Frossard, for barely two months, and then Prouvost, a press baron, for a few days only as he would resign following the armistice in June 1940.

In such circumstances, it is understandable that neither the CGI nor the Ministère de l'Information made any impact on the French colonial territories. All the more so as, at this time, unlike the British, the French took it for granted that the unity of the French colonial empire would not be imperilled during the war by African political or economic demands against the colonial state. This meant that colonial propaganda had hitherto been rather more focused inwardly, publicising the role played by colonial peoples in defence of France, than outwardly, with an emphasis on the need for Africans to support the war, as in the British colonial territories.[53]

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générale de la nation pour le temps de guerre' 13 July 1938, 8330–8337: '*Les efforts de tous les services ministériels chargés de fonctions tendant à exercer une action sur les relations entre la France et l'étranger et sur la diffusion de la pensée française*'.

52 *Journal officiel de la République française: Lois et décrets*, '*Décrets portant institution d'un commissariat général de l'information et relatif à la organisation de la radiodiffusion*' 30 July 1939, 9626–9627, '*Organisation du commissariat général à l'information*' 16 September 1939, 11488, '*Décret portant rattachement de services au commissariat général de l'information et complétant le décret du 29 juillet 1939*' and '*Personnel du commissariat général à l'information*' 30 November 1939, 13517–13518, '*Décret portant création du ministére de l'information*' 4 April 1940, 2430–2431 and'*Décret crèant un conseil supérieur de l'information*' 11 April 1940, 2666–2667.

53 P. Amaury, *Les deux premières expériences d'un 'Ministère de l'information' en France* (Paris, 1969), 1–79, Commissariat à l'Information et Services de l'Information, *Répertoire numérique détaillé* (F/41/1-F/41/800), Par M.-Th. Chabord https://www.siv.archives-nationales.culture.gouv.fr/siv/rechercheconsultation/consultation/

As it turned out, this hardly mattered. Less than a year after the CGI had been set up, with France in disarray, Prime Minister Reynaud's government fell and was replaced by that of Marshal Pétain which signed an armistice with Germany on 22 June 1940 and Italy on 24 June 1940.[54]

In the days leading up to the signing of the armistice treaties, the British had urged the French government to continue the war in line with its commitments in the March 1940 Anglo-French Declaration which stipulated that neither government would negotiate a separate peace.[55] The particular British concern being that the main fighting ships of the French navy should not fall into German hands. One possibility which had therefore been considered by Prime Minister Reynaud was for the French government to withdraw to North Africa. An example had already been set by the Belgian government which, after Belgium's military surrender in May 1940, had opted to join the French government by then based in Bordeaux and had also indicated its readiness to accompany the French government were it similarly to go into exile in its colonial territories in North Africa. A variation, rejected when President Roosevelt (United States) dismissed any possibility of US intervention, was for two parallel French governments. The first, under Marshal Pétain, would remain in France to negotiate with Germany, and the second, under Prime Minister Reynaud, would continue the war from French North Africa.[56]

However, it quickly became apparent that the terms of the armistice had been rather cleverly designed to appeal to France; Hitler taking the view that he would be better served by a French government in France than a French government in exile. It permitted the new Vichy France government to retain nominal control over the south-eastern zone of France, roughly two-fifths of

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ir/pdfIR.action?irId=FRAN_IR_000965, last accessed 13 March 2023 and https://francearchives.fr/findingaid/c9e63ac59b69e5e74ad4b66296931bad266be6c2, French National Archives, last accessed 21 June 2018 and R. Pithon, 'French Film Propaganda, July 1934–June 1940', K.R.M. Short (ed.), *Film and Radio Propaganda in World War II* (London, 1983), 78–93.

54 'The Franco-German Armistice Terms', *Bulletin of International News,* 17/13 (1940), 779–780, 'The Franco-Italian Armistice', *Bulletin of International News,* 17/14 (1940), 852–854 and WP (40) 224 'War Cabinet German and Italian Armistice Terms to France' 27 June 1940, NA CAB 66/9.

55 Anglo-French Declaration issued as *Press Communiqué* 29 March 1940 enclosed in Henderson to Colville 9 April 1945, NA PREM 3/173/2.

56 W.M. (40) 167th Conclusions, Minute 6, Confidential Annex, French Navy, 15 June 1940, NA CAB 65/13/44, Campbell to Halifax 'Account of negotiations in France' 27 June 1940, NA FO 371/24311, and *Foreign Relations of the United States* (hereinafter '*FRUS*') *1940 Vol. I General*, Documents 214: The Ambassador in the United Kingdom (Kennedy) to the Secretary of State, London, 14 June 1940, and 216: The Secretary of State to the Ambassador in the United Kingdom (Kennedy), Washington, 14 June 1940.

France's former territory, and, importantly, its overseas colonies. Specifically, Article 8 provided that all French ships should report to ports under German or Italian control although Germany undertook not to utilise the French fleet for war purposes and to allow the Vichy France government to retain such ships as were necessary to safeguard its colonial territories. The intended implication being that Germany had no designs on the French colonial territories, a critical consideration for the Vichy France government. As Brown notes, although the Vichy France government sought, unsuccessfully, to amend Article 8 so as to allow decommissioned French ships to be based in African ports, in the circumstances in which France found itself at this time, the terms were far more favourable than could have been anticipated.[57]

One of the few French leaders to refuse to recognise France's defeat as final, and, importantly, able and willing to travel to London, was General de Gaulle, a relatively junior General in the French army and recently appointed Under-Secretary of State for National Defence in Prime Minister Reynaud's government. In two BBC radio broadcasts on 18 and 22 June 1940, he appealed to the French to continue to resist and to support what would become the Free French movement based in London. He acknowledged the scale of France's defeat but suggested that there were many good reasons why France should continue to fight, not least the existence of France's vast overseas empire and its still-intact navy – the same argument with which the French government had concurred until only a few days prior to the armistice.[58]

The (British) War Cabinet had been reluctant to authorise his 18 June broadcast but, by 22 June 1940, with the German armistice having been signed, the greater part of any possible objections were no longer valid and approval was therefore given for a second broadcast. Even so, the Foreign Office hoped that a more prominent figure might yet be found to head a French government in exile.[59]

57 D. Brown, *The Road to Oran: Anglo-French Naval Relations, September 1939 – July 1940* (London, 2004), 79–81 and W.L. Langer, *Our Vichy Gamble* (New York, 1947), 54–56.

58 Broadcast 18 June 1940, quoted by F. Kersaudy, *Churchill and de Gaulle* (London, 1981), 77–79, J. Lacouture (trans. F.K. Price), *De Gaulle* (London, 1970), 73–74 and Broadcast 22 June 1940 BBC archives, http://www.bbc.co.uk/news/10339678, last accessed 2 June 2018.

59 W.M. (40) 171st Conclusions Meeting of War Cabinet 18 June 1940, NA CAB 65/7/66, W.M. (40) 176th Conclusions Meeting of War Cabinet 22 June 1940, NA CAB 65/7/71, Campbell to Halifax 'Account of negotiations in France' 27 June 1940, NA FO 371/24311 and Minute Strang 19 June 1940, Spears to Cadogan 19 June 1940 and Cadogan Minute 20 June 1940, NA FO 371/24349, L. Woodward, *History of the Second World War: British Foreign Policy in the Second World War* (London, 1962), 63–74 and M. Thomas, *The French Empire at War, 1940–45* (Manchester, 1998), 43–45; see also C. de Gaulle (trans. J. Griffin), *War Memoirs Vol. 1: Call to Honour, 1940–1942* (London, 1955), 59–109.

In order to obtain a clearer idea of whether a more prominent figure would be prepared to take the lead either in French North Africa or London, Minister of Information Cooper and General Lord Gort were despatched to North Africa. Their unauthorised visit was not well received and they were accordingly denied access to many members of the former government of Prime Minister Reynaud who were then being held under effective house arrest. For example, former Ministre des Colonies Mandel was keen to meet them to explore the possibility of going to England but was deliberately secreted away from possible contact with these unwelcome visitors. Others, such as General Noguès, made clear that no-one in North Africa was capable of forming an alternative government, and simply refused a meeting. When therefore Minister of Information Cooper reported that the prospect of a prominent figure coming forward was unlikely, the War Cabinet recognised General de Gaulle 'as the Leader of all free Frenchmen, wherever they may be'.[60]

Whereas the authority of the Vichy France government was largely accepted from the outset in French North Africa, in French West and Equatorial Africa the outcome remained in the balance for a little while longer.[61] In Dakar, the capital of French West Africa, for example, there were demonstrations in favour of continued resistance, and prominent letters and commentary opposing the armistice were published on successive days in the local *Paris-Dakar* newspaper. The business community was especially peturbed at the prospect of being cast adrift from important trade links with the British colonial territories and therefore encouraged the British Consul General to conclude that there was strong support for a continuation of the war, an assessment supported by other Foreign Office posts in the region. In the Ivory Coast, for example, a committee that included representatives of several colonial institutions and the African elite was formed to lobby for a continuation of the war; in Togo, a telegram was sent to the President of France and the Minister of the Colonies similarly

60 W.M. (40) 180th Conclusions Meeting of War Cabinet 24 June 1940, NA CAB 65/7/75, W.M. (40) 183rd Conclusions Meeting of War Cabinet 26 June 1940, NA CAB 65/7/78, W.M. (40) 186th Conclusions Meeting of War Cabinet 28 June 1940, NA CAB 65/7/81, WP (40) 225 Visit to French Morocco, Report by the Minister of Information 27 June 1940, NA CAB 66/9/5, WP (40) 226 Situation in Algeria and French Morocco, Memorandum by the Minister of Information 28 June 1940, NA CAB 66/9/6, W.A. Hoisington, Jr, *The Casablanca Connection: French Colonial Policy, 1936–1943* (Chapel Hill, 1984), 177–179, R.T. Thomas, *Britain and Vichy: The Dilemma of Anglo-French Relations, 1940–42* (London, 1979), 49–50 and M. Thomas, *The French Empire at War, 1940–45*, 62.

61 The Federation of French West Africa comprised the now-independent states of Benin, Burkina Faso, Guinea, Ivory Coast, Mali, Mauritania, Niger and Senegal. The Federation of French Equatorial Africa of the Central African Republic (CAR), Chad, Republic of the Congo and Gabon. Each of the two federations was under the supervision of a Governor-General.

voicing support for continuation of the war; and in Cameroun, the Chamber of Commerce, dependent on trade with Nigeria, also communicated its wish to continue the war and, the British Vice-Consul advised, welcomed British intervention. Although much of this support would evaporate when confronted by hard realities on the ground, at least for the moment, they provided further justification for the War Cabinet's decision to approve General de Gaulle's 22 June 1940 broadcast and for the further broadcast the following day by the MoI advertising word of these favourable reports and stressing that the armistice terms were of a 'most murderous character' and that they had been extracted 'under duress'.[62]

The balance of support began to shift, however, when the Vichy France government reassigned Governor-General of French West Africa (AOF) Cayla. He was regarded as rather too sympathetic to a continuation of the war and was therefore temporarily returned to his former posting of Governor-General of Madagascar. As it was, though, even before his reassignment, his sympathies had all but evaporated in the wake of the British attacks in early July 1940 on the French navy stationed in Mers-el-Kebir and the battleship Richelieu then at port in Dakar – attacks aimed at ensuring that the French battleships would not fall into German hands.[63]

Cayla was replaced by Boisson, hitherto Governor-General of French Equatorial Africa, who was also appointed High Commissioner of both French West and Equatorial Africa. For a few days, Boisson, still in French Equatorial Africa,

62 British Vice Consul, Douala to Foreign Office 18 June 1940 and Consul-General, Dakar to Colonial Office 18 June 1940 (reference from M. Thomas, *The French Empire at War, 1940–45*, 49–62), 23 and 29 June 1940, NA WO 208/52, W.I. Hitchcock, 'Pierre Boisson, French West Africa and the Postwar *Epuration*', *French Historical Studies,* 24/2 (2001), 316–317, J.C. Giblin, 'The Vichy Years in French Africa: A Period of African Resistance to Capitalism' (unpublished MA thesis, McGill University, 1978), 33–35 and P. Ramognino, '*L'Afrique de l'Ouest sous le proconsulat de Pierre Boisson (juin 1940–juin 1943)*', E. Jennings/J. Cantier (eds), *L'Empire Colonial sous Vichy* (Paris, 2004), 69–73.

63 W.I. Hitchcock, 'Pierre Boisson, French West Africa and the Postwar *Epuration*', 317 and M. Thomas, *The French Empire at War, 1940–45*, 52. For information on the naval attacks, see Naval Staff History, *Operations against the French fleet at Mers-el-Kebir (Oran) 3rd–6th July 1940* (London, 1962), D. Brown, *The Road to Oran: Anglo-French Naval Relations, September 1939 – July 1940,* S.W. Roskill, *The War at Sea, 1939–1945 Vol 1: The Defensive* (London, 1975), J.A. Watson, Imperial War Museum, 'Dakar Operation: The story of the Anglo Free French Expedition which attempted to rally French West Africa to the Free French cause in September 1940 as planned by Mr Winston Churchill and General de Gaulle' (1962), Report on expedition to install in Dakar in French West Africa General de Gaulle and his Free French forces 7 October 1940 and General Irwin to Under Secretary of State for War, NA CAB 106/771.

deliberated on the decision he should take. On the day the German armistice was signed, he advised the Governors in French Equatorial Africa that 'from all across the AEF, I am receiving word of the determination of the colony and its ardent desire to continue the struggle alongside our allies'. A few days later he would receive calls from the French Governors of Chad and Cameroun requesting him to create an African colonial bloc so as to continue the struggle. Even upon his arrival in Dakar at the end of July 1940, he would report, as had the British Consul General, that colonial officials were being subjected to 'extremely strong pressure' from public opinion to continue the war. However, as the British Consul General had also advised, if Boisson was to continue the fight, he would need money and military aid. To that end, therefore, General de Gaulle sent him a personal message proposing that Boisson might head up an African Overseas Defence Council and offering financial and military assistance. He concluded: 'Faced with the loss of independence of the Government of Bordeaux, it is our duty to defend French honour and the French Empire.' To no avail, Boisson would opt to support the Vichy France government.[64]

In contrast, in French Equatorial Africa, Governor Éboué of Chad, born in French Guiana, who was black, a Freemason and member of the French Socialist Party, saw the writing on the Vichy France wall early on and felt that there was little option other than to declare for the Free French. By this decision, he was able to convince the other French Equatorial Africa colonial territories, other than Gabon, to follow his example. One crucial difference was that French Equatorial Africa was less accessible than French West Africa to a possible 'rescue' attempt from French North Africa. Nevertheless, it was only after military assistance, including Free French troops, had been despatched from Nigeria that the wavering colonial territories of Cameroun and the French Congo could be brought on board. It is clear, however, that financial assistance from Nigeria was also a critical factor in their decision to opt for the Free French.[65]

When, in October 1940, Gabon was also at last decisively captured, all French Equatorial Africa was finally brought under the control of the Free French and Brazzaville in French Congo became their headquarters in Africa. It was therefore in Brazzaville that General de Gaulle would issue his October 1940 manifesto establishing the 'Conseil de défense de l'Empire' and asserting

64 Consul-General, Dakar to Colonial Office 18, 23 and 29 June 1940, NA WO 208/52, Circular to all AEF capitals, Boisson, 22 June 1940 and de Gaulle to Boisson 27 June 1940, Boisson Papers, quoted by W.I. Hitchcock, 'Pierre Boisson, French West Africa and the Postwar *Epuration*', 310–318 and M. Crowder, *West Africa under Colonial Rule* (London, 1968), 486; see also War Cabinet WP (40) 258 French Equatorial and West Africa, Memorandum by the Secretary of State for the Colonies 11 July 1940, NA CAB 66/9/38.

65 War Cabinet WP (40) 258 French Equatorial and West Africa, Memorandum by the Secretary of State for the Colonies 11 July 1940, NA CAB 66/9/38.

that the Free French movement was the legitimate successor to Prime Minister Reynaud's government.[66]

Of course, such decisions had not been made in consultation with the governed. They were invariably taken by the most senior colonial and military officials on the basis of personal career considerations, loyalty to higher authority and, often, fear for the safety of their families living in France. The reality was described by Governor Clifford (Mauritius) and Mayer, a British agent (see page 38 below), as it related to the specific situation of Madagascar, but it is a reality that would also seem to be applicable to most French colonial territories:

> propaganda alone will never alter the political situation in Madagascar. No internal initiative can be expected because of the lack of leaders, apathy of the population, and the self-supporting character of the Colony. The Colony appears to be under the effective control of less than a hundred administrative and service officers, who are unlikely to be influenced by our propaganda.[67]

All the more remarkable, then, that Governor Éboué and his deputy, Laurentie, whose families were either in France or German captivity, nonetheless opted to oppose the new Vichy France government.[68]

As a consequence of the June 1940 armistice, the French colonial territories in Africa became fair game for Allied, mainly British, wartime propaganda. In that they were deemed to have fallen under enemy occupation, they fell under the purview of the Foreign Office, which had been assigned responsibility for enemy and enemy-occupied countries. However, as the Foreign Office was

66 *Manifeste de Brazzaville, 27 octobre 1940*, http://www.charles-de-gaulle.org/wp-content/uploads/2017/03/Manifeste-de-Brazzaville.pdf, last accessed 4 June 2018; see also War Cabinet WP (44) 288 Relations with General de Gaulle, Note by the Secretary of the War Cabinet Bridges 1 June 1944, NA CAB 66/50/38.

67 Governor of Mauritius Clifford to Secretary of State for the Colonies Most Secret No. 489 17 September 1941, NA HS 3/7 (reference from E.D.R. Harrison, 'British Subversion in French East Africa, 1941–42: SOE's Todd Mission', *The English Historical Review,* 114/456 (1999), 341); see also War Cabinet WP (40) 258 French Equatorial and West Africa, Memorandum by the Secretary of State for the Colonies 11 July 1940, NA CAB 66/9/38.

68 E.T. Jennings, *Free French Africa in World War II; The African Resistance* (Cambridge, 2015), 25–27, C. de Gaulle (trans. J. Griffin), *War Memoirs Vol. 1: Call to Honour, 1940–1942*, 110–146, M. Thomas, *The French Empire at War, 1940–45*, 43–60 and 'The Anglo-French Divorce over West Africa and the Limitations of Strategic Planning, June–December 1940', *Diplomacy and Statecraft,* 6/1 (1995), 252–278, C. Akpo-Vaché, *L'AOF et la Seconde Guerre mondiale (septembre 1939–octobre 1945)* (Paris, 1996), 27–34 and B. Weinstein, 'Governor-General Felix Éboué (1884–1944)', L.H. Gann/P. Duignan (eds), *African Proconsuls: European Governors in Africa* (New York, 1978), 157–184 and *Éboué* (New York, 1972), 245–260.

only interested in policy formulation, implementation would be contracted out to other departments. As those other departments began to contend for that honour a revolving multiplicity of agencies were established with an inevitable outcome in terms of effectiveness.

The first of these, the Department of Propaganda in Enemy Countries (Department EH), was set up secretly in 1938 on the basis that, at the outbreak of the war, responsibility would be passed to the MoI. In September 1939, it was therefore passed to the MoI, but in October 1939 reassigned back to the Foreign Office, and then in June 1940 reassigned back again to the MoI. Two further, quasi-military, units, Section D and MI(R), to carry out sabotage operations, were also set up in 1938.[69] Finally, and not least, there was also the War Cabinet Committee on Foreign (Allied) Resistance, the Morton Committee, which retained a particular interest in France and its colonial territories. The Morton Committee's importance lay in Morton's close personal relationship with Prime Minister Churchill whom he served as an adviser based in 10 Downing Street. Although he had no official position, he was nonetheless assigned special responsibility as a liaison with the intelligence community and Allied governments in exile, in particular the Free French.[70]

This was hardly an ideal joined-up approach and, therefore, in June 1940, when Churchill became Prime Minister, the administration of propaganda was reorganised. Department EH was wound up and its responsibilities assigned to a new unit within the Ministry of Economic Warfare (MEW), the Special Operations Executive (SOE). It was, in turn, divided into SO1 propaganda, previously the responsibility of Department EH, and SO2, which took over the work previously carried out by Section D; in October 1940 MI(R) was also brought into the SO2 fold. However, it was not clear where subversion and sabotage, SOE's mandate, stopped and propaganda, MoI's mandate, began and the MoI therefore proposed that both activities should be subsumed within one agency under its control. In May 1941, Lord President Anderson was therefore brought in to arbitrate. His solution was a Joint Ministerial Committee on which the MoI, MEW and Foreign Office would all be represented but with the Foreign Office assigned responsibility for policy formulation.[71]

Unsurprisingly, this soon proved to be little more than an uneasy arrangement. In September 1941 therefore, SOE's senior officials recommended that a new unit, the Political Warfare Executive (PWE), should be set up with the former SO1 operating as an independent unit but reporting to a Standing Ministerial Committee of all three Ministries. Its mandate was 'to co-ordinate and

69 W.J.M. Mackenzie, *The Secret History of SOE: Special Operations Executive, 1940–1945* (London, 2000), 3–11.

70 G. Bennett, *Churchill's Man of Mystery: Desmond Morton and the World of Intelligence* (London, 2007), 228–231.

71 Propaganda to Enemy Countries 19 May 1941, NA PREM 3/365/7.

direct, in accordance with the policy of H.M.G. (His Majesty's Governnment), as laid down by the Foreign Secretary, all propaganda to Enemy and Enemy-Occupied Territories'–defined as 'enemy and enemy-occupied countries and Vichy territory in Metropolitan France, in North and West Africa and in Madagascar'. SO2 was to be left under the control of the MEW.[72] Predictably, tensions were still barely resolved and it was therefore only in March 1942, after Minister of Economic Warfare Dalton was moved on, that the Standing Ministerial Committee was abolished and with it MEW's role in the PWE, though MEW retained the SO2 subversion brief. Thereafter, policy formulation and implementation continued under the respective direction of the Foreign Office and the MoI.[73]

The most telling assessment of the impact of these internecine tensions was made by Lockhart, famously, Consul General in St Petersburg in 1917, who had sponsored the recommendations and headed up the PWE. Writing to the Foreign Secretary, he advised that he felt that it was his duty to report that: 'It is the plain truth which will be denied by no honest person inside our various propaganda organisations that most of the energy which should have been directed against the enemy has been dissipated in inter-departmental strife and jealousies.'[74]

An insight into how these rivalries, that in part reflected conflicting strategic priorities but also in many cases personal antipathies, hampered sabotage and propaganda operations can be gleaned from the experience of the two main SOE/PWE missions to Africa: The Todd Mission to East Africa/Madagascar and the Franck Mission to West Africa.

The more effective of the two was the Todd Mission whose origin lay in the Morton Committee's proposal that SOE should consider a mission to Madagascar utilising the assistance of Mayer, a British businessman resident on the island.[75] Although it had been set up with the Colonial Office's approval, from

72 Political Warfare Executive, Plan submitted by the Executive Committee 1 September 1941 and Meeting of Standing Ministerial Committee and Executive Committee, Establishment and Function of Political Warfare Executive 17 September 1941, NA FO 898/10 and Political Warfare Executive, Note by the Secretary 20 September 1941, NA INF 1/895.

73 Lockhart to Foreign Secretary, Aide-Memoire on future of PWE 4 March 1942 and Political Warfare Executive: Reorganisation PWE (E) (42) 15 20 March 1942, NA FO 898/10. The creation of the various agencies and ensuing internecine struggle are described in C. Cruickshank, *The Fourth Arm: Psychological Warfare 1938–1945* (Oxford, 1981), 17–27, T. Brooks, *British Propaganda to France, 1940–1944: Machinery, Method and Message* (Edinburgh, 2007), 10–19 and D. Garnett, *The Secret History of PWE: The Political Warfare Executive, 1939–1945* (London, 2002), 4–40, 75–80.

74 Lockhart to Foreign Secretary 22 August 1941, NA FO 898/10.

75 Extract from Widlake's terms of reference, dated 18 February, 1941, Madagascar Mission, NA HS 3/9, East African Mission Terms of Reference 4 August 1941, NA HS 3/7 and W.J.M. Mackenzie, *The Secret History of SOE: Special Operations Executive, 1940–1945*, 326–328.

the outset, the mission encountered influential resistance from the Governor of Kenya and the British military commander in East Africa who, it seems, had taken exception to a request from an SOE officer for contraceptives for personal use to be included in a supply drop. Despite such opposition, Mayer was nonetheless soon able to demonstrate his value by delivering tangible intelligence successes such as the capture of Vichy France naval convoys. Yet, even so, it was only because of fears in late 1941 of a Japanese invasion, and the resulting decision to invade Madagascar, that the mission was finally able to overcome such high-powered opposition.[76] The outcome, at least, was a happy one as Mayer would go on to make what was widely acknowledged as a highly valuable contribution to the success of the May 1942 military invasion of Madagascar to the extent that he would be awarded an OBE and his wife a MBE.[77]

The terms of reference of the Franck Mission, which was initially based in Bathurst, The Gambia, were open and subversive propaganda, cultivation of dissident elements and sabotage, to which was later added responsibility for counteracting German counter-intelligence and infiltration.[78] On Franck's arrival in West Africa in December 1940 initial apprehension was expressed locally as to the role of his mission, but after meeting with senior officials some of these concerns seem to have been allayed. After the meeting, Governor Bourdillon would write to the Colonial Secretary welcoming Franck's arrival although General Giffard, General Officer Commanding-in-Chief (GOC-in-C), West Africa, with his long-standing African military experience, was less positive. In May 1941, he informed SOE that when he and Governor Bourdillon had first heard of the mission they had been 'violently opposed to the idea' as the clear military objective was to keep West Africa quiet not provoke a war and he had earlier opposed a similar operation proposed by the War Office. He also argued that, frankly, SOE did not understand what will 'get under the skin of the African'.[79]

Thereafter, the mission was forced to operate in the face of local suspicions and departmental rivalries. In mid-1941, for example, it was reorganised into

76 Governor Clifford to Secretary of State for the Colonies Most Secret No. 489 17 September 1941 and Memorandum by Colonial Office 23 September 1941, NA HS 3/7, and E.D.R. Harrison, 'British Subversion in French East Africa, 1941–42: SOE's Todd Mission', 339–369.

77 CD (codename for Nelson, head of SOE) to Hardinge 23 May 1943, NA HS 3/9.

78 The Franck Mission to West Africa Dictated by Louis Franck about end November 1940, NA HS 3/73. The most comprehensive account of the Franck Mission is by N.E. Lawler, *Soldiers Airmen Spies and Whisperers: The Gold Coast in World War II* (Athens, 2022), 84–159.

79 Bourdillon, Chairman West African Governors' Conference to Secretary of State for the Colonies 21 December 1940 and W (Franck) to A.D. and Caesar 27 December 1940, NA HA 3/72 and Cypher Telegram, Governors, West Africa 28 November 1940 and Record of Discussion between G.O.C., West Africa and Mr Hambro, Special Operations Executive 23 May 1941, NA WO 193/1003.

two geographical units. Franck was moved to the Gold Coast with the brief of countering German propaganda activities in the Spanish and Portuguese West African colonies and Liberia, and Wingate handed responsibility for political activities and sabotage in the Vichy France colonial territories – most likely reflecting the Foreign Office and the military's objective of peaceful coexistence with Boisson as against SOE's disposition for confrontation.[80] When SO2 and PWE separated in mid-1942, there was another fight, this time over the mission's propaganda role. It was finally resolved that PWE would be responsible for radio broadcasting but that propaganda and intelligence would be retained by the geographic units; so too sabotage, albeit that it was subject to the supervision of the Governors' Conference and the GOC-in-C, West Africa.[81] As a result, when the new PWE mission team arrived in West Africa in January 1943, with Swinton now insistent that a propaganda campaign was no longer needed, it was left with nothing to do.

The mission seems to have had some success in terms of intelligence gathering and, dubiously, in facilitating the defection of the Bron tribe to the Gold Coast from Senegal (see page 49 below). Its sabotage operations, however, were constrained by a Foreign Office diktat that there should be no big 'bangs' without its prior approval. As to its propaganda side, the evidence is less clear as to what impact, if any, it might have had. Its activities included a weekly print run in Lagos of 10,000 pamphlets to be distributed in French West Africa and radio broadcasts out of The Gambia and Gold Coast which simply served to aggravate Boisson intensely and may therefore have been counter-productive. There was also an amusing operation to smuggle into French West Africa 240,000 matchboxes decorated on each side with propaganda slogans.[82]

The Free French were also active. They were allocated regular slots on BBC radio broadcasts and unofficial radio stations operating in Accra and The Gambia and permitted to have pamphlets and bulletins printed on their own account; for example, *Le Bulletin officiel des Forces françaises libres* began publication already in August 1940. They would also meet weekly with officials from the MoI to provide input into propaganda planning and content, but in

80 Franck, Most Secret Memorandum: Synopsis 12 July 1941, Proposed reorganisation of the Franck Mission in the British West African Colonies, Memorandum 12 July 1941 and Notes on a Meeting held on 11 August 1941, NA HS 3/73.

81 'Possible "Blue Print" in the Event of a PWE Charter allowing them to send a Mission to West Africa' 14 August 1942, and RHM to Morgan's Political Warfare Executive – Mission to West Africa 15 December 1942, FO 898/125.

82 Major Sheridan to Warner 8 April 1941 and McMillan, Secret to Paniguian 24 April 1941, NA FO 898/124, D. Garnett, *The Secret History of PWE: The Political Warfare Executive, 1939–1945*, 146–154 and W.J.M. Mackenzie, *The Secret History of SOE: Special Operations Executive, 1940–1945*, 226, 325–326.

practice they enjoyed limited sway over British propaganda into both France and the French colonial territories.[83]

The main exception was the *La Voix de la France Libre* radio service which, following the capture of Brazzaville in October 1940, enabled the Free French to operate largely on their own terms with greater freedom from British scrutiny of its content.[84] As with propaganda into the British colonial territories, Radio Brazzaville stressed the danger to Africans of a German victory through its Vichy France government proxy:

> the French who remain in France are like women, like slaves, dependent on the Germans … they are considering the transfer of the Blacks to the Germans … The Germans have no regard for Blacks. They see in them nothing but slaves … Hitler, the leader of the Germans, wrote in one of his books: 'The Black man is worth only half a chimpanzee.' If we accept this man's rule, he will use us like monkeys …. Encourage all your peers to cooperate to weaken the defeated Frenchmen.[85]

However, less constrained than the British, they were particularly free to pursue their main objective, the legitimisation of General de Gaulle and the Free French as the rightful government of France. This gave rise to a number of rumours within African circles that, for example, General de Gaulle could turn himself into a beautiful woman and make himself and towns invisible to protect them against German attacks and also that he had risen from the grave to serve as the deliverer of France and the Empire from German conquest.[86]

A further layer of Allied wartime propaganda was delivered by the United States. President Roosevelt had already taken the first step in July 1941 when he set up the Office of Coordinator of Information (OCI). Following US entry into the war, its mandate was broadened but split into two units: the Office of War Information (OWI) for propaganda and the Office of Strategic Services (OSS)

83 T. Brooks, *British Propaganda to France, 1940–1944: Machinery, Method and Message*, 31–32, N.E. Lawler, *Soldiers Airmen Spies and Whisperers: The Gold Coast in World War II*, 172–176, M.T. Chabord, 'Les services français de l'information de 1936 à 1947', *Revue d'histoire de la Deuxième Guerre mondiale,* 16/64 (1966), 81–87 and J-L. Crémieux-Brilhac, 'Les émissions françaises à la B. B. C. pendant la guerre', *Revue d'histoire de la Deuxième Guerre mondiale,* 1/1 (1950), 73–95.

84 See Memo to Pleven 18 March 1941 (unsigned), NA FO 898/124.

85 *Propagande dissidente ou britannique* 20 December 1940 (Archives nationales du Sénégal 11D1/869), quoted by R. Ginio, 'Marshal Petain (*sic.*) Spoke to School Children: Vichy Propaganda in French West Africa, 1940–1943', *International Journal of African Historical Studies,* 33/ 2 (2000), 296.

86 P.M. Martin, *Leisure and Society in Colonial Brazzaville* (Cambridge, 1995), 48–49, E.T. Jennings, *Free French Africa in World War II; The African Resistance*, 52–60 and C. Akpo-Vaché, *L'AOF et la Seconde Guerre mondiale (septembre 1939 – octobre 1945)*, 95–106.

for black operations.[87] One of the OCI's most successful initiatives was the Voice of America radio broadcast service which first went out on air in February 1942. Its first Arabic service was aired in mid-1942 and it would soon become an influential source of information for the local population in French North Africa in terms of raising their awareness of the Atlantic Charter and its post-war possibilities for self-determination.[88]

In French West Africa, Boisson had demobilised troops at his disposal which he could in theory deploy at any time in the recovery of French Equatorial Africa from the Free French. Indeed, in November 1940, at Vichy France Prime Minister Laval's instigation, plans had been drawn up for a Spring offensive in 1941 and it was only because of Boisson's opposition – he was all too aware of the risks that such an adventure would entail – that these plans were shelved.[89] From the other shore, West Africa was not perceived as a priority theatre of war and therefore Prime Minister Churchill had early on downgraded his interest from daily to weekly reports and based few troops there with which to counter any threat from French West Africa. Even after the failed September 1940 invasion of Dakar, when Colonial Secretary Lloyd expressed his concern at the absence of a military strategy and preparedness with regard to a possible conflict in West Africa, Prime Minister Churchill shut him down on the basis that there was still 'no reason to assume we shall be at war with Vichy France'. Prime Minister Churchill would be proved right. While, at times, each side would sense the possibility of a military threat, after September 1940 neither side would take any active military steps against the other.[90]

87 PWD/SHAEF, *The Psychological Warfare Division, Supreme Headquarters Allied Expeditionary Force: An Account of its Operations in the Western European Campaign, 1944–1945*, 13–14 (official history of the Psychological Warfare Division of Supreme Headquarters Allied Expeditionary Force) https://books.google.co.uk/books?id=fiy8-kkK-moC, last accessed 13 March 2023, A.H. Paddock, Jr., *US Army Special Warfare, Its Origins, Psychological and Unconventional Warfare, 1941–1952* (Washington, 1982), 5–8 https://apps.dtic.mil/sti/pdfs/ADA118758.pdf, last accessed 13 March 2023 and A.M. Winkler, *The Politics of Propaganda: The Office of War Information, 1942–1945* (New Haven, 1978), 31.

88 S. Arsenian, 'Wartime Propaganda in the Middle East', *Middle East Journal* 2/4 (1948), 423–424; see also R.W. Pirsein, *The Voice of America: An History of the International Broadcasting Activities of the United States Government, 1940–1962* (New York, 1979), 74–76 and H.C. Shulman, *The Voice of America: Propaganda and Democracy, 1941–1945* (Madison, 1990), 13–33.

89 W.I. Hitchcock, 'Pierre Boisson, French West Africa and the Postwar *Epuration*', 318 and M. Thomas, *The French Empire at War, 1940–45*, 60–62.

90 W.M. (40) 201st Conclusions Meeting of War Cabinet 12 July 1940, NA CAB 65/8/13, War Cabinet Joint Planning Sub-Committee, J.P. (40) 71st Meeting 8 July 1940 and 76th Meeting 29 July 1940, NA CAB 84/2 and Lloyd to Churchill 28 September 1940 and Churchill to Lloyd (undated), NA PREM 3/99/1 (reference from

Nonetheless, many of Vichy France's political leaders and colonial officials were convinced of British designs over France's colonial territories. Allied wartime propaganda that the war was being fought for the freedom of all was especially seen as a deliberate Anglo-American plot to undermine post-war France, a concern that even General de Gaulle would come to share. Boisson would therefore blame the British for failing to control Free French broadcasts out of Brazzaville and West Africa. To counter these broadcasts, they were jammed and, in December 1940, Boisson also issued a decree making it an offence to listen to any British or other radio broadcast of an 'anti-national' character.[91] A British commercial agent also reported that regular African traffic on the Togo border with the Gold Coast was being stopped and searched to prevent propaganda material reaching French West Africa.[92]

It was therefore evident that an informal accommodation between the adjoining French and British colonial territories would be mutually beneficial. From the British side, the accommodation was that propaganda would be restrained in terms of its criticism of the Vichy France government and Marshal Pétain, although there was equally a recognition that, in any event, such criticism would be largely counter-productive. However, such would be Boisson's rage at even limited British/Free French propaganda that, following the General Clark/Admiral Darlan agreement in November 1942 (after the Operation Torch landings), he still refused to cooperate with British forces in West Africa until General Eisenhower assured him that 'the British Government will not permit action or propaganda from British West Africa territories to be directed against you or your authority'.[93]

A further powerful argument in support of restraint was the fear of inculcating a climate of racial conflict. This was a concern that the Colonial Office had already sought to impress on the MoI with respect to the British colonial territories but it was conscious that the same considerations applied equally to propaganda aimed at the neighbouring French colonial territories. Moreover, there was also an appreciation that a message of colonial freedom would hardly be consistent with the propaganda message delivered in the British colonial

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M. Thomas, 'The Anglo-French Divorce over West Africa and the Limitations of Strategic Planning, June–December 1940', *Diplomacy and Statecraft,* 6/1 (1995), 268–271).

91 FRACO No. 238 Gambia 3 September 1940, NA WO 208/53, Information received from Washington on 16th February, 1942, NA HS 3/73 and *Journal officiel de l'A.O.F* 21 December 1940, quoted by M. Crowder, *Colonial West Africa: Collected Essays* (London, 1978), 277 n32.

92 Goddard District Agent, Accra to Rawlings 20 June 1941, NA FO 898/124.

93 Sir John Shuckburgh, Colonial Office, *Colonial Civil History of the War Vol.3* (1949), 103–104 and G.F. Howe, *The Mediterranean Theater of Operations, Northwest Africa: Seizing the Initiative in the West* (Washington, 1993), 271–272.

territories. Governor Bourdillon would therefore write to the Colonial Office and to the PWE an anxious warning that African discontent arising out of such a propaganda line might turn from anti-French to anti-white or anti-anybody discontent. As he advised: 'There is no intention of encouraging active revolt by Africans nor any reason to suppose that result would follow. Intention is to add to difficulties and embarrass the Vichy Administration by doing all we can to increase African discontent with the present state of affairs.' Undue revolt, he added, would 'entail the gravest consequences for African European relations throughout West Africa'.[94] The point would also be made in an internal SOE propaganda policy guidance note for French West Africa in early 1941. It noted that care should be taken against excessive criticism of the Vichy France government or praise for General de Gaulle but that 'to the natives, we can, perhaps, go further and inspire direct resistance to Dakar, so long as it is under the present regime'.[95]

The primary British offensive tool against the French colonial territories in Africa was therefore the economic blockade which was extended from France to French West Africa at the end of July 1940. It was hoped that this would persuade key sections of the population, French and African, and the colonial administration that they would be economically better off changing sides. It was not, however, a priority for the hard-pressed British navy so a decision was taken not to intercept French convoys and therefore few French ships were ever stopped.[96] All the same, even the limited blockade caused a considerable degree of economic dislocation with shortages of food, fuel and textiles leading to higher prices for luxury imported goods and, ominously, a racially regulated rationing system. When the war ended, this discrimination would not be forgotten by the African elite. Moreover, as the volume of exports also fell, due to the much reduced shipping capacity, there was a corresponding drop in the prices of export products and further economic hardship. Giblin, for example, in an extensive economic analysis, estimated that there had been a two-thirds decline in imports and an over 80 per cent decline in exports over the period 1939–43;

94 Bourdillon, West African Governors' Conference to Secretary of State for the Colonies 23 and 27 April 1941 and Secretary of State for the Colonies to Bourdillon 23 April 1941, NA FO 898/124 and WP (40) 392 Policy towards Vichy France, Memorandum by the Secretary of State for Foreign Affairs 27 September 1940, NA CAB 66/12/22.

95 SOE Policy for Propaganda to French West Africa (early 1941, undated unsigned), The Headquarters The Franck Mission, Lagos after consultation with the Governors' Conference, general instructions covering propaganda to the Section Heads in the four British West African Colonies 31 January 1941 enclosed in Cpt. Sheridan to Warner 8 February 1941, NA FO 898/132.

96 W.M. (40) 267th Conclusions Meeting of War Cabinet 7 October 1940, NA CAB 65/9/29.

while Crowder estimated that during 1940–42 groundnut production fell by 75 per cent, and cocoa and timber production to virtually nil.[97]

The counterpart of Allied wartime propaganda was the propaganda directed by the Vichy France government. A programme that, as Amaury points out, was both qualitatively and quantitively different in that it was invigorated by the ideology of 'National Revolution' and therefore more developed, specialised and intense than that of the pre-armistice French governments.[98]

As a result of the changed circumstances arising out of the armistice, it was clear that a new focus was needed for the colonial territories. Its first task was to explain and justify France's defeat and subsequent turn to Germany and thereby also France's continuing claim to act as the 'protector' of its colonial territories. Defeat was easily explained in terms of perfidious Albion which had drawn France into an unnecessary and unwanted war and then failed to provide the promised twenty-six army divisions for the defence of France, all with the main purpose of detaching France's colonial territories. As to France's continuing role as 'protector', in his maiden speech after the armistice, Marshal Pétain laid particular emphasis on the importance of the unity of the French Empire: 'I was no less concerned about our colonies than about Metropolitan France. The Armistice protects the links that bind us to them. France has the right to count on their loyalty.' Following up on this speech, the Ministère des Colonies finally issued an internal circular calling for propaganda into, as opposed to from, the colonial territories to be intensified.[99]

The Vichy France government's propaganda would be based on its anti-democratic, anti-British and anti-Semitic 'National Revolution' ideology and the paternal personality of Marshal Pétain, who, as Ginio describes, was essentially held out to be 'a loving father, who forgives his African children for being a little "slow"'. It set out its stall by replacing France's traditional shibboleth of *Liberté, Egalité, Fraternité*, which hardly made any sense in the colonial territories if most of the population were deemed to exist in a lower state of civilisation, hence France's civilising mission. The new slogan was *Travail, Famille, Patrie*. It was reinforced by the article of faith that there could be no compromise over the unity of France with its colonial territories, a unity which had been forged through sacrifice over many years. It was explained that it was precisely this unity

97 J.C. Giblin, 'The Vichy Years in French Africa: A Period of African Resistance to Capitalism', 68–108, M. Crowder, *West Africa under Colonial Rule*, 496–497 and P.M. Atkins, 'Dakar and the Strategy of West Africa', *Foreign Affairs* 20/2 (1941), 362–364 (reference from M. Crowder, *West Africa under Colonial Rule*, 467).

98 P. Amaury, *Les deux premières expériences d'un 'Ministère de l'information' en France*, 7–8

99 *La Légion*, No. 3, August 1941 and *Propagande et information aux colonies*, 31 August 1940, quoted by R. Ginio, 'Marshal Petain Spoke to School Children: Vichy Propaganda in French West Africa, 1940–1943', 294–295.

which would support France and justify its seat at the top negotiating table in the New World Order that would emerge after the war to the mutual benefit of both France and the colonial territories: 'The Empire guarantees the French future'.[100]

This political programme would be transmitted through the medium of radio broadcasts, officially sponsored newspapers, films, newsreels and lectures, including a series undertaken by Minister of Information Henriot in April 1942. In late 1941, Minister for the Colonies Platon had also visited West Africa, though, as British intelligence sources reported, his speeches were 'complete emptiness' and African reaction merely one of further disillusionment. It was supplemented by local societies intended to bind its members in loyalty to the regime, such as the 'French Legion of Combatants of Black Africa', and by public celebrations that extolled, in turn, Marshal Pétain, French nationalist heroes, such as 'Joan of Arc Day', and the unity of colonisers and Africans, such as 'Imperial Week'. There was even a bronze medal award, *médaille du mérite de l'Afrique française noire*, for Africans who 'fight against foreign influence in our colonies'.[101]

The most hapless attempt to draw the younger elements of the African elite into the Vichy France orbit–'youth' being a key target of the 'National Revolution'–was the addition in early 1942 of *Dakar-Jeunes* as a supplement to the *Paris-Dakar* newspaper. It was conceived as a forum in which African 'youth' could feel free to express their views. Rather foolishly, though, the colonial government encouraged a literary debate in its columns in which the outline of the much later post-war African cultural debate is clearly identifiable and which had been prefigured in many respects by a famous public talk given by Senghor in September 1937 in Dakar, 'Le problème culturel en AOF'. In the course of this talk, Senghor suggested that 'intellectuals have a mission to restore black values in their truth and excellence' and, although he would later recant, that there cannot be a true civilisation without a written literature that can give it expression and, further, that one cannot imagine a native literature that is not written in a native language.[102]

100 R. Ginio, 'Marshal Petain Spoke to School Children: Vichy Propaganda in French West Africa, 1940–1943', 292, 295, 299 and *French Colonialism Unmasked: The Vichy Years in French West Africa* (Lincoln, 2008), 16.

101 R. Ginio, *French Colonialism Unmasked: The Vichy Years in French West Africa*, 33–57, 'Marshal Petain Spoke to School Children: Vichy Propaganda in French West Africa, 1940–1943', 295–309 and 'La propagande Impériale de Vichy', E. Jennings/J. Cantier (eds), *L'Empire Colonial sous Vichy*, 128–134, C. Akpo-Vaché, *L'AOF et la Seconde Guerre mondiale (septembre 1939 – octobre 1945)*, 80–85, Bourdillon, West African Governors' Conference to Secretary of State for the Colonies 8 December, 1941, NA WO 208/53 and W.I. Hitchcock, 'Pierre Boisson, French West Africa and the Postwar *Epuration*', 323–324.

102 'Le problème culturel en AOF', Paris-Dakar 6–8 September 1937, quoted by J.G. Vaillant, *Black, French, and African: A Life of Léopold Sédar Senghor* (Cambridge,

The literary debate began with an article questioning whether African assimilation into French culture was either inevitable or desirable. It attracted a range of views including Zinsou, future President of Dahomey, Dia, Senghor's future first Vice-President and rival, and M'baye, a future Minister in the first Senegal government. All expressed doubt as to whether it was desirable, let alone possible, for black Africans even to attempt to adapt to a civilisation that was not created by and for them. These unwelcome conclusions were then made worse by Béart, the French principal of the William Ponty School, the leading school for the African elite attended by many of the post-war West African political leaders including Senghor, Houphouet-Boigny, Dia, Telli and Baye. Béart argued that no purpose was served by Africans even attempting to write French literature as, even if they were able to master the language, they would not understand its mechanisms. He went on to advise that they should rather focus on the task of reconstructing African stories, myths, and legends while at the same time being on guard against developing a native pride because, while their oral literature might be rich and varied, it was not the equal in value to any European written literature. Understandably, in view of the reaction, the colonial authorities quickly shut down the debate.[103]

Vichy France propaganda was reinforced by repression and censorship. Shortly after arriving in Dakar, Boisson dismissed numerous colonial officials whose loyalty he considered suspect on the grounds that they were Communists, Freemasons or Jews. Thereafter, the response to any suspicion of opposition or criticism of the Vichy France government was removal from office and arrest. Indeed, within a few months, the jails in French West Africa were so full that prisoners had to be transferred to French North Africa, notably Algeria. In

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1990), 151–165 and 'The Problem of Culture in French West Africa', C. Becker/S. M'baye/I. Thioub (eds), *AOF: réalités et héritages: sociétés ouest-africaines et ordre colonial, 1895–1960 Tome 2* (Dakar, 1997), 682–696.

103 H. Gamble, *Contesting French West Africa: Battles over Schools and the Colonial Order, 1900–1950* (Lincoln, 2017), 167–183, C-R. Ageron, 'Vichy, les Français et l'Empire', J.P. Azéma/C. Bédarida (eds), *Le Régime de Vichy et les Français* (Paris, 1992), 122–134, R. Ginio, 'Marshal Petain Spoke to School Children: Vichy Propaganda in French West Africa, 1940–1943', 297–298, O. Socé, 'L'évolution culturelle de l'AOF' 29 January 1942, M. Dia, 'Pour ou contre une culture africaine' 12 March 1942, E. Zinsou, 'L'évolution culturelle en AOF – une opinion de Cotonou' 14 March 1942, J. Baye, 'Le méttisage culturel ne doit pas être un but mais un moyen' 26 March 1942, and C. Beart, 'A propos d'une littérature indigène d'expression française' 18 June 1942, *Dakar-Jeunes*, quoted by R. Ginio, *French Colonialism Unmasked: The Vichy Years in French West Africa*, 100–103, and M. Crowder, *West Africa under Colonial Rule*, 488–489. Dia would be the first Prime Minister of Senegal from 1957 to 1962 until imprisoned by President Senghor, and Zinsou would be briefly President of Dahomey in 1968–69 until overthrown by the military that had appointed him.

October 1941, further legal measures provided colonial governors with even greater authority to move against any hint of opposition by sanctioning the arrest of anyone judged a danger to national defence or public security. Other censorship measures, a US intelligence report recorded, included a 'strict postal censorship, all telephone conversations are taped … heavy penalties for listening to British and American wireless stations'. A censorship, far more extreme than in the British colonial territories, was similarly imposed on films and newspapers such that, for example, after December 1941 all new periodicals or journals had first to be authorised by Boisson himself.[104]

At the same time, while conscious of the need to retain and inspire African support, the Vichy France government was congenitally unable to suppress its ideological predisposition to reverse pre-war advances in African assimilation and participation in colonial administration. Over 2000 Africans would thereby be dismissed from the colonial service and, at the same time, many Africans, even those with French citizenship, had their rights and legal status downgraded from '*citoyen*' to '*sujet*' on purely racial grounds. Further naturalisation grants were also largely suspended so that, whereas in 1939 and 1940 almost forty Africans had been granted French citizenship, in 1941 the number of grants were reduced to five and those grants motivated almost solely for propaganda purposes. Moreover, in line with developments in France, all representative institutions to which Africans with French citizenship could be elected were suspended and replaced by appointed representatives.[105]

104 Information received from Washington on 16th February, 1942, NA HS 3/73, R. Ginio, *French Colonialism Unmasked: The Vichy Years in French West Africa,* 26–31, W.I. Hitchcock, 'Pierre Boisson, French West Africa and the Postwar *Epuration*', 321–327, C. Akpo-Vaché, *L'AOF et la Seconde Guerre mondiale (septembre 1939–octobre 1945)*, 61–69 and J. Giblin, 'The Vichy Years in French Africa: A Period of African Resistance to Capitalism', 51.

105 R. Ginio, 'Les élites Européennes et colonials face au nouveau règime en Afrique-Occidentale Française', E. Jennings/J. Cantier (eds), *L'Empire Colonial sous Vichy*, 235–252, P. Ramognino, *'L'Afrique de l'Ouest sous le proconsulat de Pierre Boisson*, 82–86 and 'Le pétainisme sans Pétain. Révolution nationale et contrôle social en AOF – 1940–1943', *Outre-Mers Revue d'histoire,* 91/342–343 (2004)), 65–82 (reference from R. Ginio, *French Colonialism Unmasked: The Vichy Years in French West Africa*, xv Note 4), J. Suret-Canale (trans. T. Gottheiner), *French Colonialism in Tropical Africa, 1900–1945* (London, 1976), 470–475 and P. Blanchard, 'Discours, politique et propagande l'AOF et les Africains au temps de la Révolution Nationale', C. Becker/S. M'baye/I. Thioub (eds), *AOF: réalités et héritages: Sociétés ouest-africaines et ordre colonial, 1895–1960 Tome 1* (Dakar, 1997), 315–338; see also D.E. Gardinier, 'The Second World War in French West Africa and Togo: Recent Research and Writing', P.P. Boucher (ed.), *Proceedings of the Tenth Meeting of the French Colonial History Society April 12–14, 1984* (Lanham, 1985), 261–272.

This political situation was summarised in early 1941 by a British intelligence report:

> The French have been less concerned than ourselves with the need for establishing confidence between the governing and the governed and have given less attention to the development and strengthening of native institutions … Their administration tend (*sic.*) to discount the value of native opinion (but) signs of African discontent are not wanting and may be expected to recur with greater frequency as conditions become more difficult.[106]

As in the British colonial territories, the majority of Africans were largely indifferent to wartime propaganda, and in any event had little empathy with what they perceived as simply the white man's war, a quarrel between colonisers, but any opposition was otherwise effectively constrained by the harsh repression. What opposition there was was therefore largely provoked by excessive forced labour demands or requisitioning quotas, or a heavy-handed approach towards tribal leaders by colonial officials on the ground as against outright opposition to the Vichy France colonial regime. The tensions were invariably managed on the colonial government side by detention and on the African side by desertion, in some cases by defection of whole tribes to adjoining British and Portuguese colonial territories or Liberia. For example, the Joola tribe in southern Senegal rebelled in protest at the food quotas they were assigned and were consequently severely repressed. Most famously, in January 1942 with SOE support, the otherwise loyal Bron tribe decamped *en masse* to the Gold Coast in response to insensitive interference in their affairs on the part of local colonial officials. African opposition would also be reflected in economic protests, such as the railway and dock strikes in Cotonou in 1941–42 in protest against the exporting of food from starving Dahomey under the slogan: 'Do not send our products to Germany', and in such rumours as that the British or Germans might come as liberators.[107]

The African *évolué* elite, on the other hand, were in a rather more difficult position in as much as they were politically and mentally committed to France and the idea of French civilisation and had far more to lose given their privileged status.[108] They were nonetheless largely unconvinced by Vichy France propaganda

106 West African Intelligence Centre, Bulletin No. 1 17 January 1941, NA FO 898/124.

107 N.E. Lawler, 'The Crossing of the Gyaman to the Cross of Lorraine: Wartime Politics in West Africa, 1941–1942', *African Affairs,* 96/382 (1997), 53–71, J. Giblin, 'The Image of the Loyal African During World War II and its Postwar Use by the French Communist Party', *Canadian Journal of African Studies* 14/2 (1980), 321–322 and 'The Vichy Years in French Africa: A Period of African Resistance to Capitalism', 176 and R.E. Osborne, *World War II in Colonial Africa: The Death Knell of Colonialism* (Indianapolis, 2001), 250–251.

108 The term *évolué* was essentially a racial term applied to those Africans deemed to

and arguments in support of the armistice, which they saw as an unexpected humiliation, or the Vichy France government, which seemed to have too much in common with the evils that France had until recently claimed to be resisting. They also quickly grasped that their status was threatened as, increasingly, Vichy France's outright racism and repression weighed down on them. Although their plight may have brought them together in a shared sense of insecurity and opposition, faced with the threat of detention and the appreciation that their status was still primarily dependent on the colonial government, they had little to gain and much to lose from any public expressions of discontent at this time.

That all changed when the Vichy France regime of Boisson was finally overthrown in July 1943. Although still committed to France, they had been made painfully aware of the racial dimension of their status. Looking back, African political leaders would remember the segregated shops and railway apartments, the racially determined rationing and that only Africans had been executed, but, above all, they would recall the newly posted sign at the entrance of a beach in Dakar which read '*plage des blancs*'.[109] They had also heard the denunciations by the Free French of the Vichy France government and were increasingly conscious from Allied wartime propaganda of the international debate on the moral justification of colonialism and the push for self-government in other colonial territories, just as Boisson had feared and as General de Gaulle would observe to the 1944 Brazzaville Conference. They were therefore determined to pursue the amelioration of what they felt were the two most objectionable racist aspects of Vichy France government rule, forced labour and status, and to become more actively involved in the French constitutional debate as it related to the coming new relationship between France and its colonial territories.

The immediate problem, however, was that the incoming Free French administration was doing little to dismantle the racial discriminations of the Vichy France regime. Unlike the Vichy France regime, the Free French had little need to take account of a potential threat to their authority from an alternative French government or the Germans. Already in French Equatorial Africa, the Free French had imposed excessive forced labour obligations and coerced military conscription and had also pushed hard for further 'voluntary' contributions to the war effort. As Jennings points out, in an April 1941 declaration, Free French High Commissioner de Larminat had stated that the time for reform had not yet come: 'We are taking the machine as is … we do not aspire to disassembling it and rebuilding it under a better form.' Moreover, after 1943, French West Africa

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have evolved or assimilated sufficiently close to the French civilised ideal as to merit official recognition of their higher status.

109 R. Ginio, *French Colonialism Unmasked: The Vichy Years in French West Africa*, 87–158 and '*Les élites Européennes et colonials face au nouveau règime en Afrique-Occidentale Française*', 248 and J.C. Giblin, 'The Vichy Years in French Africa: A Period of African Resistance to Capitalism', 154–155.

would be one of the main independent sources of income for the Free French and every effort was therefore made to squeeze more out of the economy than ever the Vichy France government had attempted. Inevitably, the burden was placed on the African population.[110]

The dam began to burst already in 1944 with a series of strikes by African workers culminating in a widely supported general strike in Dakar for racial equality in pay and the 1947–48 West Africa railways strike. Possibly because after the massacre at Thiaroye of demobilised African soldiers the French colonial authorities felt the need to respond cautiously to defuse the potentially volatile situation, the strikes were largely successful in their immediate goal, but they also served to demonstrate the possibilities of a united African front. Longer term, the most significant impact of the strikes was therefore possibly the radicalisation and emboldenment of the emerging generation of African political leaders in their relations with the French colonial authorities.[111]

In 1945, as France began the process of electing a government and a constituent assembly to draft a new constitution, the African political representatives therefore moved to secure the abolition of forced labour in the colonial territories. Already in May 1945, Lamine-Guèye, an African representative from Senegal, had written to the Minister of the Colonies protesting that the proposed labour legal code 'retains many of the least popular and most tyrannical dispositions of the indigenous legal code promulgated by the Vichy government'. The letter had little effect and it gradually dawned on the African representatives that the new French government was intending to move only slowly in abolishing forced labour. Accordingly, in February 1946, the African representatives wrote collectively to Minister of the Colonies Moutet again advising that: 'Millions of men have sent us here giving us a precise mandate, to struggle with all our might to abolish the slavery which is still practised in Black Africa by men, civil servants and civilians, who are traitors to France and her noble civilizing mission.' When the response came that forced labour was essential and could therefore only be phased out over a five year period, the African representatives pressed the issue to a vote.[112]

The resulting *Loi Houphouet-Boigny*, as it came to be known, after its sponsor, Houphouet-Boigny, an African representative from the Ivory Coast and subse-

110 E.T. Jennings, *Free French Africa in World War II; The African Resistance*, 63–66.

111 F. Cooper, 'The Senegalese General Strike of 1946 and the Labor Question in Post-War French Africa', *Canadian Journal of African Studies* 24/2 (1990), 165–215 and *Decolonization and African Society: The Labor Question in French and British Africa* (Cambridge, 1996), 186–187.

112 E.T. Jennings, *Free French Africa in World War II; The African Resistance*, 251–252 (Lamine-Guèye to Minister of Colonies) and African Deputies' letter to Moutet 22 February 1946, quoted by F. Cooper, *Decolonization and African Society: The Labor Question in French and British Africa*, 527 n37.

quently its first President, abolished forced labour in the French colonial territories with immediate effect. A month later, still angered by the distinction in status in the colonial territories between French '*citoyens*' and '*sujets*', which meant that only '*citoyens*' would be entitled to vote in the forthcoming French constitutional referendum, Lamine-Guèye was also able to secure adoption of what came to be known as the *Loi Lamine Guèye* abolishing this distinction (see page 150 below).[113]

More significantly, the experience of the war years and the widespread African support for the series of strikes were to bring about a fundamental change in the self-perception of the French-educated and minded African elite – now no longer the handmaidens of French colonial power but representatives of their people. Reflecting on their experience of the racial discrimination of the Vichy France government, in July 1945, Senghor, then an African representative for Senegal, would remonstrate: 'We are sick of nice speech – of derogative sympathy. What we need are actions … We are not separatists, but we want equality. We insist: Equality.' As in the British colonial territories, therefore, words were no longer sufficient. African representatives now wanted to see the rhetoric of French republican values supported by positive action which they further justified in the Constituent Assembly debates in early 1946 by examples of racism that post-dated the Vichy France regime. As Ginio pointed out, the racism inherent in French colonialism had been unmasked.[114]

Nonetheless, the French West African *évolué* elite still identified themselves with France and French civilisation because at that time they had less of a political base than the tribal chiefs and therefore still relied on the French colonial system for their elevated political and social status in a way that educated African opinion in the British colonial territories and French North Africa did not. Out of interest and temperament therefore, they still wished to remain within the French orbit. There was, therefore, little talk of independence, albeit that the basis of the colonial relationship was now to be subject to review. At a less exalted level of political representation, however, among the students and trade unions, a more radical mindset was beginning to emerge, a mindset that was less inclined to see its future within the French civilising community and more inclined to contemplate independence. It was this mindset that would eventually come to the fore during the 1958 French Community referendum debate.[115]

113 *Journal officiel de la République française: Lois et décrets*, '*Loi N° 46–645 du 11 avril 1946 tendant à la suppression du travail forcé dans les territoires d'outre-mer*', 12 April 1946, 3063 and '*Loi N° 46–940 du 7 mai 1946 tendant à proclamer citoyens tous les ressortissants des territoires d'outre-mer*', 8 May 1946, 3838.

114 Senghor, *Défence de l'Afrique noire* in *Esprit*, quoted by R. Ginio, *French Colonialism Unmasked: The Vichy Years in French West Africa*, 175–176, 183–189, and *Journal officiel de la République française: Débats de l'Assemblée nationale constituante* (1946) 20–26 March 1946.

115 Y. Benot, *Les députés africains au Palais Bourbon de 1914 à 1958* (Paris, 1989), 38–53

The situation in French North Africa was, again, completely different from that of French West and Equatorial Africa in that there was a long-standing tradition of organised anti-colonialism with political leaders willing to give a lead. As a result, even though French North Africa had been the first to accept the authority of the Vichy France government, the local population was less forgiving and more minded to see the armistice as providing ample justification for the termination of French colonial rule. For example, in Tunisia, the Neo-Destour (New Constitution) independence party organised demonstrations against the armistice and distributed tracts pointing out that France would soon be forced to give up its protectorship as it was unable even to protect itself. A similar warning was given by General Noguès, Resident-General in Morocco and Commander of the French North African army. In a message to General Weygand, he advised that if France did not continue the war, 'even if North Africa is left to us … we would forever lose the respect and confidence of the native population'. He also counselled Marshal Pétain that 'to envisage the surrender to a foreign power without their consent and without having to do battle would be considered treason. If we do not defend North Africa, we will have a hard time keeping any real authority over what our enemies leave us *at the final reckoning.*'[116]

Yet, despite the scope for mischief-making, Allied wartime propaganda was never inclined to provide any encouragement to North African anti-colonialism. It was simply too dangerous a card to play with almost certain knock-on effects not only in Africa but also the Middle East and it would also have irreparably alienated the French and pushed them closer to Germany. There were also important military considerations to take into account. The most immediate was the potential threat posed to British supply lines to Gibraltar, Malta, North Africa, the Middle East and beyond were Germany to establish a military presence in French North Africa. As was clearly understood, the primary factor deterring a German military presence was the armistice agreement and there was therefore a strong argument for leaving the Vichy France status quo in French North Africa undisturbed at this time.

It was no doubt on that basis that in October 1940 the Morton Committee minuted that British aims were 'to encourage certain Vichy Colonies to opt for de Gaulle as soon as possible' but that 'such action is not immediately desirable in Morocco, Tunis or Algeria'. However, by March 1941, most likely as a result of

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and T. Chafer, *The End of Empire in French West Africa: France's Successful Decolonization?* (Oxford, 2002), 43–49.

116 General Noguès to Weygand 17 June 1940 and General Noguès to Marshal Pétain 18 June 1940, quoted by W.A. Hoisington, Jr., *The Casablanca Connection: French Colonial Policy, 1936–1943*, 165–167; italics original, as in all cases following unless otherwise indicated.

the British army's all too temporary advance across North Africa, the views of the Chiefs of Staff had evolved so that they now after all considered it desirable for French North Africa to 'rejoin' the war as soon as possible. Unfortunately, as the Morton Committee observed, only force would 'compel' French North Africa back into the war and that was unrealistic. What was left was propaganda and economic pressure, and the latter was limited by the British naval resources that could be assigned to the blockade and the US trade deal.[117]

The US trade deal was the result of a twin-track policy agreed by the United States and Britain in February 1941, even before US entry into the war, though with reluctance on the part of the British. British misgivings arose because it was felt that the US was too soft on the Vichy France government which both they and some US diplomats attributed to the sway of Murphy, President Roosevelt's personal representative in North Africa, who was regarded as too sympathetic to the Vichy France government. Whereas Britain would therefore maintain its mutually suspicious relationship, the US would recognise the Vichy France government. The US would also provide economic support to Vichy France on the basis of the February 1941 Murphy-Weygand agreement which authorised the use of hitherto blocked French government funds in the US 'to facilitate the supply of the essential needs' of French North Africa. At the same time, the British would agree to relax the blockade so as to enable these essential needs to get through.[118]

This approach allowed the US to station additional diplomatic personnel in French North Africa on the pretext of monitoring French compliance with the agreement though in reality to act as intelligence agents. These were the US Vice-Consuls, otherwise the 'Twelve Apostles', who had been selected for this assignment by the US Army and Navy Departments and then foisted on the State Department. After experiencing first-hand North African aspirations for independence and Vichy France's repression and pretensions of superiority, several of these Apostles would subsequently become strong supporters of the independence movements in French North Africa.

117 War Cabinet, Committee on Foreign (Allied) Resistance, C.F.R. (40) 56 Policy *vis-à-vis* pro-Vichy French Colonies 4 October 1940, NA FO 892/5 and War Cabinet, Chiefs of Staff Committee, 12 March 1941, The Situation in French North Africa 6 March 1941, NA CAB 80/26/57.

118 Most Secret, United States and North Africa, Foreign Office 3 February 1941, NA FO 892/105, *FRUS Vol. II Europe*, Documents 187: The Ambassador in France (Leahy) to the Secretary of State Vichy, 28 February 1941, 203: Memorandum of Conversation, by the Assistant Chief of the Division of Near Eastern Affairs (Villard) 11 February 1941 and 204: The Department of State to the British Embassy, Memorandum 13 February 1941, D.A Walker, 'OSS and Operation Torch', *Journal of Contemporary History,* 22/4 (1987), 673 and W.L. Langer, *Our Vichy Gamble*, 399–401 (Appendix 1: The Murphy-Weygand Agreement).

In North Africa, French hatred of the British had become the default position. British support for General de Gaulle was a gamble that had not only failed to draw out other more prominent supporters but, worse, resulted in him being seen as self-seeking, a traitor to France and a threat to the unity of France and the Empire. British naval actions in July 1940 and the assault on Dakar in September 1940, the economic and social impact of the blockade and an ever-increasing outpouring of rabid anti-British Vichy France propaganda further fuelled that hatred. The Morton Committee, for example, perceived that: 'Vichy policy is based on a belief that the British cannot win this war … Other Frenchmen doubt if the France we should restore would sufficiently resemble the France they wish to see.'[119]

In the hope, therefore, of encouraging a change in French attitudes, the main thrust of British propaganda was directed at French colonial and military officials. It sought to put across a shared hatred of the Germans, the certainty of British victory by reference to the First World War, the gallantry of the Free French in continuing the struggle and an appeal to French patriotism. Particular emphasis was placed on the commitment to restore France with the integrity of her borders and colonial territories fully intact. The British could 'not be suspected of going over the heads of the French authorities themselves'. Propaganda was also to tread carefully in its criticism of the Vichy France government or of Marshal Pétain who was still regarded as a heroic figure and therefore largely beyond reproach.[120] This approach clearly had little effect as, in June 1942, when the BBC carried out an assessment of the opinions of its radio audience in French North Africa, it noted a strong residual antipathy to Britain and French hopes that the war between Britain and Germany would so weaken both countries that France would become the balancing force in the future of Europe.[121]

Considerably less emphasis was placed on propaganda to the African population. In the first instance, not only were they regarded as unimportant in terms of the main objective, drawing French North Africa back into the war as and when strategic considerations allowed, but that even this primary objective might be frustrated if the French were to feel that British propaganda was deliberately intent on undermining the authority of the colonial regime. As a result, an August 1941 propaganda planning review included the admonition that the population 'could not be treated simply as Moslems, but had to be treated also as inhabitants of French territories'. It was also absolutely insistent that there should be no call for a *jihad* against the colonial regime.[122]

119 War Cabinet, Chiefs of Staff Committee, 12 March 1941, The Situation in French North Africa, 6 March 1941, NA CAB 80/26/57.

120 Sub-Directive for North Africa 19 March 1941 and Propaganda plan for French North Africa, Appendix A to French Plan 26 March 1941, NA FO 898/126.

121 BBC, Status of European Audiences: The French Audience in North Africa 25 June 1942, NA FO 898/127.

122 Foreign Office meeting on 8 August 1941 to consider the question of propaganda in

Early on in the planning of a propaganda policy, Leeper, the propaganda head, was also warned about the wider implications of an appeal to the 'native' population. It was explained that 'for the Arabs, ALL white men are "sons of dogs"' and that: 'In case of revolt no descrimination (*sic.*) would be made, wholesale murder of <u>all</u> white men would result.' This was in a sense the counterpart of the fears expressed by the Colonial Office with respect to the propaganda directed at French West Africa and no doubt contributed to a reluctance to target the 'native' population.[123]

Nonetheless, by mid-1941, the PWE French North Africa section, largely through the energy of Abulafia, its not-always-appreciated expert, was beginning to lobby for a more active approach to the local population. As a result, a regular series of Arabic language leaflet drops was initiated[124] supplemented by short propaganda and news bulletins broadcasts by the BBC, which had begun an Arabic service in January 1938 and a Maghrebi service in 1939, both of which were brought under increasing PWE guidance.[125] Over and beyond these targeted broadcasts, listeners in French North African were also able to access a far wider range of BBC and Voice of America broadcasts and also propaganda broadcasts transmitted from Accra, Brazzaville and The Gambia.

Further efforts were made from mid-1942 to expand the range of propaganda directed at the local North African population although some limitations were placed on an expansion of activities lest it be perceived as signalling an invasion.[126] In August 1942, for example, it was suggested that there should be a more intense programme of propaganda directed at the Arab population but subject to the caveats that: 'We do not seek to turn the natives against the French and in view of the special request from S.O.E. we have refrained from any reference to General de Gaulle.' The emphasis was therefore to be placed

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North Africa 9 August 1941, NA FO 898/126.

123 French Morocco, Kingsbury to Leeper 26 September 1940 and Sub-Directive for North Africa 19 March 1941, NA FO 898/126; underlining original as in all cases following, unless otherwise noted.

124 Propaganda plan for French North Africa, Appendix A to French Plan 26 March 1941, Facilities Required to Operate North African Propaganda Plan 16 March 1941, War Office to Governor and C-in-C, Gibralter, 30 May 1941 and Abulafia to Paniguian 5 August 1941, NA FO 898/126; in some sections of SOE it was felt that as a Jew Abulafia was not a reliable judge of propaganda content into North Africa (see Rushbrook Williams to Leeper 12 July 1941, NA FO 898/126).

125 S. Arsenian, 'Wartime Propaganda in the Middle East', 423 (reference from D. Maghraoui, 'The Moroccan "*Effort de Guerre*" in World War II', J.A Byfield/C.A. Brown/T. Parsons/A.A. Sikainga (eds), *Africa and World War II*, 98–99 and Abulafia to Mangeot 29 August 1942, NA FO 898/128.

126 Arabs and Berbers in North Africa, Memorandum by the Joint Secretary, Frend 24 April 1942, NA FO 898/127 and Paniguian to Mangeot 18 July 1942, NA FO 898/128.

on the certainty of Allied victory and the exposing of German designs on the Arab world.[127] Yet it was still all half-hearted with no real objective in mind. As Frend, the Morton Committee's Secretary, with his personal experience of North Africa, pointed out, a greater effort should be made to target the local population as a counter to Vichy France propaganda promoting the 'National Revolution'. Short BBC radio news broadcasts and a 6,000 per week leaflet drop for all of North Africa were 'wholly inadequate'.[128]

In July 1942, when it was finally decided that a direct invasion of Europe was not as yet feasible and the decision therefore taken to invade French North Africa, Allied propaganda priorities for the region were further refined. The new strategic imperative was to ensure the neutrality of Vichy France military forces at the time of the invasion as a friendly occupation of North Africa was considered 'of the first strategical importance in the Atlantic area'. It was anticipated, correctly as it proved, that Germany would immediately respond to the invasion by rushing in additional troops into North Africa, and the Allies did not therefore want to fight first with the French North African army. Thereafter, civil law and order would be a major priority and it was obviously desirable that Allied forces should not be forced to patrol behind their lines but enabled to concentrate on on-going military operations in North Africa or Europe – the Sicily landings would follow in July 1943 shortly after the war finally ended in Africa in May 1943. There was also the further consideration that French troops should be encouraged to return to the front line in other theatres of war and the economies of the French colonial territories integrated into the overall Allied war economy. To that end it was also recognised that, following the landings, there was probably little option other than to retain the existing colonial administration in place. This, it was argued, would not be recognition of a French government in exile merely recognition of a *de facto* French administration in a specific colonial territory.

If these aims were to be met, in the first instance, Vichy France's self-respect would have to be propitiated. As British involvement had been compromised, indeed, intelligence and public opinion reports had all indicated that British forces would be vigorously resisted, it was decided to maintain an American character to the invasion, and the British kept largely out of sight.[129]

127 Abulafia to Paniguian 8 August 1942 and PWE paper, Propaganda for the Natives of French North Africa September 1942, NA FO 898/128.

128 Frend to Morton 13 May 1942, NA FO 898/127.

129 Eden to Mack 15 August 1942 and Mack to Strong 21 October 1942, NA CAB 121/493 and G.F. Howe, *The Mediterranean Theater of Operations, Northwest Africa: Seizing the Initiative in the West,* 10, 13–14, 24, 28, 54–57; H. Cantril, 'Evaluating the Probable Reactions to the Landing in North Africa in 1942: A Case Study', *The Public Opinion Quarterly,* 29/3 (1965), 400–410 (reference from A.L. Funk, *The*

In line with this softly-softly approach, a joint American-British plan also agreed that the primary propaganda objective should be 'to create and foster a French authority in North Africa free of Axis influence' and that it would be wrong to appeal to the local population over the heads of the French 'as long as there was the slightest chance of French co-operation'.[130] Writing to General Marshall, to detail the formal announcement to be made regarding the aim of the invasion, General Eisenhower made it clear that: 'The only statement of American policy desired by the President is the defeat of the Axis powers and the preservation of French administration in the colonies.' As a result, the Operation Torch Proclamation was to read: 'We come among you to save you from conquerors who would remove forever your rights of self-government, your rights to religious freedom, and your rights to live your own lives in peace'. This and similar messages would be widely broadcast into French North Africa by Voice of America radio stations.[131]

That this was not intended as a message of prospective self-government for the local population was indirectly confirmed by Secretary of State Hull at a press conference in December 1942. In response to a question he replied that: 'With the victory won and freedom restored to those who have lost it or who are seeking it, there would then arise under point three of the Atlantic Charter the fullest opportunity for each people to select their leaders and their forms of government'; the subject matter of the question being the widely publicised on-going struggle for power among French military leaders. Unsurprisingly, this message was not lost on local political leaders who were clearly unhappy with the lack of attention that they were receiving. As a report from the US *Chargé* in Tangier had already recorded, it was 'receiving increasing visits from influential Moors who express astonishment and regret the Sultan and the Moorish people have not been mentioned in any American communication regarding the motives for the landing of American forces in Morocco or American territorial guarantees'.[132]

Politics of Torch: The Allied Landings and the Algiers Putsch, 1942 (Kansas, 1974), 95 Note 12) gives an account of how President Roosevelt sponsored a public opinion assessment of French attitudes to an invasion of French North Africa by the US and, separately, by the US and Britain jointly.

130 Eden to Prime Minister P.M./42/220 14 October 1942 and Eden to Prime Minister, P.M./42/226 Most Secret, enclosing revised draft of 'Joint American-British plan of Psychological Warfare for France and the French Empire' 16 October 1942, NA PREM 3/442/7 and War Cabinet Chief of Staff Commission C.O.S. (42) 154th Meeting 20 October 1942, NA CAB 79/58/4.

131 Telegram Marshall to Eisenhower 16 October 1942, NA FO 898/132 and Eden to Prime Minister P.M./42/220 14 October 1942, NA PREM 3/442/7.

132 *FRUS 1942 Vol. II Europe*, Documents 438: The Chargé at Tangier (Childs) to the Secretary of State 14 November 1942 and 481: Press Release issued by the Department of State, 17 December 1942 and *Department of State Bulletin* 7/182 (1942), 1008; see also Document 471: The Secretary of State to the Chief of Staff,

At the point of the invasion, President Roosevelt also wrote to Marshal Pétain assuring him of the United States' commitment to 'the liberation of France and its Empire from the Axis yoke' and that the US 'seeks no territories'. In his reply, Marshal Pétain wrote: 'I have read your message. You invoke pretexts which nothing justifies … I have always declared that we would defend our Empire if it were attacked; you should know that we would defend it against any aggressor whoever he might be.'[133]

In the event, therefore, despite attempts at reaching an advance agreement with military leaders in French North Africa, and notwithstanding an OSS intelligence assessment that Vichy France forces would not oppose the landings, for several days Vichy France forces would fight on the beaches leading to casualties on both sides.[134] However, two weeks after the invasion, an agreement was finally reached by General Clark and Admiral Darlan (Clark-Darlan Agreement) by which the opportunistic Admiral Darlan was to be appointed High Commissioner of French North Africa and almost all the leading Vichy France colonial officials (including Boisson) confirmed in place; an agreement which even received the retroactive endorsement of General Secretary Stalin (Soviet Union). This was the same Admiral Darlan who had been Prime Minister of Vichy France from February 1941 until April 1942.[135]

Following the success of the invasion, and with the existing French colonial regime now largely retained in place, in January 1943 the aims of Allied propaganda were therefore further refined. Going forward, it was determined that the primary aims should be to maintain security for the still on-going military operations in North Africa and the prospective invasion of the soft 'underbelly' of Europe, to restore the fighting spirit of French forces and to maximise the cooperation and encourage the unity of the civilian population. Longer term, the British also hoped to inculcate a greater appreciation of British war efforts and policies and, in cooperation with France, to induce the sympathy of the wider Arab/Muslim world, a sympathy that would both assist the war effort

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United States Army (Marshall) Washington, 5 December 1942.

133 *Department of State Bulletin* 7/177 (1942), 904–5; see also *FRUS The Conferences at Washington, 1941–1942, and Casablanca, 1943*, Document 122: Oral Message From President Roosevelt to General Weygand 23 December 1941.

134 J.F. Jakub, *Spies and Saboteurs: Anglo-American Collaboration and Rivalry in Human Intelligence Collection and Special Operations, 1940–45* (London, 1999), 48–72, G.E. Maguire, *Anglo-American policy towards the Free French* (Basingstoke, 1995), 57, A.M. Winkler, *The Politics of Propaganda: The Office of War Information, 1942–1945*, 114–116 and D.A Walker, 'OSS and Operation Torch', 667–679.

135 *FRUS 1942 Vol. II Europe*, Document 454: Agreement Between General Mark Clark and Admiral François Darlan, Signed at Algiers, 22 November 1942 and *FRUS The Conferences at Washington, 1941–1942, and Casablanca, 1943*, Document 313: Telegram, Prime Minister Churchill to President Roosevelt, London, 2 December 1942.

and, subsequently, the management of the post-war world. However, in putting forward these aims, whereas the Appreciation Paper acknowledged that Tunis and Morocco aspired to independence and that Algeria, which was then part of France, sought a greater participation in government and the abrogation of Muslim political disabilities, there was no suggestion, of course, that these aspirations should be supported in any way. Quite the contrary, the French were to be left in charge just as the British expected to be left in charge of their colonial territories.[136]

As part of this process of bolstering French prestige, in January 1943, Macmillan, British Minister Resident in the Mediterranean based in Algiers, and Murphy signed an agreement with the French colonial administration whereby responsibility for 'Internal Propaganda' to French North Africa was to be handed over to the French High Commissioner for French North Africa subject only to any military considerations.[137] To further sustain the French colonial administration, in August 1943, a directive to the BBC North African Service laid down a new British political objective, 'to help restore native confidence in the New France and to restore French prestige in French North Africa and to help consolidate the position of the *Comité Français de la libération nationale*'. Accordingly: 'All references to the Atlantic Charter, other than hard news, must be avoided, since its application to French North Africa raises controversial questions.'[138]

The Vichy France government approach towards French North Africa had followed along much the same ideological lines adopted in French West Africa but was implemented with a far greater rigidity and purpose of mind. In Algeria, as Thomas points out, it pushed even moderates such as Abbas, the future Algerian nationalist leader, to advise Governor-General Abrial that the attack on Muslim civil and religious freedoms, such as the dual electoral colleges, was politically unacceptable. The situation was made much worse by an economic

136 Ministry of Information and Political Warfare Executive, Overseas Planning Committee, Plan of Propaganda for French North Africa, Draft Appreciation Paper No. 312 9 January 1943 and Plan of Propaganda for French North Africa (Algeria and Morocco), Draft Policy Plan (Aims and Objectives), Paper No. 313 11 January 1943, NA CAB 115/711.

137 Protocol re propaganda between Allied Propaganda Services and Secretariat of Political Affairs for French Propaganda Services 22 January 1943, NA FO 371/36182 and McMillan(*sic.*)-Murphy Agreement, Propaganda to the Arabs in North Africa (no date, unsigned), NA WO 204/6235.

138 Standing Directive for the BBC North African Arabic Service Series 1943/1327 August 1943, NA FO 371/36249 (reference from M. Khenouf/M. Brett, 'Algerian Nationalism and the Allied Military Strategy and Propaganda during the Second World War: the Background to Setif', D. Killingray/R. Rathbone (eds), *Africa and the Second World War* (Basingstoke, 1986), 267).

system deliberately designed to favour French settlers and the needs of Vichy France at the expense of the local population.[139] Such was the sentiment that, for example, a 1942 BBC review of its North African audience reported that, far from resenting the British blockade, the local population wanted to see it made more effective so as to prevent requisitioned supplies from reaching France which was sorely resented as the price they were being forced to pay for Vichy France's collaboration with Germany.[140] Increasingly, therefore, to maintain order, the Vichy France colonial government was forced into outright repression and the imprisonment of anti-colonialist political leaders such as Messali Hadj in Algeria and Bourguiba in Tunisia.

In May 1941, writing to Weygand, then Delegate-General for North Africa of the Vichy France government, General Noguès had advised that there was no threat of outright treason by the native population who were 'healthy and devoted but a bit uneasy'.[141] Even at the time, this assessment probably underestimated the underlying disquiet of the local population that was simply biding its time. A more accurate picture is recorded in Murphy's June 1942 political assessment. He had travelled to North Africa on a fact-finding trip with the Operation Torch landings in mind and had identified considerable anti-French sentiment. In particular, that Sultan Muhammad V (Morocco) was wildly enthusiastic about the possibility of an Allied invasion, which he hoped would lead to Moroccan independence, though wisely he had also cautioned: 'I shall be the first to welcome them, but first let them come'.[142]

Indeed, as Thomas points out, the harsh experience of the war under the Vichy France colonial government, propelled by expectations arising out of Allied wartime propaganda and particularly the Atlantic Charter, had so radicalised French North Africa that the 'pent-up frustrations of Moroccans, Tunisians and, above all, Algerians were impossible to contain'. Hahn, too, notes that when in 1942 Darlan and Giraud asked for Arab support for the war effort, they were advised that it would be forthcoming but only if 'they be given basic rights and liberties'.[143] When, therefore, the war in Africa came to an end, the anti-colonialist

139 M. Thomas, *The French Empire at War, 1940–45*, 165–166 and 'Resource War, Civil War, Rights War: Factoring Empire into French North Africa's Second World War', *War in History*, 18/2 (2011), 225–248.

140 BBC, Status of European Audiences: The French Audience in North Africa 25 June 1942, NA FO 898/127.

141 Noguès to Weygand 9 May 1941, quoted by W.A. Hoisington, Jr, *The Casablanca Connection: French Colonial Policy, 1936–1943*, 204.

142 W.A. Hoisington, Jr, *The Casablanca Connection: French Colonial Policy, 1936–1943*, 220–221.

143 M. Thomas, 'Resource War, Civil War, Rights War: Factoring Empire into French North Africa's Second World War', 248 and L. Hahn, *North Africa, Nationalism to Nationhood* (Washington, 1960), 142.

parties rapidly re-emerged into the open and began actively campaigning for a change in the colonial relationship, demonstrating that wartime quiescence was merely the forced response to colonial repression. They would however be strongly disabused of such aspirations as no incoming French government of any ilk had any intention of allowing a significant measure of devolution and simply moved against the anti-colonialist parties. In French North Africa, though, the die had already been cast and, as a result, in all of colonial Africa the dénouement in French North Africa would be soonest in coming.

It would be churlish to deny that, in rather difficult circumstances, British and French colonial governments had enjoyed a good war. They had succeeded in their primary aim of securing African political, social and, to a large extent, economic quiescence for the duration of the war. They had also managed to persuade significant numbers of Africans to volunteer for army service abroad and, in the main, to accept the imposition of forced labour and a reduction in real incomes. On this basis, looking forward, colonial governments might reasonably have anticipated that, while, with the war now at an end, demands might be made for political change, there would be only few calls for outright independence and such calls as might arise could be easily contained or bought off.

Indeed, it can reasonably be argued that this was largely the way it went in that, in the immediate aftermath of the war, of the French colonial territories, only French North Africa and Madagascar would actively pursue independence; French West and Equatorial Africa most certainly did not. Indeed, fifteen years after the end of the war in Africa, only Guinea voted against the 1958 French Community Constitution, and, but for that vote, it is more than probable that independence for French West and Equatorial Africa might well have been deferred for some considerable further period of time. In the British colonial territories, too, calls for independence were only barely beginning to be heard and then effectively only in a few of the more politically advanced colonial territories of British West Africa and the special case of Sudan.

Yet this apparent post-war calm was dangerously deceptive. It is clear that Allied and Vichy France wartime propaganda, each in its own way, had been, at best, clumsy and hackneyed. If at all, wartime quiescence had been achieved not as a consequence, or even with the appreciable assistance, of wartime propaganda, but almost despite wartime propaganda. The reality was that across the board, the political, economic and social waves wrought by the war were beginning to ripple across the bows of the colonial ship of state. The Owl of Minerva had already taken flight. As the Colonial Office had sensed, wartime quiescence had indeed been bought at the cost of a long-term post-war aspiration for change in that the war had accelerated the process of bringing to the

political fore a rising class of educated, and more radically minded, African opinion. Hitherto, this rising class had recognised the advisability of supporting the colonial regime during the war, though, particularly in the French colonial territories, fear of repression had been a major factor in that recognition. But it had also grasped and drawn the appropriate conclusions from its exposure to the disconnect between the self-interest of Allied and Vichy France wartime propaganda and the actual reality of racial discrimination on the ground. It was therefore now looking for a change in the terms of the colonial relationship and a greater participation in political power.

What, above all, tipped the balance, what transformed and accelerated African political consciousness and the trajectory of anti-colonialist agitation, was an increasing awareness of the Atlantic Charter which brutally exposed to respectable gaze the contradictions inherent in the claims of Allied and Vichy France wartime propaganda and fatally compromised the existing rules of colonial engagement which were now brought into the international arena.

The Atlantic Charter

Following their historic meeting in the Atlantic Ocean off the coast of Newfoundland 9–12 August 1941, President Roosevelt and Prime Minister Churchill released a press statement setting out 'a joint declaration of … common principles … on which they base their hopes for a better future for the world'.[144] Although discussions were concluded on 12 August, in order to maintain the secrecy that would improve the prospects of a safer homeward journey for Prime Minister Churchill, it was determined that the press statement should only be released on 14 August. The statement was initially referred to as the 'The Joint Anglo-American Declaration of Principles', 'Joint Declaration of Principles'

144 *White House Press Statement 14 August 1941*, Press Releases August 1941 Box 10, Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York; see also 'C. Attlee BBC Radio 3.00pm 14 August 1941', Sound Cat. No. 3571, Imperial War Museum Collections. The primary archival sources are War Cabinet WP (41) 202 Memorandum, Prime Minister Churchill 20 August 1941, NA CAB 66/18/25 (Churchill Memorandum) and WP (41) 203 Memorandum, Conference between the Prime Minister of the United Kingdom and the President of the United States 18 August 1941, NA CAB 66/18/26 (Conference Telegrams), W.M. (41) 84th Conclusions Meeting of War Cabinet 19 August 1941, NA CAB 65/19/20 (Most Secret Addendum) and *FRUS 1941 Vol. I General, The Soviet Union*, Documents 368: Memorandum by the Under Secretary of State (Welles) of a Conversation with the British Permanent Under Secretary of State for Foreign Affairs (Cadogan) 9 August 1941 and 369–371: Memorandum of Conversation, by the Under Secretary of State (Welles) 10 and 11 (twice) August 1941.

or the 'Atlantic Declaration', but, as a result of an overnight *Daily Herald* editorial, it immediately came to be known as the Atlantic Charter.[145]

While President Roosevelt and Prime Minister Churchill were the central protagonists, albeit that Prime Minister Churchill was under some obligation to obtain War Cabinet approval, much of the preliminary and on-going negotiations and drafting were delegated to Under Secretary of State Welles and Permanent Under-Secretary of State for Foreign Affairs Cadogan. The last-minute decision to add Welles and Cadogan to the meeting roster was taken largely because of the Foreign Office's anxiety that Cadogan should be on hand to 'guide' an impulsive Prime Minister Churchill through the negotiations. In response, President Roosevelt determined that Welles, as his opposite number, should also be brought on board. This strongly implies that neither Prime Minister Churchill nor President Roosevelt envisaged that their meeting would conclude with what would prove to be such a momentous public statement. Welles, for example, would later record that: 'There had been no prior exchange of views between the President and Mr. Churchill about issuing a declaration such as the Atlantic Charter.'[146] A similar explanation was given by Prime Minister Churchill on his return to the UK:

> We had the idea when we met there, the President and I, that without attempting to draw final and formal peace aims, or war aims, it was necessary to give all peoples, and especially the oppressed and conquered peoples, a simple, rough-and-ready wartime statement of the goal towards which the British Commonwealth and the United States mean to make their way.[147]

145 'Editorial', *Daily Herald* 15 August 1941, 2 (originally identified by T.A. Wilson, *The First Summit: Roosevelt and Churchill at Placentia Bay 1941* (Boston, 1969), 222, who mistakenly gave the publication date as 14 August). As regards the official record, once 14 August was recognised as the official date in the Declaration by United Nations (see page 73 below), as Millar to Dunbar 21 July 1942, NA PREM 3/485/9 noted, it became impossible to alter and from there that date found its way into other international agreements.

146 T.A. Wilson, 'The First Summit: FDR and the Riddle of Personal Diplomacy' and D. Reynolds, 'The Atlantic "Flop": British Foreign Policy and the Churchill-Roosevelt Meeting of August 1941', D. Brinkley/D.R. Facey-Crowther (eds), *The Atlantic Charter* (Basingstoke 1994), 4, 135–136 and S. Welles, *Where Are We Heading?* (London, 1947), 5; see also J. Harvey (ed.), *The War Diaries of Oliver Harvey* (London, 1978), 31 (reference from A.W.B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*, paperback edn (Oxford, 2004), 179).

147 Prime Minister Churchill, Broadcast 24 August 1941, http://www.ibiblio.org/pha/policy/1941/410824a.html, last accessed 6 February 2013 (reference from 'Note on the Atlantic Declaration', Foreign Research and Press Service, Balliol College, Oxford, 3 September 1941, RR. I/59/iii, 1, NA CAB 117/58).

Nonetheless, both Welles and Cadogan were experienced diplomats and there have been some suggestions that Welles may have arrived with a draft statement of war and peace aims, prepared in the last hours before departure and based on discussions in the preceding weeks with President Roosevelt. Similarly, that Cadogan may also have brought with him papers on potential war aims. As it is, though, none of these alleged preparatory documents have been identified in the official archives, nor is there any mention of them in the several first-hand accounts of the discussions.[148]

Reflecting his appreciation of Cadogan's contribution to these negotiations, Prime Minister Churchill would subsequently confess to him: 'Thank God I brought you with me'. In contrast, Cadogan's view may be surmised from a letter he was to write to his wife in early 1945 from the Yalta Conference: 'The Great Men don't know what they're talking about and have to be educated and made more tidy in their methods.'[149]

According to Prime Minister Churchill's official account, the initiative had come from President Roosevelt: 'At one of our first conversations, the President told me that … it would be good if we could draw up a joint declaration laying down certain broad principles which guide our policies along the same road.' President Roosevelt went on to explain that, although personally inclined to support US entry into the war, he was confronted by a divided country as yet unconvinced of the inevitability of war. As Welles was to recall: 'By the summer of 1941 the overwhelming issue was his need to obtain the support of the people … and of their Congress, for those measures which were indispensable.'

For this reason, a joint declaration, ostensibly summarising the 'full' ambit of discussions, and with appropriate references to matters of particular US interest, was intended as political cover for President Roosevelt against any suspicions that the US Congress might entertain about what had been discussed and promised at this initially secret meeting. A declaration, not being a treaty, had the further advantage in that it would not require formal ratification by the US Senate. Unprepared, and left with little choice but to go along, Prime Minister Churchill anxiously sought Cabinet approval: '(President Roosevelt) attaches so much importance to the joint declaration, which he believes will affect the

148 F. Davis/E.K. Lindley, *How War Came to America: From the Fall of France to Pearl Harbour* (London, 1943), 221 (reference from W.L. Langer/S.E. Gleason, *The World Crisis and American Foreign Policy: The Undeclared War 1940–1941* (New York, 1953), 681 Note 40) and T.A. Wilson, *The First Summit: Roosevelt and Churchill at Placentia Bay 1941*, 187 and 'The First Summit: FDR and the Riddle of Personal Diplomacy', 13.

149 D. Dilks (ed.), *The Diaries of Alexander Cadogan O. M. 1938–1945* (London, 1971), 401 (reference from W.R. Louis, *Imperialism at Bay 1941–1945: The United States and the Decolonization of the British Empire* (Oxford, 1977), 123 Note 5) and 704 (reference from S. Bills, *Empire and Cold War: The Roots of US-Third World Antagonism, 1945–47* (London, 1990), 14).

whole movement of U.S. opinion … It would be most imprudent … to raise unnecessary difficulties … I fear President will be very much upset if no joint statement can be issued, and grave and vital interests might be affected.' As for Prime Minister Churchill, his aspirations for the meeting were almost wholly invested in securing a commitment, secret or otherwise, to US entry into the war; and, as a secondary goal, agreement on a strategy that might dissuade Japan from the further territorial aggressions that would inevitably lead to an extension of the war.[150]

Prime Minister Churchill's realisation that a commitment to enter the war could not be considered at this time was an enormous if not unexpected disappointment, although the outcome of the discussions on Japan was more favourable. In such circumstances, therefore, beyond goodwill and platitudes aimed at disguising the failure, there was nothing to be gained in a fanciful declaration. On the contrary, Prime Minister Churchill had consistently expressed his doubts 'about the utility of attempting to plan the peace before we have won the war'.[151] He could therefore only confess the 'difficulty attaching to all such declarations' and, in recommending acceptance, with resignation admit that:

150 Churchill Memorandum, 2–6, Most Secret Addendum, 1, Telegram, The Prime Minister to the Lord Privy Seal 11 August 1941, The Prime Minister to the Foreign Office 11 August 1941, Conference Telegrams, 7–10, *FRUS 1941 Vol. I General, The Soviet Union*, Documents 176–237, 368: Memorandum by the Under Secretary of State (Welles) of a Conversation with the British Permanent Under Secretary of State for Foreign Affairs (Cadogan) 9 August 1941 and 369–371: Memorandum of Conversation, by the Under Secretary of State (Welles) 10 and 11 August 1941 and S. Welles, *Where Are We Heading?,* 3–6. Although Welles indicates that the initiative had come from Prime Minister Churchill, this is contradicted by UK official accounts and probably reflects his slight misreading of the initial conversation between the two leaders on 9 August when the idea of a declaration was first mooted and Cadogan was assigned to prepare the first draft; for more detailed background, see also US 79th Congress 1st Session, *Hearings before the Joint Committee on the Investigation of the Pearl Harbour Attack* (Washington, 1947).

151 Churchill to Eden 24 May 1941, NA PREM 4/100/5 (reference from D. Reynolds, 'The Atlantic "Flop": British Foreign Policy and the Churchill-Roosevelt Meeting of August 1941', 141–142). The context was a response to Foreign Secretary Eden's enthusiastic endorsement of J.M. Keynes' official 'Draft Statement to Counter German New Order', NA PREM 4/100/5. Foreign Secretary Eden had promised a copy to Hopkins, President Roosevelt's personal representative, who had seen an early draft and was keen for President Roosevelt to see it as he felt that it would resonate with the President's thinking about the priority of economic reconstruction in post-war planning; see also D. Dilks (ed.), *The Diaries of Alexander Cadogan O. M. 1938–1945*, 221–222 (reference from A.W.B. Simpson, *Human Rights and the End of Empire*, 158).

'We must regard this as an interim and partial statement of war aims designed to reassure all countries … and not the complete structure … after victory.' At best, he could only suggest that: 'The profound and far-reaching importance of this Joint Declaration is apparent. The fact alone of the United States, still technically neutral, joining with a belligerent Power in making such a Declaration is astonishing.' The War Cabinet took a similar view: 'that while the Declaration in certain respects fell short of what the War Cabinet would themselves like to have seen issued, the right course was to accept it.'[152]

Whereas for President Roosevelt the Declaration was therefore to serve its purpose – the political response proved gratifyingly favourable – for the Foreign Office, notwithstanding Cadogan's involvement, loss of drafting control had burdened it with a confused declaration.[153] It was generally thought: 'A terribly woolly document full of all the old clichés of the League of Nations period'; and Point 3 especially 'made in language which lends itself to too many interpretations'. One year later, Under-Secretary of State for the Colonies Macmillan was asked to prepare a summary of all the statements that had been made on the Atlantic Charter and he too reached a similar, though flawed, conclusion:

> I do not think the P.M. can have realised the true nakedness of the land when he made the statement of September 9th, 1931 (*sic.* – see page 166 below) The declarations are not complete in themselves, nor are they free from ambiguity. They are scrappy, obscure and jejune … The P.M. must have written the declaration more or less on his own.[154]

As political necessity had dictated the need for a declaration, so it essentially also prescribed (and proscribed) its content. President Roosevelt's two primary interests were therefore laid out in the initial discussion between Welles and Cadogan and they would form the basis on which Cadogan prepared the first draft.[155] Firstly, President Roosevelt sought confirmation that Britain and the

152 Telegram, The Prime Minister to the Lord Privy Seal 11 August 1941, 7–8, Churchill Memorandum, 4 and W.M. (41) 81st Conclusions Meeting of War Cabinet 12 August 1941, NA CAB 65/19/17.

153 T.A. Wilson, 'The First Summit: FDR and the Riddle of Personal Diplomacy', 17, 21. L.C. Gardner, 'The Atlantic Charter: Idea and Reality, 1942–1945', D. Brinkley/D.R. Facey-Crowther (eds), *The Atlantic Charter*, 50 notes the positive Gallup Poll approval rating response.

154 J. Harvey (ed.), *The War Diaries of Oliver Harvey*, 31, Atlantic Charter (Authorship not clear, possibly Macdonald) 19 August 1941 W14302, NA FO 371/28909 and Macmillan to Gater 1 September 1942, NA CO 323/1848/19 (reference from R.D. Pearce, *The Turning Point in Africa: British Colonial Policy 1938–48* (London, 1982), 26).

155 *FRUS 1941 Vol. I General, The Soviet Union*, Document 368: Memorandum by the Under Secretary of State (Welles) of a Conversation with the British Permanent

Soviet Union had not entered into secret agreements on post-war territorial adjustments as they had done during the First World War. It was a concern that he had already expressed with some urgency even prior to the meeting.[156] As Welles makes clear, 'the President had uppermost in his mind … that an agreement on principles between the British and American governments would remove the danger that the British government might enter into … secret agreements'. While Welles expressed satisfaction for the time being with Cadogan's verbal assurances that there were no secret commitments, it is nevertheless clear that Points 1 to 3 were conceived by Cadogan exclusively as a means of further allaying President Roosevelt's concern.[157] Secondly, exploiting his superior bargaining position, in Points 4 and 5 President Roosevelt sought to force a British commitment to a more open post-war international economic system 'as a fundamental factor in the creation of a new and better world'. At this time, as Simpson describes, the US believed that the key issue of post-war negotiations would be the international economic system and they had therefore placed responsibility for US post-war planning in the hands of Pasvolsky, an economist. More immediately though, President Roosevelt's target was the preferential trading arrangements of the British Empire and it was this issue that emerged as the main sticking point at the meeting. Prime Minister Churchill felt he had first to obtain the advice and approval of the War Cabinet on this matter and as a result it was the last point to be resolved between the two sides. Ultimately, it was only accepted by Prime Minister Churchill with the reservation 'with

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Under Secretary of State for Foreign Affairs (Cadogan) 9 August 1941. The three primary drafts are set out in Churchill Memorandum, Cadogan draft, 2; Welles draft, 8 Annex I; and Final Declaration, 8–9 Annex II. More detailed explanations of textual discussions are set out in Churchill Memorandum, 2–4, Telegrams between Prime Minister Churchill and the Lord Privy Seal 11–12 August 1941, Conference Telegrams, 7–17, *FRUS 1941 Vol. I General, The Soviet Union*, Documents 370 and 371: Memorandum of Conversation, by the Under Secretary of State (Welles) 11 August 1941 and S. Welles, *Where Are We Heading?*, 4–14; see also R.B. Russell/J.E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945* (Washington, 1958), 33–34.

156 *FRUS 1941 Vol. I General, The Soviet Union*, Documents 363: The Acting Secretary of State to the Ambassador in the United Kingdom (Winant) (on behalf of President Roosevelt to Prime Minister Churchill) 14 July 1941, and 364: The Ambassador in the United Kingdom (Winant) to the Secretary of State 16 July 1941.

157 S. Welles, *Where Are We Heading?*, 5, *FRUS 1941 Vol. I General, The Soviet Union*, Document 368: Memorandum by the Under Secretary of State (Welles) of a Conversation with the British Permanent Under Secretary of State for Foreign Affairs (Cadogan) 9 August 1941 and Cadogan 20 August 1941 W10301/426/49, NA FO 371/28904; see also Draft chapters for Cadogan's autobiography (1960) ACAD 7/2, 4 and Diary 9 August 1941 ACAD 1/10, The Papers of Sir Alexander George Montagu Cadogan (1884–1968), Churchill Archives Centre, Churchill College, Cambridge.

due respect for their existing obligations', which was aimed at safeguarding the system of Imperial Preference.[158]

On his side, with the limited hand he had to play, Prime Minister Churchill fought resolutely for the inclusion of points that responded to British concerns. However, with US foreign policy still traumatised by the failures of the League of Nations system, US political calculation determined that the discreet hint in Point 8 of the 'establishment of a wider and permanent system of general security' was preferred to a direct reference to a post-war 'effective international organisation'. In the same way, the fear of objections from US isolationists prompted President Roosevelt, over Prime Minister Churchill's strenuous protestations, – he 'deprecated … the absence of commitments. This would be seized on by Germany' – to excise Cadogan's hopefully exuberant Preamble references to Nazi and German aggression and a common policy accord (although the excision was slightly ameliorated by a more generous explanatory statement preceding the Declaration).[159]

As the several drafts clearly establish, there was little if any change in the substance of Points 1 to 3 throughout the drafting process. This was because, as Welles was to point out, they were 'admirable in their clarity'. In fact, no changes were made to Points 1 and 2 of Cadogan's initial draft. They provided that: 'First, their countries seek no aggrandizement, territorial or other; Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.' As for Point 3, the changes were largely cosmetic. Cadogan's initial draft had proposed that: 'They respect the right of all peoples to choose the form of government under which they will live; they are only concerned to defend the rights of freedom of Speech and Thought, without which such choice must be illusory.' It seems inconceivable that this formulation was intended to encompass self-determination for the colonial territories as opposed to President Roosevelt's far more specific concern over secret commitments, a

158 *FRUS 1941 Vol. I General, The Soviet Union*, Document 370: Memorandum of Conversation, by the Under Secretary of State (Welles) 11 August 1941, Telegrams between Prime Minister Churchill and the Lord Privy Seal 11–12 August 1941, Conference Telegrams, 7–13, Churchill Memorandum, 3–4 and A.W.B. Simpson, *Human Rights and the End of Empire*, 175–176; see also L.S. Pressnell/S.V. Hopkins, 'A Canard Out of Time? Churchill, the War Cabinet and The Atlantic Charter, August 1941', *Review of International Studies,* 14/3 (1988), 223–235, W.R. Louis, *Imperialism at Bay 1941–1945*, 24 and W.L. Langer/S.E. Gleason, *The World Crisis and American Foreign Policy*, 683–686. Imperial Preference was a system of mutual tariff reduction enacted throughout the British Empire following the Ottawa Conference of 1932.

159 *FRUS 1941 Vol. I General, The Soviet Union*, Document 370: Memorandum of Conversation, by the Under Secretary of State (Welles) 11 August 1941, Churchill Memorandum, 3 and S. Welles, *Where Are We Heading?,* 8–10; see also R.E. Sherwood, *Roosevelt and Hopkins, an Intimate History* (New York, 1950), 359–360.

concern that Cadogan cleverly conjoined with elements of President Roosevelt's Four Freedoms address.[160]

After review with President Roosevelt, the second Welles draft, which became the initial draft of discussion between the two leaders, deleted the subsidiary clause, the defence of 'the rights of freedom of Speech and Thought', and added 'and they wish to see self-government restored to those from whom it has been forcibly removed'; an amendment that considerably weakens any possible inference that it was intended to encompass the colonial territories. In the final discussion of the text, minor textual amendments apart, Prime Minister Churchill inserted 'sovereign rights and' to the US amendment, which therefore completely excludes any possibility of an inference to the colonial territories as they could hardly be said to have been in prior enjoyment of sovereign rights. Finally, therefore, Point 3 affirmed that both governments 'respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them'.

Reflecting their relative negotiating positions, the Atlantic Charter was therefore a largely one-sided declaration that primarily sought to address President Roosevelt's political concerns while taking some account of Prime Minister Churchill's sensitivities. There is no evidence to suggest that colonialism, India or, least of all, Africa had emerged at that time as political questions to which Point 3 would have been intended as an answer. Other than the later account put forward by President Roosevelt's son, Elliott, who was present on the USS Augusta, there are no references to such a discussion in either the official papers or the public or private memoirs of the major participants.[161] Indeed, Cadogan's

160 S. Welles, *Where Are We Heading*?, 6–9. The 'Four Freedoms address' is the name often given to the State of the Union Address to Congress 6 January 1941, Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York (see http://www.fdrlibrary.marist.edu/pdfs/ffreadingcopy.pdf, last accessed 13 March 2023). For an interesting analysis of the speech, see L. Crowell, 'The Building of the "Four Freedoms" Speech', *Speech Monographs,* 22/5 (1955), 266–283.

161 W.R. Louis, *Imperialism at Bay 1941–1945*, 19–20, 121–122 is one of several commentators who regard the account by E. Roosevelt, *As He Saw It* (New York, 1946), 35–38 as partial; see also M.S. Venkataramani, 'The United States, the Colonial Issue, and the Atlantic Hoax', *International Studies,* 13/1 (1974), 18–21, who argues that a narrow interpretation was agreed by the two leaders at the time but that official records of the conversations which would confirm this arrangement remain sealed, and W. Range, *Franklin D. Roosevelt's World Order* (Athens, 1959), 105. The official British position is set out in W.M. (41) 89th Conclusions Meeting of War Cabinet 4 September 1941, NA CAB 65/19/25 and 'Interpretation of Point III of Atlantic Declaration in respect of the British Empire' (respectively) Memorandum by the Secretary of State for India and for Burma 29 August 1941 WP (G) (41) 85, NA CAB 67/9/85, and Memorandum by the Secretary of State for the Colonies 2 September 1941 WP

private diary recorded that discussion of Points 1 to 3 'went well', which could hardly have been the case if colonial independence had been discussed.[162] As for the Soviet Union, it at least had little difficulty in interpreting the purport and intended application of Point 3 and as a result qualified its later accession to the Atlantic Charter with the explanatory statement 'that the practical application of these principles will necessarily adapt itself to the circumstances, needs, and historical peculiarities of particular countries'; a view that the British obviously shared but for quite different reasons. Shortly thereafter, in the face of British hesitation at acquiescence in Soviet proposals for the post-war absorption of the Baltic States, General Secretary Stalin was more explicit: 'I thought that the Atlantic Charter was directed against those people who were trying to establish world dominion. It now looks as if the Atlantic Charter was directed against the U.S.S.R.'[163]

However, one year later, with the US having joined the war and President Roosevelt's political priorities having therefore moved on, cracks began to appear in the hitherto shared gloss which the two leaders wished to see placed on the intended scope of Point 3. These cracks first emerged into the open when the Office of War Information issued a guidance note to radio stations as to the line which they might wish to adopt with regard to an expected statement from President Roosevelt on the occasion of the first anniversary of the Atlantic Charter. The note indicated that: 'The Atlantic Charter is world-wide in scope. It applies to … Africa … The Atlantic Charter gets its name from the fact that it was signed at sea and not because it applies only to the nations bordering on the Atlantic as some persons mistakenly think.'[164] It prompted Prime Minister Churchill to write urgently to President Roosevelt to remind him of what they had agreed:

> I hope you will let me see beforehand the text of any message you are thinking of sending me upon the anniversary of the Atlantic Charter … We considered the wording of that famous document line by line together and I should not be able, without mature consideration, to give it a wider interpretation than was agreed between us at the time. Its proposed application to Asia and Africa requires much thought.[165]

(G) (41) 89, NA CAB 67/9/89. For USS Augusta, see Chapter 2, fn 5.

162 Diary 9 August 1941 ACAD 1/10, The Papers of Sir Alexander George Montagu Cadogan (1884–1968), Churchill Archives Centre, Churchill College, Cambridge.

163 'Statement by Ambassador Maisky in support of the Atlantic Charter principles', HMSO Cmd. 6315, *Inter-Allied Meeting, London 24 September, 1941 Report of Proceedings* (London, 1941), 4–6, 10–11 and *FRUS 1942 Vol. III Europe*, Document 427: The Ambassador in the United Kingdom (Winant) to the Secretary of State 19 January 1942 (reference from L.C. Gardner, 'The Atlantic Charter: Idea and Reality, 1942–1945', 54). The documents on the US side are issued in *FRUS 1941 Vol. I General, The Soviet Union*.

164 Telegram, Eden to Prime Minister Churchill 8 August 1942, NA PREM 3/485/9

165 Telegram, Prime Minister Churchill to President Roosevelt 9 August 1942, NA PREM 3/485/9.

Following up with Foreign Secretary Eden (UK), who had brought this matter to his attention, Prime Minister Churchill added: 'I cannot see any advantage in making specific declarations on the spur of the moment. There is every advantage in keeping things vague and general.'[166]

Rather tactfully, at least on this occasion, President Roosevelt withdrew the guidance note.[167] However, he would not always be minded to show sympathy or sensitivity to Prime Minister Churchill's difficulties with the colonial territories over Point 3 as would be clearly apparent from the US diplomatic push from 1942 to 1944 for a joint declaration on the colonies, often described as the Colonial Charter, and from his various public pronouncements and those of senior members of his administration. As a result, Prime Minister Churchill was faced with an on-going fear as to what President Roosevelt might say as, of course, at this time, reaction to a statement by the President of the United States as to the world-wide application of Point 3 could scarcely be contained within President Roosevelt's domestic political universe; nor was it always intended by President Roosevelt that it should.[168]

Indeed, from the moment of its announcement, Point 3 became the object of widespread international attention and, exactly as the Foreign Office had feared, its interpretation willed by perspectives and *desiderata* far removed from those which its authors had contemplated. On the day of the announcement, Secretary of State for India and for Burma Amery (UK) would already record: 'I hear that Burmese Ministers have already asked … for an immediate fulfilment of Point Three as to all peoples choosing their own form of Government … We shall no doubt pay dearly in the end for all this fluffy flapdoodle.'[169] The response from Africa would not be far behind.

166 Telegram, Prime Minister Churchill to Eden 9 August 1942, NA PREM 3/485/9.

167 Telegram, President Roosevelt to Prime Minister Churchill 13 August 1942, NA FO 954/31B/422 and 14 August 1942, NA FO 954/31B/12462 and Prime Minister Churchill to President Roosevelt 15 August 1942, NA PREM 3/485/9. The anniversary statement issued by President Roosevelt is in *Department of State Bulletin* 7/164 (1942), 697.

168 W.R. Louis, *Imperialism at Bay 1941–1945*, 227–258 and J.E. Williams, 'The Joint Declaration on the Colonies: An Issue in Anglo-American Relations, 1942–1944', *British Journal of International Studies,* 2/3 (1976), 267–292.

169 J. Barnes/D. Nicholson (eds), *The Empire at Bay: The Leo Amery Diaries Vol. 2 1929–1945* (London, 1988), 710 (reference from D. Reynolds, 'The Atlantic "Flop": British Foreign Policy and the Churchill-Roosevelt Meeting of August 1941', 145); the diary entry date of 14 August 1941 is suspect as the announcement was only made at 3.00pm (London time) 14 August 1941 and therefore could not have been known on that same day in Burma.

It is a measure of the international attention it attracted that, barely five months later, it was considered appropriate, necessary even, to incorporate the Atlantic Charter into the Declaration by United Nations, the diplomatic initiative that followed on from US entry into the war after Pearl Harbour. Although essentially aimed at pre-empting the possibility of a separate peace, the Declaration by United Nations also provided for 'a common program of purposes and principles … known as the Atlantic Charter' and recognition that 'complete victory … is essential to defend life, liberty, independence and … to preserve human rights and justice in their own lands as well as in other lands'.[170] As Simpson has pointed out, this was the first occasion on which 'human rights' found mention in an international document.[171] Even more so, it was a fateful step as, with its inclusion in the formal Declaration by United Nations, the status of the Atlantic Charter was effectively elevated from that of an informal Joint Declaration to a formal expression of war aims by the wider group of the United Nations. More worryingly, the references to 'the rights of all people' and 'human rights' were thereby opened up to appropriation and interpretation by any of its signatories, or, even, as would become clear, by the many interested parties in the colonial territories around the world.[172]

170 *FRUS 1942 Vol. I General, The British Commonwealth, The Far East*, Document 18: Declaration by United Nations 1 January 1942; see also H. Notter (ed.), *Postwar Foreign Policy Preparation 1939–1945* (Washington, 1949), 61–65. There were 26 initial signatories; Egypt, Ethiopia and Liberia acceded at a later date.

171 A.W.B. Simpson, *Human Rights and the End of Empire*, 183–185; as Simpson also points out, 'human rights' was only added in the final draft, which was only seen by the War Cabinet after Prime Minister Churchill's acceptance. The textual record is set out in Declaration by United Nations, signed 1 January 1942, *FRUS 1942 Vol. I General, The British Commonwealth, The Far East*, Documents 1–34.

172 In the US there had been significant criticism of the absence in the Atlantic Charter of any reference to 'freedom of religion'. As a result, President Roosevelt would report to the US Congress on 21 August 1941 that it should be 'unnecessary for me to point out that the declaration of principles includes of necessity the world need for freedom of religion and freedom of information' (see http://avalon.law.yale.edu/wwii/atcmess.asp, last accessed 11 February 2013). Although the first draft of the preamble of the Declaration by United Nations did not include a reference to 'freedom of religion', President Roosevelt insisted on its inclusion. Subsequently, General Secretary Stalin, through Ambassador Litvinov in Washington, agreed to accept a compromise wording of 'religious freedom' (see *FRUS 1942 Vol. I General, The British Commonwealth, The Far East*, Document 7: President Roosevelt to the Secretary of State 27 December, 1941); see also C. Hull, *The Memoirs of Cordell Hull* (London 1948), 1114–1126.

Longer term, however, these were not the only phrases in the Atlantic Charter that would resonate and endure in African minds. After independence, as African minds started to turn from political to economic independence, they would also recall the phrase in Point 6, 'freedom from fear and want', taken by Cadogan from President Roosevelt's 1941 State of the Union Address, and repeatedly employ and apply their interpretation of that phrase to justify their demands for a new economic order as encapsulated in the campaign for a 'right to development' and a new international economic order (NIEO).[173]

173 The original reference to freedom from fear and want was to Nazi aggression towards other states, not its own people, and to the economic dislocation of the 1930s. This context is clearly identified in the ordering of the Atlantic Charter points (Points 5 and 6) but also in President Roosevelt's State of the Union Address to Congress 6 January 1941: 'The third is freedom from want – which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world. The fourth is freedom from fear – which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour – anywhere in the world.'

Part One

The Origins of the ACHPR

Chapter 2

The Atlantic Charter and the Post-war International Settlement

Point 3 of the Atlantic Charter, with its seeming commitment to 'respect the right of all peoples to choose the form of government under which they will live', and apparent underpinning by the United States, struck an immediate chord in many of the African colonial territories. In Smyth's somewhat over-exuberant estimation, it 'swept like a grass fire through Africa'.[1] At a stroke, it legitimised what had hitherto been only isolated African demands for self-government, demands which the colonial powers had simply dismissed as radical and immoderate, and laid bare the pretensions of the repeated claim in Allied and French wartime propaganda that the war was being fought for the freedom, or benefit, of all. That claim would now come under particularly close scrutiny as many Africans, particularly in British West Africa, began to ask in turn: 'What does it mean for us?' All the more so when Prime Minister Churchill immediately sought to deny the application of Point 3 to the African colonial territories; a denial that made of Africa a clear exception that many Africans would increasingly come to see as having been determined by racial considerations alone.

Increasingly, therefore, as the end of the war hove into sight, self-determination began to emerge as the central question of African political life with, in many colonial territories, corresponding hopes and expectations of what might be achieved in the post-war settlement to come – and, in many cases, though not all,

1 R. Smyth, 'Britain's African Colonies and British Propaganda during the Second World War', 78. P.G. Lauren, *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination* (Boulder, 1996), 146 suggests: 'A declaration of principle like this (the 1942 Declaration) provided tremendous inspiration for those fighting against the Axis and elicited enormous sacrifices for the cause of freedom.' As against Lauren, there is a nonetheless telling anecdote of a Kenyan KAR soldier who 'protested when being told … that he was fighting for democracy. He was fighting for King George V … and if he was fighting for democracy he must have extra pay', quoted by E.E. Sabben-Clare, 'African Troops in Asia', *African Affairs* 44/177 (1945), 157.

Point 3 would come to represent the political and moral authority upon which demands for self-determination would be based. At the very least, it would serve as the petard upon which the moral authority of colonialism might legitimately be hoist. As Emerson and Kilson therefore pointed out, by the end of the war, there was 'a substantial body of people no longer content to tolerate the existing colonial situation nor modestly to suggest that they might be accorded some participation in colonial political management'.[2]

How that question would come to be manifested on the ground would ultimately depend on two primary, albeit symbiotic, factors: The general philosophy and approach of the colonial power to colonial governance and the particular circumstances of the individual colonial territories. If therefore, in the first instance, there would be significant differences in the ambitions and paths of African anti-colonialism as between the European colonial empires, thereafter, the push for self-determination would also differ widely in form and amplitude of expression depending on the particular political and social circumstances of the individual colonial territories. For example, in French North Africa, anti-colonialist political forces were already established and ready to go, but in most other British and French colonial territories educated African opinion was still at the stage of building a political base, defining more precisely its immediate political aims, establishing an organisational structure and identifying the means by which its representations might effectively be made. It was a process which would necessarily take time to work itself through and whose rate of progress would be largely dependent on local conditions. Moreover, as the colonial powers were still intent on maintaining control, there was as yet no certainty as to how this process might play out and no obvious sign of a Whiggish road map or timetable leading to independence. In French North Africa, therefore, this process would proceed by means of active demands for independence, leading to forced exile or imprisonment, while in French West and Equatorial Africa there would be *évolué* collaboration and evolution towards greater autonomy rather than independence. In most of the British colonial territories it would necessitate a rising opposition not only to colonial government but also the rule of the traditional tribal chiefs. In addition, as the prospect of power began to loom large, it also brought into play fierce regional and tribal conflicts that would eventually come to be reflected in the negotiations over the human rights provisions incorporated into the constitutions of the British colonial territories.

2 R. Emerson/M. Kilson, *The Political Awakening of Africa* (New Jersey, 1965), Introduction; see also R.W. July, *The Origins of Modern African Thought: Its Development in West Africa during the Nineteenth and Twentieth Centuries* (London, 1968), 467.

Africa and the Atlantic Charter

Morocco

Although an awareness of the potential significance of the Atlantic Charter had already insinuated itself into the political consciousness of North Africa by way of Allied wartime propaganda, the prominence that the Atlantic Charter would assume can initially be directly attributed to President Roosevelt's reckless remarks to Sultan Muhammad V. These undoubtedly reflected the dismal first-hand impressions he had gained in the course of his journey to the January 1943 Casablanca Conference. The road to Casablanca had taken him through Bathurst (Banjul), capital of the British Gambia; a further side trip, on his return journey, would also take him to Monrovia, capital of Liberia. Even though he had only been able to undertake a brief tour of these places, he was profoundly disturbed by what he had seen. His impressions can be grasped from the official log and comments at press conferences on his return to the US. They reveal that in Bathurst he was disturbed by the low wage rates 'one (shilling) and nine (pence) … per day, together with a half-cup of rice' and the seemingly glum demeanour of the workers, leading him to declare that the British Gambia was 'the most horrible thing I have ever seen in my life' and that colonial development in West Africa 'hasn't been good'.[3] Writing to Prime Minister Churchill two months later, he would also refer to 'that hell-hole of yours called Bathurst', and even two years later, at a meeting with Colonial Secretary Stanley (UK), he would still dwell on his horror at the general condition of the people in British Gambia.[4]

3 Log of the trip of the President to the Casablanca Conference, 9–31 January, 1943, Grace Tully Archives, Grace Tully Papers, Box 7 Logs of the President's Trips, Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York http://www.fdrlibrary.marist.edu/resources/images/tully/707.pdf, last accessed 13 July 2017, 'Special Conference for Negro Newspaper Publishers Association' 5 February 1944 (reference from W.R. Louis, *Imperialism at Bay 1941–1945*, 356–357) and 'Press Conference for the American Society of Newspaper Editors' 12 February 1943 (reference from W. Range, *Franklin D. Roosevelt's World Order*, 105–106), S.I. Rosenman, *The Public Papers and Addresses of Franklin D. Roosevelt: 1944–45 Victory and the Threshold of Peace*, 66–70 and *1943 The Tide Turns* (New York, 1950), 82–87; see also J-D. Miller, 'The United States and Colonial Sub-Saharan Africa, 1939–1945' (unpublished PhD dissertation, The University of Connecticut, 1981), 187–194. President Roosevelt's inspection tours were limited to a 30-minute boat tour of the Bathurst waterfront on the outward journey and a two hour trip up the Gambia River on his return. He would spend fewer than three hours in Liberia.

4 'Roosevelt to Churchill 17 March 1943', E. Roosevelt (ed.) assisted by J.P. Lash, *The Roosevelt letters: Being the Personal Correspondence of Franklin Delano Roosevelt Vol.3 1928–1945* (London, 1952), 461 and Memorandum by Taussig of meeting of

It was only after several days into his stay in Casablanca – his priority was military and political discussions with Prime Minister Churchill and the Combined Chiefs of Staff – that President Roosevelt extended a dinner invitation to Sultan Muhammad V, although he had already written to him to express his gratitude for his cooperation during the Operation Torch landings.[5] Indeed, Blair argues strongly that the invitation only came about because of the unforeseen gap in President Roosevelt's timetable brought about by General de Gaulle's delayed arrival.[6] This was a reflection of Sultan Muhammad V's status under the 1912 French Protectorate Treaty in which foreign policy was controlled by the French Resident-General who therefore closely supervised access to Sultan Muhammad V to the extent that he would even dictate Sultan Muhammad V's subsequent expression of appreciation to President Roosevelt for the dinner.[7]

No formal record seems to have been made of the dinner discussion and therefore information can only be gleaned from the memoirs of those present. Murphy, for example, recalled that: 'The President began the serious conversation by expressing sympathy with colonial aspirations for independence, and soon he was proposing … that arrangements should be made after the war for American-Moroccan economic cooperation.'[8] This account is essentially confirmed by Elliott Roosevelt. Among several references to the benefits of a trade and financial relationship with the US, Elliott Roosevelt portrays his father advising that US consultancy services would enable 'Morocco to retain considerable control over its own resources' as a counter to the 'self-perpetuating syndicates' of French and British financiers 'dredging riches out of colonies'. To

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President Roosevelt and Colonial Secretary Stanley 16–17 January 1945, Charles Taussig Papers, Box 49: Anglo American Caribbean Commission Files, State Department Photostats, 1945, Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York (references from W.R. Louis, *Imperialism at Bay 1941–1945*, 227, 438).

5 By coincidence, the Operation Torch landings were led by the USS Augusta, the ship on which President Roosevelt and Prime Minister Churchill had negotiated the Atlantic Charter.

6 *FRUS The Conferences at Washington, 1941–1942, and Casablanca, 1943*, Document 349: Roosevelt-Noguès conversation 17 January 1943, Noon, President's Villa, McCrea Notes, Roosevelt to Sultan Muhammad V 15 February 1943, quoted by L.B. Blair, *Western Window on the Arab World* (Austin, 1970), 96–97 and L.B. Blair, 'Amateurs in Diplomacy: The American Vice Consuls in North Africa 1941–1943', *The Historian*, 35/4 (1973), 615.

7 K. Pendar, *Adventure in Diplomacy: The Emergence of General De Gaulle in North Africa* (London, 1966), 148 refers to the possibility of a second private letter secretly sent out by Sultan Muhammad V as does L. Hahn, *North Africa, Nationalism to Nationhood*, 79.

8 R. Murphy, *Diplomat among Warriors: The Unique World of a Foreign Service Expert* (London, 1964), 216–217.

no great surprise, then, Elliott Roosevelt goes on to report Sultan Muhammad V leaving the meeting glowing: 'A new future for my country!'[9]

Some further confirmation of this conversation was subsequently given by President Roosevelt himself during his 1945 meeting with Colonial Secretary Stanley. He recalled that he had advised Sultan Muhammad V not to sell the oil that was starting to be discovered but to use it for internal developments such as irrigation projects and that Sultan Muhammad V had been amazed at such 'unselfish advice'.[10]

Almost certainly, no promises were made by President Roosevelt, but equally there seems to be no doubt that Sultan Muhammad V left that evening with a considerable degree of encouragement as to the prospect of recovering Moroccan independence. All the more so if, as Hahn reports, President Roosevelt subsequently wrote two letters to Sultan Muhammad V, one private and one to be read by the Resident-General, in which 'according to informed observers, he promised to "act personally at the end of the war to hasten the coming of Morocco's independence"'. Pendar, the US Vice-Consul in Casablanca at that time, would also recall that this was 'the first time in the history of Morocco that Sultan Muhammad V had met the head of any other foreign state than France … They considered this a proof of our sincerity in the Atlantic Charter'.[11]

Bernard therefore argues that this dinner marks the effective start of Morocco's nationalist conflict with France; an assessment also reached by a 1948 State Department paper which judged that: 'There is strong evidence that President Roosevelt … personally encouraged the Sultan to hope for American support in throwing off French control and in preparing Morocco, possibly under a joint U.S., British and French protectorate, for independence some years hence.'[12]

9 E. Roosevelt, *As He Saw It*, 109–112. Some caution has to be exercised in accepting this account. The log of the trip of the President to the Casablanca Conference, 9–31 January 1943, 9 indicates that Elliott Roosevelt was the most junior person present and therefore most likely would have been seated some way from his father; moreover, unlike other evenings, the log does not record President Roosevelt ending that day with a private conversation with his son. K. Pendar, *Adventure in Diplomacy*, 142 also records that the talk 'was out of earshot of the Resident-General', and, therefore, most likely also of Elliott Roosevelt.

10 Memorandum by Taussig of meeting of President Roosevelt and Colonial Secretary Stanley 16–17 January 1945.

11 L. Hahn, *North Africa, Nationalism to Nationhood*, 79 and K. Pendar, *Adventure in Diplomacy*, 43, 142, who also notes that: 'The Atlantic Charter struck … this … chord of idealism in the Arab mind. It made a truly profound impression on them and for months they hardly talked of anything else. I imagine they still discuss it today.'

12 S. Bernard, *The Franco-Moroccan Conflict 1943–1956* (New Haven, 1968), 3, 15–16 and *FRUS 1948 Vol. III Western Europe*, Document 431: Memorandum by the Policy Planning Staff PPS-25/NSC 12 22 March 1948 (Villard) (reference from B. Rivlin,

Indeed, Cline, a US Professor of Anthropology based in Morocco, recorded that: 'It was imagined that the Americans would prepare the land for independence, would transform Morocco into another California with their dams and ditches, and would found schools and universities to educate Moroccans in the arts of self-government.'[13]

As Sultan Muhammad V himself was barred from direct conversations with foreign diplomats, and was watched carefully by the French, he could only establish contact with US and British diplomats through intermediaries. Following the dinner, therefore, his intermediaries sought every opportunity to pledge friendship with the US (and the UK) and to express hopes of closer ties including full diplomatic representation. Already within a few days, Grand Vizier el Mokhri, who had been present at the dinner, was despatched to a secret meeting with Hopkins, President Roosevelt's personal foreign policy adviser, in order to obtain clarification of US intentions towards Morocco. The British Consul also met with el-Glaoui, Pasha of Marrakesh and was told that the Sultan regarded the 1912 French Protectorate Treaty as having lapsed and proposing that until Morocco became ready for independence a new protectorate arrangement might be established that would include the US, the UK and, possibly, Spain. In further meetings el-Glaoui expressed to US Consul General Russell his support for the United Nations cause and urged that steps be taken for higher-level US diplomatic representation as the basis on which collaboration might be established; and to the head of the US Legation, in September 1943, he outlined his aspirations for Moroccan independence, namely that 'he and all Moroccan Nationalists are hopeful that the United States will aid them in the restoration of a Moroccan State in accordance with "President Roosevelt's declaration". He later explained that by this "declaration" he meant the Atlantic Charter.' The US Consul General in Tangier also received a visit from el-Glaoui's Khalifa who

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'The United States and Moroccan International Status, 1943–1956: A Contributory Factor in Morocco's Reassertion of Independence from France', *International Journal of African Historical Studies,* 15/1 (1982), 64–65). In response, *FRUS 1948 Vol. III Western Europe*, Document 437: The Director of the Office of Near Eastern and African Affairs (Henderson) to the Acting Director of the Executive Secretariat (McWilliams) 11 June 1948 proposed an amendment to this memorandum to the effect that such encouragement should be described as 'directly or indirectly'; see also W.R. Louis, *Imperialism at Bay 1941–1 945*, 19–20 and *FRUS 1969–1976 Vol. E–5 Part 2 Documents on North Africa, 1969–1972*, Document 107: Morocco: Kenitra and the King 3 November 1970.

13 W.B. Cline, 'Nationalism in Morocco', *Middle East Journal,* 1/1 (1947), 24 (reference from C-R. Ageron, 'Developments in North Africa during the Second World War', *Africa and the Second World War Reports and Papers of the Symposium Organized by UNESCO at Benghazi, Libyan Arab Jamahiriya from 10 to 13 November 1980* (Paris, 1985), 42).

advised of 'the Sultan's anxiety to arrange for direct and secret contact with the British and United States representatives in Morocco'.[14]

At about the same time, the British Vice-Consul was subjected to a similar meeting with the Chief Judge of Salé who presented himself at the Consulate carrying an Arabic copy of the Atlantic Charter and 'anxious to know if the promise of the "four freedoms" merely amounted to political propaganda to enlist the sympathy and aid of the Arab population, or was it the honest intention of Mr Roosevelt and Mr Churchill to abide by the promise'. A second visit created 'the impression … that anti-French feeling is widespread' and invoked a plaintive question from the visitor: 'Does not the Atlantic Charter mean that the Moors are to have their independence?'[15]

The end of the war in North Africa also opened the door to the return of many of the exiled Moroccan nationalist leaders and, in December 1943, to the founding of a revived nationalist party, the Istiqlal (Independence) Party, thereby adding a further layer of nationalist agitation. Initially, it was thought that Istiqlal would demand no more than an increased participation in government, but it soon became apparent that they were aiming for an immediate end to the French Protectorate. As was made clear to US diplomats, this was a demand that Istiqlal was disinclined to discuss solely with the French but wished to see placed before a wider, more sympathetic, international audience.

On 11 January 1944, therefore, with the obvious complicity of Sultan Muhammad V, Istiqlal 'presented to the Sultan a memorial calling for Moroccan independence under Sultan, adherence to Atlantic Charter and representation at Peace Conference … many Moroccans believe Great Britain and particularly the United States will support their aspirations'. Copies were also handed to all the major Allied powers including the Soviet Union. It noted that 'the Allies, who are shedding their blood for the cause of liberty, have recognized in the

14 *FRUS The Conferences at Washington, 1941–1942, and Casablanca, 1943*, Document 382: Hopkins-el Mokhri conversation 23 January 1943, Casablanca, Wilbur Notes and *FRUS Vol. IV 1943 The Near East and Africa*, Documents 790: The Secretary of State to the Consul General at Casablanca (Russell) 5 May 1943, 791: The Consul General at Casablanca (Russell) to the Secretary of State 6 May 1943 and 795: The *Chargé* at Tangier (Childs) to the Secretary of State 2 October 1943, enclosing Memorandum by the *Chargé* at Tangier (Elbrick) 30 September 1943.

15 Acting Consul-General, Rabat to Principal Secretary of State, Copy of Memorandum from Mr Vice-Consul Brown, 25 August and 15 September 1943, NA FO 371/49275; this exchange seems to have also been recorded in Mayer, US Consul, Rabat to Murphy, 7 September 1943 and Murphy to Mayer, US Consul Rabat 6 October 1943, quoted by M.W. Willis, 'Undermining Self-determination: Robert Murphy and the Atlantic Charter in Tunisia, 1943', *Journal of North African Studies*, 17/4 (2012), 595–630.

Atlantic Charter, the right of people to freedom, independence'.[16] Al-Fāsi, one of the founders of Istiqlal, would similarly eulogise the impact of the Atlantic Charter on Moroccan nationalists: 'A new horizon had been opened for exposing colonialism and discrediting its oppressive policies.'[17]

Within a matter of weeks, though, the 1944 Brazzaville Conference (see page 146 below) would clearly demonstrate that independence was not an option that France was prepared to contemplate. In an attempt, therefore, to reach a more sympathetic audience, in March 1945, al-Yazadi, Joint Secretary-General of Istiqlal, appealed to the 'President' of the impending San Francisco Conference and to the governments of the US, the UK, the Soviet Union, China and France to allow Morocco a place among the United Nations, 'if, in conformity with the proclamation of the United Nations, each people, small or great, who took part in the coalition, is authorized to be represented in the new international forum, the Upholders of Liberty should allow our country to enjoy its share of Victory'.[18]

Continuing French reluctance to consider anything other than modest reforms eventually led to an impasse between Sultan Muhammad V and the French Resident-General and forced General de Gaulle to pursue a personal understanding with Sultan Muhammad V. Sultan Muhammad V was therefore invited to France where he was received with all the solicitous attention due a head of state and flattered to be made a *Compagnon de la Libération*. As was the intention, General de Gaulle took this opportunity to propose a gradual inde-

16 'Proclamation of the Istiqlal Party, Rabat, 11 January 1944', Office of the Istiqlal Party, *Documents 1944–1946* (Paris, 1946 English edn), 1–5 and *FRUS 1944 Vol. V The Near East, South Asia, and Africa, the Far East*, Documents 570: The Consul at Rabat (Mayer) to the Secretary of State 12 January 1944 and 571: The *Chargé* at Tangier (Childs) to the Secretary of State 14 January 1944; see also Native Nationalism in Spanish Morocco 1 June 1944, 11, *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961*, Reel 9 and D. Zisenwine, *The Emergence of Nationalist Politics in Morocco: The Rise of the Independence Party and the Struggle against Colonialism after World War II* (London, 2010).

17 A. al-Fasi, *The Independence Movements in Arab North Africa*, trans. from the Arabic by Hazem Zaki Nuseibeh (Washington, 1954), 382–384 (reference from B. Rivlin, 'The United States and Moroccan International Status, 1943–1956: A Contributory Factor in Morocco's Reassertion of Independence from France', 78).

18 'Petition to the San Francisco Conference 8 March 1945', Office of the Istiqlal Party, *Documents 1944–1946*, 19–25. As with most African petitions addressed to the San Francisco Conference, there seems to be no record in *Documents of the United Nations Conference on International Organization, San Francisco, 1945* (hereinafter *UNCIO*) (New York, 1945–54). The *United Nations Archives Reference Guide No. 10, Guide to the Records of the United Nations Conference on International Organization, San Francisco, 1945*, Section 27 suggests the possible existence of correspondence but the UN archives have been unable to locate details of petitions. It may be that petitions were open letters or were distributed outside of the official distribution system.

pendence arguing that Morocco had much to gain from friendship with France. Referring to the dinner with President Roosevelt, he posed the question: 'When President Roosevelt jingled the marvels of independence before your Majesty at Anfa, what did he offer you beyond the cash and a place among his customers?'[19]

While this charm offensive brought about a short, temporary *rapprochement*, inexorably, French intransigence towards real reforms reasserted itself and served to reinforce Moroccan demands for outright independence. As a result, Moroccan nationalists increasingly sought to put their case before an international audience and to base that case on the Atlantic Charter. In 1952, for example, a paper to the UN explained that: 'The renaissance of Moroccan nationalism coincided with the new birth of freedom … which eventually was crystallized in the Atlantic Charter and the United Nations Charter.' By then, too, the international political climate was such that Morocco phrased its appeal in terms of human rights, though that appeal would reference the UN Charter not the UDHR: 'The appeal to the United Nations is based on … the fact that France is denying the people of Morocco the right to self-determination and other human rights as guaranteed by the United Nations Charter.'[20]

Tunisia

Tunisia's status was essentially identical to that of Morocco. Nominally, it was a sovereign state subject to the authority of the Bey, but under the 1881 Treaty of Bardo and the 1883 Convention of al-Marsa the Bey had accepted French

19 C. de Gaulle, *Complete War Memoirs of Charles de Gaulle* (Paris, 1984), 923 (reference from E. Nwaubani, 'The United States and the Liquidation of European Colonial Rule in Tropical Africa, 1941–1963', *Cahiers d'Études africaines,* 43/171 (2003), 514), D. Stenner, 'Networking for Independence: The Moroccan Nationalist Movement and its Global Campaign against French Colonialism', *Journal of North African Studies,* 17/4 (2012), 573–594, http://www.academia.edu/1976142/Networking_for_independence_the_Moroccan_nationalist_movement_and_its_global_campaign_against_French, last accessed 13 March 2023, describes how Pendar returned to Morocco to set up the Coca-Cola franchise. The company supported the nationalist movement so that in retaliation the French started a rumour that Coca-Cola contained pork. That wiped out sales until Sultan Muhammad V's son (his uncle was a shareholder) drank a bottle in public to discredit the rumour; see also E.J. Kahn, Jr., *The Big Drink: An Unofficial History of Coca-Cola* (London, 1960), 37–38.

20 The Moroccan Delegation, *The Moroccan Question and the United Nations* (New York, 1952), 1, 10. For background on the Moroccan delegation in New York and cooperation with delegations from the other North African nationalist movements, see K.J. Perkins, 'North African Propaganda and the United States, 1946–1956', *African Studies Review,* 19/3 (1976), 65–77 and D. Stenner, 'Networking for Independence: The Moroccan Nationalist Movement and its Global Campaign against French Colonialism', 573–594.

Protectorate status administered by a Resident-General. In political terms, though, the nationalist position in Tunisia was more fragile. Following the armistice, the leaders of the nationalist Neo-Destour party had been arrested and deported to Vichy France and only repatriated to Tunisia in April 1943 barely a month before Allied troops finally took control of Tunisia. The initial nationalist running was therefore made by Moncef Bey.

In August 1942, some two months after being proclaimed as Bey on the death of his cousin, he presented a memorandum to the French Resident-General calling for reform measures aimed at reducing French political and administrative controls. A few months later, in January 1943, as nationalist expectations rose following the Operation Torch landings, he went further when, for the first time, he appointed a nationalist-minded government without the prior approval of the French Resident-General. As a result, when the new French colonial administration took over in May 1943, it prioritised Moncef Bey's removal and the appointment of a puppet Bey more amenable to French instructions. Administrative reforms reinforcing French control then followed alongside the arrest of several thousand nationalist Tunisians.[21]

It meant that, although the return of the main nationalist leaders, notably Bourguiba, enabled a revival of the Neo-Destour party, they had still to contend with the severe limitations on political activity imposed by the French but without the kind of ameliorating support Sultan Muhammad V was able to provide in Morocco. Bourguiba, one of the leaders of the Neo-Destour party, would therefore write to King George VI (UK), who had briefly visited Tunisia in June 1943, explaining that Tunisians merely regarded the Axis occupation as a short respite from the French occupation which had now resumed, and they therefore entertained great hopes for independence arising out of the principle laid down by Point 3.[22] Another letter to President Roosevelt described French repression and asked for help from 'the Head of the Great American Democracy': 'Thus by an irony of fate particularly cruel to our democratic hearts, the victory of the Democracies in Tunisia put in place the most authentic fascist methods there.' Bourguiba was advised that his letter had been 'read with interest'; indeed President Roosevelt even sought an update from Doolittle, the recently recalled US

21 Consul-General Moneypenny to Mr Eden Z 1317/16/69 15 February 1944, NA HS 3/47, M.W. Willis, 'Undermining Self-determination: Robert Murphy and the Atlantic Charter in Tunisia, 1943', 601–602, L. Hahn, *North Africa, Nationalism to Nationhood*, 29, N. Salem, *Habib Bourguiba, Islam and the Creation of Tunisia* (London, 1989), 112–115 and M. Thomas, *The French Empire at War, 1940–45*, 166.

22 Bourguiba to King George VI Tunis 19 June 1943, NA FO 371/36248 and Consul Gybbon-Moneypenny, Tunis to Speaight 16 September 1943, NA FO 371/36249; it seems unlikely that the letter was passed to King George VI whose visit included an open top drive around the city. After independence, Bourguiba became the first President of Tunisia.

Consul in Tangier. However, as Willis describes, largely through the scheming of Murphy, nothing practical was done to ameliorate French repression.[23]

Despite the restrictions on political activity, in November 1944 the Neo-Destour party issued a circular declaring that the goal of Tunisian nationalism was to guarantee 'to the Tunisian people their internal freedom, their honor and their prestige, having noted from the beginning that the ideal of the Allies was their own and that the Atlantic Charter reflected their own feelings and that no peace could be lasting between the great powers without an international organization guaranteeing to the smaller peoples their right to life'. [*au people tunisien sa liberté intérieure, son honneur et son prestige, a constaté dès le début que l'idéal des Alliés était le sien et que la Charte de l'Atlantique traduisait ses sentiments propres et que nulle paix n'était durable entre les grandes puissances sans une organisation internationale garantissant aux petits peoples leur droit à la vie*.] It was followed in February 1945 by the multi-party '*Manifeste du Front Tunisien*', which called for the complete independence of Tunisia.[24] The French responded with an intensification of political repression obliging Bourguiba, already under town arrest, to flee to Egypt. He would also travel to the US in late 1946 to lobby the UN and to put his case before US public opinion. For example, in an interview with the *New York Times*, he reminded its readers of recent, authoritative US anti-colonial texts and argued that 'because the United States had fought for the peace of the world, it should intervene to forestall bloodshed in Tunisia … Citing the San Francisco Charter, the Atlantic Charter and President Wilson's Fourteen Points as having formulated the basis for independence of North Africa's "small nations", he demanded that they be applied towards Tunisia.'[25]

Algeria

Algeria was a quite different proposition to Morocco and Tunisia. It was administered as an integral part of France and over time had absorbed almost one million French (*pied-noir*) settlers. As a result, for the most part, the Muslim elite were educated in France (as was Bourguiba) where they absorbed as a part of their own identity the ideas of French culture. In 1935, for example, nationalist leader Abbas would advise Minister of the Interior Régnier (France): 'There is nothing left in this country but the way of assimilation of fusion of the native element in French society.' He would also observe that he had looked but could not

23 Bourguiba to President Roosevelt 1 June 1943 and Alling to Doolittle 2 July 1943, quoted by M.W. Willis, 'Undermining Self-determination: Robert Murphy and the Atlantic Charter in Tunisia, 1943', 618, 623.

24 *Histoire du mouvement national tunisien, Pour préparer la troisième Épreuve, 1. Le Neo Destour brise le silence 1944/49* (Algiers, 1948), 157–60, 183–190.

25 N. Salem, *Habib Bourguiba, Islam and the Creation of Tunisia*, 114–120 and *New York Times* 4 December 1946, 15 (reference from K.J. Perkins, 'North African Propaganda and the United States, 1946–1956', 66).

find the Algerian nation and claimed: 'I am France because I am soldier, worker, artisan and consumer. To turn down my collaboration, my well-being and that of my compatriots is almost the same as gross heresy.'[26] Ironically, Abbas and Messali Hadj, the radical nationalist leader, both married French women, as did Bourguiba.

The Second World War, however, brought home to Abbas the depth of French discrimination and intransigence towards the equality and assimilation that were the counterpart of his French allegiance. At the same time, he became more attracted to the ideas seemingly suggested by Point 3.[27] By late 1942, therefore, Abbas would begin to discern an Algerian nation and to portray the war of liberation as the basis upon which independence might be established: 'If this war were, as the President of the United States has declared, a war of liberation of peoples and individuals, without distinction of race and religion, the Algerian Muslims would join in with all their strength and by all their sacrifices to this liberating struggle.' [*Si cette guerre etait, comme l'a déclaré M. le Président des Ėtats-Unis, une guerre de libération des peuples et des individus, sans distinction de race et de religion, les musulmans algériens s'associeraient de toutes leurs forces et par tous les sacrifices ä cette lutte libératrice.*][28]

On the actual day of the Operation Torch landings, by chance, Abbas, already the most important nationalist leader, called on Murphy 'to inquire what was the American Government's latest attitude towards an autonomous Algeria? I … told him … that Americans were generally sympathetic to all desires for independence but that our present purposes in Africa … were concentrated upon defeating the Nazis'. It would be one of many contacts between the two and although Murphy was careful as to the encouragement he would give, regardless, as Reich suggests, the respect given generally to Algerian nationalists by Murphy and other US diplomats encouraged them to imagine a far greater degree of support from the US than was actually on offer.[29]

Further encouragement would also be drawn from parallel developments in Morocco, which were obviously followed with interest in Algeria. It can there-

26 S. el Din el Zein el Tayeb, 'The Europeanized Algerians and the Emancipation of Algeria', 209–212 (the reference is to F. Abbas, '*En Marge du Nationalisme! La France, c'est moi!*', *L'Entente,* 23 February 1936).

27 J.E. Lane, 'Ferhat Abbas, Vichy's National Revolution and the Memory of the *Royaume arabe*', *L'Esprit Créateur,* 47/1 (2007), 19–20 and L. Hahn, *North Africa, Nationalism to Nationhood*, 148.

28 '*Message des représentants des musulmans algériens aux autorités*' 20 December 1942, C. Collet/J-R. Henry, *Le Mouvement National Algérien Textes 1912–1954* (Paris, 1978), 153–155.

29 R. Murphy, *Diplomat among Warriors*, 157–158 and B. Reich (ed.), *Political Leaders of the Contemporary Middle East and North Africa: A Biographical Dictionary* (New York, 1990), 4; see also E. Behr, *The Algerian Problem* (London, 1961), 50–51.

fore hardly be regarded as a coincidence that, in February 1943, shortly after Sultan Muhammad V's dinner with President Roosevelt, Abbas published the *Manifeste du Peuple Algérien*. The Manifesto, referencing the Atlantic Charter, called for a greater degree of self-government and an autonomous Algerian constitution though at the same time tactfully expressing an attachment to the spiritual and moral tradition of France. The Manifesto noted that:

> President Roosevelt, in his declaration made on behalf of the Allies, gave the assurance that, in the organisation of the new world, the rights of all peoples, small and great, would be respected.
>
> On the strength of this declaration, the Algerian people demand
>
> A) The condemnation and abolition of colonisation, that is to say, the annexation and exploitation of a people by another people …
>
> B) The application for all countries, small and large, of the right of peoples to self-determination.[30]
>
> *[Le Président Roosevelt, dans sa déclaration faite au nom des Alliés, a donné l'assurance que, dans l'organisation du monde nouveau, les droits de tous les peoples, petits et grands, seraient respectés*
>
> *Fort de cette déclaration, le peuple algérien demande*
>
> *A) La condamnation et l'abolition de la colonisation, c'est-à-dire, de l'annexion et de l'exploitation d'un people par un autre people …*
>
> *B) L'application pour tous les pays, petits et grandes, du droit des peuples à disposer d'eux-même]*

In the event, as even moderate demands were rejected, and as expectations rose of US support, moderation was pushed to radicalism. In May 1943 an '*Additif au Manifeste*' was issued, this time calling for outright independence.[31] As the report on the 1948 first conference of the Union Démocratique du Manifeste Algérien (UDMA), the nationalist party founded in 1946 by Abbas, would later seek to emphasise, this was the first time that the principle of self-determination had been proclaimed: 'It is this principle which the Manifesto has affirmed solemnly. The colonized people should have access to the exercise of sovereignty … and participate in the administration of their national heritage.'[32]

30 F. Abbas, *Du Manifeste à la République algérienne*, 40; see also Abbas' comments in '*Compte rendu de la session du Conseil Général tenue a Constantine le 22 Mai*', J-C. Jauffret, *La guerre d'Algérie par les documents, Tome premier, L'avertissement 1943–1946* (Vincennes, 1990), 64 (Fabian Klose kindly drew my attention to this source).

31 F. Abbas, *Du Manifeste à la République algérienne*, 45–55. For an analysis of the two documents, see S. el Din el Zein el Tayeb, 'The Europeanized Algerians and the Emancipation of Algeria', 221–226.

32 First National Congress of the Algiers, UDMA, Setif, September 1948, quoted by

After the war, Abbas would also publish an official commentary on the origins of the 1943 *Manifeste du Peuple Algérien* which emphasised how Allied propaganda, specifically Point 3, had permeated Algerian wartime political consciousness and thereby led to the manifesto:

> The radios of London, Paris, Washington, Moscow increase their talks and political education of the colonized continents. The Muslim Algerian sees the development, all over the world, of the concept of the right of peoples to self-determination. The radio waves bring him echoes of the Atlantic Charter. The colonial regime has been denounced by all the United Nations. From all sides men are promised liberty and equality. [*Les radios de Londres, de Paris, de Washington, de Moscou multiplient leurs causeries et l'éducation politique des continents colonisés. L'Algérien musulman voit se developer, partout dans le monde, le concept du droit des peuples à disposer d'eux-mêmes. Les ondes radiophoniques lui apportent les échos de la Charte de l'Atlantique. Le régime colonial est dénoncé par toutes les Nations-Unies. De tous les côtés, on promet aux homes la liberté et l'egalité.*] [33]

Confronted by this increasing nationalism, France complained bitterly to the US that 'external influences, including the Atlantic Charter, were making it harder to control the native population'. Indeed, it was precisely with such aspirations in mind that Abbas delivered to US diplomats 'some materials he thought appropriate for the founding meeting of the United Nations Organisation'. US diplomats interpreted this approach as an indication 'of increasing self-confidence in Moslem circles and their rising hope that the San Francisco Conference may come to some measure beneficial to their status'.[34]

In late April 1945 similar aspirations were expressed to the British Consulate General by Parti du peuple algérien representatives:

> They said that they had been encouraged by the declarations of the Atlantic Charter and pronouncements in regard to the San Francisco Conference to expect that the status of all colonies and dependencies would be considered and modified. They were disappointed that the native populations of North Africa were not to be represented … and enquired whether it was still possible to remedy this omission.[35]

A further appeal to the San Francisco Conference seems also to have been made by the 'North African Front' or the 'Front for the Defence of North Africa',

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S. el Din el Zein el Tayeb, 'The Europeanized Algerians and the Emancipation of Algeria', 222; see also F. Abbas, *Regards sur le présent et l'avenir de Algérie* (Algiers, 1948).

33 F. Abbas, *Du Manifeste à la République algérienne*, 23; see also S. el Din el Zein el Tayeb, 'The Europeanized Algerians and the Emancipation of Algeria', 218–223.

34 Lawton to Secretary of State 24 March and 14 April 1945, quoted by S. Bills, *Empire and Cold War*, 36–37.

35 Carvell to Principal Secretary of State 29 April 1945, NA FO 371/49275.

information on which is sketchy, which called for the right to independence of Tunis, Algiers and Morocco to be respected.[36]

It was therefore on such 'external influences' that the massacre at Sétif on VE Day 8 May 1945 was blamed. In the official French Commission of Enquiry on the 'events' at Sétif and elsewhere, anti-French propaganda was accorded a large part of the blame and the San Francisco Conference was expressly identified as a direct cause particularly as regards the timing of the demonstrations:

> Many signals were received that the independence of Algeria would be claimed during or at the end of the conference. Various people have said that Ferhat Abbas let it be known that he had the support of the Anglo-Saxons, that he had seen President Roosevelt during his visit to Algiers and other sorts of rumors, which made it seem that Algeria could not delay in escaping French sovereignty. In his April 29 speech in Sétif, Ferhat Abbas publicly affirmed that the San Francisco Conference should ensure the freedom of all peoples and that the Algerian people would benefit from all the advantages it would grant them … we must seek the explanation of this belief … in the persuasion that the Americans would impose after the victory, the end of colonialism. *[Elle a cependant enregistré plusieurs échos lui rapportant que l'indépendance de l'Algérie serait réclamée pendant ou à la fin de la conférence. Diverses personnes ont raconté que Ferhat Abbas laissait entendre qu'il avait l'appui des Anglo-Saxons, qu'il avait vu le Président Roosevelt lors de son passage à Alger et autres sortes de bruits, qui faisaient croire que l'Algérie ne saurait tarder à échapper à la souveraineté française. Dans son discours du 29 avril à Sétif, Ferhat Abbas a affirmé publiquement que la conférence de San Francisco devait assurer la liberté de tous les peuples et que le peuple algérien en tirerait tous les avantages qu'elle lui accorderait… il faut rechercher l'explication de cette croyance … dans la persuasion que les Américains imposeraient après la victoire, la fin du colonialism.]*[37]

The depth of support for independence was further evident a few months later when Algerian nationalists claimed eleven of the thirteen seats in the October 1945 elections to the French Constituent Assembly. In Paris, the Algerian delegates would join together with the two Malagasy representatives to form a separatist bloc. They would decline to vote in the election of a President on the

36 The President, N. African Front, Mohammad Alkhadr Hussein to President of United Nations Congress San Francisco 24 April 1945 enclosed in Killearn to Eden 29 April 1945, NA FO 371/49275; it has not been possible to identify further information about this appeal.

37 *RAPPORT À Monsieur le Ministre Plénipotentiaire Gouverneur Général de l'Algérie de la Commission chargée de procéder à une enquête administrative sur les évènements qui se sont déroulés dans le département de Constantine les 8 mai 1945 et jours suivants* http://perspective.usherbrooke.ca/bilan/servlet/BMDictionnaire?iddictionnaire=1731 last acessed 6 March 2013 (Fabian Klose kindly drew my attention to this source).

basis that it was not their concern and would also abstain or decline to attend the vote on the 1946 French Constitution. In his maiden speech, Abbas would make his position clear: 'I am here to represent the interests of my country'; and, in August 1946, he put before the French Constituent Assembly a proposal for an Algerian constitution for a free and sovereign Algeria.[38]

However, under sustained French repression and personal psychological pressure, Abbas was mentally overwhelmed and close to accepting defeat. It was at this point that Bourguiba, though they had never met, felt obliged to remonstrate with him. While acknowledging the differences between Tunisia and Algeria, he nonetheless complained that acceptance by Abbas of French sovereignty undermined the independence efforts of all the North African colonial territories. He stressed that although they were now seemingly faced with a choice, either 'to submit and dissolve into the French nation, or insurrection until crushed', the new reality was that 'times have changed' and that 'peoples of all races are rising up in an irresistible movement against the domination of the whites'.[39]

Yet, despite the hopes and expectations of the North African nationalist movements, the reality, as Blair points out, is that President Roosevelt had come to Morocco for military discussions and had done no work on post-war settlements: 'Fantasies! There is no evidence that Roosevelt ever had any more than casual concern for Moroccan independence.'[40] Indeed, quite the opposite.

In the run up to the Operation Torch landings, Murphy and General Giraud had entered into secret negotiations. The US was keen to reach an agreement with any French leader who could ensure that the French army would not resist the invasion. The agreement that had been reached committed the US to restore to France in full independence and extent the territories it had held before the war in France and its colonies. When it became evident that General Giraud lacked authority over the French army, the US military was forced to turn to Admiral Darlan, who was fortuitously on the spot, and the same assurances were thereby included in the Clark-Darlan agreement.[41] Later

38 L. Hahn, *North Africa, Nationalism to Nationhood*, 146–147, S. el Din el Zein el Tayeb, 'The Europeanized Algerians and the Emancipation of Algeria', 232, and R. Morgenthau, *Political Parties in French-speaking West Africa*, corrected edn (Oxford, 1967, 1964 corrected edn), 87 Note 2.

39 Bourguiba to Abbas, 29 July 1946, quoted by L. Hahn, *North Africa, Nationalism to Nationhood*, 32–35 and M. Connelly, *A Diplomatic Revolution: Algeria's Fight for Independence and the Origins of the Post-Cold War Era* (Oxford, 2002), 46–47; see also Bourguiba's comments in *FRUS 1946 Vol. VII The Near East and Africa*, Document 35: Memorandum of Conversation, by Mr Harry H. Schwartz of the Division of African Affairs 19 December 1946.

40 L.B. Blair, 'Amateurs in Diplomacy', 615.

41 A.L. Funk, 'A Document Relating to the Second World War: The Clark-Darlan Agreement of November 22, 1942,' *Journal of Modern History,* 25/1 (1953), 61–65,

still, following Admiral Darlan's assassination, they were also included in the Anfa memorandum signed in early 1943 by the US, Britain and General Giraud, by then, the High Commissioner of French North Africa.[42] While President Roosevelt gently chided Murphy, 'you overdid things a bit … Your letter may make trouble for me after the war', his main objection centred on France's colonies in Indo-China not Africa.[43]

If, therefore, as Bills points out, 'Arab leaders *expected* the United States to support the demands put forward in nationalist manifestos', they were to be disappointed. The US (and the UK) regarded the conduct of the war as their overriding priority. US intimations that independence might be considered when the war ended were therefore deeply disingenuous.[44] Some sense of how North African nationalism was perceived is evident in a note from the US *Chargé* in Tangier who advised that 'premature talking in Morocco about Atlantic Charter and Four Freedoms, in respect of a people who are several generations behind Egyptians in political development, is dangerous'.[45] Even worse, Villard, the grandson of W.L. Garrison and first head of the State Department's Office of African Affairs, would go on the record to explain that:

'Negotiating the "Deal with Darlan"', *Journal of Contemporary History,* 8/2 (1973), 81–117 and 'Eisenhower, Giraud, and the Command of "TORCH"', *Military Affairs,* 35/3 (1971), 103–108, *FRUS 1942 Vol. II Europe*, Documents 416: The American Political Advisor at Algiers (Murphy) to the Secretary of State 22 March 1943 and 454: Agreement Between General Mark Clark and Admiral François Darlan, Signed at Algiers, November 22, 1942, *FRUS The Conferences at Washington, 1941–1942, and Casablanca, 1943,* Document 329: Joint Chiefs of Staff Minutes of a Meeting at the White House 7 January 1943 and G.F. Howe, *The Mediterranean Theater of Operations, Northwest Africa: Seizing the Initiative in the West*, 77–83.

42 27 March 1943 Anfa memorandum, State Department, quoted by A.L. Funk, 'The "Anfa Memorandum": An Incident of the Casablanca Conference', *Journal of Modern History,* 26/3 (1954), 246–254 and 'Les accords concernant l'Afrique du Nord française (de l'Armistice de juin 1940 au Mémorandum d'Anfa de janvier 1943)', *Cahiers d'histoire de la guerre* II (Oct., 1949), 1–30.

43 L.B. Blair, *Western Window on the Arab World*, 42–44 and M.W. Willis, 'Undermining Self-determination: Robert Murphy and the Atlantic Charter in Tunisia, 1943', 607; see also 'Letter from Robert Murphy to Pierre Boisson, November 2, 1942', quoted by P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969' (unpublished PhD thesis, University of Maryland, 2011), 93.

44 S. Bills, *Empire and Cold War*, 34 and L.B. Blair, 'Amateurs in Diplomacy', 610, 617; as Blair reports, these Vice-Consuls were recruited by the War and Navy Departments with the impending North African invasion in mind and 'thrust upon State'. See also *FRUS 1944 Vol. V The Near East, South Asia, and Africa, the Far East*, Document 576: The Secretary of State to the Consul at Rabat (Mayer) 31 January 1944.

45 *FRUS 1944 Vol. V The Near East, South Asia, and Africa, the Far East*, Document 571: The *Chargé* at Tangier (Childs) to the Secretary of State 14 January 1944.

> great as our desire may be to see the Africans enjoy … political independence, we must remember that definite stages of economic progress must precede the capacity to manage successfully the self-governing institutions of an independent political entity. We should furthermore remember that only a small minority of the peoples in the colonies have expressed a desire for self-government … it is also true that many of the inhabitants of these colonies are actually opposed to self-government.[46]

Moreover, following the end of the war, the US found even further justification for limiting support for North African nationalism in its growing fears of international communism and the corollary concern that the colonial powers might be dangerously weakened politically and economically if the colonies were cut loose.[47] In order to agree a formal policy, in June 1947 a meeting in Paris brought together US diplomats from North Africa. Its conclusions, subsequently endorsed by Secretary of State Marshall, were that while evolutionary reform was appropriate for Morocco and Tunisia, although neither country was yet ready for self-rule, Algeria was a separate case; and, further, that the US had no interest in supporting over-ambitious nationalist demands: 'Premature and hasty achievement of theoretical independence under present-day world conditions, instead of achieving true sovereignty, could well lead to new and sterner forms of bondage.'[48]

In his magisterial assessment of the US contribution to the decolonisation of the British Empire, Louis concluded that 'from about 1943 into the period of the cold war the general policy of the American government … tended to support rather than break-up the British Imperial system'; while Bills argues that President Roosevelt 'was anticolonial in everything he said and in little that he did. He apparently believed what he said and was genuinely moved by the plight of colonial peoples … Yet, he showed little inclination to press allies for concessions to native nationalists.'[49]

There was a yet further consideration – the US was beginning to have colonial ambitions of its own. On the flight from Bathurst to Casablanca a detour

46 H.S. Villard, 'American Relations with Africa', *Department of State Bulletin* 9/217 (1943), 108–109 (reference from D. Little, 'Cold War and Colonialism in Africa: The United States, France, and the Madagascar Revolt of 1947', *Pacific Historical Review* 59/4 (1990), 534).

47 *FRUS 1947 Vol. V The Near East and Africa*, Document 460: The Diplomatic Agent at Tangier (Alling) to the Secretary of State Secret No. 488 Tangier 13 January 1947.

48 *FRUS 1947 Vol. V The Near East and Africa*, Document 475: The Ambassador in France (Caffery) to the Secretary of State 20 June 1947 (reference from S. Bills, *Empire and Cold War*, 191–192).

49 W.R. Louis, *Imperialism at Bay 1941–1945*, 567–68 and S. Bills, *Empire and Cold War*, 204.

had been taken to enable President Roosevelt to view Dakar from the air.[50] His interest had been piqued by the failure of the 1940 Allied assault on Dakar. That failure had prompted US post-war defence planners to contemplate the possibility of retaining a strategic military port on the West African coast. President Roosevelt had flagged this possibility at the press conference on his return from Casablanca and, at the Tehran Conference, he had also informed General Secretary Stalin that: 'Dakar in unsure hands was a direct threat to the Americas.' In a meeting with President Vargas (Brazil) he went further, intimating that Dakar in the bulge of West Africa represented a threat to Brazil and therefore might be put into 'some sort of trusteeship … perhaps: one from the United States, one from Brazil and one from some other American country'.[51] In the event, US interests would eventually be met through an arrangement with Liberia, but, in the Pacific, similar US strategic interests would be incorporated into the very fabric of the UN Charter (see page 185 below).

Liberia

Perhaps the most ironic outcome of President Roosevelt's blandishments to African leaders during his 1943 visit to Casablanca arose out of his meeting with President Barclay (Liberia). While there was no pressing issue that necessitated such a meeting, the United States' historic relationship with Liberia and the presence of US troops probably imposed upon President Roosevelt certain moral and political obligations to drop in on Liberia.[52] Accordingly, on his homeward journey from Casablanca, President Roosevelt undertook a side trip to Liberia to meet with President Barclay. During his three hour visit, President Roosevelt reviewed US troops and toured the Firestone rubber plantation. The wage rates of the Liberian workers were obviously discussed as President Roosevelt's official log records a rate of 18c per day with the further comment that: 'Even at this

50 'Log of the trip of the President to the Casablanca Conference, 9–31 January, 1943', 12 and Hopkins' personal descriptive notes, quoted by R.E. Sherwood, *Roosevelt and Hopkins, an Intimate History*, 673.

51 'Press Conference for the American Society of Newspaper Editors' 12 February 1943, 87, *FRUS 1943 The Conferences at Cairo and Tehran, 1943*, Document 362: Tripartite Dinner Meeting 28 November 1943, Bohlen Minutes, *FRUS 1943 Vol. V The American Republics*, Document 605: The Ambassador in Brazil (Caffery) to the Secretary of State January 30, 1943 and Halifax to Foreign Office 4 February 1943, NA FO 892/173; for a further interesting list of references, see M.P. Leffler, 'The American Conception of National Security and the Beginnings of the Cold War, 1945–1981', *American History Review,* 89/2 (1984), 350 and E. Nwaubani, *The United States and decolonization in West Africa, 1950–1960* (Rochester 2001), 28–30.

52 G.A. Padmore, *The Memoirs of a Liberian Ambassador, George Arthur Padmore* (Lewiston, 1996), 152–153 places less reliance on the idea of an historic moral obligation as the reason for the Presidential side visit to Liberia.

rate a problem exists in keeping the average native steadily at work – not because he doesn't want to work for only 18c a day, but because in a few days at this rate, he can earn enough money to take care of most of his needs for a comparatively long period'.[53]

It must therefore have come as some surprise that one week later President Barclay approved the 'Labour Law for Minimum Wages and Hours for Workmen', which had already been adopted by the Liberian Parliament in the week prior to President Roosevelt's visit. It provided for a minimum rate of twenty-four cents per day, a forty-eight hour week with time and a half for overtime and a penalty fine 'for the utterance of "any abusive language having a racial basis" directed against a Liberian by a foreign employee'. Firestone took great umbrage at this increase as it cut across their recently signed investment agreement with the Liberian government. As for the abusive language clause, although reasonable in itself, it was regarded as setting an impossible task for the courts to adjudicate. Firestone therefore made it clear that it did not consider itself bound by the new law and sought diplomatic support from the US government.[54]

As the enquiry into the background of this new law pondered on whether it had been discussed by President Roosevelt and President Barclay, President Roosevelt advised that indeed 'the subject had been broached to President Barclay and a solution reached'. However, it was not clear what that meant as no meeting record had been passed to US diplomats in Liberia. President Barclay himself expressed his belief 'that he had the support of President Roosevelt, who, in discussing the Atlantic Charter and its application to colored peoples, had said it was planned to establish minimum living standards everywhere after the war'. In contrast, Hibbard, the US *Chargé* in Liberia, attributed the law to President Barclay's 'predominant characteristics' which he described as 'nationalistic, xenophobe (*sic.*) and antiwhite'; while Harvey Firestone, Chairman of Firestone, thought that it 'was in the nature of a "swan song", since the President's tenure of office expires a year from now and he probably wished to go on record as having enacted something of great benefit to Liberia's working classes'. A more likely explanation was given by President Barclay when in May/June 1943 he took up President Roosevelt's offer of a return visit to the US. He advised Villard 'that while he appreciated all that Firestone had done for his country, he regarded Firestone as an American interest which had to be curbed … the Firestone

53 Log of the trip of the President to the Casablanca Conference, 9–31 January 1943, 41–43.

54 H.B. Sisay, *Big Powers and Small Nations: A Case Study of United States-Liberian Relations* (Lanham, 1985), 147–148. At the prevailing Pound Sterling-US Dollar exchange rate, the 'one shilling and nine pence', not to mention the 'half-cup of rice', that the Gambian workers were paid was well in excess of the '18c' paid to Liberian workers. All references to the UN Charter are to the UN Charter as set out in http://www.un.org/en/about-us/un-charter, last accessed 13 March 2023.

organization considered itself to be of paramount importance in Liberia and as if the country should be run for its benefit alone.'[55]

In view of the racial motivation imputed to President Barclay, it may hopefully have proved a salutary lesson for Firestone (and Hibbard) that, when President Barclay visited Firestone's headquarters at Akron, it proved impossible, on racial grounds, to find him hotel accommodation and he had to be accommodated in a private railway car.[56]

The result of the State Department's enquiry into the Liberian wage law was an admonishment from Assistant Secretary of State Berle that 'we should go very slowly' about protesting. No doubt to Firestone's consternation, there were more pressing matters under negotiation between the US and Liberia at that time, for example, an expanded US airforce base and a new naval base. While Villard was therefore unable to persuade President Barclay to withdraw the wage law, Firestone continued its protests so that six months later President Barclay announced that the law was 'experimental and subject to change' and that he now favoured modification following study of Firestone's counter-proposals by the Attorney-General.[57]

This, though, was not the end of the matter. In December 1949 there was a major labour strike in Firestone's Liberian operations in which the main grievances seem to have been pay and working conditions and a sense that local employees were not being trained in sufficient numbers to take over lower level management positions.[58] Again, in 1957, President Tubman (Liberia) was

55 *FRUS 1943 Vol. IV The Near East and Africa*, Documents 706: Memorandum of Conversation, by the Assistant Chief of the Division of Near Eastern Affairs (Villard) 1 June 1943, 735: and 742: Memorandum of Conversation by the Assistant Chief of the Division of Near Eastern Affairs (Villard) 22 January and 8 February 1943, 737: and 740: The *Chargé* in Liberia (Hibbard) to the Secretary of State 26 January and 2 February 1943, 739: The Secretary of State to the *Chargé* in Liberia (Hibbard) 1 February 1943 and 741: Memorandum of Telephone Conversation, by the Assistant Chief of the Division of Near Eastern Affairs (Villard) 4 February 1943.

56 H.B. Sisay, *Big Powers and Small Nations*, 139. Some measure of what President Barclay expected to find in the US, no doubt based on his experience with Firestone, is recorded in *FRUS 1943 Vol. IV The Near East and Africa*, Document 706: Memorandum of Conversation, by the Assistant Chief of the Division of Near Eastern Affairs (Villard) 1 June 1943, which notes his surprise at the apparent lack of racial discrimination in the US.

57 *FRUS 1943 Vol. IV The Near East and Africa*, Documents 743: Memorandum by the Assistant Secretary of State (Berle) to the Under Secretary of State (Welles) 11 February 1943 and 744: and 745: The Minister in Liberia (Walton) to the Secretary of State 9 July 1943 and 27 August 1943.

58 *FRUS 1950 Vol. V The Near East, South Asia, and Africa*, Documents 920: The Secretary of the State to the Embassy in Liberia 10 January 1950 and 921: The Ambassador

sufficiently outraged at the behaviour of foreign companies for apparently dismissing their white employees for marrying local girls as to pass a law authorising the closure of those companies persistently guilty of such behaviour. He was also so outraged at the failure of 'big Concessions which had large tracts of land which they operate … to produce indigenous Managers for these plantations' as to seek to raise the issue at the 1958 Accra Conference of Independent African States (CIAS). It is clear that he had Firestone in mind.[59]

Ethiopia

The cause of the Atlantic Charter as reflected in the Declaration by United Nations was also taken up with enthusiasm by Emperor Haile Selassie who was restored to Ethiopia by British forces in May 1941 after five years of exile. In the summer of 1942 he proposed that, as the first country to obtain its liberty during the present war, Ethiopia should accede to the Declaration by United Nations. British reluctance to respond positively reflected a concern that upon accession Ethiopia would immediately offer unfit troops to the war effort and at the same time request economic and military aid on a scale that could not be met; an assessment most probably drawn from the British forces' unhappy experience with Ethiopian 'patriot' troops during the military advance to Addis Ababa. Moreover that, at the eventual peace settlement, Ethiopia would make territorial claims as its due. In order to delay Ethiopian accession, the British therefore proposed to Emperor Haile Selassie that he should rather apply directly to the US.[60]

Accordingly, in July 1942, Emperor Haile Selassie sent a telegram to President Roosevelt expressing Ethiopia's desire to accede and followed it up with a formal memorandum in which he referred to having 'applied to the United States of America to be taken as a participator of the Sacred Atlantic Charter signed between Great Britian (*sic.*) and the United States of America, the initiator of the Charter which the entire world is relying upon'. As against British reluctance, the US concluded that accession should be 'discreetly encouraged' whether in the case of Ethiopia or other countries. In the US experience, requests for material assistance invariably 'do not await encouragement'. Acceptance was therefore a formality, although the prior approval of the UK, the Soviet Union and China had also to be obtained.[61]

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in Liberia (Dudley) to the Secretary of State 13 January 1950 and S. Grant, *The Call of Mother Africa* (Kingston, 1973), 61–64.

59 CIAS Secretariat, CIAS Confidential Report: Speeches, Resolutions, Meeting Reports and Ambassadors Minutes, SOAS, University of London, Microfiche, 386 (Business 19 April 1957).

60 Eden to Halifax 4 September 1942, NA FO 954/6A/310 and S. Anglim, 'MI(R), G(R) and British covert operations, 1939–42', *Intelligence and National Security,* 20/4 (2005), 641–645.

61 *FRUS 1942 Vol. IV The Near East and Africa*, Documents 121: The Secretary of State

A further imperative prompting Emperor Haile Selassie's enthusiasm for accession was his annoyance at British reluctance to hand back control. Understandably, it rankled that one year after his return not only were the British continuing to administer Ethiopia, but they were doing so on the pretext that Ethiopia was under 'Occupied Enemy Territory Administration'. This legal fiction was necessary because the War Office had insisted on retaining full operational control of Ethiopia for the duration of the war and that insistence required an appropriate cloak of legal sanction.[62]

To counter-balance what he regarded as this lack of good faith, Emperor Haile Selassie sought US assistance and the seeming protection afforded by US diplomatic representation in Addis Ababa. In the presentation of this request, he suggested that the US 'is expected to be represented in all the countries friendly to her with a view to observing whether international affairs are being conducted in … compliance with the sacred ideal for which the United Nations are fighting'. The following year, by now even more irritated, Emperor Haile Selassie once again turned to President Roosevelt. He pointed out that 'upon seeing Ethiopia freed … all the peoples composing the United Nations would be reassured by this example of the Atlantic Charter "in action"'; and he observed that the 'spirit' of the 1942 Anglo-Ethiopian Agreement and Military Convention imposed 'under duress' by the British 'is not in accordance with that of the Atlantic Charter'. He therefore requested diplomatic and legal assistance 'so that a settlement, consistent with the spirit of the Atlantic Charter might be reached'.[63]

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to the Minister in Egypt (Kirk) 5 June 1942, 122: and 125: The Minister in Egypt (Kirk) to the Secretary of State 9 June and 2 October 1942, 126: The Consul at Asmara (Smith) to the Secretary of State 13 October 1942 enclosing Aide-Memoire, The Emperor of Ethiopia (Haile Selassie I) to the Consul at Asmara (Smith) 22 September 1942, 129: The Emperor of Ethiopia (Haile Selassie I) to President Roosevelt 28 July 1942 and 130: President Roosevelt to the Emperor of Ethiopia (Haile Selassie I) 9 October 1942.

62 *FRUS 1943 Vol. IV The Near East and Africa*, Documents 103: The Consul at Asmara (Smith) to the Secretary of State 18 February 1943 enclosing Aide-Memoire of Remarks by His Majesty, Haile Selassie, on February 11, 1943 to General Maxwell, Colonel Edwin N. Clark and E. Talbot Smith and 115: The Secretary of State to President Roosevelt 2 August 1943, J.H. Spencer, *Ethiopia at Bay: A Personal Account of the Haile Selassie Years* (Algonac, 1984) 94–99 and J. Swansinger, 'A Three-Legged Race: Ethiopian Reconstruction, 1940–1944', *Journal of World History,* 2/2 (1991), 175–200.

63 *FRUS 1942 Vol. IV The Near East and Africa*, Documents 119: The *Chargé* in Egypt (Jacobs) to the Secretary of State 12 May 1942 and 126: The Consul at Asmara (Smith) to the Secretary of State 13 October 1942 enclosing Aide-Memoire, The Emperor of Ethiopia (Haile Selassie I) to the Consul at Asmara (Smith) 22 September 1942 and *FRUS 1943 Vol. IV The Near East and Africa*, Document 114: The Ethiopian Vice Minister of Finance (Yilma Deressa) to President Roosevelt,

In the event, British concerns were fully realised. Ethiopian requests to the US for substantial economic and military aid were not long in coming and, while recognising the inadequacy of his military forces, Emperor Haile Selassie nevertheless offered his troops for the war effort, an offer that the British promptly declined.[64]

Ethiopia also began to lobby for a territorial route to the sea. To that end, in February 1945, Emperor Haile Selassie was finally able to steal away, without notice to the British, to a meeting with President Roosevelt at Cairo on the latter's return journey from Yalta. The US meeting report records that 'all the important political matters mentioned during the conversation were brought up by the Emperor'. As at the San Francisco Conference later that year, Emperor Haile Selassie's overriding aim at this meeting was to convince President Roosevelt of Ethiopia's historic right to the (former) Italian territories of Eritrea and the Ogaden and to secure US support for Ethiopian control over the railway line to Djibouti – the last French colonial territory in Africa to renounce the Vichy France government.[65]

Sudan

In Sudan, which was ruled by a nominally independent but British-controlled Sudan Government operating under the authority of the 1899 and 1936 Anglo-Egyptian agreements, news of the Atlantic Charter was greeted with great

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Aide-Memoire, 12 July 1943; see also Prepared Statement of J.H. Spencer, *Ethiopia and the Horn of Africa: Hearings before the Subcommittee on African Affairs of the Committee on Foreign Relations, United States Senate, 94th Congress 2nd Session* (1976), 17–35 (4–6 August 1976).

64 *FRUS 1943 Vol. IV The Near East and Africa*, Documents 103: The Consul at Asmara (Smith) to the Secretary of State February 18, 1943 enclosing Aide-Memoire of Remarks by His Majesty, Haile Selassie, on 11 February 1943 to General Maxwell, Colonel Edwin N. Clark and E. Talbot Smith, 110: Memorandum of Conversation, by the Liaison Officer (Wilson) 8 June 1943 and 122: The Minister in Ethiopia (Caldwell) to the Secretary of State 21 October 1943, 90, 98–99, 115. The Ethiopian government requested loans of US$40 million from the US Export-Import Bank and $10 million from the US Treasury (see J.H. Spencer, *Ethiopia at Bay*, 99, 105–106 and *FRUS 1943 Vol. IV The Near East and Africa*, Documents 113: The Ethiopian Vice Minister of Finance (Yilma Deressa) to the Secretary of State 12 July 1943, 117: Memorandum of Conversation, by Mr. Charles W. Lewis of the Division of Near Eastern Affairs 5 August 1943 and 124: and 125: The Acting Secretary of State to the Minister in Egypt (Kirk) 23 October 1943).

65 *FRUS 1943 Vol. IV The Near East and Africa*, Document 114: The Ethiopian Vice Minister of Finance (Yilma Deressa) to President Roosevelt, Aide-Memoire, 12 July 1943, *FRUS 1945 Vol. VIII. The Near East and Africa*, Document 5: The Minister in Addis Ababa (Caldwell) to the Secretary of State 27 February 1945 and J.H. Spencer, *Ethiopia at Bay*, 159–160.

enthusiasm and anticipation. The immediate focus of this enthusiasm was Point 3, but when, in March 1942, Sudanese troops were sent to fight in Libya to protect Egypt, there was also a sense that, as they were being sent to defend democracy, as British propaganda was suggesting, Sudan was entitled to get something politically tangible in return.

Sudanese enthusiasm for the Atlantic Charter was further stimulated in mid-April 1942 by the expectancy generated by Cripps' stop-over following the so-called 'Cripps Mission' to meet with nationalist leaders in India. In his summary of the political mood at this time, Newbold, the liberal-minded (British) Sudan Civil Secretary, noted that:

> A strong stimulus … to political thinking … was applied, in the winter of 1941 and spring of 1942, by
>
> (i) The promulgation of the Atlantic Charter … with the consequent commentaries in the world's press and broadcasts, and the adherence to the Charter by the 26 Allied Nations proclaimed in January 1942.
>
> (ii) Sir Stafford Cripps' spectacular mission to India, the effect of which was heightened by his passage through the Sudan … and the brief interview given by him … to the two Editors of the Vernacular Press in which he said: 'We are all looking to the future. The Sudan is playing its part in the war effort very well, and this will gain it a place in the new era … There are a lot of things to be done: and we must perhaps do them more quickly than we have in the past'.[66]

This sense of a change in the air is also captured in several memoirs of that period. For example, a British official in the Sudan Political Service recalled: 'I think that the greatest influence to change was the Atlantic Charter … the more educated Sudanese sat up and said, "Do they really mean this for freedom?" … it really meant something to the Sudanese.' From the other shore, a Sudanese official similarly recalled that: 'The continuous hammering on the radio from America and England on the Four Freedoms – how everyone was going to be free; Sir Stafford Cripps passing through … all this made the Sudanese feel that a change was definitely going to take place … and that they were going to be independent.'[67] It was a sentiment with which Newbold was largely sympathetic: 'I think we must start *now* – taking note of the Atlantic Charter. Intelligentsia

66 Note on further association of Sudanese with local and central government in the Sudan, Newbold, 10 September 1942, NA FO 371/31587 (reference from D.H. Johnson (ed.), *British Documents on the End of Empire Series B Vol. 5 Sudan Part 1 1942–1950* (London, 1998), 18). Cripps had been UK Ambassador to the Soviet Union but at the time of this mission was Lord Privy Seal and a member of the British government.

67 E. Aglen and M.S. Akrat, quoted by T. Royle, *Winds of Change: The End of Empire in Africa* (London, 1996), 92–93.

here and elsewhere will naturally want to cash in on it and the vernacular press in Khartoum and W. Africa is already doing so … I'm sure it's wrong to retard … self-government in colonies, because of the war. It's the worst kind of propaganda; rather we should accelerate it.' He would also point out though that 'the Congress and vernacular press quote incessantly clause 3 of the Atlantic Charter "the right of all peoples to chose (*sic.*) the form of Government under which they will live". It is clear from the rest of this paragraph that this clause does not apply to colonial peoples unable yet to stand by themselves.'[68]

The first tentative feelers were put out by the Sudanese Graduates' Congress, an embryonic political association. In anticipation of Cripps' stop-over, it adopted a memorandum, which it passed to the Sudan Government in April 1942, arguing that it represented 'enlightened public opinion' and that the views expressed were informed by 'the desire of the Sudanese people at the present time' and expressed 'faithfully the inclinations and aspirations of this country'. It noted that 'the freedom of peoples … has been expressed in the statements of British politicians and recorded in the agreements of democratic leaders' and therefore called for: 'The issue, on the first possible opportunity, by the British and Egyptian governments, of a joint declaration, granting the Sudan, in its geographical boundaries, the right of self-determination, directly after this war.'

Although the Sudan Government recognised that the Graduates' Congress represented 'the first conscious expression of a nascent Sudanese nationalism' and that there were 'already growing speculations of the educated Sudanese about the Sudan's share in the promises of the Atlantic Charter', the memorandum was strongly rebuffed by Newbold: 'By the very act of submitting the memorandum … and by its wording' the Graduates' Congress was 'attempting to turn itself into a political national body.' On that basis, it 'not only could not retain the cooperation of Government, but could not hope for continuance of recognition'. Newbold also blunty observed that the Graduates' Congress' claim to represent all the Sudanese was manifestly flawed: 'The fact that the Graduates' Congress is, for the moment, the only organised body of educated Sudanese does not give it a monopoly of representation, or advice, or wisdom.' In turn, the Graduates' Congress countered that 'our object was merely to reserve to our country the rights guaranteed to all peoples by the Atlantic Charter and the pledges of the Democratic leaders … The Congress cannot but express its deepest regret at your returning of the Memorandum.'[69]

68 Newbold to Mayall 9 February 1942 and undated (probably June 1942), K.D.D. Henderson, *The Making of the Modern Sudan: The Life and Letters of Sir Douglas Newbold KBE* (London, 1953), 233, 244–245.

69 J 2664/1528/16 Lampson to Eden Egypt and Sudan 9 June 1942 enclosing President of the General Graduates' Congress to the Consul-General of the Sudan 3 April 1942, Newbold to Ibrahim Ahmad 29 April 1942, Huddleston to Lampson 12 May 1942 and Lampson to Eden 22 May 1942, Ibrahim Ahmad to Newbold 23 July 1942

The Foreign Office, which, because of the condominium arrangement with Egypt, carried responsibility for the Sudan, took much the same view. Although largely receptive to Newbold's determination to accelerate the Sudanisation of the administration, it was concerned that Sudan was not as 'yet sufficiently advanced in political development or education to stand alone in the modern world'. It was also particularly alarmed by: 'The cleavage (which is bound to become more and more marked) between the Northern and Southern Sudan. To the profound racial difference … has now been added as deep a cleavage in religion and lines of development.' As regards the Graduates' Congress, the Foreign Office also felt that it merely represented the few as there was no balance within educated public opinion or between the intelligentsia and tribal leaders, the regions or religious groups.[70] There was also the further complication that Egypt interpreted demands for an independent Sudan as a perfidious British plan to separate Sudan from its historic connection to Egypt. For Egypt, self-determination under the Atlantic Charter meant self-determination for Egypt and Sudan jointly not severally.

While Newbold realised that he had over-reacted in his response to the Graduates' Congress, he was reluctant to back down lest he appear weak. He therefore sought to ameliorate his rebuff by means of informal personal contacts between senior civil servants and individual members of the Graduates' Congress. However, such informal contacts were too little too late and failed to satisfy all sections of the Graduates' Congress to the extent that, in Collins' assessment, Newbold's 'sting threw the Congress into death throes as its body was rent by the different elements hitherto held together by success'. Soon thereafter, therefore, the Graduates' Congress splintered into rival political groups based, variously, on their inclination to contemplate unity with Egypt, religion and allegiance to individual political leaders, just as the Foreign Office had feared.[71]

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and Newbold to Ibrahim Ahmad 19 September 1942, NA FO 371/31587 (references from D.H. Johnson (ed.), *British Documents on the End of Empire*, 1–5), K.D.D. Henderson, 'The Sudan Government and the Educated Classes 1938–46: The Graduates' Congress and the Advisory Council', K.D.D. Henderson, *The Making of the Modern Sudan: The Life and Letters of Sir Douglas Newbold KBE*, 536–555, A.S. Cudsi, 'The Rise of Political Parties in the Sudan, 1936–1946' (unpublished PhD thesis, SOAS, 1978), 158–159 and P. Woodward, *Condominium and Sudanese Nationalism* (London, 1979), 22–27; see also H.J. Sharkey, *Living with Colonialism: Nationalism and Culture in the Anglo-Egyptian Sudan* (Berkeley, 2003), 91–92.

70 'The Sudan', Memorandum by the Egyptian Department, FO, on the Anglo-Egyptian treaty, 1 September 1942 and corresponding Minute, Coulson 3 September 1942, NA FO 371/31587 (reference from D.H. Johnson (ed.), *British Documents on the End of Empire*, 4–5, 13–16) and K.D.D. Henderson, 'The Sudan Government and the Educated Classes 1938–46: The Graduates' Congress and the Advisory Council', 244, 536–555.

71 R.O. Collins, 'Sudanese Nationalism, Southern Policy and the Unification of the

Despite Newbold's rebuff, as the end of the war approached, these nascent political groups began increasingly to reflect on Sudan's post-war prospects. Already in March 1944 it was clear that the imminence of an Allied victory was 'beginning to focus people's attention … on what was going to happen after the war. The Sudanese, like every other people who had fought on the Allied side, had their aspirations and hoped to see them realised through the victory of Britain and the United Nations'. Newspapers reminded the Sudan Government that the Atlantic Charter had promised self-government to the colonies. When, therefore, news of the San Francisco Conference, and their exclusion, reached Sudan, Sudanese leaders were quick to express their anger and concern that their future would be determined by others:

> They have misread or misinterpreted various articles which have appeared in the Egyptian and world Press and … believe that San Francisco will settle the future of the Sudan … We have assured them that the San Francisco Conference is not concerned with, and will not deal with, their future … but they want … an assurance that … no Egyptian delegate will be allowed to claim directly or indirectly that he represents also the Sudan.[72]

It was expressed formally in a letter by the recently established pro-independence Umma party to Governor-General Huddleston while at the same time requesting his support for its demand for representation at the forthcoming San Francisco Conference:

> The Atlantic Charter, and the declarations … that have followed it have emphasised for all nations their right to self-determination. The San Francisco Conference will meet shortly … the Sudan has not been invited … in spite of its having declared war at a time … when no one could have imagined that the price of a chair (at that conference) was declaration of war … the Nation

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Sudan, 1939–1946', M.A.H. Al-Sufi (ed.), *The Nationalist Movement in the Sudan: Part of the Proceedings of the Conference on the Nationalist Movement in the Sudan* (Khartoum, 1989), 228, M. Abbas, *The Sudan Question: The Dispute over the Anglo-Egyptian Condominium, 1884–1951* (London, 1952), 108–111, M.W. Daly, *Imperial Sudan: The Anglo-Egyptian Condominium, 1934–56 (* Cambridge, 1991), 154–171, Sir H. Macmichael, *The Sudan* (London, 1954), 192–193, M.A. Mahgoub, *Democracy on Trial: Reflections on Arab and African Politics* (London, 1974), 41–42, A.S. Cudsi, 'The Rise of Political Parties in the Sudan, 1936–1946', 177 and A.I. Abushouk, 'The Anglo-Egyptian Sudan: From Collaboration Mechanism to Party Politics, 1898–1956', *Journal of Imperial and Commonwealth History,* 38/2 (2010), 214–218.

72 SA/52-A-1 Sanders to Burrows 25 March 1944 enclosing Notes of Scrivener's meeting with Sayyed Sir Abdal Rahman and leading Sudanese Effendis at Robertson's home 26 February 1944, NA FO 371/41363 and Robertson to Fouracres CS/SCR/36.M.S 8 April 1945 incorporating Abdallah Khalil, Secretary Umma Party (Sudan for the Sudanese) to Huddleston 19 March 1945, NA FO 141/1024 (references from D.H. Johnson (ed.), *British Documents on the End of Empire,* 42–43, 73).

> Party wishes to demand that this country be accorded its right in attending the conference, on the same footing as other nations who declared war and participated in it … The Sudanese nation … wishes to place its confidence … in the United Nations, with whom it fought for the restoration of freedom to those from whom it had been temporarily taken away, in order that the Sudan should not be deprived of its freedom or of the realisation of its aims.[73]

Sudan's exclusion from the San Francisco Conference was not, however, the last act in the matter. To add insult to injury, at a June 1945 press conference, Robertson, the recently appointed Sudan Civil Secretary, explained, as Governor Bourdillon had explained in Nigeria, that there would be 'no reward after a war'. In fact, he argued, the Sudanese had already received 'some notable gain from their association with the British in this war'. Outraged, several local newspaper editorials thunderingly pondered whether the principles of democracy declaimed by Allied political leaders were merely intended to serve as propaganda weapons.[74]

British East Africa

Although generally grouped together as British East Africa, the colonial territories of Tanganyika, Uganda, Kenya and Zanzibar had only limited historical, social or political arrangements in common; most significantly reflected in their respective juridical status. Tanganyika was a former German colony that had been constituted as a League of Nations Mandate Territory in 1922; Uganda and Zanzibar were established as Protectorates; and, since 1920, Kenya was a self-governing Crown Colony. Unsurprisingly, therefore, their differences would be reflected in their quite different approaches to the issue of self-determination raised by the Atlantic Charter.

Tanganyika, so too Uganda, was a comparatively parochial colonial territory that had hitherto shown little inclination to challenge colonial rule. Indeed, there was rather a sense, even among Africans, that Tanganyika was not ready for independence though Westcott argues that 'the terms of the Atlantic Charter were familiar to many and were taken as the standard against which local administration was judged'.[75] Thirty years later, reflecting on the impact of the Atlantic

73 Robertson to Fouracres CS/SCR/36.M.S 8 April 1945 incorporating Abdallah Khalil, Secretary Umma Party (Sudan for the Sudanese) to Huddleston 19 March 1945, NA FO 141/1024 and A.A. Sikainga, 'Sudanese Popular Response to World War II', J.A Byfield/C.A. Brown/T. Parsons/A.A. Sikainga (eds), *Africa and World War II*, 475.

74 *Sawt al-Sudan* 13 June 1945 (Press Conference), *Al-Ray al Amam* 16 June 1945 and *Al Nil* 17 June 1945, quoted by A.S. Cudsi, 'The Rise of Political Parties in the Sudan, 1936–1946', 313–314.

75 N.J. Westcott, 'The Impact of the Second World War on Tanganyika, 1939–1949' (unpublished PhD thesis, University of Cambridge, 1982), 303–304 Note 105.

Charter, President Nyerere (Tanzania), then a student at Makerere College, Uganda, but sufficiently active in the Tanganyika African Association (TAA) as to put forward a resolution to its 1945 conference, would recall that 'the Atlantic Charter … caused some little stir, but they were not surprised when Winston Churchill declared that its high-minded principles did not apply to the British Empire'. In comparison, President Roosevelt 'acquired some prestige … for his opposition to Churchill's imperialist assertions'; while General de Gaulle's promise, at the 1944 Brazzaville Conference, of African participation in the drafting of the French constitution 'made a more direct impression'.[76]

Newspaper coverage of the Atlantic Charter announcement and the ensuing debate over its applicability to Africa was somewhat mixed. For example, although, in September 1941, the *Tanganyika Herald* reported UK Deputy Prime Minister Attlee's explanatory remarks on the Atlantic Charter to the West African Students' Union (WASU) (see page 164 below), in general it seemed to show far greater editorial interest in Indian demands for independence: 'Is it not a cruel mockery to say that India is not included in the Atlantic Charter … ? India does not know what she has been fighting for! She wants her position clarified.'[77] Most likely, that reflected, on the one side, Indian ownership of the *Tanganyika Herald* and *Samachar* newspapers and, on the other side, wartime self-censorship that was required if newspapers wished to continue in business and also, possibly, a coded reference by association. In contrast, *Kwetu* (Our place), which was aimed at an African readership and therefore published in Swahili, was more active in its coverage of the wider debate over post-war political reform. It was owned by the remarkable Fiah who claimed it was the only independent African newspaper.[78] In March 1942 *Kwetu* published a feature on WASU and in its editorials and letter pages there was regular speculation as to what the political future might hold for the African majority. For example, in May 1942, it posed the question: 'After the War, What?', and in September 1943 it warned that 'the African post-war freedom is only a mere joke'.[79]

76 President Nyerere, quoted by J. Hatch, *Two African Statesmen: Kaunda of Zambia and Nyerere of Tanzania* (London, 1976), 16.

77 *Tanganyika Herald* 3 September 1941, 9 and 16 January 1942, 4 (The text suggests a familiarity too close to be coincidental with WASU's address to Attlee and Azikiwe's telegram to Churchill published in *West African Pilot* 13 November 1941, 2–3 (see pages 164–166 below)).

78 N.J. Westcott, 'An East African Radical: The Life of Erica Fiah', *Journal of African History,* 22/1 (1981), 92–93, J.R. Brennan, 'Politics and Business in the Indian Newspapers of Colonial Tanganyika', *Africa: Journal of the International African Institute,* 81/1 (2011), 58–61 and J.F. Scotton, 'Tanganyika's African Press, 1937–1960: A Nearly Forgotten Pre-Independence Forum', *African Studies Review,* 21/1 (1978), 1–18.

79 *Kwetu* 26 March, 1 May 1942 and 22 September 1943, quoted by J. Iliffe, *A Modern History of Tanganyika* (Cambridge, 1979), 378–379, 425.

By 1945, though, even the politically cautious *Samachar* was prepared to report that people were anxious as to what the 'forthcoming San Francisco Conference will hold for them' and concern was expressed that if 'Federation' meant they should be 'ruled from Cape Town then woe betide the coloured races, for tyranny of colour is infamous throughout the world'. The context, however, is clearly rather more the looming questions of the Mandate and Federation (with Kenya) than political advance arising out of the Atlantic Charter debate.[80]

The main forum for educated African opinion, which was largely excluded from political influence by the system of indirect rule, was the TAA. It was formed sometime around 1929 with the aim of creating a network of branches that would 'safeguard the interest of Africans, not only in this territory but in the whole of Africa'. However, its pretensions belied its narrow membership and limited political prospects. It was only able to hold its first conference in 1939 and, while further conferences seem to have been held in 1940 and 1942, such was the modest nature of these affairs that only information on the 1940 conference seems to have survived. That 1940 conference expressed for the first time the idea that Africans should be represented on provincial and inter-provincial boards: 'In a word, we are now claiming for a voice in the Government. That is, the African now be given chance to speak on behalf of his country.'[81] Yet, beyond such rhetoric, the TAA made only limited progress during the war years in developing an active branch network or headquarters. It was a modest undertaking with little influence whose continuing existence was constrained by the need to remain within the bounds of official tolerance. Mwapachu, for example, one of Nyerere's closest friends in the early years, described the TAA in 1945 as having 'sunken to a tea-party organisation.'[82]

In the face of the colonial government's lack of recognition, its meagre and narrow membership and funding difficulties, the TAA might therefore well have collapsed under the weight of its own insignificance. That it was temporarily, at least, reprieved in 1945 can be attributed almost entirely to the reemergence of

80 *Samachar* 8 April 1945, 3.

81 Rawson Watts, Interview, *Tanganyika Standard,* 14 October 1930, and Resolutions 11–16 May 1940, enclosed in Mzee Sudi and Mntambo to Governor 3 August 1940, quoted by J. Iliffe, 'The Age of Improvement and Differentiation (1907–45)', I.N. Kimambo/A.J. Temu (eds), *A History of Tanzania* (Nairobi, 1969), 156, 159; see also P.A. Dumbuya, *Tanganyika under International Mandate 1919–1946* (Lanham, 1995).

82 Interview with author, J. Listowel, *The Making of Tanganyika* (London, 1965), 184. The section on the TAA has drawn extensively on J. Iliffe, *A Modern History of Tanganyika*, 422–435, U. Lohrmann, *Voices from Tanganyika: Great Britain, the United Nations and the Decolonization of a Trust Territory, 1946–1961* (Berlin, 2007), 499–505 and W. Morris-Hale, 'British Administration in Tanganyika from 1920–1945; With Special References to the Preparation of Africans for Administrative Positions' (unpublished PhD thesis, University of Geneva, 1969), 292–297.

the debate over Tanganyika's future status, that is, the Mandate, and the project of Federation. These issues, which cut across the Atlantic Charter debate, were the dominant questions confronting Africans in Tanganyika and served to engender an African unity of purpose that would be largely expressed through the forum of a revitalised TAA.

Tanganyika's comparatively privileged status as a League of Nations Mandate Territory was a matter of pride to Tanganyikans. When, in January 1946, leaders of the Kenya African Union (KAU) met with the leaders of the TAA to discuss a possible joint response to British proposals for Federation, the Tanganyikans rejected their proposal on the grounds 'that in Kenya people had leprosy … By this we meant that the Kenyan Government was a colony'.[83] However, as the war neared its end, and with it the winding up of the League of Nations system and the imminent creation of the UN Trusteeship Council, questions began inevitably to be raised about the disposition of the Tanganyika Mandate.

It was a critical decision. The UN Charter required that those member states responsible for 'the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount'. Moreover, the UN Charter also provided the further safeguard of supervisory oversight by the UN Trusteeship Council.[84] In contrast, it might be argued that Crown Colony status would have enabled Tanganyika to enjoy a greater degree of self-government. However, in 1945, elections would have been held on a restricted franchise leading to a minority government and thereafter the likelihood of absorption by the white settlers of Kenya, as evidenced by a July 1946 motion in the Kenyan Legislative Council in support of colony status and opposition to a trusteeship for Tanganyika, and proposals for Federation.[85]

Some sense of what that would entail clearly emerges in the response to Colonial Secretary Creech Jones's 1947 paper on local government which advised colonial governors of the fundamental assumptions underlying the British government's post-war colonial policy:

> The rate of political progress cannot be regulated according to a pre-arranged plan; the pace over the next generation will be rapid, under the stimulus of our own development programmes, of internal pressure from the people

83 Joseph Kimalando, TAA Secretary and founder member of TANU, quoted by S. Rogers, 'The Search for Political Focus on Kilimanjaro: A History of Chagga Politics 1916–1952 With Special Reference to the Co-operative Movement and Indirect Rule' (unpublished PhD thesis, University of Dar es Salaam, 1972), 773–774 (reference from J. Iliffe, *A Modern History of Tanganyika*, 430–431).

84 Covenant of the League of Nations, Article 22 http://avalon.law.yale.edu/20th_century/leagcov.asp#art22, last accessed 17 July 2017 and UN Charter, Articles 73–91.

85 Colony and Protectorate of Kenya, Legislative Council Debates, Official Report Second series Vol. XXIV-Part III 1946, Second Session Commencing 2nd July to 19th July 1946, 127–176 (18–19 July 1946 Adopted 12:5) and *Daily Sketch* 20 July 1946.

> themselves, and of world opinion expressed through the growing international interest in the progress of colonial peoples.[86]

In his response, Governor Mitchell (Kenya), the most belligerent of the colonial governors, but with the tacit support of several other colonial governors, declared:

> It is not by any apologetic or defensive attitude, either before our own people at home or in Africa, or in international gatherings, largely composed of representatives of the most corrupt and abominable misgovernment extant today, that we shall do what we have to do … which I conceive to be no less than to civilize a great mass of human beings who are at present in a very primitive moral, cultural and social state … the only way … East African tribes can enjoy the benefits of civilised government … is under the forms of Colonial Government administered by a strong and enlightened Colonial Power … the Government of Kenya … considers itself morally bound to resist processes which might be called 'political progress' by the misinformed or opinionated.[87]

It was an argument with which Kenyatta, the future first President of Kenya, was all too familiar and which several years earlier he had sought to address from his wartime base in Sussex: 'Africans who want self-government are always put off with: "Not yet. Not till you are fit for it". Certainly we aspire to be fit for self-government. But we should like to know who is to be the judge of our fitness and by what standards will his verdict be pronounced?'[88] The point was also made in a prize-winning lecture and pamphlet (endorsed by Creech Jones) by Udoma, a Nigerian student in Dublin and later a Supreme Court Justice. Why has Britain 'the right to determine when a particular nation shall be able to stand by itself?'[89]

When, therefore, it came to wide public attention that the Tanganyika British Association had put forward representations to Colonial Secretary Hall suggesting that Africans supported the idea of Tanganyika becoming a colony, in

86 Secretary of State Despatch Confidential No. 41 25 February 1947, NA CO 847/35/6.

87 From the Governor of Kenya to the Secretary of State for the Colonies 30 May 1947 Despatch No 16 including Appendix to Kenya Despatch No. 16 Confidential Note by the Governor of Kenya, NA CO 847/35/6 (reference from C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy* (Cambridge, 1976), 13–17); see also Governor Hall (Uganda) to Creech Jones 29 August 1947, NA CO 847/35/6, 3: 'I find myself in substantial agreement with the views expressed by Sir Philip Mitchell in his despatch … of the 30th May 1947.'

88 J. Kenyatta, Letter to the Editor, *The Listener* 24 August 1943.

89 E.U. Udoma, *The Lion and the Oil-Palm* (Dublin, 1943), 15 (reference from P.S. Zachernuk, *Intellectual life in a colonial context: the Nigerian intelligentsia, 1860–1960* (Toronto, 1991), 246); see also M. Matera, 'Black Internationalism and African and Caribbean Intellectuals in London, 1919–1950' (unpublished PhD dissertation, Rutgers University, 2008), 300.

part as a reward for their contribution to the war, it generated a flurry of angry responses that were printed even in the settler-owned *Tanganyika Standard*, furiously arguing that 'when the war was being fought … the reason … was to suppress the power of those people who wanted to possess by force lands belonging to other people … now … among the same white men who fought for freedom should claim to colonize this country in spite of the owners' wish'; 'Churchill … stated … that "This war is fought not for the aggrandizement of territorial boundaries and enhancement of the Empire area, but for the freedom of all people of all races … this war will not change any country from its origin status"'; 'It is sinful to have included Africans in their selfish desires and interests. We fought in the recent war not for British nationalisation as our goal, but to safeguard our interests. No sane African likes the territory to be declared a colony'; and 'It is not half-true … that Africans fought the Second World War in order to become colonists … It is high time the Africans rule themselves now'.[90].

At its 1945 conference at Dodoma the revived TAA therefore pushed hard for UN Trusteeship. In view of the issue's importance the conference was well attended, including the Superintendent of Police, whose report commented favourably on the 'restraint and decorum' with which the conference was conducted. From an organisational perspective, possibly in response to earlier criticisms, the TAA now also sought to promote an inclusive membership irrespective of tribal or religious affiliation or educational or financial attainment; it proposed that 'efforts be made to enrol all Africans, women and men, in the African Association'. The conference also adopted several development proposals, one of which, for example, called for compulsory education for Africans. More significantly, though, in what Iliffe describes as 'the political awakening among educated Africans during the war', the conference compiled a memorandum setting out its views which it delivered to the colonial government. This made clear that: 'The Conference is strongly opposed to the removal of the Mandate … The Mandate affords some protection to the interests of Africans'; and it pointed out that: 'We are proud of our participation in the present war and expect we shall not be forgotten in the New World that is to come after the end of the war.'[91]

90 British Association of Tanganyika to Governor, Tanganyika (undated) enclosure in Battershill to Secretary of State Hall 3 May 1946, NA CO 822/114/7 and *Tanganyika Standard* 10, 11 and 12 July 1946; the *Tanganyika Standard* was controlled by the Kenyan *East African Standard*.

91 Director of Intelligence and Security, Dar es Salaam to Director of Intelligence and Security, Nairobi 12 May 1945, Draft of the Agenda for the Third Conference of the African Association, to be held at Dodoma, 29 March 1945, Ali Ponda to CS 15 June 1945 and Minutes of the African Association Third Conference held at Dodoma, Tanganyika Territory, 29 March to 3 April 1945, quoted by J. Iliffe, *A Modern History of Tanganyika*, 422–425 and Draft of the Agenda for the Third Conference of the African Association, to be held at Dodoma, 29 March 1945, quoted by J. Iliffe, 'The

In the event, the British government was confronted by a single overriding consideration. Point 1 of the Atlantic Charter had stated that the UK would 'seek no aggrandizement, territorial or other'. In view of this pledge and faced with likely US and domestic UK political objections, it would have been politically difficult for Foreign Secretary Bevin, white settlers notwithstanding, to alter Tanganyika's status from trusteeship to colony. In January 1946 the decision was therefore taken to place all the UK's African Mandates into the UN Trusteeship system; the Tanganyika Trusteeship Agreement would be signed in late 1946.[92]

Federation, which was the Mandate issue dressed up in different clothes, addressed the question of whether the British East African colonial territories should be merged into a single administrative or constitutional unit. The idea had first emerged in the 1920s but was fought off by African political leaders against the powerful lobbying of the white settlers. All that could be agreed on was an informal, advisory Conference of East African Governors under the chairmanship of the Governor of Kenya. However, following the success of the Conference of East African Governors and the Joint Economic Council in the management of the war effort a renewed momentum in favour of Federation began to build up.[93]

The proposals that emerged in the immediate post-war period had their origin in the suggestion for closer union put forward by Governor Moore (Kenya) at the 1942 Conference of East African Governors. He argued that such a union should be based on a unitary not a federal constitution and that 'the war had given practical proof of how close an economic unit these four territories were'. Only Pilling, British Resident at Zanzibar, expressed serious doubts. Governor Dundas (Uganda), too, while supportive of the proposal in principle, also noted that it was 'unthinkable that Uganda would accept any racial preponderance in the central Legislature. It was absolutely essential … that it should not appear that there was any domination at the centre by the European community, or in other words Nairobi'. Acting Governor Freeston (Tanganyika) agreed: 'Tanganyika could not become a willing partner to any arrangements providing for unofficial European majority'[94]

Age of Improvement and Differentiation (1907–45)', 157–160.

92 Cabinet Conclusions 10 January 1946 CM (46) 4, NA CAB 128/5/4, HMSO Cmd. 6935, *Trusteeship Territories in Africa under United Kingdom Mandate* (London, 1946) and HMSO Cmd. 7081, Treaty Series No. 19 (1947) *Tanganyika, Text of Trusteeship Agreement as Approved by the General Assembly of the United Nations* (London, 1947), UNGA 63/1 13 December 1946, UN A/152/Rev.2 12 February 1946 and U. Lohrmann, *Voices from Tanganyika*, 498–499.

93 J. Banfield, 'Federation in East Africa', *International Journal,* 18/2 (1963), 181–193 and R.A. Frost, 'Sir Philip Mitchell, Governor of Kenya', *African Affairs,* 78/313 (1979), 541.

94 Proceedings of the East African Governors' Conference, Nairobi 26–27 January

Initially at least, Colonial Secretary Stanley responded to continuous lobbying from Kenya by repeatedly advising that, notwithstanding the economic and services benefits, such a project was not politically feasible and that unease was already being voiced in the UK Parliament.[95] Nonetheless, any such unease seems to have dissolved in December 1945 when the British government issued Colonial Paper No. 191 proposing an East African High Commission (chaired by the Governor of Kenya) and a central inter-territorial Legislative Assembly and executive structure for delivery of common services such as communications, customs and transport. However, it also proposed an equal one-third representation for Africans, Indians and Europeans, and for that reason it was able to garner some African support particularly in Kenya, which saw in equal representation a considerable improvement in their position. However, their perspective was not shared by the Africans in Tanganyika and Uganda.[96]

Its saving grace, the compromise, was that the arrangements precluded closer political union: 'It is clear from expressions of public opinion during the last few years that there exists … neither the community of interest nor the public support which a scheme of political closer union would require.' Moreover: 'Equality in numbers, the only practicable basis for unofficial representation of the three main races … arises from the impossibility of devising any generally acceptable formula by which to decide the relative importance … of the communities concerned … It does not appear … there is any logical alternative to equal representation.'

Yet, despite the apparent logic and the earlier observations of the Governors in 1942, equality of representation was vehemently opposed by the white settlers in all three East African territories. Following an opinion-gathering visit to Africa, during which African representatives were quite deliberately left on the outside, Colonial Secretary Creech Jones was thereby prevailed upon to issue in March 1947 an amended proposal, Colonial Paper No. 210, this time providing for a white settler majority.[97]

1942, Item VIII: Closer union of East African Territories, NA CO 822/107.

95 Stanley to Moore 15 June 1943, 13 January 1944 and 12 April 1944, NA CO 967/62.

96 F.J. Khamisi (Secretary, KAU), 'The East African Political Scene – The African Viewpoint', *African Affairs,* 45/180 (1946), 139–141.

97 Inter-Territorial Organisation in East Africa 27 November 1945 CP (45) 308, NA CAB 129/6, HMSO Colonial 191, *Inter-Territorial Organisation in East Africa* (London, 1945) and HMSO Colonial 210, *Inter-Territorial Organisation in East Africa. Revised proposals* (London, 1947); see also N.J. Westcott, 'Closer Union and the Future of East Africa, 1939–1948: A Case Study in the "Official Mind of Imperialism"', *Journal of Imperial and Commonwealth History,* 10/1 (1981), 67–88 and KAU, A Memorandum on the Economic, Political, Educational and Social Aspects of the African in Kenya Colony, undated probably July/August 1946, NA CO 533/537/21, 36–38 (there seems to be a slightly different copy in NA CO 533/554/11 but the

In 1945 the appointment of the first two African representatives to the Tanganyika Legislative Council added another layer of African opposition to the proposals for Federation. As Colonial Paper No. 191 had been withdrawn before it had been put before the Legislative Council, the African Legislative Council representatives arranged a conference in February 1946, under the auspices of the TAA, to discuss Federation. It resolved that it should not even be considered. Opposition continued to be voiced at the next TAA conference in April 1946 at which time African views were formally set out in a three-tier structure: Firstly, the economic or political unification of East Africa was absolutely rejected. The primary reason was the likely influence of the white settlers of Kenya. It argued that: 'The Africans of Tanganyika hope and believe that a day will come when they will get their independence or self-government as Tanganyikan Africans and not as East Africans.' Secondly, with trusteeship not yet having been formalised, the meeting declared: 'The principle of Trusteeship as regards Tanganyika. We welcome it. We do not want Tanganyika to be declared a British colony.' It was also made clear that the UK should remain the Trustee Power. Thirdly, the meeting sought that 'the Trustee Power should develop this Territory quickly and able Africans should … be given … more responsibility in every sphere and particularly in Provincial Administration until the Africans reach the point where they can manage their own affairs'. Moreover, that it should 'grant them their independence without any necessary delay' when Africans believed 'that they are ready and want to rule themselves'.[98]

However, inevitably, given the official majority on the Legislative Councils of Tanganyika and Uganda and the vested interest of the government in Kenya, Colonial Paper No. 210 was accepted by all three territories and enacted in late 1947. As a final insult, in the case of Tanganyika, the paper was only distributed to the Legislative Council at the last moment. Chief Kidaha Makwaia and Chief Abdiel Shangali, the two African members, therefore proposed a delay so as to enable the TAA to study it. When this was refused, inexplicably, and to widespread African fury, they merely abstained on the vote even though the two Asian members cast their vote against.[99]

Yet, notwithstanding the rapid expansion of the TAA's branch network in response to fears over the Mandate and Federation, by 1948, as Iliffe explains, 'headquarters apparently collapsed entirely' and the planned 1948 annual conference was cancelled. The colonial government had simply ignored the views

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binding and signatures suggest the former is the original).

98 'Agenda for discussion at the Fourth Conference of the African Association to be held at Daressalaam (*sic.*) on 19/4/46 to 28/4/46' and 'Tanganyika and Trusteeship', quoted by U. Lohrmann, *Voices from Tanganyika*, 46-47, 502.

99 East Africa (High Commission) Order in Council 1947 and Tanganyika Territory, Proceedings of the Legislative Council, Extraordinary Meetings 15th and 16th April 1947, 17–47 (reference from J. Listowel, *The Making of Tanganyika*, 138–139).

expressed at previous TAA conferences and little funding was made available by the branches to the centre. By 1948, too, the political situation was less urgent in that trusteeship had been confirmed and economic conditions had also improved considerably.[100]

When, therefore, the first UN Visiting Mission arrived in Tanganyika in 1948 there was no fully coordinated presentation of African views. The petitions by the TAA and Shinyanga Township, which Iliffe describes as 'peculiarly parochial', repeated requests for greater African participation in administration and government and an emphasis on African education as a pathway towards eventual self-government. But independence was not identified as an immediate goal, indeed there was as yet no demand for elections to the Legislative Council. Nonetheless, the Shinyanga Township petition referred to the 'heart-breaking fact' of the existence of a 'colour bar' and sought greater freedom of speech:

> we wish to express our thanks and gratitude to the United Nations for securing us freedom, but though the Africans took part in the fight during the 2nd World War, we regret to say that they possess little of Freedom of Speech … we humbly beg to be guaranteed for full freedom in Speech, e.g. in publications of all sorts and in public life.[101]

In 1900, following on from the Uganda Agreement, the Kingdom of Buganda was incorporated into the Uganda Protectorate. One of the key elements of the Uganda Agreement was the land settlement which apportioned freehold ownership of land not only as between the Kabaka (King of Buganda), his family and the most prominent Bagandan officials and the colonial government but also to 'one thousand chiefs and private landowners'. While this settlement may have served to limit the scope for white settlers to acquire arable land in Buganda, it also sowed the seeds of eventual conflict between peasant tenants and the upper strata of *rentier* landed chiefs.[102]

It was not a one-sided agreement. The Kingdom of Buganda was able to negotiate a legal status that allowed for a far greater degree of retained sovereignty than was permitted the other regional kingdoms. More substantively, the relationship that developed between the trinity of the colonial government, Bagandan leadership and the Anglican Church was close and mutually supportive in a

100 J. Iliffe, *A Modern History of Tanganyika*, 432–434.

101 UN T/218/Add.1 8 November 1948 Petitions, 5–8, 14–18, J. Iliffe, *A Modern History of Tanganyika*, 432–434 and A. Maguire, 'The Emergence of the Tanganyika African National Union in the Lake Province', R.I. Rotberg/A.A. Mazrui (eds), *Protest and Power in Black Africa* (New York, 1970), 646–648. The most extensive work on the UN Trusteeship Council and Missions with respect to Tanganyika is by U. Lohrmann, *Voices from Tanganyika*.

102 'The Uganda Agreement, 1900', *Laws of the Uganda Protectorate in Force on the 31st December, 1909, Comp. under the Authority of the Government Comp. by G.F.M. Ennis and W.M. Carter* (London, 1910), 952–964.

way that was unique to Uganda and impossible in a settler-dominated colonial territory. On the one side, it enabled the Kingdom of Buganda to maintain its pre-eminence within Uganda and the Bagandan leadership to retain its position within Buganda, and, on the other side, enabled the colonial government to utilise Buganda's hegemony as the mainstay of colonial overrule within Uganda as a whole. The colonial government was also much taken with the etiquette deeply entrenched within Bagandan society. Johnston, who had negotiated the Uganda Agreement, would describe the Bagandans in glowing terms: 'In politeness, quickness of intelligence, and appreciation of beauty, they are the Japanese of Africa.'[103]

Almost fifty years later though, the Bagandan opposition would seize on that etiquette as evidence of an over cosy relationship between the Bagandan leadership and the colonial government and Anglican Church. Their antipathy was dramatically demonstrated in 1948 by the manner in which Mulumba, by then Bataka party representative in London, refused a dinner invitation from Bishop Stuart, head of the Anglican Church in Uganda. In an open reply, he raged that it was precisely through cosy unofficial dinners and tea with missionaries and officials that the Bagandan leaders had been seduced and corrupted into permitting the alienation of Bagandan lands and blocking the means by which Baganda might progress; he concluded: 'My lord … you are crooked.'[104]

One of the earliest protest movements against the post-1900 Bagandan leadership was the '*bataka*' movement of the 1920s. The *bataka* movement was a manifestation of the struggle between the traditional *bataka* structure of clan elder loyalties, which had lost out in 1900, and the triad structure of the Kabaka (King of Buganda), Bakungu chiefs and the peasantry, which had won. More significant, though, was its claim to represent the peasantry against the landed aristocracy and the freehold settlement in the Uganda Agreement. While the opposition that emerged in the 1940s, which now appropriated the *bataka* label, shared with the earlier movement an objection to the freehold settlement, it was essentially driven by more contemporary concerns: economic factors, frustration at being excluded from participation in political power and a popular sense that a broader base of interests should be represented in the Lukiiko (Bagandan Parliament).[105]

103 H. Johnston, 'The Uganda Protectorate, Ruwenzori, and the Semliki Forest', *The Geographical Journal,* 19/1 (1902), 21 (reference from M. Twaddle, 'The Bakungu Chiefs of Buganda under British Colonial Rule, 1900–1930', *Journal of African History,* 10/2 (1969), 309–322).

104 Mulumba to Stuart 26 July 1948 and 27 August 1948, NA CO 537/3593.

105 C. Summers, 'Radical Rudeness: Ugandan Social Critiques in the 1940s', *Journal of Social History,* 39/3 (2006), 741–770 and 'Grandfathers, Grandsons, Morality, and Radical Politics in Late Colonial Buganda', *International Journal of African Historical Studies,* 38/3 (2005), 427–447. Carol Summers kindly drew my attention to the

Although the Bataka opposition was far more intense than the other anti-colonial movements in East Africa at this time, it nonetheless did not articulate its demands in terms of Point 3. This was not due to an unfamiliarity with the Atlantic Charter. On the contrary, many of its political leaders, such as Kivu (Fabian society) and Mulumba (Pan-African movement), had established contacts abroad and were therefore well-informed. Political gossip was also freely exchanged at Makerere College and trickled in from Bagandan soldiers serving abroad. However, in comparison with almost all the other British colonial territories, there seems to have been far less press coverage of the Atlantic Charter.

This is hardly to be explained by press censorship as vernacular pamphlets, notably *Gambuze* and *Munyonyozi*, and the virulently anti-British *Buganda Nyaffe* (Buganda our mother) seem to have encountered little difficulty in publishing aggressive criticisms. One of *Buganda Nyaffe*'s main criticisms, usually expressed in lurid terms, was that the Bagandan leadership itself had been responsible for selling land to their British 'friends' and thereby the Bagandan people into slavery. It characterised the Bagandan leadership's relationship with the British as based on a self-deception of the relationship: 'The European employs an African in the way as a master treats his dog … the dog is an animal but as it resides in a man's house, it treats itself differently while under the impression that the rest of its kind against whom it barks, are the animals, while it thinks itself to be half of what a man is.'[106]

Most likely, Point 3 was less relevant when, in the first instance, criticisms were being addressed against the Bagandan leadership. As Low observed: 'They saw the solution … to Buganda's ills within Buganda itself.'[107] This was particularly evident during the general strike of 1945 and the disturbances in 1949 when hostility was vented against the Bagandan chiefs rather than the colonial government. Nonetheless, the politically astute opposition leaders would regularly deploy political terminology which drew on the incongruities of wartime propaganda. In 1943, Kivu, for example, referred to the 'racial dictatorship' of the colonial government and of a liberty merely 'to obey your rules and regulations' and declared that: 'We have joined arms in fighting for liberty and freedom against

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relevant files in the NA and to the L.M. Boyd Papers, MSS Africa S. 951, Bodleian Library of Commonwealth and African Studies at Rhodes House, University of Oxford (hereinafter L.M. Boyd Papers).

106 *Buganda Nyaffe* 1944 (in translation), quoted by D. Low, *The Mind of Buganda: Documents of the Modern History of an African Kingdom* (Ibadan, 1971), 118–124, Z. Gariyo, *The Press and Democratic Struggles in Uganda: 1900–1962* (Kampala, 1992), 20–23, G. Thompson, *Governing Uganda: British Colonial Rule and its Legacy* (Kampala, 2003), 234 and R. Mukherjee, *The Problem of Uganda: A Study in Acculturation* (Berlin, 1956), 35.

107 D.A. Low, 'The Advent of Populism in Buganda', *Comparative Studies in Society and History,* 6/4 (1964), 424–435.

dictators … and are at the same time being forced into submission by dictatorial enforcement.'[108] Similarly, in their demands for wider representation in the Lukiiko, the opposition leaders would also invariably reference democracy as the moral basis upon which their demands were justified. Kakembo, for example, would write, in the context of the rule of the chiefs rather than as a comment on colonialism, that:

> We have fought to preserve democracy, which means a rule or government of the people, by the people, for the people. In other words it is a rule in which every man and woman has got a say in the running of his or her country. Obviously this is a new form of government in Africa, and it has not been adopted yet, but there are signs of it coming, and it is bound to come in the near future.[109]

Another returning soldier noted that: 'The point is it is cheating sending our men to the front to fight for democracy only to come back to find the government autocratic and bureaucratic.'[110]

Support for opposition claims that the Bagandan leadership were colluding with the colonial government and the Anglican Church to alienate Bagandan lands was reinforced in the early to mid-1940s by a number of political crises and controversial land transfers. This, in turn, prompted widespread political protests against the increasingly fragile Bagandan leadership. For example, in 1939, the death of the Kabaka led to a disputed succession process and it was followed two years later by further divisions within Bagandan society over the pregnanacy and proposed re-marriage of the Namasole, the Queen Mother. Although the Anglican Church was deeply entrenched in the fabric of Buganda society and government, its intervention in these matters nonetheless served to outrage many Bagandans. This outrage was further compounded when it was discovered that in 1941 the Anglican Church had secretly transferred mining rights on Church lands to the colonial government and, again, in 1944 when the Anglican Church sought to transfer Cathedral lands away from the Native Representative Council to the Church Missionary Society. As the church in Buganda pointed out in its protests to the Anglican Church in the UK, the Uganda Agreement had given these lands in trust to the African church. Popular outrage was also aroused in 1943 by enabling legislation aimed at appropriating private Bagandan land to provide for the expansion of Makerere College and the building of a cotton growing research station. There was widespread suspicion

108 Kivu to The Imperial British Government 2 November 1943 and Kivu to Fabian Colonial Bureau 22 June 1944, quoted by G. Thompson, *Governing Uganda: British Colonial Rule and its Legacy*, 234, 301.

109 R. Kakembo, *An African Soldier Speaks*, 44–46.

110 Report of the Chief Censor, Nairobi 3 March 1943, Kenyan National Archives, quoted by T. Parsons, 'The Military Experiences of Ordinary Africans in World War II', 22.

that the land would be applied to quite a different purpose and, more worryingly, that it would set a precedent for further land appropriations.[111]

It is now widely recognised that, contrary to the conclusion reached by the official Commission of Enquiry, the 1945 general strike in Uganda was not politically motivated but essentially a protest against the fall in real wages brought about by the war. Nonetheless, the protest could hardly fail to reflect the cumulative political discontent building up against the Bagandan leadership. Governor Hall, however, whose evidence strongly influenced the Commission of Enquiry, saw the strike as essentially political and guided by Communist influences. In his official report, he noted the emergence of a new class of 'business' politicians bringing with them new perspectives: 'Racial consciousness with the inevitable concomitant of colour prejudice'.

With this analysis in mind, the colonial government responded by putting down the strike with the help of troops from Kenya and sending a number of the more prominent opposition leaders into internal exile. *Buganda Nyaffe* was also banned for having brought about the strike by its provocative agitation. At the same time, though, the colonial government recognised the need for a 'carrot' alongside the 'stick' and it therefore raised wages and forced the Bagandan leadership to increase the number of members elected to the Lukiiko. Uganda also followed the other East African colonial territories in admitting (three) Africans onto its Legislative Council.[112]

111 The Christians in the Church of Uganda to the Kabaka 11 November 1948 enclosing The Church in Uganda, NA CO 537/3594, Mulumba, Letter to Lambeth Conference enclosing Memorandum from The Christians of Uganda 25 May 1948 and African Pastors to Archbishop of Canterbury 10 August 1948, NA CO 537/3593, Mulumba to Lambeth Conference 23 March 1948, L.M. Boyd Papers, C. Summers, 'Radical Rudeness: Ugandan Social Critiques in the 1940s', 744–745, K. Ward, 'The Church of Uganda and the Exile of Kabaka Muteesa II, 1953–55', *Journal of Religion in Africa,* 28/4 (1998), 418–424 and R. Mukherjee, *The Problem of Uganda: A Study in Acculturation*, 275–281. The section on the political events of 1940–49 has drawn extensively on E.M.K. Mulira, *Troubled Uganda* (London, 1950), 23–41, G. Thompson, *Governing Uganda: British Colonial Rule and its Legacy*, 222–314, D. Apter, *The Political Kingdom of Uganda: A Study in Bureaucratic Nationalism*, 2nd edn (Princeton, 1967), 216–262 and D.A. Low/R.C. Pratt, *Buganda and British Overrule 1900–1955* (Oxford, 1960), 263–293.

112 Government Printer, *Report of the Commission of Inquiry into the Disturbances which occurred in Uganda during January, 1945* (Entebbe, 1945), 6, G. Thompson, 'Colonialism in Crisis: The Uganda Disturbances of 1945', *African Affairs,* 91/365 (1992), 605–624 and Governor Hall to Stanley 7 March 1945, Enclosure Annexure A: Notes on political background to recent events in Baganda, NA CO 536/215/10; in his covering letter, Governor Hall suggested that as the earlier incidents 'appeared to be of isolated significance', the latest incidents 'must be regarded as definite indices of a growing race consciousness movement'. See also C. Summers, 'Radical

However, the administrative measures that followed on from the strike, not least the unpopularity of the repression and a new imposed Katikkiro (Prime Minister), did little to stem increasing popular discontent with the Bagandan leadership, and led directly to the formation of the 'new' Bataka Party in 1946. To support its programme of opposition, in 1947 it despatched a representative to London to lobby on its behalf. Its representative, Mulumba, had in fact only recently returned to Buganda from London where he had been studying at SOAS, University of London. Although his studies had been sponsored by the Catholic White Fathers, he had discovered Pan-Africanism through contact with fellow African students and had therefore attended the 1945 Manchester Pan-African Congress. Thereafter, he regarded the missionaries and Catholic Church which had sponsored his studies as a tool of the British.[113]

On his return to London, Mulumba bombarded a range of officials and institutions with petitions and provided Buganda with regular updates on his activities and achievements. One such petition was addressed to the UN, Prime Minister Attlee, the Colonial Office, the Governor of Uganda, the Kabaka and the Archbishop of Canterbury and widely publicised within Buganda; it announced:

> We do not want the British to keep on telling us we are not able to govern ourselves while they continue to misrule us, rolling in stacks of our money and deliberately hindering and retarding the normal development of the political, economic and social life of our country … We do not want Britain to organize anything for us any more in Uganda: we will do so ourselves.[114]

A further petition with a similarly impressive addressee list, this time officially received by the UN as it was sent through Gromyko, the Soviet Union's Representative to the UN, specifically addressed African rejection of Colonial Paper No. 210 and demanded a UN Commission of Enquiry into the question of Federation. Prime Minister Attlee was also advised that 'we are contented to organise our society on such solid foundations as are still inherent in our national culture'; that is, an imposed development was rejected, even if such a stance was thought to be backward.[115]

Rudeness: Ugandan Social Critiques in the 1940s', 750–751 and Z. Gariyo, *The Press and Democratic Struggles in Uganda: 1900–1962*, 22–23.

113 A detailed account of Mulumba's biography and activities is given in Uganda Protectorate, *Report of the Commission of Inquiry into the Disturbances in Uganda during April, 1949* (Entebbe, 1950), 85–95; see also K. Ward, 'African Nationalism, Christian Democracy and "Communism" – the rise of Sectarian Confessional Politics in Uganda 1952–1962', K. Kunter/J.H. Schjorring (eds), *Changing Relations between Churches in Europe and Africa: The Internationalization of Christianity and Politics in the 20th Century* (Wiesbaden, 2008), 76.

114 Mulumba Petition 8 August 1948, L.M. Boyd Papers.

115 Mulumba Petition to UN, 18 November 1947, NA CO 537/3605 (it is also included

The British government, fed up and disinclined to grant Mulumba any further time, responded with its standard line when faced with almost any opposition group:

> The Bataka movement, which Mr. Semakula Mulumba claims to represent, is a mushroom political party unrepresentative of the great mass of the people of Uganda. It has steadfastly refused to seek expression of its views by constitutional means through the system of local Councils … It is not recognised either by the Native or Protectorate Governments or by myself … he has addressed many abusive communications to me and to others, about events and people in Uganda. These communications do not merit serious consideration.[116]

At this point, with domestic unease continuing unabated, the Bagandan leadership finally came to the realisation that it was not so much colonial rule as their traditional authority that was under threat. In August 1948, therefore, they banned Bataka party meetings and asked the administration to put Mulumba on trial. It was an option that the colonial government was disinclined to take until the 1949 protests brought matters again to a head. The protests began when the Bagandan leadership failed to respond adequately to a petition to the Kabaka calling for 'the rule of democracy to start giving people powers to choose their own Chiefs' and for the cotton market, an area of vital business concern, to be opened up.

Nonetheless, as Gertzel and Low describe, compared with the experience of numerous other African colonial territories, in the years following 1949 no powerful country-wide political party would emerge in Uganda. The emphasis on local councils seemed to offer sufficient scope for the new generation of political leaders, there were few issues with nation-wide implications and by the mid-1950s the jealousy of the other regions within Uganda over Bagandan pre-eminence further limited the scope for a united national party that could challenge the authority of the colonial government.[117]

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in Mulumba to Gromyko (Ambassador of Soviet Union to UN) 18 November 1947, NA CO 537/3485 (UN, T/PET.2/42, 3 (letter to Gromyko) 4–5 (petition)) and Mulumba to Attlee 22 August 1948, NA CO 537/3593; see also D.R. Peterson, *Ethnic Patriotism and the East African Revival: A History of Dissent, c. 1935–1972* (Cambridge 2012), 90–93.

116 Secretary of State for the Colonies Creech Jones Written Answer, House of Commons 3 November 1948; see also Semakula Mulumba (undated c. 1948), NA CO 537/3594 which describes his background and abusive letters. Mulumba's extensive communications can be located in NA CO 537/3485, 3592–3594 and 3604–3605, Uganda Protectorate, *Report of the Commission of Inquiry into the Disturbances in Uganda during April, 1949*, 87–95 and the L.M. Boyd Papers, which also has extensive copies of vernacular newspaper commentary.

117 Uganda Protectorate, *Report of the Commission of Inquiry into the Disturbances in Uganda during April, 1949*, 20–26, 110, C. Gertzel, 'The Development of Political

There is, similarly, little evidence in Kenya of immediate discontent directly linked to the Atlantic Charter. Most likely because, at the outbreak of the war, the colonial government moved quickly to proscribe the Kikuyu Central Association (KCA) and two smaller African associations and to detain their leading members until some time after the end of the war in Africa. The most prominent of the KCA leaders, Kenyatta, had been sent to England in 1931 to represent the KCA's interests and to protest against sequestration of African lands. He remained there throughout the war and was therefore not detained although almost certainly he would have been had he remained in Kenya. As a result of this pre-emptive move, there were few political leaders and no major political association around which educated African opinion might coalesce.[118]

Commentary on the Atlantic Charter was also generally sparse in Kenyan newspapers although Gadsden nonetheless suggests that: 'The ideal of national self-determination, written into the Atlantic Charter, was common currency among nationalist leaders in Kenya.'[119] As a newspaper aimed predominantly at the settler community, the *East African Standard*, for example, quite obviously avoided discussion of the Atlantic Charter and therefore any sense of underlying African disquiet emerges only briefly in occasional snatches. In 1942, an editorial observed that the 'high principles' of the Atlantic Charter had 'prompted some awkward questions from the sceptical representatives of certain Asian and African peoples' and, in 1943, a letter was published from an African reader in which reference was made to the Atlantic Charter and the freedom of speech which it defended.[120] After the war, though, *Sauti ya Mwafrika*, the paper of the newly established KAU party, published a letter which seemed to express the pent-up feeling of Africans:

> This war has taught the African a lesson – that all people in this world must be accorded equal treatment irrespective of their colour and race … The African has therefore fought for the freedom of mankind. But the freedom for which he has fought cannot be seen … Now the war for equality of mankind is over. Will the African reap the benefit thereof?[121]

Parties in Uganda', P.S. Staff Seminar, Makerere College 22 February 1966 and D.A. Low, *Buganda in Modern History* (London, 1971), 167–226.

118 W. Kihoro, *The Price of Freedom: The Story of Political Resistance in Kenya* (Nairobi, 2005), 44–46 and HMSO Cmnd. 1030, F.D. Corfield, *Historical Survey of the Origins and Growth of Mau Mau* (London, 1960), 46–49.

119 F. Gadsden, 'Wartime Propaganda in Kenya: The Kenya Information Office, 1939–1945', *International Journal of African Historical Studies,* 19/3 (1986), 419, although the dating of sources are not sufficiently clear; see also S.I. Nyagava, 'The influence of WASU in East Africa', UNESCO, *The Role of African Student Movements in the Political and Social Evolution of Africa from 1900 to 1975* (Paris, 1994), 67–79.

120 Editorial 'After the War' and Letter 'African Grievances', *East African Standard,* 23 January 1942, 17 and 30 April 1943, 7.

121 *Sauti ya Mwafrika,* 15 October 1945, quoted by O.J.E. Shiroya, *Kenya and World War*

As in the other colonial territories, the issue arose as to whether an African representative should be nominated to the Legislative Council. It had already been pondered in 1938–39 and an enabling amendment adopted but it had not been followed up on the pretext that 'at present no suitable person was available'. By 1942–43, however, political pressure had built up for a 'suitable person' to be found as a result of which the first African member was appointed in 1944 and a second in 1947. The process served to stimulate African interest in political activity but also to heighten the colonial government's concern that it should give 'no encouragement … that the Government is contemplating the eventual introduction of ballot box methods for Africans'. It was 'a question which may have to be faced but anything of the kind would be quite premature at present'.[122]

The most prominent campaign for the first African nomination was run by Koinange, son of an important Kikuyu chief, who actively pursued the endorsement of other prominent Africans for his petition. With an impressive list of endorsements he addressed his petition directly to Colonial Secretary Stanley on the occasion of his visit to Kenya in October 1943 in an attempt to bypass the colonial government which might otherwise have declined to pass it on. Although he was interviewed, and had emerged in a privately conducted canvas of African opinion as the favoured candidate, his audacity in attempting to deliver the petition directly to Colonial Secretary Stanley weighed against him in the minds of the colonial government. As a result, Mathu, also a Kikuyu, was nominated as the first African unofficial member.[123]

Mathu's appointment led directly to the formation in 1944 of the KAU – initially the Kenya African Study Union – to support his work on the Legislative Council.[124] The initial aims of the KAU were declared as being: '(a) To unite the African people towards an African nation; and (b) To foster the social, economic and political interest of the African.' Nonetheless, at this stage, the KAU still felt that: 'The time is not yet ripe for any form of self-government to be awarded to Kenya … At the moment our people are not yet ripe to carry out the responsibility of a self-governing country. When the time comes (it) will be the Africans themselves who will petition His Majesty's Government to grant self-government to Kenya.' However, they also noted that in Kenya there seemed 'little prospect of the realisation of the four freedoms so loudly proclaimed from the international platform by the United Nations leaders'.[125]

II: African Soldiers in the European War (Nairobi, 1985), 169–170.

122 Moore to Stanley 21 March 1944 and Seel 22 April 1944, NA CO 533/532/7.

123 Petition to Secretary of State for (*sic.*) Colonies 31 August 1943, Governor Moore to Stanley 21 March 1944 and Edmonds 14 April 1944, NA CO 533/532/7.

124 B.E. Kipkorir, 'Carey Francis at the A.H.S, Kikuyu, 1940–62', B.E. Kipkorir (ed.), *Biographical Essays on Imperialism and Collaboration in Colonial Kenya* (Nairobi, 1980), 144–145 suggests that Mathu was not a 'nationalist' and the KAU founded essentially by old school friends from the famous Alliance High School.

125 KAU, A Memorandum on the Economic, Political, Educational and Social Aspects

As a step in what was perceived to be the political education of Africans, the KAU was given cautious official support. In contrast, in late 1945, an attempt was made to petition for the ban against the KCA and the other African parties to be lifted. Notwithstanding the formation of the KAU and despite the support of the Colonial Office, the colonial government in Kenya, controlled by the white settlers, nonetheless refused to lift the ban.[126]

On his return to Kenya in September 1946, Kenyatta was therefore elected President of the KAU when the leader at the time, Gichuru, willingly stepped down so as to enable his election. Under Kenyatta's leadership the KAU slowly came under the control of younger, more militant, members disinclined to accept the rules and timetable of the colonial government and eager to press for independence. Already at the KAU delegates' meeting which confirmed Kenyatta's election, it was unanimously resolved that the KAU's political objectives 'must be self-government by Africans for Africans'.[127]

Alongside his efforts to build up the KAU domestically, Kenyatta, with his experience and the international contacts acquired during his time in England, realised that the UN had opened up the opportunity to appeal to a wider international audience as a means of bringing pressure to bear on the Colonial Office. In 1948, therefore, Koinange, his brother-in-law, forwarded a memorandum about conditions in Kenya, in the name of the KAU, to the UN Trusteeship Council.[128] Although the attempt to debate the memorandum was easily rebuffed by the UK, there is a tantalising suggestion that he also sought to have the KAU recognised as an NGO at the UN. For example, in one letter intercepted by British intelligence, Koinange advised his colleagues: 'I have applied for permanent

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of the African in Kenya Colony, undated probably July/August 1946, NA CO 533/537/21, 48–52, J.P. Spencer, T*he Kenya African Union* (London, 1985), 120–126 and HMSO Cmnd. 1030, F.D. Corfield, *Historical Survey of the Origins and Growth of Mau Mau*, 49; see also C.G. Rosberg, Jr/J. Nottingham, *The Myth of Mau-Mau: Nationalism in Kenya* (Stanford, 1966), 212–215.

126 Ndegwa, General Secretary, KCA, The Ukamba Members Association and The Teita Hills Association 4 January 1946 and Acting Governor to Hall Secretary of State for the Colonies 15 February 1946 NA CO 533/543/2.

127 From the officer administering the Government of Kenya to The Secretary of State for the Colonies 21 February 1949, NA CO 537/4661, S. N. Bogonko, *Kenya 1945–1963: A Study in African National Movements* (Nairobi, 1980), 39, G. Padmore, *Africa: Britain's Third Empire* (London, 1949), 231–232 and W.A. Hunton, *Decision in Africa: Sources of Current Conflict* (New York, 1957), 194.

128 Koinange to Attlee 23 September 1948 enclosing Memorandum to the United Nations Organisation by the Kenya African Union in regard to information on non-self-governing territories, and transmission of political information 23 September 1948 and Chief of Native Commission to The Secretariat 18 October 1948, NA CO 537/3591. Details of the memorandum were published in several African papers notably *Mumenyereri* 18 October 1948, *Mucemanio* 23 October 1948 and *Bafaza* 23 October 1948, NA CO 537/3591.

credentials for the Kenya African Union to be recognised by the United Nations with a member of our Union being at all times recognised as an observer with full rights and privileges. I am keen to state that the application has been fully endorsed by Dr. Ralph Bunche.' All that remained therefore was for the KAU to formally sign the application form and attach a copy of its constitution for forwarding to the UN. It is, of course, highly unlikely that Bunche, who was head of the UN's Department of Trusteeship at that time, could or would have committed himself in this way.[129]

It was also suggested that Kenyatta's international experience was being put to use in other ways. In his official 1960 report on the origins of the Mau Mau revolt, Corfield, a former colonial officer in the Sudan Civil Service who had retired to Kenya, observed that Kenyatta was 'fully conversant with the modes of British thought, not excluding the great and almost fanatical respect paid to freedom … which with calculated cunning he exploited to further his own ends'. As an example of the manner in which that cunning had been applied, he reported on an alleged private conversation between Kenyatta and an unnamed friend in which Kenyatta had advised that 'in speeches on the aspirations of Africans always mention the word "democracy" as this word was dearly respected by Left-wing sympathizers in the United Kingdom'.[130]

British Central Africa

The colonial territories of British Central Africa comprised the Protectorates of Nyasaland (Malawi) and Northern Rhodesia (Zambia), established in 1907 and 1924 respectively, and Southern Rhodesia (Zimbabwe), a self-governing colony since 1923 under the political control of the white settler community. As in British East Africa, although they were quite separate political units, during the Second World War, the Inter-Territorial Conference had been created to coordinate non-political matters across all three territories. This had worked well and the white settlers now sought to consolidate that arrangement by political union, 'Federation' or 'amalgamation', along much the same lines as was being proposed for British East Africa. The problem, recognised by Colonial Secretary Stanley, was that African opinion in Nyasaland and Northern Rhodesia, as in Tanganyika and Uganda, was completely opposed to the idea. That had similarly

129 Wyn Harris to Cohen 15 November 1948 and Telegram Governor of Kenya to Secretary of State for the Colonies 16 December 1948, reference being made to intercepted letter Koinange (from Paris) to Kariuki 1 December 1948, NA CO 537/3591, and Wyn Harris to Cohen 23 February 1949, Cohen to Wyn Harris 1 March 1949 and Letter (unreadable signature) to Patterson 3 March 1949, NA CO 537/4661.

130 HMSO Cmnd. 1030, F.D. Corfield, *Historical Survey of the Origins and Growth of Mau Mau*, 51–52.

been made absolutely clear by African representations to the pre-war Bledisloe Commission that had been set up to enquire into the possibility of closer union between the three colonial territories.

Nonetheless, the Colonial Office continued to flirt with the idea on the basis that certain services could be run more efficiently if centralised and investment capital would more likely flow into the poorer areas of Nyasaland and Northern Rhodesia if supervised by a white settler government. However, the economic argument was soon overtaken by the Colonial Office's genuine fear that, without amalgamation, Southern Rhodesia might opt to amalgamate with South Africa. In May 1943, for example, the Colonial Office was forced to express its opposition to the idea floated by the Southern Rhodesian Legislative Assembly (subsequently also the Kenya Legislative Council) for a Pan-African conference to be chaired by Prime Minister Smuts (South Africa). The idea that such a conference would self-limit discussion to economic issues, as was suggested, was rightly dismissed as a canard.[131]

The Colonial Office's decision in 1944 to replace the Inter-Territorial Conference with a Central African Council was therefore essentially designed to placate the white settlers. But it was also stressed by Colonial Secretary Stanley that this structure, by retaining the individual political identities of the territories, was intended to convey the message that political union was not an option under consideration. However, as the white settlers continued to press their point, in 1951 the British government was finally persuaded to approve economic amalgamation with the prospect of political amalgamation to follow – the Central African Federation, the Federation of Rhodesia and Nyasaland, was thereby formally established in 1953. One of the key deciding factors was the advice given by the Colonial Secretary to the UK Cabinet that: 'We should regard the federation … as an essential measure for preventing non-British influences from the Union of South Africa from encroaching on and eventually engulfing British Central Africa'; albeit that 'African opinion … was almost unanimously opposed to the proposals'.[132]

131 Southern Rhodesia Colony, Debates of the Legislative Assembly, Fifth Session 1943 Vol. 23, Columns 332–368 (5 May 1943). The background can be followed in NA CO 847/23/15; see also *African Transcripts* 2 March 1945, 37–39.

132 Closer Association in Central Africa, Memorandum by the Central African Department, Colonial Office 16 February 1951, NA DO 35/3591, Closer Association in Central Africa, Memorandum by the Secretary of State for the Colonies and Secretary of State for Commonwealth Relations C.P. (51) 265 12 October 1951, NA CAB 129/47/40, 'Introduction', P. Murphy (ed.), *British Documents on the End of Empire: Central Africa, Series B, Vol. 9 Part 1 Closer Association 1945–1958* (London, 2005), xxxviii, The Federation of Rhodesia and Nyasaland Act 14 July 1953, The Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953 1 August 1953 and R. Hyam, 'The Geopolitical Origins of the Central African

The basis of African hostility towards amalgamation was, once again, the fear that it would lead to the further alienation of prime African-farmed land and effective political domination by the white settlers of Southern Rhodesia. Confronted by this prospect, African opinion in Nyasaland and Northern Rhodesia drew much the same conclusions that African opinion in Tanganyika had drawn and responded in much the same way. While drawing inspiration from the Atlantic Charter, their more intermediate goal was simply greater African participation in government as a prelude to independence rather than independence itself. Indeed, independence was to be avoided until Africans were able to command a majority in the territorial decision-making bodies.

Whereas, in 1915, the Chilembwe uprising had posed the question 'what are we fighting for?', in the early years of the Second World War, Nyasaland gave little outward indication of a similar questioning or of doubts as to the principle of colonial governance. No political agency through which African opinion beyond the tribal chiefs might make itself known emerged almost as if the Atlantic Charter had passed Nyasaland by. Nonetheless, this calm was misleading. Below the surface an underlying discontent was simmering.[133]

Discontent was centred on the land issue. Already before the Second World War, but continuing into 1945, there had been several 'serious incidents' arising out of evictions from private estates that prompted a recollection of the Chilembwe uprising. Indeed, such was the Chilembwe uprising's enduring hold on the collective memory of Nyasaland that the Nyasaland Commission of Inquiry into the 1959 disturbances and State of Emergency thought it of sufficient importance as to merit mention in their final report that 'during the course of our tour of Nyasaland we sometimes heard the name of John Chilembwe mentioned as a kind of hero figure not without influence on the imaginations of the present-day population of Nyasaland'.[134]

As for educated African opinion, it was only in 1943, as the war in Africa came to an end, and as the limitations on political activity no longer seemed as justi-

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Federation: Britain, Rhodesia and South Africa, 1948–1953', *Historical Journal,* 30/1 (1987), 145–172; see also J.W. Davidson, *The Northern Rhodesian Legislative Council* (London, 1948), 112–117.

133 G. Shepperson/T. Price, *Independent African: John Chilembwe and the Origins, Setting and Significance of the Nyasaland Native Rising of 1915* (Edinburgh, 1958), J. Power, *Political Culture and Nationalism in Malawi: Building Kwacha* (Rochester, 2010), 26–28 and R.I. Rotberg, *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1873–1964* (Cambridge, 1966), 76–92.

134 HMSO Cmnd. 814, *Report of the Nyasaland Commission of Inquiry* (London, 1959), 8–9, C. Baker, *Seeds of Trouble: Government Policy and Land Rights in Nyasaland, 1946–1964* (London, 1993), 40–43 and B. Pachai, *Land and Politics in Malawi, 1875–1975* (Kingston, 1975), 128–129.

fied as they had been, that it finally took up the challenge of the Atlantic Charter. The first step was taken by Sangala who was employed in the colonial service but who had also been one of the leaders of the Blantyre Native Association in the 1930s. After receiving official encouragement and blessing, in October 1943 he issued a circular letter proposing the formation of a Nyasaland Educated African Council, which soon evolved into the Nyasaland African Congress (NAC). He suggested that an association was the most effective means by which African opinion might be collectively made known to the colonial government: 'In the past grievances … affecting the country and people have been presented to the government … by local organizations who were only interested in local worries… the time is ripe now for Africans … to strive for unity … to obtain the greater development of the peoples and country of Nyasaland.' The circular letter also referred to the need for Africans 'to fight for their freedom', and 'to make our voices heard' in order that 'our race shall have a place amongst the civilized races', though it was made clear to the colonial government that this was not intended to provoke violence or civil disorder.[135] Further official support in the form of an open letter in the press congratulated the NAC 'upon the high standard and exposition of the objects and aims and confirms the Government is glad to recognise the NAC as representing various African Associations and that recommendations will receive consideration'.[136]

This refrain of 'freedom' would be reiterated by many speakers at the preparatory NAC meetings who demanded that when 'the enemies shall be defeated … whatever privileges will be given to the victorious big nations of the world, the Africans will also have a share' and they also called for 'opportunities for all regardless of race, colour or creed'. It would also find expression in the Presidential address to the first October 1944 Annual General Conference of the NAC which referred to support received from 'our soldiers who are fighting for the cause of liberty' and, again, by Mlanga at the first meeting of the advisory-only Nyasaland African Protectorate Council in 1946: 'When is Africa going to be freed? Where is that freedom promised to the world, when is it going to be enjoyed by everyone living on this earth?' At the May 1944 Introductory General

135 'Circular letter 1 October 1943', quoted by R.I. Rotberg, *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1873–1964*, 181–196, R. Grey, *The Two Nations: Aspects of the Development of Race Relations in the Rhodesias and Nyasaland* (London, 1960), 337–343, R.K. Tangri, 'The Rise of Nationalism in Colonial Africa: The Case of Colonial Malawi', B. Pachai/G.W. Smith/R.K. Tangri (eds), *Malawi Past and Present, Studies in Land and Regional History: Papers presented at the University of Malawi History Conference June 1967* (Malawi, 1968), 103–107 and K.K. Virmani, *Dr. Banda in the Making of Malawi* (Delhi, 1992), 40.

136 Letter, Ingham, on behalf of Acting Chief Secretary to the Government, *Bantu Mirror,* 24 February 1945, 6.

Meeting and the first October 1944 Annual General Conference of the NAC, the Governor was also requested to inform the Colonial Secretary of African fears over amalgamation, in fact, that 'one of the points which influenced us to organise is the question of amalgamation.'[137]

These concerns were summarised in a June 1946 letter to Colonial Secretary Creech Jones from Banda, the NAC's representative in London. He noted that Nyasas had twice 'contributed to the defence of the Empire with their blood, labour and treasure' and deserved direct representation for the two million against the two thousand settlers – and not indirectly by missionaries who spoke only for missionary interests; that provincial councils were no substitute for representation on the Legislative Council; that ordinary Nyasas feared alienation of tribal lands; and that there was total opposition to amalgamation. He also observed that the tribal chiefs were hardly representative of the people as the colonial government always claimed: 'They tell the Government Officials what they think will please the Government officials.'[138] Such was the noticeable change in African political attitudes at this time that it was thought worthy of mention in the Colonial Office's 1946 Annual Report on Nyasaland: 'Important psychological changes were also taking place … the formation of African Provincial Councils and of the Nyasaland African Congress was leading to an appreciation of social and political horizons wider than those of the village and the tribe.'[139]

Yet over the next few years, the NAC, like the TAA, would wither away through lack of funding and an inability to influence government policy. It was

137 Formation of Nyasaland African Congress: Speech by Laurence 20 May 1944, Blantyre', *Bantu Mirror,* 17 June 1944, 1, Minutes of a meeting held in Blantyre 20 May 1944, Minutes of African Congress: First Annual Meeting October 1944 and C.W. Mlanga, Nyasaland African Protectorate Council 28 January 1946, quoted by R.I. Rotberg, *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1873–1964*, 179, 192–196, Presidential Address, quoted by R. Grey, *The Two Nations: Aspects of the Development of Race Relations in the Rhodesias and Nyasaland*, 343, R. Tangri, 'Inter-War "Native Associations" and the Formation of the Nyasaland African Congress', *Transafrican Journal of History,* 1/1 (1971), 94–99 and 'Colonial and Settler Pressures and the African Move to the Politics of Representation and Union in Nyasaland', *Journal of African History,* 13/2 (1972), 299–303 and J. McCracken, 'Democracy and Nationalism in Historical Perspective: The Case of Malawi', *African Affairs,* 97/387 (1998), 233–234.

138 Banda to Creech Jones 14 June 1946 enclosing Memorandum prepared by Mr. C.J. Matinga and presented to the Bishop of Nyasaland, Meeting with the Hon. The Right Rev., The Bishop of Norwood, Blantyre, Nyasaland 24 January 1944 and ps attachment by Banda to Creech Jones, NA CO 525/199/10 (reference from P. Murphy (ed.), *British Documents on the End of Empire: Central Africa, Series B, Vol. 9 Part 1 Closer Association 1945–1958*, 28–34).

139 HMSO, *Colonial Office Annual Reports, Nyasaland 1946* (London, 1948), 3.

only with the renewed threat of amalgamation in the 1950s that African political activity was revived. Confronted once again by this threat, but with independence now a viable option, Banda, on the occasion of the 1953 Carlton House Terrace Conference which established the Federation of Rhodesia and Nyasaland, sought to remind British public opinion of the long lost promise of freedom: 'The Atlantic Charter which Mr. Roosevelt and your Mr. Churchill signed guaranteed territorial integrity and the right of any people to choose the form of government under which they would live. We, the Africans of Nyasaland and Northern Rhodesia, are people under the provisions of the charter.'[140]

There is greater evidence of interest in the Atlantic Charter in Northern Rhodesia where the *Bantu Mirror* provided extensive coverage and commentary from the outset.[141] For example, in August 1941 it published the text of the Atlantic Charter and a report on the WASU Atlantic Charter meeting (see page 164 below).[142] Another lead article in November 1941 noted that: 'In almost every newspaper or magazine one sees reference to the New World Order';[143] and in December 1941 it also published a modest proposal (advising that it had been partially censored): 'I do not suggest that self-government be restored to the Africans; for this would cause chaos and confusion. But to raise the qualification for a franchise so high as to leave the whole black population voteless does not bring the New World Order.'[144] A further editorial in 1942 cautioned Africans against undue expectations arising out of the Atlantic Charter observing that the 'Atlantic Charter and other world-wide statements urging that … after the war there shall be equal opportunities for all are apt to be more readily adopted

140 Verbatim Report of a public meeting, Church House, Westminster 23 January 1953, quoted by R.I. Rotberg, *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1873–1964*, 247–248.

141 The *Bantu Mirror* was published in Southern Rhodesia but its coverage extended to Northern Rhodesia. It was published 'by Africans for Africans', although it had a Trust structure with a European overseer to ensure that nothing libellous or seditious was published; this was, appropriately, described as censorship although it also received a small subsidy from the colonial government without which it might not have survived (see Eastwood 20 October 1943 and Lister and Minister of Native Affairs, 29 October 1943, Southern Rhodesia Colony, Debates of the Legislative Assembly, Fifth Session 1943 Vol. 23 Columns 2302–2309, 2628–2656 and Gore-Browne 20 December 1945, Northern Rhodesia, Legislative Council Debates First Session (Resumed) of the Eighth Council 24 November to 20 December, 1945, 538). In contrast, W.A. Hachten, *Muffled Drums* (Ames, 1971), 224 suggests that the paper employed no reporters but merely clipped other newspaper reports which it translated into the vernacular.

142 *Bantu Mirror,* 23 August 1941.

143 *Bantu Mirror,* 15 November, 1941.

144 'What Place has the Bantu in the New World Order', P.W.G. Mbofana, Letter, *Bantu Mirror,* 6 December 1941, 1, 4, 6.

in those countries without a race problem than in those where this problem is acute'.[145] From January through to April 1943 the paper also published a review of the US 'Committee on Africa, the War, and Peace Aims', *The Atlantic Charter and Africa from an American Standpoint* in an extensive series of articles.[146] Further commentary in 1944 on 'The Atlantic Charter and the Africans' and 'The African and the New World Order' noted that most Africans have not only not read or seen the Atlantic Charter but 'do not know that there is such a thing' so that there was some fatalism about post-war prospects: 'I took it for granted that whatsoever faithfulness and devotion one might show the Europeans we must never dream of comparative human rights';[147] nonetheless, it was argued that: 'The Atlantic Charter is applicable to the Africans as it is to the Asiatic and all people'.[148]

As a result of such commentary, Africans were moved to vociferous protest when the application of the Atlantic Charter to Africa was denounced during a debate in the Southern Rhodesia Legislative Assembly. This 1943 debate was initiated by Eastwood who asked 'the Government to outline its native policy in relation to the points set out in the Atlantic Charter'; as he made clear, the specific points he had in mind were Points 3 and 6 (freedom from fear and want):

> I asked that the Government would make a statement on its native policy in relation to the terms of the Atlantic Charter … I have learnt that as far as the Government is concerned the Atlantic Charter does not in any way apply to Southern Rhodesia. – [The MINISTER OF NATIVE AFFAIRS: You ought to have known it before] … in the opinion of … the Minister the Atlantic Charter, either in word or spirit, does not in any way apply to Southern Rhodesia – [The MINISTER OF NATIVE AFFAIRS: Will you point out the points that do?]

As the debate went on, Lister rather bluntly observed that 'under the present economic system it is absolutely impossible at the present time to give the natives really a square deal … members know perfectly well that the ideals in the Atlantic Charter are ideals which perhaps will be brought into practice about 100 years after this'. A further question on the application of the Atlantic Charter to Africa elicited the response from Minister of Native Affairs Bertin that there

145 *Bantu Mirror,* 25 July 1942, 6.

146 *Bantu Mirror,* 'The Atlantic Charter from an American Standpoint', 30 January 1943 – 3 April 1943 (ten articles).

147 Mashonaland Correspondent S.J. Soko, 'The Atlantic Charter and the Africans', *Bantu Mirror,* 25 March 1944, 1 (reference from R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 356–357) and 'The African and the New World Order', *Bantu Mirror*, 17 June 1944, 3; see also 'The Atlantic Charter and the Africans', *Bantu Mirror,* 1 January 1944.

148 'Africans and the New World Order', *Bantu Mirror,* 18 March 1944, 1 (reference from private paper by Professor M.O. West on Africa and the Atlantic Charter).

was no doubt that Prime Minister Churchill and President Roosevelt did not have the colonial territories in Africa in mind in relation to Point 3 but that Africans were entitled to live in freedom from fear and want and that in fact they did live in freedom from fear and, relatively speaking, freedom from want in Southern Rhodesia.[149]

In an overwhelmingly negative African response to this debate, President Roosevelt's statement 'that it was intended to apply to all races everywhere' was recalled,[150] and a letter described the Atlantic Charter 'as one of the "most important events during these dark times"' and insisted on Point 3's applicability to 'all the peoples';[151] a further letter from a Southern Rhodesian soldier also reflected that:

> A denial was published … as to whether Africans should be excluded in the New World Order through the Atlantic Charter … The African has served his rulers with admirable devotedness. What is he to receive for this? A continual exclusion from human rights? If so, our rulers must be quite shameless to blame the enemy for his brutality and assumed racial superiority.[152]

In response to the claim that Africans already had freedom, a letter to the *Bantu Mirror* asked 'can our authorities tell us what that freedom is?' and that: 'This constant emphasis on democracy is confusing. If democracy means rule by the people why are not the black people assisting in the making of our laws as well as the whites? What is going to happen after the war? Why are the Black people not represented in Parliament?'[153] The editorial response was that democracy takes time and to ponder whether the Bantu were fully ready.[154] It also

149 Eastwood 20 October 1943 and Lister and Minister of Native Affairs, 29 October 1943, Southern Rhodesia Colony, Debates of the Legislative Assembly, Fifth Session 1943 Vol. 23 Columns 2302–2309, 2628–2656 (reference from private paper by Professor M.O. West on Africa and the Atlantic Charter).

150 D. Basondile, Letter, 'Africans and Freedom', *Bantu Mirror*, 18 December 1943, 4 (reference from R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 356–357).

151 Mashonaland Correspondent S.J. Soko, 'The Atlantic Charter and the Africans', *Bantu Mirror,* 25 March 1944, 1 (reference from R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 356–357).

152 *Bantu Mirror,* 17 June 1944 (reference from A.S. Mlambo, 'From the Second World War to UDI, 1940–1960', B. Raftopoulos/A. S. Mlambo (eds), *Becoming Zimbabwe: A History from the Pre-colonial Period to 2008* (Harare, 2009), 79); see also Mashonaland Correspondent, 'Government Native Policy', *Bantu Mirror,* 20 October 1943, 1, 'Native Affairs in Parliament', 11 December 1943, 1, 'Conference of African Delegates of Native Welfare Societies', 25 December 1943, 6–7 and 'The Atlantic Charter and the Africans', 22 January 1944, 1, 4.

153 D. Basondile, Letter, 'Africans and Freedom', *Bantu Mirror*, 18 December 1943, 4.

154 'Editorial: Democracy', 6 November 1943, 1,

seems to have prompted the 1943 *Bantu Mirror* Essay Competition to adopt as its theme 'The Place of the African in the New World Order'.[155] Further commentary in 1944, in a letter from Nkumbula, later leader of the Northern Rhodesia African National Congress (NRANC) party, would also specifically connect 'the right of ALL people to choose the form of governments under which they will live' as the moral basis underpinning African opposition to amalgamation and that, with reference to amalgamation, Point 3 'must always be referred to' as it indicated that it applied to all peoples and nations.[156]

Notwithstanding awareness of the Atlantic Charter, an African political association seems nonetheless to have taken some time to form in Northern Rhodesia.[157] The situation was, perhaps, less urgent in that Gore-Browne, a sympathetic European who spoke Cibemba, had been appointed to represent African interests in the Legislative Council. In 1942, at his prompting, regional councils were created and, as Rotberg suggests, they 'comprised a system that permitted a number of African leaders to feel a sense of involvement … in the management of their own country'; though they thereby lessened the urgency to establish an African political party.[158] These councils, while permitting open debate, were nevertheless only advisory in that they had been established by the colonial government as essentially a safety valve for African aspirations. Accordingly, sensitive debates seem to have been excised from the report of proceedings, though some information was published in the *Mutende* newspaper.

What emerges from these debates is the importance Africans placed on the need for the white settlers to show a greater respect to Africans and for more dignified treatment. Exception was particularly taken at the abusive behaviour directed towards Africans and the practice of serving Africans through small external windows in European-owned shops. Amalgamation was, of course, strongly opposed. When a white settler took umbrage, arguing that such opposition did not represent the views of all Africans and that amalgamation would rid the territory of dependency on the Colonial Office, which he likened to a state of servitude, *Mutende* and the *Bantu Mirror* published letters pointing out 'that if anyone in Northern Rhodesia was living in a state of servitude it was not the European but the African'.[159]

155 'The Bantu Mirror Essay Competition Xmas 1943', *Bantu Mirror,* 25 December 1943, 1, 3, 4, 8.

156 Nkumbula, *Bantu Mirror,* 1 July 1944 (reference from R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 356–357). Nkumbula would be elected President of the Northern Rhodesian African National Congress in 1951.

157 This section has drawn extensively on R.I. Rotberg, *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1873–1964*, 199–213.

158 J.W. Davidson, *The Northern Rhodesian Legislative Council*, 78–81.

159 *Mutende,* 20 April 1944 and the *Bantu Mirror,* 22 April 1944, quoted by R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 356–357.

With the example of Nyasaland before them, and no amelioration of grievances in sight, the idea of an African political association gradually began to take shape and to coalesce around existing African welfare associations such as the Lusaka Welfare Association whose constitution provided that its objective was 'to protect and further African interests generally'. Increasingly, then, these welfare associations began to see themselves, and not the nominated African members sitting on the advisory councils, as the legitimate representatives of the people and to sense that what was needed was a national forum independent of the government through which African grievances could be expressed. Smyth, for example, notes 'extensive publicity' in the *Bantu Mirror* about the Nyasaland Congress and corresponding calls for a similar African association to be established in Northern Rhodesia. However, although an initial proposal was advanced in 1942, it was only in 1946 that the Federation of African Welfare Societies of Northern Rhodesia was formed. This was the first expression of a territorial consciousness although, as always, the colonial government's attitude was that this association represented no-one but its members.[160]

In response and in order to lessen the influence of the welfare associations, in 1946, an African Representative Council was established albeit that, once again, it was only advisory and also, quite deliberately, overwhelmingly composed of rurally based representatives to maximise the influence of conservative African elements. Yet, as with the regional councils, given the opportunity, its African members also spoke out in protest on behalf of equal pay, the return of African lands, an increased degree of respect to be shown to Africans and unanimous opposition to amalgamation: '(We do not) wish self government yet, we wish the Colonial Office to continue … We do not want a government like Southern Rhodesia, where the Africans are little better than slaves.' By 1948, though, the idea of amalgamation was reviving. As a result, disenchantment with the response of the colonial government to their representations against amalgamation and an increasing sense of 'betrayal' of African interests prompted the Federation of African Welfare Societies to transform itself into the Northern Rhodesia African Congress (NRAC). Although careful to express its moderation, the NRAC was a more focused embryonic African political party that aimed to 'promote the educational, political, economic, and social advancement of the Africans' and 'to interpret truly and faithfully the real African opinion'.[161]

160 R.I. Rotberg, *The Rise of Nationalism in Central Africa: The making of Malawi and Zambia, 1873–1964*, 203–207, *Bantu Mirror,* 3 November 1945, quoted by R. Smyth, 'War Propaganda during the Second World War in Northern Rhodesia', 358, and M.C. Musambachime, 'Dauti Yamba's Contribution to the Rise and Growth of Nationalism in Zambia, 1941–64', *African Affairs,* 90/359 (1991), 264–267.

161 Chief Ishinde and NRAC Constitution, quoted by R.I. Rotberg, *The Rise of Nationalism in Central Africa: The Making of Malawi and Zambia, 1873–1964,* 207–212. Stanley to Creech Jones 16 February 1948, NA CO 537/4690 (reference from

Once again, therefore, amalgamation, which had been advanced in order to promote white settler domination, had led to a more assertive African political consciousness and a determination to defend African interests.

South Africa

In his autobiography written some fifty years later, Mandela recalled that:

> The Atlantic Charter … reaffirmed faith in the dignity of each human being and propagated a host of democratic principles. Some in the West saw the charter as empty promises, but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the allies against tyranny and oppression, the ANC created its own charter, called African Claims.[162]

This account of the impact of the Atlantic Charter in South Africa would seem to be supported by the opening recitals of the African National Congress (ANC) 'African Claims in South Africa' to which Mandela had referred:

> In all countries this summary of the war aims of the Allied Nations has aroused hopes and fired the imagination of all peoples in regard to the new world order adumbrated in its terms. For us in South Africa particular significance attaches to this document because of its endorsement on more than one occasion by Field-Marshal Smuts, who has announced that the post war world will be based upon the principles enunciated in the Atlantic Charter.[163]

Yet, notwithstanding its references to hopes and fired imagination, the ANC knew well that Prime Minister Smuts' endorsement did not provide any basis of encouragement for the ANC. For example, in a 1942 speech, he referred to 'the Atlantic Charter, in which certain large principles of international policy in the social and economic sphere have been accepted. That too marks a great step forward which only requires more careful definition and elaboration to become

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P. Murphy (ed.), *British Documents on the End of Empire: Central Africa, Series B, Vol. 9 Part 1 Closer Association 1945–1958*, 70–71) suggests that the breakdown of Gore-Browne's marriage affected his outlook.

162 N. Mandela, *Long Walk to Freedom* (London, 1994), 110; see citing of Mandela's account, for example, in E. Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, 2005), 29, F. Klose, '"Source of Embarrassment": Human Rights, State of Emergency, and the Wars of Decolonization', S-L. Hoffmann (ed.), *Human Rights in the Twentieth Century* (Cambridge, 2011), 239 and P.G. Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia, 1998), 144.

163 'African Claims in South Africa' adopted by the ANC Congress 16 December 1943, T. Karis/G.M. Carter (eds), *From Protest to Challenge: A Documentary History of African Politics in South Africa 1882–1964, Vol. 2 Hope and Challenge 1935–1952* (New Haven, 1973), 210–211.

a real Magna Carta of the nations'.[164] The following year, he explained that: 'Application of the Atlantic Charter to India, Africa, and elsewhere would have to be carefully worked out on the basis of the racial, economic, and cultural situation in complex varied societies.'[165] Both pronouncements were made before the ANC had even set up its Atlantic Charter Committee so it would already have been on notice. That this was understood by the ANC is clearly suggested by ANC President Xuma's warning in the Preface to 'African Claims in South Africa' that: 'As African leaders we are not so foolish as to believe that because we have made these declarations that our government will grant us our claims for the mere asking. We realise that for the African this is only a beginning of a long struggle entailing great sacrifices of time, means and even life itself.'[166]

Much the same point can also be made of the optimistic reference to the speech by Minister of Native Affairs Reitz at the opening of the Native Representative Council (NRC) in December 1942: Reitz 'speaking on behalf of the Government, to the African people … indicated that the Freedoms vouchsafed to the peoples of the world in the Atlantic Charter were indicated for the African people as well'.[167] Indeed, the immediate reaction to his speech by the African NRC delegates suggested that they at least saw no grounds for optimism. Disillusioned with the NRC, which was (soon to be) likened to 'a toy telephone with no connection anywhere', they were no longer interested in empty speeches. In his reply, Dube therefore delivered a passionate response, described by Ballinger as 'those questions that were to re-appear throughout the session. "What does it mean for us?"'.

> Does freedom from oppression mean that no white man dare hit me or my wife or my child, that no policeman dare break into my house at night and drive out my wife naked … Does it mean that the abominable pass laws will be destroyed for ever? Does it mean that my people shall be respected when they move in public places … For at present there are many forms of oppression and many degrees of it.[168]

164 Prime Minister Smuts, Speech to both Houses of Parliament, 21 October 1942, 'General Smuts on the War', *Journal of the Royal African Society,* 42/167 (1943), 59–68.

165 Interview with General Smuts 15 March 1943, 'Collaboration in Peace: Gen. Smuts's views', *Sydney Morning Herald,* 16 March 1943, http://trove.nla.gov.au/newspaper/article/17840682, last accessed 13 March 2023.

166 'African Claims in South Africa' adopted by the ANC Congress 16 December 1943, 210–211.

167 'African Claims in South Africa' adopted by the ANC Congress 16 December 1943, 211.

168 M. Ballinger, *From Union to Apartheid: A Trek to Solidarity* (Cape Town, 1964), 111, 162–167. Margaret Ballinger was a (white) anti-apartheid member of the NRC and the House of Assembly, and John Langalibalele Dube was the first President of the ANC and a member of the All-African Convention (AAC).

Surprisingly, too, given Mandela's account, there is no mention of the Atlantic Charter in Xuma's Presidential Address to the 1941 ANC Conference or Tabata's speech to the 1941 All-African Convention (AAC) Conference. Nor is any mention made in the 1944 Manifesto of the ANC Youth League which Mandela helped found.[169] In fact, the ANC's intervention in the Atlantic Charter debate only seems to have come about as a result of a letter in late 1942 from Secretary-General Calata to Xuma suggesting that 'in your Presidential address you deal with the Atlantic Charter and try to interpret it in South African terms. I hope that in so doing you will include such terms as "The Social Security Code" wit (*sic.*) a view to suggesting to the Government what we expect as post war reconstruction of the State'.[170] This implies that Calata did not have any great hope that the Atlantic Charter might be applied in South Africa in terms of self-government or democratic principles, but that it might offer some potential in terms of the 'social and economic sphere'. He therefore concluded that an improvement in African social and economic conditions was a realistic goal for the ANC to pursue. Xuma accepted his advice but in his resolution before the 1942 ANC Conference he also allowed for a far wider brief than had been suggested by Calata: 'That this Congress gives the President general power to appoint a Committee to go into the question of the Atlantic Charter and to draft the Bill of Rights to be presented to the Peace Conference at the end of the present war'. It is therefore only at this point that the project begins to contemplate 'a host of democratic principles'.[171]

Having received the 1942 ANC Conference's approval, it would still take a further three months before Xuma sent out a letter inviting thirty-four prominent Africans to join the proposed Atlantic Charter Committee. Invitations were also sent to the Paramount Chiefs suggesting that they might wish to

169 'Presidential Address to ANC Annual Conference 14–16 December 1941', 'Address by Tabata to AAC Conference 16 December 1941' and 'Provisional Committee of the Congress Youth League, March 1944', T. Karis/G.M. Carter (eds), *From Protest to Challenge*, 172–184, 300–308, 340–346.

170 Calata to Xuma 26 November 1942 AD843-F2-005-jpeg.pdf, last accessed 19 July 2014, Xuma Papers, University of Witwatersrand Historical papers, Digitised Collections http://researcharchives.wits.ac.za (there is a further note dated November 1942 but unsigned AD843-F2-006-jpeg.pdf, last accessed 13 March 2023, which also seems to place the context of the Atlantic Charter reference in social welfare policy terms); see also S.D. Gish, *Alfred B. Xuma: African, American, South African* (Basingstoke, 2000), 115.

171 'Overview' and 'Resolutions of the ANC Annual Conference, December 20–22, 1942', T. Karis/G.M. Carter (eds), *From Protest to Challenge*, 88–90, 122 Note 27, 199, and Resolutions passed, at the Annual Conference of the African National Congress at Bloemfontein 20–22 December 1942 AD843-F3-012-jpeg.pdf, Xuma Papers, University of Witwatersrand Historical papers, Digitised Collections http://researcharchives.wits.ac.za, last accessed 13 March 2023.

nominate additional members. Twenty-eight prominent persons would eventually be recorded as members of the committee. Alongside the invitation, Xuma provided details of the proposed terms of reference, an outline of sections, the procedure that would be followed and the sub-committees that would be responsible for preparing each of the sections. The draft would then be reviewed by the Atlantic Charter Committee before being presented to the 1943 ANC Conference for adoption. The terms of reference provided that the members should 'formulate a statement of principles and a programme of action with a view of ensuring that African needs and aspirations in regard to different aspects of African individual and social life receive adequate attention in the post-war development of South Africa'. By November 1943, however, when he sent out a circular reminding committee members of the meeting date, Xuma had received a copy of the 1943 Atlantic Charter memorandum which the West African press delegation had presented to the Colonial Office (see page 168 below). Xuma therefore further refined the aim of the statement that had been set out in the terms of reference: 'The Africans themselves must tell South Africa and the world what they want for themselves.' This, as he explained, was the point that the West African press delegation had made, otherwise 'we may be left in the lurch in post-war days to come'. It was in essence recognition that there were no grounds for optimism in terms of the expected response of the South African government to the Atlantic Charter.[172]

The Atlantic Charter Committee met as proposed to deliberate and two days later presented their report to the 1943 ANC Conference which adopted it as 'African Claims in South Africa'. Commending the report, Xuma cautioned: 'It is a question whether the mighty ruling white South African will receive this document with the respect this document deserves.' In the Preface, Xuma described the background to the report; the second part, 'The Atlantic Charter and the Africans', provided an analysis of the Atlantic Charter from an African

172 Sub-Committees and African National Congress: Atlantic Charter Committee (undated, almost certainly March 1943) AD843-G2-001-jpeg.pdf, Invitation letter from Xuma for membership of Atlantic Charter Committee 22 March 1943 AD843-G2-004-jpeg.pdf, updated African National Congress: Atlantic Charter Committee (possibly 13 September 1943) AD843-N3-9-001-jpeg.pdf, A.B. Xuma, Circular letter to members of the Atlantic Charter Committee 22 November 1943 AD843-H4-002-jpeg.pdf, Xuma Papers, University of Witwatersrand Historical papers, Digitised Collections http://researcharchives.wits.ac.za, last accessed 13 March 2023 and P. Walshe, *The Rise of African Nationalism in South Africa: The African National Congress, 1912–1952* (London, 1970), 271–273; the reference is to The Atlantic Charter and British West Africa, Memorandum on Post-war Reconstruction of the Colonies and Protectorates of British West Africa Prepared under the Auspices of the West African Press Delegation to Great Britain August 1943, NA CO 554/133/3.

perspective; and the third part set out a draft Bill of Rights: 'We want the Government and the people of South Africa to know the full aspirations of the African peoples so that their point of view will also be presented at the Peace Conference. We want the Government of the United Nations to know and act in the light of our own interpretation of the "Atlantic Charter"'. This was all the more important, he argued, in that: 'Already according to press reports there seems to be differences of opinion as to the applicability of the "Atlantic Charter" as between the President of the United States and the Prime Minister of Great Britain.' The ANC therefore sought to make clear that, as British wartime propaganda had encouraged them to believe: 'the "Atlantic Charter" must apply to the whole British Empire … since … to quote B.B.C. Radio News Reel: "We Fight for World Democracy"'. Moreover, taking up an emotional point, touched on by Xuma in his 1941 Presidential Address, it also pointed out that: 'The soldiers of all races … have won their claim and the claims of their peoples to the four freedoms by having taken part in this war.' In its analysis of Point 3, the report observed that:

> In the African continent in particular, European aggression and conquest has resulted in … Alien governments … It is the inalienable right of all peoples to choose the form of government under which they will live … Africans welcome the belated recognition of this right by the Allied Nations … the acid test of this third article of the charter is its application to the African continent.

In the third part, the Bill of Rights demanded as a matter of urgency 'the granting of full citizenship rights such as are enjoyed by all Europeans in South Africa' and, in line with Calata's original suggestion, a range of further economic and social rights covering land, public health, education and industry and labour.[173]

173 'Presidential Address to ANC Annual Conference 14–16 December 1941' and 'African Claims in South Africa' adopted by the ANC Congress 16 December 1943, T. Karis/G.M. Carter (eds), *From Protest to Challenge*, 181–183, 209–233, African National Congress, Presidential address, delivered by Dr. A.K. Xuma, President-General, African National Congress on 15 December 1943, AD843-H5-002-jpeg.pdf, Xuma Papers, University of Witwatersrand Historical papers, Digitised Collections http://researcharchives.wits.ac.za, last accessed 13 March 2023; see also F. Meli, *South Africa Belongs To Us: A History of the ANC* (Harare, 1988), 94–96. In 1923 the ANC had also adopted a resolution – 'as human beings' and 'as the sons of this soil' – in support of a Bill of Rights, see 'Resolutions of the Annual Conference of the African National Congress, May 28–29 1923', T. Karis/G.M. Carter (eds), *From Protest to Challenge: A Documentary History of African Politics in South Africa 1882–1964, Vol. 1 Protest and Hope, 1882–1934* (Stanford, 1972), 345–346; see also K. Asmal/D. Chidester/C. Lubisi (eds), *Legacy of Freedom: The ANC's Human Rights Tradition* (Jeppestown, 2005), 47.

The report having been adopted, it was made available for sale to the general public, and, as a preliminary to a requested interview, a copy sent to Prime Minister Smuts. In due course, Prime Minister Smuts' Private Secretary would reply regretting that 'an interview would serve no useful purpose', and that: 'The Prime Minister … does not agree with your interpretation of the Atlantic Charter' and was 'not prepared to discuss proposals which are wildly impracticable.'[174]

Other African parties also commented on the Atlantic Charter, but, again, more cautiously than is suggested by Mandela. For example, the left-wing African Democratic party noted that: 'The African people share in this hope of a better post-war world … engendered by the statements of international statesmen abroad (e.g., The Atlantic Charter).' It also proposed that Africans should 'solemnly turn to God' on 8 January 1944 which should be known as Atlantic Charter Day: 'This is our New Year message to the African people. Salvation lies in your hands. Heaven helps those who help themselves. Observe the African Day of Prayer and fight for freedom.'[175]

In contrast, AAC President Jabavu, who had declined a place on the Atlantic Charter Committee, was more circumspect, declaring in 1943 that the government should be pressed 'for a clearer interpretation of the Atlantic Charter (which was) couched in grandiose language that easily satisfies complacent communities'. In posing several questions about the applicability of the Atlantic Charter to Africans and whether Africans would be represented at the peace settlement, he closed with the reservation that: 'If these questions cannot be satisfactorily answered … then the charter is an empty shell so far as Africans are concerned.'[176] Later in 1943, when it was clear that they would not be answered satisfactorily, the AAC Executive Committee issued 'A Call to Unity', which warned that: 'When the war is over, a Peace Conference will deal with

174 Xuma to Smuts 15 and 31 August 1944 and Prime Minister's Private Secretary to Xuma 18 August 1944, AD843-I3-002-jpeg.pdf and AD843-I3-003-jpeg.pdf, Xuma Papers, University of Witwatersrand Historical papers, Digitised Collections http://researcharchives.wits.ac.za, last accessed 13 March 2023 and Prime Minister's Private Secretary to Xuma 29 September 1944, quoted (in parts) by P. Walshe, *The Rise of African Nationalism in South Africa*, 273–274 and S.D. Gish, *Alfred B. Xuma*, 128–129.

175 Manifesto of the African Democratic Party 26 September 1943, T. Karis/G.M. Carter (eds), *From Protest to Challenge,* 347, 392. B. Hirson, *A History of the Left in South Africa: Writings of Baruch Hirson* (London, 2005), 192 identifies that the New Year's message was printed in most African papers in December 1943; 'Overview', T. Karis/G.M. Carter (eds), *From Protest to Challenge*, 128 Note 83 also describes a proposal by Mosaka and Mampuru, founders of the African Democratic Party, for an African Day of Prayer to be designated as Atlantic Charter Day.

176 Professor D.D.T. Jabavu, Statement on the Atlantic Charter 26 June 1943, T. Karis/G.M. Carter (eds), *From Protest to Challenge*, 347, 392.

the various claims of the oppressed peoples to self-determination and freedom … The government of South Africa, which represents only the White people, cannot speak for us. They have rejected our constitutional claims to citizenship and representation, so that we cannot entrust our claims and future to them.'[177]

The AAC also debated the prospect of representation at the Peace Conference but concluded that 'no useful purpose would be served by sending delegates to a Peace conference of Imperialist governments'. In July 1944, with the government's position becoming clearer, the AAC Executive Committee issued a further statement commenting that: 'We have been finally shown, not only in words but in deeds, that the Atlantic Charter applies only to the White man. No four freedoms for the Non-European! Only the old bonds of slavery called by four different names: "trusteeship", segregation", separation", "development on his own lines"'.[178]

Madagascar

The French colonial territories were very much divided in their response to the Atlantic Charter. In North Africa the Atlantic Charter clearly inspired nationalist movements and in Madagascar, too, it would be utilised as the basis upon which demands for independence might reasonably be advanced. Yet, in most of French West and Equatorial Africa, there was hardly any reaction.

The Allied invasion of Madagascar was wrapped up by November 1942 only days before the Operation Torch landings in North Africa. The invasion was led by British forces without the Free French who were deliberately excluded as both the US and the UK were concerned that General de Gaulle's priorities were rather more focused on his own political future and the recovery of colonial territories than on the demands of military operations. It also came at a time when the relationship between General de Gaulle and Prime Minister Churchill had almost completely broken down as a result of the dispute over the terms of the armistice agreed with Vichy France forces in Syria and Lebanon. The British wanted to make it clear to General de Gaulle that their primary concern was the conduct of the war not Free French political sensitivities whereas, on his side, General de Gaulle saw British negotiations with Vichy France military forces as an insult to the Free French and proof of British intentions to seize French colonial territories.[179]

177 'A Call to Unity, Manifesto adopted by the National Executive Committee of the AAC, 26 August 1943', T. Karis/G.M. Carter (eds), *From Protest to Challenge*, 128 Note 86, 351.

178 All-African Convention Executive Committee, Johannesburg, *Statement: Along the New Road 7 July 1944*, quoted by I.B. Tabata, *The Awakening of a People* (Nottingham, 1974), 61–62.

179 War Cabinet WP (44) 288 Relations with General de Gaulle, Note by the Secretary of the War Cabinet Bridges 1 June 1944, NA CAB 66/50/38 and M. Zamir, 'De

There were also concerns that Vichy France leaders in both Madagascar and North Africa were virulently opposed to General de Gaulle. It was therefore not apparent what reception the invasion should expect to receive but certain that cooperation would be less likely if it was believed that the territories would be handed over to General de Gaulle. Although, therefore, Free French troops would not be utilised, Prime Minister Churchill thought it would be helpful to request President Roosevelt, first, that the invasion should still be described as 'Anglo-American' and, second, that a token US force should be involved as political cover. Finally, there were also well-founded fears over possible Free French leaks of the invasion plans. As a result, Prime Minister Churchill was not only adamant that 'The Free French … should be kept out' but that General de Gaulle should even be misled about the invasion operation.[180]

To allay French fears that French territory would not be returned to France, assurances were given to the Vichy France colonial administration and General de Gaulle at the outset of the invasion.[181] Yet, despite these assurances, Vichy France forces doggedly resisted as a result of what Jennings has described as 'an avalanche of Anglophobic invective' and orders 'to resist a British attack, but to tolerate a potential Japanese incursion'. In fact, the British would have been quite prepared to leave the Vichy France regime in Madagascar in place if they had not resisted.[182] As a result of that resistance, control was handed over to the Free French. But, in a further sign of displeasure with General de Gaulle, a hand-over agreement was not signed until December 1942 and the arrival of the new French High Commissioner was deliberately delayed until early January 1943.[183]

Gaulle and the Question of Syria and Lebanon during the Second World War: Part I', *Middle Eastern Studies,* 43/5 (2007), 675–708; see also A.B. Gaunson, *The Anglo-French clash in Lebanon and Syria, 1940–1945* (London, 1987).

180 Peake, Despatch 19 February 1942, enclosing de Gaulle to Churchill 19 February 1942, Prime Minister Churchill's PPS to Lawford 7 March 1942 and Churchill to Ismay 30 March 1942, NA PREM 3/265/1, Eden to Prime Minister 29 August 1942, NA PREM 3/265/10, M. Thomas, 'Imperial Backwater or Strategic Outpost? The British Takeover of Vichy Madagascar, 1942', *Historical Journal,* 39/4 (1996), 1055–1056, 1061 and D. Garnett, *The Secret History of PWE: The Political Warfare Executive, 1939–1945,* 233–234.

181 *FRUS 1942 Vol. II Europe*, Documents 692: 'The Secretary of State to the *Chargé* in France' (Tuck) 4 May 1942 and 696: 'The British Embassy to the Department of State *Aide-Memoire*' 15 May 1942, Strang 10 October 1942 Conversation with Pleven, NA FO 371/31907 and P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969', 140–145.

182 E.T. Jennings, 'Vichy Propaganda, Metropolitan Public Opinion, and the British Attack on Madagascar, 1942' *L'Esprit Créateur,* 47/1 (2007), 44–45 and War Cabinet WP (44) 288 Relations with General de Gaulle, Note by the Secretary of the War Cabinet Bridges 1 June 1944, 5, NA CAB 66/50/38.

183 Memorandum, Eden 9 November 1942 WP (42) 518, NA CAB 66/30, Agreement

The incoming French administration was immediately confronted by a hostile population that had for some time been forced to endure the burdenous economic exactions and repressive measures of an unpopular foreign, that is Vichy France, regime. As a 1942 US intelligence report noted, 'the French regime is by no means popular' due mainly to graft by colonial officials and exploitation by large French companies.[184] A British military report also noted that many people in Madagascar would prefer a purely British occupation and that General de Gaulle 'must be prepared to encounter considerable opposition, prejudice and non-cooperation'.[185]

Over the next two years, therefore, the new colonial administration experimented with various political structures as it sought to balance the interests of the French settler community and war requisitioning against the pent-up resentment of the Malagasy population. Initially, there was an attempt to revive the pre-war Economic and Financial Delegations structure alongside a newly created advisory Franco-Malagasy Commission based on equal representation. However, in March 1945, equality of representation was discarded with the creation of a new Representative Council the elections to which were based not only on separate French and Malagasy electoral colleges but also allowed for official nominations by the colonial government.[186]

With post-war political structures in France and Madagascar still in the balance, Malagasy nationalists sought, secretly, to sound out US and UK officials about the extent of their support for outright Malagasy independence based on the Atlantic Charter. In February 1944 the nationalist leader Ravoahangy went even further when he 'openly appealed for U.S. support for Malagasy independence, citing article three of the Atlantic Charter'. However, Wharton, the US Consul in Madagascar and the first black Foreign Service Officer in the State Department, warned Secretary of State Hull that all attempts to encourage the

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between the Government of the United Kingdom and the French National Committee on the defence of the Island of Madagascar and its dependencies and the Island of Reunion, 14 December 1942, NA FO 892/132, C. Smith, *England's Last War Against France: Fighting Vichy 1940–42* (London, 2009), 280–356 and R.E. Osborne, *World War II in Colonial Africa: The Death Knell of Colonialism*, 238–243.

184 Madagascar 5 May 1942, 3, *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961*, Reel 8 and E.T. Jennings, *Vichy in the Tropics: Pétain's National Revolution in Madagascar, Guadeloupe, and Indochina, 1940–1944* (Stanford, 2002), 72–78.

185 Note by M.O. 11 on Telegram 44992/3/4/5 16 August 1942, NA WO 193/884; see also E.S. Munger, 'After the Rebellion: A letter from Edwin S. Munger', *African Field Reports 1952–1961* (Cape Town, 1961), 385–391.

186 This section has drawn extensively on V. Thompson/R. Adloff, *The Malagasy Republic: Madagascar Today* (Stanford, 1965), 34–69; see also M. Thomas, *The French Empire at War, 1940–45*, 139–158 and R.K. Kent, *From Madagascar to the Malagasy Republic* (London, 1962), 90–91.

nationalists were 'ill-advised' and 'might possibly retard the restoration of France and her colonial empire'. His successor, Fernald, was equally unsympathetic and advised that, although for the nationalist leaders 'everything else is apparently secondary to the aim of independence', they had come under communist influence. He even suggested that Raseta, a nationalist leader, had been a communist, notwithstanding that Raseta had only recently sought to sound him out on the prospect of bringing in 'American capital to develop the resources of the island' and Ravoahangy had also speculated whether it might be possible to visit Washington to discuss the possibility of a UN Trusteeship over Madagascar.[187]

In October 1945, Ravoahangy and Raseta were elected to the French Constituent Assembly in a clear indication of popular Malagasy sentiment and aspirations. Both had campaigned from the outset on a platform of independence for Madagascar based on the Atlantic Charter. For example, at a public meeting, Ravoahangy had given a speech in which he suggested that 'the San Francisco Conference and especially the Atlantic Charter' were the foundation of 'a new world order where the people will be sovereign' and that:

> France, as a signatory of the United Nations Charter, has accepted … to lead towards independence those colonial peoples who are still incapable of governing themselves, and to give independence immediately to those who are capable. France has therefore bound itself to give us back our independence sooner or later. It is time to demand it.[188]

Upon their arrival in Paris in December 1945, Ravoahangy and Raseta actively sought to promote Malagasy independence. Despite, or possibly in response to, their failure, in the face of opposition from all the French political parties, they decided in February 1946 to form a Malagasy nationalist party, Mouvement démocratique de la rénovation malgache (MDRM), as a platform for Malagasy unity and the agency through which independence negotiations might be conducted with the French government. According to US officials, the programme of this newly created nationalist coalition 'was … loosely modelled on FDR's "Four Freedoms"'.[189] Although the MDRM expanded quickly throughout Madagascar, it was not well received by the French Constituent Assembly who in early 1946 rejected the first of several proposals from Ravoahangy and Raseta for Malagasy independence.

187 Ravoahangy to Wharton 25 February 1944 enclosed in Wharton to Hull 24 April 1944 and Fernald to State Department 18 March, 2 August and 18 October 1946 and 5 March 1947, quoted by D. Little, 'Cold War and Colonialism in Africa: The United States, France, and the Madagascar Revolt of 1947', 533–538.

188 Speech made in Malagasy published as pamphlet, quoted by N. Heseltine, *Madagascar* (London, 1971), 173–174; see also P. Boiteau, *Contribution à l'histoire de la nation malgache* (Paris, 1958), 345–400 and A. Spacensky, *Madagascar: Cinquante ans de vie politique: les partis et la vie politique à Madagascar* (Paris, 1970), 38

189 D. Little, 'Cold War and Colonialism in Africa: The United States, France, and the Madagascar Revolt of 1947', 535.

Despite these rejections, Ravoahangy and Raseta continued to enjoy the support of the Malagasy electorate who re-elected them in June 1946 to the French Constituent Assembly and again to the new French National Assembly in November 1946, on that occasion together with their colleague Rabemananjara (despite French efforts at ballot-rigging). Their Manifesto had pointedly noted another blatant contradiction in Allied wartime propaganda:

> We do not pardon the White Man for utilizing the art of dialectics with such a strange subtlety that he finds it natural for another man in love with liberty and independence to live submissively … under a regime that he, the White Man, abhors with all his soul, not precisely because he is a White Man, but simply because of the dignity of man.[190]

There is no doubt that the British government had no wish to absorb Madagascar. However, as the British Consul General reported, nationalist aspirations had been 'considerably influenced by the various Allied Proclamations, the Atlantic Charter, the San Francisco Conference and the Brazzaville Conference and there is every reason to believe that Raseta and Ravoahangy were inspired to imagine that they could count on United Nations' support, particularly from Great Britain and the United States, in securing independence'. Worryingly, he also reported that British army officers, in one case for personal financial gain, and Protestant missionaries had expressed rather too openly their sympathy for the nationalist cause leading the colonial administration to blame nationalist demands for independence on British interference and to become even more anxious as to British intentions. Indeed, in June 1946, Raseta had handed the British army liaison unit a document expressing the desire to negotiate independence but warning of the prospect of open rebellion in the event of failure and seeking British assistance, failing which an appeal would be made to the UN.[191] A month later, in July 1946, the Protestant-missionary-backed Parti démocratique malgache also handed over a formal document to the British Consul General, delivered simultaneously to the colonial administration, expressing yet again the desire of the Malagasy people for independence:

190 A. Spacensky, *Madagascar: Cinquante ans de vie politique*, 47, D.S. White, *Black Africa and de Gaulle: From the French Empire to Independence* (University Park, 1979) 164 and N. Heseltine, *Madagascar*, 174–175; see also M. Shipway, 'Madagascar on the Eve of Insurrection, 1944–47: The Impasse of a Liberal Colonial Policy', *Journal of Imperial and Commonwealth History,* 24/1 (1996), 72–100 and M. Covell, *Madagascar: Politics, Economics and Society* (London, 1987), 26–28.

191 Consul General to Foreign Office 1 July 1946 and GCC in C East Africa to War Office 3 July 1946, NA FO 371/60126, Report 1 January 1949 as enclosure to Despatch No. 8 26 January 1949, Lake, NA FO 371/73721 and *Secrétariat d'État aux Colonies, Note sur l'agression Britannique contre Madagascar*, March 1943, 36, quoted by P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969', 140–145.

> In offering you this document, we expect that your respectable Government being member and founder of the United Nations, and a Party of the Charter of San Francisco, is willing to fully examine our situation and assist the Malgasy (*sic.*) people in its desire of winning its Liberty, the Malagasy who also took part in the two Great Wars against the common enemies of Democracy and Freedom.[192]

A further, intriguing, attempt to interest the British government was made by Ravoahangy and Raseta in Paris in late 1946 to a Miss Kelsey, a British Council staff member. At the time, Kelsey was on a private visit to Paris at the home of a mutual acquaintance. The approach is, at one and the same time, vindication of British protestations against the charge of complicity with Malagasy nationalists and indicative of the desperation of the Malagasy nationalist leaders.[193]

Confronted by French intransigence and little external sympathy, the Malagasy revolt erupted in March 1947. It still remains uncertain as to who initiated it or why it erupted, but it is clear that it reflected the deep resentment of forced labour, excessive exactions, rising prices and the rice requisitioning scheme. By chance, Governor Mitchell had visited Madagascar in early March 1947. His report noted 'that the demand for self-government and the feeling of Houva nationalism are strong'. As was typical of British colonial administrators, he made light of local capacity for government, but also noted the tension between 'the old-fashioned settlers' and the 'native inhabitants'. His impression was that: 'It all sounded, indeed, very Kenya.'[194]

It was in any event a poorly organised uprising which was brutally put down by French military forces that included African troops from Senegal. When it was already clear that the uprising had failed, a desperate appeal to the UN was made by the insurgents and delivered to the consulates of the UK, US, China and South Africa pleading for an urgent UN Commission of Enquiry '*à la Raison et à la PITIE'*. There would be no response. In the aftermath, the MDRM deputies would be imprisoned and repressive measures imposed that put an end to any possibility of nationalist negotiation at least until the 1958 French Community crisis. In the event, in 1958, the Malagasy government, though far less so the people, would prove reluctant to break with France.[195]

192 Parti démocratique malgache to British Consul General 9 July 1946, NA FO 371/60126.

193 The approach to Miss Kelsey is recorded in various reports and communications in NA FO 371/60082.

194 Mitchell to Creech Jones, Visit to Madagascar 5 March 1947, NA FO 371/67716.

195 *Déclaration officielle de la Nation malgache à l'Organisation des Nations unies* 24 June 1947, Enclosure in Acting Consul General Lake to Foreign Office 12 July 1947, NA FO 371/67722A; see also P. Boiteau, *L'affaire de Madagascar* (Paris, 1949). The two major works on this period in French are J. Tronchon, *L'insurrection malgache de 1947: essai d'interprétation historique* (Paris, 1974) and P. Stibbe, *Justice pour les*

French West and Equatorial Africa

In French West and Equatorial Africa, reaction to the Atlantic Charter was far less evident than in the neighbouring British West African colonial territories as the *évolué* elite, who might have served as the agency through which demands for independence would have been expressed, still remained committed to France. A contemporary US intelligence report, for example, remarked that 'it is difficult to imagine an editor in French West Africa leading such lively discussions of the Atlantic Charter … as currently appear in the Nigerian *West African Pilot*'.[196]

As a result, African prompting seems to have played no part in General de Gaulle's decision to convene the 1944 Brazzaville Conference; though Padmore, eager to berate the British, argued that 'the meeting is an outgrowth of de Gaulle's promise to apply the full meaning of the Atlantic Charter to the French Colonies'.[197] Nonetheless, General de Gaulle and his advisers did recognise the need for reform of the basis upon which post-war relations between France and her colonial territories should be founded. General de Gaulle was also aware that President Roosevelt was critical of the stand France had taken during the war and suspicious of General de Gaulle himself and therefore believed France's claim to act as a colonial trustee had been profoundly compromised. As Suret-Canale therefore noted, 'in order to defuse American intrigues … changes had to be promised. This was the task of the Brazzaville Conference'.[198] This task was also referenced in the Conference Programme which advised that: '*Enfin l'étranger nous considère. Il faut répondre à l'investigation de ses regards*' ('Finally, the foreigner is looking at us. We must respond to the investigation of his gaze').[199] There is, as both Jennings and M'Bokolo therefore point out, more than a hint that the conference may simply have been a cynical attempt to allay US suspicions about the direction of travel of French colonialism.[200]

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malgaches (Paris, 1954); see also J-R. Randriamaro, *PADESM et luttes politiques à Madagascar: de la fin de la Deuxième Guerre mondiale à la naissance du PSD* (Paris, 1997), F. Randriamamonjy, *Histoire de Madagascar*: 1895–2002 (Antananarivo, 2009), 139–207 and A. Spacensky, *Madagascar: Cinquante ans de vie politique: les partis et la vie politique à Madagascar*, 21–77.

196 Survey of French West Africa 12 September 1942, *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961*, Reel 3. For an Anglophone perspective of the Francophone elite, see A. Quaison-Sackey, *Africa Unbound: Reflections of an African Statesman* (London, 1963), 25.

197 G. Padmore, 'General De Gaulle Promises Africans Application of Atlantic Charter' and 'Equality for All French Colonials Planned at Brazzaville Conference', *Pittsburgh Courier,* 29 January and 12 February 1944.

198 J. Suret-Canale (trans. T. Gottheiner), *French Colonialism in Tropical Africa, 1900–1945*, 485.

199 *Programme general de la Conference de Brazzaville (Janvier 1944)*, NA FO 371/42216.

200 E.T. Jennings, *Free French Africa in World War II; The African Resistance*, 251–253 and E. M'Bokolo, 'French Colonial Policy in Equatorial Africa in the 1940s and 1950s', P.

This is supported by the dominant theme of the conference, that France's post-war status as a world power and self-esteem were inextricably linked to her colonial territories – essentially the very same argument that Vichy France propaganda had employed. From the outset, therefore, the Brazzaville Conference sought to sanctify and clothe French post-war colonialism in terms of France's civilising mission. This was forcefully stated by Pleven, Commissioner for the Colonies in the French Committee of National Liberation and President of the Brazzaville Conference, in his radio address preceding the opening of the conference:

> The Brazzaville conference will demonstrate our commitment to continue France's African mission after the war … This is not because of the labor and capital we have invested in Africa … but because we feel in ourselves a vocation to be guardians of a humanity that loves our flag as much as we love it ourselves. It is because we are men convinced twenty centuries of Christianity and humanity, during which we were instructed in a faith founded on equality among men, have historically and naturally prepared us to love and understand the needs and aspirations of our African subjects.[201]

The decision to hold the conference at Brazzaville rather than the more convenient Algiers or Dakar had been taken in recognition of Éboué's pivotal role in supporting General de Gaulle in 1940. In addition to senior colonial officials, the conference was also attended by representatives of the Allied powers, notably Bunche on behalf of the State Department. All understood that whatever conclusions were reached, they were no more than advisory as policy would ultimately be determined by the post-war French government. For that reason, as Genova therefore points out, the historical importance of the Brazzaville Conference has been greatly exaggerated. Indeed, some historians, for example Coquery-Vidrovitch, have dismissed it as inconsequential.[202]

It is also clear that, as Shipway points out, any sense of the Brazzaville Conference as a forward step in the process of African decolonisation is no longer

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Gifford/W.R. Louis (eds), *The Transfer of Power in Africa: Decolonization 1940–1960* (Yale, 1982), 190; see also M. Shipway, 'Reformism and the French "Official Mind": The 1944 Brazzaville Conference and the Legacy of the Popular Front', T. Chafer/A. Sackur (eds), *The French Colonial Empire and the Popular Front: Hope and Disillusion* (London, 1999), 136–137.

201 Speech by Pleven on Brazzaville Radio, January 22, 1944, quoted by P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969', 163.

202 J.E. Genova, *Colonial Ambivalence, Cultural Authenticity, and the Limitations of Mimicry in French-ruled West Africa, 1914–1956* (New York, 2004), 201–204; the reference is to H. Moniot/C. Coquery-Vidrovitch, *L'Afrique Noire de 1800 à nos jours* (Paris, 1974), 227–228. See also Consul-General Bullock to Eden, Brazzaville, 13 March 1944, NA FO 371/42216.

tenable.[203] In the first instance, the conference did not include any African delegates, although reports were read out by Éboué on behalf of several Brazzaville *évolués*, two of whom attended in a non-deliberative capacity.[204] Moreover, in his opening address, Pleven sent out a clear message: 'Above all, we wish this … conference to be an affirmation of our faith in France's mission in Africa … In the great colonial France there are neither peoples to be emancipated nor racial discriminations to be abolished (applause). There are but peoples who feel French … and who wish no other independence than that of France.'[205] The Preamble to the recommendations of the conference would eventually reflect this approach: 'The aims of the task of civilization achieved by France in the colonies rules out any idea of autonomy, any possibility of evolution outside the French bloc of the Empire; a future constitution, and, however distant, even self-government in the colonies is to be ruled out.' [*Les fins de l'oeuvre de civilisation accomplie par la France dans ces colonies écartent toute idée d'autonomie, toute possibilité d'évolution hors du bloc français de l'Empire; la constitution éventuelle, même lointaine, de self-governments dans les colonies est à écarter.*][206]

The conference would therefore reject Éboué's vision of a new approach to colonial policy. While there was no question that France remained at the centre of Éboué's policy prescriptions, his conclusions and the interim policy he followed aimed at delegating decision-making authority to the local chiefs, African courts and local government institutions, and an upgrading of the status of African civil servants. For example, in 1942 it had been Éboué who had persuaded General de Gaulle to provide for an intermediary category of status between citizen and subject, the *notable évolué*, for Africans of particular merit.[207] Éboué's substantive argument was that:

203 This section on the Brazzaville Conference has drawn extensively on M. Shipway, *The Road to War: France and Vietnam, 1944–1947* (Providence, 1996), 11–40.

204 *Ministère des Colonies, Conférence africaine française, Brazzaville, 30 janvier 1944–8 février 1944*, 87–105 (*Opinions africaine*), B. Weinstein, *Éboué* (New York, 1972), 298 and 'Governor-General Felix Éboué (1884–1944)', L.H. Gann/P. Duignan (eds), *African Proconsuls: European Governors in Africa*, 157–184, M. Shipway, *The Road to War: France and Vietnam, 1944–1947*, 29–30, M. Crowder, *Colonial West Africa: Collected Essays*, 280 and E. Mortimer, *France and the Africans 1944–1960: A Political History* (London, 1969), 49–50.

205 Report of Brazzaville Conference, Pleven's speech (English translation) BBC Monitoring Service 30 January 1944, NA FO 371/42216.

206 *Les recommandations de la conférence de Brazzaville* https://histoire.ac-versailles.fr/IMG/pdf/Brazzaville.pdf, last accessed 15 March 2023 and E. Mortimer, *France and the Africans 1944–1960*, 56–59.

207 E. M'Bokolo, 'French Colonial Policy in Equatorial Africa in the 1940s and 1950s', 178–90; see also M. Shipway, *The Road to War: France and Vietnam*, 24–25, R.S. Morgenthau, *Political Parties in French-speaking West Africa*, 37–41, B. Weinstein, 'Governor-General Felix Éboué (1884–1944)', 180, J.E. Genova, *Colonial*

> To attempt to make or remake a society in our own image, or at least according to our own mental habits, is to court certain failure. The native has a certain code of behaviour, laws, a nation, which are not the same as our own. We will bring him good fortune neither by applying the principles of the French Revolution, which is our revolution, nor by judging him according to the Napoleonic Code, which is our code of laws, nor by replacing his chiefs with our administrators, who will think for him, but not with him.[208]

Instead, the conference preferred to follow the opposite prescription put forward by Saller, the Governor of French Somaliland (Djibouti):

> Evidently the purpose of our civilisation is to bring civilisation to others. So we civilise … we are not content to provide merely a surplus of material well-being, but we also impose moral rules and intellectual development. And by what methods and according to whose example should we do this, if not by our own methods and according to the example of our own civilisation … For what authority would we have to speak in the name of the civilisation whose people we are trying to improve?[209]

It is therefore hardly surprising that, as against Padmore, Bunche reported that there 'was no compromise with the basic principle that French Africa belonged solely to France and is an exclusively French affair'.[210]

In early 1945, discussions on post-war colonial relations began in earnest when Senghor, who represented Senegal, and Apithy, a lawyer from (and later President of) Dahomey, were co-opted onto a special commission that was to consider the basis on which the colonial territories would be represented in the forthcoming Constituent Assembly.[211] To their consternation, General de Gaulle refused to accept their recommendations. For example, it was decided that

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Ambivalence, Cultural Authenticity, and the Limitations of Mimicry in French-ruled West Africa, 1914–1956, 196 and P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969', 121–131.

208 F. Éboué, *La nouvelle politique indigène pour l'Afrique équatoriale française* (Paris, 1945), 3 (quoted in translation by M. Shipway, *The Road to War: France and Vietnam*, 24–25; see also translation by R. Aglion, 'French Colonial Policy', *World Affairs*, 107/2 (1944), 80).

209 Governor Saller, Transcript 3 February 1944, quoted by M. Shipway, *The Road to War: France and Vietnam*, 33.

210 R.J. Bunche, 'The French African Conference at Brazzaville' 6 April 1945, quoted by W.R. Louis, *Imperialism at Bay 1941–1945*, 45–46.

211 This section has drawn extensively on J.E. Genova, *Colonial Ambivalence, Cultural Authenticity, and the Limitations of Mimicry in French-ruled West Africa, 1914–1956*, 179–240, R.S. Morgenthau, *Political Parties in French-speaking West Africa*, 41–89, F. Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960* (Princeton, 2014), 26–123 and E. Mortimer, *France and the Africans 1944–1960*, 53–158.

elections would be held on the basis of separate electoral colleges for 'citizens' and 'subjects'; that women 'citizens' would be given the vote but not women 'subjects'; that only 'citizens' could vote in the constitutional referendum; and that 'subjects' would not enjoy universal suffrage. It was this discrimination that prompted Lamine-Guèye to secure adoption of the *Loi Lamine Guèye* (see page 52 above.) Senghor's concerns were set out in an article appropriately entitled 'In defence of black Africa':

> Preparations are being made to assign an important role to the colonies … with the exception of black Africa … Black Africans will continue … under the domination of … non-Africans. This undisguised condescension towards our country and our race comes out in all official speeches and semi-official declarations … we want among other things … that the Constituent Assembly extend the Declaration of Human Rights by adding to the freedom and equality of individuals the freedom of peoples and races.[212]

In private, he expressed his profound despair at the prospective options open to him:

> Black Africans believe that they are less privileged than North Africa, Indochine (which has been promised extensive autonomy), and even Madagascar … They think it is only because Africa is black, and … they are the group of colonies most loyal to France. Black Africans believe that if the Provisional Government does nothing for them, they will only have a choice between two options: either join the French communist party … or instigate nationalist insurrection (the option they prefer least) and call for an international organization of colonies. The disappointment of black Africans is therefore … profound.[213]

Almost thirty-five years later, in his address to the 1979 Dakar Meeting of Experts, President Senghor would recall this moment: 'The distinction between "citizens" and "subjects" deprived the large majority of Africans of the enjoyment of their essential rights.'[214]

Following the elections to the Constituent Assembly, Senghor was appointed to the committee drafting the new constitution. In its final form, the constitution compromised between the two quite different conceptions of the relationship uniting France and its colonial territories which had been proposed. On the

212 L.S. Senghor, '*Défense de l'Afrique noire*', 1 May 1945, *Esprit,* July 1945, 237, quoted by H. Grimal (trans. S. De Vos), *Decolonization: The British, French, Dutch and Belgian Empires* (London, 1978), 170–171 and Y. Benot, *Les députés africains au Palais Bourbon de 1914 à 1958* , 38–39.

213 Senghor to Saller, February, 1945, quoted by P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969', 202.

214 OAU (L) President Senghor's opening address to the 1979 Dakar Meeting of Experts CAB/LEG/67/5.

one side were those African delegates like Senghor who sought local autonomy and association with France by free consent in a community of equals, and on the other side those African delegates like Lamine-Guèye, the other black African representative from Senegal, who sought French citizenship for all in a single French Assembly. Thus the new Declaration of Rights, while it provided for equal rights and asserted that membership of the French Union was 'freely consented to', also established important legal and constitutional differences between mainland France and its overseas territories. What this meant in practice was that the overseas territories would not be accorded representation in the National Assembly in proportion to their population or on the basis of universal suffrage. As recompense, local assemblies with enhanced legislative authority would be set up in each of the colonial territories. In the event, though, the proposed constitution was rejected in the referendum by a narrow majority.

In the elections to the second Constituent Assembly, the French electorate, increasingly unsettled by colonial protests in Vietnam, Algiers and Madagascar, white settler lobbying and a perceived Communist threat, chose to elect representatives far less sympathetic to colonial sensibilities and more inclined to adopt a harder line. It meant that, although African delegates to the October 1945 Constituent Assembly had been assured that rejection of the constitution would not lead to a less favourable outcome for the colonial territories, this assurance was now no longer politically realistic. The overseas deputies therefore came together in an informal 'Intergroupe colonial de l'Assemblée National Constituante' bloc of non-European overseas deputies and put their demands before the Commission for Overseas Territories formulated in a set of six articles. The first of these declared that: 'France solemnly denounces systems of colonisation based on the conquest, annexation or domination of the overseas territories. She renounces all unilateral sovereignty over the colonised peoples. She recognises their freedom to govern themselves and conduct their own affairs in a democratic manner.' A further article sought assurance that each overseas territory should have as a matter of right the opportunity to decide within twenty years on the precise nature of its relationship with France. They also demanded that drafting of the new constitution should be deferred until individual territories had authorised their representatives to participate in the negotiations and drafting of such a constitution.[215]

215 *Projet de constitution de l'Union française présenté par l'intergroupe des parlementaires d'outre-mer et adopté par la majorité de la Commission des territoires d'outre-mer'*, D. Boisdon, *Les institutions de l'Union française* (Paris, 1949), 41–42 (reference from M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', W.H. Lewis (ed.) *French-Speaking Africa: The Search for Identity* (New York, 1965), 21 Note 11), D.B. Marshall, *The French Colonial Myth and Constitution-making in the Fourth Republic* (New Haven, 1973), 228–231, E. Mortimer, *France and the Africans 1944–1960*, 89–92 and R.S. Morgenthau, *Political Parties in French-speaking West Africa*, 86.

Yet, notwithstanding the tone of these demands, walk-outs and threats of resignation, with few exceptions, such as the Algerian and Malagasy representatives, there was little desire on the part of the African delegates to opt for independence. Moreover, the African deputies were further divided over the extent to which they were prepared to carry through their opposition. Inevitably, therefore, the October 1946 French Constitution provided for less favourable terms for the colonial territories. For example, it provided for a reduced representation in the National Assembly, retracted the reference to free consent, drew a distinction between French citizenship and French Union citizenship and adopted a highly centralised system of colonial administration; and, while the overseas local assemblies were retained, they would not be established during the first term of the National Assembly.

Disillusionment with these constitutional arrangements and the obvious need to defend African interests led to the October 1946 Bamako Congress and the setting up of the Rassemblement démocratique africain (RDA) coalition dedicated to 'the emancipation of the various African countries that are under the yoke of colonialism by asserting their political, economic, social and cultural individuality'.[216] However, as Milicent points out, the disillusionment was as yet not sufficient for the congress to call for complete independence or to approve a proposal to appeal to the UN. 'Progressive but rapid autonomy' was not to be confused with separatism – 'immediate, brutal, total independence'. Ultimately, French African political leaders preferred to assert their desire to remain French and to be emancipated by remaining French.[217]

The Bamako Congress was opposed by all the main French political parties, who put pressure on African representatives to stay away, other than the Communists with whom the RDA therefore chose to align. In an historic decision, which he would later publicly regret, Senghor was cajoled into not attending. Other African representatives, such as Lamine-Guèye, Diallo and Sissoko, all of whom had approved the manifesto summoning the congress, were similarly dissuaded from attendance. In the short-term, their submission threw away an historic opportunity to form a united African lobby within the French National Assembly. Longer term, it worsened the personal and political animosity between the two leading African representatives, Senghor and Houphouet-Boigny.

The most immediate political fallout from the alliance of the Communist opposition and the RDA, now under Houphouet-Boigny, was the revenge wreaked on the Ivory Coast. When the Governor of the Ivory Coast was appointed in 1948, he was informed by Minister of Overseas France Coste-

216 '*Manifeste du RDA (septembre 1946)*', J. Dalloz, *Textes sur la décolonisation* (Paris, 1989), 35 and P. Kipre, *Le congrès de Bamako: ou la naissance du RDA en 1946* (Paris, 1969), 64–93.

217 E. Milicent, *L'AOF entre en scène* (Paris, 1958), quoted by E. Mortimer, *France and the Africans 1944–1960*, 105–110.

Floret that: 'You are going there to suppress the RDA.' It would be 1950 before Houphouet-Boigny, under severe economic strain, would finally capitulate and rejoin the French Socialist party; independence does not seem to have been considered an option.[218]

However, having returned to the fold, and been rewarded with ministerial honours, Houphouet-Boigny would display a convert's zeal. In 1957 he would enter into his famous 'bet' with Prime Minister Nkrumah (Gold Coast) as to whether the Ivory Coast would be better off with French economic support than would the Gold Coast as an independent state: 'A wager has been made between two territories, one having chosen independence, the other preferring the difficult road to the construction … of a community of men equal in rights and duties … Let each of us undertake his experiment … and in ten years we shall compare the results.'[219]

In 1948, two years too late, Senghor, too, equally disillusioned, but travelling in the opposite direction, would leave the French Socialist party to form his own party the Bloc Démocratique Sénégalais (BDS). The African representatives, he would later explain, were merely lobby fodder whose interests were otherwise ignored; we 'discovered … that the French parties, even those on the left, were national parties, formed by national realities and oriented towards national interests … French socialism … wished to apply a schema made for and by Europe'. However, Senghor, too, still preferred to stay French and did not consider the alternative of independence.[220]

On this basis, it would be all too easy to dismiss the influence of the Atlantic Charter on the French colonial territories. Yet, even so, there were a few straws in the wind that suggested that the terms of the colonial relationship had evolved. Independence movements had emerged, not only in Madagascar and North Africa, but also in the Trust Territories of Togo and Cameroun, and the RDA had emerged as an influential political agency for African interests. Longer-term,

218 L.S. Senghor, 'Discours d'ouverture', *Conventione Africaine, Congrès interterritorial de regroupement des partis politique africaine, Dakar le 11, 12, et 13 janvier 1957* (Dakar, 1957), 4–6, quoted by W.J. Foltz, *From French West Africa to the Mali Federation* (New Haven, 1965), 78, F. Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960*, 166–167, 172, H. Grimal (trans. S. De Vos), *Decolonization: the British, French, Dutch and Belgian Empires*, 359–361 and R.S. Morgenthau, *Political Parties in French-speaking West Africa*, 88–90; see also G. Lisette, *Le combat du Rassemblement démocratique africain pour la décolonisation pacifique de l'Afrique noire* (Paris, 1983), 17–154.

219 J. Woronoff, *West African Wager: Houphouet versus Nkrumah* (Metuchen, 1972), 10–13, *West Africa* 13 April 1957, 343 and F. Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960*, 278.

220 L.S. Senghor (trans. M. Cook), *Nationhood and the African Road to Socialism* (Paris, 1962), 8–9.

there is also the suspicion that Africa's Francophile political leaders were not fully representative of the underlying drift of sentiment towards self-determination among the growing (young) urban elite. However, the conflict between the older generation resolved to retain a French identity and the younger generation imbued with an anti-colonialist spirit would take time to germinate and would only finally come to a head in the 1958 referendum on the French Community Constitution.

British West Africa

The most insistent demands for implementation of Point 3 first emerged in the more politically advanced colonial territories of British West Africa. Reports on the Atlantic Charter were not only more widely available but there was also a lively debate as to what it portended for the African colonial territories. For example, a 1943 US intelligence report noted that there had been 'initial scepticism followed by growing hope among West Africans about the Atlantic Charter'; and a further review in 1944 that: 'While there is no official indication that the Atlantic Charter was intended as a document of "liberation" for colonial peoples, it has been so interpreted by the more advanced leaders … in dependent areas.'[221] Even a rather partial British commentator on British West Africa admitted that: 'The Atlantic Charter … and our wartime slogans … have been publicised and widely discussed among the African elite.'[222] When, therefore, Colonial Secretary Stanley visited British West Africa in 1943, he was assailed by petitions expressing African aspirations for the expected post-war reconstruction and calling for self-government, in most cases citing the Atlantic Charter as the justification for such hopes.[223]

For example, in the British Gambia, *The Gambia Echo* and *The Gambia Outlook and SeneGambian Reporter* published an account of Prime Minister Churchill's speech in the House of Commons on the Atlantic Charter. *The Gambia Echo* followed this up in October and November 1941 with extensive reporting on the August 1941 visit by Deputy Prime Minister Attlee to WASU and of the key

221 A Strategic Survey of the Gold Coast 21 April 1943, *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961*, Reel 7 and OSS R & A Report No. 1972, *British and American Views on the Applicability of the Atlantic Charter to Dependent Areas (Particularly British Africa)* 30 August 1944, 18, quoted by E.A. Laing, 'The Norm of Self-determination, 1941–1991', *California Western International Law Journal,* 22/2 (1991–1992), 273.

222 M. Fortes, 'The Impact of the War on British West Africa', *International Affairs,* 21/2 (1945), 209.

223 Itinerary for Secretary of State's West African Tour, Revised 6 September 1943, NA CO 554/132/18; he arrived in The Gambia 8/9 September and left Nigeria on 6 October en route to East Africa.

question as to whether the Atlantic Charter applied to West Africa (see page 166 below). It also pointed out that the formal address of welcome to Deputy Prime Minister Attlee had posed the key question:

> Today, Great Britain has proclaimed her determination to re-establish and support the national independence of the countries of Europe, of Ethiopia and of Syria. BUT WHAT ABOUT WEST AFRICA? What is Britain's proclamation and declaration about the national independence of the loyal and devoted people of West Africa … We people of West Africa naturally feel that we are entitled to know what we are fighting for, and are anxious as to what our position is going to be in the coming new World Order

and then went on to suggest that:

> The anxiety reflected in the question of the deputation finds constant expression in the African papers … The British conscience has been awakened, but … colour prejudice dies hard. We shall have to deal resolutely with these questions if we are to satisfy African expectations and our own sense of duty and honour.

A commentary in *The Gambia Outlook and SeneGambian Reporter* would similarly observe that: 'It was a matter of paramount importance to all of us in British West Africa to hear … that the Vice Premier of the United Kingdom told West African Students that we were included in the historic Roosevelt-Churchill Atlantic Charter.' Its report on the welcome address by the Bathhurst Council to Colonial Secretary Stanley on the occasion of his 1943 visit would also diffidently, but unmistakeably, observe that: 'We look hopefully forward to filling our rightful place in the Post-War world of justice, freedom and security.'[224]

In the Colony and Protectorate of Sierra Leone, Wallace-Johnson, the organising spirit behind the West African Youth League (Sierra Leone Section) (WAYL), had been agitating against the colonial government even before the Second World War. Perhaps only half-seriously, Sierra Leone's Colonial Secretary Blood had suggested that perhaps 'the way to neutralise his effect was to appoint him to the Legislative Council'.[225] Instead, at the outset of the Second World War, he was detained along with most of the other WAYL leaders. As Wallace-Johnson was rather well-connected in British socialist circles, naturally, questions were raised in the House of Commons as to the legal basis upon which

224 *The Gambia Echo,* 15 September 1941, 3, 13 October 1941, 3, 5, 27, October 1941, 4, 3 November 1941, 3, 10 November 1941, 4 and 17 November 1941, 3–4 and *The Gambia Outlook and SeneGambian Reporter,* 30 August 1941, 1, 4, 6 September 1941, 1, 4, 13 September 1941, 1, 4, 20 September 1941, 1, 2, 6, 11 September 1943, 1, 6.

225 Williams 1 September 1938 (quoting Governor Blood), NA CO 267/666/32215 (reference from J.D. Hargreaves, 'Assumptions, Expectations, and Plans: Approaches to Decolonisation in Sierra Leone', W.H. Morris-Jones/G. Fischer (eds), *Decolonisation and After: The British and French Experience* (London, 1980), 84).

he had been detained. For example, one MP queried whether it was 'proposed to detain Wallace-Johnson until he is convinced that this is a war for liberty?'[226]

Although a petition was presented at the time of Colonial Secretary Stanley's 1943 visit for Wallace-Johnson's release, it was denied and he therefore remained in detention until 1944. For a greater part of this period, though, it amounted to no more than house arrest, which at best merely slowed the pace of his correspondence. For example, in 1942 he was able to smuggle out an article demanding the abolition of the official majority on the Legislative Council, and he also suggested that he himself might stand for election as an unofficial member.[227]

Controversially, the colonial government also took advantage of the war to ban several newspapers and, as the Colonial Office's Information Officers reported, while there was no compulsory pre-censorship, the other newspapers were aware of the kind of material that they were expected to submit for scrutiny.[228] This did not, however, stop newspapers in Sierra Leone from commenting on the Atlantic Charter and its application to Africa, often explicitly connecting opposition to self-government to colour prejudice. It was pointed out, for example, that: 'TWICE DAILY the B.B.C. tells us that we are fighting for world freedom … Roosevelt and … Churchill have drawn up a charter – The Atlantic Charter which embodies eight points all dealing with … freedom (including) freedom of self-determination. Can anything be plainer?'[229] A later report on the trusteeship negotiations at the San Francisco Conference would therefore suggest that: 'The time has come when Colonial peoples should express for themselves the form of Government they want … The Four Freedoms should apply to all peoples of the earth'[230]

Although, as Spitzer points out, as a result of the detentions and censorship, Sierra Leone was 'perhaps the only place in Africa where World War II effectively slowed, rather than increased, the pace of anticolonial nationalism', African representations for post-war change were not completely repressed. While African political leaders were generally accommodating in their support of the war, they too saw the war as an opportune moment in which to call for a greater degree of

226 Paling MP, Question to Secretary of State for the Colonies Macdonald, House of Commons 15 November 1939 (reference from L. Spitzer, *The Creoles of Sierra Leone, Responses to Colonialism, 1870–1945* (Madison, 1974), 213).

227 I.T.A. Wallace-Johnson, 'What we Africans Demand', *The New Leader,* 31 October 1942, NA CO 267/682/3. The details of his detention can be followed in NA CO 267/682/3, 267/682/4 and 267/687/7.

228 Report of Conference of Information Officers held at Accra in February, 1942, NA CO 875/9/4. The press censorship process can be followed in NA CO 267/676/11 and 267/681/1.

229 *The Sierra Leone Daily Mail,* 'Activities of West African Editors in United Kingdom', 19 August 1943, 1 and 'Opinion: After the War-What?' 25 October 1944, 1.

230 *The Sierra Leone Daily Mail,* 'San Francisco Pointer', 14 June 1945, 1.

African participation in colonial government and administration as the first step towards self-government.[231] In 1942, for example, the West African Labour Federation despatched a memorandum on the development of self-governing peoples to the Colonial Office and, in 1943, another petition complained of strong opposition to 'taxation without effective and adequate representation … on the established English constitutional principle'.[232] The WAYL, too, resolved that the 'time has come when Sierra Leoneans should govern themselves and hereby demands complete Self-Government for Sierra Leone'.[233] On his 1943 visit, Colonial Secretary Stanley was also presented with a further memorandum advising that: 'The Time has come when the peoples of the Colony and Protectorate should elect their representatives and there should be no nominated Member'; moreover, that the Governor should not be able to force through a bill unanimously opposed by all the unofficial elected members.[234] Even Wallace-Johnson managed to deliver a petition to Colonial Secretary Stanley asserting that the 'time is more than over-due when we should be granted the unfettered right to choose the kind of Government under which we will live, according to the provisions laid down in Clause III of the Atlantic Charter'.[235]

These calls were pursued the following year in the Legislative Council by During, the first Urban-elected unofficial member. He proposed that: 'The time has come when the people of Sierra Leone should take a more effective part in the government of the country and in order to harmonise with the principle of democratic government which is the prevailing policy of His Majesty's Government respectfully request … the Legislative Council be amended to provide for an unofficial majority.' However, when his motion came to be considered by the Legislative Council, the Governor was able to turn the tables on During. He

231 L. Spitzer/L. Denzer, 'I.T.A. Wallace-Johnson and the West African Youth League. Part II: The Sierra Leone Period, 1938–1945', *International Journal of African Historical Studies,* 6/4 (1973), 565–601 and L. Spitzer, *The Creoles of Sierra Leone, Responses to Colonialism*, 211–215; see also J. Cartwright, *Politics in Sierra Leone 1947–1967* (Toronto, 1970), 36–37.

232 Wyndham, West African Labour Federation, 27 May 1942, NA CO 267/683/10 and Petition following mass meeting in Freetown 27 May 1943 from prominent persons of Sierra Leone 29 May 1943, NA CO 554/131/20.

233 Acting Governor to Stanley 10 August 1943 Enclosure: Resolution of the West African Youth League (Sierra Leone Section) Meeting 13 July 1943 organised by Frazer and Thomas, NA CO 267/681/2.

234 Memorandum of subjects of discussion by the Elected and Nominated Members of the Legislative Council of the Colony of Sierra Leone presented to the Right Honourable The Secretary of State for the Colonies 3 October 1943, NA CO 267/678/3, 4–6.

235 A Memorandum on the Economic, Social and Political Situation of the Colony and Protectorate of Sierra Leone, Wallace-Johnson, Organising Secretary of the West African Youth League, NA CO 267/687/7, 35–36.

explained that over 90 per cent of the population of Sierra Leone was based in the relatively backward and undeveloped Protectorate such that the Colony was currently disproportionately represented in the Legislative Council. If, therefore, the motion was adopted, it would necessarily lead to a far greater representation for the more 'backward' Protectorate. A chastened During immediately withdrew his motion.[236]

In 1945 this very problem was also discussed by the Colonial Office with Wallace-Johnson during his visit to England. Like During, when he grasped the implications, he also conceded that 'if Sierra Leone had to wait until the people of the Protectorate were brought up to the educational standard of the Colony peninsula it would be something more than a thousand years before this happened. Even if education was greatly speeded up, he could not conceive that their education would be on a level … within fifty years.' He therefore proposed that, as an interim step, the Protectorate might elect members to the Legislative Council by means of an electoral college of tribal chiefs who he felt 'were already impatient to be given a fuller share in the management of the affairs of Sierra Leone'.[237]

Indeed, as Wallace-Johnson had reported, even the 'backward' Protectorate was beginning to envisage a more active political role and to develop political associations enabling their collective views to be put forward. In 1940, the Paramount Chiefs began to meet informally at annual conferences without colonial officials in attendance and in 1946 the educated elite revived the Sierra Leone Organisation Society. Aspirations for self-determination were also advanced in the Legislative Council by Paramount Chief and Executive Council (Cabinet) Member Caulker who declared in 1943 that: 'We want the government to give us a free hand in our own affairs … If we are not fit for self-government, let the Government give us a trial.' The following year he would add: 'I hope the Sierra Leone Government has already drawn up plans to make this Dependency what it should be after the war in the spirit of the Atlantic Charter.' Reffell, the President of the Sierra Leone National Council and a Legislative Council member, would also call for: 'Britain's pledge be carried out, that of self-government eventually in each territory.'[238]

236 During 16 November 1945, Sierra Leone Colony, Legislative Council Debates, No 1 of Session 1944–1945, 116–121 (reference from M. Kilson, *Political Change in a West African State* (Harvard, 1966), 152) and A.J.G. Wyse, *H. C. Bankole-Bright and Politics in Colonial Sierra Leone, 1919–1958* (Cambridge, 1990), 137–138).

237 Williams, Note of Conversation with Mr Wallace-Johnson 23 February 1945, NA CO 267/687/7 and A.J.G. Wyse, *H. C. Bankole-Bright and Politics in Colonial Sierra Leone, 1919–1958*, 137–138.

238 P.O. Esedebe, 'The Independence Movement in Sierra Leone', *Tarikh,* 4/1 (1971), 24 and Sierra Leone Colony, Legislative Council Debates, No 1 of Session 1943–1944, 76 and 1944–1945, 65–67 (reference from M. Kilson, *Political Change in a West African State*, 147–148, 152).

Responding to African calls for political advance, although probably rather more the pressure emerging out of the Gold Coast and Nigeria, the colonial government began to implement constitutional reforms. While Africans had already been represented on the Legislative Council well before the war, in 1943, for the first time, two African members were nominated to the advisory Executive Council. A Protectorate Assembly subsuming the annual conference of the Paramount Chiefs was also established in 1946 with an African majority although, as an advisory body, the concession of an African majority was, perhaps, another example of colonial window-dressing. More seriously, though, elections to this new body were structured so as to be dominated by the tribal chiefs and provide only limited scope for the election of the rising, educated elite. This raised the question as to whether it was the educated elite or the tribal chiefs who were the true representatives of the people. It was a question that would be repeated in 1947 as further constitutional reform ensured that elections to an expanded Legislative Council would, again, effectively result in control remaining with the essentially 'conservative' Protectorate chiefs. It was a policy that would be followed in several other West African colonial territories with much the same resentments.[239]

In the more advanced Gold Coast, whereas for the wider body of the African population the war was always 'a white man's war', their interests were essentially economic, the tribal chiefs were happy to extend their support to the colonial government. So too, for the most part, educated African opinion as they were under no illusion as to what Hitler's victory would mean. However, as a 1942 British propaganda evaluation noted, the educated African elite were increasingly animated about the Atlantic Charter.[240] When, therefore, it became increasingly clear that the war would be won, educated African opinion began to actively contemplate plans for political reform in an expected post-war reconstruction of colonial government – though it was recalled with some concern that after the First World War the Gold Coast's contribution had not been acknowledged or rewarded.[241]

The major forum in which the educated African elite were able to debate political reform was the Gold Coast Youth Conference which organised a series of public debates. In the second of these debates, Moore, a Legislative Council

239 J. Cartwright, *Politics in Sierra Leone 1947–1967*, 36–39 and A.J.G. Wyse, *H. C. Bankole-Bright and Politics in Colonial Sierra Leone*, 139–140.

240 Gold Coast Area Newsletter, security reports (secret), 1942, quoted by D. Killingray, 'Military and Labour Recruitment in the Gold Coast During the Second World War', *Journal of African History,* 23/1 (1982), 93 and W.P. Holbrook, 'British Propaganda and the Mobilization of the Gold Coast War Effort, 1939–1945', *Journal of African History,* 26/4 (1985), 353.

241 W.P. Holbrook, 'The Impact of the Second World War on the Gold Coast: 1939–1945' (unpublished PhD thesis, Princeton University, 1978), 95–103, 113, 120–121, 144–145.

member, condemned the colonial government and in an appeal to racial pride proposed self-governing status for the Gold Coast.[242] He continued to press his point in the Legislative Council. In his maiden speech, he criticised the lack of Africanisation and made clear that, if the British government had failed in its duty as trustee to educate Africans as to make them fit for government, then, in his view, 'it is time they packed up and cleared away and left us to ourselves'. Subsequently, he also declared that 'rumour is current that the Africans … have no share in the good things provided for in the Atlantic Charter … it will be a great relief to us if Government would make a statement as to where we stand regarding the Atlantic Charter'.[243]

Danquah, Chairman of the Gold Coast Youth Conference, was also particularly active in drawing up a stream of constitutional proposals. His efforts culminated in a proposal which was approved by the Confederacy Council of Ashanti, the Joint Provincial Councils of the Colony and the African municipal members of the Legislative Council and handed to Colonial Secretary Stanley at the time of his 1943 visit. Its essential element was a call for an African majority in the Legislative Council.[244]

242 Gold Coast Youth Conference 27 May 1942, G.E. Moore, *Are We to Sit Down? Whither Are We Drifting?* (Accra, 1942), 19, quoted by W.P. Holbrook, 'The Impact of the Second World War on the Gold Coast: 1939–1945', 359–362; see also D. Austin, 'The Working Committee of the United Gold Coast Convention', *Journal of African History,* 2/2 (1961), 275–276. J.B. Danquah, *Self-help and Expansion: A Review of the Work and Aims of the Youth Conference, with a Statement of its Policy for 1943, and the Action consequent upon that Policy* (Accra, 1943), 9–11 gives a list of the lectures; Moore's speech is the second in the series.

243 Gold Coast, Legislative Council Debates Session 1941, Issue No. 1 26 February 1941 (reference from S. Shaloff, 'The Africanization Controversy in the Gold Coast, 1926–1946', *African Studies Review,* 17/3 (1974), 499–500 and M. Wight, *The Gold Coast Legislative Council* (London, 1947), 177) and Gold Coast, Legislative Council Debates Session 1943, Issue No. 1 3 March 1943 (reference from G.E. Metcalfe, *Great Britain and Ghana: Documents of Ghana History 1807–1957* (Legon, 1964), 668–669 and S.K.B. Asante, 'The Neglected Aspects of the Activities of the Gold Coast Aborigines' Rights Protection Society', *Phylon,* 36/1 (1975), 43). Moore also spoke at a private meeting of the Gold Coast Aborigines' Rights Protection Society in May 1942 to the effect that 'this is a war for Europeans, not for Africans', quoted in A Strategic Survey of the Gold Coast 21 April 1943, 66 and Gold Coast Area Newsletter, security reports (secret), 1942, 93; although this may be his speech to the Gold Coast Youth Conference referred to above.

244 Gold Coast Constitution, Memorandum of The Joint Provincial Councils of the Gold Coast Colony and the Confederacy Council of Ashanti, together with African Unofficial Members of the Legislative Council, for and on behalf of themselves and their people, September 1943, NA FCO 141/5145, Danquah to Nkrumah 30 April 1957, H.K. Akyeampong, *Journey to Independence and After (J.B. Danquah's letters*

Danquah's constitutional proposal was rejected by Colonial Secretary Stanley who explained that, although this specific proposal was rejected, the Governor would nonetheless convene a meeting to discuss alternative constitutional reform measures. Although a Colonial Office report at this time concluded that public opinion regarded this offer of a meeting as insincere, in that but for the war the proposal would have been rejected out of hand, in fact, Governor Burns had already accepted the need for reforms. As a first step, in 1942–43 he had appointed two Africans to the Executive Council and the post of Assistant District Commissioner and encouraged African majorities in local government bodies.[245] In 1944 he also announced a new constitution for the Gold Coast, to come into effect in 1946, with, for the first time, an unofficial African majority. Its major drawback, though, was that only five of the eighteen seats were open, the majority being reserved for the tribal chiefs. Once again, a colonial government was seeking to frustrate the aspirations of educated African opimion.

As Austin points out, the limited elections led directly to the 'tributaries of discontent' forming the United Gold Coast Convention (UGCC) in 1947. The UGCC saw itself as a 'nation-wide movement' preparing for office under self-government and its nomenclature 'Convention' was intended to convey a national movement. Its aims, as set out in its constitution, provided 'that persons elected to represent the people … shall be elected by reason of their competence and not otherwise' and that 'the control and direction of Government shall within the shortest possible time pass into the hands of the Natural Rulers and their people'. Soon thereafter, in December 1947, the UGCC took the fateful decision to appoint Nkrumah as its Secretary. He was appointed despite the lingering concerns of the more conservative leaders of the party. Danquah, who would die in President Nkrumah's prison, in particular, had quizzed Nkrumah about his Communist and Pan-African sympathies and how these would fit in with his proposed responsibilities at the UGCC.[246]

Vol. III 1952–1957) (Accra, 1971), 114, W.P. Holbrook, 'The Impact of the Second World War on the Gold Coast: 1939–1945', 362–367, 382–383 and B.M. Edsman, *Lawyers in Gold Coast Politics c. 1900–1945: From Mensah Sawabah to J.B. Danquah* (Uppsala, 1979), 222–231.

245 Stanley to Burns 2 June 1944 and 6 June 1944, NA FCO 141/5147, Constitution and Interim Report: Reaction of the public to the Secretary of State's Reply to the Memorandum of Constitutional Reform for the Gold Coast, C.L.D. 8 July 1944, NA FCO 141/51445–51447 and W.P. Holbrook, 'The Impact of the Second World War on the Gold Coast: 1939–1945', 369–381; one of the two African appointees was Busia. The details of the CO discussions are in FCO 141/51445–51447.

246 D. Austin, *Politics in Ghana 1946–60* (London, 1964), 52–55 and 'The Working Committee of the United Gold Coast Convention', 273–281 and HMSO Colonial 231, *Report of the Commission of Enquiry into Disturbances in the Gold Coast* (London, 1948), Appendix 15. Bradley to Creech Jones 12 December 1947, NA CO 537/3566 provides further (sceptical) background on the founding of the UGCC.

The answer would soon become apparent. Within weeks of his appointment, in February 1948, a long-awaited colonial government announcement failed to respond adequately to long-standing grievances against the protectionism which was pushing up the prices of many basic imported goods. By chance it coincided with a protest march by ex-soldiers who were attempting to present a petition of grievances to the new and inexperienced Governor. The chance conjunction of the two discontents led to serious rioting and, in response, the shooting of several ex-soldiers.

The UGCC leaders promptly despatched a telegram to the Colonial Secretary advising that: 'Civil Government Gold Coast broken down … Working Committee United Gold Coast Commission declare they are prepared and ready to take over interim government.' Nkrumah, however, saw this even more as the moment to press home an advantage against the colonial government. While he was largely restrained by the other UGCC leaders, he nevertheless sent an unauthorised telegram to the Colonial Secretary, copied to the UN Secretary-General and the international press, announcing that: 'People demand Self-government immediately. Recall Governor. Send Commission supervise formation Constituent Assembly. Urgent'.[247] In fact, as now became clear to the UGCC leaders, Nkrumah's goal had always been to push for immediate self-government.

The instant response of the colonial government was to detain the UGCC leaders, an action which the Watson Commission of Enquiry, though expressing grave concern about the Removal Orders, would nonetheless conclude had been taken by the Governor 'in good faith'. The more significant impact of this episode, though, was the breach between the old guard of the UGCC and their secretary and his radical supporters which led directly to the formation of the Convention People's Party (CPP) and to eventual political power for Nkrumah.

In its report, the Watson Commission of Enquiry concluded that there were several underlying causes of the disturbances. Primarily, it noted that the government seemed to be held in general distrust and suspicion. More specifically, that ex-soldiers were disappointed in their expectations and promises made following their return, that educated Africans were politically frustrated at ever being able to exercise political power, the 1946 constitution being mere window-dressing, and that Africanisation was a promise that was not being fulfilled. It therefore recommended that 'a substantial measure of constitutional reform is necessary to meet the legitimate aspirations of the indigenous population' in that the 1946 constitution though 'well-intentioned' was 'obviously conceived

247 Danquah to Nkrumah 30 April 1957, H.K. Akyeampong, *Journey to Independence and After (J.B. Danquah's letters Vol. III 1952–1957)*, 119–120, HMSO Colonial 231, *Report of the Commission of Enquiry into Disturbances in the Gold Coast*, 19, 94–95 (Appendices 13: Telegram to Secretary of State for the Colonies (Nkrumah) 29 February 1948 and 14: Telegram to Secretary of State for the Colonies (President, UGCC) 29 February 1948); copies of both telegrams with minor textual differences are in FCO 141/5086 and D. Austin, *Politics in Ghana 1946–60*, 73–80.

in the light of pre-war conditions' and therefore 'outmoded at birth'. It added that the tribal chiefs 'are being used by the Government as an instrument for the delay if not the suppression of the political aspirations of the people'. The obvious conclusion to be drawn was that the Gold Coast should move towards self-government at a far faster rate, a recommendation that was essentially accepted by the Colonial Office.[248]

Many years later, Nkrumah would continue to evoke the Atlantic Charter thereby attesting to its enduring impact on African political consciousness. For example, at the 1958 Accra All-African People's Conference (AAPC), he referred to 'the rights of all peoples to decide for themselves their own forms of government as well as the rights … to lead their own lives in freedom and without fear', presumably in the expectation that the reference would be understood.[249] Again, in *Africa Must Unite*, which was distributed to the 1963 Addis Ababa Conference, he recalled that: 'They proclaimed the Atlantic Charter and the Charter of the United Nations, and then said that all these had no reference to the enslaved world outside the limits of imperialism and racial arrogance.'[250]

As in the other colonial territories of West Africa, the initial reaction in Nigeria of the tribal chiefs, and even the press and educated public opinion, was to express unequivocal support for the war. However, already by mid-1940, discomfiting questions began to be asked of the colonial government as to their intentions regarding post-war constitutional reform. The most insistent questioner was Azikiwe. Although he would co-found (with Macaulay) the National Council of Nigeria and the Cameroons party (NCNC) in 1944, as of 1940, Azikiwe owed his political influence to ownership of several Nigerian newspapers, the *West African Pilot*, founded in 1937, of which he was also the editor, being the most prominent. The newspaper's masthead motto 'Show the Light and the people will find the way' was intended to convey Azikiwe's political mission 'to pilot the people of West Africa to self-determination by showing them the light'.[251] With a circulation of 10,000, it was regarded by the colonial government as the most influential of the Nigerian newspapers, an influence which it attributed to 'its attacks on the Government in general and on officials in particular, and to anti-white politics'.[252]

248 HMSO Colonial 231, *Report of the Commission of Enquiry into Disturbances in the Gold Coast*, 7–8, 15–17, 24–26 and R. Rathbone, 'The Government of the Gold Coast after the Second World War', *African Affairs*, 67/268 (1968), 209–218.

249 S. Grant, *The Call of Mother Africa*, 103–104 and A. Quaison-Sackey, *Africa Unbound*, 36; the two texts are slightly different.

250 K. Nkrumah, *Africa Must Unite* (London 1963), ix, xiii.

251 A. Abba, *The Northern Elements Progressive Union and the Politics of Radical Nationalism in Nigeria, 1938–1960* (Zaria, 2007), 64–65.

252 Overseas Planning Committee Plan of Propaganda to British West Africa Revised Channels Paper, Paper No: 412B, 1 October 1943, NA CO 875/9/7, 13 and C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration

Only a few days before the Atlantic Charter announcement, Azikiwe broadcast his frustration: 'Day by day I become embittered when I ponder the fate of Africans who had no choice but to become Colonial peoples … Day by day … I taste the pill of being a subject race.'[253] The spark, when it was struck a few days later, would not be the Atlantic Charter itself but the chance visit of Deputy Prime Minister Attlee to WASU on the day after the announcement. Founded in 1925, WASU was a hostel for African students in London but it was also a political lobbying centre and contact point for West African-based political groups. It was funded from a range of sources, not least a Colonial Office grant.[254] Deputy Prime Minister Attlee had been invited to speak at WASU some weeks earlier as Leader of a Labour Party perceived as sympathetic to African independence.[255] His comments ought therefore to have been more properly understood as a statement of Labour Party, not government, policy but they were so explosive as to render the distinction somewhat hollow.

In response to the welcoming address, which had pointedly asserted that 'we … naturally feel that we are entitled to know what we are fighting for, and … what our position is going to be in the coming new world order', he explained that: 'We in the Labour Party have always demanded that the freedom which we claim for ourselves shall be extended to all.' As regards the Atlantic Charter, he went on to suggest that its 'principles will apply, I believe, to all the peoples of the world (applause) we fight this war not just for ourselves alone, but for all people … I look for an ever-increasing measure of self-government and political freedom for Africa'.

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in Nigeria, 1939–51', 86–87. An insight into the Colonial Office's relationship with Azikiwe is given by J.E. Flint, '"Managing Nationalism": The Colonial Office and Nnamdi Azikiwe, 1932–43', *Journal of Imperial and Commonwealth History,* 27/2 (1999), 143–158 and K. Lawal, 'Decolonization in Nigeria: The perception and attitude of the Colonial Office and officials to Zik – 1946–1951', University of London, ICOM Studies Postgraduate Seminar 1988–89.

253 'Inside Stuff', *West African Pilot,* 9 August 1941, 2, 4 (reference from G.O. Olusanya, *The Second World War and Politics in Nigeria 1939–1953)*, 55–56.

254 Background, history, objects, *WASU Magazine* VII/1 (May 1940), 3–7, H. Adi, 'West African Students and West African Nationalism in Britain 1900–1960' (unpublished PhD thesis, University of London, 1994), G.O. Olusanya, *The West African Students' Union and the Politics of Decolonisation, 1925–1958* (Ibadan, 1982), P. Garigue, 'The West African Students' Union: A Study in Culture Contact', *Africa: Journal of the International African Institute,* 23/1 (1953), 55–69 and A.I. Asiwaju, 'WASU: A Reassessment', UNESCO, *The Role of African Student Movements*, 81–91; for an 'official' view of WASU, see Williams 26 October 1943, NA CO 554/127/12.

255 H. Adi, 'West African Students and West African Nationalism in Britain 1900–1960', 101–102, 141 clearly establishes that WASU's invitation to Attlee was made on 19 July 1941 as leader of the Labour Party in respect of an unfulfilled 1939 invitation.

His comments prompted a report of the meeting to 'see … in the historic Joint Declaration … A Charter of Liberties for all the peoples of the world … one of freedom's landmarks as memorable as the Bill of Runnymede, the … Declaration of Independence and the Proclamation of Emancipation'; though it poignantly added: 'It may be said … that here is little or nothing which had not been registered in their own minds and hearts as essential by millions of men and women in many lands.' Azikiwe also responded positively but with a note of caution. It seems that: 'Africans also will enjoy those things promised for the new world to come … We welcome this attitude and hope that the Eight Points Declaration will not fizzle out in the end to be mere platitudes.'[256]

On his return from the meeting with President Roosevelt, Prime Minister Churchill was immediately faced not so much with the fallout from Deputy Prime Minister Attlee's speech to WASU, which was regarded as of only minor consequence, as by demands from Burma and India for immediate implementation of Point 3.[257] He was therefore forced into a public clarification of its

256 The meeting and speeches were reported by *West Africa,* 23 August 1941, 811–812, 818, *WASU Magazine,* IX/1 (May 1942), 1–2 and *West African Pilot,* 16 August 1941, 1–2, 8, 11 October 1941, 2 and 13 November 1941, 1–2; see also G.O. Olusanya, *The West African Students' Union*, 52, quoting from *The Manchester Guardian,* 16 August 1941, P.O. Esedebe, *Pan-Africanism: The Idea and Movement 1776–1963* (Washington, 1982), 145–146, quoting from the *Daily Herald,* 16 August 1941, and H. Adi, 'West African Students and West African Nationalism in Britain 1900–1960', 141–142. The reports differ slightly in their reporting of the text of the speech. Both the Atlantic Charter and Attlee's speech to WASU were praised by 'Africans and Anglo-American War Aims', *West African Pilot,* 20 August 1941, 2, a copy of which was requested by the Colonial Office which was apprehensive about the likely reaction in West Africa to Attlee's speech (see Nigerian Secretariat, Lagos to Moyne 6 November 1941, NA CO 967/117). Amusingly, the copy of N. Azikiwe, *Renascent Africa* (Accra, 1937) at the LSE Library was presented by Attlee; unfortunately the library was unable to ascertain the date of the gift.

257 Statement issued by U Saw, the Premier, on behalf of the Council of Ministers and the people of Burma, on the 16th August, NA PREM 4/50/3, W.M. (41) 89th Conclusions Meeting of War Cabinet 4 September 1941, NA CAB 65/19/25, 10 and Interpretation of Point III of Atlantic Declaration in respect of the British Empire, respectively, Memorandum by the Secretary of State for India and for Burma, 29 August 1941 WP (G) (41) 85, NA CAB 67/9/85 and Memorandum by the Secretary of State for the Colonies, 2 September 1941 WP (G) (41) 89, NA CAB 67/9/89; although Viceroy to Secretary of State for India 18 August 1941, NA PREM 4/50/3 observes that any response is 'further complicated by statement reported here to have been made by Attlee'. See also Saw to President Roosevelt 26 November 1941 and Hull to President Roosevelt 15 December 1941, Series 3: Diplomatic Correspondence, Box 25 Burma, Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York, http://www.fdrlibrary. marist.edu/_resources/images/psf/psfa0241.pdf#search=, last accessed 30 July 2014, M.S. Venkataramani,

intent, asserting that 'we had in mind, primarily, the restoration of the sovereignty, self-government … of the States and nations of Europe now under the Nazi yoke … So that is quite a separate problem from the progressive evolution of self-governing institutions in the regions and peoples which owe allegiance to the British Crown.'[258] This prompted an immediate response from Azikiwe: 'That a British Prime Minister could utter such a statement during an unparalleled destructive war which has cost Colonial peoples their material resources and man-power is … a revelation. What … must we expect to be our fate after the war?'[259] He followed it up with a telegram to Prime Minister Churchill in which he asked:

> Must we assume that … the statement … that the Atlantic Charter would benefit coloured races as well as the white race is mis-leading and unauthorised? … Are we fighting for security of Europeans to enjoy the four freedoms while West Africans continue to live on pre-war status? We naturally feel entitled to know what we are fighting for, and are anxious to know what our position is to be in the coming new world order.

Azikiwe also warned that he had requested the US Consul to obtain similar clarification as to the meaning and application of the Atlantic Charter directly from President Roosevelt.[260]

Prime Minister Churchill's straight-bat reply was that: 'The declared policy of H.M.G. with regard to the peoples of the British Empire is already entirely in harmony with the high conception of freedom and justice which inspired the joint declaration, and the Prime Minister does not consider that any fresh statement of policy is called for in relation to Nigeria or West African Colonies, generally.' He also pointed out that Deputy Prime Minister Attlee's statement to WASU was made 'before he had an opportunity of consulting the Prime Minister as to

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'The United States, the Colonial Issue, and the Atlantic Hoax', 25 and E. Nwaubani, 'The United States and the Liquidation of European Colonial Rule in Tropical Africa, 1941–1963', 508. For comments on embarrassment caused by Attlee's speech, see Notes on Address to the Secretary of State by WASU to be presented during his visit on 9 April 1942 and Williams 26 October 1943, NA CO 554/127/12.

258 Statement by Prime Minister Churchill, House of Commons 9 September 1941; see also *West African Pilot* 4 November 1941, 1, 3 in which the speech was reported and compared unfavourably with Attlee's speech to WASU.

259 Telegram, Bourdillon to Secretary of State for the Colonies 15 November 1941, NA PREM 4/43A/3 and *West African Pilot,* 5 November 1941, 2; there are slight variations between the two texts.

260 *West African Pilot,* 13 November 1941, 1–2 and Prime Minister's Personal telegram 'From Nigeria' 15 November 1941, NA PREM 4/43A/3; see also textual similarity of WASU's welcome address to Attlee with report by *West African Pilot,* 8 October 1941, 3–4 and London Correspondent, 'Twenty Million Africans Ask Churchill To Explain Atlantic Charter Meaning', *Pittsburgh Courier,* 7 February 1942, 2.

the relation of the principles embodied in the Atlantic Charter to those underlying the declared policy of H.M.G. with regard to the colonial dependencies'.[261]

In view of the increasing press invective against colonial governance emerging out of West Africa, it might therefore have been thought foolhardy for eight West African newspaper editors, including Azikiwe, to be invited to tour Britain in 1943. The visit seems to have been initiated by the British Council and the MoI following a suggestion by departing Governor Bourdillon, although press commentary in Nigeria suggests that it may have been prompted by West African press reports of a tour by journalists from Brazil, Turkey, Sweden, Switzerland and the West Indies. A concerned Colonial Office considered the initial planning by the British Council 'malevolent incompetence' such that the visit might likely 'intensify bad relations between the discontented African intelligentsia and the British instead of improving relations between them'. The Colonial Office therefore pondered calling it off, but recognised that it was probably too late and agreed to proceed only the basis that it was not handled by the British Council and that it would be limited to eight participants. As to what they might visit, the initial ideas were described as 'improving experiences rather too boring' and based on a 'standard plan' unamenable to any suggestions.[262]

No aims for the visit were indicated at the outset, but in retrospect it was proposed that they might be understood as having provided the editors with a view of life in England during the war and an opportunity to establish personal

261 Telegram from Secretary of State for the Colonies 25 November 1941, NA PREM 4/43A/3 (the reply was sent through Governor Bourdillon); it was also published in the *West African Pilot,* 29 November 1941, 1 (slight textual differences). See also G. Padmore, 'Churchill Still Not Specific in Replying to Nigerian Charter Query' and Unsigned, 'Britain's Reply to Africa', *Chicago Defender,* 7 March 1942, 12 and 14 March 1942, 14 (reference from P.M. von Eschen, *Race against Empire Black Americans and Anticolonialism, 1937–1957* (Ithaca, 1997), 26) and H. Adi, *West Africans in Britain, 1900–1960: Nationalism, Pan-Africanism and Communism* (London, 1998), 98–105.

262 Resident Minister to Secretary of State for the Colonies 28 November 1942, Sabine to Pedler, Williams and Gent 3 December 1942, Robinson 9 and 13 March 1943, Minute of meeting held at the British Council to discuss the visit of West African journalists to Great Britain this year, held on March 3rd, 1943, Robinson to Sabine, Williams and Dawe 15 June 1943, Dawe to Sabine 31 March 1943, Williams 15 June 1943 and Dawe to Jeffries 16 June 1943, NA CO 875/9/22, 'African Editors in London', *West African Pilot,* 2, 'Editorial', *Daily Service* 3 November 1942, 2 and 5 November 1942, 2 and H. Adi, 'West African Students and West African Nationalism in Britain 1900–1960', 158. The visit was also the subject of a 1944 film 'West African Editors' by the Colonial Film unit for the mobile film units operating in the African colonial territories (see R. Smyth, 'The British Colonial Film Unit and sub-Saharan Africa, 1939–1945', *Historical Journal of Film, Radio and Television,* 8/3 (1988), 291).

contact with 'persons of prominence', and, optimistically, to demonstrate what local government in Britain had been able to achieve. In reality, 'they were overwhelmed with their own private affairs. The visit had been accepted as a cheap way of doing their own business in England.'[263]

En route, Azikiwe urged the editors to subscribe to a memorandum to the British government. In its Introduction the memorandum explained that 'it has become clear to us in British West Africa that unless we make known our feelings and aspirations we may be left in the lurch in the post-war days to come.' It therefore called for immediate self-government for a period of ten years, followed by responsible government for five years, and thereafter dominion status; a call which it linked to Point 3. The memorandum also set out a list of 'Basic Constitutional Rights'. The first provided for the right to pre-natal and post-natal care; the fourteenth, for the right to keep and bear arms. Only two editors refused to sign: Mallam Abubakar Imam from Nigeria 'could not sign for that newspaper because it was an official publication', while no explanation seems to have been forthcoming as to why Thompson from Sierra Leone felt unable to sign; in addition, although Thomas from The Gambia signed, he did so 'with 19 unspecified reservations'.[264]

At the WASU reception, differences between the editors were further exposed. Thompson, in his speech of reply on behalf of the editors, explained that the principal consideration everywhere in West Africa is winning the war, but that thereafter each territory had its own aspirations, which was in general a faster push towards representative government. In contrast, the aggressive speech by

263 Covering note, Visit to England by West African Editors, August, 1943, unsigned and undated, and Notes on West African Editors' visit, unsigned and undated, NA CO 554/133/3.

264 The Atlantic Charter and British West Africa, Memorandum on Post-war Reconstruction of the Colonies and Protectorates of British West Africa Prepared under the Auspices of the West African Press Delegation to Great Britain August, 1943, 1, 9 and Signatory page, Harvill 9 September 1943 and Williams 13 September 1943, NA CO 554/133/3; see also *West Africa,* 25 September 1943, 852 and G. Padmore, *The New Leader,* 23 October 1943. The Memorandum was also published in the US in the *African Interpreter,* 1/5 (1944) (reference from H.R. Lynch, 'Pan-African Responses in the United States to British Colonial Rule in Africa in the 1940s', P. Gifford/W.R. Louis (eds), *The Transfer of Power in Africa: Decolonization 1940–1960*, 76) and given wider publicity by Amy Garvey, who commended the Memorandum to Du Bois (see Garvey to N. Azikiwe 14 April 1944 (reference from J.G. Spady, *Marcus Garvey, Africa, and the Universal Negro Improvement Association: A UMUM Perspective on Concentric Activity in the Pan African World* (New York, 1985), 91) and Garvey to Du Bois 4 April 1944, H. Aptheker (ed.), *Correspondence of W.E.B. Du Bois Vol. 2: Selections, 1934–1944* (Amherst, 1976), 375–377) and discussed at the 1944 Council on African Affairs Conference 'Africa-New Perspective' (reference from E.A. Laing, 'The Norm of Self-determination, 1941–1991', 265–266).

Awoonor-Renner, a Communist journalist from the Gold Coast, declared that: 'We believe in the principle and stand by the Atlantic Charter … We demand the right to take our rightful place at the Peace Conference table'.[265] Rather more ominously, a report suggested that Mallam Abubakar Imam may have spoken bluntly of Northern contempt for Southerners, advising that 'the common people of the North put more confidence in the white man than in either their black Southern brothers or the educated Northerners'.[266] As for the Colonial Office, its response was dismissive: 'The most interesting fact … is that two members refused to sign it … It would be easy to dismiss this memorandum … but there are points … which are worth noting … It undoubtedly expresses the various wishes of a number of the educated Africans … No action is required on this memorandum.'[267]

Azikiwe would serialise the Memorandum in the *West African Pilot* in 1943 and follow it up with the further serialisation of his 1943 pamphlet *Political Blueprint for Nigeria*, which set out his proposals for constitutional reform in frustration at the British attitude to the application of the Atlantic Charter to Africa: 'These observations leave me and those of my kind who are living in the outposts of the British Empire to begin to ponder … whether we should not prepare our own blueprint ourselves, instead of relying on others who are too busy preparing their own blueprint?' It was a frustration that had been festering since at least December 1942, when, confronted by the apparent futility of political protest, Azikiwe had begun to refer to the Atlantic Charter as 'The Atlantic Chatter': 'A charter is a document bestowing certain rights and privileges … chatter on the other hand, means to utter sounds rapidly or to talk idly or carelessly'[268]

Other Nigerian newspapers and political groups sought to compete with the *West African Pilot* in the degree of reproach levelled against Africa's express exclusion from the application of Point 3. Thus, for example, the *Daily Service*, the newspaper of the Nigerian Youth Movement (NYM), inveighed that:

265 Speech delivered in London by Councillor Bankole Awoonor-Renner at the reception given by WASU to the West African Press Delegation to the United Kingdom on 25 August 1943, NA CO 875/9/22 and 'Activities of West African Editors in United Kingdom', *The Sierra Leone Daily Mail,* 19 August 1943, 1; see also H. Adi, *West Africans in Britain, 1900–1960*, 197–200.

266 *Nigerian Citizen,* 1 July 1949, quoted by J.S. Coleman, *Nigeria: Background to Nationalism* (Berkeley, 1958), 360–361 who suggests (incorrectly) that this explains why Mallam Abubakar Imam was the only editor not to sign.

267 Harvill 9 September 1943 and Williams 13 September 1943, NA CO 554/133/3.

268 *West African Pilot,* 22 December 1942, 2 (reference from B. Ibhawoh, 'Second World War Propaganda, Imperial Idealism and Anti-Colonial Nationalism in British West Africa', 241) and 15 April 1944, 3 (this article was Part 18 of the serialisation of N. Azikiwe, *Political Blueprint for Nigeria* (Lagos, 1943) (reference from J.S. Coleman, *Nigeria: Background to Nationalism*, 232).

'Imperialism is the antithesis of freedom for which we are now at war'; and that: 'Peace without political and economic freedom vitiates the purpose for which we fought against Nazism.'[269] The NYM also took the opportunity presented by Colonial Secretary Stanley's 1943 West African tour to present him with a petition which argued that:

> The African peoples … should have the right to determine the form of Government under which they will live, and that they may live out their lives in freedom from fear and want. We therefore request that a definite pronouncement should be made as regards the rights of the Colonial peoples to be brought within Points 3, 4, 5 and 6 of the Atlantic Charter.

It also sought, as proof of British sincerity, that African ministers should be appointed to head up key departments within the colonial government.[270]

Further reminders of African aspirations referencing the Atlantic Charter were also evident in several of the speeches welcoming Colonial Secretary Stanley during his 1943 visit. One such speech explained that: 'We pray … that the Atlantic Charter be made applicable to us Africans in all entirety'; and that

> when Egba people remind themselves of the declaration contained in, or the spirit of, the Atlantic Charter … they have not the slightest doubt or hesitation in thinking that the ideals for which the Empire … fight will soon find acceptable repercussion in the ordering of affairs and their management when the details of post-war reconstruction are given consideration.[271]

In a further expression of an increasing African reaction to racial indignities, Colonial Secretary Stanley was also petitioned by junior civil servants about the use of the term 'Native' which they considered grossly insulting.[272]

269 *Daily Service,* 5, 16 and 28 July 1944, quoted by P.B. Clarke, *West Africans at War 1914–1918, 1939–1945: Colonial Propaganda and its Cultural Aftermath*, 77; the attribution of the second quotation is not clear as the text implies a date of September 1945 and it has not proved possible to obtain direct verification of the reference.

270 Memorandum submitted by the Nigerian Youth Movement to the Rt. Honourable Colonel Stanley, M.P., Colonial Secretary, on the occasion of his visit to Nigeria in September 1943, 2, NA CO 583/263/18; see also O. Awolowo, *Awo: The Autobiography of Chief Obafemi Awolowo* (Cambridge, 1960), 124–125.

271 Address, Members of the Ibadan Societies, Ibadan 22 September 1943, NA CO 554/132/18 (an identical phrase is employed in An Address presented to Right Honourable Colonel Oliver Stanley, the Secretary of State for the Colonies, on the occasion of his visit to Ibadan, Nigeria, West Africa on 21 September 1943, NA CO 583/263/15) and Address from The Alake of Abeokuta to the Right Honourable Colonel Oliver Stanley, the Secretary of State for the Colonies 23 September 1943, NA CO 554/132/18; a reference was also made to WASU indicating the extent to which its activities were followed in West Africa.

272 Address from the Federal Union of Native Administration Staffs to the Right Honourable Colonel Oliver Stanley, The Secretary of State for the Colonies, 23

Unsurprisingly, then, as the war came to an end, the colonial government was forced to confront several challenges to its authority, notably the 1945 general strike and the political backlash to the Richards Constitution. Further opprobrium was heaped on the colonial government as a result of administrative amendments which became known as the 'obnoxious' ordinances. As in Buganda, they were probably more innocuous than obnoxious, but due to the degree of distrust in which the colonial government was held in Southern Nigeria, they were seen as an interference in traditional rights and a land grab but also, importantly, as another example of the refusal of the colonial government to consult with educated public opinion.[273]

The 1945 general strike was largely a response to the fall in real wages brought about by the war but exacerbated by the colonial government's refusal to negotiate almost certainly in the (mistaken) belief that black workers were incapable of effective organisation. In fact, the strike, which lasted for about six weeks, was well supported. It ended only after threats of dismissal divided the strikers and forced a return to work, but the subsequent negotiations ended with agreement that the strikers' wage demands would be reviewed by a commission of enquiry. The resulting Tudor Davies Commission of Enquiry largely endorsed the strikers' arguments that the 1942 cost-of-living increase had been intended as a temporary expedient and that wage rises of 50 per cent, as against the 20 per cent on offer, were appropriate given the increase in the cost of living. It also agreed with the strikers' representation that, whereas European wage rates had been adjusted for inflation, African wage rates had not.[274]

Whether Azikiwe had inspired or brought about the strike, as (not only) the colonial government believed, it was clear that he was helping to direct it through his newspapers. As a result, the colonial government decided to ban

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September 1943, NA CO 554/132/18. The same point was made in 'The Word "Native" disliked by Africans', *Bantu Mirror,* 7 March 1942, 2: 'Practically speaking, every African is feeling the sting of the everlasting stigma of being called "native" while he has a hundred percent right to the name African.'

273 C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration in Nigeria, 1939–51', 132–134.

274 HMSO Colonial 204, W. Tudor Davies, *Enquiry into the Cost of living and the Control of the Cost of Living in the Colony and Protectorate of Nigeria* (London, 1946), W. Oyemakinde 'The Nigerian General Strike of 1945', *Journal of the Historical Society of Nigeria* 7/4 (1975), 693–710, 'Labour Costs and Conditions in Nigeria: The Report of the Tudor Davies Commission', *West Africa* 26 October 1946, K. Ezera, *Constitutional Developments in Nigeria: An Analytical Study of Nigeria's Constitution-Making Developments and the Historical and Political Factors that affected Constitutional Change*, 2nd edn (Cambridge, 1964), 57–60 and G.O. Olusanya, *The Second World War and Politics in Nigeria 1939–1953,* 89; see also C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration in Nigeria, 1939–51', 136–148.

the *West African Pilot* and the *Daily Comet* on the grounds of misrepresentations designed to aggravate the strike. Shortly thereafter, Azikiwe withdrew to his home town of Onitsha claiming that he had been a victim of an assassination plot organised with the connivance of the colonial government. This was a step too far and it was therefore decided to move against him: 'I have decided that the time has come to go for Zik.'[275] Governor Richards would also describe him as an 'irresponsible lunatic'. Azikiwe was therefore refused a wireless licence, his press representatives excluded from Legislative Council meetings and, more seriously, official advertising and public notices withdrawn from his newspapers.[276]

By 1946, under severe financial pressure, Azikiwe was driven to petition Colonial Secretary Hall and Governor Richards. His petition demanded that the colonial government rescind its decision to cancel its contractual relationship with his newspapers and 'to be just and equitable in all official dealings with our business organisation'. For good measure, it also noted: 'That we view with apprehension the tendency to depart from the principles of the Four Freedoms, for which sons of Nigeria had died … The question arises: What price the sacrifices made by Nigeria to the World War II?' The British government was therefore advised that they would best 'win the peace in Nigeria, by implementing the solemn obligations of Great Britain … with particular reference to the "Freedom of Speech and Expression," "Freedom from Want," and "Freedom from Fear"'.[277]

The Richards Constitution was conceived in 1943–44 as a constitution for the post-war era. It was introduced and adopted in 1945–46 and brought into effect in 1947. As Governor Richards explained: 'In framing my proposals I have kept three objects before me; to promote the unity of Nigeria; to provide adequately within that unity for the diverse elements which make up the country; and, to secure greater participation by Africans in the discussion of their own affairs.' Under the proposed constitution new Executive and Legislative Councils were created that for the first time included all three Regions, North, East

275 Swinton papers, Richards to Swinton 15 December 1945, quoted by R.D. Pearce, 'Governors, Nationalists, and Constitutions in Nigeria, 1935–51', *Journal of Imperial and Commonwealth History,* 9/3 (1981), 298. The protests and letters of support are located in NA CO 583/276/1 together with a pamphlet by N. Azikiwe *Press in British West Africa* (Onitsha, 1945).

276 Richards to Secretary of State 15 February 1946, NA CO 583/275/10 Part 3, Richards to Swinton Christmas Card, quoted by C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration in Nigeria, 1939–51', 155–160, and 'Inside Stuff', *West African Pilot,* 24 October 1945, 2; see also G.O. Olusanya, *The Second World War and Politics in Nigeria 1939–1953*, 89–92 and K. Ezera, *Constitutional Developments in Nigeria*, 59–61.

277 Humble Petition of Nnamdi Azikiwe 15 February 1946, NA CO 583/265/1.

and West, but with the requisite compromise that authority over many areas of administration was devolved to the regional councils.[278]

The immediate negative reaction was largely the product of Governor Richards' deliberate refusal to consult Nigerian public opinion. Prior to his departure in 1943, Governor Bourdillon had assured the Legislative Council that 'no reforms will be introduced until every shade of opinion in this country has had a full opportunity of saying what it thinks about them'.[279] Indeed, he would feel sufficiently strongly on this point as to come out openly in criticism: 'I have one regret … I feel that the public should have been given every chance to say what they thought about them.'[280] In fact, Governor Richards had consulted the tribal chiefs but otherwise made no effort to consult educated public opinion. Moreover, the constitution was placed before the Legislative Council with no warning so that there was little opportunity for even constructive criticism.[281] In Pearce's view, this was a deliberate ploy by the intransigient Governor Richards who had little sympathy with his predecessor's conciliatory approach and preferred to confront the pretensions of educated public opinion to represent either ordinary Nigerians or the regions.[282]

The new constitution was seen as having failed in several respects. As the NCNC petition argued: firstly, it provided for participation essentially only in discussions not in ultimate authority and administration.[283] In the Legislative Council debate, an unofficial member', Ikoli, would therefore make it clear to Governor Richards that: 'We do not want only discussion, Sir, we want to be able to take part in the management of our own affairs.'[284] Secondly, it provided

278 HMSO Cmd. 6599, *Proposals for the Revision of the Constitution of Nigeria* (London, 1945), 6 and Nigeria (Legislative Council) Order in Council, 1946, 2 August 1946; see also G.O. Olusanya, *The Second World War and Politics in Nigeria 1939–1953*, 74–76 and K. Ezera, *Constitutional Developments in Nigeria*, 59–75.

279 Bourdillon 19 March 1943, Debates in the Legislative Council of Nigeria Twenty-First Session 15–27 March 1943, 252.

280 Sir B. Bourdillon, 'The Nigerian Constitution', *African Affairs*, 45/179 (1946), 88.

281 Richards 5 March 1945, Debates in the Legislative Council of Nigeria Twenty-Third Session 5–24 March 1945, 35–39 and Brown 24 March 1947, Debates in the Legislative Council of Nigeria First Session 20 March – 2 April 1947, 222–228 (reference from C. Thomas, 'Colonial Government Propaganda and Public Relations and the Administration in Nigeria, 1939–51', 130–132).

282 R.D. Pearce, 'Governors, Nationalists, and Constitutions in Nigeria, 1935–51', 294–299.

283 NCNC, Memorandum on the New Constitution for Nigeria submitted to His Excellency the Governor of Nigeria for onward transmission to the Right Honourable The Secretary of State for the Colonies, including Preamble by Herbert Macaulay, 27 March 1945, NA CO 583/268/8.

284 Ikoli 22 July 1945, Debates in the Legislative Council of Nigeria Twenty-First Session 5–24 March 1945, 503–505.

for only four directly elected seats on a limited franchise as against widespread nomination of the tribal chiefs, who were seen as puppets of the colonial government, and commercial interests. Indeed, as Pearce noted, Governor Richards' intention, which the Colonial Office had blocked, had been to exclude all direct elections.[285]

In the summer of 1947, Azikiwe was therefore determined to undertake a further visit to the UK, as leader of the NCNC party, to lobby against the Richards Constitution. It was seen by many of his political opponents and the British government as a publicity stunt. On his way to the UK, Azikiwe travelled first to the US where he was received by Mrs Roosevelt, who was then chairing the UDHR drafting process. He was also able to attract publicity from a series of speeches in one of which he would point out: 'According to the leaders of the Allied Nations, we fought the last war … to make the Four Freedoms a living reality … After we had won the war, can we say conscientiously that we have won the peace? … The answer is definitely "NO"'[286]

The memorandum Azikiwe presented to the British government opened with an appeal to the memory of the Atlantic Charter. It expressed the hope that 'the Atlantic Charter is evidence of a sincere desire on the part of its signatories … to preserve and to extend democracy … knowing that Article III … states: "They respect the right of all people to choose the form of Government under which they may live"'. It also appended a draft constitution that included a list of 'Basic rights', the first two of which were, once again, the right to pre- and post-natal care. While the meeting with Colonial Secretary Creech Jones was outwardly friendly, as all understood, it was essentially a polite charade acted out by both sides.[287]

285 R.D. Pearce, 'Governors, Nationalists, and Constitutions in Nigeria, 1935–51', 294–299; see also 'The New Nigerian Constitution: WASU's Criticism of the Proposals', *West African Review,* 16/213 (1945), 103–109 and G.O. Olusanya, *The Second World War and Politics in Nigeria 1939–1953*, 75–84.

286 Speech to Storer College, West Virginia 2 June 1947, N. Azikiwe, *Zik: A Selection from the Speeches of Nnamdi Azikiwe* (Cambridge, 1961), 82 and H.R. Lynch, 'K.O. Mbadiwe, 1939–1947: The American Years of a Nigerian Political Leader', *Journal of African Studies,* 7/4 (1980–81), 199–200; see also G.O. Olusanya, *The Second World War and Politics in Nigeria*, 108–109 (although his attribution seems incorrect). The visit was given extensive coverage in the *West African Pilot*, for example, *West African Pilot,* 26 June 1947, 1, 4, and was also reported on for the benefit of the Colonial Office in Second Monthly Report to the Colonial Office, NA CO 583/292/2.

287 Memorandum Submitted by the Delegation of the National Council of Nigeria and the Cameroons to the Secretary of State for the Colonies 11 August 1947 and Notes of a Meeting with the National Council of Nigeria and the Cameroons held on 13 August 1947 with the Colonial Office, NA CO 583/292/2–3. Nigerian press reports on the visit are summarised in Extract from West African Press Survey No.

The following year, at its first annual congress at Kaduna, the NCNC issued an amended version of the constitutional proposals that had been presented to the Colonial Office as 'The Freedom Charter'. It proclaimed the right to self-determination based on Point 3 and proposed a federal structure for Nigeria, with a guarantee of twenty-six (previously twenty-four) basic rights and limitations on the powers of the Executive and Legislative Council, all of which, it argued, was based on African political experience and the aspirations of the African people.[288] While it may be tempting to see this package of rights as a forerunner of the ACHPR, the reality is that the political context was rather more the issue of the regional balance of power in an independent Nigeria than with a conception of universal human rights.[289] Indeed, to Azikiwe's fury, a *Daily Times* report on the NCNC's annual congress had referred to it as an 'all Ibo affair'. By then, too, a Yoruba organisation, the *Egbe Omo Oduduwa*, was also being formed. This rivalry became so intense that in October 1948 the colonial government was obliged to issue a call to order, not only to political leaders but also the editors of the *West African Pilot* and the *Daily Service* who were engaged in a lurid exchange of slander. This tribal rivalry would also come to impact the North where, in 1950, the Northern People's Congress party would emerge out of a purely cultural society as the main political party of the Northern Region.[290]

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44 16 September 1947, NA CO 583/292/3; see also N. Azikiwe, *The Development of Political Parties in Nigeria* (London, 1957).

288 Memorandum on the First Annual Convention of the National Council of Nigeria and the Cameroons and the National Assembly held at Kaduna 5–10 April 1948, Field 28 April 1948, NA CO 583/292/5 and Governor to The Secretary of State for the Colonies. Saving 307 3 February 1953 enclosing Nigerian Secretariat, Notes on trends in the policies of the National Council of Nigeria and the Cameroons and its affiliated bodies, 31 December 1952, NA CO 554/599. B. Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (Albany, 2007), 160–161 also references National Council of Nigeria and the Cameroons, *Freedom Charter* (Lagos, 1948) and E. Ita, *The Freedom Charter and Richard's Constitution in the Light of the Universal Declaration of Human Rights signed by the United Nations Assembly* (Calabar, 1949).

289 R.D. Pearce, 'Governors, Nationalists, and Constitutions in Nigeria, 1935–51', 301 and D. van den Bersselaar, *In Search of Igbo Identity: Language, Culture and Politics in Nigeria 1900–1966* (Leiden, 1998), 269; see also V. McKay, 'Nigerian Nationalism Poses Major Issue for Britain', *Foreign Policy Bulletin,* 27/4 7 November 1947, 2–3.

290 Memorandum on the First Annual Convention of the National Council of Nigeria and the Cameroons and the National Assembly held at Kaduna 5–10 April 1948, Field 28 April 1948, 8, NA CO 583/292/5, Field, 'Note on the *Egbe Omo Oduduwa*' attached to Governor to Secretary of State for the Colonies Saving 947 19 June 1948 and Governor to Secretary of State for the Colonies Saving 52340 14 October 1948, NA CO 583/287/4, A. Bello, *My Life* (London, 1962), 85, J.S. Coleman, *Nigeria: Background to Nationalism*, 332–352, 357–362, K. Ezera, *Constitutional Developments*

In fact, further steps of political advance were already on the way. Although at the time of his 1947 visit, the Colonial Office had not been inclined to signal to Azikiwe any intimations of its intentions, it had by now recognised that further changes needed to be made. These changes would shortly mark the beginning of the constitutional road that would end in independence for Nigeria as a unitary state; a road made longer by the protracted negotiations arising out of the tribal rivalries of Nigeria's three main Regions.

The UN Charter, UDHR and UNESCO – the post-war international settlement

The UN Charter

Although in many of the colonial territories there was an expectation that the forthcoming Peace Conference would address the question of self-government, if not independence, such hopes had in fact already been extinguished well before the San Francisco Conference opened. The 1944 Dumbarton Oaks Conference had discussed whether the colonial question should be included in the draft agenda of the San Francisco Conference but deferred a final decision mainly due to the inability of the US to reach an internal consensus on the Pacific military bases it was seeking to obtain. It was only at the February 1945 Yalta Conference that it was finally agreed that there would be no discussion of the colonial system, the status of non-self-governing territories or the disposition of specific colonial territories, discussion of which was to be left for a later date. Discussion would be limited to the working out of a new Trusteeship structure but only in respect of colonial territories currently under mandate, detached from enemy states or voluntarily placed under trusteeship by states presently responsible for their administration.[291] It would therefore be left to Egypt, Ethiopia and Liberia as to whether they chose to voice discomfiting opinions on the colonial system despite the restriction imposed by the agenda framework.[292]

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in Nigeria, 91–96 and T. Sklar, *Nigerian Political Parties: Power in an Emergent African Nation* (Princeton, 1963), 63–72, 232–235.

291 *FRUS 1945 The Conferences at Malta and Yalta, 1945,* Document 423: 6th Plenary Meeting 9 February 1945, Bohlen Minutes, *FRUS 1945 Vol. I General: The United Nations,* Documents 120: The Secretary of State to Mr Leo Pasvolsky, Special Assistant to the Secretary of State 3 April 1945 and 132: The Secretary of State to President Roosevelt 9 April 1945, E.J. Sady, *The United Nations and Dependent Peoples* (Washington, 1956), 20–22, W.R. Louis, *Imperialism at Bay 1941–1945*, 459–460, E.B. Haas, 'The Attempt to Terminate Colonialism: Acceptance of the United Nations Trusteeship System', *International Organization,* 7/1 (1953), 1–21, R.B. Russell/J.E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945*, 626–630, 1032 Appendix L and H. Gilchrist, 'V. Colonial Questions at the San Francisco Conference', *American Political Science Review,* 39/5 (1945), 982–992.

292 In order to qualify for the San Francisco Conference, Egypt declared war on 26

In the event, of the three African states, only Egypt would take an active part in proceedings. Egypt's primary interest was a revision of the 1936 Anglo-Egyptian Treaty of Alliance, but, with North Africa and Middle East in mind, it also took a keen interest in the trusteeship discussions.[293] As regards black Africa, as Mazrui and Tidy note: 'Egypt … was too conservatively Arab in outlook to consider African unity.' In contrast, Liberia, took little part in the proceedings. For now, its reliance on US aid made it disinclined to raise awkward questions. As for Ethiopia, Pan-African consciousness was some years away: 'Ethiopians did not even regard themselves as black Africans in this period.'[294] Indeed, even with prominent African Americans, the Ethiopians adopted a tone of arrogant superiority. Logan, for example, sensed that the Ethiopian Ambassador 'looked down on African Americans (and) thought that African Americans … were a primitive people, especially as compared to Ethiopians'.[295] This moved a prominent black newspaper to comment that African-American correspondents found it easier to access the 'big shots' of the major powers than the delegates of Ethiopia and Liberia, an accusation that Ojike (see page 179 below) would eventually conclude was unproven.[296] Ethiopia's overriding concern was the disposition of Italian Somaliland and access to the sea through Djibouti and it therefore devoted no effort to interest itself in the aspirations of the African colonial territories.[297]

None of the three African states would therefore attempt in their opening statements to confront the conference over the question of colonialism, though Egypt took the opportunity to remind the conference of the importance that should be attached to the Atlantic Charter, thereby raising the issue of colonialism indirectly. That importance had originally been stressed by the Eyptian government during the parliamentary debate that had sanctioned the declaration of

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February 1945 (see *FRUS 1945 The Conferences at Malta and Yalta, 1945*, Documents 394: 5th Plenary Meeting 8 February 1945, Bohlen Minutes and 397: The President's Special Assistant (Hopkins) to the President 8 February 1945).

293 Meeting, Commission II/4 9 June 1945, *UNCIO Vol. 10*, 510 and *FRUS 1945 Vol. I General: The United Nations*, Documents 255: Minutes of 55th Meeting 26 May 1945 and 257: 56th Meeting 28 May 1945 of the United States Delegation. The Egyptian position is more fully described in *Egypt and the United Nations*, Report of a Study Group set up by The Egyptian Society of International Law (New York, 1957).

294 A.A. Mazrui/M. Tidy, *Nationalism and New States in Africa: From about 1935 to the Present* (London, 1984), 28–29.

295 K.R. Janken, *Rayford W. Logan and the Dilemma of the Afro-American Intellectual* (Amherst, 1993), 174–175.

296 *The Pittsburgh Courier,* 12 May 1945 and *Chicago Defender,* 5 May 1945 (reference from R.L. Harris, Jr., 'Racial Equality and the United Nations Charter', R.L. Robinson/P. Sullivan (eds), *New Directions in Civil Rights Studies* (Charlottesville, 1991), 141) and M. Ojike, *I have Two Countries* (New York, 1947), 156.

297 Meeting Commission II/4 17 May and 19 June 1945, *UNCIO Vol. 10*, 446, 577.

war which qualified Egypt for the San Francisco Conference when it described the Atlantic Charter as 'a glorious defense of democratic principles and freedom of peoples'. In its opening statement, therefore, Egypt took the opportunity to suggest that 'the deep-rooted principles enunciated in the Atlantic Charter' should be regarded as the 'keystone' of the conference, and later also sought, unsuccessfully, for a reference to the Atlantic Charter to be included in the 'Purposes' chapter of the proposed UN Charter.[298] In his assessment of the conference performance of the three African states, Quaison-Sackey, who would subsequently serve as Ghana's Foreign Minister and Ambassador to the UN, argued that each of the three African states 'pursued policies consistent with her allies' and that 'Egypt then behaved as if she were not part of Africa because of her ties with the Arabian states across the Red Sea'.[299]

The February 1945 Yalta Conference had also agreed that invitations to the Peace Conference would be limited to those sovereign states which had declared war on Germany and Japan by 1 March 1945 and that the colonial territories would be represented by the colonial power.[300] It was therefore more in hope than expectation that in March 1945 Ikoli and the other African members of the Nigerian Legislative Council put forward a motion for 'the appointment of a delegation of two unofficial … members to attend as observers at the San Francisco conference'. The unofficial members voted in favour, whereas the official members abstained safe in the knowledge that the motion would thereby fail.[301]

With Padmore advising that the San Francisco Conference would most likely 'soft-pedal' on the question of colonialism, a disappointed Azikiwe wrote: 'We are pessimistic because there is no new deal for the blackman at San Francisco. We are worried … because colonialism and economic enslavement of the Negro

298 *Egypt and the United Nations*, Report of a Study Group set up by The Egyptian Society of International Law, 16, 22–23, *UNCIO Vol. 1* Egypt, 233–238, Ethiopia, 426–430 and Liberia, 447–451 and *UNCIO Vol. 3* Egypt, 447 (Suggestions of the Egyptian Government on the Tentative Proposals of Dumbarton Oaks under Examination at the United Nations Conference at San Francisco), 453.

299 A. Quaison-Sackey, *Africa Unbound*, 135; see also assessment by C.O.C. Amate, *Inside the OAU: Pan-Africanism in Practice* (London, 1986), 190.

300 In order to qualify for the San Francisco Conference, Egypt declared war on 26 February 1945 (see *FRUS 1945 The Conferences at Malta and Yalta, 1945*, Documents 394: 5th Plenary Meeting 8 February 1945, Bohlen Minutes and 397: The President's Special Assistant (Hopkins) to the President 8 February 1945).

301 Richards to Secretary of State for the Colonies 24 March 1945 and Webster 7 April 1945, NA FO 371/50691 (reference from M. Sherwood, '"There is No New Deal for the Blackman in San Francisco": African Attempts to Influence the Founding Conference of the United Nations, April–July 1945', *International Journal of African Historical Studies,* 29/1 (1996), 81–82), *West African Pilot* 26 March 1945, 1, 27 March 1945, 2 and 19 April 1945, 2, *Daily Service* 26 February 1945, 1 and 10 April 1945, 1 and *West African Review* 16/213 (1945), 127. The articles by Sherwood and Lynch have informed much of this section either directly or by way of bibliographical references.

are to be maintained'; and he speculated, too, whether 'the colonial peoples of the world … have been bamboozled'.[302] An editorial in the *Daily Service* also expressed its disappointment in strong terms:

> as usual Great Britain, presuming the ignorance of her colonial peoples to take part in the shaping of their own future, will play the part of a benevolent godfather. We have had enough of … the policy of deciding the future of a people without offering them the opportunity of expressing their own views … we would like to know who will represent the coloured peoples? Will the case for the colonies be presented from the point of view of the Colonial peoples or of the imperial powers?[303]

When a further attempt by Robeson, acting through the US Council on African Affairs, to bring Azikiwe and two Nigerian trade unionists to the US also failed, through lack of funds, Azikiwe resolved that Ojike, then studying in the US, should attend the San Francisco Conference with the brief of 'casting the impression … that the sleeping giant of Africa had finally awakened'.[304]

Ojike was one of several politically active West Africans studying in the US who were *protégés* of Azikiwe. In 1941, together with two other Nigerian students, Mbadiwe and Orizu, he founded the African Students Association (ASA).[305] They were joined the following year by Nkrumah, who came on board as President of the ASA, but his Marxist approach seems to have pushed Mbadiwe away with the result that his energies were redirected into the African Academy of

302 *West African Pilot* 15 March 1945, 1, 3 April 1945, 1, 25 April 1945, 2 and 1 May 1945, 2.

303 'Editorial: San Francisco and the Colonies', *Daily Service* 21 March 1945, 2.

304 M.B. Duberman, *Paul Robeson* (London, 1989), 669–670 Note 2 (O. Nwakanma, 'Azikiwe, 1904–1987', *The Orbit* 22 November 2009, Nigerian Village Square https://www.vanguardngr.com/2009/11/azikiwe-1904-1987, last accessed 13 March 2023, suggests that in fact the authorities denied Azikiwe a travel permit) and Azikiwe, quoted (no reference) by H.R. Lynch, 'Pan-African Responses in the United States to British Colonial Rule in Africa in the 1940s', 82; see also *West African Pilot* 1 May 1945, 1. The phrase does, however, correspond with Azikiwe's message of support to the 1945 Manchester Pan African Congress that 'the erstwhile sleeping giant is gradually rising from the stupor and debris of the past' (see Azikiwe, Goodwill Message, H. Adi/M. Sherwood, *The 1945 Manchester Pan-African Congress Revisited with Colonial and… Coloured Unity (the Report of the 5th Pan-African Congress)* George Padmore (ed.) (London, 1995), 165).

305 A.A.N. Orizu, *Africa Speaks* (God's Village, 1990), 13–16, H.R. Lynch, *K.O. Mbadiwe: A Nigerian Political Biography* (New York, 2012), 34–35, 38–39 and 'K.O. Mbadiwe, 1939–1947: The American Years of a Nigerian Political Leader', 188–190 and A. Adjei, 'African Students in America', *WASU Magazine,* XII/1 (March 1945), 14–17. West African Attitudes Towards the War: Record of Conversation with African students 16–17 January 1942 (author not given but most likely R. Bunche), *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961*, Reel 1 identifies Mbadiwe, Ojike and Orizu as the key figures in the West African student community.

Arts and Research (AAAR) which he set up in 1943.[306] Among its more mundane rules, the ASA's Charter of Principles, adopted at its 1942 Second Annual Conference, provided: 'That this Association supports the fundamental principles of democracy as expressed in the Four Freedoms and the Atlantic Charter, but insist that if this is to be considered a true war for democracy and liberty for all peoples, these principles must be applied immediately'.[307]

Both the ASA and AAAR included prominent African Americans as patrons and, in turn, African students actively participated in debates on the future of Africa by such African-American groups as the Committee on Africa. Nkrumah, for example, participated in several such events, notably the Council on African Affairs' April 1944 conference, which focused on the application of the Atlantic Charter. Nkrumah's contribution included an expression of hope for 'a post-war world based upon the principles of freedom as expressed in the Atlantic Charter'. He was also one of five 'representative Africans' invited to respond to the Committee on Africa's draft report on the Atlantic Charter and Africa, and a participant in the April 1945 New York Colonial Conference which sought to coordinate tactics ahead of the San Francisco Conference.[308] In a similar, though less exalted, fashion, Mbadiwe, together with other African students, spoke at a college meeting in New York on 'Africa and the War for World Freedom' at which a resolution was passed to the effect that the Atlantic Charter should also apply to Africa. Anticipating post-independence African revanchism, a further resolution demanded: 'That African culture should be given its rightful presentation in the history of mankind', and a Sierra Leone student charged 'European exploiters' with claiming 'all natural resources below six feet of soil'.[309] Mbadiwe would also meet with Creech Jones at a meeting with black leaders in New York

306 K.O. Mbadiwe, *Rebirth of a Nation* (Enugu, 1991), 16–18 and *Africa – Today and Tomorrow* (New York, 1945), 9, 17 and H.R. Lynch, Pan-African Responses in the United States to British Colonial Rule in Africa in the 1940s', 70–81; see also I. Duffield, 'Pan-Africanism Since 1940', M. Crowder (ed.), *The Cambridge History of Africa Vol. 8* (Cambridge, 2008), 100 and I. Geiss (trans. A. Keep), *The Pan-African Movement* (New York, 1974), 375–381.

307 'The African Students Association – Charter of Principles', *African Interpreter* 1/2 (1943), 4.

308 Council on African Affairs, *Proceedings of the Conference on Africa – New Perspectives* (New York, 1944), 45, The Committee on Africa, the War, and Peace Aims, *The Atlantic Charter and Africa from an American Standpoint* (New York, 1942) ix and E.A. Laing, 'The Norm of Self-determination, 1941–1991', 265–266; see also I. Geiss (trans. A. Keep), *The Pan-African Movement*, 382, C. Anderson, *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (Cambridge, 2003), 41 and K.R. Janken, *Rayford W. Logan and the Dilemma of the Afro-American Intellectual*, 173–176.

309 *New York Amsterdam Star-News,* 9 and 30 May 1942, 2; it is not clear whether these reports are of separate meetings held under the 'Africa Speaks' programme.

in 1943 and with Eleanor Roosevelt on several occasions from 1943 through to 1946 in the context of the AAAR.[310]

Yet, despite their participation in such debates, it is clear that the African students had difficulty in convincing even African-American leaders of the viability of African independence – Janken quotes Logan as recalling that even Nkrumah 'wavered considerably' as regards the proposed timetable for independence.[311] On several occasions, therefore, they were advised that demands for self-determination were premature and thus ill-advised. Significantly, *The Atlantic Charter and Africa from an American Standpoint*, the foremost exposition of African-American opinion – although it concluded 'That the goal of ultimate self-government should be definitely accepted in every colony' – in its opening page also warned that: 'The emergence into political consciousness of the non-white peoples of the world … is full of promise and full of possibility of danger … if complete self-government is provided before the people are qualified through education and experience to make use of it wisely and effectively'; an analysis with which the Colonial Office would eagerly have concurred.[312] Bunche, who had contributed to that report and was a State Department adviser at the San Francisco Conference, also advised Ojike that 'to grant colonies political independence was worse than foreign rule'.[313]

All the more poignant then was the speech in China at the moment of Ghana's independence by Du Bois, one of the most prominent Pan-African and civil rights activists, in which he admitted: 'Once I thought of you Africans as children whom we educated Afro-Americans would lead to liberty. I was wrong. We could not even lead ourselves, much less you.'[314]

For appearance's sake, Ojike attended the San Francisco Conference as the representative of the ASA and AAAR although his expenses were paid by Charles Beck, a Pastor in the Church of God in Christ and Director-General of the American Sons and Daughters of African Descent. As Ojike later explained, his aims were to promote an African caucus, publicise African discontent and press the case for self-determination; and, not least, to file reports on proceedings for the Nigerian press. In advance of the conference, Ojike had arranged

310 H.R. Lynch, *K.O. Mbadiwe: A Nigerian Political Biography*, 39–49 and 'K.O. Mbadiwe, 1939–1947: The American Years of a Nigerian Political Leader', 188–198.

311 K.R. Janken, *Rayford W. Logan and the Dilemma of the Afro-American Intellectual*, 173–176.

312 The Committee on Africa, the War, and Peace Aims, *The Atlantic Charter and Africa from an American Standpoint*, 1, 105.

313 M. Ojike, *I have Two Countries*, 109; see also Villard's comment on page 94 above.

314 91st birthday celebration speech in Peking, W.E.B. Du Bois, *Dusk of Dawn: An Essay Toward an Autobiography of a Race Concept* (New York, 1968), 406 (reference from J.H. Meriwether, *Proudly We Can Be Africans: Black Americans and Africa 1935–1961* (Chapel Hill, 2002), 11).

for a 'Memorandum of Recommendations on Independence of British West African Colonies', calling for immediate self-government with a date set for independence, to be sent under ASA cover to the Colonial Office. It received the standard response which pointed to the need for 'progressive evolution'. A largely identical memorandum, again recommending that the colonial powers be required to set a date for independence, was delivered to the San Francisco Conference and to Secretary of State Stettinius, and widely distributed to other national delegations; and yet a third memorandum, this time in the name of the AAAR, was distributed during the course of the conference. Despite the desire of the Liberians to keep a low profile, Ojike also managed to organise a news conference at the Liberian delegation's office with representatives in attendance from Egypt, Ethiopia, Liberia and Haiti.

Even after the close of the San Francisco Conference, Ojike continued to be active. In 1946, he sent another memorandum to the UN under AAAR cover warning that 'the continuation of colonialism … in Africa constitutes the most complete negation of the noble aims of the United Nations'; and requesting the UN 'to restore democratic peoples' governments to African dependencies, by abolishing colonialism'. He would also lobby the first meetings of the UN.[315]

In parallel with Ojike's lobbying efforts, Orizu ran a press campaign in the *Pittsburgh Courier*, pointedly observing that: 'No African nation under these ruthless Europeans is represented at San Francisco. None of these European nations can foresee a day of independence for any African country under them … I simply cannot understand why no African representative of nations under European domination was invited to … San Francisco.'[316]

Further appeals were organised out of Britain. In February 1945, the recently released Wallace-Johnson, together with Bankole-Bright, Small, Garba-Jahumpa and Annan, attended the World Trade Unions Conference (WTUC) meeting in London. With the San Francisco Conference in mind, Wallace-Johnson 'asked the delegates to "endorse the principle of self-determination" and to "call upon the signatories of the Atlantic Charter … to declare a time limit within which the principle shall be translated into action"', and Bankole-Bright besought the meeting 'to declare itself solidly in favour of the Atlantic Charter'. Although the motion to include a demand for a set date for colonial freedom was defeated, the

315 K.O. Mbadiwe, *Rebirth of a Nation*, 19–21 (Mbadiwe and Ojike were, respectively, President and Executive Director of the AAAR), M. Ojike, *I have Two Countries*, 149–155, H.R. Lynch, *K.O. Mbadiwe: A Nigerian Political Biography*, 50, A.A.N. Orizu, *Africa Speaks*, 27, 31–32, 151–190, *West African Pilot,* 20 June 1945, 1, 4, 25 January 1947, 1–3 and M. Sherwood, '"There is No New Deal for the Blackman in San Francisco": African Attempts to Influence the Founding Conference of the United Nations, April–July 1945', 79–80.

316 *The Pittsburgh Courier,* 26 May 1945.

Declaration on the Attitude to the Peace Settlement at least expressed a desire to 'end the system of colonies … with all possible speed'.[317]

At the conclusion of the WTUC meeting, Hill, a delegate from Jamaica, and Wallace-Johnson were invited by the British Trades Union Congress to assist in drafting a colonial programme. Thereafter, they moved on to Manchester to participate in a meeting of the Pan-African Federation with Kenyatta, Makonnen and Padmore and to assist in the planning of what would become the October 1945 Manchester Pan-African Congress. At that meeting it was decided that they should draft a 'Manifesto' in advance in order to present it to the San Francisco Conference as any delay would have meant that the decision-making boat of the looming San Francisco Conference would already have sailed. The resulting Manifesto observed that the major powers had 'reaffirmed their faith in the principles of the Atlantic Charter' and that they should ensure, therefore, that 'the principles for which we fight do not only apply to Europe'. It also noted the 'present inferior political, economic and social status of the African peoples' and demanded 'the abolition of every kind of discrimination on account of colour, race and creed' and 'the achievement of full self-government within a definite time limit'. It was sent to the National Association for the Advancement of Colored People in the US and published in the *Chicago Defender*. A copy was also sent by the League of Coloured Peoples to Foreign Secretary Eden, but the Colonial Office advised him that a simple acknowledgement would suffice in response.[318] Amy Garvey would also submit a memorandum to the San

317 The resolutions, debates and speeches by Wallace-Johnson and Bankole-Bright were given extensive coverage in the *West African Pilot,* 6 March 1945, 1 and 7 March 1945, 1–3 and *The Gambia Outlook and SeneGambian Reporter* 14 April 1945, 2, 4; see also *Report of the World Trade Union Conference February 6th to 17th 1945,* Reported verbatim by J. MacIntosh/S. Ireland (London, 1945), B. Wallace, *World Labour Comes of Age* (Letchworth, 1945), 9–12, 126, 164–167 and G. Padmore (ed.), *The Voice of Coloured Labour: Speeches and Reports of Colonial Delegates to the World Trade Union Conference – 1945* (Manchester, 1945) (the texts differ slightly). The sentiments of the 'Declaration on the Attitude to the Peace Settlement' are reiterated in slightly different form in 'The World Trade Union Conference Calls to All Peoples' 22 February 1945, M. Sherwood, '"Diplomatic Platitudes": The Atlantic Charter, the United Nations and Colonial Independence', *Immigrants and Minorities* 15/2 (1996), 141–142.

318 'Africa in the Post-war World, Manifesto for Presentation to the United Nations Conference, San Francisco, April, 1945', *Labour Monthly,* XX/VII (1945), 154–156 (WASU was one of the signatories), *Chicago Defender,* 17 March 1945, J.R. Hooker, *Black Revolutionary George Padmore's path from Communism to Pan-Africanism* (London, 1967), 86–89, H.L. Moon to Du Bois 9 April 1945, H. Aptheker (ed.), *Correspondence of W.E.B. Du Bois Vol. 3: Selections, 1944–1963* (Amherst, 1978), 657–659, G. Padmore, *Pan-Africanism or Communism? The Coming Struggle for Africa*

Francisco delegates that included details of Azikiwe's 1943 Memorandum to the British government but, as with so many of these memoranda, it is doubtful whether it ever reached its intended audience.[319]

Unsurprisingly, then, these representations made no impression. It was only rather late in the day that the Soviet Union proposed that 'self-determination' should be included in the UN Charter.[320] These references, it was agreed, would be inserted into Articles 1 (Purposes) and 55 (International Economic and Social Cooperation), and in Article 56 member states pledged 'to take joint and separate action … for the achievement of the purposes set forth in Article 55'.[321] What

(London, 1956), 155, M. Sherwood, '"Diplomatic Platitudes": The Atlantic Charter, the United Nations and Colonial Independence', 143–146, H. Adi, *Pan-Africanism: A History* (London, 2018), 124–127 and 'Pan-Africanism in Britain: Background to the 1945 Manchester Conference', H. Adi/M. Sherwood, *The 1945 Manchester Pan-African Congress Revisited: with Colonial and… Coloured Unity (the Report of the 5th Pan-African Congress)* by George Padmore (ed.), 11–32, I. Geiss, *The Pan-African Movement*, 389–92 and J.A. Langley (trans. A. Keep), *Pan-Africanism and Nationalism in West Africa, 1900–1945: A Study in Ideology and Social Classes* (Oxford, 1973), 348. The correspondence with the British government is reported in full by M. Sherwood, '"Diplomatic Platitudes": The Atlantic Charter, the United Nations and Colonial Independence', 143 Notes 46–47. The reference by Moody in a letter to Du Bois that 'They have our manifesto' probably refers to the UK Delegation rather than the San Francisco Conference (see Padmore to Du Bois 12 April 1945 and Moody to Du Bois (undated), H. Aptheker (ed.), *Correspondence of W.E.B. Du Bois Vol. 3*, 62–67).

319 A.J. Garvey, *Memorandum Correlative of Africa, West Indies and the Americas sent to the Representatives of the United Nations* (no details indicated, possibly Kingston, 1944).

320 Amendments of the Soviet Delegation to the United States draft on Trusteeship System, Doc. 2 G/26 (f) 11 May 1945, *UNCIO Vol. 20*, 618, 622, 626 and Amendments proposed by the Governments of the United States, the United Kingdom, the Soviet Union, and China, Doc. 2 G/29 5 May 1945, *Comments and Proposed Amendments concerning the Dumbarton Oaks Proposals: Submitted by the delegations to the United Nations Conference on International Organization* (San Francisco, 1945). The phrase self-determination was initially intended for insertion in what would become Articles 1 (Purposes), 55 (International Economic and Social Cooperation) and 76 (International Trusteeship System); see also *USSR Information Bulletin* VII/1 (1948), 6 (reference from R. Emerson, *From Empire to Nation: The Rise to Self-Assertion of Asian and African Peoples* (Cambridge, 1962), 301).

321 R.B. Russell/J.E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945*, 811 and H. Notter (ed.), *Postwar Foreign Policy Preparation 1939–1945*, 684; see also *FRUS 1945 Vol. I General: The United Nations*, Document 218: The Acting Secretary of State to the Chairman of the United States Delegation (Stettinius) 8 May 1945. As H. Quane, 'The United Nations and the Evolving Right to Self-Determination', *International and Comparative Law Quarterly*, 47/3

it meant, though, is not particularly obvious as any immediately meaningful application of that term was effectively negated by Articles 73 and 74 (Declaration Regarding Non-Self-Governing Territories), Articles 75 to 85 (International Trusteeship System) and Articles 86 to 91 (The Trusteeship Council), which, in effect, sanctioned the existing colonial system.

Article 73 essentially restated British policy, merely committing the colonial power 'to develop self-government … according to the particular circumstances of each territory … and their varying stages of advancement', but with no obligatory timetable for independence. In fact, Articles 73 and 74 were largely based on the draft that the UK had brought to the conference in anticipation of a debate on colonial independence. Acceptance of that draft was facilitated by US determination to find a formula that would justify both its control over a number of Pacific Islands and its commitment in Point 1 of the Atlantic Charter that it sought 'no aggrandizement, territorial or other'. This was explained to Jebb, a senior Foreign Office official, in a conversation in April 1944 with Bowman, a State Department adviser accompanying Under Secretary of State Stettinius on a visit to London, who told him: 'It is essential … that the United States should by one means or another control the Japanese Islands in the Pacific. On the other hand, they could not annex these outright without violating the Atlantic Charter and other statements regarding "aggrandisement"'. This could only be done by camouflaging these acts so that they would be seen to be acting in the interests of the United Nations. Bowman similarly advised Colonial Secretary Stanley: 'The real object of any Colonial plan is to enable the United States to get away with the retention of the Marshalls and Carolines.'[322]

The solution was for Articles 82 and 83 to authorise exceptional trusteeship arrangements for 'strategic areas'. As cover for this distinction, the US had pleaded with the UK to agree to the inclusion in Article 76 of 'international peace and security' as one of the aims of trusteeship and therefore essentially the basis upon which the distinction justifying an exceptional arrangement could be drawn. As Article 24 assigned responsibility for international peace and security to the UN Security Council, in the case of strategic areas, oversight would be vested in the UN Security Council where the US enjoyed a veto. In contrast, oversight of non-strategic Trust Territories was assigned to the UN Trusteeship Council and ultimately the United Nations General Assembly (UNGA). This would allow the US to exercise control over those strategic areas for which it had

(1998), 537–572 points out, the conference debate on the amendment indicates a clear lack of agreement as to its precise meaning. Holland 15 January 1952, NA FO 371/101435 provides further commentary on the original uncertain meaning of self-determination.

322 Jebb Conversation with Bowman 12 April 1944 and Note of a conversation between the Secretary of State for the Colonies and Dr Bowman, at the Colonial Office on 18th April, 1944, 19 April, 1944, NA FO 371/40749.

been nominated as the administering authority, but it could 'justifiably' claim that it was merely acting as the trustee and that ultimate sovereignty was vested in the UN Security Council.[323]

In similar fashion, Article 76 also provided that the purposes of trusteeship merely extended to a 'progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory'; in essence, the British and French view, although the British were forced to concede the insertion of 'or independence' despite their argument that independence was one form of 'self-government'. In Articles 87 and 88, however, the British and French were more successful in limiting the scope and form of visitations of Trust Territories.[324]

At this point, Egypt intervened by putting forward several amendments, for example, that the people should have a say in the choice of administering authority and that provision should also be made for terminating or transferring the trusteeship if the trustee was deemed to have failed to meet its obligations; all were rejected.[325] Quaison-Sackey would later recall accusatorily that: 'When the Charter of the United Nations was promulgated … Africa was relegated to Chapters XI and XII, in which the fate of non-self-governing and Trust Territories, respectively, was arbitrarily summarised.'[326]

323 Telegram UK Delegation to Foreign Office 12 May 1945 No. 271 and UK Delegation to the Secretary of State for Foreign Affairs 12 May 1945 No. 268, NA CO 968/161/2 and E. B. Haas, 'The Attempt to Terminate Colonialism: Acceptance of the United Nations Trusteeship System', 1–21.

324 The debate from the UK perspective is recorded in NA CO 968/161/1–4; see in particular Poynton to Gent 13 April 1945 14814/11/45 [No. 124] Enclosure 2 'Draft of Chapter for inclusion in U.N. Charter', NA CO 968/161/1, 'War Cabinet, International Aspects of Colonial Policy', Memorandum by the Secretary of State for the Colonies, 50 WP (45) 300 14 May 1945, NA CAB 66/65/50, Telegram, UK Delegation to Foreign Office 20 June 1945 No. 781, NA CO 968/161/3, 'Territorial Trusteeship UK Draft of Chapter for Inclusion in United Nations Charter', *UNCIO Vol. 3*, 609–614 and Meeting Commission II/4 19 June 1945, *UNCIO Vol. 10*, 561–562, A.W.B. Simpson, *Human Rights and the End of Empire,* 268–272 and Y. El-Ayouty, *The United Nations and Decolonization: The Role of Afro-Asia* (The Hague, 1971), 17–28.

325 Meeting Commission II/4 14 May and 31 May 1945, *UNCIO Vol. 10*, 440–441, 496–497, *FRUS 1945 Vol. I General: The United Nations,* Documents 263: Minutes of the 60th Meeting United States Delegation 1 June 1945, 264: 61st Meeting 1 June 1945 and 285: 66th Meeting 8 June 1945, Telegram No. 762, UK Delegation to Foreign Office 19 June 1945, NA CO 968/161/3, H. Gilchrist, 'V. Colonial Questions at the San Francisco Conference', 985–992, R.J. Bunche, 'Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations', *Department of State Bulletin* 13/340 (1945), 1037–1044, W.R. Louis, *Imperialism at Bay 1941–1945*, 512–547 and R.B. Russell/J.E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945*, 811–842.

326 A. Quaison-Sackey, 'Africa and the United Nations: Observations of a Ghanaian

The failure of the San Francisco Conference to respond to African aspirations, although, by then, not unexpected, was, nonetheless, a major disappointment for Africa. Azikiwe, for example, lamented that: 'We have registered our strongest protest at the determination of our destinies without our representation … It is a matter of the greatest concern that we colonial people should be ignored with such impunity … But … the hour is at hand.' A few days later he added that 'we cannot help but express our bitter disappointment at the way the end has been reached'. The outcome was also derided by the *Daily Service*: 'The Government of the Colonies … reminds one of Nazi Germany … the Supreme Law in the United Kingdom is the will of the people, in the colonies it is the wish of the Government … Democracy means one thing in Britain, another in the colonies.'[327]

The October 1945 Manchester Pan-African Congress, which met a few months later, would adopt a more aggressive tone and despatch a yet further memorandum to the UN, drafted by Du Bois, calling for 'adequate representation of the coloured peoples of the world within the United Nations … so that the grievances and demands of the Africans can be freely expressed'. In debate, Blaize argued that: 'We are fighting towards one goal – the independence of Africa …. if the Atlantic Charter is good for certain people, it is good for all'; and Appiah suggested that 'force was the only language that Britain understood'. The declaration 'The Challenge to the Colonial Powers' therefore proposed that 'if the Western world is still determined to rule mankind by force, then Africans … may have to appeal to force in the effort to achieve Freedom … We demand for Black Africa autonomy and independence.' A second declaration 'Declaration to the Colonial Workers, Farmers and Intellectuals' demanded that: 'All Colonies must be free from foreign imperialist control, whether political or economic. The peoples of the Colonies must have the right to elect their own governments, without restrictions from foreign powers.' Finally, the resolution 'West Africa' noted that: 'The claims of "partnership", "trusteeship", "guardian-ship" and the "mandate system", do not serve the political wishes of the people of West Africa … complete and absolute independence for the Peoples of West Africa is the only solution.' Among the future African political leaders attending the congress were Banda, Kenyatta and Nkrumah.[328]

Diplomat', *African Forum,* 1/1 (1965), 53.

327 *West African Pilot,* 4 June, 2 and 12 June 1945, 2 and *Daily Service,* 16 May 1945, quoted by P.B. Clarke, *West Africans at War 1914–1918, 1939–1945: Colonial Propaganda and its Cultural Aftermath*, 69.

328 H. Adi/M. Sherwood, *The 1945 Manchester Pan-African Congress Revisited with Colonial and… Coloured Unity (the Report of the 5th Pan-African Congress)* George Padmore (ed.), 55–59, 82, 102–104, 117–120, G. Padmore (ed.), *History of the Pan African Congress*, 2nd edn with new material (London, 1963), 1–10 and J. Appiah, *Joe Appiah: The Autobiography of an African Patriot* (Westport, 1990), 166. The memorandum was endorsed by a range of 'Pan-African' organisations and presented to the UN Secretariat by Du Bois in September and included in the Pan African

Further insult was shortly to be added to injury at the UN Fourth Committee meeting reviewing the report of the Trusteeship Council which had met for the first time in 1947.[329] With this 1948 meeting in mind, the UK decided that a black representative from the Commonwealth should attend as an alternate member of the UK delegation so as to deal specifically 'with Colonial and Trusteeship matters' as they arose. After careful deliberations as to the suitable candidate, the Colonial Office opted for Adams, leader of the Barbados Labour Party and Barbados Workers' Union. His moment arrived when the Soviet Union criticised conditions in the British colonial territories. Adams' 'authentic' rebuttal not only denied the Soviet accusations but claimed that, on the contrary, 'colonial people are satisfied with the treatment accorded them by the British Government'. When news of his denials broke, there was widespread anger on the basis that he was neither qualified nor authorised to comment on behalf of all the colonial territories. Kenyatta, for example, was so incensed that he sought formal approval from the KAU to denounce Adams. Nor were Adams' comments welcomed in Barbados when word was spread, quite slanderously, that his 'statements justifying lower wage rates for coloured workers had been carefully omitted from local reports' of his speech.[330]

Universal Declaration of Human Rights

In January 1947, the recently established 'nuclear' UN Commission on Human Rights (CHR) began the process of drafting what would become the UDHR.[331] The discussions were naturally dominated by Cold War considerations but it

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Congress report (see M. Sherwood, 'The Congress', H. Adi/M. Sherwood, *The 1945 Manchester Pan-African Congress Revisited with Colonial and… Coloured Unity (the Report of the 5th Pan-African Congress)* George Padmore (ed.), 48 and 'Pan-African Conferences, 1900–1953: 'What Did "Pan-Africanism" Mean?' *Journal of Pan African Studies,* 4/10 (2012), 106–126); see also M. Sherwood, 'Kwame Nkrumah: The London Years, 1945–47', *Immigrants and Minorities* 12/3 (1993), 170 and P. Esedebe, *Pan-Africanism: The Idea and Movement 1776–1963*, 162–164.

329 UNGA 64/1 14 December 1946 and United Nations General Assembly: Second Part of First Session, Report on Trusteeship and Supply of Information on Non-Self-Governing Territories, Memorandum by the Secretary of State for the Colonies 16 January 1947 C.P. (47) 5, NA CO 936/1/5.

330 Official Records of the Third Session of the General Assembly, Part I, Trusteeship, Fourth Committee, Summary Records of Meetings 21 September – 22 November 1948, UN A/C.4/SR.50–85, Harris to Cohen 15 November 1948 enclosing Confidential Security Report on Meeting of Kenya African Union 7 November 1948, NA CO 537/3591 and Secretary of State for the Colonies to Blood (Barbados) 7 November 1948, NA CO 936/5/3. The process by which Adams was chosen is recorded in NA CO 936/5/3–4.

331 J. Morsink, *The Universal Declaration of Human Rights* and M.A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, paperback edn (New York, 2002), 32–51.

was also evident that, beyond even the Cold War, the CHR found it difficult to reach agreement on fundamental issues. In order, therefore, for even the lowest common denominator agreement to be reached, principles had to be compromised, legal form reduced to a non-binding declaration and moral aspirations reduced to a pious 'common standard of achievement'. Even the last-minute change in the title of the UNGA resolution from 'International' to 'Universal' Bill of Rights, which would become the most important 'selling' point of the UDHR, was only approved on a 17:11 vote with ten abstentions.[332] The final UNGA vote itself produced eight abstentions.[333] Egypt also expressed reservations over Article 17 (marriage) and 19 (change of religion) which would be carried through into Egypt's subsequent ratification of the ACHPR.[334]

332 UN E/C.4/SR.77 28 June 1948 and A/C.3/SR.167 30 November 1948, 786; once amended, the resolution as a whole was approved by 29:0, with seven abstentions (see UN A/C.3/SR.178 6 December 1945, 879–880). The explanation by J. Morsink, *The Universal Declaration of Human Rights*, 33 that the 'universal character of the Declaration' was raised by Haiti (UN A/C.3/373 27 November 1948) and 'prepared the way for a change of title' as proposed by France (UN A/C.3/339 15 November 1948) is slightly misleading. The change resulted from the French amendment which had been proposed before but voted on after Haiti's separate resolution on minorities, which mentioned the universal character of the draft declaration, had been adopted (see UN A/C.3/SR.165 30 November 1948, 760); Haiti's reference was therefore merely employed by Cassin in support of the French amendment. In contrast, M.A Glendon, *A World Made New*, 161 suggests the change was made by a sub-committee reviewing style and linguistic consistency. That the change in title was brought about by the French amendment at the last session on 30 November before being passed on to Sub-Committee 4 for review is further confirmed by Telegram, UN General Assembly Paris (UK Delegation) to Foreign Office No. 634 1 December 1948, NA DO 35/3776 and Telegram, UN General Assembly Paris (UK Delegation) to Foreign Office No. 154 2 December 1948, NA CO 537/3412. All the documents can be found in W.A. Schabas (ed.), *The Universal Declaration of Human Rights: The Travaux Préparatoires* (Cambridge, 2013).

333 UNGA 3/217A 10 December 1948; the 'International' title remained for composite UNGA Resolution 3/217 10 December 1948. The abstentions were from the six Soviet bloc states, Saudi Arabia and South Africa; Honduras and Yemen did not participate in the vote.

334 UN A/PV.183 10 December 1948, 912–913; see also 'Reservations and Declarations to the African Charter', R. Murray/M.D. Evans (eds), *Documents of the African Commission on Human and Peoples' Rights, Vol. 2* (Oxford, 2001), 18. M. Marzouki, President, Tunisian League of Human Rights, W. Heinz (ed.), *The System of Human Rights Protection in Africa and Europe: An Exchange of Experiences and Perspectives, Afro-European Conference 26–31 March 1990, Strasbourg, Proceedings of the Conference* (Brussels, 1990) 14 and S. Waltz, 'Tunisia's League and the Pursuit of Human Rights', *Maghreb Review* 14/3–4 (1989), 220 also note that the Egyptian reservations were precisely the same issues that provoked significant domestic opposition to the proposed 1985 Tunisian human rights charter.

Cultural differences aside, which would only assume an importance much later, the aspect of the UDHR that most occupied African minds was its failure to accommodate self-determination. In the headlong rush to reach agreement, the UDHR, as M'baye would later recall, 'neglected to mention the right to self-determination'.[335] At the last moment a Soviet resolution had proposed a clause providing that 'Every people and every nation has the right to national self-determination', but it was defeated. As the UK pointed out, it 'had no objection in principle to … the amendment. The United Kingdom had always encouraged the evolution towards self-government in the territories under its jurisdiction. Since, however, the document under discussion was a declaration of human rights, it would not be appropriate to include in it clauses dealing with the duties of States'. An attempt was also made to provide for a specific reference to the application of the UDHR to colonial territories but this too was successfully blocked. The UK, again at the forefront of opposition, argued that Article 2, 'Everyone is entitled to all the rights and freedoms set out in this Declaration without distinction of any kind' was quite specific in its intended coverage and therefore sufficient.[336]

This uneasy cohabitation between the UDHR and the colonial system would resurface only a few years later when the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was under negotiation – the key difference being that the ECHR, as its Preamble made clear, was intended to be legally binding. The ECHR described its aims as 'securing the universal and effective recognition and observance of the Rights (declared by the UDHR)'. However, Article 63 deliberately excluded dependent territories from its jurisdiction unless an opt-in clause was exercised by the colonial power, which would seem to blatantly contradict the British argument against the proposed 1948 amendment that UDHR Article 2 was more than specific in its universal application.[337] Senghor, a French Parliamentary Deputy at the time, famously objected arguing that it ran counter to the universality of the UDHR: 'In effect, Article 63 appears to be a rather clumsy way of excluding overseas territories from the Convention … In adopting Article 63 the Assembly would transform the European Declaration of Human Rights into the Declaration of

335 K. M'baye, 'Human Rights in Africa', K. Vasak (ed.), *The International Dimension of Human Rights Vol. 2* (revised and edited for the first English edn by P. Alston) (Westport, 1982), 584.

336 UN A/784 8 December 1948, UN A/PV.181, 882–885 and A/PV.183 10 December 1948, 884 (the amendment to Article 3 was defeated by 34:8 with 14 abstentions) and Creech Jones Circular 25102/2/49 28 March 1949 Secret 28 March 1949, NA DO 35/3776. The background, if not always the analysis, is admirably surveyed by J. Morsink, *The Universal Declaration of Human Rights*, 96–101.

337 HMSO Cmd. 8969, Treaty Series No. 71 (1953) *Convention for the Protection of Human Rights and Fundamental Freedoms* (London, 1953).

European Human Rights.' Despite his objection, not only was the opt-in clause retained, but Article 63 also allowed that, even after the opt-in, the ECHR 'shall be applied in such territories with due regard … to local requirements' so as to fall in line with the 1946 French Constition Article 80 which provided that: 'All subjects of the Overseas Territories shall be citizens with the same status as French nationals of Metropolitan France or of the Overseas Territories. Special laws shall determine the conditions under which they may exercise their rights as citizens.'[338]

As it turned out, it was the UK, the first signatory of the ECHR, which opted-in all its African colonial territories other than Southern Rhodesia, which, it argued, was a self-governing colony. Belgium did not opt-in the Congo, and Senghor's France did not accede to the ECHR at all until 1974 by which time essentially all its African territories had been independent for some time.[339] This response on the part of the French and Belgian governments should, of course, be contrasted with the enthusiasm with which their delegates on the 'nuclear' CHR, Cassin (France) and Dehousse (Belgium), had lauded the UDHR and declared its universal application. Thirty years later, with the ACHPR process now in mind, M'baye would recall this opt-in, as did President Senghor when addressing the experts assembled to draft the ACHPR. As M'baye would point out, the opt-in was in obvious conflict with the UDHR which proclaimed 'that all nations shall strive to secure "the universal and effective recognition and observance [of human rights], both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction"'.[340]

By coincidence, at the same time that the colonial opt-in clause was being debated with regard to the ECHR, an identical debate was taking place in the UN during the drafting negotiations for the proposed International Covenant on

338 Council of Europe, Preparatory work on Article 63 of the European Convention on Human Rights, Cour (78) 8 Strasbourg 2 March 1978, 31–32, http://www.echr.coe.int/Documents/Library_TP_Art_63_Cour(78)8_eng.PDF, last accessed 13 August 2017 and M. Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford, 2020), 200–204; see also K. Vasak, 'The European Convention of Human Rights beyond the Frontiers of Europe', *International and Comparative Law Quarterly,* 12/4 (1963), 1206–1231 and C. Heyns, 'African Human Rights Law and the European Convention', *South African Journal on Human Rights,* 11/2 (1995), 254–256.

339 US 1738/44 No. 12 20 October 1953 Foreign Office to Scarlett, Strasbourg, NA DO 35/7008 and Scarlett 23 October 1953 Reference 61/97/53, Council of Europe, *The European Yearbook on Human Rights* (Leiden, 1964), 32. See also M. Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention*, 203–205.

340 K. M'baye, 'Human Rights in Africa', 583 and OAU (L) President Senghor's opening address to the 1979 Dakar Meeting of Experts CAB/LEG/67/5; see also K. M'baye, UN (G) HR/Liberia/1979/BP.2, 4.

Civil and Political Rights (ICCPR); but with a diametrically opposite outcome. The first draft in 1950 had also allowed for a colonial opt-in clause. However, this was so strongly opposed by the increasingly vocal anti-colonialism bloc within the UNGA, led by the Asian and Arab states (including Egypt), that, already in 1951, it was defeated. Moreover, the anti-colonialism bloc was also able to insist that a self-determination clause be included. To do otherwise, Jobin (Brazil) asserted, would be to provide 'a loop-hole for certain states' which would 'enable them to deny human rights to the populations of the Territories they administered'. The inclusion of this clause was cleverly effected by a resolution in the UNGA so as to side-step any possibility of it being blocked at the CHR where the colonial powers still enjoyed a majority.[341] During the UNGA debate the UK had sought to cut its losses by suggesting that, if self-determination was to be mentioned at all, it should be by reference to the self-determination of the UN Charter, failing which it would abstain on principle. In contrast, France and New Zealand 'expressed some opposition' and Dehousse, now under strict orders, came out 'flatly against'. Cassin, too, also under house orders, defended the need for caution: 'It would involve transformations that … could only be carried out in the overseas territories after a long period of time and then under conditions that might endanger public order, since the peoples would not be ready for such changes. In either case, such measures would run the risk of retarding human progress.'[342]

The UNGA composite motion by which the UDHR was adopted also called for the UDHR to be publicised. This had been introduced as a French, or rather Cassin, amendment and it exhorted UN member states to use 'every means within their power solemnly to publicize the text of the Declaration and to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories'.[343]

The approach adopted by France was to publish the UDHR in its *Journal officiel* in which all treaties and legislation are published, but otherwise largely to

341 UN A/C.3/L.186 7 December 1951, UNGA 5/421 4 December 1950 and 6/545 5 February 1952 and Jobin (Brazil), General Assembly, Official Records: Fifth Session, Third Committee, A/C.3/SR.294 294th Meeting, 26 October 1950, 149.

342 Cassin (France), General Assembly, Official Records: Fifth Session, Third Committee, A/C.3/SR.294 294th Meeting, 26 October 1950, 151–152, Cabinet Steering Committee on International Organisation: International Covenant – Self-determination 22 December 1951, NA CAB 134/426 and B. Rivlin, 'Self-determination and Colonial Areas', *International Conciliation,* 30/501 (1953–1955), 207–213; see also 'Annotations on the text of the draft International Covenants on Human Rights (Prepared by the Secretary-General)' UN A/2929 1 July 1955, which sets out an historical review of the international covenants to date.

343 UN A/C.3/381 30 November 1948 (Draft resolution) and UNGA 3/217D 10 December 1948.

disregard the injunction.[344] As Simpson has explained, the French government had largely ignored the drafting process of the UDHR and, therefore, by extension, the position adopted by its delegate in its name. While the UK was always concerned about the legal implications of a text that might later become binding, France seems to have taken the view that it could safely be ignored, indeed that France would never be bound by either the UDHR or, later, the International Covenants (although it was always intended that they should be legally binding). France would therefore not commit to the UDHR, indirectly by way of the ECHR, until 1974 or the International Covenants until 1980. That, most likely, explains why its Colonial officials (as also those of Belgium) were not kept fully informed of the emerging detail of the UDHR and why, to British frustration, for some time Cassin had seemed to carry no formal instructions as to the line he should follow thereby allowing him scope to proceed on the basis of his own personal inclinations. It would take some considerable time for Cassin's enthusiasm to be reined in and rather late in the day before France began to grasp the implication of the declaration which its delegate had so enthusiastically urged. As a rather belated note from the political affairs division of the Ministère d'Outre-Mer pointed out:

> A frank acceptance of the Universal Declaration of Human Rights raises very serious problems for political, cultural, and social plans, and … on our economic and financial plans, given the weakness of our resources and the need to resort to foreign capital in order to defend French sovereignty or interests in the French overseas territories, trust territories and associated states.

Ministre d'Outre-Mer Delavignette therefore ordered that any distribution of the UDHR should be accompanied by a caveat that it was merely 'an ideal to be attained' rather than immediately applicable under law.[345]

The UK adopted quite the opposite approach. The Colonial Office was regularly briefed on the negotiations and provided input that enabled some 'unhelpful provisions' to be negotiated away. All the same, its wise forebodings were frequently ignored by the Foreign Office in pursuit of some other advantage and accordingly several provisions still remained that the Colonial Office considered dangerous in terms of their possible impact on its ability to manage the colonial territories. The inevitable question therefore arose as to how much publicity the UDHR should be given as, unlike the French, the British government was

344 *Journal officiel, Lois et décrets* (1949), 19 February 1949, 1859–1861.

345 A.W.B. Simpson, *Human Rights and the End of Empire*, 512–513, 521–523, 615, 652, J. Winter/A. Prost, *René Cassin and Human Rights: From the Great War to the Universal Declaration* (Cambridge, 2013), 247, Le Quesne 18 February 1949 and Rundall to Shuckburgh 25 February 1949, NA FO 371/78936 and '*Note pour Monsieur le Chef du 3ème Bureau*' 22 and 26 February 1949, quoted by P.D. Schmitt, 'From Colonies to Client States: The Origins of France's Postcolonial Relationship with Sub-Saharan Africa, 1940–1969', 255.

only too aware that its performance would come under parliamentary scrutiny. Colonial Secretary Creech Jones therefore gave explicit instructions as to the publicity the UDHR should be given:

> all Colonial Governments should, unless they have special reasons to the contrary (in which case I should wish to be informed), arrange for the Declaration to be published in their Official Gazette …. Apart from this measure … I would not wish to press Colonial Governments to go any further in giving effect to the Resolution – i.e. publicity … and I need hardly again point to the desirability of emphasising in any publicity … its true character, i.e., as a statement of ultimate ideals.[346]

On the whole, colonial governments would comply with his, albeit, unpopular instructions and by October 1949 the Colonial Office was able to produce a preliminary survey of the publicity that had been given: Mauritius, Nyasaland and Tanganyika had all published the UDHR in their Official Gazette; Kenya and Uganda had published the UDHR for sale to the public; and Nigeria had tabled it in its Legislative Council. There had been no publication in The Gambia, Gold Coast, Northern Rhodesia and Sierra Leone. No information had been forthcoming from the Somaliland Protectorate and Zanzibar although in due course the Somaliland Protectorate would also confirm official publication of the UDHR. All the colonial governments were agreed that 'having regard to the existing level of political education … little if anything would be gained by further exposition in schools (as) its terms are not easily comprehensible'; moreover, disingenuously, governments 'do not prescribe what is to be taught in schools'. Southern Rhodesia did not gazette the UDHR 'as it would give the impression that the Declaration had the force of law, and would be seized on by agitators to further their own ends and to cause unrest'; Northern Rhodesia's reasons for non-publication were that 'publication at a time when racial feeling is so close to flashpoint would create a highly embarrassing situation for Government'; and the Governor of Sierra Leone was reluctant to publish details of matters which in certain respects 'we have no hope of implementing for some time to come. To add the qualification that these are statements of ultimate ideals is merely to beg the question'. The preliminary survey also noted that the press in the Gold Coast had published the UDHR 'with remarkable scepticism, and the small interest it has aroused seems to have died down'. In the Bechuanaland Protectorate (now Botswana), a copy of the UDHR was sent to District Commissioners 'for your secret information'; although it was 'not secret … it should not be given publicity'. It was also explained that, despite the 'suggestion' that it should be published in the Official Gazette, 'it has been decided that this should

346 Creech Jones, Report on 3rd Session of Human Rights Committee on Draft International Declaration of Human Rights, Circular Despatch (2) 25102/2/48 28 July 1948 and Creech Jones Circular 25102/2/49 Secret 28 March 1949, NA DO 35/3776.

not be done in the case of the High Commission Territories'. In the Seychelles, publication of the UDHR 'stimulated some newspaper comment but reactions have not been of any great significance'; similarly, in Nyasaland, 'there has been no apparent reaction to the publication'; as also in Mauritius, 'there has been so far no local reaction to such publication'. Tanganyika seems to have been the boldest in that it not only published details in its Official Gazette but followed it up with press statements along the lines suggested by Colonial Secretary Creech Jones' circular.[347]

The decision in 1948 to 'neglect' self-determination, rather more than the sparseness of official publicity, meant that the UDHR largely passed Africa by. It was, unmistakably, the dog that did not bark when Africans sought to justify the case for independence. Its adoption, as the Colonial Office had noted, seems to have elicited only limited contemporary comment, in itself a telling indictment, with almost no political follow-through. Even in Nigeria, the *West African Pilot* devoted only a small paragraph to record the adoption of the UDHR as compared to its extensive coverage of the San Francisco Conference, although it was later praised as a potential 'tribune' for 'oppressed and colonial peoples everywhere'. There was a similarly brief reference to the UDHR in the *Daily Service*. The *Sierra Leone Daily Mail* also reported its adoption but only alongside the Soviet Ambassador to the UN Vishinsky's excoriation.[348] However, the limited interest shown by Africa in the UDHR was not merely the result of its failure to provide for self-determination. By 1948 the question of self-determination and therefore of political power had begun to emerge as the primary issue of African politics. Political power was a game that was largely dependent on an accommodation with the colonial power and accordingly it was those negotiations rather than the UDHR which necessarily had to be the focus of African attention.

A sense of African post-independence attitudes towards the UDHR can be gauged by M'baye's observation in 1979 that: 'We must be realistic and recognize that the various declarations on human rights were drawn up for the societies

347 Beresford-Stooke to Cohen 12 May 1949, Kennedy to Noel-Baker 7 June 1949 and Huijeman, Colonial Office to Duffy, Foreign Office 12 October 1949, NA FO 371/78949, Ellenberger, Circular Instruction No. 68 of 1949 24 September 1949, NA FCO 141/1262, Harford to Creech Jones 19 May 1949, Governor of Nyasaland to Creech Jones 12 July 1949, Jakeway to Creech Jones 8 September 1949 and Acting Governor to Creech Jones 14 June 1949, NA CO 537/4580 and Huijeman to Le Quesne 24 April 1950, NA FO 371/88767; see also A.A. Luini del Russo, 'The European Bill of Rights: The First Decade of International Protection of Human Rights', *Santa Clara Law Review,* 4 (1963–64), 27. The High Commission Territories comprised the territories of the current states of Botswana, Lesotho and Swaziland.

348 *West African Pilot,* 13 December 1948, 1, 'G. Padmore, 'Human Rights Charter of the United Nations', 17 January 1949, 2, *Daily Service,* 14 February 1948, 1 and *Sierra Leone Daily Mail,* 13 December 1948, 1.

to which their promoters belonged. Thus, African countries in particular have always been excluded from the unrestricted benefit of human rights rules.' He also noted that 'the African countries played but a minute part in the preparation of the Universal Declaration … Only two black African countries were members of the international community at that time.'[349]

The United Nations Educational, Scientific and Cultural Organization

Even as the UDHR was being drafted, UNESCO determined to assist the process by means of a survey that would 'consult philosophers and assemble their replies … to the rational interpretation and justification of those rights of the individual which society must respect … Many schools of thought are represented'. Privately, Huxley, UNESCO's first Director-General, had great hopes for this project. He would pompously confide that 'the book that we hope to get out of this will be much more important in the long run than the Declaration itself'.[350]

Although it was a separate undertaking from the CHR drafting process, Huxley thought it might nonetheless be helpful to make contact with members of the CHR, notably Roosevelt, Humphrey (first Director, UNDHR) and Cassin, with a view to an exchange of ideas. They met on several occasions and seemed to have reached an understanding of sorts as UNESCO's invitation memorandum felt sufficiently sure of its ground to confide that: 'UNESCO has been informed by the Chairman of the Commission that its views on the principles underlying any such Declaration would be welcomed.' However, when word of this endorsement reached the CHR, it was disavowed by an angry majority so that, to Huxley's embarrassment, the CHR formally repudiated any connection with the UNESCO project.[351] Sixty years later this repudiation seems to have

349 K. M'baye, UN (G) HR/Liberia/1979/BP.2, 4, and 'Human Rights in Africa', 586, 614.

350 UNESCO (ed.), *Human Rights: Comments and Interpretation*, A Symposium with an Introduction by Jacques Maritain (London, 1949), 9, UNESCO/Phil/1/1947 27 March 1947, 1 and Huxley to McKeon 5 May 1947; see also The Programme of UNESCO for 1947, UNESCO/C/30, 275 for a further definition of this project.

351 A.G. Danilovic, 'Pragmatism, Philosophy and International Politics: The UNESCO Committee on the Philosophical Principles of the Rights of Man and the Drafting of the Universal Declaration of Human Rights' (unpublished MA thesis, The University of British Columbia, 2002), 6–13, 38–44 gives an interesting account of the development and disavowal of this relationship. The key documents are UN E/CN.4/SR.26 3 December 1947 and E/CN.4/78 16 December 1947, and also Havet to Arnaldo undated (probably Spring 1948). Danilovic's excellent thesis, albeit not all of which can be endorsed, references the UNESCO online files upon which most of this section draws. All correspondence and papers referred

been forgotten as the UNESCO website celebrating the sixtieth anniversary of the UDHR explained that UNESCO's philosophic contribution played an important part in the process that brought about the UDHR, and indeed that it had 'facilitated the adoption of the Universal Declaration of Human Rights'.[352]

UNESCO sent out invitations to about 150 potential contributors, including Prime Minister Smuts, but the only identifiable 'African' contribution seems to have come from Webb.[353] There is, however, a correspondence with Lewin who advised that: 'What troubles all of us who live in Africa is whether racial discrimination in any form can be justified? If UNESCO could explore this question it would be doing a great service.' In his reply, Huxley concurred, but there is no indication that he gave the matter much further thought.[354] Moreover, there was to be no other African contribution or any sense that such a contribution was appropriate. In Huxley's view: 'Most colonial territories would not have become colonies if they had not been so backward'; and: 'As for immediate self-government, especially self-government based on universal suffrage, the results, if anyone were so foolish as to put it into practice, would be catastrophic.'[355]

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to in this section, unless otherwise indicated, are taken from the UNESCO online archives referenced under *Comité sur les principes philosophique des droits de l'homme*, Part 1 https://atom.archives.unesco.org/uploads/r/5c00m/1/1/11494/ag08sf00007m_compressed.pdf and Part 2 https://atom.archives.unesco.org/uploads/r/5c00m/1/1/11495/ag08sf00008m_compressed.pdf, last accessed 13 March 2023.

352 *SHSVIEWS, UNESCO Social and Human Sciences Sector magazine*, October–December 2008, 7 https://unesdoc.unesco.org/ark:/48223/pf0000177907, last accessed 13 March 2023.

353 Suggested names to be invited to contribute on 'the rights of man', undated, Huxley initials. Some correspondents were asked to recommend potential contributors so that the actual list of invitees would have been much longer. Forty-four replies, including that of Webb, were received by the deadline date (see Report of the first meeting of the Committee of Experts convened by UNESCO on the Philosophical Principles of the Rights of Man, UNESCO/Phil/8/1947 7 July 1947). Several contributors mistakenly thought they were being invited to contribute to the UDHR drafting (see Huxley to Croce undated and Huxley to McKeon 5 May 1947). Ironically, a similar 'confusion' arose at the 1979 UN Monrovia Seminar when several participants thought they were being invited to draft the ACHPR.

354 Lewin to Huxley 23 April 1947 and Huxley to Lewin 2 May 1947. Lewin, who was working in the Department of Social Anthropology and African Government, University of the Witwatersrand, indicated the invitation would be passed on to the South African Institute of Race Relations, an anti-apartheid group funded by a US foundation, where Webb seems to have worked. Webb's contribution could not be located.

355 J.S. Huxley, 'Colonies in a Changing World', *The Political Quarterly,* XIII/4 (1942), 386.

This last commentary, in particular, though it was no more than the view reached by the US Committee on Africa report to which Huxley had acted as a consultant, provoked Awoonor-Renner to write to Huxley challenging him to a debate. The subject was to be 'there is no fundamental difference between the occupation of what is presumed as "British" and "French" West Africa and the occupied countries of Europe today'. This is, of course, precisely the point that Bourguiba had sought to advise King George VI. Azikiwe, too, would react to Huxley's commentary that Africans were too backward for self-government in an article in the *West African Pilot*. Huxley, it seems, 'was unable to accept the challenge.'[356]

As Danilovic points out, for Huxley and his colleagues, the main *problematique* of universal human rights was essentially little more than the reconciliation between Western individual rights and socialist economic rights; or as the invitation memorandum explained, 'to effect a reconciliation of the two opposites in a higher synthesis'. The invitation memorandum sought to direct contributions to this end and it was also always intended that replies should be edited to ensure a greater degree of compatibility, that is universalism, than might otherwise have been justified by the diversity of views.[357] As Havet, a senior UNESCO official, explained to Carr, the British historian and Chairman of the Drafting Committee, although the report should be 'completely truthful … it is … desirable to … transcend the views put forward and assert a higher philosophical spirit'. Transcendence was clearly needed as fundamental doubts were expressed by several respondents.[358] For example, T.S. Eliot replied that: 'A statement of the rights of man, unless it was a tissue of ambiguities, could never … command the assent of all intelligent men … the design seems to me to be futile'; Herbert Read noted that 'cultural changes can never be brought about by any process of intellectual assent. Real change is always essentially molecular and effected on the physical and emotional level of human society'; and Benedetto Croce asserted that: 'Declarations of Rights (have) become philosophically and historically quite

356 'What West Africa Needs', *The Sierra Leone Daily Mail,* 21 July 1944, 2 (first published in *New Statesman and Nation,* 17 June 1944), B. Awoonor-Renner, *West African Soviet Union* (WANS Press) (London, 1946), 21–22, NA CO 537/3566 and 'Editorial' and 'Inside Stuff', *West African Pilot,* 13 March 1944, 1–3; see also 'African Public Opinion', *WASU Magazine,* XII/1 (March 1945), 17–18.

357 UNESCO/Phil/1/1947 27 March 1947, 5, Huxley to A. Huxley 2 April 1947 and UNESCO (ed.), *Human Rights: Comments and Interpretation,* A Symposium with an Introduction by Jacques Maritain, 251–257.

358 Havet to Carr (Chairman of the Drafting Committee) 2 June 1947. It seems inconceivable that M.A. Glendon, *A World Made New,* 76–78, 83–84, 222 or 'Knowing the Universal Declaration of Human Rights', *Notre Dame Law Review,* 73/5 (1997–98), 1155–1157 would have referred to the universality of the opinions expressed if she had seen the UNESCO archives.

untenable … Nor do I see how it would be possible to formulate any half-way or compromise declaration which would not prove either empty or arbitrary.' Croce, with some foresight as to Huxley's intentions, also warned that opposing views should be included in UNESCO's final report.[359]

Efforts were also made to obtain the thoughts of Nehru and Gandhi. In effect, both declined although Gandhi's already legendary fame ensured that even his letter of refusal merited inclusion in the final compendium. Nehru's reply understandably displayed little insight into the *raison d'être* of UNESCO's project: 'Just to write some pious sentiments will serve little purpose.' Gandhi, however, felt no such compunction in his one page contribution but, reading between the lines about the importance he attached to duties as the prior correlate of all rights, indeed that any right that does not correspond to a 'duty to be first performed … can be shown to be a usurpation hardly worth fighting for', there is more than a hint of disapproval. As Cmiel points out, Gandhi disliked '"rights-talk" of all kinds, associating it with the self-indulgence of the modern age'.[360]

Yet, notwithstanding Huxley's pursuit of a higher synthesis, UNESCO's invitation memorandum did include a reference to the rights and freedoms of dependent peoples as one of the twenty-five rights upon which contributors were invited to comment, though self-determination was only mentioned from the perspective of minorities not majorities. Several comments were therefore received on this otherwise peripheral area of enquiry, and two responses in particular warned of the problem of ignoring an African perspective. Barnes, for example, in direct opposition to Huxley, argued that explanations that 'colonies are not ready for self-government because their living standards are too low' or that 'representative institutions will not work (through lack of) educated people to man … its organs of local and central government' are 'plausible' but 'seriously incomplete'. This assessment followed on from his 1939 commentary in which he had derisorily dismissed the 'favourite imperialist form of expression … that Africa is not yet ripe for self-determination'. Barnes went on to suggest to Huxley, most presciently, that: 'Formulations of human rights naturally tend

359 Eliot to Huxley 18 April 1947, he later described the project as '*jejune*' (see Eliot to Havet 15 July 1947), Read to Huxley 19 April 1947, he later added: 'Rights and Freedoms don't seem to me to exist on a universal scale' (see Read to Huxley 9 July 1947) and Croce to Huxley 15 April 1947 (UNESCO translation); see also Huxley to Croce undated, which may have forced Huxley to include Croce's less than enthusiastic contribution in the UNESCO report.

360 Huxley to Nehru 2 April 1947, Nehru to Huxley 14 May 1947, Gandhi to Huxley 25 May 1947, UNESCO (ed.), *Human Rights: Comments and Interpretation*, A Symposium with an Introduction by Jacques Maritain, 18 and K. Cmiel, 'The Recent History of Human Rights', *American Historical Review,* 109/1 (2004), 119 (reference from S. Dubow, 'Smuts, the United Nations and the Rhetoric of Race and Rights', *Journal of Contemporary History,* 43/1 (2008), 68).

to reflect the major frustrations of those who make them', and that, therefore, 'when colonial peoples set about drafting a Bill of Rights, their claims will … show … a special character of colonial disabilities'. Only a truncated version of Barnes' paper was included in the UNESCO report. There is, perhaps, some irony (on both sides) that the economic arguments against self-determination which Barnes opposed were turned upside down in the 1970s when it would be the independent African states which argued that economic rights must precede civil and political rights and the developed world that took the opposite line.[361]

However, the most famous discordant opinion was that put forward by Herskovits (President, Executive Board, American Anthropological Association (AAA)) who was so horrified at the concept of the UDHR that he not only responded to UNESCO but hastened to make a more formal (and unwelcome) submission directly to the CHR.[362] It warned that 'the primary task confronting those who would draw up a Declaration on the Rights of Man is thus, in essence, to resolve the following problem: How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America?'; and, worse, that: 'It will not be convincing to the … African … if it lies on the same plane as like documents of an earlier period … Such a document will lead to frustration, not realization.' In an earlier article, written in 1944, which anticipates the fundamental perspective of post-independence African revanchism, Herskovits had already argued that the perceived obligation to '"educate the native" for self-government' is largely the result of 'a congenial belief in our own superiority, for among Europeans and Americans ethnocentrism has been raised almost to an article of faith'. Herskovits' contribution was not included in the UNESCO report.[363]

361 UNESCO/Phil/1/1947 27 March 1947, 7–8 and L. Barnes, 'The Rights of Dependent Peoples', June 1947, UNESCO online archives referenced under *Comité sur les principes philosophique des droits de l'homme* Part 1, 5–6, 9–10 and *Empire or Democracy?* Left Book Club edn (London, 1939), 275. In contrast, Priestley to Huxley 15 April 1947 argued that all that was feasible was 'a basic Human Rights statement … simple enough for Eastern and colonial races to understand'.

362 For the drafting history of the statement, see M. Goodale, *Surrendering to Utopia: An Anthropology of Human Rights* (Stanford, 2009), 20–23. Goodale's research is more focused on the AAA files at the National Anthropological Archives, Smithsonian Museum Support Centre Library, Maryland and does not seem to have accessed relevant AAA Maryland files or the Northwestern University Melville Herskovits, 1906–1963 Papers. Nor does Goodale seem to have been aware at this time of the UNESCO online archive which does not support all aspects of his argument although he has subsequently published his edited volume *Letters to the Contrary: A Curated History of the UNESCO Human Rights Survey* (Stanford, 2018).

363 American Anthropological Association Executive Board, 'Statement on Human Rights', *American Anthropologist* (NS) 49/4 Part 1 (1947), 539–543, delivered 24 June 1947, M.J. Herskovits, 'Native Self-government', *Foreign Affairs,* 22/3 (1944),

UNESCO's invitation memorandum had also noted that 'in other parts of the world other theories of human rights have emerged, are emerging, or are destined to emerge'. However, unlike Herskovits, this was not, of course, a reference to prospective regional or cultural differences, it was rather directed towards Fascism and the Soviet Union. The final report took a similar view. There was a reference to modern rights emerging and of rights having to be understood in historical situations, but the final list of rights on which 'all men are agreed' did not address the issue of self-determination, though there was mention of the nebulous 'right to share in progress', presumably Western civilisation's gift to the 'backward' peoples of Africa.[364] This approach was yet further confirmation, if any was needed, of the irrelevancy of fundamental African concerns to the determination of the post-war international settlement.

It is an attitude of mind to which M'baye subsequently sought to draw attention and in so doing provided some insight into the extent of African collective memory of the historic slight of the post-war settlement. In summarising the history of human rights in Africa, M'baye noted that the reference in the Preamble to UNESCO's 1946 Constitution to the denial of the 'dignity, equality and mutual respect of men' and to the doctrine of the inequality of men and races 'does not refer primarily to colonialist racism but to Hitlerian racialism'; that is to say, as with the UDHR that would emerge two years later, 'the dignity, equality and mutual respect of men' was considered compatible with the existence of the colonial system.[365]

On just such an understanding, in Africa, the UDHR would therefore be remembered not as 'a common standard of achievement for all' but rather as a pronouncement drawn up by colonial powers with their own interests in mind and without African participation or assent and indeed without African perspectives having been taken into account. If Africa was to take part in that game, they would do so only if the rules were changed in their favour. That was to be the task of African revanchism.

The immediate post-war reluctance of the colonial powers to concede any significant steps of political advance in their African colonies brought to an abrupt end then whatever immediate aspirations and expectations Point 3 had encouraged in many colonial territories for an increasing and meaningful measure of self-government leading to (immediate or) eventual independence. Even so, notwithstanding the acquiescence of the '*évolués*' of French West and

413–415 and Elkins to Huxley undated.

364 UNESCO/Phil/1/1947 27 March 1947, 6 and UNESCO/Phil/10/1947 31 July 1947, 11.

365 K. M'baye, 'Human Rights in Africa', 585–586, quoting from J. Hersch, 'The Concept of Race', *Diogenes* 15/59 (1967), 117.

Equatorial Africa or, in the British colonial territories, the tribal chiefs concerned to retain their status and authority, it was too late to prevent the rhetoric of 'freedom' and 'self-government for all' from seeping deep into the emerging political consciousness of what had become a broader-based and emboldened African anti-colonialism and propelling the decisive shift in African forbearance of the colonial system. As Awolowo would recall, there was 'a change of attitude among Africans towards their white exploiters and rulers' that 'accelerated with phenomenal tempo after … 1945 right up to 1957'.[366] Increasingly, too, that resentment would be reflected not only in more insistent demands for political independence but also in a deep existential desire for the revanchist disalienation of African identity from the overpowering clutches of Western cultural and intellectual universalism. Post-independence, that revanchism would also be reflected in the strident demands for economic independence and a new international economic order (NIEO).

366 Chief Obafemi Awolowo, 'The Problems of Africa: The Need for Ideological Reappraisal', *Kwame Nkrumah Memorial Lecture First Series* (London, 1977), 29.

Chapter 3

African Political and Economic Revanchism and the Emergence of the OAU

By 1960, only fifteen years after the UN Charter had sanctioned colonialism, twenty-two African colonial territories, with several more on the way, had successfully negotiated their independence. It was a stunning reversal. As Neale poignantly observed, this was to prove 'no ordinary change of government; it was a change in the relationship of black nations to white nations … It called for a new representation of the relationship that had obtained up to that point'.[1] The obsession driving this new representation is most aptly portrayed in Sartre's famous rhetorical question: 'What would you expect to find, when the muzzle that has silenced the voices of black men is removed? That they would thunder your praise? When these heads that our fathers have forced to the very ground are risen, do you expect to read adoration in their eyes?'[2] Political independence would therefore merely be the first (if yet only partial) step in the process of the effective repudiation of the post-war international settlement and of the wide-ranging changes that the newly independent African states would demand and actively pursue especially at the UN. A new world had indeed come into being once again to redress the balance of the old.

As, therefore, the process of African political independence began to unfold, the full extent of repressed humiliation and resentment began to reveal itself in a gathering torrent of African revanchism of existential intensity. A revanchism in which the African political, intellectual and cultural elite aggressively sought to confront the commanding heights of the condescension and self-interest of Western universalism across the broad spectrum of political, intellectual, cultural and economic thought and praxis. A revanchism that, some twenty years later,

1 C. Neale, *Writing 'Independent' History: African Historiography 1960–1980* (Westport, 1985), 3.

2 J.P. Sartre (trans. S.W. Allen) *black orpheus* (Paris, 1963), 7; originally published as L.S. Senghor, *Anthologie de la nouvelle poésie nègre et malgache de langue française: Précédée de Orphée noir par Jean Paul Sartre* (Paris, 1948), ix–xliv.

the conception and content of the ACHPR would seek to express. In its place 'Africa' would pursue an 'African' identity that expressed an 'African' perspective, asserted 'African' interests and recovered the historic loss of 'African' dignity.

The fulcrum of African political and economic revanchism would be the OAU, but, as an indirect consequence, it would therefore also become the forum in which an African human rights proposal would have to be considered. How, and on what basis, it was established, and its *modus operandi*, are therefore critical to an understanding of the twists and turns of the ACHPR process and the compromises that would have to be made in the content of the ACHPR.

The emergence of the African Group at the UN

1955 Asian-African Conference, Bandung

In December 1954, at a conference in Bogor, Indonesia, the Prime Ministers of Burma, Ceylon, India, Indonesia and Pakistan resolved to convene an Asian-African Conference in April 1955 at Bandung, Indonesia. The letter of invitation advised of the purposes of the conference. These included: an exploration of the 'mutual as well as common interests' of the nations of Asia and Africa and consideration of 'problems of special interest to Asian and African peoples, e.g. problems affecting national sovereignty and of racialism and colonialism'. After considerable debate, the five sponsors agreed to invite twenty-five countries to the conference. Seven were African: The Central African Federation (CAF), Egypt, Ethiopia, Gold Coast, Liberia, Libya and Sudan. The CAF was invited, despite strong opposition, at the insistence of Prime Minister Nehru (India) who argued that 'there should be no racilism (*sic.*)', whereas Nigeria was omitted as 'no-one at the conference knew what her precise status was and whether she fell into the same category as the Gold Coast'. Although an invitation was not extended to Algeria, Morocco or Tunisia, they would attend the conference as observers.[3]

Initially, the major colonial powers and, for different reasons, the US viewed the prospective attendance of the African states with considerable consternation.[4] Colonial Secretary Lennox-Boyd denounced 'the idea that this Confer-

3 Prime Minister Sastroamidjojo, Republic of Indonesia to Prime Minister, Central African Federation 15 January 1955, NA CO 936/348, Parkes, Djakarta to Foreign Office No. 363 31 December 1954, NA CO 936/347 and G.H. Jansen, *Afro-Asia and Non-alignment* (London, 1966), 169–181. The League of Arab States, *The First Asian-African Conference held at Bandung, Indonesia (April 18–24, 1955), Report submitted by Mohamed Abdel Khalek Hassouna, Secretary of the League of Arab States to the League Council* (Cairo, 1955), 91 reports that some observers were temporarily accredited to the delegations of other Arab states to enable them to attend the conference deliberations on the North African independence resolution.

4 K. Ampiah, *The Political and Moral Imperatives of the Bandung Conference of 1955:*

ence, engineered by certain Asian Prime Ministers and primarily concerned with Asian problems, is competent to pronounce on the affairs and destinies of Africa'.[5] The UK Cabinet concurred and concluded that 'we should do nothing to encourage attendance at the Afro-Asian Conference', indeed that 'discreet steps' should be taken 'to discourage … the Central African Federation and the Gold Coast from sending representatives to this conference'.[6] In theory, this approach ought not to have presented too many difficulties. The foreign policy of CAF, the Gold Coast and the Sudan lay within the UK's protected prerogative and international protocol therefore required that, in the first instance, any invitation should be addressed through the British government. It would then be for the British government to advise on the appropriate reply. In practice, though, invitations (and replies) were addressed directly to (and from) the African heads of government of each of these territories. While this led to several weeks of trepidation at the Foreign Office and the Colonial Office, it was subsequently seen as a blessing as the British government was above all sensitive lest an impression be given that it had sought to pressure the three colonial territories to decline the invitations.[7]

Discussions with the CAF were straightforward. Prime Minister Huggins (CAF) sought 'advice on the terms of the refusal he should send to the … invitation' as he had little desire to be excoriated at the conference in discussions of 'racialism and colonialism'. It was therefore agreed that he should cite pressure of parliamentary business as the basis for his refusal; as a result, the CAF would be the only country to decline attendance.[8] As for the Sudan, the British government determined early on that it would concur with whatever decision the Sudan Government itself reached. Egypt, too, sensing the opportunity to take Sudan in hand on its first foray on the international stage, also approved Sudan's acceptance, but its delusions of pre-eminence were frustrated when Prime Minister Al Azhari (Sudan) made it clear that the Sudan was not going to be 'run' by Egypt.[9]

The Reactions of the US, UK and Japan (Folkestone, 2007), 64–117 (US) 127–138 (UK), 205–206 (UK) and N. Tarling, '"Ah-Ah": Britain and the Bandung Conference of 1955', *Journal of Southeast Asian Studies,* 23/1 (1992), 74–111.

5 Lennox-Boyd to Eden 11 January 1955, NA CO 936/347.

6 Cabinet Conclusions 13 January 1955 C.C. (55) 3rd Conclusion, NA CAB 128/28/3, 3–4.

7 Bromley, Afro-Asian Conference 14 January 1955, NA FO 371/116976.

8 Note for Secretary of State's talk with Sir Godfrey Huggins on Friday 11 February, 10 February 1955, NA DO 35/4665.

9 Cable 3 February 1955, NA FO 371/116977, Governor General's Office, Khartoum to Foreign Office No. 23 9 February 1955 and Stevenson, Cairo to Foreign Office 23 February 1955, NA CO 936/348 and Helm to Shuckburgh 31 May 1955, NA FO 371/113592. The Sudanese view of the conference is described in Ministry of Social

In the case of the Gold Coast, the political considerations to be taken into account were more nuanced and sensitive. There is little doubt that Prime Minister Nkrumah would have welcomed the opportunity to parade on such a prominent stage and to mingle as an equal with his new peers. This, though, was precisely what the Colonial Office sought to prevent. He was therefore informed that his presence at Bandung would not be well received and might serve to jeopardise the timetable of independence for the Gold Coast which was already coming under strain as the opposition began to organise against his constitutional proposals. Wisely, then, he agreed that, upon receiving an invitation, he would first consult with the Governor: 'His initial reaction is that he would not wish to attend himself, but might consider sending a representative if non attendance was likely to lower the prestige of the Gold Coast. He would not, however, wish to do anything that might impair the goodwill of the United Kingdom Government or prejudice early attainment of independence'.[10] However, such considerations seemed to have played little part in his eventual decision to respond directly to Prime Minister Sastroamidjojo (Indonesia) without clearing the text with the Governor. His reply pointed out that 'the Gold Coast is not yet a Sovereign state … the Governor is responsible for external affairs … It is expected that the Gold Coast will achieve independence in the very near future'; and, to British discomfort at the inference which was certainly intended to be drawn, he added: 'In view of these reasons, I very much regret that we shall not be able to send delegates to the Conference. I propose, however, to send two personal observers.'[11]

The two personal observers were Minister of Justice Botsio and Dei-Anang. With the Colonial Office still apprehensive as to what they might say at the conference, before setting off they were discreetly taken aside and warned of the 'dangers' of irresponsibility and advised that observers were there merely to observe not to take part or associate themselves with the final conference conclusions. Prime Minister Nkrumah was similarly warned by the US that it 'would look askance at any speech by Mr. Botsio … and would be incensed by any pho-

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Affairs, *Sudan Weekly News Special Supplement* (Khartoum, 1955).

10 Arden-Clarke, Personal No. 3, Gold Coast to the Secretary of State for the Colonies 8 January 1955, NA FO 371/116975 and Intelligence Report No 6830.5, Developments relating to the Bandung Conference, 14, NA FO 371/116984.

11 SCR 0129/19 Prime Minister Nkrumah to Sastroamidjodjo (*sic.*) 17 March 1955, NA CO 936/349. For an amusing debunking of the myth of Prime Minister Nkrumah's attendance, see R. Viatlis, 'The Midnight Ride of Kwame Nkrumah and Other Fables of Bandung (Ban-doong)', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development,* 4/2 (2013), 261–288 http://humanityjournal.org/wp-content/uploads/2014/06/4.2-The-Midnight-Ride-of-Kwame-Nkrumah-and-Other-Fables-of-Bandung-Ban-doong.pdf, last accessed 9 August 2017.

tograph of Mr. Botsio arm-in-arm with Mr. Chou En Lai'.[12] These admonitions were clearly merited as, in a post-conference debriefing, Dei-Anang reported that: 'Mr. Botsio had been anxious to contribute to the discussions on matters of concern to Africa' and it had been 'very difficult … to restrain him'. Nonetheless, he had responded well to Dei-Anang's reminders 'to keep his mouth shut', as had been advised. Dei-Anang also pointed out that Botsio's opening speech to the conference, which he had drafted, had made clear 'that the Gold Coast delegation could not be expected to declare itself on matters of controversy'.[13] In a later personal memoir, Dei-Anang would recall further that: 'We managed to avoid the temptation to condemn colonialism'; but he also observed that this caution was apparently misinterpreted by Hassouna who 'submitted a report on the Bandung Conference to the Arab League in Cairo in which he described the Gold Coast as a "follower of Britain"'.[14]

The concerns of the US centred on the presence of China. In particular, that Liberia and Ethiopia, the two countries over which it enjoyed some influence, might become contaminated and alienated through such contact with 'communism'. Initially, therefore, its inclination was to discourage attendance. However, faced with the inevitability of the conference and the enthusiasm with which it had been greeted in both those countries, by January 1955 it had conceded that discretion was the better part of valour.[15] In a meeting with the French, who were also uneasy at what might emerge from the conference, the US explained that: 'We were happy with the British position of discouraging discreetly the Gold Coast and Central African Federation from attending. It

12 ME to Governor's Secretary, Asian African Conference 29 March 1955, NA FCO 141/5051 and Cumming-Bruce to Governor's Secretary 6 April 1955, NA CO 936/350. As Foreign Affairs were the responsibility of the Governor, Ghana had no Foreign Minister. Botsio was one of Prime Minister Nkrumah's closest collaborators while Dei-Anang was a junior civil servant though subsequently a senior member of President Nkrumah's African Secretariat inner sanctum.

13 Cumming-Bruce, Record of Talk with Mr. Dei-Anang, 2 May 1955, NA FCO 141/5051 and Ministry of Foreign Affairs, Republic of Indonesia, *Asia-Africa Speaks from Bandung* (Djakarta, 1955), 76–77; see also 'Speech by K. Botsio', Republic of Indonesia, *Asian-African Conference, Bandung – Indonesia, 18th–24th April 1955, Speeches and Communiqués*, NA FO 371/116985).

14 M. Dei-Anang, *The Administration of Ghana's Foreign Relations, 1957–1965: A Personal Memoir* (London, 1975), 20; the reference is to League of Arab States, *The First Asian-African Conference held at Bandung, Indonesia (April 18–24, 1955)*, 40. Hassouna, previously Egyptian Foreign Minister, was Secretary-General of the Arab League; his assessment concluded that: 'Liberia is considered a friend of the United States and a supporter of U.S. policy.'

15 Makins, Washington to Foreign Office No. 177 22 January 1955 and No. 243 27 January 1955, NA CO 936/348, Cable 24 January 1955, NA FO 371/116976 and Makins, Washington to Foreign Office No. 404 12 February 1955, NA FO 371/116977.

was too dangerous in our opinion to discourage the attendance of Liberia and Ethiopia.' France, of course, had hoped that prospective participants might be dissuaded from attending, in particular, 'that the US would use its influence … to prevail upon Liberia and Ethiopia not to send representatives'.[16]

The *Final Communiqué* of the 1955 Asian-African Conference, much as expected, condemned colonialism and apartheid and referenced many of the issues, such as economic development, terms of trade and cultural suppression, which, in due course, would become the international focus of the independent African states and, eventually, find a place in the ACHPR – in several cases employing the Bandung text. Yet beyond the geography of a few of its participants, the conference can barely be said to have merited its description as 'African'. On the one side, there was, at that time, little political consciousness of an 'African' identity. As Dei-Anang's conference debriefing noted, Botsio apart,

> the other delegates from Africa had been so inert. The Ethiopians made a negligible contribution and the Liberians showed little or no interest. The Libyans did not seem to regard themselves as an African so much as a Middle Eastern country. The result was that there was no one to fill the role of spokesman from Africa on matters of African concern.[17]

On the other side, the African states, Egypt apart, were just not considered of sufficient stature in a conference arranged by and largely for the benefit of its Asian participants. For example, although specific reference was made in the *Final Communiqué* to self-determination for Algeria, Morocco, Tunisia, Palestine and the Yemen, self-determination for black Africa was effectively only referenced on a composite basis; indeed, even condemnation of apartheid required sympathy to be extended equally as between the 'peoples of African and Indian and Pakistani origin'.[18]

The subordinate status at the conference of the black African states emerged even more clearly in the wrangle that followed the speech by Prime Minister Kotelawala (Ceylon) in the Political Committee on the debate over Egypt's resolution calling for the right of self-determination and independence for the North African states. In his speech, Prime Minister Kotelawala observed that it was equally incumbent on the conference to condemn communist, that is, Soviet

16 *FRUS 1955–1957 Vol. XVIII Africa*, Document 1: Memorandum of a Conversation (Vimont, French Embassy), Department of State, Washington, 1 February 1955; instructions were conveyed in telegrams 91 (Monrovia) and 205 (Addis Ababa) and 28 January 1955, Department of State, Central Files, 670.901/1–2855; see also Allen, Afro-Asian Conference, 1 January and 6 January 1955, NA CO 936/346.

17 Cumming-Bruce, Record of Talk with Mr. Dei-Anang 2 May 1955, NA FCO 141/5051.

18 Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release 24 April 1955*, C. 'Human rights and Self-determination' and D. 'Problems of Dependent Peoples'.

colonialism: 'You may say that Colonialism is a term generally understood and capable of only one meaning. I cannot agree … There is another form of colonialism … about which many of us represented here are perhaps less clear in our minds and to which some of us would perhaps not agree to apply the term colonialism at all.'[19] His comments should have come as no surprise. They were after all no more than he had propounded at the 1954 Conference of South Asian Prime Ministers in Ceylon, the conference at which Prime Minister Sastroamidjojo had first raised the idea of the Asian-African Conference, and at that time his comments had enjoyed the support of Muhammad Ali Jinnah (Pakistan) and U Nu (Burma).[20]

It is also to be wondered why the opening address by Prime Minister Jamali (Iraq) had not elicited a similar reaction. Referencing the Atlantic Charter, he argued that:

> The peoples of Asia and Africa who have been struggling for decades to achieve their freedom and independence are liable through Communist machination to jump from the pan into the fire … In spite of the declaration of the Great Powers during the Second World War that they seek no territorial aggrandizement, conquest and domination have proved to be the rule with the Communist world. They confront the world with a new form of colonialism much deadlier than the old one. Today the Communist world has subject races in Asia and Eastern Europe on a much larger scale than any old colonial power.[21]

While, therefore, Prime Minister Kotelawala was immediately condemned by China, India and Indonesia, who feared he might split the conference, his comments were soon supported by, first, Pakistan, Iran, Turkey and Iraq, and then Lebanon, Liberia, Libya, the Philippines and the Sudan. Some support was

19 *Uncorrected Verbatim Record of the Proceedings of the Meeting of Heads of Delegations, Asian-African Conference 1955*, Papers presented to St. Antony's College, Oxford by G.H. Jansen, 170–175 and Prime Minister Kotelawala, Statement on Colonialism, Enclosure, Vines to Hunt 2 May 1955, NA DO 35/6098. More extensive reports of Prime Minister Kotelawala's speech and the ensuing events are in 'Report on Asia-African Conference', undated NA FO 371/116985, G.M. Kahin, *The Asian-African Conference: Bandung, Indonesia, April 1955* (Ithaca, 1956), 17–21, G.H. Jansen, *Afro-Asia and Non-alignment*, 202–207, R. Abdulgani (trans. M. Bondan), *The Bandung Connection: The Asia-Africa Conference in Bandung in 1955* (Singapore, 1981), 114–121 and J.A.C. Mackie, *Bandung 1955: Non-alignment and Afro-Asian Solidarity* (Singapore, 2005), 87–95.

20 United Kingdom High Commissioner in Ceylon to Secretary of State for Commonwealth Relations, Ceylon: South Asian Prime Ministers' Conference, Colombo 2 June 1954 CRO Ref: SA 325/32/2, 4–5, NA FO 371/111930.

21 Ministry of Foreign Affairs, Republic of Indonesia, *Asia-Africa Speaks from Bandung*, 82–86.

also extended by Cambodia, Ceylon, Gold Coast, Ethiopia, Japan, Jordan, Laos, Thailand and State of (South) Vietnam; even 'Egypt promised support'. This was a clear majority of the delegations. To enable the conference to proceed, drafting of the statement on colonialism was assigned to a sub-committee. Understandably, there was therefore a rush for seats on this sub-committee. So much so that, despite Pakistan proposing the Sudan, and Liberia's protestation as the composition of the sub-committee was being decided – 'Have you included a representative from Africa? If so, it is all right' – no place could be found for a black African state; similarly, none was included on the sub-committee drafting the statement on apartheid, although subsequently India proposed the inclusion of Ethiopia.

The conference was in due course only saved by the intervention of Ambassador Menon (India) who proposed the opaque formulation 'colonialism in all its manifestations'. This formulation was then 'sold to the drafting committee by Colonel Nasser', Egypt's Prime Minister.[22]

The emergence of the CIAS and Pan-African conferences

The report of the conference brought home by his 'personal observers' must undoubtedly have confirmed Prime Minister Nkrumah in his apprehension that African interests could not be best served within a unified Asian-African bloc at the UN alone. In a memorandum setting out his thoughts on the planning for what would emerge as the 1958 Accra Conference of Independent African States (CIAS), he observed that 'we in the African region were presented to the world as "junior partners" at the end of the Conference' and he contemplated the day on which the six African states who attended the 1955 Asian-African Conference might attend a purely African conference in either Cairo or Accra. As he would later make clear: 'We want to give Africa an African personality. We do not want to be submerged in any other group'; although he would be careful to concede that the Africa states should always cooperate with the Asian bloc in pursuit of common interests.[23]

22 *Uncorrected Verbatim Record of the Proceedings of the Meeting of Heads of Delegations, Asian-African Conference 1955*, Papers presented to St. Antony's College, Oxford by G.H. Jansen, The Afro-Asian Conference at Bandung, Morland to Macmillan 4 May 1955 D 2231/319, NA CO 936/350 and Secret, Report on Asian-African Conference – Bandung (no date or author is indicated), NA DO 35/6099. Conference delegations were also handed a special memorandum, National Council of Azerbaijan, North-Caucasia, Idil-Ural, Crimea and Turkestan, *Nations under the URSS Imperialism* (Bandung, 1955), which described the extent of Soviet imperialism. Menon was India's Ambassador to the UN and an adviser to Prime Minister Nehru.

23 'Memorandum on the All-African Conference' and Letter, 'All African Conference, attachments to separate notes from Commissioner of Police Special Branch to Hindle 7 November 1955, FCO 141/4947, Ghana: Pan-African Conference, UK High Commissioner in Ghana to Secretary of State for Commonwealth Relations

However, political realities at several levels dictated that such plans as he had for an African conference would necessarily have to be held in abeyance at least for a few more years. It would not be until the Gold Coast's independence in 1957, the first black African state to achieve post-war independence, and the 1958 '*Non*' vote in Guinea that African independence became a substantive reality; and only then that political consciousness of a distinct 'African' identity and, as a consequence, the conception of a separate 'African' bloc directed towards the promotion of 'African' interests could begin to take shape in concrete political form.

Prime Minister Nkrumah also conceived of a Pan-African conference of African nationalist groups alongside but independent of the proposed meeting of the heads of states; this would eventually evolve into the 1958 Accra All-African People's Conference (AAPC). Envisaged as a platform for African unity, it was a project upon which he had been actively deliberating since the 1945 Manchester Pan-African Congress. The constitution of his Convention People's Party (CPP), for example, included as one of its aims: 'To support the demand for a West African Federation and of Pan-Africanism.' Despite the successful efforts of the colonial government in the Gold Coast to impede planned conferences in 1948 and 1952, he had already managed to hold a small gathering of West African nationalists at Kumasi in 1953, but, with independence looming, he conceived of this new Pan-African conference as an altogether more substantial affair.[24]

Notwithstanding these long-held plans, concrete discussions with fellow African political leaders, notably Prime Minister Bourguiba (Tunisia), seem only to have been initiated in earnest on the occasion of the Gold Coast's independence celebrations in March 1957. Such was the promise of these initial discussions that Prime Minister Nkrumah felt emboldened to announce immediately his intention to hold a 'Pan-African Conference'.[25] His first thought had been

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22 March 1957, including Annexure A and B, Crosthwaite to Smith 18 April 1957 and Foreign Office to certain of Her Majesty's Representatives Intel No. 88 16 May 1957, NA CO 936/576, UK High Commissioner in Ghana to CRO Cypher No. 27 11 March 1957, NA FO 371/125352 and H. Adi, *Pan-Africanism: A History*, 136–137.

24 G. Padmore, *The Gold Coast Revolution The Struggle of an African People from Slavery to Freedom* (London, 1953), 253 Appendix III Constitution of the Convention People's Party of the Gold Coast and Appendix to P.I.N. No. 32 'New C.P.P. Constitution', undated, NA CO 554/592. A fascinating account of the background to the Kumasi Conference is given by M. Sherwood, 'Pan-African Conferences, 1900–1953: What Did "Pan-Africanism" Mean?, 1116–1119 and 'The Pan-African Conference, Kumasi, 1953', https://consciencism.wordpress.com/history/the-imperialist-is-a-paper-tiger, last accessed 13 March 2023; see also Assistant Superintendent, Kumasi Police Report ASH/O. F.116 7 8 December 1953 and Commissioner of Police to McWilliams Ref. No. S.F. 912 11 December 1953, NA FCO 141/4947.

25 UK High Commissioner in Ghana to CRO Cypher No. 27 11 March 1957, NA FO 371/125352. The announcement was made on 7 March 1957, Ghana having celebrated its independence on 6 March 1957.

that this conference should be held in Tunis, no doubt to deflect potential criticism of his personal ambitions, but Prime Minister Bourguiba suggested that it should rather be held south of the Sahara in a British territory to lessen any prospect of a clash with France. By an unfortunate coincidence, though, as Ghanaian invitations were being despatched, Morocco, too, was sending out invitations to a conference with a similar purpose in mind which it proposed should be held sometime in the summer of 1957. When the Ghanaian invitation surfaced, Morocco, which claimed preliminary agreement had already been reached with several states (but not Egypt who wanted Cairo as the venue), deferred to the Ghanaian initiative and stepped aside.[26]

The preliminary discussions at the independence celebrations were promptly followed up by more detailed consultations among the African ambassadors in London, Egypt excepted, as, following the Suez war, Egypt did not maintain diplomatic relations with the UK. At the third meeting, Ghana set out in a draft memorandum the aims it proposed for the conference:

> The object would be to produce an African identity and personality in international affairs … The time has come for Africa to view the international situation in the light of her own interests … It is not proposed that the states of Africa should dissociate themselves from the Afro-Asian group of nations. It will … strengthen this group … if the African states have a definite and collective contribution to make to the deliberations of this group.

To expedite planning arrangements, in parallel with the meetings in London, Prime Minister Nkrumah also despatched Ghanaian diplomatic missions to Cairo and, subsequently in 1958, to the capitals of all the independent African states, led by Minister of Justice Adjei and Padmore, his personal political adviser.[27]

26 Tunis to Foreign Office No. 28 16 March 1957, Duke, Rabat to Foreign Office No. 99 17 April 1957 and No. 102 24 April 1957, CRO to various High Commissioners W. No. 187 2 May 1957 and Foreign Office to certain of Her Majesty's Representatives Intel No. 88 16 May 1957, NA CO 936/576 and Foreign Office to Paris No. 1464 29 April 1957, NA FO 371/125352.

27 CIAS Secretariat, CIAS Confidential Report: Speeches, Resolutions, Meeting Reports and Ambassadors Minutes, SOAS, University of London, Microfiche, *Ghana Draft Memorandum – Conference of African States*, quoted by T. Hovet, Jr., *Africa in the United Nations* (London, 1963), 27 (there is a suggestion in W.S. Thompson, *Ghana's Foreign Policy, 1957–1966: Diplomacy, Ideology, and the New State* (Princeton, 1969), 31 that Hovet may have been quoting from an earlier draft of the memorandum), and Itinerary, UK High Commissioner in Ghana to CRO 5 February 1958, FO 371/131238. Background on the negotiations leading up to and including the 1958 Accra CIAS are in A. Quaison-Sackey, *Africa Unbound*, 62–75, W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 31–37, M. Dei-Anang, *The Administration of Ghana's Foreign Relations, 1957–1965*, 64–68 Appendix A, T. Hovet,

The conference invitation had advised that the conference would be held in Accra in October 1957, but as early as July 1957 it was announced that it was being put back to April 1958. This reflected major arguments among potential participants as to where and when it should be held, who should attend and at what level and, not least, the agenda. Adu, who headed the conference planning team, disclosed that they 'were disappointed at the lack of enthusiasm which had been apparent in the capitals of the other African countries'; adding that: 'It would not be altogether surprising if the Conference never materialises at all.'[28] At the centre of the political complexities surrounding the conference was the rivalry between President Nasser (Egypt) and Prime Minister Nkrumah who both saw the conference as an opportunity to grasp political leadership of a newly emerging Africa. There was also a sense, according to two of Prime Minister Nkrumah's closest collaborators, Makonnen and Foreign Minister Botsio, 'that the Egyptians looked down at us because of our color' although 'we were prepared to forgive and forget the Arabs' previous attitude of looking down on Black Africa'.[29] It would require two diplomatic missions to Cairo before Egypt's participation was approved, although President Nasser would not attend. Differences still remained over the status of Algerian participation and the level of support to be expressed for the Palestinian cause. In both cases, Prime Minister Nkrumah was concerned that African unity should not be jeopardised by issues that might prompt interference from the colonial powers or the US. Ultimately, though, to appease the North African states, support for Algerian independence would be expressed with sufficient fervour. In contrast, there was less support and particular Liberian hostility towards any conference statement on Palestine.

As to the rivalry between President Nasser and Prime Minister Nkrumah, this was well-known to the other African states, which invariably came down on the side of Prime Minister Nkrumah. The Sudan, in particular, saw the conference as 'a check to Egyptian political aspirations in Africa', an outcome personally and politically congenial to the Sudanese leadership; indeed Prime Minister Nkrumah had to persuade them that not to invite the Egyptians, as

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Jr., *Africa in the United Nations*, 26–34 and C. Legum, *Bandung, Cairo & Accra: A Report on the First Conference of Independent African States* (London, 1958), 10–24; see also Official Handbook, Conference of Independent African States – April 1958, NA CO 936/577.

28 Foreign Office to certain of Her Majesty's Representatives Intel No. 88 16 May 1957 and Intel No. 49 28 March, 1958, NA CO 936/576 and Copy of last paragraph of a letter from M.E. Allen, CRO to Cumming-Bruce, Accra, 15 July 1957, NA FO 371/125353.

29 Private correspondence and interviews, quoted by W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 8; Makonnen (born Griffiths) was a Guyanese-born (of Ethiopian descent) Pan-Africanist activist and one of President Nkrumah's closest collaborators.

they had proposed, was 'bad politics'. Libya, Morocco and Tunisia were similarly supportive of any check on President Nasser's leadership aspirations. Ethiopia and Liberia, however, were less enthusiastic about Prime Minister Nkrumah and inclined to 'deprecate this initiative by the youngest of African countries'. In response to the question of how to resolve the competing Ghanaian and Moroccan conferences, Emperor Haile Selassie referred 'scoffingly to people who achieved independence one day and summoned conferences the next … he had not yet received invitations for either, and hardly knew what he would reply if and when he did'. However, whereas the Emperor himself might wish 'to refrain from any initiative in African affairs … his pride in Ethiopia's history and position would not allow him to consent to Ethiopia being left behind while brash new independent states launched out into international affairs'.[30] As Legum has pointed out: 'The Emperor could no longer afford to maintain his policy of isolation in an Africa that was discovering itself.'[31]

As Nigeria was not independent, although the process was well advanced, its involvement in the conference would have been anomalous. Nevertheless, Nigeria was a potentially valuable catch if it could be persuaded to attend though that would not be easy as Prime Minister Balewa (Nigeria) was dismissive of Prime Minister Nkrumah's overtures as 'he is not ready to see Nigeria treated "as a colony of Ghana" and sees in the proposal "an insult to Nigeria"'. His particular concern was that Prime Minister Nkrumah might 'pose as the leader of West Africa' and 'boast of having Nigerian support … to confront Nasser and rival him as an African leader' or seek 'to impress the great powers with his influence'. Prime Minister Nkrumah's request to visit Nigeria in a last ditch effort to persuade Prime Minister Balewa to attend was therefore pointedly declined.[32]

Despite all these obstacles, the 1958 Accra CIAS, which was attended by all eight independent African states, Egypt, Ethiopia, Ghana, Liberia, Libya, Morocco, Tunisia and the Sudan, was an undoubted success. Understandably, it addressed issues of immediate concern, independence for Algeria and sub-Saharan Africa, but it also flagged other issues, such as aid without conditions and cultural identity, that would recur over the next twenty-five years.[33] Most

30 Chapman Andrews, Khartoum to Foreign Office No. 339 25 March 1957, NA FO 371/125352, Foreign Office to certain of Her Majesty's Representatives Intel No. 88 16 May 1957, NA CO 936/576, Chapman Andrews to Watson 3 May 1957 and Furlonge to Watson 18 March and 25 April 1957, NA FO 371/125353.

31 C. Legum, *Pan-Africanism: A Short Political Guide*, revised edn (London, 1965), 41–42.

32 Robertson, Federation of Nigeria to the Secretary of State for the Colonies Personal No. 43 19 March 1958 and Personal No GG.54 21 March 1958, NA FO 371/131238, Maclennan, Despatch No. 5 Office of the High Commission for the United Kingdom, Accra 29 April 1958, NA FO 371/131239, 2–3 and C. Legum, *Bandung, Cairo & Accra*, 11.

33 Government Printer, *Conference of Independent African States, Declarations and*

important of all, though, it gave President Nkrumah a platform upon which to proclaim the 'African personality' theme: 'For too long in our history, Africa has spoken through the voices of others. Now, what I have called an African Personality in international affairs will have a chance of making its proper impact and will let the world know it through the voices of Africa's own sons.'[34]

It was a vision that the conference readily endorsed. For example, Foreign Minister Mokaddem (Tunisia), in his opening speech, complimented Prime Minister Nkrumah: 'I wish particularly to bring the support of my delegation to the ideas so coherently developed by President (*sic.*) Nkrumah – ideas which review … the spirit of our Conference … I wish to say to him … that he has been able to be the authentic expression of the new African conscience.' While, in his closing speech, Prince Sahle-Selassie (Ethiopia) concluded that: 'This conference symbolizes the victory inherent in the discovery of Africa … Africans are beginning to discover Africa.'[35]

The indispensable corollary of such enthusiasm was the conference's declaration and resolution 'to constitute the Permanent Representatives of the Participating Governments at the United Nations as the informal permanent machinery'. It was an arrangement that the 1960 Addis Ababa CIAS would agree

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Resolutions, 22nd April 1958 (Accra, 1958); see also Bureau of African Affairs (A.K. Barden), *Awakening Africa: Conferences of Independent African States* (Accra, 1962).

34 President Nkrumah, Radio broadcast to the nation prior to the opening of the 1958 Accra CIAS, quoted by K. Nkrumah, *I Speak of Freedom: A Statement of African Ideology* (London, 1961), 125 (also quoted by A. Quaison-Sackey, *Africa Unbound*, 35, 67–68 with minor textual differences); see also 'The African Personality', *Observer,* 6 July 1958, 5. The term 'African Personality' was widely employed by the conference, for example, the *Ghana Draft Memorandum- Conference of African States*, President Nkrumah's Opening and Closing Conference Addresses and the Conference Declaration. It would subsequently find a place in several African constitutions, such as Mali (1961 Constitution, Preamble) and Senegal (1963 Constitution, Preamble). However, C. Legum, *Bandung, Cairo & Accra*, 12 argues, probably with *négritudé* in mind, that it was the French African elite who coined the phrase. More interestingly, P.O. Esedebe, *Pan-Africanism: The Idea and Movement 1776–1963*, 36 identified that the term was first employed by E. Blyden in a lecture 'Study and Race' (published by *Sierra Leone Weekly News,* 27 May 1893, 2–4); though L.S. Senghor (trans. D. L. Schalk), 'Edward Wilmot Blyden, Precursor of Negritude', H.R. Lynch (ed.), *Selected Letters of Edward Wilmot Blyden* (Millwood, 1978), xx notes that 'we were not aware of his works'.

35 Speech by Dr Sadok Mokaddem, Secretary of State for Foreign Affairs of Tunisia, leader of the Tunisian Delegation, Government Printer, *Conference of Independent African States, Speeches Delivered at the Inaugural Session, 15th April 1958* (Accra, 1958), 40 and 'Speech by H.I.H. Prince Sahle Selassie, Head of the Ethiopian Delegation at the Final Session of the Conference of Independent African States', Government Printer, *Conference of Independent African States Speeches Delivered at the Close of the Conference, 22nd April 1958* (Accra, 1958), 3.

to continue 'pending the establishment of a Permanent Organisation with a seat in Africa to fulfil its functions'.[36] This decision to constitute what became known as the 'African Group at the UN' (African Group) may be seen as the first step onto the world stage of the emerging 'African' polity. A step which recognised the UN as the most effective agency through which the African states could influence international arrangements in their interest and effect change in the post-war settlement and also, as Prime Minister Nkrumah had grasped, side-step the limitations of an Asian-African bloc with respect to issues of specific concern to the African states.

Yet, notwithstanding the success of the conference, Prime Minister Nkrumah had not been able to impose his will on all matters. In particular, his proposal for a small permanent secretariat to coordinate discussions between conferences, its location to be determined by the heads of state, in effect the precursor of a secretariat of a united Africa, was rejected when 'on the last morning … Nkrumah interviewed the heads of all the delegations successively and besought them to agree to a permanent organisation in Accra and they all turned it down'. Egypt and Liberia, especially, expressed strong opposition. Other reports suggest that it had been turned down because none of the states could make suitable staff available and that Khartoum had been considered as the site for the secretariat. All that could be agreed was that the 'informal permanent machinery' would also be responsible 'for making preparatory arrangements for future conferences'. The African Group therefore became the key meeting place for the African states and, until the creation of the OAU, the forum in which inter-African conferences would be negotiated and arranged.[37]

The decision to form the African Group was promptly followed up in May 1958 by more formal arrangements that established a coordinating group of African Ambassadors to the UN, who would meet once a month, and a four-man rotating

36 Resolution XIII, 'The Setting up of a Permanent Machinery after the Conference', Government Printer, *Conference of Independent African States, Declarations and Resolutions, 22nd April 1958*, 16 and 'Resolution on the Future Status of the Informal Permanent Machinery of the Independent African States', Ministry of Information of the Imperial Ethiopian Government, *Second Conference of Independent African States, Addis Ababa, 14–26 June 1960* (Addis Ababa, 1960), 102; see also C.O.C. Amate, *Inside the OAU*, 191.

37 CIAS Secretariat, CIAS Confidential Report: Speeches, Resolutions, Meeting Reports and Ambassadors Minutes, SOAS, University of London, Microfiche, 673–675 (Working Paper by Secretariat), Maclennan to Snelling 6 May 1958 – Maclennan went on to say that: 'I cannot absolutely guarantee the truth of this version but it seems quite likely' – and Wakely to Allen 2 June 1958, NA CO 936/576 – the source was Adu, Chief Secretary of the Conference Secretariat; see also W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 37–39, and T. Hovet, Jr., *Africa in the United Nations*, 16, 79–81.

secretariat.[38] Inevitably, though, its initial impact was, as yet, circumscribed by a lack of numbers. Although, therefore, the volume of African-issue resolutions in the UNGA began to increase substantially, a key UNGA resolution in 1958 on Algeria independence, sponsored by the Asian-African bloc, failed to achieve a two-thirds majority by one vote, and the following year 'a similar resolution was accepted paragraph by paragraph … but defeated … when voted on as a whole'.[39] It was only after September 1960, when a further sixteen African states were admitted into the UN, that, with the African states now making up almost one-quarter of UN membership, the 'African Personality' could finally be said to have been empowered to make its impact on the world stage and Africa's engagement and prospects in international affairs transformed.[40]

The first African steps at the UN

The new constellation of forces, and the political direction in which they would be deployed, were immediately evident as the African states began to deluge the UN with resolutions and initiatives arising out of their two main priorities, anti-colonialism and apartheid and economic development. Priorities that would later also feature in the ACHPR.

Anti-colonialism and apartheid

At the same 1960 UNGA session in which the sixteen African states were admitted, President Nkrumah, apparently with advance knowledge of the impending Soviet initiative, proclaimed to the UNGA that: 'The United Nations must call upon all nations that have colonies in Africa to grant complete independence to the territories still under their control. In my view possession of colonies is now

38 CIAS, Secretariat of the Informal Permanent Machinery IAS/613, Annex III, quoted by T. Hovet, Jr., *Africa in the United Nations*, 79–85.

39 UN A/PV.792, 622–627 13 December 1958 debating the resolution arising out of UNGA First Committee Report A/4075 13 December 1958 on the 'Question of Algeria', final vote 35:18:28 and UN A/PV.855, 731–734 and A/PV.856, 735–747 12 December 1959 debating UNGA First Committee Report A/4339 9 December 1959 on the 'Question of Algeria', and new Resolution UN A/L.276 11 December 1959, final vote, 39:22:20, C. Hoskyns, 'African States and the United Nations 1958–1964', *International Affairs,* 40/3 (1964), 466–480, A. Quaison-Sackey, *Africa Unbound*, 147–148 and M. Connelly, 'Rethinking the Cold War and Decolonization: The Grand Strategy of the Algerian War for Independence', *International Journal of Middle East Studies,* 33/2 (2001), 221–245.

40 Acceptance of UN membership by the UNGA: UNGA 15/1476–1488 20 September 1960, 15/1490–1491 28 September 1960 and 15/1492 7 October 1960. For African membership of the UN, see D.A. Kay, 'The Impact of African States on the United Nations', *International Organization,* 23/1 (1969), 21 Table 1; by 1968, African states would comprise one-third of the membership of the UN.

quite incompatible with membership in the United Nations.' He was immediately followed by First Secretary Khrushchev (Soviet Union) who explained that it is the UN's 'duty to reaffirm faith in human rights, in the dignity and worth of the human person, in the equal rights of nations large and small … The Soviet Government believes that the time has come to pose the question of the full and final abolition of the colonial system of government in all its forms and varieties.'[41]

Discussion of the Soviet Union's follow-up resolution was initially assigned to the UNGA's First Committee, but, at the suggestion of the Soviet Union, the UNGA decided unanimously that it should rather be discussed in full plenary session.[42] However, as Kay notes, the several weeks that elapsed between submission and formal consideration by the UNGA enabled the Asian-African bloc to draft an alternative resolution. Accordingly, on the first day of discussion, Cambodia, on behalf of (an eventual) forty-three sponsors (twenty-five of which were African), introduced an alternate resolution. So as to lessen the scope for disagreement, it was wisely decided that, wherever possible, the resolution should employ a text that had already been agreed. As Ethiopia would explain to the UNGA: 'The present draft resolution … is a consolidation of the ideals and principles which the African-Asian countries have proclaimed and supported ever since 1955, in Bandung, Accra, Monrovia and Addis Ababa … all the paragraphs of the preamble have at one time or another and in one form or another been proclaimed in those historic conferences.' Nonetheless, at the behest of the Asian states, the African states were forced to tone down the more aggressive language with which they had sought to demand independence for all the remaining colonial territories. Thus, for example, the final version of the

41 UN A/PV.869 23 September 1960, 61 (President Nkrumah), 74 (First Secretary Khrushchev) and *FRUS 1958–1960 Vol. XIV Africa*, Document 302: Memorandum of Telephone Conversation Between the Assistant Secretary of State for African Affairs (Satterthwaite) and the Ghanaian Representative at the United Nations (Quaison-Sackey) 24 September 1960. It is ironic that First Secretary Khrushchev referred to colonialism 'in all its forms' seemingly unaware that at the 1955 Asian-African *Communiqué* 'in all its manifestations' was intended as a reference to the colonial incursions of the Soviet Union. The phrase may have been taken from Prime Minister Nkrumah's speeches to the 1958 Accra CIAS where references were made to colonialism in 'new and old forms' and 'in whatever shape or form' which was intended to refer to neo-colonialism (see Government Printer, *Conference of Independent African States, Speeches Delivered at the Inaugural Session, 15th April 1958* and *Conference of Independent African States, Speeches Delivered at the Close of the Conference, 22 April 1958*. The UN process and relevant documents on which this account has relied are in http://legal.un.org/avl/ha/dicc/dicc.html, last accessed 29 December 2013.

42 UN A/4501 (proposal) and A/4502 (declaration) 23 September 1960 and A/L.312 and Rev.1 30 September and 13 October 1960 (Soviet resolution).

resolution made no mention of Algerian independence. This was yet further evidence of the potential for conflicts of interest within the Asian-African bloc on matters of primary concern to the African states and, therefore, as President Nkrumah was pressing, of the desirability of a forum for exclusively African bloc deliberations.[43]

In the circumstances, the Soviet resolution was seen off as were its two amendments to the Asian-African resolution which called for colonial independence to be effected by the end of 1961 and for consideration by the UNGA the following year of the extent to which the Declaration had been implemented. Two further amendments by Honduras and Guatemala were, by agreement, not put to a vote. The resolution, the 'Declaration on the Granting of Independence to Colonial Countries and Peoples', was therefore finally adopted with no votes cast against and only nine abstentions. It asserted that: 'The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation … All peoples have the right to self-determination.' For the first time, colonial tutelage, which had hitherto been regarded as the moral prop for colonialism, was no longer acceptable: 'Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.'[44]

Alongside the Declaration, two further resolutions put particular pressure on Portugal. The first identified twelve principles that would serve as the basis for determination as to whether the responsible power was obliged to provide information on non-self-governing territories to the UN under UN Charter Article 73(e) and the second identified nine territories in respect of which Portugal was deemed to have such an obligation. A year later, another resolution would express condemnation of Portuguese non-compliance and establish a

43 UN A.L. 323 and Adds 1–6 (African-Asian resolution) 28 November – 6 December 1960 and A/PV.928 30 November 1960, 1020. For an account of the negotiations and debates, see D.A. Kay, *The New Nations in the United Nations, 1960–1967* (New York, 1970), 150–172 and 'The Politics of Decolonization: The New Nations and the United Nations Political Process', *International Organization,* 21/4 (1967), 789–793, *Yearbook of the United Nations 1960*, 44–50 and Y. El-Ayouty, *The United Nations and Decolonization: The Role of Afro-Asia*, 208–213; see also L. Tita-Ghebdinga, *African and O.A.U. Diplomacy on Dual Paradigms of Self-determination 1945–1985: A Study of African Foreign Policy Coordination on Decolonisation, and the Consequent Maze of Ethnonationalism* (Lund, 1993), 65–70.

44 UN A/PV.929 30 November 1960, 1045–1046, A/L.324 1 December 1960 and Rev 1–2 1–7 December 1960 (Honduras), 325 7 December 1960 (Guatemala) and 328 13 December 1960 (Soviet Union) and UNGA 15/1514 14 December 1960. The debates took place from 28 November to 7 December and from 13 to 14 December 1960; they are recorded in UN A/PV.925–939, 944–947.

Committee of Seven with a specific mandate to review all information pertaining to the Portuguese colonies; all the members of this committee were clearly opposed to the continuation of colonialism.[45]

African efforts to abolish colonialism by fiat of the UNGA continued in 1961 much as they had ended 1960. Two years earlier, Guinea had put a resolution before the Fourth Committee calling upon the colonial powers to submit to the UNGA timetables for the independence of non-self-governing territories. While Guinea had been prevailed upon to withdraw its resolution by, among others, Ghana and Ethiopia, it had resolved to return in 1960.[46] That resolve had been overtaken by the 1960 Soviet initiative that had culminated in the Declaration, albeit that the Soviet amendment calling for independence by the end of 1961 had been rejected, but also by a US initiative 'Africa: A United Nations Programme for Independence and Development' (Assistance to Africa). Although the US initiative outlined by President Eisenhower (USA) had preceded the Soviet initiative (by one day), it was only scheduled for debate by the UN's First Committee in March-April 1961 several months after the Soviet initiative was to have been debated. The intention underlying the initiative, as the US explained, was its desire to support the determination of the African states to manage their own political and economic affairs. It was made clear that the US welcomed African input on the content of this programme which was intended to channel increased financial resources to Africa through the UN and its agencies. Such a financial programme, it was hoped, would enhance prospects for African political sovereignty and economic stability. It was to be an 'historic opportunity for the free industrialised nations to assist the less developed countries towards self-sustained economic growth'.[47] In response, twenty-five African states thad tabled a two-part resolution: The first called for reaffirmation of the Declaration and authority for the Fourth Committee to work out precise details, including target dates, for implementation of that resolution; the second part urged the economically advanced countries to fund an increase in UN financial and technical assistance to Africa to be channelled through the ECA with no conditions prejudicial to African political or economic sovereignty. As the first part was

45 UNGA 15/1541 and 15/1542 15 December 1960 and 16/1699 19 December 1961.

46 UN A/C.4/L.628 4 December 1959 and Intel No. 108 Foreign Office to certain of Her Majesty's Representatives 16 August 1961, NA DO 181/43, 2; for an account of the Fourth Committee discussions, see also *Yearbook of the United Nations 1959*, 314–315.

47 UN A/PV.868 22 September 1960, 45–50 (President Eisenhower), UN A/4515 and Add.1 28 September and 20 October 1960 (US memorandum and illustrative resolution); for an account of the US initiative, see *Yearbook of the United Nations 1960*, 129–132. The debates took place from 23 March to 21 April 1961; they are recorded in UN A/C.1/PV.1137–1138, 1140, 1142, 1144–1145, 1147, 1152 and 1161; the US presentation to the First Committee is in UN A/C.1/PV.1137.

failing to gather sufficient support, and the sponsors were unwilling to drop it, a decision was reluctantly taken to continue discussion in the forthcoming 1961 UNGA sessions.[48]

The momentum of anti-colonialism pressure was maintained at the start of the 1961 UNGA session by a Soviet resolution calling for the immediate implementation of the Declaration and for the final and unconditional liquidation of colonialism in all its forms no later than the end of 1962. At Madagascar's suggestion, as chair of the African Group, it was then agreed that the US and (the new) Soviet initiatives should be considered together in full plenary session. This was unsuccessfully opposed by Nigeria which argued, with some foresight, that any further discussion of the Declaration would end in a fruitless anti-colonialism Cold War tirade and detract from the important issue of furthering support for African economic development.[49]

Once again, the Asian-African bloc put forward its own agreed draft. As always, it had to contend with a wide array of views. On this occasion, the main bone of contention was whether it was feasible or desirable to declare an end date for colonial independence and, if so, what that end date should be. Ghana and Guinea sought an expedited end date and an active role for a UN committee in independence negotiations with the colonial powers, whereas India and Nigeria, and several other states, were reluctant to set an end date or involve the UN. Alternative resolutions were therefore put forward by Mexico and Nigeria although they would eventually be withdrawn. The resolution as finally adopted set no end date, but reiterated the urgency of implementation and established a Special Committee to report on the progress of implementation. As for the US initiative, without a corresponding African response, there was nowhere for it to go.[50]

Significantly, this 'Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colo-

48 UN A/C.1/L.271 and Add.1 and Rev.1 and 2, 11, 12 and 21 April 1961 and UN A/4747 21 April 1961 (Report of First Committee).

49 UN A/4859 29 August 1961 (Soviet agenda request), A/4889 27 September 1961 (memorandum), A/L.355 9 October 1961 (resolution), A/PV.1047, 568–572 and A/PV.1048, 573 7 November 1961; for an account of the negotiations and debates, see D.A. Kay, *The New Nations in the United Nations, 1960–1967*, 172–180 and *Yearbook of the United Nations 1961*, 44–57.

50 UN A/L.357 and Add.1 17 October 1961 (Nigeria and Liberia), A/L.366 and Add.1–3 20 November 1960 (African-Asian), A/L.369 24 November 1961 (Mexico) and A/L.370 27 November 1961 (Soviet amendment to Asian-African resolution). The debates took place from 7 to 27 November 1961; they are recorded in UN A/PV.1047–1050, 1052, 1054–1061, 1064–1066 and 1094; see also Dean, UKMUN to United Kingdom No. 1849 27 October 1961, NA DO 181/44 and Dean to Lord Home, United Nations Debate on Colonialism 8 January 1962, NA DO 181/45.

nial Countries and Peoples' was established outside of the existing UN non-self-governing territories machinery so as to side-step the blocking representation instituted by the colonial powers in 1945 on the UN Trusteeship Council and the Committee on Information from Non-Self-Governing Territories which required parity between the colonial powers and other member states. From inception, therefore, the Special Committee had an in-built anti-colonialism majority which was further extended in 1962 when membership was increased from seventeen to twenty-four, such was the clamour for seats, notably from Guinea and Ghana. At the same time, the African states were also successful in obtaining the adoption of a further UNGA resolution setting up a parallel 'Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa'.

The remit of the Special Committee's authority was set out in its founding resolution which directed that it should 'carry out its task by … all means which it will have at its disposal within the framework of the procedures and modalities which it shall adopt for the proper discharge of its functions' That generously wide remit was reinforced a year later by a UNGA resolution directing it: 'To continue to seek the most suitable ways and means for the speedy and total application of the Declaration to all territories which have not yet attained independence.' As a result, the Special Committee was effectively empowered with almost unlimited authority enabling it to adopt procedures and interpretations that accorded with the wishes of the African states; although it had no power to compel the colonial powers to accede to its demands. For example, it was given authority to hear and investigate petitions from groups or individuals in dependent territories at a time when, by comparison, the CHR was under its 'self-denying ordinance' that did not allow for similar investigations of communications (see page 580 below). Moreover, while cases were to be considered on a country-by-country basis, priority was nevertheless to be accorded to African territories. The following year, in yet another revanchist revision of the UN Charter, the UNGA determined that 'all United Nations activities concerning Non-Self-Governing Territories should now be co-ordinated and consolidated, with a view to the immediate ending of colonialism' within this Special Committee and that the Committee on Information from Non-Self-Governing Territories should therefore be dissolved.[51]

For M'baye, this was a significant moment: 'It was not until 1960 … that one saw the international community unequivocally proclaim the right to

51 UNGA 16/1654 27 November 1961, 17/1761 6 November 1962, 17/1810 17 December 1962 and 18/1970 16 December 1963, Report of the Special Committee to the UNGA 8 October 1962, UN A/5238, 9–48, D.A. Kay, 'The Politics of Decolonization', 794–795 and *The New Nations in the United Nations, 1960–1967*, 52–54, Y. El-Ayouty, *The United Nations and Decolonization*, xx, 214–217 and Dean UKMUN No. 1516/8 to Lord Home 11 February 1963, NA DO 181/51.

self-determination.' It was significant because 'is not the right of peoples to self-determination the first human right in that all the others are dependent on it?'[52] Quaison-Sackey, Ghana's UN representative, was similarly effusive, declaring that 'this Declaration is as important to Africa as the Charter of the United Nations and the Universal Declaration … It redresses an ancient injustice done to Africa … Africa was the forgotten continent when the Charter was promulgated … the Declaration … made it quite clear that Africa had taken her rightful place … in the United Nations'.[53]

Perhaps of greater significance, though, was the lesson of how the post-war settlement might be overturned from within. The Declaration, as Amate noted, 'was in effect an amendment of the UN Charter' and, therefore, African revanchism's first major victory at the UN in its confrontation with the post-war settlement.[54] A similar observation was made by the Chairman of the Fourth Committee, who praised the committee for having brought about

> a gradual and almost imperceptible adjustment of certain provisions of the Charter so that it might remain, as far as possible, a reflection of the progress and the major currents of our day. A significant illustration of this continuous process of empirical adaptation of the Charter to a rapidly and constantly changing world lies in the way in which it was possible gradually to change the centre of gravity of United Nations anti-colonial action from the Trusteeship Council to the Committee of Twenty-Four.[55]

Economic development

Alongside anti-colonialism and apartheid, the other primary area of African political demands at the UN at this time was economic development. Its importance had already been recognised by the 1955 Asian-African Conference which had placed it as the first item in the *Final Communiqué*. The *Communiqué* had stressed the urgency of economic development, recommended that financial support should be made available to developing states through the UN, the World Bank and other international financial agencies and expressed deep

52 K. M'baye, 'Human Rights in Africa Reviewed', trans. from *AFRICA, Dakar* (1980), 4 and 'Human Rights in Africa', 584; in effect, this was a restatement of Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, C. 'Human Rights and Self-determination', which defined self-determination as a 'prerequisite of the full enjoyment of all fundamental human rights'.

53 A. Quaison-Sackey, *Africa Unbound*, 139–140.

54 C.O.C. Amate, *Inside the OAU*, 375.

55 Statement by the Chairman at the 1517th meeting of the Fourth Committee on 28 September 1965, UN A/C.4/640 30 September 1965, 4 (reference from J. Carey, 'The United Nations' Double Standard on Human Rights Complaints', *The American Journal of International Law,* 60/4 (1966), 796).

unease at the basis on which international trade, specifically commodity prices and shipping rates, was conducted.[56] If, therefore, the Declaration may be seen as a revanchist reinterpretation of the UN Charter aimed at the elimination of political colonialism, the increasing torrent of post-1960 UN resolutions pursuing development goals may similarly be seen as pursuing a revanchist overturning of the post-war international economic system aimed at the elimination of economic colonialism. While Gros Espiell has suggested that it was not until 1960 that the UN began to give due attention to the concept of 'development', it may more appropriately be argued that it was not until the African states were admitted in 1960 that there were sufficient numbers of states for whom the concept of 'development' was thought to require UN attention.[57]

In pushing the issue of economic development, the African states invariably argued that the locus of their revanchist demands was the UN Charter itself. Its Preamble expressed the determination of the signatories 'to promote social progress and better standards of life' and 'for these ends … to employ international machinery for the promotion of the economic and social advancement of all peoples'. Article 1 also provided that one of the purposes of the UN was 'To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character'. This was to be given effect by Article 55, which laid down that the UN 'shall promote … higher standards of living, full employment, and conditions of economic and social progress and development', and by Article 56, in which all member states 'pledge themselves to take joint and separate action … for the achievement of the purposes set forth in Article 55'.

The African states now began to argue that member states should give practical effect to these undertakings. This was most simply advanced in the preamble of a 1960 UNGA resolution expressing a belief that 'the principles laid down in the Charter of the United Nations with regard to international economic and social cooperation should be reaffirmed now when so many States have recently become Members of the United Nations'. The argument would be taken one step further the following year when the 1961 UNGA resolution proposing a UN Development Decade argued that economic development was not only essential to underdeveloped countries, it was 'basic to the attainment of international peace and security' which was another of the purposes of the UN laid down in Article 1.[58]

Although African attempts to promote the concept of development took many forms, initially they focused on procuring an increase in the flow of finan-

56 Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, A. 'Economic Cooperation'.

57 H. Gros Espiell, 'The Right of Development as a Human Right', *Texas International Law Journal*, 16/2 (1981), 190.

58 UNGA 15/1515 15 December 1960 and 16/1710 19 December 1961.

cial and technical assistance. The idea of a UN development fund channelling financial and technical assistance to developing countries was first considered by the UN in 1950 following reports and studies by the Economic and Social Council (ECOSOC) and the Secretary-General on the financing of economic development in under-developed countries. It continued to be discussed at the UNGA and ECOSOC throughout the 1950s but to no end. For example, in 1957, a Preparatory Committee (which included the recently admitted Ghana) was delegated to assess the feasibility and rules for a Special Fund for Development. As it was apparent that such a fund enjoyed little support from those upon whom financial demands would be made, the project fell into temporary abeyance. An attempt was made to revive this project in 1959 but the UN Secretary-General, who was asked to canvas opinion, found once again little support from the developed countries.

By now, though, the underdeveloped states were in majority control of the UN. Undeterred, they decided to proceed. In 1960, therefore, a UNGA resolution was adopted approving a UN Capital Development Fund 'in principle'. However, not for the last time, adoption merely demonstrated that while the majority in the UN could pass resolutions, they could not compel performance. Most of the developed states were disinclined to participate and, indeed, seven member states, including the US, the UK, France, Japan, Canada and the Netherlands, declined to even participate in the drawing up of the Fund's statute. It was therefore only in 1966 that a UN Capital Development Fund was finally set up, and even then it failed to secure financial pledges of support of any significance.[59]

The other area of particular economic concern for the African states was the price they were able to obtain for their commodities and other natural resources, which in many cases represented a significant part of their national product. There was a deeply held feeling that through lack of access to funding and capital flows they were an unequal party in the negotiating process and often locked into unfair contractual agreements agreed prior to independence. If there was little immediate remedy, at the very least, a basis could be laid upon which future action might be justified. In 1958, the UN was therefore prompted to establish a commission to survey the status of 'the permanent sovereignty over natural resources as a basic constituent of the right to self-determination'; an early example of the broad definition of self-determination that would later be subsumed within the label of neo-colonialism. It was followed up in 1962 by another UNGA resolution calling for further study of this question and asserting that: 'The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of

59 UNGA 5/400 20 November 1950, 12/1219 14 December 1957, 14/1424, 5 December 1959, 15/1521 15 December 1960 and 21/2186 13 December 1966; see also UN E/3393 2 June 1960 (Report by the Secretary-General) and E/3654 14 June 1962 (Report of the Commission on a United Nations Capital Development Fund). The process is described in D.A. Kay, *The New Nations in the United Nations, 1960–1967*, 90–95.

the well-being of the people of the State concerned.' Moreover, that nationalisation or expropriation based on the national interest overrode purely private interests. Some twenty years later, these arguments would be incorporated into Article 21 of the ACHPR.[60]

At the heart of African economic revanchism, though, at least until the NIEO emerged in the early 1970s, was the Economic Commission for Africa (ECA). The idea of an economic commission as a vehicle for development assistance to Africa was first broached in the UN as early as 1947 by Liberia and India. It was the type of internal interference that the colonial powers found most unwelcome and accordingly the proposal was easily swatted away in favour of a resolution calling for field surveys in Ethiopia and other devastated areas in Africa, which were never carried out. In October 1948 the idea was raised again by Pakistan, but that too was easily deflected. A more limited proposal was also put forward for an economic commission specifically for North Africa and Ethiopia but withdrawn when it was suggested that Egypt and Ethiopia should be included within the proposed Economic Commission for the Middle East, and France argued that its territories in North Africa should fall under the responsibility of the Economic Commission for Europe. In September 1949 the idea was revived again when the Assembly of the World Federation of United Nations Associations adopted a proposal from the Togoland United Nations Association recommending that the UN should carry out a preliminary study of the economic situation in Africa with a view to setting up an economic commission for Africa. Although that proposal was then brought to the attention of ECOSOC, the UK, together with other colonial powers, determined that 'we should do our best to kill it'.[61]

60 UNGA 13/1314 12 December 1958 and 17/1803 14 December 1962. Ironically, the issue had been discussed by British and American scientists at a 1942 Conference on 'Mineral resources and the Atlantic Charter' (see C.H. Behre, Jr., 'Mineral Resources and the Atlantic Charter', *Geographical Review,* 33/3 (1943), 482–486). One participant suggested that to satisfy Point 5's goal of improving labour standards, it might prove necessary to raise the price at which raw materials are sold to developed countries.

61 Mercer to Marshall 5 January 1950 enclosing 'Proposed Economic Survey in Africa and Proposed Economic Commission for Africa, Memorandum by the Colonial Office of the United Kingdom', 25102/25/49, Cadogan No. 419 UKDUN to Foreign Office 9 November 1949, Wallace to Poynton 19 December 1949 and Wallace to Clauson and Cohen 3 January 1950, NA CO 936/19/1, Confidential I.O.C. (50) 14 31 January 1950, Cabinet Steering Committee on International Organizations, Draft Brief for United Kingdom Delegation to Tenth Session of Economic and Social Council on Item 31 of the Provisional Agenda: – Study of Economic Situation in Africa, NA CO 936/43/3 and UN E/1555 28 October 1949 (WFUNA resolution and request for discussion in ECOSOC). For an historic account of the discussions, see *Yearbook of the United Nations 1957*, 184.

The UK's best proved sufficient as ECOSOC was prompted to conclude that 'it was premature to consider the desirability of establishing an economic commission for Africa' and that discussion should be held over until the following year when it was intended that the work of regional commissions in general would be considered. Nonetheless, it was felt that it would be helpful if 'more information about the economic problems and resources of Africa' could be collated. To that end, India proposed a survey on economic conditions in Africa but was baulked by a British amendment which argued that it would be costly and time-consuming for both the UN and the individual governments and therefore: 'It would be sufficient and would satisfy the purpose of the Indian draft if a special section on the economic situation of Africa were included in the regular world economic report.'[62]

Over the next few years, despite the efforts of some NGOs to keep the idea alive, there was no follow-through until November 1957 when Ghana revived the idea during a UN Second Committee debate on the annual ECOSOC report. Ghana's appeal was picked up by Egypt and promptly endorsed by all the African states and several Asian and Latin American states. In view of the earlier blocking measures of the colonial powers, it was realised that the Western majority on ECOSOC had yet again to be circumvented. Accordingly, a resolution instructing ECOSOC that 'for the purpose of giving effective aid to the countries and territories of Africa' it should 'give prompt and favourable consideration to the establishment of an Economic Commission for Africa' as one of ECOSOC's five regional agencies was first put to the UNGA. Upon adoption, ECOSOC was obliged to give it effect.[63]

Almost as soon as the ECA was established, the African states determined to assert their authority over the UN agency – African affairs were now to be controlled by African states alone. Initially the African states focused on the UN member states entitled to membership. Thereafter, after the formation of the

62 'Economic Study of Africa to be Made', *United Nations Bulletin* Vol. VIII, 1 April 1950, 306 and UN E/L.31 28 February 1950 and E/L.34/Rev.1 28 February 1950 (UK amendment) adopted as ECOSOC Resolution 266 (X) 2 March 1950, UN ESCOR 10th Session 1950 Supplement No. 1: Resolutions UN E/1661, 1; see also UN ECOSOC 'Study of the Economic situation in Africa', Communication dated 17 February 1950 from the WFUNA and draft resolution, E/1555/Add.3 20 February 1950.

63 UN A/3740 15 November 1957 (Report of the Second Committee) and A/C.2/L.334 and Add.1-2 16–22 October 1957 (resolution leading to UNGA resolution), subsequently confirmed by UNGA 12/1155 26 November 1957 and ECOSOC Resolution 671 (A-B) (XXV) 29 April 1958, UN ESCOR 25th Session 1958 Supplement No. 1: Resolutions UN E/3123 1958, 1–2, and *Yearbook of the United Nations 1957*, 184–186; see also United Nations Economic Commission for Africa, Paper for Discussion, IRD Colonial Office, November 1957, NA CO 936/582.

OAU in 1963, and once that battle had been won, the focus shifted to control over the determination of policy and priorities.

The ECA's initial list of members had been laid down in the ECOSOC foundational resolution. These were the eight independent African states, South Africa and six colonial powers; but it also provided that the colonial powers might nominate their colonial territories as associate members. As the UK, which nominated eight of its colonial territories, was the only colonial power to do so, the following year the African states secured an UNGA resolution specifically requesting that all the colonial powers should follow the UK lead by nominating their African territories.[64]

Belgium complied, and by now France's territories had largely become independent, leaving only Portugal and Spain to refuse. Their refusal was therefore followed up by ECA resolutions directed at ECOSOC with the aim of securing compliance with the 'request'. In 1962, a resolute ECA went further and pressed for the outright expulsion of Portugal and Spain and the demotion of colonial powers to associate status. Whereas Spain would finally accept the need to bow its knee, Portugal still remained obdurate sustained by ECOSOC's refusal to accept the ECA's recommendation.[65]

In parallel with the move against the colonial powers, the ECA also began to target South Africa. It first authorised a study on the economic and social implications of racial discrimination and then, having duly considered the resulting study, recommended that South Africa should be expelled because of its racial policies.[66]

The ECA's campaign would eventually succeed in 1963 when ECOSOC finally responded positively to two further ECA resolutions. Portugal was expelled and the ECA's terms of reference were amended so that the colonial powers would now only be entitled to associate status. As for South Africa, ECOSOC directed that: 'The Republic of South Africa shall not take part in the work of the Economic Commission for Africa until the Council, on the recommendation of the

64 UNGA 14/1466 12 December 1959; for an account of the early process of establishing the ECA, see *Yearbook of the United Nations 1958*, 191–194.

65 UN ECA Resolutions: 5(II) 28 January 1960, E/3320 Economic Commission for Africa Annual Report, ESCOR 30th Session 1960, Supplement No. 10, 16–17, 24(III) 16 February 1961, E/3452/Rev.1 Economic Commission for Africa Annual Report, ESCOR 32nd Session 1961, Supplement No. 10, 31–32, 42 and 44 (IV) 27 February 1962, E/3586 Economic Commission for Africa Annual Report, ESCOR 34th Session 1962, Supplement No. 10, 39–40, Dudley to Foreign Secretary 'Fourth Session of the ECA, Addis Ababa February 19–March 3 1962', 27 March 1962, NA FO 371/161389 and A.H. Akiwumi, 'The Economic Commission for Africa', *Journal of African Law*, 16/3 (1972), 254–261.

66 UN ECA Resolution 44 (IV), E/3586 Economic Commission for Africa Annual Report, ESCOR 34th Session 1962, Supplement No. 10, 40–41.

Economic Commission for Africa, shall find that conditions for constructive co-operation have been restored by a change in its racial policy.'[67]

The creation of the OAU

Despite the outstanding success of the Declaration and continuing progress in the UN on other issues, as the number of independent African states increased, so the cohesion of the African Group became increasingly compromised by the emergence of competing (often overlapping) political blocs. These blocs reflected deep differences between the independent African states (and leaders) in their political leanings and outlook, territorial and personal rivalries and the extent to which they sought to retain their ties with the former colonial power. For some of the smaller African states, it was, even more, an issue of their survival as independent states. When these differences spilled over into the UN, notably when Algeria, the Congo and Mauritania came to be discussed, the African Group was inevitably pulled apart. If, therefore, the African states were to take advantage of their increasing leverage at the UN, it was clear that they would first have to establish the principles of African unity upon which they would all agree to be bound. The determination of those principles now became the primary political question of the emerging African regional polity.

The first step was taken by Ghana and Guinea who announced in a joint declaration in November 1958 that: 'Inspired by the example of the thirteen American colonies … and inspired further by the declaration of the Accra Conference regarding the African Personality. We … have agreed to constitute our two States as the nucleus of a union of West African states.' A second joint declaration announced a loan of £10 million to be advanced by Ghana to Guinea.[68]

67 ECA Resolutions 68 and 69(V), E/3727/Rev.1 Economic Commission for Africa Annual Report, ESCOR 36th Session 1963, Supplement No. 10, 40 and ECOSOC Resolution 974D III (Portugal) 24 July 1963 and IV (South Africa) (XXXVI) 30 July 1963, UN ESCOR 36th Session 1963 Supplement No. 1: Resolutions E/3816, 3–4, Marjoribanks to Home 'Fifth Session of the ECA, Leopoldville, February 18 – March 2 1963', 5 March 1963, NA CO 936/895, 'Economic and Social Council', *International Organization,* 18/1 (1964), 133–135, L.B. Sohn, 'Expulsion or Forced Withdrawal from an International Organization', *Harvard Law Review,* 77/8 (1964), 1409–1412 and *FRUS 1961–1963 Vol. XXI Africa*, Document 318: 'Memorandum From the Department of State Executive Secretary (Read) to the President's Special Assistant for National Security Affairs (Bundy), Washington, July 24, 1963'.

68 'Joint Declaration made by the Prime Minister of Ghana and the Prime Minister (President in French language version) of the Republic of Guinea on the occasion of the state visit of the latter to Ghana from the 20th to 24th November, 1958' 23 November 1958 and 'Second Joint Declaration' 23 November 1958, NA DO 35/9352; see also E.S. Munger, 'All-African People's Conference Africa for Africans Only Demanded by 240 Delegates from 28 African Countries, A Report by Edwin S.

This declaration was of potentially enormous importance to President Nkrumah as it seemingly exemplified the first step towards the political unity he was pressing on African leaders. However, as many in Ghana suspected, President Touré's enthusiasm stemmed rather more from Guinea's pressing need for the loan than from a commitment to political union with Ghana; indeed, Telli, President Touré's special emissary, was despatched to advise the UK that: 'There was no question of merger with Ghana … the idea was to set up a West African union in which each component state would retain its own sovereignty and connexions.'[69]

Notwithstanding these doubts, in May 1959, following a meeting in Conakry, a further Joint Ghana-Guinea Declaration set out the basic principles of a 'Union of Independent African States'. It was to be open to all independent African states; however, beyond platitudes and empty symbols, such as a union flag, anthem and motto, it gave little indication of the practical steps that would be taken to implement the envisaged political or economic union.[70] By July 1960, President Nkrumah was therefore forced to admit, in response to questioning at a press conference, that 'there was so far no effective union but argued that this was still being planned and would come about'.[71] In reality, this Union was a fiction that, for the present at least, suited both leaders.[72]

Anxious lest he be accused of lacking enthusiasm for African unity, but keen to forestall President Nkrumah's ambitions until more colonial territories had become independent and able to join him in opposition, in January 1959, President Tubman (Liberia) announced a brief alternative proposal for a convention of independent African states. Such a convention might establish 'a permanent organization to be known as The Associated States of Africa', but he warned that 'any hasty or superficial semblance of union … may undermine the entire structure of any permanent political unity and retard real cooperative effort'. He followed this up in April 1959 with a letter to President Nkrumah and President

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Munger, Accra, Ghana January 8, 1959', *African Field Reports 1952–1961* (Cape Town, 1961) 42–46 and *West Africa,* 29 November 1958, 1130, 1143.

69 Foreign Office to Paris No. 2740 28 November 1958, NA FCO 141/13649 and Chadwick 16 January 1961, Flack to Moreton 30 January 1961 and Flack to Logan 3 June 1961, NA DO 195/70; see also *West Africa* 27 December 1958, 1243. Telli gave this assurance because of rumours that union might require Guinea to join the Commonwealth and the sterling area.

70 'Joint Declaration by His Excellency Dr. Kwame Nkrumah, Prime Minister of Ghana, and His Excellency Mr. Sékou Touré, President of the Republic of Guinea', 1 May 1959, NA FCO 141/13649.

71 High Commissioner for the United Kingdom in Ghana to the Secretary of State for Commonwealth Relations Savingram No: 81 8 July 1960, NA DO 153/14.

72 This section on the course of events from 1958 up to the 1963 Addis Ababa Conference has drawn extensively on W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 67–94, C.O.C. Amate, *Inside the OAU*, 40–51, A. Quaison-Sackey, *Africa Unbound*, 74–97 and T. Hovet, Jr., *Africa in the United Nations*, 34–99.

Touré referring to his idea and proposing a meeting to discuss 'matters of interest to our respective countries'. His overture was eagerly embraced by President Nkrumah and President Touré as they both understood that, at this juncture, President Tubman was one of the main obstacles to an expansion of African unity. Their 'policy', as Thompson reports, 'was to get him to bend, and if he did not, show him for the reactionary he was'.[73]

The first step was therefore a meeting in July 1959 at Sanniquellie, Liberia during which President Nkrumah tried to persuade President Tubman to join the Ghana-Guinea Union. While President Tubman adamantly refused to contemplate any surrender of sovereignty, he was prepared to acquiesce in the idea of a loose association. Once again, therefore, the Joint Declaration that followed (Sanniquellie Joint Declaration) announced agreement on a Declaration of Principles, the first of which was described as the 'The Community of Independent African States'. There were, however, few commitments to a deeper union or surrender of sovereignty and, indeed, each member of this community accepted the principle of non-interference in the internal affairs of the other members. In an obvious reference to the Atlantic Charter, the Sanniquellie Joint Declaration also insisted on the right of Africans 'to decide the form of Government under which they wish to live'. The next step was to present the Sanniquellie Joint Declaration to a conference of all the independent African states with a view to formulating a charter that would bring about the ultimate goal of African unity. The obvious forum for such a presentation was the forthcoming meeting which, as agreed at the 1958 Accra CIAS, was to be held in 1960 at Addis Ababa.[74]

At the 1960 Addis Ababa CIAS meeting, Ghana, as expected, seized on the opportunity to present its plans for African unity. In his opening address, Foreign Minister Adjei stressed that 'a Union of African States is inevitable' and that only complete political union 'can save Africa from the maelstrom into which it may easily fall'. However, his attempt to persuade the conference to discuss such a union, and, specifically, to appoint a committee of experts to work out the details of a union charter, was flatly rebuffed. Nigeria, while agreeing that 'Pan-Africanism is the only solution to our problems in Africa', also insisted that a realistic approach had to be adopted and that meant a Pan-Africanism

73 *Liberian Official Gazette* XLVI No. 2X (Extraordinary) 26 January 1959, FCO 141/13649, W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 73–74, L.A. Marinelli, *The New Liberia: A Historical and Political Survey* (London, 1964), 184–186 (*Liberian Official Gazette* XLVI No. 2X (Extraordinary) 26 January 1959), 187–194 (Correspondence between President Tubman, President Nkrumah and President Touré) and J.E. Holloway, *Liberian Diplomacy in Africa: A Study of Inter-African Relations* (Washington, 1981), 28–34.

74 Liberian Information Service, *The First West African Summit Conference, Held at Sanniquellie, Coastal Province, Liberian Hinterland, July 15–19, 1959* (Monrovia, 1959), 28–30.

developed gradually from the ground up, not from the top down. In an obvious allusion to Prime Minister Nkrumah, Nigeria also observed that 'if anybody makes the mistake of feeling that he is a Messiah who has got a mission to lead Africa, the whole purpose of Pan-Africanism will … be defeated'. As a result, it was agreed that discussion should be deferred until the next meeting when many more colonial territories were expected to have gained independence and would thereby be enabled to participate in the discussion of such an important question. In the meantime, consultations on African unity would proceed 'through diplomatic channels'.[75]

By now, though, a considerable degree of mistrust had been engendered between many of the states, particularly towards President Nkrumah. It therefore proved impossible to agree on a host for the next CIAS meeting so that there was little option other than to leave the decision to Ethiopia's discretion. After cautious deliberation, it was eventually agreed that Tunisia should host the next meeting in April 1962, but, in the event, despite several postponements, residual disagreements over Algeria and Monrovia bloc reluctance to accommodate President Nkrumah after the successful outcome of the 1962 Lagos conference (see page 237 below) conspired to ensure that this meeting would never be held.

Notwithstanding this rebuff, in December 1960, Mali responded to Ghanaian overtures by agreeing to join the Ghana-Guinea Union. It was formalised by a meeting of the three heads of state in April 1961 at Accra and the signing in June 1961 of a 'Charter for "The Union of African States"', which the signatories optimistically described as 'the nucleus of the United States of Africa'. As now seemed the custom, Mali received a £5 million loan reward from Ghana.

The supreme decision-making body of the Union was to be the Conference of Heads of State of the Union which was to meet on a quarterly basis. Again, membership would be open to all the independent African states, but this time more detail was provided as to the extent of the proposed harmonisation of diplomatic, economic, defence and cultural policies.[76] All too soon though, it was evident that President Nkrumah's enthusiasm for the union was not shared by his prospective partners. As Quaison-Sackey recalled: 'The whole purpose … slowly lost its force.'[77] The dénouement came when an effectively bankrupt Guinea insisted that its continuing commitment was contingent on

75 Ministry of Information of the Imperial Ethiopian Government, *Second Conference of Independent African States, Addis Ababa June 14 to 26, 1960*, 36–43 (Speech by Adjei (Ghana)), 66–71 (Speech by Sule (Nigeria)), 102 (Resolution: Promotion of African Unity).

76 'Charter for the Union of African States', Ghana Press Release No 615/61 1 July 1961, Ghana *Gazette* No 38 1 July 1961 and Communiqué, Press Release No. 1222/60, NA DO 195/74.

77 A. Quaison-Sackey, *Africa Unbound*, 78–79.

establishing a joint currency zone. Although the 1960 tripartite declaration had committed the three partners 'to promote a common economic and monetary policy', wiser heads in Ghana declined this poisoned chalice as Guinea had anticipated it would. As it was, by now, President Nkrumah's horizons were extending well beyond West Africa to take in the whole of Africa. President Touré too had moved on and, in opposition to President Nkrumah, was becoming a key mediator between the African blocs in the planning for what would become the 1963 Addis Ababa Conference.

In a parallel move towards a different form of African unity, in October 1960, President Houphouet-Boigny (Ivory Coast) brought together twelve of the fourteen former French colonial territories at a meeting in Abidjan – Guinea and Mali were the two non-attendees. The aim of the meeting was to formulate a joint policy on the issue of Algerian independence, which was fast developing into the major bone of contention between France and its former colonial territories. In principle at least, they supported independence for Algeria but, at the same time, they were also compromised by their reliance on French financial support. It was also intended as the start of a process to reunite the former French colonial territories and to heal the divisions of the recent independence debate. This initial meeting was followed up in December 1960 by a further meeting at Brazzaville from which the bloc would derive its soubriquet. These meetings resulted in a common position being agreed in support of France's 'managed' approach to Algerian independence, Mauritanian independence and opposition to 'outside' UN intervention in the Congo conflict; three of the foreign policy issues dividing the African states at this time.[78]

It was also agreed that their representatives at the UN should set up a separate African and Malagasy Union group with (eventually) its own office and secretariat albeit that it should operate alongside the existing African Group. While the two groups worked closely together on most issues, fundamental policy differences meant that the Brazzaville bloc would regularly be missing in action when resolutions condemning France over Algeria or nuclear testing came before the UNGA. For example, while agreement was reached on a 1961 UNGA resolution demanding French military withdrawal from Tunisia, a 1960 UNGA resolution on Algeria was defeated.[79]

78 A brief report on the various meetings of the Brazzaville bloc is given in 'Brazzaville Powers', *International Organization,* 16/2 (1962), 434–437 and G. Devernois, 'The Evolution of the African and Malagasy Countries of French Civilisation', *Civilisations,* 12/1 (1962), 113–121; see also H. Pick, 'The Brazzaville Twelve and How Things Came To Be', *Africa Report,* 6/5 (1961), 2, 8, 12, 15, 'The Brazzaville Twelve', *Africa South in Exile,* 5/3 (1961), 76–84 and C.O.C. Amate, *Inside the OAU*, 191.

79 UNGA Special Session III UNGA Resolution 1622 25 August 1961 (the failed resolution called for a referendum in Algeria; however, UNGA 15/1573 20 December 1960, which recognised the Algerian right to self-determination, was successful),

The 1960 Brazzaville meeting also endorsed a policy of long-term cooperation with a view to developing a common foreign policy, economic cooperation, joint diplomatic representation and a permanent secretariat. Unlike the Joint Declarations by Ghana and Guinea, these aspirations were followed up at meetings in Yaoundé in March 1961 and Tananarive in September 1961. As a result, agreement was reached on the creation of the Union Africaine et malgache (UAM) and adoption of the Charter of the African and Malagasy Union. It aimed to 'organize, in all aspects of foreign policy, cooperation between its members' and provided for twice-yearly meetings of heads of state and an Administrative Secretary-General with a permanent secretariat at Yaoundé. To further the UAM's wider ends, committees were to be established for Economic and Social Development, Foreign Trade, Monetary Problems, and Scientific and Technical Research, and further reinforced by a wide range of protocols and conventions. As with the 'The Union of African States', membership was to be open to all independent African states. A separate statement by the twelve member states also made it clear that the UAM was 'merely a part of the larger grouping of African States known as the Monrovia Group' which had been formed in the period between the Yaoundé and Tananarive meetings.[80]

As a direct response to the Brazzaville meeting's support for Mauritanian independence, King Muhammad V invited the radical states opposed to French policy, Egypt, Ghana, Guinea, Libya and Mali, and Abbas, Prime Minister of the provisional Algerian government, to a conference at Casablanca in January 1961. Ethiopia, Liberia, Nigeria, Somalia, Sudan, Togo and Tunisia were also invited but declined to attend. The Casablanca Conference, which gave its name to the Casablanca bloc, declared 'its determination to support by all means the Algerian people and the Provisional Government' in their struggle for independence, denounced all support for France and invited all African states to recognise

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A. Quaison-Sackey, *Africa Unbound*, 147–148 and T. Hovet, Jr., *Africa in the United Nations*, 91–95. For an analysis of the African blocs and sub-blocs, their *modus operandi* and statistical analysis of their UN voting patterns, see T. Hovet, Jr., *Africa in the United Nations*, 73–106.

80 République Malgache, *Conférence des chefs d'État et de gouvernement africains et malgache, Tananarive, 6–12 septembre 1961* (Tananarive, 1962), 117–175, 'Charter of the African and Malagasy Union', A. Tevoedjre, *Pan-Africanism in Action: An Account of the UAM* (Cambridge, 1965), 61 (reference from L.B. Sohn (ed.), *Basic Documents of African Regional Organizations Vol. 1* (Dobbs Ferry, 1971), 352–354) and Convention on Diplomatic Representation, Tananarive, September 1961, Cameroun *Journal officiel* 1 March 1963, 128–132, quoted by L.B. Sohn (ed.), *Basic Documents of African Regional Organizations Vol. 1*, 355–357. A summary of the main points of the Charter of the African and Malagasy Union is also given in Statement by Ambassador Djermakoye (Niger), UN A/PV.1032, 355–360 10 October 1961 (reference from T. Hovet, Jr., *Africa in the United Nations*, 93) and G. Devernois, 'The Evolution of the African and Malagasy Countries of French Civilisation', 114–117.

the Algerian Provisional Government. As against the Brazzaville bloc, it also extended support to Prime Minister Lumumba (Congo) and approved the use of UN force to end Katangan secession, opposed nuclear tests by France on the African continent and denounced Mauritania as a 'puppet State' set up by France. It concluded with a brief 'Charter of Casablanca' which envisaged a permanent African Consultative Assembly 'as soon as conditions permit' and proposed a Joint African High Command but, for the present, limited cooperation to three technical committees: Political, Economic and Cultural.[81]

The Political Committee met for the first time in Cairo in March 1961 to agree protocols to the Charter establishing a formal organisational structure. A second meeting in Cairo in June 1962, following several meetings of the Economic Committee throughout 1961 and early 1962, went on to approve a raft of common projects. However, as a British diplomatic report concluded: 'On paper the resolutions and agreements … look most impressive'; but 'we are not inclined to ascribe much economic significance to the Committee's meeting'. That assessment would prove most perceptive as cooperation between the member states was largely dysfunctional and therefore withered away for lack of interest and sympathy. By October 1962, with news emerging of the conference proposed for Addis Ababa in 1963, even President Nkrumah was forced to shut down the Casablanca bloc project, despite Moroccan requests for its continuation, for fear of seeming to divide rather than unite the African states.[82]

By 1961, therefore, the independent African states were largely divided into two main blocs with two quite different visions of African unity and opposing perspectives on several major African conflicts. It was hardly in Africa's interests and therefore, at the beginning of 1961, an attempt was made by a few non-aligned states, in particular Liberia and Nigeria, to bring the two blocs together. With the apparent co-sponsorship of states from both blocs, it seemed as if agreement had been reached on a potentially unifying conference to be held in Monrovia in May 1961. At the last moment though, the Casablanca bloc states, including Guinea and Mali who had co-sponsored the conference, decided to withdraw. The purported justification was the participation of Mauritania and non-attendance of the Algerian Provisional Government. They also argued that there was as yet an inadequate basis of agreement for the conference to proceed.

81 Kingdom of Morocco, Ministry of Foreign Affairs, *African Conference of Casablanca January 1961, Morocco* (Rabat, 1961), 31–32 (Communiqué Concerning the Situation in the Congo), 33–34 (Resolution on Algeria), 35–36 (Resolution on Mauritania), 39–40 (Charter of Casablanca), 41 (Resolution on Nuclear Tests).

82 C. Legum, *Pan-Africanism: A Short Political Guide*, 211–215 Appendix 16: 'The Protocol of the African Charter May 5 1961', W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 306–307 and Hannum to Laurence, Reporting on April 1962 meeting of Casablanca Group Economic Commission, 10 April 1962, NA FO 371/161406; see also 'Casablanca Powers', *International Organization,* 16/2 (1962), 437–439.

Notwithstanding their withdrawal, the majority of the independent African states were still intent on coming to Monrovia as they were by now effectively committed to a looser form of African cooperation than that promoted by, increasingly, President Nkrumah alone. While regretting the absence of the Casablanca bloc and expressing the hope that they might attend future meetings, the twenty remaining African states took the opportunity to move forward with a wide-ranging discussion of the basis upon which they wished to see African unity established.

The 1961 Monrovia Conference adopted three important resolutions. The first prescribed the principles that should govern the relationship between the independent African states. These were: absolute equality; non-interference in internal affairs; respect for sovereignty; condemnation of outside subversive action by neighbouring states; promotion of cooperation (and non-acceptance of any leadership); and unity of aspirations and action not of political integration. So as to put these principles into effect, it was agreed that an Inter-African and Malagasy Advisory Organisation should be established at the next conference. The second proposed that disputes between African states should be settled by peaceful means and that a commission should be created to assist in the resolution of disputes. Finally, that the African states should present a more united front at the UN and that a more equitable representation for Africa on the Security Council and ECOSOC should be sought. Further resolutions expressed support for the dependent territories, condemned apartheid and appealed to France and the Algerian Provisional Government to reach an early agreement on the independence of Algeria. It was also agreed that a further conference should be held in Lagos to discuss the findings of a technical commission of experts on African cooperation and to establish the African advisory organisation. It was hoped that by the time of that conference the Casablanca bloc might be persuaded to participate in this process.[83]

Arrangements for the Lagos conference were therefore deliberately slowed in the hope that informal negotiations would lead to the participation of at least some of the Casablanca bloc states. Nigeria was, in particular, encouraged in the belief that Guinea, Mali and the United Arab Republic (UAR, the 1958–61 union of Egypt and Syria) would attend. In the event, all the African states confirmed their participation and the conference was set for January 1962. It therefore came

83 Liberian Information Services, *Conference of Heads of African and Malagasy States, Monrovia, Liberia, 8–12 May 1961, Resolutions of the Plenary Sessions* (Monrovia, 1961) and Federal Ministry of Information, Nigeria, *African Summit in Monrovia* (Lagos, 1961); see also R. Howe, 'The Monrovia Conference', *Africa Today,* 8/5 (1961), 4, *West Africa,* 6 May 1961, 477–478, 495 and 20 May 1961, 538–539, 'Monrovia Powers', *International Organization,* 16/2 (1962), 439–443 and C. Legum, *Pan-Africanism: A Short Political Guide*, 52–59, 216–219 Appendix 17: The Monrovia Conference May 8–12, 1961.

as a shock when a last-minute caucus in Accra of the Foreign Ministers of the Casablanca bloc states announced their withdrawal yet again. They sought to justify their withdrawal as a response to the failure to invite the Algerian Provisional Government. Following the announcement, the Foreign Ministers of the Sudan, Tunisia and Libya, who were already in Lagos for the preparatory meeting of Foreign Ministers, also withdrew. In the political post-mortem that followed, there was some understanding of the position of these North African states, but little sympathy for President Nkrumah who, it was felt, was only interested in pushing for African political union under his leadership.[84]

The debate at the 1962 Lagos Conference addressed quite openly what it identified as the two fundamental differences between the two blocs. Firstly, as Governor-General Azikiwe noted in his opening address,

> there is one basic difference of an ideological nature between the two groups, which should attract the serious attention of all who sincerely advocate African Unity. It is the conspicuous absence of specific declaration on the part of the Casablanca States … regarding the inalienable right of African states … to legal equality … to self-determination … to safety from interference in their internal Affairs … to be secure in the inviolability of their territories from external aggression.

Secondly, the Monrovia bloc states were determined not to contemplate a transfer of sovereignty to an African regional organisation. They incorporated these two positions into the *Proposed Charter of the Inter-African and Malagasy States Organisation*. The Charter, again, open to all independent African states 'under indigenous African rule', provided for an Assembly of Heads of States and Governments which would meet at least once every year, a Council of Ministers (CoM) and a General Secretariat. It aimed at extending African cooperation across a range of economic, social, health, defence and cultural activities and for this purpose both Specialised Commissions and 'The Association of African and Malagasy Economic Cooperation and Development' were to be established.

84 Heads of State Discussion and 'Joint Statement of the Foreign Ministers of the Casablanca States on the Lagos Conference', Federal Ministry of Information, Nigeria, *Lagos Conference of Heads of African and Malagasy States 25th–30th January 1962* (Lagos 1962), 9–51, 59–102, 191–224. The British assessment of the background to Ghana's non-attendance is described in Section 2 – External, Monrovia Powers Conference in Lagos, undated, Lagos Conference C.R.O. (JIC Distribution) (62)16, undated, British High Commissioner, Nigeria to the Secretary of State for Commonwealth Relations, Federation of Nigeria: Conference of Independent African States C.R.O Ref: WA 12/42/2 21 February 1962, Watson, No. 1 Saving, Dakar 15 January 1962 and Chadwick 24 January 1962, NA DO 195/93 and Palliser, Dakar to Foreign Office No. 44 Saving U.A.M. meeting at Libreville: Relations with France 19 September 1962, NA FO 371/161436; see also J.R.L. Sterne, 'The Lagos Conference', *Africa Report,* 7/2 (1962), 3–6, 23 and *The Times,* 22 January, 8, 23 January, 8, 25 January, 9 and 2 February 1962, 9.

As a first step, the 1962 Lagos Conference accepted the Charter 'in principle'. There was some debate as to whether it should be signed immediately, but, ultimately, it was felt that a document of such importance should not be approved in haste. It was therefore agreed that it should first be submitted to governments for comments and, thereafter, a Committee of Representatives would consolidate these comments. The revised charter would then be placed before the next conference of heads of state for approval and signature.[85] It was also hoped that this drawn out process would enable the draft to be sent to those states that had not attended and facilitate a *rapprochement* with the Casablanca bloc. When that hope proved illusory, the Charter was finalised by a CoM meeting in May/June 1962 and signed by seventeen of the twenty-two participating states at a further CoM meeting in Lagos in December 1962.[86]

Following on from the 1961 Monrovia Conference, the 1962 Lagos Conference also discussed how best to ensure that African interests in international affairs were effectively represented. As Governor-General Azikiwe had advised in his opening address: 'Our identification with the United Nations is strategic because our numerical strength is now between one-fourth and one-third of its membership.' What emerged was an awareness of the limitations of the existing arrangements both in terms of cooperation between the African states themselves and in relation to the Asian-African bloc. While Tanganyika expressed some concern about a separation from the Asian-African bloc, the consensus was in favour of a separately constituted African bloc. In addition, both Ethiopia and Mauritania recalled the disparity in representation that had existed in 1945 and reiterated the argument for an appropriate adjustment. It was therefore resolved 'to constitute the African members of the United Nations into a distinct bloc … to deal with all problems coming before the United Nations … and to strive to revise the United Nations Charter so that the African States may be equitably represented in all the United Nations

85 Federal Ministry of Information, Nigeria, *Lagos Conference of Heads of African and Malagasy States 25th–30th January 1962*, 481 (Azikiwe address), 537 (Liberian draft), 538 (indigenous qualification aimed at S. Africa and S. Rhodesia), Federal Ministry of Information, Nigeria, *Conference of Heads of African and Malagasy States 25th–30th January 1962, Proposed Charter of the Inter-African and Malagasy States Organisation* (Lagos, 1962) and Press Release from Nigeria House 'Resolutions adopted at Lagos Conference of Heads of African and Malagasy States and Governments 25th to 30th January 1962'; see also Federal Ministry of Information, Nigeria, *Solidarity in Africa: A Record of the Conference of the Heads of African and Malagasy States held in Lagos from January 25–30, 1962* (Lagos, 1962).

86 L.A. Marinelli, *The New Liberia: A Historical and Political Survey*, 209–220 Appendix 14 'Charter of the Inter-African and Malagasy Organisation', Lagos, 21 December 1962'; see also T.O. Elias, 'The Charter of the Organization of African Unity', *American Journal of International Law*, 59/2 (1965), 244.

organs'. All that, of course, was dependent on an agreement between the African states on African unity.[87]

Although the two blocs were by now seemingly moving further apart, towards the end of 1961 and into 1962 many of the differences that had hitherto divided them were either resolved or moderated and so no longer served as obstacles to a unification meeting. In August 1961 a legitimate government was formed in the Congo; in October 1961 Mauritania was admitted into the UN; and in July 1962, Algerian independence was declared. It was therefore with some greater expectation of success that in June 1962 at Lagos the Foreign Ministers of the Monrovia Group agreed that their next heads of state conference should be held in Addis Ababa at a date to be determined by Emperor Haile Selassie.[88]

It was, in hindsight, an inspired decision as it provided a basis upon which Foreign Minister Yifru (Ethiopia), conscious of the more benign foreign policy backdrop, was able to persuade Emperor Haile Selassie that it was in Ethiopia's best interests to take the lead in working to bring the two blocs together. As an initial step, Foreign Minister Yifru cajoled President Touré into a state visit to Addis Ababa in July 1962 so that Emperor Haile Selassie might convince him to join with Ethiopia in working to unite the two blocs.

Foreign Minister Yifru's initiative led to the creation of a small seven-state group working 'silently' to ensure attendance at the proposed conference in Addis Ababa of all the African states. By August 1962, for example, Telli, as President Touré's personal emissary, had already visited eighteen African capitals and Beavogui, Guinea's Foreign Secretary, had been similarly active. As a result, once the incoming Algerian government had taken office in late September 1962, the working group had only to follow up their preliminary soundings with concrete discussions on the agenda and date for the proposed conference, which was eventually scheduled for May 1963. By the time of its September 1962 Libreville meeting, the Brazzaville bloc states had all agreed to attend the proposed Addis Ababa conference and by the December 1962 Lagos meeting of the Monrovia bloc, the Monrovia bloc states were also on board. After which, the final step was for Foreign Minister Yifru to deliver Emperor Haile Selassie's invitation to President Nkrumah in person. By January 1963, therefore all the heads of state had confirmed their commitment to attend the proposed Addis Ababa conference.

Throughout this period, President Nkrumah, too, had been working hard to gather support for his 'Union of African States' as for the time being he had also the as yet undimmed hope that the CIAS set for Tunisia might still be successfully convened. In May 1962, therefore, he sent out a circular letter to all heads

87 Federal Ministry of Information, Nigeria, *Lagos Conference of Heads of African and Malagasy States 25th–30th January 1962*, 311–350 (Africa Group), 482 (Azikiwe address), 529–531 (Africa Group).

88 UNGA 16/1631 27 October 1961 (Mauritania) and Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, NA PREM 11/4603, 1–2.

of state setting out proposals for a common economic and foreign policy and a joint military command. Another reworked proposal, in January 1963, provided for a two-tier African Parliament, although by now he was aware that the Addis Ababa conference had already been agreed. It was therefore followed up by diplomatic missions to African capitals aimed at drumming up support for his proposals as against the less ambitious *Charter of the Inter-African and Malagasy States Organisation*. So as to pre-empt accusations that he wanted to establish Accra as the capital of a united Africa, President Nkrumah also sounded out President Dacko (CAR) about the possibility of locating Africa's capital city at Bangui. Finally, in advance of the Addis Ababa conference, a Ghanaian team was despatched to Addis Ababa to prepare the ground and establish a visible Ghanaian presence including the publication and distribution of President Nkrumah's *Africa Must Unite*, copies of which were presented to all delegation heads.[89]

In its agenda submission to the Ethiopian Conference Secretariat, Ghana called for discussion of the 'Creation of a Political Union of African States'. The accompanying memorandum proposed an upper and lower house modelled on the US Congress, with its seat in the CAR, and a unified defence command.[90] Rumours were also foolishly spread that President Nkrumah was undecided about attending in the event that the Preparatory Conference of Foreign Ministers refused to endorse his proposal for political union.[91]

The 1963 Addis Ababa Conference

The 1963 Addis Ababa Conference was the first occasion on which all but one of the by-then thirty-two independent African states had agreed to meet together to discuss matters of mutual political concern and to formulate the principles of African unity. Morocco was the only African state to decline an invitation as it was not prepared to sit at the same conference table with Mauritania.

There was also a major problem with the credentials of the Togo delegation which was led by its Foreign Minister rather than President Grunitzky. In

89 Pugh to Cox 19 September 1962, NA FO 371/161436, Despatch No. 32 (1073/62) 'Political Committee Casablanca States June 1962', Beeley, Cairo to Home 21 June 1962 and Logan to Millard 5 July 1962, NA FO 371/161435, M. Ketema, 'The Creation of the OAU', http://zethio.blogspot.com/2014/04/the-creation-of-oau.html, last accessed 13 March 2023, M. Dei-Anang, *The Administration of Ghana's Foreign Relations, 1957–1965*, 43–44 and W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 306–307, 316–320; the reference is to K. Nkrumah, *Africa Must Unite*.

90 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1, Section 1*, CIAS Agenda/Conf/2 15 May 1963 (Ghanaian reference is No.C.4/4/(5)/153 Secret 28 April 1963); see also 'Dr. Nkrumah's plea for unity', *The Times,* 20 May 1963, 10.

91 W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 320–332; see also *West Africa,* 16 August 1963, 301.

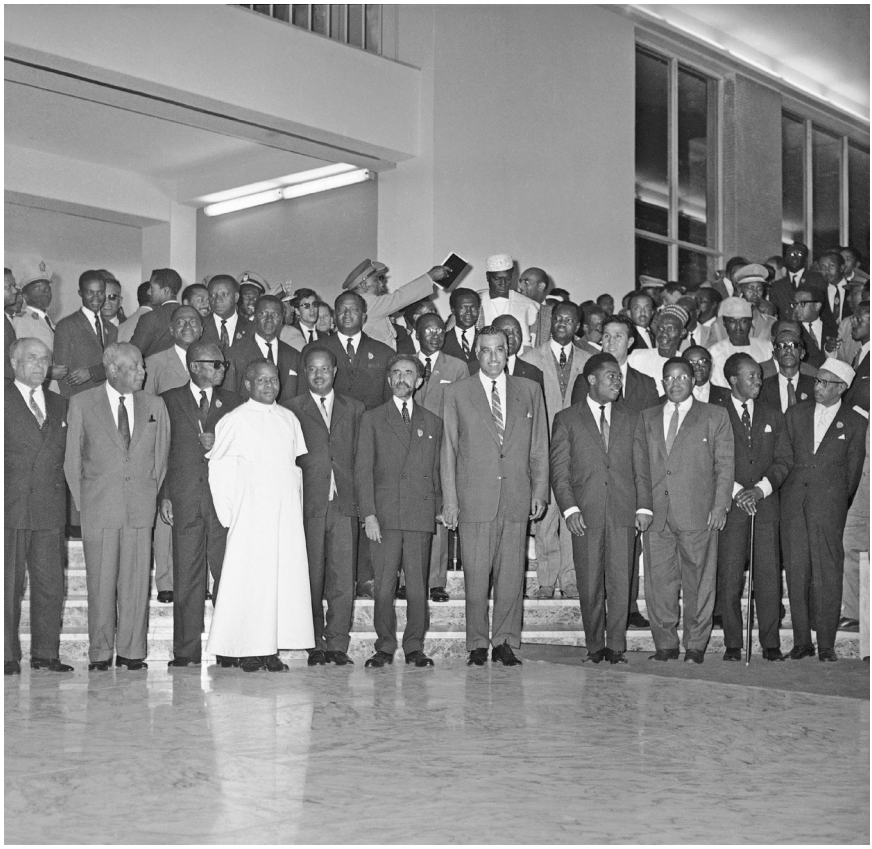


Figure 1. Emperor Haile Selassie of Ethiopia (centre, bearded) with the other African heads of state as they leave the Heads of State conference, Addis Ababa, Ethiopia, 25 May 1963; President Nkrumah and President Nasser are second and fifth from the right in the front row and President Senghor is standing behind Emperor Haile Selassie in the second row (Anonymous/AP/Shutterstock).

January 1963, Togo's respected President Olympio was asassinated and many West African leaders believed that President Nkrumah had been complicit in his murder. He was also suspected of an assassination attempt on President Houphouet-Boigny and in Awolowo's alleged conspiracy against the Nigerian government.[92] As it was precisely this type of interference that the Monrovia

92 'Record of a Discussion on Africa held at Quai d'Orsay January 30, 1963', NA FO 371/167141, W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 308–312, B.E. Ate, *Decolonization and Dependence: The Development of Nigerian-U.S. Relations, 1960–1984* (Boulder, 1987), 137–146 and A. Bolaji Akinyemi, 'Organisation of African Unity: The Practice of Recognition of Governments', *Indian Journal of Political*

states had deplored and sought to address in their charter, the Togo delegation was shunned.[93] Ghana was therefore one of only a few states prepared to endorse the Togo delegation.

Togo was, of course, entitled to a seat at the table, but an incensed Nigeria and Guinea, supported by the CAR, Ivory Coast, Niger, Sierra Leone and Tanganyika, refused to recognise Togo's new regime. At the Preparatory Conference of Foreign Ministers, Nigeria expressed its objections:

> The conference that was held in Lagos immediately after this incident occurred, when 19 African States met and decided … that they do not accept the principle of murder and assassination as a means of attaining power … If there are any Foreign Ministers here who have the authority of their government to say that they accept murder and assassination of heads of states and heads of government as a means of acquiring power, let them tell us here.

Even after the arrival of the heads of state, with President Touré resolutely opposed to recognition, no other head of state felt inclined to revive the question of their exclusion from the conference.[94]

The proposed agenda of the 1963 Addis Ababa Conference implicitly acknowledged the potential benefits to Africa of reaching agreement on the principles of African unity. Three of the agenda items, Decolonisation, Apartheid

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Science, 36/1 (1975), 63–67. An excellent analysis of the cause of the assassination is in K. Skinner, 'West Africa's First Coup: Neo-Colonial and Pan-African Projects in Togo's "Shadow Archives"', *African Studies Review,* 63/2 (2020), 375–398.

93 Ghana's interest in Togo was based on a desire to create an Ewe homeland within Ghana. Having acquired British Togoland after a 1956 UN plebiscite (see page 537 below), Ghana was still interested in French Togoland (Togo); see W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 9–12, 81–87, 229–237, 308–316, J. Coleman, 'Togoland', *International Conciliation,* 509 (1956), 3–98, J. Kent, *The Internationalization of Colonialism: Britain, France, and Black Africa, 1939–1956*, 214–262, C.E. Welch, *Dream of Unity: Pan-Africanism and Political Unification in West Africa* (Ithaca, 1966), D. Austin, 'The Uncertain Frontier: Ghana-Togo', *Journal of Modern African Studies,* 1/2 (1963), 139–145 and I.W. Zartman, 'The Politics of Boundaries in North and West Africa', *Journal of Modern African Studies,* 3/2 (1965), 165–166.

94 OAU *Proceedings of the Summit Conference of Independent African States Verbatim Record Preparatory Conference of Foreign Ministers*, Second Meeting 15–25 May 1963, 4–5, 7-A, II-4; the reference is to a conference of the Monrovia bloc called by Nigeria in January 1963 to discuss the Togo situation. Resolution V of that meeting recommended that Inter-African and Malagasy Organisation states sever diplomatic relations with any state found guilty of internal subversion of another state (see Inter-African and Malagasy Organisation, Meeting of Foreign Ministers in Lagos, 24–26 January, 1963, Resolution V, NA DO 195/71); see also Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, 2–3 and A. Bolaji Akinyemi, 'Organisation of African Unity: The Practice of Recognition of Governments', 63–67.

and Disarmament, were *desiderata* upon which all the African states were agreed, but essentially required action to be taken in the UN and its agencies.[95] Yet as the Foreign Ministers considering the agenda understood, and as the past three years had amply demonstrated, such foreign policy aspirations had proven barely sufficient to ensure a minimal basis of cooperation within a divided African Group. It was therefore hardly likely that they would suffice as a basis for the more substantive African cooperation now under consideration. Nor was it any more likely that the urgent need for African cooperation in respect of transport, telecommunications, finance and customs, which had been the subject of much technical discussion by experts from both the Casablanca and Monrovia blocs, would prove any more persuasive. The decisive issue remained what it had been for some time, namely, whether the two blocs could surmount their personal, ideological and territorial differences so as to reach agreement on the structure of a charter to which all African states would be prepared to subscribe. However, lurking in the shadows was the related, and for the smaller states the more important, question as to whether future relations between the African states would be based on their mutual acceptance of the colonial boundaries inherited at independence.

At the outset of the Preparatory Conference of Foreign Ministers, the Foreign Ministers were confronted by the need to agree which of several drafts should form the working document of their deliberations on an African charter. The decision was assigned to the first of two committees established by the Foreign Ministers. With considerable persistence, Nigeria insisted that the Monrovia bloc's charter should be used as the working document as it had already been agreed by a majority of the African states. However, Nigeria's insistence was opposed, not so much by the Casablanca bloc charter, but by a draft put forward by Ghana. Anticipating this difficulty, Ethiopia had prepared another draft which it offered up as a potential compromise. It advised that it had been prepared with the assistance of Ambassador M. Trucco of Chile, an expert from the Organization of American States, and had taken account of both the Monrovia and Casablanca blocs charters and that it was being put forward with no pre-conditions as to either discussion or amendment. There was also the difficulty that, irrespective, some Foreign Ministers claimed not to have been authorised to negotiate such an important document at short notice and that further time would therefore be needed to study any proposal. One other alternative was for a declaration of principles to be presented to the heads of state and, subject to their approval, a committee of experts appointed to draw up a draft to be submitted to a further conference.[96]

95 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1, Section 1*, CIAS Confidential Agenda/12 17 May 1963.

96 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1 Section 1*, COMM.1/EMPC/1 17 May 1963 (Ethiopian draft)

In an attempt to move proceedings on, a decision was taken to refer further discussion on the working document to a sub-committee. The Sub-committee was able to agree that a draft charter should be presented to the heads of state but it was still unable to resolve which draft should be employed as the working document as Nigeria continued its outright opposition to the Ethiopian draft, although it now allowed for equality between the charters of the two blocs. In an unholy alliance Nigeria was supported by Ghana, which saw the opportunity to block discussion of any proposal other than its own. The Sub-committee was accordingly forced to admit defeat. The decision was then taken by the plenary meeting of Foreign Ministers that the heads of state should be advised that they had been unable to agree but that an outline of the basic principles upon which a charter should be based, together with the Ethiopian draft, which enjoyed overwhelming support, should be circulated for comments with the intention that it would subsequently be reviewed by a conference of Foreign Ministers.[97]

It therefore proved necessary, in a portent of OAU decision-making to come, to await upon the heads of state for instructions. Upon their arrival, Emperor Haile Selassie made a final appeal, reminding his 'brother' heads of state of the problems the African states faced and pleading for agreement on an African unity that would facilitate the solution to many of these problems:

> What we still lack … is the mechanism which will enable us to speak with one voice when we wish to do so and take and implement decisions on African problems when we are so minded … What we require is a single African organisation through which Africa's single voice may be heard, within which Africa's problems may be studied and resolved. We need an organisation which will facilitate acceptable solutions to disputes among Africans … Let us not put off … the one decision, which must emerge from this gathering if it is to have real meaning.[98]

Responding to his appeal, it was decided that, while the rota of opening speeches should rumble on uninterrupted, below stairs work should commence

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and Report of the Work of Committee 1 SCIAS/Plen./3 22 May 1963 and Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, 2; for the Ghanaian attitude towards Ambassador Trucco's involvement, see Z. Cervenka, *The Unfinished Quest for Unity: Africa and the OAU* (London, 1977), 5 Note 8 and W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 320.

97 C.O.C. Amate, *Inside the OAU*, 52–57 (Amate was a member of the Ghanaian delegation and later Ghana's permanent ambassador to the OAU) and OAU, *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1 Section 1*, COM.I/Dra.Res./16 19 May 1963 (First Committee Draft Resolution) and CIAS/Plen./2 22 May 1963 (Foreign Ministers Plenary Resolution). The members of the sub-committee were: Algeria, Cameroon, Ethiopia, Ghana, Guinea, Malagasy Republic, Nigeria, Tanganyika and Tunisia (SCIAS/Plen./3 22 May 1963, 3).

98 OAU SUMMIT/CIAS/GEN/INF/3, 5–6.

on the drafting of an African charter using the Ethiopian draft as the primary working document, but with the use also of the Casablanca and Lagos Charters and President Nkrumah's proposed Union of African States draft. The task was assigned to a Special Commission of the Foreign Ministers of the Summit Conference which, in turn, passed on the detailed drafting to a sub-committee under Ethiopian chairmanship. With many delegations having received amended instructions, the Sub-committee was able to complete its task within two days and the draft accepted by the Special Commission of the Foreign Ministers with only minor changes, mainly in regard to the preamble. Specifically, the order of the clauses in the preamble was altered, the clause 'BELIEVING that the aim of government is the well-being of the governed' was excised and a clause referring to the 'responsibility to harness the natural and human resources of the continent' was added. On the final day of the conference, the agreed draft could therefore be passed to the heads of state for consideration in closed session. Beyond a change in the name of the organisation to read the 'Organisation of African Unity', they were content and made only minor amendments.[99]

In the view of Elias, who was in charge of the committee that drafted the Lagos Charter and a member of the Nigerian delegation at Addis Ababa, the only substantive differences between the Lagos Charter and the OAU Charter were the inclusion of a Defence Commission among the designated Specialised Commissions of the OAU and the reformulation of some of the paragraphs of the Preamble and of the Purposes and Principles; in both cases largely as a concession to the Casablanca bloc states.[100] There was therefore, inevitably, some concern as to whether President Nkrumah would agree to sign. While some of the more radical members of his entourage advised against, Emperor Haile Selassie met privately with President Nkrumah and urged acceptance.[101]

After an emotional palaver, the conference was therefore finally able to reach an agreement on African unity. President Nkrumah even persuaded the conference to allow Morocco and Togo to sign as founding members.[102] It had been a fraught process and this was reflected in reports on the conference. For example, *The Times* reported that: 'Many observers at the conference doubted whether

99 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol.1, Section 1*, CIAS/Comm/Report/1 24 May 1963 (Sub-Committee) and CIAS/SP.COMM/CHARTER (Special Commission) 24 May 1963 and OAU Summit Conference of Independent African States: Drafting Committee on the Charter CIAS/COMM.1/DRA/SR.1 24 May 1963, 4; the Report on the work of the Preparatory Conference and the Special Commission of the Foreign Ministers of the Summit Conference is set out in OAU SCIAS/PLEN/1 30 May 1963.

100 T.O. Elias, 'The Charter of the Organization of African Unity', 245.

101 W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 322–323.

102 OAU *Proceedings of the Summit Conference of Independent African States Verbatim Record*, A3–53, 54.

it would be possible to achieve any kind of agreement'.[103] It was an appreciation which the OAU itself, too, thought of sufficient significance to mention in publicity material: 'To a stunned world, all regional groupings had come to a compromise for the safeguard of Africa's honour, freedom and permanent interests.'[104] There was, though, no denying the 'great success' of the conference as President Nyerere pointed out to Prime Minister Macmillan (UK).[105] The State Department, which described the OAU Charter as a 'remarkable achievement', and the UK Ambassador in Addis Ababa, who was equally effusive in his description of the conference as 'undoubtedly a major success' with the Charter as its 'main achievement', reached much the same conclusion.[106] Yet Legum's description of the OAU as 'born … out of historic necessity and a welter of conflicting political ideas and interests' seems the most apposite assessment in that, in 'historic necessity' and the 'welter of conflicting political ideas and interests', he captures the essential dualism of both the womb from which the OAU was torn and thereafter the OAU polity 'child' that was conceived.[107]

In the first instance, this 'historic necessity' was the idea of Africa as a unified polity and of the OAU not only as the embodiment of that idea but as the primary agency through which African interests would achieve effective representation on the world stage and African disputes resolved without outside interference. As Walraven would point out: 'Africa had now moved from a mere geographical entity to a political community with its own consciousness.'[108] Two

103 Africa Correspondent, *The Times,* 27 May 1963, 10.

104 OAU, *OAU: What it is How it Works What it Does* (Addis Ababa, 1973), 2.

105 President Nyerere to Prime Minister Macmillan 21 June 1963, NA PREM 11/4603.

106 *FRUS 1961–1963 Vol. XXI Africa*, Document 219: Circular Telegram From the Department of State to Certain African Posts 28 May 1963 and Russell to Foreign Office, African Summit: Final round-up 27 May 1963, NA PREM 11/4603.

107 C. Legum, 'The Organisation of African Unity – Success or Failure?, *International Affairs,* 51/2 (1975), 208. There is a wonderful vignette of the background preparations by Ethiopia's chief legal adviser at the conference, B.H. Selassie, 'The Bumpy Road from Accra to Addis Ababa: Recollections of an Observer/Participant', *Societies without Borders,* 2/1 (2007), 56–60, which is marred only by a fatuous footnote added by the editors: 'The female denizens of the "Red Light District" in Addis Ababa had been mobilized to serve their country and Emperor under the able hand of one Asseghedech Alamiro, Chief Madam of the District. The government had coached and admonished the women to behave like proud Africans and devotees of African unity and to be ready to perform their services in pursuit of that noble ideal. Nocturnal arrangements were made so that African leaders and their entourage did not feel lonely and cold at night … a few of her nocturnal comrades were awarded medals by His Majesty, who commended them for their loyal service to king and country.'

108 K. van Walraven, *Dreams of Power: The Role of the Organisation of African Unity in the Politics of Africa 1963–1993* (Aldershot 1999), 153.

years earlier, President Youlou had warned the UN that: 'We cannot allow the fate of our brothers on the other side of the Congo to be decided quite arbitrarily by those who do not know their country … Africa is our affair, our problems cannot, I repeat, be solved by any but ourselves, the great African family.' Now, at the conference, he would emphasise the desirability of 'a "Monroe Doctrine" for Africa … to secure Africa against any direct interference by a non-African power … keeping Africa for the Africans'.[109] In his opening address, Emperor Haile Selassie, too, had advised that: 'We stand today on the stage of world affairs … We have come together to assert our role in the direction of world affairs'; and he urged that quarrels between African states 'must be confined to this continent and quarantined from contamination of non-African interference.'[110] With agreement reached, President Touré could also hope to see his vision realised whereby 'our free Africa has to impose her aspirations … and to acquaint all nations … with her political thinking … All the relations that we establish … all the conferences that we attend … are opportunities for us to affirm the militant personality of Africa, her realities, her aspirations.'[111]

Twenty years later, an identical representation of the OAU would be espoused by OAU Secretary-General Kodjo. The OAU, he pointed out, was 'the living symbol of Africa's determination to free itself from foreign domination and to assume control over its own destiny'. As to what 'foreign domination' entailed and how Africa had responded so as to more effectively 'assume control of its own destiny', he went on to explain that: 'Africa's political maturity will help remove obstacles inherent in the concept of sovereignty, and will keep at bay foreign interferences and interventions in strictly African matters … As has been observed … the will to transcend these obstacles has been illustrated by the African Charter on Human and Peoples' Rights.'[112]

The sine qua non of this historic necessity was, of course, a more cohesive arrangement at the UN. As President Touré declared: 'It only remains for Africa to coordinate its action at the United Nations to stimulate its effectiveness'; and President Abboud (Sudan) pointed out that 'with Unity, the African Voice will carry more weight … the rest of the world will be impelled to fulfil its obligations towards us'.[113] Indeed, African leaders had already sought to reiterate the obligations that they felt were Africa's due. Foreign Minister Slim (Tunisia) noted

109 OAU SUMMIT/CIAS/GEN/INF/11, 2, 4 and President Youlou, quoted by J.H. Spencer, 'Africa at the UN: Some Observations', *International Organization* 16/2 (1962), 385.

110 OAU SUMMIT/CIAS/GEN/INF/3, 1, 7.

111 A.S. Touré, 'Diplomatic Action', *Africa on the Move*, Panaf English edn (Conakry, 1979), 579 (most likely date is January–May 1963, not otherwise indicated).

112 E. Kodjo, 'Introduction', Y. El-Ayouty/I.W. Zartman (eds), *The OAU after Twenty Years* (New York, 1984), 4, 11.

113 OAU SUMMIT CIAS/GEN/INF/5, 3 and SUMMIT CIAS/GEN/INF/12, 8.

that: 'When the Charter was adopted … the African States numbered 3 only (now) they constituted more than a third of the member states … Consequently, they must … appeal to all the member states to assist the Africans in achieving revision of the gentlemen's agreement of 1945.'[114] President Touré drew a similar conclusion with his assertion that 'the world context of the San Francisco Conference is long since outdated … the idea of the Great Powers which prevailed in 1945 no longer holds in our time so that it is necessary to revise the United Nations Charter, to place it on a just basis, recognizing our continent's rights to the place it deserves'.[115] A year later, President Kenyatta would reiterate the same point: 'When the United Nations came into being 19 years ago, the role of Africa was practically disregarded … It is imperative that the present permanent arrangement in the Security Council should be overhauled'; and some weeks later he recalled (appropriately on United Nations Day) that: 'Among the forty-six countries represented at the foundation meeting at San Francisco in 1945, only two – Ethiopia and Liberia – were African states.' Yet again, in that context, black African leaders and commentators were disinclined to count Egypt as an African state.[116] It was President Senghor, though, who made the cutting but necessary observation:

> There is an African Group at the United Nations … But unfortunately it is a fictitious one … If then we really desire African unity, if we want our action to be efficacious, it is essential that the African Group in the United Nations becomes a living reality, and that its deliverations (*sic.*) be respected by all the African States without exception.[117]

The outcome was a resolution on Africa's relationship with the United Nations. As its starting point, it insisted that Africa was entitled to an 'equitable representation in the principal organs of the United Nations, particularly the Security Council and the Economic and Social Council and its specialized agencies', and it invited 'African Governments … without prejudice to their membership in and collaboration with the African Asian Group, to constitute a more

114 OAU Foreign Ministers Preparatory Conference Committee 1: Summary Record of the Second Meeting, Comm1/SR/2, 13; see also Foreign Minister Beavogui (Guinea) UN A/PV.1020, 168 2 October 1961 (reference from 'Africa Speaks to the United Nations: A Symposium of Aspirations and Concerns Voiced by Representative Leaders at the UN', *International Organization,* 16/2 (1962), 319–323). In 1961, Foreign Minister Slim had become the first African to preside over the UNGA.

115 OAU SUMMIT CIAS/GEN/INF/12, 8.

116 OAU Verbatim and Summary Records of the Meeting of the First Session of the AHSG 17–21 July 1964, DV/SR (1), 8–9 and United Nations Day 24 October 1964, J. Kenyatta, *Suffering without Bitterness* (Nairobi, 1968), 246. It was an historic slight that two senior African diplomats A. Quaison-Sackey, *Africa Unbound*, 134–135 and C.O.C. Amate, *Inside the OAU*, 190 thought worthy of mention in their memoirs.

117 OAU SUMMIT CIAS/GEN/INF/9, 5.

effective African Group with a permanent secretariat so as to bring about closer cooperation and better coordination in matters of common concern'.[118]

At the (first) CoM meeting in Dakar later that year, a further resolution 'Africa's representation at the United Nations' once again recalled the increase in African membership at the UN from 1945 to the present and advised of the urgency attached by the African states to a reversal of this 'grave injustice' of 'Africa's marked under-representation in all the major and subsidiary bodies of the Organization'. A few years later, yet another resolution, 'OAU policy towards UN and UN Specialized Agencies', would also lay down that:

> OAU policy … should be guided by the following principles: (a) Always try to obtain maximum benefits in quantity and quality from the UN and the UN Specialized Agencies for individual African States, and whenever required, for regional and continental African projects; (b) Always ensure that the African views are unitedly and effectively presented within the organs of the UN and of the UN Specialized Agencies.[119]

The 'new' African Group officially began its operations on 1 December 1963 with the benefit of the Secretariat and the other facilities that had been set up by the Brazzaville bloc, and it now, as Amate observed, became the primary contact point for any African state seeking support for a proposal before the UN, although that in itself was no guarantee of a united front.

There was, however, little need for coordination in respect of Africa's insistence on equitable representation at the UN. Already in 1963 the UN agreed to amend the UN Charter by enlarging the Security Council and ECOSOC to accommodate an African regional quota. A further enlargement of ECOSOC in 1971 allowed for an even greater African proportional quota in that by then the African states had come to comprise one-third of the UN's membership.[120] It was a lead that would be followed in all the UN's agencies and in appointments to UN positions with great effect and advantage for the African states.

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118 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1, Section 1*, CIAS/Plen.2/Rev.2 24 and 25 May 1963: Agenda Item III: 'Africa and the United Nations'; see also The African Heads of State Conference at Addis Ababa, Russell to Lord Home 4 June 1963, 5, which suggests that the rider 'without prejudice … to the African-Asian Group' was added at the behest of the UAR.

119 OAU CM/Res.1 (I) and CM/RES.121 (IX). All AHSG and CoM resolutions, unless otherwise stated, are sourced from the Resource section on the official AU website: http://www.au.int/en/.

120 UNGA 18/1991 17 December 1963 and 26/2847 20 December 1971. Nonetheless, typically, OAU CM/Res.41 (III) and CM/Res.55 (IV) were needed to remind OAU member states of the need to ratify the necessary amendments to the UN Charter without which they might not come into effect.

With the creation of the OAU in 1963 and the corollary agreement on an African Group, Africa's revanchist aspirations to confront the post-war settlement beyond mere political independence can therefore finally be seen to have been placed on a firm organisational basis and the OAU member states enabled at last to enter the world stage fully empowered to assert African interests. This consciousness of the OAU as the embodiment of Africa was, though, to have the further important consequence that, thereafter, any initiative purporting to represent Africa was obliged to seek the imprimatur of the OAU; effectively, the OAU alone was now entitled to speak in Africa's name (albeit only within strict bounds). This was exemplified by the decision in 1964 of the inaugural conference of the Commission of African Jurists, which had been set up as a private professional association following the success of the 1961 ICJ Lagos conference, to place itself under the authority of the OAU (see Volume 2). At the same time, therefore, that the creation of the OAU had enabled the conception of an 'African' human rights perspective, it also ensured that any such perspective could only be contemplated under the auspices and *modus operandi* of the OAU.

The OAU polity[121]

Territorial integrity and sovereignty

If the idea of a unified African polity was, in the first instance, the 'historic necessity' which impelled the OAU into being, agreement on the basis upon which relations between member states were to be conducted was its significant other. In 1958 Prime Minister Nkrumah and Padmore, his political adviser, had fulfilled their long-held ambition to hold a Pan-African conference on African soil. At President Nkrumah's insistence, the conference was designated as 'All-African' rather than 'Pan-African' to emphasise that a new tradition of Pan-Africanism had come into being. The conference delegates were intended to be 'representatives of progressive political, nationalist … and other organisations of the people from every country throughout Africa committed to the struggle for complete Independence'. It envisaged its purpose as 'the rallying centre of Emergent African Nationalism' and this was reflected in its clarion call, 'Hands off Africa! Africa must be Free!!' The primary task set by the Preparatory Committee for the conference was to 'formulate and proclaim our African Personality based on the philosophy of Pan-African Socialism', but its draft agenda also proposed a broad discussion of the question of the permanence of the existing borders between the African states:

121 The term 'polity' is intended to denote both the OAU system and the regional political dynamics within which it operated.

> THE CONFERENCE will also examine the question of Irredentism and discuss plans for the regrouping of Independent African States on the basis of:
>
> 1. Adjustment of existing artificial frontiers.
> 2. Amalgamation or federation of territories on a regional basis.
> 3. The progressive federation or confederation of geographical regional State Groupings into an ultimate Pan-African Commonwealth of Free, Independent United States of Africa.[122]

This 'examination' resulted in the resolution 'Frontiers, Boundaries and Federations'. It denounced 'artificial barriers and frontiers drawn by imperialist Powers to divide the peoples of Africa, particularly those which cut across ethnic groups and divide people of the same stock' and called 'for the abolition or adjustment of such frontiers at an early date' and for 'the Independent States of Africa to support a permanent solution to this problem founded upon the wishes of the people'.[123] It is remarkably similar to the resolution that Nkrumah had procured at the 1945 Manchester Pan-African Congress, which declared: 'That the artificial divisions and territorial boundaries created by the Imperialist Powers are deliberate steps to obstruct the political unity of entire West African peoples.'[124] It also felicitously matched President Nkrumah's approach in respect of Ghana's own borders with Togo and the Ivory Coast. It was therefore a line that he would repeatedly press not least in an October 1961 communiqué issued jointly with Somalia, which was similarly pursuing its own ethnic claims on parts of Ethiopia, Kenya and Djibouti.[125]

In contrast, an appeal for the adjustment of frontiers was conspicuous by its absence from subsequent African conferences. Indeed, with Ghanaian shackles over subsequent AAPCs loosened, the 1960 Tunis AAPC's denunciation of existing frontiers was downgraded to a brief recital in the Preamble of the 'Resolution on African Unity': 'Considering the artificial character of the divisions imposed by force on the continent'; and by the time of the 1961 Cairo AAPC, the focus of the denunciations in the 'Resolution on African Unity and Solidarity' was

122 Conference Booklet, 'All-African People's Conference' and G.K. Amegbo, Secretary-General, Preparatory Committee 'Statement: "All-African Peoples' Conference"' (1958), NA CO 936/579; see also W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 59–60.

123 Maclennan, Office of the High Commission for the UK, Accra Despatch No. 11 ACC.35/11/2 30 December 1958, All-African People's Conference: Resolutions, NA CO 936/580, Appendix II, Annexe and All-African People's Conference, *Conference Resolution on Imperialism and Colonialism* (Accra, 1959), 3.

124 H. Adi/M. Sherwood, *The 1945 Manchester Pan-African Congress Revisited with Colonial and … Coloured Unity (the Report of the 5th Pan-African Congress)* George Padmore (ed.), 102–103.

125 R. Emerson, 'Pan-Africanism', *International Organization*, 16/2 (1962), 278.

rather more on the role played by colonialism and neo-colonialism in placing 'real obstacles to the realisation of African Unity and the affirmation of African personality' than 'artificial barriers and frontiers'.[126]

One of the first to express its concern at Ghana's irredentism was Liberia. In the preparatory discussions in London for the 1958 Accra CIAS it had sought to include in the conference agenda a commitment that 'ideologies or *coups d'etat* whose designs are to overthrow organised governments should be discountenanced and condemned as subversive and destructive ideologies'.[127] Although Liberia was forced to back down, it was subsequently successful in adding to the conference declaration a commitment whereby the states would 'resolve … to safeguard our hard-won independence, sovereignty and territorial integrity'. Its point was further strengthened in two of the conference's resolutions: Resolution I referenced the principles of 'Abstention from intervention or interference in the internal affairs of another country' and 'Respect for the sovereignty and territorial integrity of all nations' (as set out in the 1955 Asian-African Conference communiqué) and Resolution V specifically provided for a determination 'to safeguard the hard-won independence, sovereignty, and territorial integrity of each of its members' and the corollary commitment 'to respect the independence, sovereignty and territorial integrity of one another', 'to resort to direct negotiations to settle differences' and condemnation of 'all forms of outside interference directed against … the Independent African States'.[128]

126 Permanent Secretariat, *All-African People's Conference, Tunis, 25th–30th January 1960* (Accra, 1960), 37–39, Beoley to Home No. 34 2211/61 20 April 1961 'Memorandum – The Third All-African People's Conference' and Conference Resolutions 17 April 1961, NA FO 371/154724 and UAR Information Department, *All-African Peoples' Conference 'Africa on the March!'* (Cairo, 1961), 11–21; see also C. Legum, *Pan-Africanism: A Short Political Guide*, 241–280 Appendix 22: The All-African Peoples Conference. As regards the 1961 Cairo AAPC, Beoley refers to some confusion and doubt over the authenticity of the texts of the resolutions in their official form.

127 CIAS Secretariat, CIAS Confidential Report: Speeches, Resolutions, Meeting Reports and Ambassadors Minutes, SOAS, University of London, Microfiche, 197–200 (Business 15 April 1957), Third and Fourth Meeting of Heads of Mission 21 December 1957 and 10 February 1958, 693 (Third Meeting), 710 (Fourth Meeting: Annex to a verbatim report from Liberian Embassy).

128 Conference Declaration, Resolutions I 'Exchange of views on Foreign Policy' and V 'Steps to be taken to Safeguard the Independence, Sovereignty, and Territorial Integrity of the Independent African States', Government Printer, *Conference of Independent African States, Declarations and Resolutions, 22nd April 1958*, 1–4, 8; see also Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, G. 'Declaration on the Promotion of World Peace and Co-operation' and W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 33.

The point was reaffirmed in the 1959 Sanniquellie Joint Declaration, which asserted that: 'Each member of the Community accepts the principle that it shall not interfere in the internal affairs of any other member.'[129] The following year Liberia returned to the fray when it proposed to the 1960 Addis Ababa CIAS that 'the African States agree to the principle of generally accepting the present boundaries after the various countries become independent'; and added that this principle had been agreed between Liberia and Guinea in a Joint Communiqué signed in May 1960. This was accepted and included in the resolution 'Exchange of views on Foreign Policy' by reference to Resolution I of the 1958 Accra CIAS (though for some reason not to Resolution V).[130]

It was now also became increasingly clear that, as more African territories became independent, President Nkrumah's aspirations and support for opposition groups in neighbouring states began to be seen as, at best, a destabilising distraction, at worse a direct threat. It pushed a growing body of opinion to conclude that the African states should formally acknowledge their irrevocable acceptance of the colonial boundaries inherited at independence. As a result, as Azikiwe had pointed out to the 1962 Lagos Conference, it became a fundamental point of difference between the Casablanca bloc, which ignored the issue, and the Monrovia bloc, for whom it had become an essential part of its programme. By 1963, though, it had reached the point at which it had become clear that mutual recognition of the colonial boundaries inherited at independence was, for most African states, a necessary corollary of political independence.[131]

That concern was brought into even sharper focus at the Preparatory Conference of Foreign Ministers, which Morocco had declined to attend as a result of its border conflict with a now independent Mauritania, in the speech by the Somali Foreign Minister. The speech sought to draw attention to Somalia's territorial aspirations and the Somali agenda proposal for a 'General consideration of the question of territorial disputes between neighbouring African countries, and the need of establishing effective machinery to examine and settle such territorial disputes'.[132] As a result, when the Foreign Ministers recommended to the

129 Liberian Information Service, *The First West African Summit Conference, Held at Sanniquellie, Coastal Province, Liberian Hinterland, July 15–19, 1959*, 28.

130 'Speech by Secretary of State Grimes (Liberia)' and Resolution 'Exchange of views on Foreign Policy', Ministry of Information of the Imperial Ethiopian Government, *Second Conference of Independent African States, Addis Ababa June 14 to 26, 1960*, 33, 107–108.

131 T.O. Elias, 'The Charter of the Organization of African Unity', 248; see also 'Address by Rt. Hon. Dr Nnamdi Azikiwe, Governor-General of Nigeria, delivered in London to the Committee of African Organisations on August 12 1961', N. Azikiwe, *The Future of Pan-Africanism* (London, 1961), 11.

132 OAU *Proceedings of the Summit Conference of Independent African States Verbatim Record Preparatory Conference of Foreign Ministers*, I-19 and OAU *Proceedings of the*

heads of state that the Ethiopian draft should be taken as the working document for the drafting of an African charter and appended a list of the principles upon which such a charter should be based, described as 'pre-requisites for African unity and co-operation between the African and Malagasy States', they included territorial integrity and non-interference.[133]

Inevitably, therefore, many heads of state at the 1963 Addis Ababa Conference sought to address the problems that might arise if agreement on African unity could not be reached. For example, President Diori (Niger) pointed out that unity must be 'based on reciprocal respect and esteem, brotherly trust, excluding all desire for ethnical, ideological, religious or economic pre-eminence, sincerely repudiating any attempt to settle possible differences by force, any interference in the domestic affairs of nations, any direct or indirect support of subversion'; President Keita (Mali) advised that 'we must take Africa as it is, and we must renounce any territorial claims … African unity demands of each one of us complete respect for the legacy that we have received from the colonial system, that is to say: maintenance of the present frontiers of our respective states'; and Prime Minister Balewa, with Ghana clearly in mind, declared that 'if we want this unity in Africa we must first agree to certain essential things: The first is that African States must respect one another … Nigeria recognises all the existing boundaries in Africa … we cannot achieve this African unity as long as some African countries continue to carry on subversive activities in other African countries'. The imperative was given further emphasis by President Ahidjo (Cameroon)'s admonition that 'sentiment, reason, self-interest and in the final analysis, survival, all of these impel Africa to unite' and President Tsiranana (Malagasy Republic)'s observation that 'should we take race, religion or language as criteria for setting our boundaries, a few states of Africa would be blotted out from the map'.[134] As Kodjo would, therefore, recall 'the OAU was founded above all in order to freeze the crises and stabilize the political map of Africa fashioned by colonial partitioning … the (OAU) was first and foremost

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Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1 Section 1, AGENDA/CONF/5, 15 May 1963 and AGENDA/12 17 May 1963, VII, 'Establishment of Permanent Conciliation Commission'; see also S. Touval, 'The Organization of African Unity and African Borders', *International Organization,* 21/1 (1967), 103.

133 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1 Section 1*, COM.I/Dra.Res./16 19 May 1963 (First Committee Draft Resolution) and CIAS/Plen./2 22 May 1963 (Foreign Ministers Plenary Resolution); see also L.A. Marinelli, *The New Liberia: A Historical and Political Survey*, 209–220 Appendix 14 'Charter of the Inter-African and Malagasy Organisation', Lagos, 21 December 1962'.

134 OAU SUMMIT/CIAS/GEN/INF/19, 3, SUMMIT/CIAS/GEN/INF/33, 2, SUMMIT/CIAS/GEN/INF/35, 2–3, SUMMIT/CIAS/GEN/INF/10, 2 and SUMMIT/CIAS/GEN/INF/14, 4.

a political body with a well-defined objective; i.e. maintaining the original geographical form for the new states'.[135]

The one dissenting voice was that of President Osman Daar (Somalia). Somalia had already clashed with Ethiopia at the 1961 Monrovia Conference leading to a conference resolution that called for the peaceful settlement of disputes and the creation of a commission to help resolve such disputes. Nor would it be the last. The issue would still be raised almost twenty years later at the June 1980 Banjul Ministerial Meeting review of the ACHPR draft.[136] Now, in Addis Ababa, President Osman argued that: 'It has been suggested … that any attempt to adjust existing boundary arrangements would aggravate rather than ease the situation, and for that reason matters should remain as they are. We do not subscribe to that view.' It was an insensitive intervention. Many heads of state thought it disrespectful to their Ethiopian hosts and allowed Ethiopia an opportunity to rebut Somalia's claims. As several commentators noted, it only served to turn opinion against Somalia.[137] Although it was only an observer at the conference, in anticipation of such a statement by Somalia, Kenya, too, had prepared a paper for distribution to the heads of state; it argued that: 'The principle of self-determination has relevance where FOREIGN DOMINATION is the issue. It has no relevance when the issue is territorial disintegration by dissident citizens.'[138]

The other dissenter, of course, was Morocco. Although not present in other than a watching brief, it, too, was not prepared to accept the injunction on respect for colonial boundaries. Accordingly, when it eventually adhered to the OAU Charter a few months later, it included the reservation that its membership did not imply acceptance of existing boundaries or renunciation of existing territorial claims. This referred specifically to the Western Sahara dispute that, sixteen years later, was one of the major items of discussion at the 1979 Monrovia AHSG, and, in 1982, almost led to the collapse of the OAU system.[139]

135 E. Kodjo, *Africa Today* (Accra, 1989), 25; see also S.K.N. Blay, 'Changing African Perspectives on the Right of Self-Determination in the Wake of the Banjul Charter on Human and Peoples' Rights', *Journal of African Law,* 29/2 (1985), 147–159.

136 'Resolution 3: Settlement of Conflicts which may arise between African States', Federal Ministry of Information, Nigeria, *African Summit in Monrovia*, 23, R. Howe, 'The Monrovia Conference', 4 and H.B. Jallow, *The Law of the African (Banjul) Charter*, 36–37.

137 OAU SUMMIT CIAS/GEN/INF/25, 5 and SUMMIT/CIAS/GEN/INF/43 (reply by Prime Minister Habte-Wolde (Ethiopia)), African Summit: Final round-up, Russell to Foreign Office 27 May 1963, Paragraph 9 and Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, 4.

138 *Pan-African Unity and the N.F.D. Question in Kenya*, May 1963, quoted by R. Emerson, *Self-Determination Revisited in the Era of Decolonization* Harvard Occasional Paper in International Affairs 9 (Harvard, 1964), 35–36.

139 C.O.C. Amate, *Inside the OAU*, 405, H.M.L. Beri, 'OAU Survives', *Strategic Analysis,* 7/4 (1983), 310–319 and J. Naldi, 'The Organization of African Unity and the

In an attempt to suppress the territorial problem, the concern of the smaller states was therefore fully recognised in the OAU Charter. The Preamble expressed the resolve of member states 'to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states'. Thereafter, the first five (of seven) principles in Article III set out the basis on which the relationship between member states was to be conducted. 'Sovereign equality'; non-interference in … internal affairs';[140] 'respect for … sovereignty and territorial integrity'; 'peaceful settlement of disputes'; and 'unreserved condemnation of … political assassination as well as of subversive activities'. It is tempting to see these principles as a direct response to President Olympio's assassination and a warning to Ghana, but they also quite evidently reaffirm the principles adopted by the 1961 Monrovia Conference and incorporated into the 1962 Lagos Charter. They also bear more than a passing resemblance to the principles agreed by the 1955 Asian-African Conference which in turn derive from the Five Principles of Peaceful Coexistence as agreed between India and China in April 1954.[141]

As a further measure of support, the OAU Charter also provided that 'Member states pledge to settle all disputes … by peaceful means and, to this end, decide to establish a Commission of Mediation, Conciliation and Arbitration'. Here, seemingly, was an institution that might claim 'sovereignty' over a member

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Saharan Arab Democratic Republic', *Journal of African Law* 26/2 (1982), 152–162.

140 Although non-interference in the internal affairs of member states also applied to the OAU itself, this principle seems to refer to the relationship between African states; O.C. Eze, UN (G) HR/Liberia/1979/BP.3, 9–10 gives an alternative view.

141 Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, G. 'Declaration on the Promotion of World Peace and Co-operation', Federal Ministry of Information, Nigeria, *African Summit in Monrovia*, 17–18, 'Agreement between the Republic of India and the People's Republic of China on trade and intercourse between Tibet Region of China and India signed at Peking, on 29 April 1954', *United Nations Treaty Series, Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations* Vol. 299 (1958), 70 and L.A. Marinelli, *The New Liberia: A Historical and Political Survey*, 209–220 Appendix 14 'Charter of the Inter-African and Malagasy Organisation', Lagos, 21 December 1962', Article 3. In contrast, T.O. Elias, 'The Charter of the Organization of African Unity', 249, C.E. Welch, Jr., 'The OAU and International Recognition: Lessons from Uganda', Y. El-Ayouty (ed.), *The Organization of African Unity After Ten Years: Comparative Perspectives* (New York, 1975), 112–113 and C.O.C. Amate, *Inside the OAU*, 62 point to Nigerian insistence, in the context of the assassination of President Olympio, for the inclusion of these principles, while Z. Cervenka, *The Organisation of African Unity and its Charter* (London, 1969), 34 draws a direct parallel between these clauses and clauses in the UN Charter.

state, if only in the course of a dispute.[142] Yet notwithstanding its inclusion in the OAU Charter, it nevertheless took some considerable effort to agree the terms of the protocol by which it would be established and and the procedures under which it would operate, an indifference on the part of many member states which demonstrated that even this limited scope for interference would prove unacceptable in practice. It would only finally be agreed by the 1964 Cairo AHSG.[143]

The following year the 1965 Accra AHSG appointed the first commissioners but a distinct lack of interest meant that the Commission only met for the first time in December 1967, and only after some prodding by the 1967 Kinshasa CoM, and then merely to finalise rules of procedure and the budget. At its first formal meeting in 1968, nine of the twenty-one members of the Commission would not attend including the two Vice-Presidents who, together with the President, constituted the Commission's Bureau.

That disinterest would be on-going. At the 1968 Algiers AHSG, OAU Administrative Secretary-General Telli noted that, despite reminders, Commission meetings had gone unattended and budget contributions had not been paid. Further attempts were made in 1970 by Dahomey and in 1977 by Nigeria to revive the Commission as an ad hoc or standing committee but there were also, in 1971 and 1973, submissions 'from a certain number of states requesting that the Commission be pure and simply abolished'. The Nigerian proposal at the 1977 Libreville AHSG, for example, called for a standing committee of five to seven member states to adjudicate on conflicts between member states. As General Obasanjo (Nigeria) pointed out, 'the frequency and sheer number of intra-African quarrels now constitute such an ominous development that there is a real threat to our continent … such desperate situations call for desperate measures'. Failure to agree an effective system clearly reflected the refusal of member states to contemplate any transfer of sovereignty to, or to allow any interference in their internal affairs by, the OAU. A 1993 report to the AHSG and CoM by the OAU Secretary-General would note further that the Commission 'has been virtually dormant since its establishment' as 'not a single Member State had paid its assessed contribution' and 'not even one dispute had been referred' to it.[144]

142 Z. Cervenka, *The Organisation of African Unity and its Charter*, 85; see also J. Woronoff, *Organizing African Unity* (Metuchen, 1970), 176–180.

143 'Organization of African Unity: Protocol of the Commission of Mediation, Conciliation and Arbitration', *International Legal Materials,* 3/6 (1964), 1116–1124. The protocol was approved in OAU CM/Res.42 (III) and adopted by the AHSG in a composite motion on measures recommended for adoption by the CoM.

144 OAU 'Report of the Administrative Secretary-General of the OAU: A review of the years 1963–68', Algiers, September 1968, CM/212 (Part 1), 9–11, OAU AHG/67 (Part II) (X) General report covering OAU activities for the period 1963–1973 prepared and presented by the Administrative Secretary-General, 13, OAU CM/1767

In the history of this Commission, the attitude adopted by many African states towards the ACOMHPR, whether in respect of its initial terms of reference or in support of its operational effectiveness, can be most obviously anticipated.

The express obligations of the OAU Charter notwithstanding, border disputes between member states were barely contained and within a few months of the 1963 Addis Ababa Conference disputes had broken out in many parts of Africa.[145] The two most immediate and pressing disputes were those between Algeria and Morocco and between Somalia and, variously, Ethiopia, Kenya and French Somaliland (Djibouti). What emerges from these disputes is the determination of the OAU member states that these disputes should be settled within Africa, and that they should be based on the principles in the OAU Charter. This was emphasised at the first Extraordinary CoM in November 1963, held in response to the Algeria-Morocco border dispute, which adopted a resolution reaffirming 'the unwavering determination of the African States always to seek a peaceful and fraternal solution to all differences that may arise among them by negotiation and within the framework of the principles and the institutions prescribed by the Charter of the Organization of African Unity'.[146] Nonetheless, Morocco and Somalia, both of whom were attempting to overturn existing border arrangements, sought, in the case of Morocco, to avoid a formal reference to the OAU and, in the case of Somalia, to refer the dispute to the UN. Their efforts were largely unsuccessful, but they were more successful in resisting the involvement

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(LVIII), 'Report of the Secretary-General, Report on the Establishment, within the OAU, of a Mechanism for Conflict Prevention, Management and Resolution, presented to the OAU CoM, and AHSG, Cairo, June 1993', 5–9, OAU CM/Res.240 (XVI), *Resolutions, Recommendations and Statements adopted by the Ordinary and Extra-ordinary sessions of the Council of Ministers (tenth to the twentieth ordinary sessions) Seventh Extra-ordinary session (1968–1973) Vol. Two* (Addis Ababa, 1973), 137, C.O.C. Amate, *Inside the OAU*, 154–169, British Embassy, Addis Ababa, Report on OAU 15th Session of the Council of Ministers and 7th Summit meeting 15 September 1970 and OAU: Fifteenth Session of the Council of Ministers and Seventh Summit Meeting, FCO Diplomatic Report No 470/70 JER 2/1 The British Ambassador in Ethiopia to the Secretary of State for Foreign and Commonwealth Affairs 21 September 1970, NA FCO 31/653, Chief M.T. Mbu, 'The O.A.U. and the Settlement of African Disputes: An Appraisal of Machinery, Practice and Effectiveness' (unpublished PhD thesis, University of London, 1996), M. Wolfers, *Politics in the Organization of African Unity* (London, 1976), 106–113, Z. Cervenka, *The Organisation of African Unity and its Charter*, 100 Note 3 and *Africa Research Bulletin*, 15 August 1977, 4487.

145 For details of the disputes between OAU member states in the early life of the OAU, see A. Ajala, *Pan-Africanism: Evolution, Progress and Prospects* (London, 1974), 142–163, C.O.C. Amate, *Inside the OAU*, 403–458 and R.O. Matthews, 'Interstate Conflicts in Africa: A Review', *International Organization*, 24/2 (1970), 335–360.

146 OAU CM/Res.1 (I).

of even an OAU ad hoc commission as either arbitrator or mediator. As would become apparent, even after the Commission had been established, the most popular method by which disputes could be settled was mediation conducted on a non-binding and informal basis by mutually agreed African political 'elder statesmen'.

However, in view of the importance of this issue, unlike other matters, it could not be passed over in silence and it therefore became necessary to remind member states of their commitment to the integrity of existing borders. The matter was raised at the 1964 Cairo AHSG by Tanzania which proposed discussion of 'The study of ways and means which may help to avoid new disputes among African states'. In the debate that followed President Kenyatta would remind the heads of state that: 'There is hardly an African country today which would remain unaffected were the present boundaries to be redrawn to conform to tribal or ethnic groupings'; and President Apithy (Dahomey) warned that 'the tidal wave of territorial claims would plunge our continent into apocryphal chaos'.

As its defence, Somalia sought refuge in a diplomatic *démarche*. Firstly, at the last moment, President Osman Daar decided to stay away and requested that, in his absence, President Nasser as host should protect Somalia if any of its interests were to become the subject of discussion by the AHSG. Secondly, at the preceding CoM and again at the AHSG, the Somali Foreign Minister announced that Somalia would not consider itself bound by any resolution; moreover, that he objected to the last-minute inclusion of such a debate on the agenda. Finally, Somalia suggested that as the agenda had referred to 'new disputes', and President Nyerere's explanatory remarks had indicated that the resolution was intended as a guide for the future, the resulting resolution could not have been intended to cover pre-existing Somali territorial claims. However, despite Somali and Moroccan reservations, the majority of heads of state were sufficiently enthused by the resolution as to ensure it would be adopted by acclamation without a vote.

The resolution essentially restated the position set out in the OAU Charter. It stressed 'that the borders of African States, on the day of their independence, constitute a tangible reality' and 'the imperious necessity of settling, by peaceful means and within a strictly African framework, all disputes between African States'; and it 'solemnly' recalled that member states had pledged themselves to respect the principle of the sovereign and territorial integrity of all member states and 'to respect the borders existing on their achievement of national independence'. Indirectly, as Blay points out, this resolution also effectively denied minorities within existing African states the right to self-determination or secession by freezing the territorial status quo. That would shortly emerge as the next problem to be faced.[147]

147 S. Touval, 'The Organization of African Unity and African Borders', 102–127, P.B. Wild, 'The Organization of African Unity and the Algerian-Moroccan Border

The following year, the principle of territorial integrity was reinforced by the stand taken by several states against what was felt to be continuing Ghanaian subversion.[148] As the 1965 AHSG had been set for Accra, Niger, who saw Ghana as being primarily responsible for repeated incursions and a failed assassination attempt against President Diori, together with the Ivory Coast and Upper Volta, threatened a boycott and were supported by most of the Francophone states. Although having little political empathy with President Nkrumah, Nigeria, with the support of Liberia and Ethiopia and a sympathetic Tanzania, took the view that the rather more important issue was the potential risk a boycott posed to the viability if not the very existence of the OAU. With a view to mediation, it therefore called for an Extraordinary CoM which, despite OAU Administrative Secretary-General Telli's obstruction and the reluctance of President Nkrumah to attend, nonetheless obtained the two-thirds majority approval required for its authorisation.

Ghana was represented at the Lagos Extraordinary CoM by Foreign Minister Botsio. After some hard bargaining, he was forced to agree that Ghana would, before the forthcoming AHSG, expel other countries' opposition elements based there. Nonetheless, despite this agreement, and even a last-minute meeting between the main protagonists, the Ivory Coast, Niger and Upper Volta insisted on continuing with their boycott as President Nkrumah had made only a token effort to action the commitments made at the Lagos Extraordinary CoM. A further five states, Chad, Dahomey, Gabon, Madagascar and Togo, also declined to attend and nine other states were represented at a level below that of head of state or government. However, twenty-eight member states did attend and therefore the 1965 Accra AHSG was able to meet the quorum requirement. In the absence of many of the moderate states, while it proved possible to debate the issue of subversion, an agreed resolution could only be reached on the basis that condemnation was to be applied in equal measure to subversion by both member states and foreign powers.[149] The final resolution, 'Declaration on

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Conflict: A Study of New Machinery for Peacekeeping and for the Peaceful Settlement of Disputes Among African States', *International Organization,* 20/1 (1966), 25–36, S.K.N. Blay, 'Changing African Perspectives on the Right of Self-Determination in the Wake of the Banjul Charter on Human and Peoples' Rights', 151–155, OAU AHSG/PV.2 (I) Annexe 1 and AHSG/PV.3 (I) Annexe 3 and AHSG/Res.16 (I), and C.O.C. Amate, *Inside the OAU*, 404–405.

148 The extent of Ghana's subversion was such that the UK's Counter-Subversion Committee had a 'Working Group on Ghana'. They considered whether evidence of this subversion should be presented to Nigeria but concluded on balance that it should not; see Counter-Subversion Committee, Working Group on Ghana, 23 March 1964, CRO, R.J. 5545/84/1, NA PREM 11/4823.

149 Telegram, Lagos to CRO 11 June 1965, Nigeria: Organisation of African Unity – Extraordinary Meeting of Council of Ministers 15 July 1965 and Acting British

the Problem of Subversion', nonetheless reminded the member states of their obligation under OAU Charter Article III.5: 'Not to tolerate … any subversion originating in our countries against another Member State of the Organization of African Unity.'[150]

Ironically, then, the very next OAU meeting, the February 1966 Addis Ababa CoM, which had been called in the hope that an agreed OAU response to the Rhodesian Unilateral Declaration of Independence (UDI) might be reached, was held almost immediately after President Nkrumah was overthrown in a military coup. After some initial uncertainty, it became clear that representatives of the Nkrumah government would not seek to contest the right to Ghana's seat – indeed, rumours were current at the time, subsequently confirmed, that President Touré had made an official statement proclaiming Nkrumah President of Guinea.[151] It was therefore agreed that the new Ghana regime would be recognised as the official Ghanaian delegation, although it was noted that this did not imply recognition of the new regime by the member states. At this point, though, Guinea, Mali, Tanzania and the UAR, supported by Algeria, Congo-Brazzaville, Kenya and Somalia, walked out in protest and Mauritania (and possibly the Sudan) also withdrew from the final vote.[152]

High Commissioner in Nigeria to the Secretary of State for Commonwealth Relations, NA FO 371/181804, Seaward to Walker 27 October 1965 POL 128/1, NA FO 371/181807, Foreign Office and CRO to certain missions Guidance No. 429 27 October 1965 'O.A.U. Meeting in Accra', NA DO 153/46 and W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 365–386; see also '*Le Communiqué de Ouagadougou*', Decision of Heads of State of Ivory Coast, Niger, Togo and Upper Volta and Head of government of Dahomey, not to attend O.A.U. summit meeting at Accra, October 1965, NA DO 153/46, W.S. Thompson/I.W. Zartman, 'The Development of Norms in the African System', Y. El-Ayouty (ed.), *The Organization of African Unity After Ten Years: Comparative Perspectives*, 24–31, N. McKeon, 'The African States and the OAU', *International Affairs*, 42/3 (1966), 401–402, Z. Cervenka, *The Unfinished Quest for Unity*, 74–76 and J. Woronoff, *Organizing African Unity*, 387–393.

150 OAU AHSG/Res.27 (II).

151 Telegrams Nos 113 and 115 3 March 1966 Russell Addis Ababa to Foreign Office 'Nkrumah: President of Guinea', NA FO 371/188165; Russell to Stewart 16 March 1966 'Organisation of African Unity Conference, Addis Ababa, 28 February – 6 March 1966' also records that Tello confirmed that the announcement had been made in all seriousness.

152 Russell, Addis Ababa to Foreign Office No. 96 1 March 1966 and No. 134 8 March 1966, Russell to Stewart 16 March 1966 Organisation of African Unity Conference, Addis Ababa, 28 February – 6 March, 1966 and Foreign Office and CRO to certain missions Guidance No. 89, 9 March 1966, O.A.U. Meeting, NA, FO 371/187822; see also E.J. Kisanga, 'Tanzania and the Organisation of African Unity (O.A.U.)', K. Mathews/S.S. Mushi (eds), *Foreign Policy of Tanzania 1961–1981: A Reader* (Dar es Salaam, 1981), 100, 120 Note 7, who adds Zambia, but excludes Congo-Brazzaville,

It may plausibly be argued that the success of the OAU can be measured by the fact that, as Jackson and Rosberg point out, as of 1981 'none of the Black African states have been destroyed or even significantly changed … No territories or people – or even a segment of them – have been taken over by another country'.[153] Yet protests against subversion remained a regular feature of AHSG meetings and served to disrupt considerably the limited cohesion the OAU system was able to summon up. Indeed, more than ten years later, subversion was still considered an issue of sufficient concern for the 1977 Libreville AHSG to adopt a strongly worded resolution recalling, once again, Article III 'Principles' of the OAU Charter and calling on all member states not to interfere in the internal affairs of other states or to support subversive activities aimed at neighbouring states. It would also be considered appropriate to include that same exhortation in the ACHPR.[154]

The Cold War overlay

The most significant of the many disputes between African states, at least in terms of its impact on the process and content of the ACHPR, was that engendered by the Cold War. It was significant in two key respects. Firstly, in the threat it posed to African unity and its potentially disruptive impact on prospects for achieving a consensus within the AHSG. Secondly, in the antagonism it engendered towards, first, the conception and, then, the content of the ACHPR.

The threat the Cold War posed was already recognised in 1963 and it was largely with that threat in mind that OAU Charter Article III had included 'Affirmation of a policy of non-alignment with regard to all blocs' as one of the principles of the OAU. This principle was reaffirmed by the February 1964 Lagos CoM meeting which recommended that OAU member states adopt a coordinated, non-aligned foreign policy approach towards all blocs. After some debate as to what non-alignment meant, the 1964 Cairo AHSG adopted the recommendation of their Foreign Ministers.[155] As Amate therefore points out: 'After this debate, no African state … ever again questioned why the OAU should adopt the policy of non-alignment. Since then all independent African states have … proclaimed non-alignment as the basis of their foreign policy even when they are patently showing bias towards one or the other of the two world blocs.'[156]

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and N. McKeon, 'The African States and the OAU', 405, who includes Mauritania and the Sudan, but excludes Zambia.

153 R.H. Jackson/C.G. Rosberg, 'Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood', *World Politics,* 35/1 (1982), 1.

154 AHSG/Res.85 (XIV).

155 OAU CM/Res.12 (II) and AHG/Res.2 (I) (which gives composite approval to the recommendations of the CoM) and W.S. Thompson/I.W. Zartman, 'The Development of Norms in the African System', 36–46.

156 C.O.C. Amate, *Inside the OAU*, 25–27.

It was, though, as Amate recognised, an injunction invariably honoured in the breach. By the mid-1970s, the independence of the Portuguese colonial territories, the 1974 Ethiopian revolution and the 1976 'turn' to 'scientific socialism' by Somalia were to muddy OAU waters further by bringing to power governments that owed much of their position and future prospects to support in terms of military hardware or 'advisers' from the Soviet Union (or Cuba). These relationships were further cemented by formal treaty agreements: Somalia (1974), Mozambique (1977) and Ethiopia (1978) signed treaties of friendship with the Soviet Union; Mozambique also signed a cooperation agreement with COMECON (the Soviet Union's Council for Mutual Economic Assistance), although its application for membership was rebuffed in 1980 (as COMECON could not bear the cost); and Angola and Ethiopia were granted observer status at COMECON; however, Ethiopia's application for full COMECON membership, like Mozambique's, was declined.[157]

This expansion of Soviet influence led to a considerable radicalisation of sentiment within the OAU in that it brought together a loose, but significant, ideological bloc of states aggressively opposed to Western political ideas and influence. That bloc extended from the extreme 'radical' states of Angola, Benin, Cape Verde, Ethiopia, Guinea-Bissau and Mozambique to fellow-travellers of varying degrees such as Guinea, Libya, Madagascar, Mali, the Seychelles, Somalia and Tanzania. It led, in turn, to a counter-bloc of 'moderate' states, with only a few 'independent' but moderately inclined states such as Botswana, Ghana, Kenya, Nigeria, Sierra Leone and Zambia left to maintain a precarious balance. By 1977, disharmony had therefore reached a point at which, as Amate noted, the 'radical' and 'moderate' states would meet secretly prior to OAU meetings to coordinate their strategy.[158] The following year, the Foreign Office recorded

157 L.A. Jinadu, 'Soviet Influence on Afro-Marxist Regimes: Ethiopia and Mozambique', E.J. Keller/D. Rothchild (eds), *Afro-Marxist Regimes: Ideology and Public Policy* (Boulder, 1987), 248–249, M. Hall/T. Young, *Confronting Leviathan: Mozambique since Independence* (London, 1997), 112, C. Clapham, *Africa and the International System: The Politics of State Survival*, paperback edn (Cambridge, 2005), 140, 148–149 and R.C. Nation, 'Soviet Engagement in Africa: Motives, Means and Prospects' and C. Coker, 'The Soviet Union and Eastern Europe: Patterns of Competition and Collaboration in Southern Africa', R.C. Nation/M.V. Kauppi (eds), *The Soviet Impact in Africa* (Lexington, 1984), 42–43, 68–69; C. Andrew/V. Mitrokhin, *The Mitrokhin Archive: The KGB and the World Vol. II* (London, 2005), 459 also identifies President Menghistu's (Ethiopia) annual May Day parade featuring giant portraits of Lenin.

158 C.O.C. Amate, *Inside the OAU*, 23–33. For a more detailed division of the OAU member state groupings, see Z. Cervenka/C. Legum, 'The Organization of African Unity in 1978: The Challenge of Foreign Intervention', *Africa Contemporary Record Vol. XI* (1978–79), A27–29; for a division between 'progressives' and 'moderates' in the context of the 1980 Libyan excursion into Chad, see E.K. Kouassi, 'The OAU

that: 'The Khartoum Conference brought out into the open as never before the ideological differences separating its conservative and moderate members on the one hand from the progressive and radical members on the other … For the first time in the history of the organization the Conference openly split into two blocs.' If, in 1978 and 1979, the 'moderates' were able to recover some measure of control over the AHSG, by 1980 a conference report concluded that 'never has a summit been so near to being the very last for the OAU … The rift between the progressive and moderate factions of the OAU was … confirmed at Freetown, but no-one had the courage to take the last step, since no-one wished to take the responsibility'. The most important accomplishment of the 1980 Freetown AHSG was therefore that the OAU had survived.[159] However, by 1982, the disorder was such that the 1982 Tripoli AHSG failed to reach a quorum and had to be abandoned.

This Cold War conflict would in due course also spill over into the ACHPR process starting with the 1979 Monrovia AHSG which debated Decision 115 and continuing all the way through the drafting meetings. As Jallow, who attended in his personal capacity at the 1979 Dakar Meeting of Experts and as a member of the Gambian delegation at the Banjul Ministerial Meetings and the 1980 Freetown and 1981 Nairobi AHSGs, would record in his memoir of the ACHPR process: 'This political or ideological cleavage was to haunt and dog the drafting of the Charter and at times to threaten the integrity and survival of the process.'[160]

The *modus operandi* of the OAU

While the 'historic necessities' of the African Group and territorial integrity may have prompted and enabled an agreement on 'African Unity' to be reached, as the negotiations at Addis Ababa had demonstrated, agreement would not have been possible other than on the clear understanding that it did not oblige member states to surrender any part of their newly acquired sovereignty to the OAU. Almost without exception, the heads of state were determined to assert and protect 'their' sovereignty and to reject any measure of African political union. Thus, President Keita had explained that 'you have doubtless guessed my country's desire not to take advantage … of our constitution, which specifies the partial or total relinquishment of sovereignty in favour of any viable African organization'; while President Tsiranana pointed out that 'the Malagasy being deeply attached to their independence, which they attained recently and with difficulty, I would

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and International Law', Y. El-Ayouty/I.W. Zartman (eds), *The OAU after Twenty Years*, 62, 377–378 Annexe 5 'Ideological Groups in the OAU'.

159 Report on The OAU following the Khartoum Summit 27 September 1978, NA FCO 65/2139, 'Editorial', *African Index,* 31 July 1978, 7 and *Africa Research Bulletin,* 15 August 1980, 5733.

160 H.B. Jallow, *The Law of the African (Banjul) Charter*, 27.

not have the support of my fellow-countrymen, were I to approve any project of association, federal or even merely confederal in character'. In his summing-up of the debate, Prime Minister Balewa would therefore observe that 'there have been only a very few members who spoke on the desirability of having a political union. Almost all the speeches indicate that a more practical approach is much preferred by the majority.'[161]

The one African leader who did not accept such an outcome was, of course, President Nkrumah who was still intent on pressing for African political union. His opening gambit was an attempt to impede the setting up of the Provisional OAU Secretariat. However, despite Ghana's presence on the expert committee assisting in the preparations, his blocking efforts were baulked largely as a result of the robust response of Ethiopia and Senegal. Further spoilers were attempted in the lead-up to and at the February 1964 Lagos CoM, with much the same outcome as Liberia and Senegal made it clear that political union had been rejected at the 1963 Addis Ababa Conference. All that the meeting was willing to accept was a face-saving formula allowing for the means of promoting African unity to be studied by a Special Committee of the CoM. Its report would eventually tamely conclude that more time was needed to study the question and that further consideration should be passed on to the next CoM and AHSG.[162]

Ghanaian pressing continued unabated at the 1964 Cairo CoM where the overwhelming consensus was, once again, against further discussion although it was agreed that Ghana's proposal would be accepted onto the agenda of the 1964

161 OAU SUMMIT/CIAS/GEN/INF/33, 3, SUMMIT/CIAS/GEN/INF/14, 5 and SUMMIT/CIAS/GEN/INF/35, 2. C.O.C. Amate, *Inside the OAU*, 57–58, and Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, 4 limit support for President Nkrumah to Prime Minister Obote (Uganda) with some support from President Youlou (Congo-Brazzaville) for a supra-African Parliament; whereas Z. Cervenka, *The Organisation of African Unity and its Charter*, 10 suggests support was limited to Prime Minister Obote and, to a certain extent, Algeria, Mali, the UAR and Tanzania. President Keita's reference is to Mali's adoption of constitutional provisions permitting abrogation of sovereignty to an African Union; Cameroon, the CAR, Ghana, Guinea, Ivory Coast, Senegal, Togo and Upper Volta all adopted similar provisions (see E. Schwelb, 'The Republican Constitution of Ghana', *American Journal of Comparative Law,* 9/4 (1960), 640–642 and Egyptian Society of International Law Brochure No. 17, *Constitutions of the New African States: A Critical Survey* (Cairo, 1962), 7).

162 OAU CIAS/Res.1/Rev.1 26 May 1963, CM/Res.20 (II) and CM/Res.23 (II) and J.H. Polhemus, 'The Provisional Secretariat of the O.A.U., 1963–4', *Journal of Modern African Studies,* 12/2 (1974), 287–295; the description of President Nkrumah's pursuit of African political union following the 1963 Addis Ababa Conference has drawn on C.O.C. Amate, *Inside the OAU*, 76–78 and W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 323–356, 385–386.

Cairo AHSG.[163] The resulting presentation by President Nkrumah attempted to suggest that 'the OAU was a declaration of intention to unite. It was an optimistic beginning … But, we need more than this'. In an effort to mollify some of the concerns expressed by the heads of state, he rather disingenuously argued that 'union government' need not require 'abrogation of sovereignty' merely 'specific fields of common action … defence, foreign policy, and economic development (including a common currency for Africa)'. Although several African leaders, such as President Touré, President Apithy, President Tombalbaye (Chad) and Prime Minister Ben Bella, were prepared to accept that African government was an ideal to which all Africans should subscribe, somewhat in the manner of another African, St Augustine of Hippo, they added, 'but not yet'. Other prominent African leaders were not so sympathetic. President Senghor grudgingly conceded that it might be discussed, but warned, 'we have already pronounced … that we cannot at present form a pan-African government … we must not every so often indirectly reintroduce the problem'; Prime Minister Balewa also made clear that 'this idea of an African Government is a dream … or a nightmare … we, on our own free will, shall never surrender our sovereignty to any organisation'; while President Ahidjo and President Bourguiba were reluctant even to consider 'studying' the possibility. Nonetheless, on Emperor Haile Selassie's suggestion, a compromise resolution was agreed by which the Ghanaian proposal for a 'Union Government of Africa' would be referred to the 'Specialised Commissions of the Organization of African Unity so that they may study the elements of African Unity in their different aspects'. All except President Nkrumah understood that this meant the end of any possibility of African political union for the foreseeable future.[164]

The 1964 Cairo AHSG had however awarded the 1965 AHSG to Ghana. For President Nkrumah, this afforded an apparently felicitous, further, opportunity to press his proposals. To impress his guests, at great cost he ordered the construction of a complex of buildings to host the AHSG but which, in the longer-term, it was hinted, might serve as the capital of Africa.[165] In early 1965, therefore, he began to prepare his political ground by discreetly circulating a draft constitution for a Union Government of Africa to a few, hopefully sympathetic, member states such as Algeria, Congo-Brazzaville, Dahomey, Egypt and Mali.[166] The finalised proposal put to the 1965 Accra AHSG provided that 'as a first step to continental union "we should set up now a full-time body of Executive Council

163 OAU CM/Res.35 (III); see also W.S. Thompson/I.W. Zartman, 'The Development of Norms in the African System', 7–24.

164 OAU AHG/PV.7 (I) debate and AHG/Res.10 (I).

165 M. Dei-Anang, *The Administration of Ghana's Foreign Relations*, 3–4 and W.S. Thompson, *Ghana's Foreign Policy, 1957–1966*, 358, 382–383.

166 Australian High Commission File No 212/20 Memo No 52 9 February 1965, NA FO 371/181813.

of the OAU to act as the executive arm of the Assembly of Heads of State and Government'". Surprisingly, his proposal met with some support, notably from Egypt, Guinea and Mali, and a resolution was therefore advanced that a committee be established to study the implications of a revision to the OAU Charter which such a proposal entailed. However, at Nigerian insistence, the resolution was put to a vote and, although it secured an absolute majority of votes, it failed to reach the two-thirds majority threshold required for adoption. In pique at such a narrow failure, President Nkrumah had to be talked down from his threat to leave the OAU.[167] To mollify the rejection, Emperor Haile Selassie persuaded the heads of state to accept yet another compromise resolution by which the Ghanaian proposal for an OAU 'executive body' would be examined by a six-man committee which would report back to the next AHSG. Even then that compromise was questioned by, among others, Nigeria who argued that this was not the correct procedure for considering, as would arise, an amendment to the OAU Charter.[168]

This marked the effective end of the line for African political union as in early 1966 President Nkrumah was deposed by the Ghanaian military and thereafter all clamour for change faded away. These deliberations over the nature of African unity had, however, served to delineate the political limitations of African unity. On the one side was the political expediency of that 'historic necessity', and on the other was the refusal by the African states to contemplate political union and the ceding of sovereignty that this would have entailed. This refusal was ideologically enshrined in the principle of non-interference in the internal affairs of the member states; non-interference that is, not only by one member state against another, but also by the OAU. It was laid down as Article III.2 of the OAU Charter but, even more, it was an outlook, if not an article of faith, that lay at the very heart of how the member states conceived of the OAU Charter. It had made the creation of the OAU possible and, thereafter, would enable it to survive.

Non-interference came to the fore again when Liberia was scheduled to chair the 1980 Lagos Extraordinary CoM which was to discuss the OAU's Year 2000 development plan. Reluctant to see Liberia in the chair so soon after the public execution of the deposed government, the CoM sent a message reaffirming the right of any member state to change its government 'in any way it sees fit' but requesting Liberia to exercise some restraint 'on purely humanitarian grounds' and out of 'respect for the principles of human rights'. To reinforce the message,

167 Cumming-Bruce to Chadwick, CRO 8 November 1965 and Smedley, British High Commission, Accra to Bottomley POL 128/1 Despatch No. 26 10 November 1965, NA DO 153/46.

168 OAU AHG/Res.28 (II). The debate among the heads of state is recorded in OAU AHG/PV.6 (II), AHG/PV.7 (II) and AHG/PV.8 (II); President Nkrumah summarises the position in AHG/PV.10 (II).

Nigeria refused to allow the Liberian delegation's plane bringing Foreign Minister Matthews to the meeting to land at Lagos forcing it to divert. At the subsequent 1980 Freetown AHSG, President Shagari (Nigeria) 'spoke of the tragic circumstances under which President Senghor … had to assume the interim chairmanship of the OAU', but when the AHSG stood in a minute's silence in tribute to President Tolbert, the Liberian delegation remained seated.[169]

Non-interference was not only expressed directly in the OAU Charter, but also indirectly in the *modus operandi* of the OAU which sought, deliberately, to limit the authority, scope and effectiveness of the OAU. At its most fundamental, it is affirmed by Article VIII which provides that the supreme, essentially the only, decision-making authority is vested in the AHSG, leading Boutros-Ghali to point out that 'the Assembly is the only real organ of the OAU'. Moreover, although AHSG resolutions required a two-thirds majority for approval, in practice, the AHSG operated largely through a process of consensus as many member states regarded voting as divisive. As Legum observed: 'Consensus politics is … a crucial aspect of the "African way of doing things", and finds its highest expression in the way the OAU conducts its business.'[170] It meant that, as its sponsors knew, the bar for adoption of Decision 115 and adoption of the ACHPR in 1981 allowed for hardly any dissension.

It was a practice that seems to have been set at the Preparatory Conference of Foreign Ministers when the Ethiopian Chairman noted: 'In past practices we have used the method of consensus. Don't ask me what that means, but we have used it effectively in other conferences … Is that agreed? Good!' The decision-making bar was, therefore, raised correspondingly higher in that there was rarely a vote without an indication of a consensus having already been reached.[171] However, as Amate describes, there was a tiny crack in the wall insofar as, at the 1967 Kinshasa AHSG, the often chaotic, time-constrained, AHSG agreed that all resolutions approved by the CoM should be adopted without debate in a single vote by the AHSG and this provided some scope for matters to be pushed through below the radar of the AHSG.[172]

A further limitation on the effectiveness of the OAU was the paltry importance heads of state attached to the AHSG. In the initial draft for an African charter presented to the 1962 Lagos Conference, it was proposed that the heads of state should meet at least once every three years; the 1962 Lagos Conference reduced this to every two years; and the final charter signed in December 1962

169 *Africa Research Bulletin,* 15 May 1980, 5649–5650 and 15 August 1980, 5730.

170 B. Boutros-Ghali, 'The Addis Ababa Charter – A Commentary', *International Conciliation,* 35 (1964), 45 and C. Legum, 'The Organisation of African Unity – Success or Failure?' 214.

171 OAU *Proceedings of the Summit Conference of Independent African States Verbatim Record Preparatory Conference of Foreign Ministers,* I-7 Item 5: The mode of decision.

172 C.O.C. Amate, *Inside the OAU,* 8, 21.

to an annual meeting.[173] At the 1963 Addis Ababa Conference, therefore, both the initial Ethiopian draft and the Sub-committee's subsequent draft proposed that the AHSG should meet on an annual basis. Still, several heads of state thought the AHSG should only meet on a biennial basis as, if anything of real importance were to arise in the interim, an emergency meeting of heads of state could be convened. As a result, the Special Commission's (final) draft was amended so as to allow for both options. However, in the final analysis, the majority view that annual meetings would enable heads of state to become better acquainted and thereby strengthen African unity prevailed.

Nonetheless, Tunisia would subsequently propose to the 1967 Kinshasa AHSG that the AHSG should meet every two years, the CoM annually and the remaining Specialised Commissions abolished, a revision that would have severely curtailed the OAU's effectiveness even further. Even so, as Amate has pointed out, 'very few Heads of State personally attend the sessions of the Assembly'.[174] In fact, in the case of President Senghor, it was suggested that he forced through a change in the timing of the AHSG for the sole purpose of avoiding a clash with his annual summer holiday in France.[175]

This dismissive approach by African leaders reflected their appreciation that although the OAU Charter obliges member states to 'coordinate and harmonize their general policies' to meet the purposes of the OAU, and to 'solemnly affirm and declare their adherence' to the principles of the OAU, in reality decisions are merely morally binding recommendations; indeed the Sub-committee draft of the OAU Charter had even revised the obligation from 'unify' to 'harmonize' to emphasise this point.[176] As Padelford therefore notes, there are no

173 Federal Ministry of Information, Nigeria, *Lagos Conference of Heads of African and Malagasy States 25th–30th January 1962*, 250–251, 511, Federal Ministry of Information, Nigeria, *Conference of Heads of African and Malagasy States 25th–30th January 1962, Proposed Charter of the Inter-African and Malagasy States Organisation*, 4 and L.A. Marinelli, *The New Liberia: A Historical and Political Survey*, 212 Appendix 14 'Charter of the Inter-African and Malagasy Organisation', Lagos, 21 December 1962.

174 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1 Section 1*, COMM.1/EMPC/1 17 May 1963 (Ethiopian draft), CIAS/Comm/Report/1 24 May 1963 (Sub-Committee), CIAS/SP.COMM/CHARTER (Special Commission) 24 May 1963 and C.O.C. Amate, *Inside the OAU*, 66–67.

175 Z. Cervenka, *The Organisation of African Unity and its Charter*, 48. After 1971, the OAU AHSG meetings were moved from September to June; see Langridge (British Embassy, Dakar) to Goodall 4 June 1971, NA FCO 31/924. C.O.C. Amate, *Inside the OAU*, 3 specifically identifies President Kenyatta, President Banda, President Houphouet-Boigny, Colonel Gaddafi and President Bourguiba as regularly missing in action.

176 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol.1, Section 1*, COMM.1/EMPC/1 17 May 1963, CIAS/Comm/Report/1 24 May 1963 (Sub-Committee) and CIAS/SP.COMM/CHARTER

enforcement provisions in the OAU Charter; non-interference means the structure is designed 'to promote cooperation, not to exact it; to urge collaboration'.[177]

This was most clearly apparent in the OAU's response to Malawi's refusal to break-off trade and diplomatic relations with South Africa, the most sensitive of all issues for the OAU. Initially, most African leaders were sympathetic to Malawi's inescapable economic reliance on South Africa. However, that sympathy largely faded when, in September 1967, Malawi established diplomatic relations with South Africa, contrary to both OAU and UNGA policy, and, in May 1970, became the first black African state to host Prime Minister Vorster on a state visit. It, perhaps, ought to have come as no surprise as President Banda had famously quipped that, for the sake of Malawi, he was prepared to trade with the devil; and, indeed, following this *rapprochement*, Malawi obtained substantial foreign currency loans and technical assistance from South Africa.[178]

At the same time as Malawi was moving diplomatically closer to South Africa, the Fifth Summit Conference of East and Central African States held in Lusaka in April 1969 was meeting to hammer out a strategy for dealing with South Africa. Its primary conclusion, set out in the Lusaka Manifesto, was that although peaceful progress towards an ending of apartheid and majority rule was to be preferred, until South Africa was prepared to accept that path, support for the armed struggle was the only possible policy option.[179]

Somewhat foolishly, then, in late 1970, President Houphouet-Boigny, who had hitherto shown only limited interest in South Africa, was drawn into the debate. It was inevitable, therefore, that Malawi's actions and President Houphouet-Boigny's critical comments on the Lusaka Manifesto would be raised at the March 1971 Addis Ababa CoM. In a furious exchange, although the Ivory Coast refused to debate the issue outside of the forthcoming AHSG, the March 1971 Addis Ababa CoM ended with adoption of the 'Declaration on the

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(Special Commission) 24 May 1963. Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, 5 suggests that the promotion of 'political and diplomatic cooperation' from fourth to first in the listing of policies to be coordinated and harmonised in OAU Charter Article II 'Purposes' was 'probably' initiated by Ghana; see Z. Cervenka, *The Organisation of African Unity and its Charter*, 48.

177 N.J. Padelford, 'The Organization of African Unity', *International Organization,* 18/3 (1964), 535.

178 H.B.M. Chipembere, 'Malawi's Growing Links with South Africa: A Necessity or a Virtue?', *Africa Today,* 18/2 (1971), 27–47 and P. Wallensteen, 'Dealing with the Devil: Five African States and South Africa', *Instant Research on Peace and Violence,* 1/3 (1971), 85–99.

179 Government Printer, *Fifth Summit Conference of East and Central African States, Manifesto on Southern Africa, Lusaka, 14th–16th April 1969* (Lusaka, 1969) and The Lusaka Manifesto, UN A/7754 7 November 1969 accompanying UNGA 24/2505 20 November 1969.

Question of Dialogue'. This endorsed OAU policy that OAU Charter Articles II and III and the 1969 Lusaka Manifesto were 'the only objective basis for any meaningful solution to the problems of apartheid, racial discrimination and colonialism in Africa' and that 'there exists no basis for a meaningful dialogue with the minority racist regime of South Africa'. This endorsement provoked a walk-out by the Ivory Coast, Gabon, Dahomey, Togo and Upper Volta supported by Lesotho, Madagascar, Malawi and Swaziland, all of whom had also voted against the declaration. The majority were also able to secure adoption of several other resolutions including a request to the UN Security Council to convene a special session to discuss further measures that might be taken in support of 'decolonization, the struggle against apartheid, racial discrimination in Africa, and withdrawal of foreign occupation zones from African soil'. Scornful of these decisions, President Houphouet-Boigny demonstratively reiterated his earlier observations that OAU policy towards South Africa had not worked and that, in any event, South African internal affairs were a matter for South Africa alone and for that reason a boycott potentially created a bad precedent for relations between member states.[180]

Although six states voted against, the March 1971 Addis Ababa CoM's endorsement was adopted and the AHSG also agreed to increase several-fold contributions to the Liberation Committee and to invite Cabral, leader of the Guinea-Bissau liberation party, to address the AHSG.[181] Tanzania also presented a paper arguing that OAU membership should be subject to compliance with its anti-colonialism and anti-apartheid policies. With Lesotho, Malawi and Uganda specifically in mind, it argued that: 'The policies pursued by member states on fundamental questions of African freedom and dignity have to be taken into account. The O.A.U. should deny membership to those governments that refuse to carry out the Organization's decision on how to combat South Africa, Rhodesia and Portuguese colonialism.' In view of Uganda's arms sales to South Africa, Tanzania also posed the question: 'Is that not a matter for consideration in relation to Uganda's continued membership of the OAU? Tanzania is arguing that it should be.'[182] This was particularly pertinent as the August 1970 Addis Ababa CoM had specifically condemned arms sales to South Africa.[183] President

180 OAU CM/St.5 (XVII), CM/Res.241/Rev.1 (XVII), CM/Res.242/Rev.1 (XVII) and CM/Res.243 (XVII), Y. Tandon, 'South Africa and the O.A. U.: The Dialogue on the Dialogue Issue', *Instant Research on Peace and Violence,* 2/2 (1972), 54–66 and D.C. Buxo, 'The "Dialogue Question" and the Recent OAU Summit in Addis Ababa' 25 June 1971, Commonwealth Secretariat, File 2006/42, CSLA.

181 E.J. Kisanga, 'Tanzania and the Organisation of African Unity (O.A.U.)', 103–104.

182 The O.A.U. and the Freedom Struggle, Paper by Government of the United Republic of Tanzania presented to the O.A.U. Heads of Government meeting in Addis Ababa, June 1971, NA FCO 31/924.

183 OAU CM/Res.232 (XV).

Houphouet-Boigny's response, typically he had not attended the 1971 Addis Ababa AHSG and had therefore not argued his case in person, was to announce that he did not consider himself bound by this decision. Malawi simply ignored the injunction. Yet there was never at any point a serious possibility that either state would be expelled from the OAU, nor was it likely that, despite the efforts of President Nyerere, Uganda would be thrown out.[184] It was, therefore, hardly to be expected that African political leaders would be prepared to contemplate delegating the enforcement provisions of any African human rights mechanism to an outside body or to imagine that even the OAU AHSG would be prepared to condemn one of its own.

The exclusive authority of the AHSG was further cemented by the limitations placed on the CoM and the Secretariat. Initially, the role of the CoM had been poorly defined. In time, it might have emerged as a decision-making body of sorts, but its wings were clipped following the 1965 Addis Ababa Extraordinary CoM's response to the Rhodesian UDI crisis. In a moment of anger, it had adopted a resolution declaring that if, within ten days, 'the United Kingdom does not crush the rebellion and restore law and order, and thereby prepare the way for majority rule in Southern Rhodesia … the Member States of the OAU shall sever diplomatic relations … with the United Kingdom'. The vote was unanimous although subsequently Gabon, The Gambia, Libya, Malawi and Rwanda expressed reservations. According to Foreign Minister Riad (Egypt), the resolution was an expression of African frustration at the UK's failure to act against the Smith regime: 'The rupture symbolized the sense of deep anger and frustration among all Africans, and particularly the black Africans. They were weak and suffered from racial complexes from which they, the Arabs, were happily free. The … meeting had been ruled by emotion and not logic.' In the event, only Algeria, Congo-Brazzaville, Egypt, Guinea, Ghana, Mali, Mauritania and Tanzania would implement this decision which Kenya described as 'unnecessary'.

It soon became apparent, though, that the CoM had exceeded its authority. A further CoM was proposed but opposed and it was therefore only at the 1966 Addis Ababa AHSG that Prime Minister Margai (Sierra Leone) 'queried that such a decision could be taken without the approval of the Assembly of Heads of State and Government … the Council of Ministers was only empowered to make recommendations and had no authority to take decisions on a major issue'. President Ahidjo, with the support of many other member states, therefore called for the decision to be withdrawn. President Tolbert, too, decried that 'should the practice of passing resolutions impossible to implement continue, it

184 OAU The Principles of the OAU Charter, the Lusaka Manifesto, Dialogue and Future Strategy, Addis Ababa, June 1971, *Déclaration de Son Excellence Monsieur Félix Houphouët-Boigny, Président de la République de Côte-d'Ivoire* 1 July 1971 (Abidjan, 1971), 7–10 and Z. Cervenka, 'The Organisation of African Unity in the Seventies', *Verfassung und Recht in Übersee* 5/1 (1972), 34–37.

would bring discredit to the O.A.U.'. Privately, the Ethiopians informed the UK that 'there could be no question of the Foreign Ministers again losing their heads and exceeding their power. If they did they would simply be disowned … The time had also come when the members must reassert the organization's basic principle of unanimity.'[185]

All the same, shortly thereafter, the February 1967 Addis Ababa CoM's adoption by acclamation of a resolution condemning Israel also went further than was deemed acceptable and would also be repudiated by several heads of state who once again questioned the CoM's authority to adopt such a resolution.[186] Thereafter, though, the CoM largely understood its place, which was to handle technical and administrative matters and make the initial assessment of resolutions and the agenda for the AHSG. This status was formalised in 1970 when the AHSG reserved the February CoM meeting for 'Budgetary and related matters only' and the pre-AHSG CoM meeting for finalising reports and preparing the agenda and draft resolutions for the AHSG.[187]

Operational matters were similarly constrained in that they were assigned to an under-funded Secretariat under an Administrative Secretary-General reporting to the OAU Chairman, by custom, the head of the member state in which the AHSG had last been held. Reflecting the reluctance to delegate authority, the terms of reference for the Secretary-General provided that the Secretariat would only act, in the words of President Senghor, as 'an administrative body and not a political one; a body which implemented decisions but did not make them.'[188] The status of the Secretary-General was further undercut by its description as 'Administrative' and the election of Assistant Secretary-Generals by the

185 OAU ECM/RES.13 (VI), From Cairo to Foreign Office, Meeting with Foreign Minister Riad (Egypt) 7 December 1965, NA FO 371/181607, Russell, Addis Ababa to Foreign Office No. 75 25 February 1966, NA FO 371/187822, Editorial, 'O.A.U. Resolution', *Ghana Times,* 10 May 1966, 5, T.O. Elias, *Africa and the Development of International Law* (Leiden, 1972), 149–160 (includes the Sudan and Somalia but excludes Algeria), N. McKeon, 'The African States and the OAU', 403–404 (includes the Sudan and Somalia) and D. Nworah, 'Nationalism Versus Coexistence: Neo-African Attitudes to Classical Neutralism', *Journal of Modern African Studies,* 15/2 (1977), 226.

186 The 16th Ordinary Session of the Council of Ministers of the OAU, Campbell, British Embassy Addis Ababa, FCO Diplomatic Report No. 198/71 Africa (General) 8 March 1971, Paragraph 2, NA FCO 31/925, J. Woronoff, *Organizing African Unity*, 167 and C.O.C. Amate, *Inside the OAU*, 11.

187 See C.O.C. Amate, *Inside the OAU*, 4–22 for a description of AHSG and CoM procedure in practice.

188 President Senghor, quoted by B.D. Meyers, 'The OAU's Administrative Secretary-General', *International Organization,* 30/3 (1976), 510. C.O.C. Amate, *Inside the OAU*, 74 reports that where the host President has already had his 'turn', notably when the AHSG meets in Addis Ababa, the AHSG elects an alternative Chairman.

AHSG. In 1978, after a recommendation by a committee of experts reviewing the workings of the Secretariat was accepted by the AHSG, 'Administrative' was dropped from the Secretary-General's title but in other important respects the AHSG did not accept the committee's recommendations, preferring to retain the inefficiencies of the existing structure and the limitation on the role of the Secretary-General. Unsurprisingly, therefore, when President Nimeiri (Sudan) proposed in 1973 and again in 1977 and 1978 that 'the specialised bodies and the General Secretariat should be reinforced in order to improve their performance and their ability to take initiatives', his proposals were rejected by the AHSG.[189]

At various times though, the Administrative Secretary-General sought to assert himself, notably Telli, although his proposal for a strong Secretariat was met with 'contemptuous indifference … by the Heads of State'. By 1972, Telli's approach had therefore so alienated most of the member states that he was opposed for re-election and someone who better understood the administrative function of the position was sought in his place.[190] However, his successor, Ekangaki (Cameroon), fared little better following his appointment of Lonhro as an adviser to the OAU. Although Lonhro's appointment was controversial in view of its dubious connections in Southern Africa, it also maintained a business relationship with almost twenty OAU member states and there seems little doubt that OAU Administrative Secretary-General Ekangaki had been specifically authorised to make the appointment. Nonetheless, many OAU member states felt that the decision should have been referred to the AHSG and he was therefore eventually forced to stand down.

In 1982, OAU Secretary-General Kodjo was also reminded of the limitations on his authority when he was castigated for approving the admittance of Polisario to the February 1982 Addis Ababa CoM. He argued that it was a purely administrative decision in that his hands were tied by the OAU Charter which provided for automatic acceptance once a two-thirds majority of member states had notified their acceptance. However, this interpretation was not amenable to several member states who felt that the decision should have been left to

189 C.O.C. Amate, *Inside the OAU*, 69, 79, Z. Cervenka/C. Legum, 'The Organization of African Unity in 1978: The Challenge of Foreign Intervention', A38 and 'Interview with Peter Onu', quoted by R.O. Ogunbambi, 'The Administrative Secretary-General in the OAU System: Some Interpretative Observations', *Nigerian Journal of International Affairs,* 14/1 (1988), 199; see also A.L. Adu, *Review of the Structure of the General Secretariat of the Organization of African Unity* (OAU, Addis Ababa, 1972) and M. Wolfers, *Politics in the Organization of African Unity*, 86–90. Edem Kodjo in 1978 was the first to hold the title Secretary-General.

190 B.D. Meyers, 'The OAU's Administrative Secretary-General', 517–518 and Crosby, British Embassy Addis Ababa, to Moss, East Africa Department, 4 November 1968, NA FCO 65/2050.

the AHSG.[191] Kodjo would therefore later describe the position of Secretary-General as 'both powerful and empty', an assessment that is most evident in the ACHPR process.[192]

For all intents and purposes, therefore, the OAU was born, and remained, a creature of the AHSG. It was little more than a 'club of statesmen who are obliged to subscribe to a small number of rules and practices of regional conduct' but with a wide degree of latitude and minimal risk of enforcement.[193] President Ahidjo also stressed that 'it should not be forgotten that the OAU is not a supra-national organisation and is not a substitute for the member states'.[194]

At the time of the Biafran war, however, President Nyerere complained that:

> The OAU is not a trade union of Africa's Heads of States … We must not just concern ourselves with our own survival as heads of states; we must be even more concerned about peace and justice in Africa than we are about the sanctity of the boundaries we inherited … The OAU must sometimes raise a voice against those regimes in Africa, including independent Africa, who oppress the peoples of Africa. [195]

However, by 1975, as the next AHSG would be chaired by President Amin (Uganda), Tanzania issued a statement admitting that 'the OAU acts like a trade union of the current Heads of State and Government, with solidarity reflected in silence if not in open support for each other … The reasons given by African leaders for their silence … is the non-interference clause in the OAU Charter.'[196] It was a point he would repeat in 1978 when he observed that the OAU 'served as a trade union for the heads of State and automatically protected them'.[197] In

191 R.O. Ogunbambi, 'The Administrative Secretary-General in the OAU System: Some Interpretative Observations', 193–197, H. Kitchen, 'Where Does the OAU Go From Here?' *CSIS Africa Notes,* 3 (1 September 1982), 1, 11–12, J. Damis, 'The OAU and Western Sahara', Y. El-Ayouty/I.W. Zartman (eds), *The OAU after Twenty Years*, 280–281, C.O.C. Amate, *Inside the OAU*, 79, C. Legum, 'The Organisation of African Unity – Success or Failure?', 213 and H.M.L. Beri, 'OAU Survives', 310–319.

192 Interview with Edem Kodjo, 10 December 2007, Lomé.

193 R.H. Jackson/C.G. Rosberg, 'Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood', 19.

194 *West Africa,* 27 August 1973, 1209 (reference from G.A. Nweke, *Harmonization of African Foreign Policies, 1955–1975: The Political Economy of African Diplomacy* (Boston, 1980), 168).

195 President Nyerere, quoted by E.J. Kisanga, 'Tanzania and the Organisation of African Unity (O.A.U.)', 107.

196 'The O.A.U. Meeting in Kampala: An official statement', Ministry of Information and Broadcasting, Dar es Salaam 25 July 1975, C/2682/75 IS/I.301 (printed in *Transition* 50 (1975–76), 87, 91, 95); see also 'Why Tanzania did not attend the OAU Summit Meeting in Uganda', *African Currents*, 3 (1975), 21–25.

197 Comments on the occasion of a reception for Foreign Minister Richard (Madagascar) 10 December 1978, quoted by *Africa Diary*, 5–11 March 1979, 9413–9414.

response, President Senghor readily conceded that the OAU was indeed a syndicate of heads of state, but that: 'It cannot be anything else.'[198] Legum concurred pointing out that 'the reality is that no organisation like the OAU can hope to survive once it attempts to intervene – however good the reasons – in the internal conflicts of one of its members'.[199]

There have, nonetheless, been several occasions in which the OAU has come under pressure to relax its stance on non-interference, although human rights considerations were never a factor in such deliberations. The most urgent have been those cases in which the AHSG was obliged to take sides in a dispute between member states or competing factions within a member state. For example, the 1964 Cairo CoM refused to allow Prime Minister Tshombe (Congo-Léopoldville) to attend the 1964 Cairo AHSG 'because of his collaboration with the governments of South Africa and Portugal', his use of foreign mercenaries and after King Hassan II (Morocco) had insisted that 'he cannot sit at the same table as the murderer of Patrice Lumumba'. Although President Kasavubu (Congo-Léopoldville) protested at this blatant interference in the internal affairs of his country, and received some support from other heads of state, notably President Tsiranana, Prime Minister Tshombe had made himself so personally unpopular with the OAU leaders that even after further debate the CoM was not prepared to reverse what it now sensitively described as an unofficial message.[200] A similar situation arose at the 1980 Khartoum CoM when the Comoros Islands delegation was turned away on the grounds that its legitimacy derived purely from a coup sponsored by foreign (white) mercenaries.[201]

However, the greatest pressure on the AHSG to intervene occurred in respect of the attempted secession from Nigeria by Biafra in May 1967. Although it was suggested, notably by President Nyerere, that the principle of self-determination trumped the principle of territorial integrity, from the outset, Nigeria maintained

198 President Senghor January 1979, quoted by A.R.M. Babu, 'Africa and Human Rights', *New African,* 139 March 1979, 84–85 and S. Diallo, 'Senghor: Une interview du président sénégalais dirigée par Siradiou Diallo', *Jeune Afrique,* 940 10 January 1979, 48. A.S. Touré, *The United States of Africa* (Conakry, 1977), 54 also argued that 'the OAU is by no means a trade union of governments or Heads of State'; rather, its main purpose is African unity.

199 C. Legum, 'The Organisation of African Unity – Success or Failure?' 209, 213; he also attributes to President Nkrumah's supporters in 1963 the description of the OAU as a 'trade union of African presidents'.

200 C.O.C. Amate, *Inside the OAU,* 431–433, C. Hoskyns, *Case Studies in African Diplomacy I: The Organisation of African Unity and the Congo Crisis 1964–65* (Dar es Salaam, 1969), 9 and A. Bolaji Akinyemi, 'Organisation of African Unity: The Practice of Recognition of Governments', 67–69.

201 'Coup d'Etat', *Africa Research Bulletin,* August 1975, 3736–3737, 'Comoro Islands: President Overthrown', *Africa Research Bulletin,* May 1978, 4849–4850 and E. Kannyo, 'The Banjul Charter on Human and Peoples' Rights', 135.

that this was an internal matter and therefore outside the scope of the OAU. It warned that recognition of Biafra by any member state would be unwelcomed and regarded as interference in its internal affairs. This view of the crisis was essentially accepted by the OAU and was not seriously challenged at any time by the AHSG, although Gabon, Ivory Coast, Tanzania and Zambia would recognise Biafra as an independent state. Notwithstanding Nigerian opposition, the crisis was discussed at the 1967 Kinshasa AHSG though there was little doubt as to the outcome. The heads of state, terrified of opening Pandora's Box, reaffirmed 'their adherence to the principle of respect for the sovereignty and territorial integrity of Member States', reiterated 'their condemnation of secession in any Member States' and recognised 'that situation as an internal affair, the solution of which is primarily the responsibility of Nigerians themselves'.[202]

This interpretation was then reaffirmed by the Consultative Commission of six heads of state, which had been constituted to assist in the resolution of the crisis. At the start of their first mission to Nigeria in November 1967 – they would only meet with the Biafran side on the second mission – Emperor Haile Selassie, the Commission's head, stressed that: 'The OAU is in both word and deed committed to the principle of unity and territorial integrity of its Member States (which) is not negotiable … It is … an essential ingredient for the realization of the larger and greater objective of African Unity.' It was a message he would repeat at the Commission's departure, 'any solution of the Nigerian crisis must be in the context of preserving the unity and territorial integrity of Nigeria.' Nor was Biafra accorded any courtesy when it was proposed that matters might be expedited if both parties were to address the 1968 Algiers AHSG as the suggestion was totally rejected by Algeria, the host, and Nigeria.[203] The AHSG resolution that was adopted following the debate on the Consultative Commission's report, though expressed more sensitively than the resolution adopted the previous year, was therefore equally absolute in its call for 'all Member States of the United Nations and the OAU to refrain from any action detrimental to the peace, unity and territorial integrity of Nigeria'.[204]

Further dilemmas would arise following General Amin's January 1971 coup in Uganda. At the March 1971 Addis Ababa CoM meeting, the more radical states opposed the credentials of the Ugandan Foreign Minister Kibedi on the grounds that the coup had been orchestrated from outside, that is by the UK

202 OAU AHG/RES 51 (IV).

203 OAU General Secretariat, *Report of the OAU Consultative Committee on Nigeria* (Addis Ababa, 1968), Nigerian National Press, *Report on the OAU Consultative Mission to Nigeria* (Apapa, undated), 9, Z. Cervenka, *The Nigerian War 1967–1970: History of the War, Selected Bibliography and Documents* (Frankfurt am Main, 1971), L. Tita-Ghebdinga, *African and O.A.U. Diplomacy on Dual Paradigms of Self-determination 1945–1985*, 165–185 and C.O.C. Amate, *Inside the OAU*, 440–445.

204 AHG/Res. 54 (V).

and Israel, and, worse, that President Amin had breached the non-interference clause by his embroilment in the Sudan and that he was an imperialist who had refused to condemn British arms sales to South Africa. Accreditation was also sought by Odaka, the Foreign Minister in the former Obote government, but he was also refused the Uganda CoM seat. In contrast, the more moderate states pointed out that the coup was less bloody and more popular than most African coups. Responding to this threat of exclusion, the waiting Ugandan delegation reminded the OAU that the overthrow of President Obote was a 'purely internal matter' and they threatened the withdrawal of Uganda from the OAU if they were not immediately seated at the CoM table. To side-step the problem, the March 1971 Addis Ababa CoM adjourned *sine die* (for at least several months) until member states had finally decided whether they would recognise President Amin's government.

The problem was compounded, though, in that the 1971 AHSG was already scheduled to be held in Uganda. If the venue was now to be changed a two-thirds majority vote was urgently needed. The Ugandan response was to pointedly admonish the heads of state that

> the question of a change of government … is purely an internal matter which is not the concern of the OAU … 20 member states of the OAU … now taking their seats … have had changes of Government through coups and counter-coups … if the OAU tries to involve itself in the internal affairs of member-States, it is going to destroy itself.[205]

President Amin also circulated a pamphlet to all OAU governments reminding them of the rules set out in the OAU Charter and Rules of Procedure and pointing to the violations of those rules by President Kaunda's consultations, as OAU Chairman, on a change in venue.[206] When, therefore, the change in venue was approved, President Amin boycotted the AHSG meeting. Credentials, though, were a separate matter from criticism. In 1973, when former President Obote wrote to the OAU to request a debate at the AHSG of his charges of mass-murder against President Amin, as Legum records, his letter was not accepted for circulation to member states. This was simply not an issue that could be debated at the AHSG.[207]

205 British Ambassador Campbell, FCO Diplomatic Report No. 198/71 8 March 1971, 'The 16th Ordinary Session of the Council of Ministers of the OAU', NA FCO 31/925 and *Africa Research Bulletin,* 15 March 1971, 2008–2009.

206 The Republic of Uganda, *Uganda and the Organization of African Unity* (Kampala, 1971), File 2006/28, CSLA; see also *The Contributions by His Excellency the President of the Republic of Uganda, Al-Hajji General Idi Amin Dada, at the OAU Tenth Annual Summit, Addis Ababa, May 1973* (Kampala, 1974).

207 C. Legum, 'The Organisation of African Unity – Success or Failure?' 212–213; the reference is to Letter to the AHSG of the OAU, A. Milton Obote, May 1973, Judith Hart Papers 2/7, Labour History Archive and Study Centre, People's History

In 1975, yet further difficulties arose when the OAU was faced once again with the prospect of President Amin hosting the AHSG, a prospect that OAU Assistant Secretary-General Onu described the OAU General Secretariat as contemplating 'with the greatest trepidation'. He explained that, by then, President Amin's style of government had been well-established and that: 'It was the fault of the African leaders who … had not the wit or the courage to be prepared with an alternative to Amin's offer.' In the event, only Tanzania, together with Zambia and Botswana, would boycott the meeting.[208]

Such difficulties would continue, however, even in the debate over the manner of President Amin's leaving. In 1978 President Amin decided to annexe Tanzania's Kagera salient so as to secure what he described as Uganda's natural frontier. He anticipated support from other African states seeking territorial adjustments but instead found a 'closed front of African states' even from his friends 'all insisting that existing frontiers be respected'. His biggest disappointment seems to have been the absence of support from Libya which had become concerned about a possible counter-force of Cuban troops allied with Tanzania. A UK diplomatic despatch also reported that President Amin had been advised by Etiang, the Ugandan OAU Assistant Secretary-General, that all Africa condemned his action but that President Amin's reaction had been that he had his reasons and that in any event 'the OAU was "a woman" and could do nothing about it'.[209]

When, though, in early 1979, Tanzania responded by repelling the Ugandan invasion force and continuing its pursuit into Uganda in order to overthrow President Amin, Libya submitted a request to the UN Secretary-General that the UN should act promptly against this use of force.[210] It was followed by a counter-communiqué from Angola and other front-line states describing Uganda's invasion as an 'unprovoked and premeditated war of aggression', and a parallel request from Uganda for an urgent meeting of the UN Security Council to

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Museum, Manchester, A. Bolaji Akinyemi, 'Organisation of African Unity: The Practice of Recognition of Governments', 69–71 and C.E. Welch, Jr., 'The OAU and International Recognition: Lessons from Uganda', 103–117.

208 Williams British High Commission, Lagos to Heath 19 August 1975 enclosing Report of Meeting of His Majesty's Ambassador with Peter Onu, Assistant Secretary-General of the Organization of African Unity on 3 June 1975, NA FCO 65/1595.

209 OAU Intra-African Disputes, Munro to Mansfield 27 November 1978 enclosing a translated report of Uganda/ Tanzania conflict: OAU mechanism prepared by the West German Embassy in Kampala, NA FCO 65/2140, Carruthers, Addis Ababa to Munro, FCO 7 December 1978, NA FCO 31/2401 (reference from G. Roberts, 'The Uganda–Tanzania War, the Fall of Idi Amin, and the Failure of African Diplomacy, 1978–1979', *Journal of Eastern African Studies,* 8/4 (2014), 692–709) and E.J. Kisanga, 'Tanzania and the Organization of African Unity (OAU)', 117–119.

210 UN S/13087 15 February 1979 (Libya to UN Secretary-General).

consider Tanzanian aggression. However, eight days later, Uganda's request was withdrawn 'as a result of an appeal by the African Group in New York to the Government of Uganda'; it was an African problem and, therefore, a problem for the Africa states alone, not the UN.[211] In the meantime, at the February/March 1979 Nairobi OAU CoM, President Nyerere's refusal to consider arbitration unless the OAU first condemned President Amin's invasion created some considerable dismay and an upsurge of sympathy for President Amin. That sympathy would linger on beyond President Amin's overthrow inflamed by the continuing presence in Uganda of Tanzanian military forces with the result that President Amin's ghost would return to haunt the 1979 Monrovia AHSG.[212]

This, then, the OAU, more particularly the AHSG, this 'trade union' of African heads of state, was the political forum in which the possibility of the ACHPR would be determined. As almost all interested parties understood, it was the only forum which could endow a regional human rights policy statement with legitimacy. It was, though, a forum in which, as President Amin had pointed out, (too) many of its members had acquired their places through coups, or were sustained by political systems and military force which appropriated political authority to one party or one man; a forum in which the principle of non-interference was considered absolute; and a forum that was riven by such personal, territorial and political disharmony as to limit severely any prospect of reaching the consensus that AHSG decision-making required. A forum, too, whose decisions member states were under no obligation to ratify or facilitate. It was also a forum determined to assert its authority over African affairs, defined in the widest possible sense, and on its guard against subtle and insidious attempts by (Western) neo-colonialism to insert itself into the fabric of African patterns of communal life. A less propitious, whether out of disapproval, disinclination or dysfunction, political environment from which a human rights charter based on the paradigm of the UDHR might emerge could scarcely be imagined. Yet this was the path that the ACHPR would have to tread and therefore the obstacles that would have to be overcome if a sufficient consensus was to be reached in favour of President Senghor's OAU AHSG resolution in 1979 and adoption of the ACHPR itself in 1981.

211 UN S/13141 15 March 1979 (Angola Communiqué of Front-line States Meeting 3–4 March 1979) and S/13204 28 March 1979 and S/13228 6 April 1979 (Uganda to the President of the UN Security Council), Fort to Rosling, Informal consultations of the Security Council on the Ugandan request for a meeting, 30 March 1979, Ugandan request for a Security Council meeting, 1 April 1979, NA FCO 31/2685 and *Yearbook of the United Nations 1979*, 33, 262–263.

212 'Tanzania/Uganda: OAU Mediation' Tel No. 925 Moon to FCO 11 December 1978, NA FCO 31/2401 and 'OAU Council of Ministers 32nd Session, Nairobi' Le Breton to Robson 12 March 1979, NA FCO 32/2683.

Chapter 4

African Intellectual and Cultural Revanchism – The Predicament of Black Disalienation

Just as the 'historic necessity' of African political and economic revanchism sought to repudiate the post-war international settlement that had accommodated the colonial system and an unfair international economic order, so the 'historic necessity' of African intellectual and cultural revanchism sought to confront the pretensions of Western universalism across the spectrum of intellectual and cultural thought and praxis.[1] Still, as Soyinka would point out, both 'necessities' had to be understood as essentially a single symbiotic whole that aimed at the recovery of African dignity in all its forms:

> The cultural revolution is part and parcel of the historic political revolution which has changed the face of Africa during the last decade … The economic revolution is still under way … The cultural revolution in Africa is the revolt against Western cultural domination. It is the flowering of African creativity as a result of the newly acquired political *uhuru*.[2]

1 The term 'black disalienation' is adopted from F. Fanon's 'An Essay for the Disalienation of Blacks', which he attempted to submit as his doctoral thesis; it was subsequently published as F. Fanon, *Peau noire, masques blancs* (Black skins, white masks) (Paris, 1952); see D. Macey, *Frantz Fanon: A Life* (London, 2000), 128–129 and A. Cherki (trans. N. Benabid), *Frantz Fanon: A Portrait* (Ithaca, 2006), 25. Almost all the first-generation of post-independence African leaders were familiar with his writings.

2 'Language as Boundary', W. Soyinka, *Art, Dialogue and Outrage: Essays on Literature and Culture* (Ibadan, 1988), 138–145 (originally delivered at the UNESCO Meeting of Experts on 'The Influence of Colonialism on the Artist, his Milieu and his Public in Developing Countries', Dar es Salaam, Tanzania, 5–10 July 1971 and, subsequently, as the Keynote Address at the Ministry of Education Symposium on the Question of a National Language, Kaduna, 1978); in 1986, Soyinka became the first African Nobel Prize winner for Literature. *Uhuru* is the Swahili word for 'Freedom', most commonly associated with the political writings of President Nyerere and President Kenyatta.

As regards the individual strands of the intellectual and cultural revanchist movement, whereas they can and should be interpreted on their own particular terms, they can however also be seen collectively as responding to broadly common threads of African concern – a desire to see recognition of a difference and a distinct African identity arising out of African life and experience; an African contribution to intellectual or cultural thought as valid as an end in itself and as a contribution to the 'universal' (in opposition to the idea of a universal determined by and through Western categories); limitations on the penetration of Western languages, categories and concepts in discussion of the African particular; and a mediation of the conflict between the pull of African traditions and the push of Western science and modernisation.

By its very nature, African intellectual and cultural revanchism's journey of recovery was deeply existential and intense. Mafeje would describe that journey as the 'question of the liberation of the Black man, his identity or the meaning of "being-Black-in-the-world"'.[3] Its *cri du coeur* was summed up by Diop in his address to the 1959 Rome Congress of Negro Writers and Artists (1959 Rome Congress): 'No other coloured race has played so humiliating a part in Western culture. No other has experienced to the same extent slavery, racialism and colonisation. So inhuman a position in history could not but give rise in us the need to rehabilitate that upon which people have been so ready to cast suspicion.'[4] Some twenty years later, with the African intellectual and cultural elite having enjoyed only limited success in stemming the Western universalist tide and the ACHPR process about to be set in motion, Towa still thought it valid to reiterate that *cri* in similar existential terms:

> Normally, the identity of a people or a civilization is not a problem … Each people displays certain characteristic traits which differentiate it … The situation becomes qualitatively different when the consciousness of self, of this particularity, becomes an obsession, when it invades the most intimate depths of subjectivity … taking on the dimensions of a veritable ideology. It then becomes necessary to speak of a crisis of identity.[5]

3 A. Mafeje, *African Philosophical Projections and Prospects for the Indigenisation of Political and Intellectual Discourse* (Harare, 1992), 9 (reference from I.G. Shivji, 'The Rise, the Fall and the Insurrection of Nationalism in Africa', Paper presented at CODESRIA Conference, 'East Africa: In Search of National and Regional Renewal' 30–31 October 2003, Addis Ababa http://ccs.ukzn.ac.za/files/shivji.pdf, last accessed 9 September 2019).

4 A. Diop, 'The Meaning of this Congress', *Présence Africaine,* 24–25 (1959), 47.

5 M. Towa, 'Propositions sur l'identité culturelle', *Présence Africaine,* 109 (1979), 82. (The translation, as amended, is taken from T. Serequeberhan, *Our Heritage: The Past in the Present of African-American and African Existence* (Lanham, 2000), 2); see also 'Interview: Richard Bjornson with Marcien Towa', *Research in African Literatures,* 28/4 (1997), 172–181.

As to what should be done, the mission that the post-independence generation of the African intellectual and cultural elite was thereupon called to fulfil was spelled out by p'Bitek in a commentary, one of a plethora of such commentaries, on Africa's cultural revolution:

> Africa must re-examine herself critically. She must discover her true self, and rid herself of all 'apemanship'. For only then can she begin to develop a culture of her own. Africa must redefine all cultural terms according to her own interests. As she has broken the political bondage of colonialism, she must continue the economic and cultural revolution until she refuses to be led by the nose by foreigners … We must interpret and present Africa in our own way, in our own interests.[6]

In fact, by the mid-1950s, as African independence began to unfold, that mission had already begun to take flight and therefore by the late 1970s it had already ripened into unchallenged orthodoxy. Across the spectrum of African intellectual and cultural thought and praxis, new questions had emerged to challenge old certainties and, in turn, they were analysed and answered in revanchist terms always with the shared enemy of Western universalism and the perspective of African difference in mind. African intellectual and cultural revanchism was thereby woven into the fabric of African thought and praxis to the extent that its reach extended far beyond the intellectual and cultural elite into the realm of government policies and official declarations by the OAU and international agencies such as UNESCO and the World Council of Churches (WCC). This new intellectual and cultural orthodoxy could therefore hardly fail to inform the process by which the ACHPR was conceived, considered and composed.

The universal Christian church in Africa

The first stirrings of concerted African cultural protest against the domination of Western universalism seem to have irrupted from within the universal Christian church. In 1955, for example, at a conference on Christianity and African culture, Busia posed the rhetorical question: 'Can the African be Christian only by giving up his culture and ceasing to be an African?' While he was prepared to consider that 'moralities may be different applications of a single moral system', he nonetheless recalled Herskovits' 1947 statement to the UN Commission on Human Rights (CHR) on the UDHR and insisted that: 'No one should infringe on the right of other people to be different.' The problem, though, as he pointed out, was that this was precisely the attitude adopted by Christian universalism. He warned therefore that 'the people's interpretation of the universe must be

6 O. p'Bitek, *Africa's Cultural Revolution* (Nairobi, 1973), vii (the essays cover the period 1964–1971).

appreciated if Christianity, or any faith based on the universality of moral values, is to become meaningful within their culture'.[7]

Busia's rhetorical question reflected what was already by then a rising groundswell of African opinion increasingly disposed to press the universal Christian church for a reinterpretation of how its universalism should be practised and understood, a movement that came to be known as the 'African reformation'. In its initial phase of 'adaptation', sometimes described as 'indigenisation', 'acculturation', 'translation' or 'Africanisation', African Christians aspired to little more than changes to the day-to-day practices and liturgies of the church that would accord more sympathetically with traditional African customs and practices – Christianity with an African face. However, once the thrall of Christian universalism had been undermined, and with African confidence invigorated by political independence, the inexorable logic of reformation made further challenges to the claimed universalism of the Christian church inescapable. In this second phase, the challenge was taken up by African theologians who began to question the fundamental basis of Christian theology. How much was truly universal and, therefore, essential, and how much was being imposed on Africa by a neo-colonialist Western hierocracy?

Adaptation

Adaptation was essentially a protestation from below. Ordinary African Christians simply wanted to be able to pray and respond in a manner more in keeping with their traditional way of life: 'I want to think like an African, worship like an African, sing like an African and live like an African.' While this protestation would initially have been voiced at congregational level, the strength of feeling must have been such as to convince African church leaders that further consideration was warranted at more exalted levels of the church. Increasingly, therefore, adaptation was taken up as a topic of debate at the major church conferences of the time, the first of which was the 1958 All Africa Conference of Churches (AACC) Ibadan Preparatory Conference. The aim of this conference was to prepare the ground for a foundational conference of African Christian unity and in that sense it is directly comparable to the 1958 Accra CIAS – indeed, by the time of the 1981 AACC Nairobi Assembly, the AACC was already being described as the 'OAU of the Churches'. However, the conference theme, 'The Church in Changing Africa', was also intended to deliver a message in that the organisers sought to ensure that the majority of delegates were Africans not foreign missionaries. The conference report was therefore able to trumpet that 'here for the first time the African Church found its voice'.

7 K.A. Busia, 'The African World View', Christian Council of the Gold Coast, *Christianity and African Culture: The Proceedings of a Conference held at Accra, Gold Coast, May 2nd–6th, 1955, under the auspices of the Christian Council* (Accra, 1955), 1–6.

Adaptation was introduced at the conference by a formal paper from Nketia who explained that he was primarily concerned with 'the problem of Christian worship in Africa' and therefore posed the rhetorical question: 'Why should the African be forever condemned to worship only in the Western idiom?' – and argued: 'The creation of forms of Christian worship is not the prerogative of the West.' His own conclusion was that if the Christian churches are to thrive in Africa then it was necessary to Africanise Christian worship: 'How is this to be done? What elements must be changed?' The aim of 'Africanization', he suggested, ought to be 'the use of familiar means of expression to enable the African worshiper to understand better and feel more deeply', and this called for attention to be paid to the 'media of worship'; language and music, in particular, the use of African instruments (drums) and dancing as against the hopeless dissonance of hymns sung by Africans in Western metrical forms.[8]

The following year, adaptation was also addressed by the 1959 Rome Congress. The 1956 Paris Congress of Negro Writers and Artists (1956 Paris Congress) had barely touched on the issue of religion, but, by 1959, adaptation had emerged as a subject of widespread African interest and it had therefore earned its place on the agenda.[9] As a result, several African clerics attended the 1959 congress and two formal papers addressed the adaptation debate. For example, James' paper asked: 'Already World Christianity has the sacred meal, the Mass. Would it be asking too much of African Christianity to enrich it with the Sacred Dance?'; while Sastre referred to 'The Spiritual Imperialism of Christianity' and, in commenting on the increasing desire in Africa 'to affirm the African personality', pondered critically: 'Has theology even attempted to understand this tremor which is stirring throughout … Africa?' The debate was allotted to a Sub-commission (of the Commission on Philosophy) on Theology whose 'Synthesis' declared: 'That we must lay our hearts and minds open to everything which is universal in the values of any culture or religious expression whatsoever, distinguishing in them what is universal and therefore valid for all men, from what is the proper expression of their own cultural heredity.'[10]

8 G.W. Carpenter, 'Foreword', J.H. Nketia, 'The Contribution of African Culture to Christian Worship', 'Report of Group IV II Christianity and African Culture' and 'Conference Personnel', AACC, *The Church in Changing Africa: Report of the All-Africa Church Conference, Ibadan, Nigeria, January 1958* (New York, 1958), 7, 59–64, 69–72, 101–106 and AACC, *Follow Me – Feed My Lambs: Official Report Fourth Assembly, All Africa Conference of Churches, Nairobi, Kenya, 2–12 August, 1981* (Nairobi, 1982), 14, 34; see also D.G.S. M'timkulu, 'The All Africa Church Conference', *International Review of Mission,* 51/201 (1962), 63–66.

9 The congresses were organised by Diop under the auspices of *Présence Africaine* and the Société Africaine de Culture (SAC) both of which he founded together with Senghor. Although it had no formal connection with the Christian church, *Présence Africaine* nonetheless published many major Christian revanchist works and commentaries.

10 R. Sastre, 'Theology and African culture', M. James, 'Religion in Africa' and

By the time of the foundational 1963 AACC Kampala Assembly, adaptation was widely accepted and it was therefore a less divisive issue than it had been in 1958. The inauguration ceremony itself sent out a message in that it was led by the 'authentic' sound of African drums and reflected in the title of the final report, 'Drumbeats from Kampala'. In the papers that followed, several speakers commented on the limited extent to which the Christian church had historically accommodated African culture. Andriamanjato, for example, conceded that Africa had inherited a Westernised Christianity but pondered 'in what way … would Africans now authenticate this religion as theirs'; more forcefully, Sithole argued that authenticity in the political realm went side-by-side with authenticity in the religious realm; while Setiloane accused the mainstream Christian churches of 'excessive imitation' thereby 'becoming unwilling promoters of alienation from traditional life'. This renewed sense of African confidence was also reflected in the working group report which concluded that:

> We find that the forms of worship in Africa are only copies of those used in Europe and America. We believe that the African Church must find the form of its own dialogue with God … Also, the Church in Africa must develop her own liturgies which … are to take into account … the cultural and cultic background of the people.[11]

Possibly the most significant paper was presented by Idowu who argued that 'in spite of more than 300 years of contact … Christianity is still a foreign religion to us … The Church … deals in foreign, prefabricated theology … speaks in a language which the African does not understand because it is foreign. Borrowed idiom, borrowed phraseology'. Reflecting on the 'Drumbeats', he suggested that: 'If the sound of the drum calls out of the depth of his soul the same sentiments, holy and sublime, as the organ does in that of the European or American, who are we to say the drum is an instrument of barbarous heathenism and not fit for use in Christian worship?' Idowu would later publish his paper in a famous commentary which opened with 'The Question at Issue':

> The time is now overdue for the Church in Nigeria to look at herself; to examine her own soul … to answer … the question as to whether her purpose … is not to serve as an effective tool of imperialism … Further still, there is the

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'Synthesis by the Sub-commission on Theology', *Présence Africaine,* 24–25 (1959), 142–152, 196–202, 447–448; Mbiti, a leading African theologian, would also present a paper, 'Reclaiming the Vernacular Literature of the Akamba Tribe', 244–261.

11 R. Andriamanjato, 'Liberty and Anarchy in the African Nation', N. Sithole, 'African Nationalism and Christianity' and G. Setiloane, 'Freedom and Anarchy in the Church', E. Utuk, *Visions of Authenticity: The Assemblies of the All Africa Conference of Churches 1963–1992* (Nairobi, 1997), 32–48, 52–54 and 'Report of Section I', AACC, *Drumbeats from Kampala: Report of the First Assembly of the All Africa Conference of Churches held at Kampala April 20 to April 30, 1963* (London, 1963), 37–38.

> question as to whether what we have in Nigeria today is in fact Christianity, and not in fact only transplantations from a European cult … designated Methodists, Anglicans … Roman Catholics.

The answer he proposed was that the church in Nigeria should: 'No longer … be an institution acknowledging a human overlord elsewhere outside Nigeria; no longer a marionette with its strings in the hands of some foreign manipulators.' As regards the liturgies and day-to-day observances of the church: 'For over a century, the Church has been imposing European music upon poor Nigerian worshippers …What is wrong with Nigerian music that it cannot be used in regular worship … ? … and what is the matter with Nigerian musical instruments?' As to dress: 'Christianity arrived in Nigeria dressed up in European garb … Why should a Nigerian turn European in his dress just because he believes in Jesus Christ and is found qualified to be a steward in the Church?'[12]

Protests were also being registered within the Catholic Church. Already in 1947, Senghor had written to French Catholic leaders warning of the arrogant attitude of French Catholic priests, many of whom had been supporters of Marshal Pétain: 'Unfortunately, missionaries who were the most liberal Europeans before the war, fail to comprehend the Revolution the war has wrought in minds and in fact.'[13]

The main charge against the Catholic Church would be led by Diop, who would deploy *Présence Africaine* and the SAC as the medium through which African Catholic discontent might be brought to the attention of the Vatican. In books, articles and meetings, the point was increasingly stressed that, if it was to survive in Africa and avoid the charge of religious racism and colonialism, the Catholic Church would have to abandon its overriding identification with Western civilisation in favour of a true universalism. It was therefore no coincidence that the 1959 Congress was held in Rome and that Pope John XXIII hosted a reception for the delegates.

Ahead of the Second Vatican Council in October 1962 Diop also organised a *Colloque* in Rome with the aim of defining what Africans hoped might be achieved. It was followed up in 1963 by an edition of *Présence Africaine* effectively updating its famous 1956 commentary *Des prêtres noirs s'interrogent* (see page 295 below). Several African Catholic theologians would contribute articles reflecting on Africa's relationship with the universal Catholic Church and insisting that Christianity should not be chained to any one culture and that the church in

12 E.B. Idowu, 'The Selfhood of the Church in Africa', AACC, *Drumbeats from Kampala: Report of the First Assembly of the All Africa Conference of Churches held at Kampala April 20 to April 30, 1963*, 32–37 (Idowu's paper was based on his 1961 radio broadcasts) and *Towards an Indigenous Church* (London, 1965), Preface, 1, 5, 11, 31, 34, 39.

13 Senghor to Mgr Le Hunsec 21 January 1947, quoted by E.A. Foster, *African Catholic: Decolonization and the Transformation of the Church* (Cambridge, 2019), 22.

Africa should now speak to God in its own language; President Senghor contributed the final summary.[14]

Discussion of adaptation was renewed at the 1969 AACC Abidjan Assembly but by now in a more confident tone. Mboumoua talked of the alienation brought about by the missionary and colonial experience and of the need for 'a radical revolution in the cultural realm' to make way for an 'authentic African culture', while Adegbola called for 'renewal' arguing that 'each generation and society' should determine 'its own church structure'. 'Why', he asked, 'should African Presbyterians … not be African Presbyterians, instead of trying to mix Calvinism with Africanism? What has Calvin's French learning or Swiss jurisprudence to do with the deserts and cities of modern Africa?' Following the lead given by the 1963 AACC Kampala Assembly, a working group reviewed the progress of liturgical reforms. Its report recommended that: 'The search for cultural and liturgical forms through which we can express our Christian faith must go on in all fields of Church life in Africa.' Nonetheless, though the momentum was now with the reformers, they cautioned that a residual body of unbowed conservatism continued to warn that 'an *exaggerated* adaptation … would run the risk of reintroducing … "pagan" elements'.[15]

At the 1974 AACC Lusaka Assembly, authenticity was, again, celebrated, with an even more elaborate opening procession of traditional dancers and drummers. There were however few direct references to adaptation, most probably because it no longer necessitated much further debate. The most interesting address was given by President Kaunda who claimed Christ as 'a leading humanist' and described with approval the process of the 'Zambianisation in the Church'. The path to true authenticity, he explained, was not a matter of

14 L.S. Senghor, '*Postface: Des prêtres noirs s'interogent et suggèrent', Présence Africaine, Personnalité africaine et catholicisme* (Paris, 1963), 283–293, E.A. Foster, *African Catholic: Decolonization and the Transformation of the Church*, 21–23, 55–94, 132–151, 265–267, E. Mveng, 'The Historical Background of the African Synod', African Faith & Justice Network under the direction of Maura Browne, *The African Synod: Documents, Reflections, Perspectives* (Maryknoll, 1996), 21 and A. Shorter, 'Cultural Adaptation of the Passionist Religious Life to the Church in Africa', *Revue africaine de theologie,* 3/5 (1979), 29–46; SAC also organised a *Colloque* in Abidjan in 1961 on '*Personnalité Africaine dans la vie catholique*' reported in *Présence Africaine, Colloque sur la contribution des religions à l'expression culturelle de la personnalité africaine. Colloque sur les religions, Abidjan, 1961* (Paris, 1962) and again in 1977 on 'Black Civilization and the Catholic Church' reported in *Présence Africaine*, *Pour un Concile africain* (Paris, 1978) and *Civilisation noire et Église catholique, colloque d'Abidjan, 12–17 septembre 1977* (Paris, 1978).

15 E. Utuk, *Visions of Authenticity: The Assemblies of the All Africa Conference of Churches 1963–1992*, 67–84 and 'Work of the Sections 2: The Cultural Revolution and 3: Church Renewal', AACC, *Engagement: The Second AACC Assembly 'Abidjan 1969'* (Nairobi, 1970), 99–101, 117–118.

replacing personnel but of 'reflecting our values'. It was a point he had also made in his autobiography: 'I do not think I have ever seriously doubted the truth of the Gospel, but I seriously question sometimes whether God is really speaking to us in the voice of the organised churches … in Northern Rhodesia today.'[16] A similar conclusion had been reached by Banda: 'It was not only politically that we were enslaved, colonised. We were also enslaved and colonised culturally. It became clear to me that the kind of Christianity we are being given here which condemns the people's national culture was not at all a true Christianity but something else.'[17]

Meanwhile, in the working group review of adaptation reforms, more criticism was heaped on foreign hymns which had been 'imported crudely without suitable translations' and indeed that 'most of the music used in our churches has ceased to portray any message to the African Churches as a whole'. It was therefore proposed that foreign hymns should be revised or abandoned, better still the church should build up its own repertoire of African church music; a recommendation that led to the 1976 AACC Consultation on African Church Music.

There was also much discussion about the universal Christian church's failure to respect African traditional practices. In particular, it was argued that the concept of marriage was too heavily influenced by Western notions of individualism and had failed to appreciate that the African notion of marriage was far more than a joining of a couple in holy matrimony, it was also a joining of two communities. It was also felt that the universal Christian church should look more kindly on polygamy. Carr, the AACC's General Secretary, described polygamy as a perennial concern of African theological conferences and argued that there was something wrong with a world that tolerated the institution of racism but failed to tolerate the notion of polygamy. Forcing a husband to abandon his wives and children who had done no wrong betrayed an 'utter disregard for their human rights'.[18]

16 President Kaunda, 'The Challenge of our Stewardship in Africa', *The Struggle Continues: Official Report Third Assembly All Africa Conference of Churches, Lusaka, Zambia 12–24 May 1974* (Nairobi, 1975), 65–68 and K.D. Kaunda, *Zambia shall be Free: An Autobiography* (London, 1962), 146 (reference from C. Wauthier (trans. S. Kay), *The Literature and Thought of Modern Africa* (London, 1978), 212).

17 *Malawi News,* 7 December 1962, quoted by P.G. Forster, 'Culture, Nationalism, and the Invention of Tradition in Malawi', *Journal of Modern African Studies,* 32/3 (1994), 489; at that time, Banda, although de facto Prime Minister of Nyasaland, was officially merely a Cabinet Minister.

18 'Work-Group 2: Renewal in the Church's Ministry' and 'Section II: The Church and Cultural Renewal in Africa', *The Struggle Continues: Official Report Third Assembly All Africa Conference of Churches, Lusaka, Zambia 12–24 May 1974*, 35–37, 43–48, 75–76 and E. Utuk, *Visions of Authenticity: The Assemblies of the All Africa Conference of Churches 1963–1992,* 99–103, 121.

The moratorium

With the adaptation debate effectively conceded, the Assembly moved on and now sought to express its African identity in terms of support for the liberation struggle in Southern Africa and in what came to be called the 'moratorium'.[19] This new mood was signalled by Carr's opening address. He began with a reminder that they were there 'to reappraise Livingstone's legacy' of Christianity 'by making a fresh commitment to radically renew the form and content of our faith' and that 'we, African Christians, have no desire to be the channel through which the continued domination of Africa is assured'. He noted, too, that: 'At the very root of the problem is the cultural arrogance of the small minority of mankind, located in the north Atlantic world, who have imposed upon the world a naive hypothesis of cultural-progress which places western man at the top of an imaginary scale of evolutionary development.' The solution was a moratorium on foreign missionaries. Whether this was to be extended to encompass foreign aid, as many would have liked, was never clearly spelled out. On the one hand, Carr observed, a 'considerable proportion' of foreign aid was spent on expatriate personnel; on the other hand, 80 per cent of the AACC's budget was funded from abroad. Carr therefore suggested that 'the call for a *moratorium* is a demand to transfer the massive expenditure on expatriate personnel … to programme activities manned by Africans themselves'. This was essentially the counterpart of the foreign aid argument asserted by the African states against the developed world and at the UN.

Moratorium was therefore considered in several working groups. Their general conclusion was that adaptation had been constrained by foreign structural, financial and missionary pressures and that Africa should therefore free

19 The first call for a moratorium is attributed to Gatu's address at 'Mission Festival '71', a gathering in Milwaukee sponsored by the Reformed Church of America: 'We must liberate ourselves from the bondage of western dependence by refusing anything that renders impotent the development of our spiritual resources … We must ask missionaries to leave.' However, J. Mbiti, *The Crisis of Mission in Africa* (Mukono, 1971), 1, 3 seems to have expressed similar views at about the same time: 'That the age of foreign missions in Africa is now over is a fact'; and he lamented that the 'mentality of this leadership is still largely foreign, the structures under which it is exercised are still largely foreign, and the decision-making machinery is also under strong foreign control'. For background on the moratorium, see E. Kendall, *The End of an Era: Africa and the Missionary* (London, 1978), 86–92, B.G.M. Sundkler /C. Steed, *A History of the Church in Africa* (Cambridge, 2000), 1027–1028, R. Reese, 'John Gatu and the Moratorium on Missionaries', *Missiology: An International Review of Mission*, 42/3 (2014) and M. Cassidy, 'The Call to Moratorium (Perspective on an Identity Crisis)', *The Churchman,* 90/4 (1976), 265–280.

itself from foreign control and dependency: 'The complete halt to receiving of money and personnel will surely affect the structures and programmes of many of our churches today … What would emerge would indeed be African and be viably African.' More defiantly, it was argued that: 'Should the moratorium cause missionary sending agencies to crumble, the African Church would have performed a service in redeeming God's people in the northern hemisphere from a distorted view of the mission of the Church in the world.' It was a clear charge of neo-colonialism against the universal Christian church and a corresponding unilateral declaration of independence.[20]

The debate also provoked a flurry of unofficial commentary. In one of the many post-Assembly commentaries, Fasholé-Luke argued that: 'Too many of the mission-founded churches are content with imported theologies … liturgies and spirituality … we must endeavour to maintain the tension between the particular and the universal, but Western theologies and culture must not be regarded as representing the universal.'[21]

African theology

Whereas the initial phase of the African reformation had developed as a protestation from below, its secondary phase, the development of an African theology was essentially the work of the theological elite.

It had long been an article of faith among the African political and intellectual elite that the universal Christian church in Africa had not only actively supported political colonialism but as its handmaiden had also sought to impose a theological colonialism. In 1944, Adjei put this precise point to a US audience. He explained that Christian missions to Africa were 'an act of spiritual aggression or spiritual imperialism. The Christian church has stifled and violated the freedom of Africans to worship God in the manner they think best in their circumstances … many Africans look upon the Christian church as nothing more than an agent of European and American imperialism'.[22]

20 B. Carr, 'The Engagement of Lusaka', 'Work-Group 3: Ministry for Social Justice 4: Dilemmas of Africanisation, The Call for a Moratorium', AACC, *The Struggle Continues: Official Report Third Assembly All Africa Conference of Churches, Lusaka, Zambia 12–24 May 1974*, 20, 52–54, 73–81, E. Utuk, *Visions of Authenticity: The Assemblies of the All Africa Conference of Churches 1963–1992*, 97–121 and E. Kendall, *The End of an Era: Africa and the Missionary*, 93–107; see also R.E. Kendall, 'On the Sending of Missionaries', *International Review of Missions*, 64/253 (1975) Special edition on Moratorium, 62–66.

21 E. Fasholé-Luke, 'Introduction', Part II Traditional Religion and Christianity: Continuity and Conflicts, E. Fasholé-Luke *et alia* (eds), *Christianity in Independent Africa* (London, 1978), 357–358.

22 A. Adjei, 'Imperialism and Spiritual Freedom: An African View', *American Journal of Sociology* 50/3 (1944), 190. Adjei was connected with Mbadiwe and Orizu in the

The 1945 Manchester Pan-African Congress similarly declared: 'That organised Christianity in West Africa is identified with the political and economic exploitation of the West African peoples by alien Powers'; as did the *West African Pilot* which fulminated: 'None (of the alien missionary societies) has helped Nigerians in their struggle for freedom … in the guise of Christianity they use our churches and schools to suppress and ridicule our political consciousness.'[23]

In 1960, in Adjei's footsteps, Diop took the message of African cultural revanchism to the US, illustrating that message once again by reference to the universal Christian church:

> The leaders of the Western cultural world peremptorily affirmed that the experience of the Universal had been attained and exhausted by the West, that the Negro world had nothing to do but docilely insert itself into the Western cultural current … Christianity … is often considered … as the quartermaster of colonialism … because Christianity developed in the West and borrowed from Western culture its music, its arts, its philosophy, the shape of its dogmatism, and from Western mentality its dogma, or rather its theology, and its institutions. Well, Christian Africans … have long been raising their voices to point out that if the Christian message is universal, Western forms are simply the means that the churches employ to transmit the Christian message.[24]

US and introduced Nkrumah to the UGCC (of which he was a founder member). After holding several ministerial positions, including Foreign Affairs, he was imprisoned in 1962 and charged with embezzlement of more than £25,000 with the aim of furthering a plot against President Nkrumah. The trial was reported in '£25,000 "given to a spirit"', *The Times* 15 October 1963, 9 and *The Daily Telegraph* 5 July 1963. Adjei's defence was that he had given the money to a 'money-doubling spirit', '"the spirit Zebus of the Kingdom of Uranus" who came in human form dressed in beautiful white robes'. Adjei also claimed that the spirit world was not for him 'a matter of belief – it is a matter of fact'. As a member of the Spiritualist Association of Great Britain and the Theosophical Society of England this defence may have been more than a ruse to persuade a credulous jury. Regrettably no further information is available on the outcome beyond the adjournment of the trial due to the prosecution of Adjei and others for treason. Although found not guilty he was nonetheless redetained under the 1958 Preventive Detention Act, which he had sponsored as Minister of Justice, and this probably halted proceedings in respect of the alleged fraud. Following his acquittal, President Nkrumah fired Chief Justice Korsah and held a second trial in camera which found Adjei guilty and sentenced him to death later commuted to twenty years in prison though he would be released in 1966 after the coup against President Nkrumah.

23 H. Adi/M. Sherwood, *The 1945 Manchester Pan-African Congress Revisited with Colonial and… Coloured Unity (the Report of the 5th Pan-African Congress)* George Padmore (ed.), 102–103 and *West African Pilot* 24 October 1945, quoted by S. Idemili, 'What the *West African Pilot* Did in the Movement for Nigerian Nationalism between 1937 and 1957', *Black American Literature Forum,* 12/3 (1978), 89.

24 A. Diop, 'Remarks on African Personality and Négritude', *Pan-Africanism Reconsid-*

Yet, initially, the African theological elite were reluctant to confront their subservience in the same manner and to the same degree, largely because they had too much personally invested in the existing structure of the church. While they could justify adaptation as a practical step, theological reinterpretation was a step too far as it would undoubtedly lead to a re-evaluation of the universalism of the Christian church. Perhaps surprisingly, then, the first tentative steps in theological revanchism, a reinterpretation of Christian theology, were taken by African Catholic theologians in Rome in response to Father Tempels' famous study *La Philosophie bantoue*.

Father Tempels was a Belgian priest on mission in Katanga, Belgian Congo from 1933 to 1946. He conceived of his study as an initial attempt at a systemisation of Bantu thought in the hope that a better understanding of Bantu modes of thought might identify a connection between Bantu philosophy and Christian theology. That, he hoped, would facilitate a more efficient translation of Christian beliefs and values in a way that would be recognisable to Bantu culture – Bantu was the generic name he applied to the African people of sub-Saharan Africa. Much to his surprise, his research revealed that the African pagan savage was after all capable of an ordered framework of speculative reflection on the nature of the world and of 'God' and, moreover, in a form not too dissimilar to that of Christianity: 'We arrive, therefore, at the unheard of conclusion that Bantu paganism … reaches out from the depths of its Bantu soul towards the very soul of Christian spirituality.' Nonetheless, he also concluded that this ordered framework was essentially practical in nature and unconscious in intent and it was therefore only by means of Western philosophical categories that systemisation might be properly established:

> We do not claim … that the Bantu are capable of formulating a philosophical treatise, complete with an adequate vocabulary. It is our job to proceed to such systematic development. It is we who will be able to tell them, in precise terms, what their inmost concept of being is. They will recognize themselves in our words and will acquiesce, saying, 'You understand us: you now know us completely: you "know" in the way we "know"'.

Unsurprisingly, he concluded that: 'It is in Christianity alone that the Bantu will find … a complete satisfaction of their deepest aspirations. Christianity … is the only possible consummation of the Bantu ideal.'

Tempels' study was published in 1945 in some obscurity but was brought to the attention of a wider public by *Présence Africaine* which published editions in French (1949) and English (1959). Diop had grasped that Tempels' study had, for the first time, recognised African thought as worthy of consideration on its own terms and he therefore sought to acknowledge its importance not only by

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ered: Third Annual Conference of the American Society of African Culture 1960 (Berkeley, 1962), 341.

way of publication but also by a favourable foreword to the 1949 French edition: 'For me, this little book is the most important of those I have read on Africa.' [*Pour moi, ce petit livre est le plus important de ceux que j'ai lus sur l'Afrique.*][25]

Important maybe, but as Tempels' study began to reach a wider audience, it came under withering criticism. It was attacked as patronising, demonstrating a poor grasp of African thought, whether Bantu or otherwise, and lacking in conceptual rigour. For example, Eboussi Boulaga scornfully charged: 'What is left to the Bantu to do? To await, full of gratitude … Christianity, which, according to Father Tempels, could not measure itself up to the task'; and he suggested that the whole edifice had been built up so 'that Western Christianity may be able to behave as though it had been sent by the Being hidden to the Bantus, by the being of the Bantus themselves as if it were the manifestation of all essence'. In historical terms, though, as Mbiti and others commented, such criticism is beside the point, Tempels' importance is to be found rather 'more in terms of sympathy and change of attitudes than perhaps in the actual content and theory of his book'.[26] That was nowhere more evident than in the African theological elite's response which excitedly grasped at Tempels' insight that Africans experience the God of Christianity through their own particular traditions and customs. What was less clear was whether the African experience of God could be accommodated within universal Christian theology.

The first substantive African response to Tempels was put forward by Kagame, an African priest from Rwanda studying in Rome. Kagame regarded Tempels' study as deficient in understanding and intellectual rigour and prone to over-generalisation, and therefore sought to subject Tempels' analysis to a more searching examination. His examination focused on linguistic analysis as the key to Bantu thought and, for that reason, its initial scope was limited to the Bantu of Rwanda. As his primary finding, Kagame concluded that the Bantu had developed a logically coherent ontology to a far greater extent than that with which they had been credited by Tempels. More specifically, that, although aspects of Bantu ontology fell within the stream of universal philosophy, in

25 P. Tempels, *La Philosophie bantoue* (Lovania, 1945) and (trans. C. King), *Bantu Philosophy* (Paris, 1959), 25, 121 and A. Diop, 'Niam M'Paya Ou de la fin que dévorent les moyens', R.P.P. Tempels (trans. A. Rubbens), *La Philosophie bantoue* (Paris, 1949).

26 F. Eboussi Boulaga, 'Le Bantou problématique', Présence Africaine, 66/2 (1968), 4–5 (reference from T. Okere, *African Philosophy: A Historico-hermeneutical Investigation of the Conditions of its Possibility* (Lanham, 1983), 3) and J. Mbiti, *African religions and philosophy* (Oxford, 1990), 10. V.Y. Mudimbe, 'African Philosophy as an Ideological Practice: The Case of French-Speaking Africa', *African Studies Review*, 26/3–4 (1983), 137–138, 146 described Eboussi Boulaga's critical commentary as: 'The first African text which seriously invites critical reflection on the foundation of an African philosophy…'

contrast to Western ontology, its form was collective, that is of the community, rather than the individual, in that it was expressed through the medium of the Bantu's linguistic structure and the terms it deployed.

While Kagame was widely praised for the quality of his examination, he was also criticised for ordering Bantu ontology too closely in terms of Western philosophical categories rather than on the usage of the terms it deployed. However, as with Tempels, this is to miss the point. Kagame's work confirmed the African as a subject of history and gave further momentum to the expression of Africa's particularity and desire to be heard.[27]

In 1956, Kagame also contributed to an anthology of articles by black theologians which Bujo has described as 'the founding charter of African theology'. The *Avant-Propos* to this anthology, *Des prêtres noirs s'interrogent*, explained:

> For a long time people have been thinking about our problems for us, without us, and even despite us … We do not pretend that the African priest has never been heard, but in the hubbub of voices holding forth in the Missions, his contribution has been rather discreet or easily covered up, whereas it seems that he should rather have had the first say.

In the individual articles, concerns were expressed about the extent to which the practices of the church in Africa were alien to the African way of life and of the need to take African traditions into account if the Christian mission was to succeed. Dosseh and Sastre, for example, suggested that: 'The church has need of truth and faith in Christ, it does not ask people who convert to renounce their humanity'; while Hebga explained that 'we want to serve Christ with our country's delicacies … *in the liturgy* we want to serve him with wailing chants … with sacred dances conveying religious emotion … simple and beautiful rites … in *exegesis*, we intend to connect the linguistic and literary Eastern genius with our own'. Their general conclusion at this early stage was that there was a pressing need to Africanise Christianity, but that, for the present, this merely implied adaptation.[28]

27 A. Kagame, *La Philosophie bantu-ruandaise de l'être* (Brussels, 1956); it would be followed up by *La Philosophie bantu comparée* (Paris, 1976). The study was initially prepared as his PhD thesis at the Gregorian University, Rome.

28 B. Bujo, 'Vincent Mulago: An Enthusiast of African Theology', '*Propaganda et vérité*' (author translations), M. Hebga, '*Christianisme et négritude*' (translation by T. Tshibangu, 'Towards an African-coloured Theology?)', B. Bujo/J.I. Muya (eds) (trans. S. Borruso), *African Theology in the 21st Century: The Contribution of the Pioneers Vol. 1* (Nairobi, 2003), 15, 185 and '*Avant-Propos*', R. Dosseh/R. Sastre, *Des prêtres noirs s'interrogent* (Paris, 1956), 16, 152, 200. Background to the publication by *Présence Africaine* is given in G. Molyneux, 'The Contribution to African Theology of the *Faculté de Théologie Catholique* in Kinshasa, Zaire', *African Journal of Evangelical Theology,* 11/2 (1992), 60 Notes 8 and 9.

Three years later, at the 1959 Rome Congress, with political independence in the air, the nature of the cohabitation between the universal Christian church and the Christian church in Africa began to unravel. In his paper, Sastre now suggested that far greater importance should be attached to African cultural traditions and thought: 'What therefore are the tasks of the African theologian? He must before everything else listen to the aspirations of his people … The African theologian must give the guarantees of profound doctrinal study and purity of faith … In the same way he must also remain a no less faithful son to his upbringing of African culture.' In another paper, James pulled few punches: 'Christianity in Africa *must* be African … It is absolutely essential, therefore, that there be a radical re-thinking of Christianity within the specifically African context … *African theologians must examine fearlessly the Christianity implanted in Africa and prune it of irrelevant European (or other) impedimenta.*'[29]

Further support emerged at the famous (first) 1960 theological debate at the University of Lovanium, Kinshasa, between Vanneste, the Belgian Dean of the Faculty of Theology, and Tshibangu, one of his students, later Bishop of Mbujimayi. The debate, as characterised by Mudimbe, considered the question, with its obvious resonance to the human rights cultural relativity debate: 'Can one reconcile a universal faith (Christianity) and a culture (African) within a discipline (theology) that is epistemologically and culturally marked?'[30]

Tshibangu began by pointing out that: 'For some time now everyone has agreed that the Church in Africa must become and be African.' After reviewing the initial speculations on what he labelled 'The problem of "African Theology"', he concluded that 'if we set "a system and a framework of thought of its own" in African culture … *a theology of African colour* would seem possible'. He closed with the reflection that: 'It is true we are going towards a universal way of thinking. But this universal civilisation will not rise … on the ruins of particular originalities. It will be made up of different contributions.' This is essentially Senghor's 'Civilisation of the Universal' (see page 342 below).

Vanneste countered by dismissing 'the needs and demands of the African milieu' and affirming that Christianity was a 'universal religion' and that 'theology, more than any other science, must above all remain faithful to its universal vocation'; as he explained: 'I have felt very little need to appeal to certain conceptions dubbed typically African.' In conclusion, he advised that theology in Africa 'should make an effort to be true theology and take part in the universal theological endeavour (otherwise) African theologians … would condemn themselves inevitably to remain second-rate theologians'.[31]

29 R. Sastre, 'Theology and African Culture' and M. James, 'Religion in Africa', 151, 200–201.

30 V. Mudimbe, *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (Bloomington, 1988), 164. The debate took place at the Lovanium Theological Circle, Faculty of Theology, University of Lovanium, Kinshasa 29 January 1960.

31 The texts of the debate are in *Revue du clergé africain* 15 (1960), 333–352; see also

In 1968, at the (fourth) Semaine Théologique de Kinshasa, that first debate would be resurrected. Vanneste, again, affirmed his position: 'I do not believe at all in the possibility of a dream-like African theology.' By now, though, the debate was of major consequence in theological circles and therefore this time he was also opposed by more senior African theological colleagues.[32] Mulago, for example, would affirm that: 'It must be pointed out to the apologists for a "universal theology" that this universal theology does not exist'; moreover that, 'Christ does not ask the African to strip himself of his personality to be his disciple'.[33]

At the 1958 AACC Ibadan Preparatory Conference, though, there was as yet little intimation of the impending storm about to descend on African theology, and even the 1963 AACC Kampala Assembly limited itself to a brief cryptic comment: 'The Church in Africa must have an adequate and clear theology'.[34] However, by 1966 there was already a sufficient body of opinion to support a consultation of African theologians at Ibadan because 'there were indications that here and there individuals were beginning to examine the heritage of the Church to see how pertinently it related to African thought, ideas and life in a rapidly changing situation'. It would be attended by many of the most influential African theologians of the time, such as Adegbola, Amissah, Idowu, Mbiti, Mulago and Sawyerr, all of whom would be in the vanguard of the development of an African theology over the next few years.

Revue du clergé africain 16 (1961), 105–129 and E. Ntakarutimana, 'Msgr Tharcisse Tshibangu: Champion of an "African-coloured" Theology', B. Bujo, 'Introduction to the Tshibangu-Vanneste Debate', T. Tshibangu, 'Towards an African-coloured Theology?' and A. Vanneste, 'A True Theology to Begin With', B. Bujo/J.I. Muya (eds) (trans. S. Borruso), *African Theology in the 21st Century: The Contribution of the Pioneers Vol. 1*, 47–63, 179–199.

32 T. Tshibangu, *Le propos d'une théologie Africaine* (Kinshasa, 1974), 11–20 and G. Molyneux, 'The Contribution to African Theology of the *Faculté de Théologie Catholique* in Kinshasa, Zaire', 61–67; Molyneux also provides further background on the 1960 debate. See also M.P. Hebga, 'Englebert Mveng: A Pioneer of African Theology', B. Bujo/J.I. Muya (eds) (trans. S. Borruso), *African Theology in the 21st Century: The Contribution of the Pioneers Vol. 1*, 42 and A. Ngindu, 'La quatrième semaine théologique de Kinshasa et la problématique d'une théologie africaine', *Cahiers des Religions Africaines, 2/4 (1968)*, 359.

33 V. Mulago, 'Le Problème d'une Théologie Africaine revu à la lumière de Vatican II', *Renouveau de l'Eglise et Nouvelles Eglises: Colloque sur la Théologie Africaine: Quatrième Semaine théologique de Kinshasa organisée par la Faculté de Théologie de l'Université Lovanium (22–27 juillet 1968)* (Inkisi, 1969), 115–152: *'Il faut faire remarquer aux apologues d'une "théologie universelle" que cette théologie universelle n'existe pas'*; moreover that, '*Le Christ ne demande pas à l'Africain de se dépouiller de sa personnalité pour être son disciple*'.

34 'Report of Section I', AACC, *Drumbeats from Kampala: Report of the First Assembly of the All Africa Conference of Churches held at Kampala April 20 to April 30, 1963*, 38.

In his introduction to the final report, Idowu described the background to the consultation: 'It has been increasingly clear … that the Church has been speaking in Africa and to Africans in strange or partially understood tongues.' The task of the consultation was therefore to consider

> whether there is any correlation between the Biblical concept of God and the African concept of God, between what God has done and is doing according to Biblical record and teaching and what God has done and is doing in Africa according to African traditional beliefs … We seek … to discover in what way the Christian faith could best be presented, interpreted, and inculcated … so that Africans will hear God … addressing Himself … to them in their own native situation and particular circumstances.

The consultation 'summed up its work' in a formal statement:

> We believe that God … has been dealing with mankind at all times and in all parts of the world. It is with this conviction that we study the rich heritage of our African peoples, and we have evidence that they know of Him and worship Him. We recognise the radical quality of God's self-revelation in Jesus Christ; and yet it is because of this revelation that we can discern what is truly of God in our pre-Christian heritage: this knowledge of God is not totally discontinuous with our people's previous traditional knowledge of Him.[35]

The consultation report was made available ahead of the 1969 AACC Abidjan Assembly so as to enable a working group to review its findings. Its report concluded that: 'Since African theology is still in its early stages of development, it is impossible to offer an exhaustive definition now'; but it still felt able to offer a tentative definition: 'By African theology we mean a theology which is based on the Biblical Faith and speaks to the African "soul" … It is expressed in categories of thought which arise out of the philosophy of the African people.' It also put forward some Guiding Principles: 'A sound knowledge of African culture is necessary … theologians should make an effort to use more African philosophy (thought) and less hellenistic philosophy … There ought to be a dialogue between African theologians and anthropologists.'[36]

Alongside the enabling forums provided by these theological conferences, a torrent of revanchist commentary by African theologians also pressed on with their rejection of Western theology. Mbiti was merely one of many commentators to make clear that:

35 S.H. Amissah, 'Foreword', E.B. Idowu, 'Introduction', K.A. Dickson/P. Ellingworth (eds), *Biblical Revelation and African Beliefs* (London, 1969), vii, 9, 16.

36 'Work of the Sections: 2 Working with Christ in the Cultural Revolution and 3 Church Renewal', AACC, *Engagement: The Second AACC Assembly 'Abidjan 1969'*, 114–118 and E. Utuk, *Visions of Authenticity: The Assemblies of the All Africa Conference of Churches 1963–1992*, 82–84.

> We cannot afford to keep a foreign institution in Africa … We have to Africanise Christianity … give it an indelible African character. It is not enough to transplant prefabricated Christianity … We have to produce a type of Christianity here which will bear the imprint MADE IN AFRICA, and which will not be a cheap imitation of the type of Christianity found elsewhere.

With that end in mind, Mbiti sought to lay down an important distinction. He proposed that Christianity should be seen as comprising outer and inner layers. The outer layers were culture and civilisation 'which are flexible, changeable, and manifested in many ways according to place and time'; the inner layers, Jesus Christ and the Gospel, 'were unalterable, constant and eternal'. Only the inner layers were universal, everything else was a matter of the particular religious experience:

> Christianity results from the encounter of the Gospel with any given … community/ society. To speak of 'indigenizing Christianity' is to give the impression that Christianity is a ready-made commodity which has to be transplanted to a local area … this has been the assumption followed by many missionaries … I do not accept it anymore. The Gospel is God-given. The church in which it is incarnated is made up of people who are by 'definition' indigenous 'where they happen to be born or live or have their roots'.

African Christians, he suggested, 'wish to have the benefits of both the inner and outer layers of Christianity'.[37]

Other African theologians, such as Eboussi Boulaga, rhetorically pondered:

> Can the status and functioning of dogmas acculturated in Western Christianity and civilization still be the same when Christianity is transplanted elsewhere, to another universe? … How is one to think and to live the necessity, supremacy and universality of Christianity when the latter is imposed as the dominant religion, or the religion of the dominant?[38]

Mushete thundered that: 'We must reject as absolutely false the concept of one universal theology.'[39] Tutu would also explain that: 'For too long western

37 J. Mbiti, *The Crisis of Mission in Africa*, 2, 'The Growing Respectability of African Traditional Religion', *Lutheran World* 19/1 (1972), 58 (reference with the kind assistance of The Lutheran World Federation Archives, Geneva) and 'Response of J. Mbiti to J.W. Kinney's Paper 'The Contribution of John Mbiti to the Development of Christian Theology in Africa: An Overview and a Critique', American Society of Church History, Dallas, December 1977, quoted by J.W. Kinney, 'The Theology of John Mbiti: His Sources, Norms, and Method', *Occasional Bulletin of Missionary Research,* 3/2 (1979), 66.

38 F. Eboussi Boulaga, *Christianity without Fetishes: An African Critique and Recapture of Christianity* (Maryknoll, 1984, first published in Paris, 1981), 2.

39 N. Mushete, 'Le propos du recours à l'authenticité et le Christianisme au Zaire', *Cahiers des Religions Africaines,* 8/16 (1974), 209–230 (reference from V.Y. Mudimbe,

theology has wanted to lay claim to a university (*sic.*) that it cannot too easily call its own. Christians have found that the answers they possessed were answers to questions that nobody in different situations was asking. New theologians have arisen, addressing themselves to the issues in front of them.'[40]

In place of this universal theology, African theologians sought to develop a theology that retained the character of the African religious and cultural heritage but equated the identity of the God revealed to Africans with the God of Christianity; a revelation that therefore self-evidently predated the coming of (modern) Christianity into Africa. As Pobee, for example, explained, 'the biblical faith itself allows the possibility that the natural man, otherwise described as the "heathen" like our traditional African, has some intimation of God through creation. Surely all the worship of the traditional African is his groping after this divine power … Religions, including traditional African religions, would not exist had not God revealed himself.'[41] Mbiti, too, would explain that: 'I assume … that there is but One Supreme God … also that the majority of concepts presented here, have sprung independently out of African reflection on God.'[42] By 1979, though, Mbiti's assumption had turned into certainty:

> I have no doubt whatsoever that God the Father of our Lord Jesus Christ is the same God who for thousands of years has been known and worshiped in various ways within the religious life of African peoples. He is known by various names … there are innumerable attributes about him which are largely identical or close to biblical attributes about God.[43]

Nonetheless, African theologians recognised that the fundamental tenets of this new African theology had to be underpinned by more than mere assertion. Encouraged by the 1969 AACC Abidjan Assembly's appeal for 'a dialogue between African theologians and anthropologists', they turned to a range of studies that sought to examine the nature of African beliefs in a supreme being. Such a study had already been published in 1944 by Danquah, who was, at least, an historian, but subsequent studies, by Idowu, Mbiti, Mulago and Sawyerr, were essentially those of theologians dabbling in anthropology and this was reflected in the predetermined aims they set for those studies.[44] For example, Sawyerr

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'African Theology As A Political Praxis: Vincent Mulago and The Catholic Theological Discourse, 1950–80', *Présence Africaine,* 145 (1988), 96).

40 D. Tutu, Address to Presbyterian Church Assembly, Pretoria 18 September 1978, *The Voice of One Crying in the Wilderness* (London, 1982), 35 (reference from J. Parratt, *Reinventing Christianity: African Theology Today* (Grand Rapids, 1995), 2).

41 J.S. Pobee, *Towards an African Theology* (Abingdon, 1979), 73.

42 J. Mbiti, *Concepts of God in Africa* (London, 1970), xiii.

43 J. Mbiti, 'On the Article of John W. Kinney: A Comment', *Occasional Bulletin of Missionary Research*, 3/2 (1979), 68.

44 This point is emphasised by G. Parrinder, 'Review of H. Sawyerr, *God Ancestor*

described his study as 'designed to demonstrate … fundamental concepts of God in three West African tribes'; while Mbiti envisaged his study as, 'an attempt to look at the encounter between Christianity and African traditional concepts paying attention especially to the practical and theological consequences of that encounter'.[45] Naturally, these studies confirmed their researchers' expectations. For Danquah: 'The true God is not of several kinds but he can be known under several degrees or colours, for each people has a name for God, and in the name is to be found that quality or colour … which most appeals to their racial mind.'[46] More specifically, Mbiti found that 'this Father-Son relationship in the God-head does not seem impossible to a number of people', instancing the Ndebele, Shona, Shilluk and Dogon peoples;[47] while Pobee suggested that: 'Our approach would be to look on Jesus as the Great and Greatest Ancestor – in Akan language Nana';[48] and Kibicho wondered: 'Was the God of ATR (African traditional religion, known by different names) the One True God whom we Christians worship in Christianity, the Father of our Lord Jesus Christ?'[49] As Wiredu noted, such was the enthusiasm that 'some Africans have even thought to Africanise Christ himself'.[50]

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or Creator? Aspects of Traditional Belief in Ghana, Nigeria & Sierra Leone (London, 1970)', *Bulletin of the School of Oriental and African Studies*, 34/2 (1971), 453.

45 H. Sawyerr, *God Ancestor or Creator? Aspects of Traditional Belief in Ghana, Nigeria & Sierra Leone* (London, 1970), 10 and *Creative evangelism: Towards a new Christian encounter with Africa* (London, 1968) and J.S. Mbiti, *New Testament Eschatology in an African Background: A Study of the Encounter between New Testament Theology and African Traditional Concepts* (London, 1971), 1. The other studies referred to are J.B. Danquah, *The Akan doctrine of God: a fragment of Gold Coast ethics and religion* (London, 1944), E.B. Idowu, *Olódùmarè: God in Yoruba belief* (London, 1962), J. Mbiti, *Concepts of God in Africa* and V. Mulago, *Un visage africain du christianisme à l'union vitale bantu face a l'unité vitale ecclésiale* (Paris, 1965). V.Y. Mudimbe, 'An African criticism of Christianity', *Genève-Afrique* 21/2 (1983), 91–100 reviews an interesting list of other, particularly French-language, studies.

46 J.B. Danquah, *The Akan doctrine of God: a fragment of Gold Coast ethics and religion*, 1–2.

47 J.S. Mbiti, 'Some African Concepts of Christology', J. Miguez-Bonino *et alia* (eds), *Christ and the Younger Churches: Theological Contributions from Asia, Africa and Latin America* (London, 1972), 58–59 (reference from J. Parratt, *Reinventing Christianity: African Theology Today*, 80).

48 J.S. Pobee, *Towards an African Theology*, 94.

49 S.G. Kibicho, 'The Continuity of the African Conception of God into and through Christianity: A Kikuyu Case-study', E. Fasholé-Luke *et alia* (eds), *Christianity in Independent Africa*, 370.

50 K. Wiredu 'Problems in Africa's Self-identification in the Contemporary World', A. Diemer (ed.) in cooperation with J.P. Hountondji, *Africa and the Problems of its Identity: International Philosophical Symposium on Culture and Identity of Africa 1982*

A rather similar cross-disciplinary debate was also taking place within philosophy. It had been understood early on that Tempels' insight into the particularity of African thought also held out the possibility of a similarly distinct African philosophy founded on different categories and modes of thought to those employed by Western philosophy. That possibility prompted a debate that dominated discussion of philosophy in Africa throughout the 1960s and 1970s. On the one side, efforts were made to identify the basis of a distinct African philosophy, while on the other side 'the school of professional philosophy' dismissed such a conception as a mere dressing up of ethnophilosophy. As Towa disparagingly observed: 'In general, the list of ethnophilosophers coincides more or less with the list of African theologians.'[51]

In 1977, that debate was one of the subjects assigned to a working group at the FESTAC (Second World African Festival of Arts and Culture) Colloquium (see page 371 below). In atttempting to reconcile the two schools of philosophy, its report concluded that 'the claim of European philosophy to being the universal philosophy' should be rejected, but at the same time: 'The African philosophical truth must rise to the level of the Universal. It is therefore less a matter of an African philosophy than that of *philosophy in Africa*, expressed in the cultural canons of the peoples of Africa and those of African origin.'[52]

There are, of course, parallels in these studies and commentary with commentators on African human rights who have similarly sought to identify human rights values in pre-colonial African society. The point can also be made, as p'Bitek has observed, as also in respect of human rights, that these studies are no more than an extension of Tempels' original aim:

Dusseldorf (Frankfurt am Main, 1985), 217.

51 M. Towa, 'Conditions for the Affirmation of a Modern African Philosophical Thought', T. Serequeberhan (ed.), *African Philosophy: The Essential Readings* (New York, 1991), 189.

52 Working Group III Report Section I Sub-theme: Black Civilisation and Philosophy, A.U. Iwara/E. Mveng (eds), *Second World Black and African Festival of Arts and Culture, Colloquium on Black Civilization and Education (Lagos, 17th–31st January, 1977) Colloquium Proceedings Vol. 1* (Lagos, 1977), 143. Among a wide selection of commentaries on the debate between the two schools of thought and, in particular, the work of Tempels and Kagame, see P. Bodunrin, 'The Question of African Philosophy', *Philosophy,* 56/216 (1981), 161–179, K. Gyekye, *An Essay on African Philosophical Thought: The Akan Conceptual Scheme* (Cambridge, 1987), P.J. Hountondji (trans. H. Evans with the collaboration of J. Rée), *African Philosophy: Myth and Reality* (London, 1983), D.A. Masolo, *African Philosophy in Search of Identity* (Bloomington, 1994), V.Y. Mudimbe, *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge*, T. Okere, *African Philosophy: A Historico-hermeneutical Investigation of the Conditions of its Possibility*, M. Towa, *Essai sur la problématique philosophique dans l'Afrique actuelle* (Yaoundé, 1971) and *L'Idée d'une philosophie africaine* (Yaoundé, 1979) and K. Wiredu, *Philosophy and an African Culture* (Cambridge, 1980).

> In the field of religious studies African students have responded with a vigorous condemnation and rejection of the claims of Western scholarship which presented their peoples as 'primitive pagans'. But, instead of carrying out systematic studies of the beliefs of their peoples, and presenting them as the African peoples actually know them, the African scholars, smarting under the insults from the West, claimed that African peoples knew the Christian God long before the missionaries told them about it.[53]

By the 1970s, therefore, the conception of an African theology had been firmly established. Although the 1974 AACC Lusaka Assembly found little time for discussion of African theology, it was rather more concerned with 'liberation' and 'moratorium', major theological consultations were held at Dar es Salaam (1971), Makerere (Kampala 1972), Ibadan (1973), Abidjan and Kampala (1974) and Bossey (1975); in addition, a major research study was undertaken which culminated in a 1975 conference in Jos, Ibadan, to consider the post-independence evolution of Christianity in Africa.[54]

African theologians would also join with other 'third world' theologians in denouncing Christian universalism. As the report of the 1976 Dar es Salaam Seminar of Third World Theologians noted, delegates saw the conference as a response to 'the impending demise' of 'western Christian civilization' and of the need to raise an awareness among both leaders and rank-and-file members of the Christian church of the 'erosion' of the 'power and decision-making centres of the Christian churches … in Europe and the United States'. It also noted that: 'Third World Christians have begun to look at history from their perspective as citizens of poor and dominated countries.'

A number of the conference papers were equally radical. Nyamiti, for example, highlighted what many other African theologians, including Tshibangu, were now also arguing: 'It is no longer necessary to emphasize the need or possibility of an African theology. The time for such discussions is now passed; we are actually at a higher stage of the question'; and Dickson made the point that 'for the Christian church in Africa to become truly the church of Christ in Africa it must not live on second-hand theology'. In its Final Statement, the conference conclusion would therefore declare that: 'The theologies from Europe and North America are dominant today in our churches and represent one form of

53 O. p'Bitek, *Decolonizing African Religions: A Short History of African Religions in Western Scholarship* (New York, 2011), 21.

54 *Christianity in Independent Africa: Papers Presented to the Seminars Organised by the Centre for African Studies at the School of Oriental and African Studies during 1973/4 and 1974/5* (unidentified, 1978) and E. Fasholé-Luke *et alia* (eds), *Christianity in Independent Africa*; a listing of consultations on the relationship between Christianity and African Religion is given by J. Mbiti, 'Theology of the New World I: Some Current Concerns of African Theology', *Expository Times,* 87/6 (1976), 166 and E. Fasholé-Luke, 'The Quest for an African Christian Theology', *Ecumenical Review,* 27/3 (1975), 266.

cultural domination. They must be understood to have arisen out of situations related to those countries, and therefore must not be uncritically adopted without our raising the question of their relevance in the context of our countries.'[55]

The theme of the follow-up conference, the 1977 Accra Pan-African Conference of Third World Theologians, predominantly attended by Africans, including Carr, Mbiti, Mveng and Tshibangu, was described by Appiah-Kubi with reference to Psalm 137/4: '"How can I sing the Lord's song in a strange land?," in a strange language, in a strange thought, in a strange ideology … We demand to serve the Lord in our own terms and without being turned into Euro-American or Semitic bastards before we do so.' Mushete's paper would stress that: 'The notion of a universal theology, like that of a universal philosophy, is a myth. It has no foundation in revelation, faith, or history … Against the proponents of some universally valid theology, Africans assert the right and the necessity of a specifically African theology'; while Kalilombe would argue that: 'Adaptation as currently practiced has become largely odious because it negates the very aim of the movement: selfhood, self-determination, self-reliance of the local church.' The *Final Communiqué* would therefore declare that: 'The life of our churches has been dominated by a theology developed with a methodology, a worldview, and a conception of humanity using western categories … The God of history speaks to all peoples in particular ways. In Africa the traditional religions are a major source for the study of the African experience of God.' It then made clear that: 'African theology must be understood in the context of African life and culture … different from the colonial past and the neo-colonial present … African theology must reject … the prefabricated ideas of North Atlantic theology by defining itself according to the struggles of the people in their resistance against the structures of domination.'[56]

African theology on the international stage

Nor were the African theological elite content to limit their revanchism to African theology and the liturgies of the Christian church in Africa. If the AACC can be compared to the OAU, both being created in 1963 with the aim of African unity, then the WCC may be compared to the UN. In the same way, therefore, that the African states joined together with other developing states at the UN to direct the agenda in their interest, so an alliance of African and Latin American

55 S. Torres, 'Introduction' and 'Opening Address', C. Nyamiti, 'Approaches to African Theology', K. Dickson, 'The African Theological Task' and 'Final Statement of Conference', S. Torres/V. Fabella, *The Emergent Gospel: Theology from the Developing World: Papers from the Ecumenical Dialogue of Third World Theologians, Dar es Salaam, August 5–12, 1976* (London, 1980), vii, 3, 33, 46, 269.

56 K. Appiah-Kubi, 'Preface', N. Mushete, 'The History of Theology in Africa: From Polemics to Critical Irenics', P.A. Kalilombe, 'Self-Reliance of the African Church: A Catholic Perspective' and *Final Communiqué*, K. Appiah-Kubi/S. Torres (eds), *African Theology en Route* (Maryknoll, 1979), viii, 29–30, 39, 192–193.

church groups sought to apply pressure on the WCC to adopt an African theological agenda. There were other significant parallels. African delegates to the 1975 Nairobi WCC meeting sought to form an African caucus in advance of the meeting so as to coordinate strategy and votes; though on this occasion, as in the early days of the African Group, there was a failure of planning and will. Similarly, just as the African Group had demanded greater representation at the UN, so, at the 1975 Nairobi WCC meeting, African delegates expressed dissatisfaction and resentment at their lowly status within the WCC and pressed for more equitable representation.[57] Moreover, as at the UN, African delegates to the WCC would increasingly focus on pursuing the African goals of self-determination and development. In response to these African demands, just as Western states and NGOs deplored the new course on which the UN was being set, so many Western delegations to the WCC bemoaned the emphasis increasingly placed on matters of political, as opposed to spiritual and ecumenical, concern.

The turning point came at the 1968 Uppsala WCC meeting. As several commentators reported, the meeting had been overwhelmed by the race situation in the US, notably the assassination three months earlier of Martin Luther King. For example, Slack, a delegate from Britain, recalled that: 'One word came home at Uppsala. It was the word "justice".' Justice would be reflected in two important initiatives, the first of which sought to address the issue of 'racism'. As the keynote speaker in place of Martin Luther King, James Baldwin addressed the meeting on 'White Racism or World Community?': 'I address you as one of God's creatures whom the Christian church has most betrayed'. The meeting responded with a report that emphasised white racism which 'has special historical significance because its roots lie in powerful, highly developed countries'. It defined 'white racism' as a 'conscious or unconscious belief in the inherent superiority of persons of European ancestry … coupled with the belief in the innate inferiority of all darker peoples, especially those of African ancestry'. The WCC was also urged to 'undertake a crash programme to guide the Council and the member churches in the urgent matter of racism'. Following the meeting, the WCC responded by establishing the 'Programme to Combat Racism' (PCR), the key element of which was the 'Special Fund to Combat Racism' which served as a conduit for financial support to African liberation movements including groups committed to violence against the minority governments of Southern Africa. At an emotionally charged subsequent WCC Central Committee meeting, Bishop Okullu, Anglican Church of Kenya would argue, in justification of support for liberation movements, that: 'Only Africans can say when violence is justified "people in other parts of the world cannot stand in judgement".'[58]

57 C.M. Marsh, 'World Churches meet in Africa', *Africa Today,* 23/1 (1976), 69 and Post-event Follow-up Report, WCC Nairobi 1975, WCC Geneva; to assess the success of its conference arrangements, the WCC sought feed-back from conference attendees.

58 G. Austin, 'World Council of Churches' Programme to Combat Racism', *Conflict Studies,* 105 (1979), 12.

The second initiative was introduced by another of the keynote speakers, President Kaunda, who spoke on 'Rich and Poor Nations' during which he condemned 'the new form of imperialism and monopoly capital'. The subsequent debate led to the creation of the 'Commission on the Churches' Participation in Development' based on the credo that: 'Poverty … is caused primarily by unjust structures that leave resources and the power to make decisions about the utilization of resources in the hands of a few within nations and among nations.' It was largely as a result of these initiatives that Slack was able to report on a conversation with a delighted African delegate who noted that: 'It is the first time the World Council has done anything that smelled black.'[59]

African influence within the WCC was also much in evidence at the WCC's Commission of Churches on International Affairs consultation on human rights and the church held at St. Polten in 1974. Although there was only one African paper, by Kofi-Sekyiamah, at least three of the four working groups focused on an African perspective. In his paper, Kofi-Sekyiamah lauded the UDHR but emphasised its shortcomings and the need to complete its brief by including the human rights concerns of Africa – the argument that would come to the fore in the ACHPR process. This was further emphasised in the consultation report's warning that: 'Church is always in danger of becoming a handmaid of dominant and powerful societies, thereby losing the possibility of maintaining a critical distance from the cultural and social assumptions of those societies.'[60]

African literature, *négritude*, education and language

African literature

The first moves of organised protest by the African literary elite may reasonably be ascribed to the 1956 Paris and 1959 Rome Congresses. The 1956 Paris Congress, as Diop explained, had been brought together by a mutual desire to dispel the notion of the Negro as a being without culture, and aimed, therefore,

59 K.D. Kaunda, *The Rich and Poor Nations: Address to the Fourth Assembly of the World Council of Churches in Uppsala, Sweden, on July 4, 1968* (Lusaka, 1968), 7, K. Slack, *Nairobi Narrative* (London, 1976), 5–7, 72–74, Section III World Economic and Social Development and Section IV Towards Justice and Peace in International Affairs B: Majorities and Minorities, N. Goodall (ed.), *Uppsala Speaks: Section Reports of the Fourth Assembly of the World Council of Churches, Uppsala 1968* (Geneva, 1968), 39–56, 65, D.E. Johnson (ed.), *Uppsala to Nairobi: 1968–1975: Report of the Central Committee to the Fifth Assembly of the World Council of Churches* (New York, 1975), 139–162 and Report on Baldwin Address, and Report of the Commission on Church and Society: II Recommendation for Post-Assembly Programme', N. Goodall (ed.), *The Uppsala Report 1968: Official Report of the Fourth Assembly of the World Council of Churches, Uppsala July 4–20, 1968* (Geneva, 1968), 39–56, 127–131, 241–242.

60 *Report of the Consultation, St. Polten, Austria, 21–26 October 1974: Human Rights and Christian Responsibility* (Geneva, 1974).

'*affirmer, exalter, glorifier la culture des peuples noir*'. Its final resolution concluded that responsibility for the crisis of black culture was the result of 'such shameful practices … as colonialism, the oppression of weaker peoples and racialism' and it urged: 'Negro intellectuals and all justice-loving men to struggle to create the practical conditions for the revival and growth of Negro cultures.'[61]

Three years later, the 1959 Rome Congress was held against the backdrop of African political independence and, accordingly, more ambitious goals could be contemplated. For example, the Congress set as one of its main aims (with obvious Senghorian undertones): 'To demonstrate … that the exclusive dissemination of authority by Western culture is a betrayal of our personality, our spiritual interests, and our aspirations. It is also a betrayal of universal values.' This aim would be reflected in several resolutions all expressing a determination to throw off the shackles of Western universalism. As the Congress report argued: 'Among the capital sins of colonialism, one of the most pernicious … was the concept of peoples without culture. We wished to suggest in our Resolutions that the traditional definition of culture proposed and imposed by the West, is not sufficient … African men of culture are not called to be the agents of Western hegemony.'[62]

The Congress delegates included President Touré, of a now independent Guinea, and Senghor, soon to become President of Senegal. The Congress would therefore go beyond the mere assertion of Negro culture to consideration of cultural policies for the newly independent African states. President Touré addressed this question head on: 'Every free and sovereign people finds itself placed in conditions more favourable to the expression of its cultural values than a colonized country … It is as representatives of these cultural values that (political leaders) lead the struggle for the decolonization of all the structures of their country.' In 1967, for example, that struggle would result in French Catholic missionaries being expelled from Guinea. But President Touré also warned, with Senghor in mind, that: 'It is important to demonstrate the depersonalization of the African intellectual … for which nobody can hold him responsible, because it is the price which the colonial system demands for teaching him … The more he realizes the need to free himself intellectually from the colonized complex, the more … he will serve the African cause.' This notion of the alienated intellectual acting as an agent of Western neo-colonialism would soon become an enduring feature of the revanchist debate within African literature.[63]

Drafting of the resolution on African literature was assigned to the 'Commission on Literature'. Its conclusions would presage many of the issues that would

61 A. Diop, 'Séance d'ouverture' and 'Final Resolutions', *Présence Africaine,* 8–10 (1956), 8, 363–364.

62 'The Policy of our Culture', 'Appeal: The Unity and Responsibilities of African Negro Culture' and 'Resolutions', *Présence Africaine,* 24–25 (1959), 3, 5, 11, 421–460.

63 S. Touré, 'The Political Leader Considered as the Representative of a Culture', *Présence Africaine,* 24–25 (1959), 112–114 and E.A. Foster, *African Catholic: Decolonization and the Transformation of the Church*, 3.

come to confront the debate over African literature. It noted, for example, the 'confrontation of … traditional cultures with the forms of Western culture, in the unhealthy, and most frequently barbarous context of colonization'; and, while it granted the need for a consciousness of Western forms, concern was expressed that the transition from an oral to a written literature should be effected 'without impairing the character and ethics of these literatures'. It also noted that the Negro writer 'is most frequently cut off from his authentic public by the use of a language which, in its literary form, is inaccessible to the mass of Negro peoples' and, moreover, that his 'creative possibilities are limited' by the need to write in a colonial language. There was, similarly, an appreciation that African writers often experience 'serious difficulties in getting … work published, in the modern Western conditions'. Yet, it was also argued that: 'Emphasis should nevertheless be laid on the progressive character of the use of the Western languages to the extent that they lead to economy of time in constructing the new Africa.' The Commission of Literature's report therefore advised writers to draw 'inspiration from the community' and in this way 'Negro-African literature' would be 'capable of promoting new literary forms, which break with the dominant characteristic of Western literature, in which the individual is too frequently regarded as a necessary and sufficient end, to the exclusion of all others'. This cultural self-determination was specifically connected to political self-determination: 'A general orientation of this kind is justified in our epoch, when the inscription of the Declaration of the Rights of Man and of the Citizen in the forefront of the Constitution is completed by the Right of Peoples to self-determination.'[64]

The next significant conference to debate the question of African literature was the 1962 Kampala Conference of African Writers of English Expression. It was the first gathering of English-speaking African writers and, in a loose sense, the Anglophone equivalent of the Francophone congresses in Paris and Rome.[65] It was attended by several established African writers, such as Achebe, Clark and

64 'Resolution on Literature', *Présence Africaine,* 24–25 (1959), 423–428. With the exception of Guinea, the French colonial territories had effectively adopted the 1958 French Community constitution whose Preamble proclaimed an 'attachment to the Rights of Man … as defined by the Declaration of 1789' (see French Embassy, Press and Information Division, *The French Constitution: Adopted by the Referendum of September 28, 1958 and Promulgated on October 4, 1958 French Text and English Translation* (1958), 5).

65 'Introduction', MAK/I, *Conference of African Writers of English Expression: Convened by Mbari Writers' and Artists' Club (Ibadan, Nigeria) in collaboration with the Department of Extra-Mural Studies, Makerere College; Sponsored by the Congress for Cultural Freedom* (Kampala, 1962). Conference reports by L. Nkosi, *The Guardian,* 8 August 1962 and E. Mphahlele, *Africa Report* July 1962 are included as Appendices MAK/V (1) and (2). There is also a more extensive report by B. Fonlon, 'Report on the Kampala Conference', *Présence Africaine,* 45 17/1 (1963), 132–144 supplemented by references in the writings of many of the participants.

Okigbo, and others, such as Ngugi and Soyinka, whose reputations were yet to be made. Although a number of papers were presented, it was a less formal affair than its Francophone *alter ego*. Mphahlele would later explain that the aim of the conference had been 'to create a platform for writers to talk about their common problems: literary techniques, publishing, the African's audience, the influence of tradition, and the task of stimulating creative writing'.[66]

To the apparent surprise of some participants, Okigbo, a Nigerian poet who would be killed in 1967 fighting for Biafra, introduced a discussion on 'What is African Writing?' He wondered: 'Is African literature the body of literature written by Africans of African descent or is it any literature written on and about Africa? Who is an African writer?' Okigbo's own inclination was that African literature 'must have its roots deep in African soil, must take its birth from African experience, must pulsate with African feeling'. Achebe would later recall this famous discussion in more expansive terms: 'Was it literature produced *in* Africa or *about* Africa? Could African literature be on any subject, or must it have an African theme? Should it embrace the whole continent or South of the Sahara, or just *Black* Africa? … Should it be in indigenous African languages or should it include Arabic, English, French … et cetera.'

The outcome, according to Achebe, was that 'what we tried to do and failed – that was to define "African Literature" satisfactorily'. The problem, as Nkosi reported, was that the delegates felt Africa was so wide it was an almost impossible task, not least when assigning a category to white writers living in Africa. Accordingly, as Achebe recalled: 'In the end we gave up trying to find an answer partly … on my own instigation.' All the same, Mphahlele recollected some measure of concurrence: 'It was generally agreed, rather implicitly than explicitly, that we were defining such writing in its simplest, because emotional, terms: as writing produced by black Africans.' His account is supported by Modisane who noted 'an acceptance of the unstated principle that the elements essential to African writing were the African point of view and a little of "that feeling"'.

However, the one aspect upon which all were agreed was the extent to which the content, themes, structure and evaluations of African literature were influenced by the taste of foreign publishers, critics and readers. The conference therefore also enabled the writers to 'grill' the attendant publishers; the writers having expressed their 'strong disapproval … from the very start at the attitude of some Europeans who, considering themselves as experts in Negro literature, lay down canons on what this literature should be, and dismiss as not African any work by an African that does not conform to their dogma'. Such was the passion that the writers admonished the publishers that prospective works

66 E. Mphahlele, 'African Literature', L. Bown/ M. Crowder (eds), *The Proceedings of the First International Congress of Africanists, Accra 11th–18th December 1962* (Ibadan, 1962), 229.

should be submitted for review by African critics as they were better placed than English critics to advise on what was good and, conversely, bad African literature. All were agreed that there should be no question of so-called European experts laying down canons as to what African literature should or should not be.[67]

Underlying this frustration was the case of Tutuola, who, as Irele noted, 'has been built up by foreign critics – whose appreciation of his work is based upon largely superficial considerations – as a kind of prophet without honour in his own country'.[68] This frustration was given particular colour by Clark's caustic observation on Tutuola's novel that 'the critics who so loved the man's language … little knew that the famous "lilt" in *The Palm Wine Drinkard* was as much the half illiterate author's as of the Faber and Faber hack-sub who jazzed it up'.[69] According to Modisane, there were 'hints that Amos Tutuola would probably not have been published if his manuscript had been read by an African reader'; a point Achebe would later also make albeit by then with some regret that 'it is almost certain that if we did not have foreign publishers in the 1950s Amos Tutuola would not have seen the light of day'.[70]

Following the conference, the controversy was stoked by Wali, though he had not been present at Kampala. He charged that:

> Not only was Tutuola … not present in the conference, but there was a careful exclusion of his works in the discussions … Tutuola received this … treatment partly because influential critics … have repeatedly grouped him in the negritude school, and partly because of … winning acclaim overseas for using that kind of English expression that is non-Ibadan, and non-Makerere.[71]

67 C. Achebe, 'English and the African Writer', *Transition,* 18 (1965), 27, B. Fonlon, 'Report on the Kampala Conference', 132–133, E. Mphahlele, 'African Literature', 220, L. Nkosi, *The Guardian,* 8 August 1962, MAK/V (1) and B. Modisane, 'African Writers' Summit', *Transition,* 5 (1962), 5; see also. J.T. Ngugi, 'Kenyan at the Conference', *Transition,* 5 (1962), 7.

68 A. Irele, 'Thoughts on African Language Problems', *Présence Africaine,* 47 19/3 (1963), 182. Tutuola's reputation was primarily established by *The Palm-Wine Drinkard* (London, 1952), a novel based on Yoruba folk-tales. There is a wonderful account of how the novel came to be written and published by K. Omotoso, 'The Missing Apex: A Search for the Audience', E. Oluwasanmi/E. McLean/H. Zell (eds), *Publishing in Africa in the Seventies: Proceedings of an International Conference on Publishing and Book Development held at the University of Ife, Ife, Nigeria, 16–20 December 1973* (Ife, 1975), 251–252.

69 J.P. Clark, 'Our Literary Critics', *Nigeria Magazine,* 74 (1962), 80.

70 B. Modisane, 'African Writers' Summit', 5 and C. Achebe, 'Publishing in Africa: A Writer's View', E. Oluwasanmi/E. McLean/H. Zell (eds), *Publishing in Africa in the Seventies*, 45.

71 O. Wali, 'The Dead End of African Literature?' *Transition,* 10 (1963), 13.

In the event, shortly after the conference, Achebe would be appointed as editorial adviser to Heinemann's African Writers Series and, the following year, Okigbo would be appointed Cambridge University Press' West African representative.[72]

Debate on the definition of African literature and the role of foreign publishers and critics was also raised at the 1963 Freetown conference on 'African Literature and the University Curriculum' – its Francophone counterpart would be held in Dakar also in 1963. Creighton suggested the conference might wish to consider it 'its duty to provide a general definition of … African literature' and proposed a definition that he had previously put to the 1962 Accra First International Congress of Africanists. Although the idea of a definition was rejected, Creighton's formulation was at least taken on board: 'The conference, being aware of the difficulty of defining African literature did not attempt to do so, but for the purpose of its own deliberations, agreed that the term should cover literature in which an African setting is authentically handled or to which experiences which originated in Africa are integral.'[73]

Thereafter, the delicate task of defining African literature was largely left in the shadows as other issues assumed a greater importance. For some reason, though, it was revived at the 1977 FESTAC meeting (see page 371 below) by the Working Group on 'Black Civilization and Literature' which concluded that several elements had to be present for a work to qualify as African literature: The writer must be African and must use traditional themes from oral literature, African symbols, linguistic expressions taken from negro-African languages and local imagery, that is, images of the immediate environment. In order to escape from what it called the political connotations of concepts such as *négritude* and the African Personality, it also proposed a new definition, that of 'Africanity', which it defined as 'the affirmation of the personality, the identity and the richness of the African way of life in the world literary field'.[74]

The issue of foreign publishers and critics was also raised at the 1963 Freetown Conference: 'As soon as we start thinking about African literature … we soon realise that the readership is not mainly African. The publishers who

72 J. Currey, *Africa Writes Back: The African Writers Series and the Launch of African Literature* (Oxford, 2008), xv, 3, 23–24 and D. Nwoga, 'Plagiarism and Authentic Creativity in West Africa', B. Lindfors (ed.), *Critical Perspectives on Nigerian Literatures* (London, 1979), 159.

73 T.R.M. Creighton, 'An Attempt to define African Literature', G. Moore (ed.), *African Literature and the Universities* (Ibadan, 1965), 84.

74 Working Group II Report Section II Sub-theme: Black Civilization and Literature, A.U. Iwara/E. Mveng (eds), *Second World Black and African Festival of Arts and Culture, Colloquium on Black Civilization and Education (Lagos, 17th–31st January, 1977) Colloquium Proceedings Vol. 1*, 136–137.

decide … mostly live outside the environment which produced the literature. The majority of critics also … Thus the standing of African writers has largely been determined outside Africa.' This assessment so resonated with the conference participants that additional time was set aside for further discussion.[75]

The discontent vented at these early conferences was supplemented by a continuous outpouring of resentment in the numerous African literary journals that were springing up. Awoonor-Williams, for example, complained that 'a few … novelists are writing mainly for an external audience in the mistaken conviction that they have a duty to tell Europe and America how we Africans live … This can only be changed when African writers know that they are writing first and foremost for their own people, and only secondarily for the outside world.'[76]

The effect, as Okpaku pointed out, was most unfortunate for the prospective development of African literature in that:

> Much of African literature has been severely restricted to what the Western world would like to classify as purely African or authentically African. The result of this limitation … is that African literature has been frozen in this anachronistic mode and thereby deprived of the opportunity to grow and develop along with the growth and development of the African society.[77]

A more balanced commentary was suggested by Achebe. Like all African writers, he expressed his unease:

> We are not opposed to criticism, but we are getting a little weary of all the special types of criticism which have been designed for us by people whose knowledge of us is very limited … The European critic of African literature must cultivate the habit of humility appropriate to his limited experience of the African world and purged of the superiority and arrogance which history so insidiously makes him heir to.

But he then went on to point out the realities of the situation: 'Nigerian writers cannot eat their cake … and have it. They cannot borrow a world language to write in, seek publication in Europe and America, and then expect the world not to say something about their product … No, we have brought home ant-ridden faggots and must be ready for the visit of lizards.'[78]

From an extensive literature that became more insistent in the 1970s, probably the most famous protest was that voiced by the Nigerian 'collective' of literary

75 E.D. Jones, 'Academic Problems and Critical Techniques' and 'General Discussion on Publishing African Literature', G. Moore (ed.), *African Literature and the Universities* (Ibadan, 1965), 84, 89, 130–132.

76 G. Awoonor-Williams, 'Modern African Literature', *Eastern Magazine,* 3/8 (1964), 8.

77 J.O. Okpaku, 'Editorial: The Philosophy of the New African Literature', *African Literature and the Arts,* 1 (1966), 1–2 (reference from R. Bishop, *African Literature, African Critics: The Forming of Critical Standards, 1947–1966* (New York, 1988), 63).

78 'Colonialist Criticism' and 'Where Angels Fear to Tread', C. Achebe, *Morning Yet on Creation Day* (Garden City, 1975), 8, 75–76.

critics, the 'troika' of Chinweizu, Jemie and Madubuike. In a famous manifesto, they set out an uncompromising credo:

> At this point in history it is Africa's mission to intensify its decolonization and pursue it into liberation … The cultural task in hand is to end all foreign domination of African culture, to systematically destroy all encrustations of colonial and slave mentality, to clear the bushes and stake out new foundations for a liberated African modernity … In Africa's present situation, Africa's prose literature is under attack from a dominant and malicious eurocentric criticism.

As their fundamental starting point, they therefore asserted that the task of African culture 'demands a deliberate and calculated process of syncretism: one which, above all, emphasizes valuable continuities with our pre-colonial culture, welcomes vitalizing contributions from other cultures, and exercises inventive genius in making a healthy and distinguished synthesis from them all'. However, as against Senghor, they insisted that: 'If decolonization is the aim, such synthesis must be within the parameters of the African tradition rather than outside it.'

In an argument that, again, seems to anticipate the African human rights debate, the 'troika' went on to complain that: 'African literature … has its own traditions, models and norms … Most of the objections to thematic and ideological matters in the African novel sound like admonitions from imperialist motherhens to their wayward or outright rebellious captive chickens. They cluck: "Be Universal! Be Universal!" And what they don't consider universal they denounce as anthropological, atavistic … sociological.'

A similar criticism was levelled at African critics whose 'one common failing is in their habit of attempting to force African works into the procrustean beds of an alien aesthetic … This is the mentality of cultural inferiority which responds to the foreign cultural challenge with "proof": "We've modelled ourselves after you; we've met your standards. Please accept us!"'.[79]

Particular criticism was reserved for an American critic, Charles Larson. His commentary was mocked as 'Larsony', which was defined as 'that style which consists of the judicious distortion of African truths to fit Western prejudices'. It was a criticism echoed by Achebe who observed that: 'The latter-day colonialist critic … sees the African writer as a somewhat unfinished European who with

79 Chinweizu/O. Jemie/I. Madubuike, *Toward the Decolonization of African Literature Vol. 1 African Fiction and Poetry and Their Critics* (Enugu, 1980), 1, 4, 89, 239, 287–288 (essays cover the period from 1971 onwards) and Chinweizu/O. Jemie/I. Madubuike, 'Towards the Decolonization of African Literature', *Transition,* 48 (1975), 29, 36 (see also background to the book in 'Authors' Note'). The biographies and aims of the 'troika' are set out in Chinweizu/O. Jemie/I. Madubuike, *Toward the Decolonization of African Literature Vol. 1 African Fiction and Poetry and Their Critics*, xi–xv.

patient guidance will grow up one day and write like every other European, but meanwhile must be humble, must learn all he can.' He pointed out that:

> It would never occur to them to doubt the universality of their own literature … It is only others who must strain to achieve it … I should like to see the word *universal* banned altogether from discussions of African literature until such a time as people cease to use it as a synonym for the narrow, self-serving parochialism of Europe, until their horizon extends to include all the world.[80]

Complaints were also voiced about Western influence over the form of African literature. P'Bitek, for example, argued that: 'To stick to the narrow dictionary definition of the word literature is to accept the biased and one-sided conception of the Western intellectuals who defined it that way to suit their interests. Writing … is merely a tool that is used for "communicating" ideas … And the words may be spoken, sung or written.'[81] His complaint was supported by the 'troika', who argued that 'what is misleadingly called "the novel" is really the European or Western novel … whereas other regional novels are routinely qualified as "African novel" … This … has the same misleading … effect as … when Western culture insists on calling itself "civilization" instead of "Western civilization"'. For the 'troika', the European novel was not the only 'model' for African writers to follow in that Africa's oral traditions provided a more relevant form upon which African writers might base their work; hence their spirited defence of Tutuola's work.[82]

There were similar complaints in respect of African theatre. At a 1960 World Theatre Conference round-table discussion, for example, Coffi-Gadeau insisted that: 'Nearly every African village … makes theatre without knowing it. It is we who, under Western influence, have named it theatre … giving it a form acceptable to the Western world on a theatre stage.' When a follow-up question asked 'Why do you want to force African authors to be African? I think they should be universal', Rabemananjara, founder of the MDRM in Madagascar

80 J. Gibbs, '"Larsony" with a Difference: An Examination of a Paragraph from *Towards the Decolonization of African Literature', Research in African Literatures,* 17/1 (1986), 39 (quoted from A.K. Armah, 'Larsony, or Fiction as Criticism of Fiction', *Positive Review (Ife),* 1 (1978), 14) and 'Colonialist Criticism', C. Achebe, *Morning Yet on Creation Day*, 12–13 (based on his paper to the Association for Commonwealth Literature and Language Studies, Makerere University, 1974); the reference is to a major section in Chinweizu/O. Jemie/I. Madubuike, *Toward the Decolonization of African Literature Vol. 1 African Fiction and Poetry and Their Critics*, 99–161 and C. Larson, *The Emergence of African Fiction* (Bloomington, 1971).

81 O. p'Bitek, *Africa's Cultural Revolution*, 37 ('Literature and Man' Paper presented to 1969 Makerere World Order Project: Africa, The Next Thirty Years).

82 Chinweizu/O. Jemie/I. Madubuike, *Toward the Decolonization of African Literature Vol. 1 African Fiction and Poetry and Their Critics*, 16–32.

and a poet and playwright, jumped in immediately in support of Coffi-Gadeau with an argument that eerily anticipates the emotion, tone and reproach of the ACHPR process:

> When you speak of universal one gets the impression of opposition between universal and African because for centuries the notion of 'universal' was monopolized by the West. But we say to you, a universal form from which we were absent was truncated and we do not accept it … We intend proudly to proclaim our difference … It is starting from our differences that we must try to find what we have in common. But the West will have to accommodate itself to these differences.[83]

Although therefore these early conferences had proved invaluable in bringing together the African literary elite to debate their common problems and aspirations, at the same time, they also served to expose some fundamental fault lines in the cultural revanchist approach that should be adopted; that is the form that opposition to Western universalism should take. This is most particularly associated with the debate around *négritude*.

Négritude

The term *négritude* had been coined by Césaire and Senghor in Paris in the early 1930s although it seems to have first appeared in print only in 1939 in a poem by Césaire. According to Vaillant, Senghor explained that they had simply decided to transform the French adjective *négre* by adding a suffix so as to create a new noun.[84] It was originally conceived as a response to their personal experience of pre-war French racism and the resulting questioning of their identity as black men, but it eventually came to be projected onto black nations or peoples as a counterpoint to Western civilisation and as a defence of black values and identity. Unfortunately, as Irele points out, it was also increasingly expounded in 'a multiplicity of meanings covering so wide a range that it is often difficult to form a precise idea of its particular reference at any one time or in any one usage'.[85] At

83 M. Coffi-Gadeau, Director, Gold Coast Company, and M. Rabemananjara, Playwright, Madagascar, 'The Negro Theatre at the Theatre of the Nations: Roundtable Conference', *World Theatre* 9/4 (1960), 348–351 (reference from R. Bishop, *African Literature, African Critics: The Forming of Critical Standards, 1947–1966*, 4).

84 A. Césaire, 'Cahier d'un retour au pays natal', *Volontés,* 20 (1939), 23–51 and J.G. Vaillant, *Black, French, and African: A Life of Léopold Sédar Senghor*, 244–247. Vaillant also references a mention of *négritude* in Senghor's 1936 poem '*Le portrait*' without indicating the publication; it is, however, included in an anthology of his poems *Chants d'ombre* (Paris, 1945), 219–220.

85 A. Irele, 'Negritude – Philosophy of African Being', *Nigeria Magazine*, 122–123 (1977), 1; see also J. Jahn, *Neo-African Literature: A History of Black Writing* (London, 1968), 251–252 who lists various definitions of *négritude* given by the movement's leading proponents.

its simplest, Senghor explained, it should be understood as '*the whole complex of civilized values – cultural, economic, social and political – which characterize the black peoples*, or, more precisely, the Negro-African world', which were quite different to those of the Western world. The most famous difference identified by Senghor was that: '*L'émotion est nègre, comme la raison héllène*'; that is that Western civilisation is based on discursive or analytical reasoning whereas the Negro feels and senses the real world and its inner meaning in an intuitive, sensual, spiritual and physiological reasoning: '*Le Nègre est l'homme de la nature*'.[86]

However, once it moved beyond pre-war black intellectual circles in Paris, *négritude*, which is associated above all with Senghor, proved controversial. Most famously, at the 1962 Kampala Conference, Soyinka had 'on the spot' parodied a '*negritude*' poem in the style of Senghor and declared that: 'I don't think a tiger has to go around proclaiming his tigritude'. Although he tried to 'clarify' his witticism at a 1964 literary conference in Berlin, the damage had been done: 'The point is that I said "A tiger does not proclaim his tigritude, he pounces". In other words: a tiger does not stand in the forest and say: "I am a tiger"'.[87]

Hostility and derision towards *négritude* would endure with considerable rancour throughout the 1960s and into the 1970s. It was argued that it was historically outdated, hopelessly romantic towards the African past and a literary strait-jacket. More damningly, reflecting Sartre's original characterisation of *négritude* as an 'anti-racism racism', was the indictment, exemplified by Adotevi's charge, that: 'Negritude today is actually a discourse of neo-colonialism. Negritude is the black way of being white.'[88]

86 L.S. Senghor, 'Negritude and African Socialism', K. Kirkwood (ed.), 'African Affairs Number Two', *St Antony's Papers No. 15* (London, 1963), 11 (Lecture at St Antony's College, 26 October 1961), 'Les ballets Africains de Fodéba Keita', *Liberté I, Négritude et humanisme* (Paris, 1964), 288 (originally published in *Hebdomadaire L'Unité africaine* 5 August 1959) and 'Qu'est-ce que la négritude?' *Études françaises,* 3/1 (1967).

87 L. Nkosi, *The Guardian,* 8 August 1962, MAK/V (1). The quip itself does not seem to feature in any record or report of the 1962 Kampala Conference. The reference has been taken from W.F. Feuser, 'Wole Soyinka: The Problem of Authenticity', *Black Literature Forum,* 22/3 (1988), 557; see also 'Tape of Berlin Conference', quoted by J. Jahn (trans. O. Coburn/U. Lehburger), *A History of Neo-African Literature: Writing in Two Continents* (London, 1968), 265–266. For an interesting history of this quip, see J. Sligh, 5 August 2013, 'Tigritude', http://jimsligh.wordpress.com/tag/wole-soyinka, last accessed 13 April 2014. Chinweizu/O. Jemie/I. Madubuike, 'CONTROVERSY: The Leeds-Ibadan Connection: The Scandal of Modern African Literature', *Okike: An African Journal of New Writing,* 13 (1979), 41 suggest that the origin of the quip is to be found in an article by W. Soyinka 'The Future of West African Writing' *Horn,* 4/1 (1960).

88 J.P. Sartre (trans. S.W. Allen) *black orpheus,* 59, S. Adotevi, *Négritude et négrologues* (Paris, 1972), 207 and J.G. Vaillant, *Black, French, and African: A Life of Léopold Sédar*

A further damning indictment was that *négritude* only concerned the Westernised elite; that it was simply no more than the alienated child of Western colonialism. Mphahlele was not alone in suggesting: 'Negritude remains the intellectual pastime of the governing elite'; and that 'poetry inspired by *négritude* is for an elite, because only the elite are plagued by the problem of identity … It does not speak to or about the unassimilated masses'.[89] This charge was also levelled with unrestrained contempt at the 1969 UNESCO Meeting of Experts on Problems of Cultural Policies in Africa in, of all places, Dakar. As a result of colonialism, it was argued,

> a rootless 'elite' was formed which subsequently, on seeing that it had not really been accepted by the world of the conqueror, began to lay claim to its past, sometimes with bitter nostalgia. Such, for example, is the 'negritude' movement, a cultural phenomenon which has played a political role. But it is a mistake to think that culture comes before politics: political and economic liberation is the prerequisite for cultural liberation … in struggling for the former … the African peoples asserted itself (*sic.*) and they began to rediscover their own identity.

Accordingly, the experts concluded, there was an essential need for this educated but uprooted elite to 're-educate themselves to appreciate the values of traditional culture and to avoid becoming the agents of continued decimation of culture in their role as decision-makers'.[90]

Négritude was also regarded with contempt by several African leaders. For example, it was dismissed by President Nkrumah in scathing terms: 'When I speak of the African Genius, I mean something different from Negritude … dynamic. Negritude consists in a mere literary affection and style … with occasional reference to Africa and things African. I do not mean a vague brotherhood based on a criterion of colour, or on the idea that Africans have no reasoning, but only a sensitivity.'[91] President Touré was equally dismissive: 'In the face of other cultures, Africa should … rid itself of its complexes, including the feelings of *négritude*.'[92] President Mobutu, too, in an unfavourable comparison with his

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Senghor, 288: '*La Négritude d'aujourd'hui c'est le discours actuel du néo-colonialisme. La Négritude, c'est la manière noire d'être blanc.*'

89 E. Mphahlele, Letter, 'Replying CHINUA ACHEBE', *Transition*, 9 (1963), 7 and *Voices in the Whirlwind* (New York, 1972), 195 (originally published as 'Writers and Commitment', *Black Orpheus*, II/3 (1968), 34–39).

90 UNESCO, SHC/CONF.40/3, 'Meeting of Experts on Problems of Cultural Policies in Africa', Dakar, 6–10 October 1969, 'Final report', 5 and Working Paper, Annexe III, 4; see also W. Feuser, 'Wole Soyinka: The Problem of Authenticity', 555–575.

91 Ministry of Information and Broadcasting, *Speech by Osagyefo the President at the Opening of the Institute of African Studies on 25th October, 1963* (Accra, 1963), 5–6.

92 A.S. Touré, *Africa on the Move*, 440.

own philosophy of 'authenticity', would similarly suggest that: '*Négritude* was born as a rebellion against the arrogance of others, but authenticity is ultimately a struggle to transcend the dependency in ourselves.'[93]

Yet, despite the hostility, *négritude* was evolving beyond its original conception of alienation and attracting new adherents. In its new form, as a champion of African cultural values, it appealed to a new generation of literary critics. Irele, for example, argued that: 'Negritude represents both an African *crise de conscience*, and its most significant modern expression; it is the watershed that marks the emergence of a modern African consciousness'; and that: 'The only really significant expression of cultural nationalism associated with Africa – apart from small-scale local movements – is the concept of negritude.'[94]

It was on this basis that in the 1970s *négritude* found some further, qualified, support from the 'troika' On the one hand, they deprecated *négritude* on much the same lines as Mphahlele:

> No doubt, at its inception, negritude filled a historic need. We may brandish our memories of empires of ages ago as shields against Western disparagement, but we also know that before colonialism came there was slavery. Who hunted the slaves? And who sold them for guns, trinkets and gin? … How much of this illusion of purity and sanctity can survive the events of the past decade? After all, 'When a nigger kicks a nigger/Where is the negritude?' (Madubuike).

As for the idea of a '*Civilisation de l'Univers*', this was dismissed by the 'troika' as 'Euro-American' and 'abstract'. Nonetheless, they, too, following in Wali's footsteps, espoused African traditions as the basis of African literature and therefore denounced 'modern' African writers who were 'insisting on importing imagery from alien environments'. They demanded that: 'Our poets should stop regarding themselves as primarily orphic messengers to the West'. For the 'troika',

> the problem facing the Nigerian writer is not in transferring from 'indigenous' to 'modern' poetry, but in transferring from the 'modern' in which he has been educated and which he practises, to the traditional modes of African poetic expression … The African writer or critic must confront this issue of what community he is writing for. Is he content to scribble exotic marginalia to the literatures of Europe?

93 President Mobutu, quoted by A. Mazrui/R.W. July, 'Introduction: The Humanities and New African Nations', R.W. July/P. Benson (eds), *Conference Report, African Cultural and Intellectual Leaders and the Development of the New African Nations* (Ibadan, 1992), 20–21.

94 A. Irele, 'Negritude or Black Cultural Nationalism', *Journal of Modern African Studies,* 3/3 (1965), 321 and 'Negritude-Literature and Ideology', *Journal of Modern African Studies,* 3/4 (1965), 522.

As a positive example, they put forward the name of Tutuola in that 'his use of English apart, Tutuola's mythic imagination is completely within the Yoruba African tradition'.[95]

In the view of the 'troika', 'the fountainhead of this poison' infecting African literature was the likes of Soyinka and the *Horn*, a journal founded at the English Department at the University of Ibadan. They argued that 'measures were taken against negritude only insofar as it was a "subversive" example that might incite into being a Nigerian nationalist and anti-British Literature. The particular merits or demerits of negritude poetry … were hardly the central issue.' *Négritude* was, to that extent, 'an African nationalist consciousness' subverted by a British neo-colonial cultural coup led by Soyinka and his friends. Whereas Soyinka had described *négritude* as 'artistically expatriate', they accused Soyinka and the Ibadan school of elitist alienation.[96]

Education

At the same time that African writers and critics were expressing their concerns about the creative limitations on African literature, a parallel debate was emerging on the closely related question of the decolonisation of education.

Although there was much rhetorical common ground on the answer to this question across Africa, when it came to implementation, policy varied widely. At one end of the spectrum was Ghana where Nkrumah declared his intentions from the outset.[97] In 1951, his Accelerated Development Plan for Education declared that: 'A progressive modern education system … must meet the many needs and aspirations of the nation as a whole.' What this meant was that the

95 Chinweizu/O. Jemie/I. Madubuike, 'Towards the Decolonization of African Literature', 34–37, 54; a slightly different version of this article was published as 'Towards the Decolonization of African Literature', *Okike: An African Journal of New Writing,* 7 (1975), 65–81. Soyinka responded to these 1975 articles with '"Neo-Tarzanism"; The Poetics of Pseudo-Tradition', *Transition,* 48 (1975), 38–44.

96 Chinweizu/O. Jemie/I. Madubuike, 'CONTROVERSY: The Leeds-Ibadan Connection: The Scandal of Modern African Literature', 37–46 and W. Soyinka, 'The Future of West African Writing', quoted by F. Feuser, 'Wole Soyinka: The Problem of Authenticity', 559; see also M. Banham, 'The Beginnings of a Nigerian Literature in English', *A Review of English Literature,* 3/2 (1992), 96.

97 E. Ashby, *African Universities and Western Traditions* (London, 1964), 42–93, E.A. Haizel, 'Education in Ghana, 1951–1966', K. Arhin (ed.), *The Life and Work of Kwame Nkrumah: Papers of a Symposium Organized by the Institute of African Studies University of Ghana, Legon* (Accra, 1991), 55–87 and K. Botwe-Asamoah, *Kwame Nkrumah's Politico-Cultural Thought and Policies: An African-Centred Paradigm for the Second Phase of the African Revolution* (New York, 2005), 181–195; see also R.J. Southall/J.M. Kaufert, 'Converging Models of University Development: Ghana and East Africa', *Canadian Journal of African Studies,* 8/3 (1974), 607–628.

missionary societies and churches would hand control over their schools to the state which would then take full responsibility for the supervision of education.[98] Nkrumah justified this on the basis that it was necessary

> to plan an educational system … more in keeping with the requirements of the economic and social progress for which our new development plans are aiming. Our pattern of education … was formulated and administered by an alien administration desirous of extending its dominant ideas and thought processes to us. We were trained to be inferior copies of Englishmen, caricatures to be laughed at … We were denied the knowledge of our African past and informed that we had no present … We were taught to regard our culture and traditions as barbarous and primitive … All this has to be changed.[99]

It was an approach enjoined by many other African leaders. President Touré, for example, explained that:

> The education that was given to us was designed to assimilate us, to depersonalize us, to Westernize us – to present our civilization, our culture, our own sociological and philosophical conceptions, even our humanism as the expression of a savage and almost conscious primitivism – in order to create a number of complexes in us which would drive us to become more French than the French themselves.[100]

President Nyerere similarly argued that colonial education policy:

> was not designed to prepare young people for the service of their own country; instead it was motivated by a desire to inculcate the values of the colonial society and to train individuals for the service of the colonial state … It was thus a part of a deliberate attempt to effect a revolution in the society; to make it into a colonial society which accepted its status and which was an efficient adjunct to the governing power.

The education system inherited at independence was therefore 'both inadequate and inappropriate for the new state … The Education provided by Tanzania … must serve the purposes of Tanzania'. In terms of policy: 'Education has to liberate the African from the mentality of slavery and colonialism by making him aware of himself as an equal member of the human race'[101]

98 K. Botsio, 'Foreword', Government Printing Office, *Accelerated Development Plan for Education* (Accra, 1951) and E.A. Haizel, 'Education in Ghana, 1951–1966', 60–61.

99 K. Nkrumah, *Africa Must Unite*, 49.

100 A.S. Touré, *La lutte du Parti démocratique de Guinée pour l'emancipation africaine* (Conakry, 1959), 156, quoted by J.A. Fishman, 'National Languages and Languages of Wider Communication in the Developing Nations', W.H. Whiteley (ed.), *Language Use and Social Change: Problems of Multilingualism with Special Reference to Eastern Africa: Studies presented and discussed at the Ninth International African Seminar at University College, Dar es Salaam, December 1968* (London, 1971), 38.

101 J.K. Nyerere, *Education for Self-reliance* (Dar es Salaam, 1967), 3–5, 25, 'The University's Role in the Development of the New Countries' and 'Opening Address,

President Kaunda, too, understood these policy issues in almost identical terms:

> the missionaries … saw in educating the indigenous population a means of facilitating their conversion to Christianity … the colonial administrator … saw in educating the local populace the means of producing a literate minion who would run errands for him … the time has come for all young African countries to engage in serious appraisals of their existing educational systems with a view to … gearing them to the needs of the countries concerned.[102]

After independence, therefore, President Nkrumah turned his attention to the University of Ghana. He warned that we want it 'to cease being an alien institution and to take on the character of a Ghanaian University, loyally serving the interest of the nation and the well-being of our people'.[103] Accordingly, expatriate staff were reduced in numbers and the umbilical cord linking the university with the University of London was cut. Under its new constitution, the first of the prescribed aims was the requirement that: 'In determining the subjects to be taught, emphasis should be placed upon those which are of special relevance to the needs and aspirations of Ghanaians, including the furtherance of African unity.'[104]

A further step in the projection of the African Personality was taken with the creation in 1962 of the Institute of African Studies at the University of Ghana. In his address at its opening ceremony, President Nkrumah laid down the 'guiding principles' which should always be borne in mind:

> First and foremost … the need for a re-interpretation … African studies … remain under the shadow of colonial ideologies and mentality … The study of African social institutions and cultures was subordinated in varying

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World University Service General Assembly, Dar es Salaam 27 June 1966', *Uhuru na Ujamaa: Freedom and Socialism: A Selection from Writings and Speeches 1965–67* (London, 1968), 183, and 'Education for Liberation' 20 May 1974 Dag Hammarskjold Seminar, Dar es Salaam, E. Lema/M. Mbilinyi/R. Rajani (eds), *Nyerere on Education: Selected Essays and Speeches, 1954–1998* (Dar es Salaam, 2004), 125.

102 K.D. Kaunda, 'Foreword', H.F. Makulu, *Education, Development and Nation-building in Independent Africa: A Study of the New Trends and Recent Philosophy of Education* (London, 1971), ix.

103 K. Nkrumah, *I Speak of Freedom: A Statement of African Ideology*, 167 (Speech on the tenth anniversary of the founding of the CPP in 1949).

104 University of Ghana Act, 1961, Article 79, quoted by E. Ashby, *African Universities and Western Traditions*, 90, Ministry of Information and Broadcasting, T*he Role of our Universities: Speech delivered by Osagyefo the President at University Dinner on Sunday, 24th February, 1963* (Accra, 1963), 1 (reference from E.A. Haizel, 'Education in Ghana, 1951–1966', 71); see also E.A. Haizel, 'Education in Ghana, 1951–1966', 66–69, E. Ashby, *African Universities and Western Traditions*, 86–93 and K. Botwe-Asamoah, *Kwame Nkrumah's Politico-Cultural Thought and Policies: An African-Centred Paradigm for the Second Phase of the African Revolution*, 181–195.

> degrees to the effort to maintain the apparatus of colonial power … One essential function of this Institute must surely be to study the history, culture and institutions, languages and arts of Ghana and of Africa in new Africa-centred ways … in entire freedom from the propositions and presuppositions of the colonial epoch.

As a yet further goal, President Nkrumah also called on the Institute of African Studies to produce 'an extensive and diversified Library of African Classics'.[105]

At the opposite end of the spectrum was President Banda. The University of Malawi had been established in 1965, the year after independence, to develop higher education opportunities within Malawi as hitherto there had been no other option than study abroad. However, following on from the 1964–65 Cabinet crisis, which ended with President Banda assuming autocratic control over Malawi, education became directly subject to his diktats and the university to much the same repressive controls imposed on all spheres of political life. For example, Censorship Acts restricted the use of textbooks and the content of the university's syllabus, and prior clearance was required for all academic papers sent abroad. Among the many works that were banned were those of Achebe, Baldwin, Becket, Brecht, Engels, Forsyth and Soyinka. As an extension of the censorship, foreign academics, less easy to control, were pushed to leave, while many Malawian academics were dismissed, imprisoned or forced into exile. President Banda also intervened in the university curriculum. Famously, he complained that not enough attention was paid to Classical Studies – he is alleged to have asked accusingly: 'How can you people call yourselves a real university if you don't have a Department of Classics?' As a result, by the early 1980s the University of Malawi was forced to open a Classics Department.[106]

More typical, perhaps, is the experience of Kenya which exemplified the practical difficulties confronting African aspirations. The story is recorded by

105 Ministry of Information and Broadcasting, *Speech by Osagyefo the President at the Opening of the Institute of African Studies on 25th October, 1963*, 2–4 and J.H. Nketia, 'National Development and the role of African Studies Institutes: A Case study', R.W. July/P. Benson (eds), *Conference Report, African Cultural and Intellectual Leaders and the Development of the New African Nations,* 59–60.

106 A. Matiki, 'The Politics of Language in Malawi', R.K. Herbert (ed.), *African Linguistics at the Crossroads: Papers from Kwaluseni: 1st World Congress of African Linguistics, Swaziland, 18–22 July 1994* (Cologne, 1997), 533, D. Kerr/J. Mapanje, 'Academic Freedom and the University of Malawi', *African Studies Review,* 45/2 (2002), 75–83 (the reference is to B. Pachai, *Malawi: A History of the Nation* (London, 1973)), O.J.M. Kalinga, 'The Production of History in Malawi in the 1960s: The Legacy of Sir Harry Johnston, the Influence of the Society of Malawi and the Role of Dr Kamuzu Banda and His Malawi Congress Party', *African Affairs,* 97/389 (1998), 523–549 and J. Gibbs, 'Of Kamazu and Chameleons: Experience of Censorship in Malawi', *The Literary Half-Yearly,* 23/2 (1982), 68–83 (Gibbs taught at the University of Malawi from 1972 to 1978).

Ngũgĩ, one of the main players in the process. He recalled how on his return from the University of Leeds to the University of Nairobi in 1967 he 'was horrified … to find that the Department of English was still organised on the basis that Europe was the centre of the universe. Europe, the centre of imagination?' In 1968, therefore, together with two other lecturers, he protested that: 'Just because for reasons of political expediency we have kept English as our official language, there is no need to substitute a study of English culture for our own. We reject the primacy of English literature and culture.' In the subsequent debate, the expatriate head of the Department of English emphasised the importance of a 'study of the historic continuity of a single culture throughout the period of emergence of the modern west'. Ngũgĩ replied that this assumed that 'the English tradition and the emergence of the modern west is the central root of our consciousness and cultural heritage. Africa becomes an extension of the west … If there is a need for a "study of the historic continuity of a single culture", why can't this be African? Why can't African literature be at the centre …?' If: 'We want to establish the centrality of Africa … With Africa at the centre of things, not existing as an appendix or satellite of other countries and literatures, things must be seen from the African perspective.'[107]

Though the battle would largely be won within the University of Nairobi, the war did not end there. In 1974 a conference was held in Nairobi on 'The Teaching of African Literature in Kenyan Schools' to consider: 'The Nature and Role of African literature in our educational system.' In his paper to the conference, Ngũgĩ pressed his point, 'why do we find it necessary to qualify this literature with the word "African", for what else should it be?'[108] The conference report concurred:

> Education in Kenya was an instrument of colonial policy designed to educate the people of Kenya into acceptance of their role as the colonized. The education system at independence was therefore an inheritance of colonialism so that literature syllabuses were centred on the study of an English literary tradition taught by English teachers. Such a situation meant that Kenyan children were alienated from their own experience (and) identity in an independent African country.

107 N. wa Thiong'o (Ngũgĩ), *Decolonising the Mind: The Politics of Language in African Literature* (London, 1986), 94–102, *Moving the Centre: The Struggle for Cultural Freedoms* (London, 1993), 8–9, *Homecoming: Essays on African and Caribbean Literature, Culture and Politics* (London, 1972), 14–16, 145–150 Appendix: 'On the Abolition of the English Department' and 'Literature and Society', *Writers in Politics: A Re-engagement with Issues of Literature and Society* (London, 1981), 3. Ngũgĩ is the name by which Ngũgĩ wa Thiong'o is generally known having previously written under the name James Ngugi.

108 'Introduction' and Ngũgĩ, 'Literature and Society', E. Gachukia/S.K. Akiwaga (eds), *Teaching of African Literature in Schools* (Nairobi, 1978), i–iii, 1–29.

It also lamented that 'even ten years after Independence … our students were still being *subjected to alien cultural values*'. Change is necessary because: 'A people's culture is an essential component in defining and revealing their world outlook … the education offered today … must be seen as an essential part of the continuing national liberation process.'[109]

Language

The other major area of debate was the question of the language of African literature. In his opening address to the 1963 Dakar Conference, President Senghor determined to confront this issue; he suggested that even though 'we had to submit to the language of our colonisers or … to the policy of assimilation … if we had the choice we would have chosen French'. This choice, he connected, as had been done at the 1959 Rome Congress, to 'the "immortal principles" of 1789' (the French Declaration of Rights), although, he was at least prepared to concede that: 'It was our bad fortune that these principles of the Revolution were not honestly applied in their entirety.' In contrast, Sembène argued that 'until we have made the African languages part of our educational system … our literature will still be subject to the control of other powers, or other people's good intentions'. When challenged by Diop to repeat his speech in Wolof, Sembène complained that, if he had written in Wolof, 'then who would have read it? How many people know how to read the language? … Eighty-five per cent of the people here are illiterate; the rest … do not read African authors. That means that our public is in Europe.'[110]

The effect, though, as Kane explained in a subsequent article, was that the African public is

> reduced to a state of strict subordination … as European tastes are forced on it as surely as on the writer. The proof lies in the many awards honouring the talent of a writer which seem to signify … that certain European criteria have been reached … which have nothing to do with depicting Africans and their way of life … Europe has given its verdict; the former has only to accept it.[111]

The debate was brought into sharper prominence at this time as a result of Wali's commentary on the 1962 Kampala Conference which Ngũgĩ would describe as 'the historic intervention' and Irele as a 'remarkable article'. Wali

109 1974 Nairobi Conference on 'The Teaching of African Literature in Kenyan Schools', Recommendations of the Working Committee, quoted by Ngũgĩ, *Decolonising the Mind: The Politics of Language in African Literature,* 96–102; for some reason, the recommendations are not included in E. Gachukia/S.K. Akiwaga (eds), *Teaching of African Literature in Schools* which reports on some of the conference papers.

110 President Senghor, 'Opening Address' and 'The Writers Speak', G. Moore (ed.), *African Literature and the Universities*, 14, 57–61.

111 M. Kane, 'The African Writer and his Public', *Présence Africaine,* 30/58 (1966), 10–32.

charged that if, in its attempt to define African literature, the 1962 Kampala Conference had concluded that 'it is better for an African writer to think and feel in his own language and then look for an English transliteration approximating the original', it followed that: 'An African writer who thinks and feels in his own language *must* write in that language.' He charged that: 'Less than one per cent of the Nigerian people have had access to, or ability to understand Wole Soyinka's Dance of the Forest. Yet, this was the play staged to celebrate their national independence, tagged on to the idiom and traditions of a foreign culture.' This charge was not intended as criticism of an 'extremely difficult and illogical situation' but merely to point out that

> the whole uncritical acceptance of English and French … has no chance of advancing African literature and culture … until these writers and their western midwives accept the fact that any true African literature must be written in African languages, they would be merely pursuing a dead end … There is no part of the world where a false literary unity has been attempted in the way that we are doing today in Africa, not even in Europe.[112]

If, on an emotional level, Wali's argument was hard to gainsay, on a practical level, as Sembène and Kane had pointed out, it placed writers in an impossible situation. This was the point that Achebe also sought to emphasise, in the process identifying many of the issues confronting the newly independent states faced with difficult policy decisions as regards the language of education.

> There are not many countries in Africa today where you could abolish the language of the erstwhile colonial powers and still retain the facility for mutual communication. Therefore those African writers who have chosen to write in English or French are not unpatriotic smart alecs with an eye on the main chance … They are by-products of the same processes that made the new nation states of Africa … Is it right that a man should abandon his mother-tongue for someone else's? It looks like a dreadful betrayal and produces a guilty feeling. But for me there is no other choice.[113]

The challenge, once again, was most famously taken up by Ngũgĩ who recalled how the Wali article 'kept on pursuing me'. In a 1967 interview with a student newspaper at the University of Leeds, he painfully admitted: 'I have reached a point of crisis. I don't know whether it is worth any longer writing

112 O. Wali, 'The Dead End of African Literature?' 13–14, Ngũgĩ, *Decolonising the Mind: The Politics of Language in African Literature*, xi and A. Irele, *The African Experience in Literature and Ideology*, amended edn (Bloomington, 1990), 43–65 (originally Paper presented to the 1973 Yaoundé Conference on *Le Critique africain et son people comme producteurs de civilisation*); see also E. Mphahlele, Letter to the Editor, *Transition,* 11 (1962), 7–9 and O. Wali, Letter to the Editor, 'A Reply to Critics from Obi Wali', *Transition* 12 (1964), 6–7.

113 C. Achebe, 'English and the African Writer', *Transition,* 18 (1965), 27–30.

in English'. As he explained: 'I knew *about* whom I was writing, but *for* whom was I writing?' His crisis was exacerbated by his involvement in the 'debate about the whole question, concept and constitution of a National Theatre'. The debate centred on the attempt to wrest control of the Kenyan National Theatre and Cultural Centre from its white management. It was, in effect, an extension of the struggle over the Department of English but it also reflected the wider debate over Kenya's language policy. As the struggle for control dragged on, it inspired a flowering of alternative African language theatre companies, the most famous of which was that set up by Ngũgĩ in his home village of Kamīr̲ī̲thū in 1976. Enthused by the experience of bringing African language plays to the people, Ngũgĩ publicly called on all Kenyan writers 'to return to their roots in the languages and cultures of all our nationalities'. Ngũgĩ would also recall how in a talk to a Christian audience he had emphasised that: 'I am not a man of the Church. I am not even a Christian'. In response, he was upbraided by an old man who angrily reminded him that he was a Christian and that the evidence was in his first name 'James'. As a result of this accusation, in 1977 Ngugi changed his name to Ngũgĩ wa Thiong'o and announced that, henceforth, his works would be written and published in Gikuyu.

That same year, the Kenyan government responded to his critical stage play depiction of Kenyan society *Ndeenda: ithaako ria ngerekano* (I Will Marry When I Want) by detaining him without trial on the charge of 'activities and utterances … dangerous to the good Government of Kenya and its institutions', an action that eventually forced his exile. His first novel in Gikuyu *Caitaani Mũtharaba-inĩ* (Devil on the Cross) was therefore written on prison toilet-paper. Ten years later President Arap Moi would attempt to have arrested a certain Matigari who was apparently going around asking questions about truth and justice. When it was finally realised that Matigari was simply the hero of Ngũgĩ's latest novel, the Kenyan government allegedly attempted to 'arrest' all copies of the book.[114]

As the African elite therefore recognised, underlying the literary language question was the question of national language policies particularly in relation

114 Ngũgĩ, 'Moving the Centre: Towards a Pluralism of Cultures', *Journal of Commonwealth Literature,* 26/1 (2016), 9–10, 175 (the reference is to *Matigari* (Oxford, 1989 – first published in Gikuyu as *Matigari ma Njĩrũũngi* (Nairobi, 1986)), *Decolonising the Mind: The Politics of Language in African Literature*, 34–86 and 'Foreword', I. Ikiddeh, *Homecoming: Essays on African and Caribbean Literature, Culture and Politics*, xi; see also Ngũgĩ, *Detained: A Writer's Prison Diary* (London, 1981) and J. Wilkinson, 'A Writer's Prison Diary: Ngugi wa Thiong'o's Detained', *Africa: Rivista trimestrale di studi e documentazione dell'Istituto italiano per l'Africa e l'Oriente,* 38/4 (1983), 613–623. The references are to Ngũgĩ wa Thiong'o/Ngũgĩ wa Mĩriĩ, Ngaahika, *Ndeenda: ithaako ria ngerekano* (Nairobi, 1980), Ngũgĩ, *I Will Marry When I Want* (London, 1982), *Caitaani mũtharaba-inĩ* (Nairobi, 1980) and *Devil on the Cross* (London, 1982).

to education. To survive, African languages had to be supported by government policy. Already in 1955, a Nigerian newspaper had commented that: 'We must accept the *lingua franca* that history has already forced upon us but we must fight tooth and nail to preserve our own languages in all the instinctive aspects of our culture.'[115] The 1959 Rome Congress had also concluded: 'That it is essential that the Congress should officially adopt an unambiguous position on the linguistic question.' It therefore proposed 'that independent and Federated Negro Africa should not adopt any European or other foreign language as a national language' but 'that a preferential African language should be chosen … Every African should learn this language in addition to his regional language and the European languages of secondary education.'[116]

Inevitably, therefore, African language policies became a major point of discussion at a range of meetings organised in Africa by UNESCO. For example, at the UNESCO 1969 Meeting of Experts on Problems of Cultural Policies in Africa, Ngugi stressed that: 'Increased study of African languages will inevitably make more Africans want to write in their mother tongues.'[117] The point was reiterated at the joint 1975 UNESCO/OAU Accra Conference on Cultural Policies in Africa which emphasised that: 'African languages and traditions constitute the indispensable foundations of any educational and cultural advancement in Africa.' The African states were thereby urged to 'proceed with courage to the choice of one or more national languages where they have not already done so'.[118]

The following year yet another joint UNESCO/OAU meeting, this time of African Ministers of Education, commended those African states that had supported the use of African languages: 'The fundamental vehicle of the culture of a people is its language, and this is why the use of African languages as instruments of education must be given high priority. The … countries which have made … political decisions in this sphere are now reaping the benefits in the form of … the effective cultural liberation of their peoples.'[119]

115 *Daily Times,* 14 May 1955, quoted by E. Ashby, *African Universities and Western Tradition*, 43.

116 'Resolution on Linguistics', *Présence Africaine,* 24–25 (1959), 435–436.

117 Ngũgĩ, *Decolonising the Mind: The Politics of Language in African Literature*, 72–73; the UNESCO meeting report seems to have disappeared following a fire at the building housing the UNESCO archives.

118 UNESCO, 'Report of Commission II' and 'Recommendation No. 3', Final Report, Intergovernmental Conference on Cultural Policies in Africa, 27 October – 6 November 1975, Accra (organised by UNESCO with the cooperation of OAU), 21, 26 https://unesdoc.unesco.org/ark:/48223/pf0000019056, last accessed 13 March 2023.

119 'Report of Commission I', and 'Recommendation 2 and 4', Final Report Conference of Ministers of Education of African Member States (organised by UNESCO with the cooperation of the OAU and ECA) Lagos (Nigeria) 27 January – 4 February 1976, UNESCO ED/MD/41, 22, 36–38.

Similar sentiments were incorporated into the 1976 Cultural Charter for Africa (see page 373 below). Its Preamble declared that 'it is imperative to resolutely ensure the promotion of African languages'. It therefore provided that: 'The African States recognize the imperative need to develop African languages … and to this end will endeavour to formulate a national policy in regard to languages'; and that: 'The African States should prepare and implement the reforms necessary for the introduction of African languages into education.'[120] The injunction was pursued further at FESTAC in 1977: 'We have to rescue our cultures by promoting them in our languages … No European language is fit enough to express cultural values.' It was thereupon recommended that there should be 'Teaching in African languages at all levels' and that: 'Appropriate African languages should be granted "official status" … in every African country.'[121]

There was, of course, typically, an enormous gulf between the rhetoric and practice of OAU member states. Most obviously, OAU Charter Article XXIX set out that: 'The working languages of the Organization and all its institutions shall be, if possible African languages, English and French, Arabic and Portuguese'; but, as of 1981, the working languages of the OAU were mainly English and French and, to a far lesser extent, Arabic and Portuguese. Similarly, notwithstanding the many fine words devoted to cultural and mental liberation, it was evident that, with few notable exceptions, as the UNESCO conferences had implied, only a few African states had implemented measures in support of the use and study of African languages, particularly at governmental, administrative and secondary education level. A working document for the 1975 UNESCO/OAU Accra Conference on Cultural Policies in Africa, that is some fifteen years after independence, laid out the crux of the problem: 'The situation of many African countries … is … one of linguistic pluralism whose complexity is accentuated by the privileged status accorded to foreign languages, at the expense of mother tongues'; it concluded that: 'The cultural renaissance of Africa is scarcely possible without a reinstatement of the national languages.'[122]

While the UNESCO assessment may have been fair in terms of the pretensions served up at these conferences, it was unduly harsh in terms of the practical policy decisions confronting the newly independent states. President Nkrumah, who was hardly lacking in support for African cultural liberation, outlined the dilemma in an address on the eve of Ghana's independence:

120 OAU 1976 Cultural Charter for Africa.

121 Working Group II Report, Section I Sub-theme: Black Civilisation and African Languages, A.U. Iwara/E. Mveng (eds), *Second World Black and African Festival of Arts and Culture, Colloquium on Black Civilization and Education (Lagos, 17th–31st January, 1977) Colloquium Proceedings Vol. 1,* 132–134.

122 UNESCO/OAU SHC.75/Conf.201/Col.4, 'Problems and Prospects', Intergovernmental Conference on Cultural Policies in Africa, 27 October – 6 November 1975, Accra (organised by UNESCO with the cooperation of OAU), 14, 21.

> One of the most obvious difficulties which face Africa south of the Sahara is the multiplicity of languages and dialects. Every one of us … has to conduct his parliamentary business in a language which is not his own … we welcome English as … a common medium for exchange between ourselves … also for opening the door to … the world (however) An essential of independence is that emphasis must be laid on studying the living languages of Africa.[123]

In practice, therefore, the post-independence policy responses of the African states varied considerably, but, even when policy was guided by good intentions, it invariably encountered severe difficulties of implementation. There were, of course, substantial resource constraints in turning inherited educational systems upside down, but there is also a suspicion that the continued use of colonial languages was abetted by the desire of the African elite to maintain a key distinction of social and educational status.

In Tanzania, the idea of Swahili as the national language had already been promoted by the TAA, which had drafted its constitution in Swahili. Representations for Swahili to be accepted as the second language of the Legislative Council were therefore made in 1950 but Governor Twining (Tanganyika) had still to be persuaded and accordingly it was only in the restructured Legislative Council of 1955 that Swahili was finally recognised as a second language of debate.[124]

Upon independence in 1961, Swahili was therefore immediately anointed the national language of Tanzania and the following year President Nyerere delivered a speech to Parliament in Swahili to encourage its use as the primary language of Parliament.[125] In order to accelerate acceptance of Swahili, he also established a Promoter for Swahili and, in 1967, alongside several other measures, a National Swahili Council 'to promote the development and usage of the Swahili language' and 'to encourage the use of the Swahili language in the conduct of official business and public life generally'.[126] In 1968, President Nyerere, as part

123 K. Nkrumah, *I Speak of Freedom: A Statement of African Ideology*, 102–103 (Speech to the House on the eve of independence).

124 Government Printer, *Tanganyika: Report of the Committee on Constitutional Development 1951 and Despatch of 22nd March, 1951, from His Excellency the Governor to the Secretary of State for the Colonies AND Despatch of 25th July, 1951 from the Secretary of State for the Colonies to His Excellency the Acting Governor* (Dar es Salaam, 1951), 22, 36 and Secret Ref. S.1462 30 May 1952 Twining to Colonial Secretary Lyttleton and Tanganyika: Statement by His Excellency the Governor to Legislative Council on Wednesday, the 27th August, 1952, 3, NA CO 822/607.

125 'Inaugural Address to Parliament 10 December 1962', J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja: A Selection from Writings and Speeches 1952–1965* (London, 1967), 176–187 (reprint of article for Royal Commonwealth Society Journal, December 1961).

126 August 1967 National Swahili Council Act, quoted by M.H. Abdulaziz, 'Tanzania's National Language Policy and the Rise of Swahili Political Culture', W.H. Whiteley (ed.), *Language Use and Social Change*, 164–169.

of his 'Education for Self-reliance' policy, also laid down that primary education should be conducted in Swahili with the intention that as from 1971 all secondary education should also be in Swahili. Yet, by the early 1970s, the momentum began to slow as policy was not backed up by implementation so that in many areas of higher education, business and government English retained its hold. By 1974, even President Nyerere felt compelled to suggest that: 'Tanzanians would be foolish to reject English. We are a small country. English and French are African languages, and so one we have. It is a very useful language.' As a result, by 1982, it was decided that whereas Swahili should remain the national language, and the language of instruction in primary education, the basis of secondary education should be English.[127]

In Kenya, at the 1961 general election, all candidates had to demonstrate a sufficient command of English, a prerequisite also included in the 1963 independence constitution. However, in terms of the political campaign, whereas the Kenya African Democratic Union (KADU), the opposition party, utilised Swahili, based on its appeal to the smaller ethnic groups, Prime Minister Kenyatta's Kenya African National Union (KANU) party, though initially committed to Swahili, increasingly deferred to the language preference of its ethnic supporters. This tribal divide would leave the 1964 Kenya Education Commission with little choice but to recommend English as the medium of education and the 1969 constitution to retain English as the language of the National Assembly.

However, persistent pressure and the example of Tanzania finally prompted President Kenyatta to announce that: 'We are soon going to use Swahili in Parliament, whether people like it or not … we have got to be proud and use our own language'; the choice of Swahili was unavoidable, of course, as Kikuyu would have proven disastrously divisive. As a result, in 1971, Swahili was declared the official language of Kenya and in 1974 it was also designated the official language of the National Assembly; although English was still retained as the language of law as hitherto all legislation had been written in English. In his justification of the decision, President Kenyatta explained that: 'The basis of any independent Government is a national language, and we can no longer continue aping our former colonisers … Those who feel that they cannot do without English can as well pack up and go'; and that: 'A nation without culture is dead, and that is why I decreed that Swahili would be the national language.'[128]

127 J.K. Nyerere, Policy Statement, *Education for Self-reliance*, 4–5, 24, J. Blommaert, *State Ideology and Language in Tanzania* (Cologne, 1999), 88–94 and G.A. Mhina, 'The Tanzanian Experience in the Use of Kiswahili in Education', *African Languages,* 5/2 (1979), 65–70.

128 W.H. Whiteley, *Swahili – The Rise of a National Language* (London, 1969), 68, Constitution of Kenya (Amendment) Act No. 2 of 1974 (Swahili official language of National Assembly) and (Amendment) Act No. 14 of 1975 (National Assembly to use Swahili in its proceedings but all laws to be written in English), *Africa Survey,*

The situation in Uganda was even more complex. Whereas at independence Radio Uganda had been broadcasting in five languages (including English), within a few years it had to provide broadcasts in eighteen languages. In 1967, therefore, President Obote plaintively outlined the problem that he felt confronted any Ugandan government:

> Our present policy is to teach … more English in schools. We are not unmindful … that English … was the language … by which Uganda was ruled … In spite of this … we find no alternative to English … Nevertheless there is a real possibility that as long as English is maintained … spoken by a minority, a charge … could be made … that it is the language of the privileged group. But … we could not, for instance adopt Lugbara … I am not quite convinced that having adopted an African language as a national language, a tendency would not develop to discourage all other languages around the country.[129]

However, with Tanzania and Kenya moving towards Swahili, pressure was heaped on Uganda to take a similar path. President Amin therefore initiated a country-wide debate involving a choice between Swahili and Luganda. Twelve (non-Bantu) districts voted in favour of Swahili while eight (Bantu) districts, led by Buganda and supported by four of her historic vassal tribes, voted for Luganda; precisely the ethnic divide that all African states were trying to finesse. As a result, in August 1973, Swahili was declared the national language of Uganda, but, unlike Tanzania, its implementation was barely supported by government policy measures.[130]

Congo-Léopoldville (Zaire) presented a greater challenge in that estimates suggested the existence of as many as 250 to 300 languages although eventually four regional languages emerged as an effective *linguae francae*. There is a (possibly apocryphal) story that at independence Prime Minister Lumumba

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September 1974, 54, *Daily Nation,* 1 September 1969 and *Standard,* 14 September 1974, quoted by L. Harries, 'The Nationalization of Swahili in Kenya', *Language in Society,* 5/2 (1976), 153–164, *Daily Nation,* 9 June 1969, quoted by E.G. Bokamba/J.S. Tlou, 'The Consequences of the Language Policies of African States vis-à-vis Education' and *Africa Survey* September 1974, 54, quoted by T. Hopkins, 'The Development and Implementation of the National Language Policy in Kenya', P.F.A. Kotey/H. Der-Houssikian (eds), *Language and Linguistic Problems in Africa* (Columbia, 1977), 35–53, 84–96; see also T.P. Gorman, 'The Development of Language Policy in Kenya with Particular Reference to the Educational System', W.H. Whiteley (ed.), *Language in Kenya* (Nairobi, 1974), 397–454.

129 M.A. Obote, 'Language and National Identification', *East Africa Journal,* 4/1 (1967), 3–6 (Address to Seminar on Mass Media and Linguistic Communications in East Africa, Kampala, 31 March to 3 April 1967).

130 A. Nsibambi, 'Language Policy in Uganda: An Investigation into Costs and Politics', *African Affairs,* 70/278 (1971), 62–71.

and Tshombe, leader of the Katanga region, could only confer through an interpreter.[131] In 1959, prior to independence, an educational commission had drafted plans for the study of African languages and a course on African culture, but political pressure ensured that these plans were never realised and so the language of higher education remained French and in 1962 French was formally adopted as the official language; in effect the language of the elite.[132]

Acceptance of French as the official language was all the more remarkable given President Mobutu's philosophy of '*Authenticité*'. *Authenticité* was 'the Zairian people's awareness of return to its own sources, of the need to seek out ancestral values … It is … rejection of the blind adoption of imported ideologies'.[133] As President Mobutu explained, 'throughout our colonial epoch, by dint of hearing about the superiority of the cultural values of the colonial ruler, the people ended up by despising their own culture and letting themselves be convinced that the colonists were superior to them in everything … We have decided to bury once and for all the vestiges of our colonial past.'[134]

In that 'political liberation had to be accompanied by economic liberation and, above all, by a liberation of the mind', President Mobutu therefore ordered Zairians to have authentic names which refer to their ancestors; changed the name of the country, cities, and streets to eliminate European names; took down old statues and commemorative plaques of Stanley, Leopold II and Elizabeth II; changed the fashion code to make African dresses the formal wear and eliminated the wearing of coats and ties for men, and mini-skirts, trouser suits, wigs, lipstick, and make-up for women; greeted foreign heads of state with drumming rather than a 21-gun salute; and urged that all Zairian traditional art in foreign collections be returned to Zaire so as to inspire contemporary artists.[135]

As might have been expected, in Guinea, President Touré spelled out in clear terms the case for change; he argued that:

> The language of a People is a part of its personality and constitutes an active element of its human identity… It is the mirror reflecting its values

131 B. Yates, 'The Origins of Language Policy in Zaire', *Journal of Modern African Studies,* 18/2 (1980), 257.

132 E. Polomé, 'The Choice of Official Languages in the Democratic Republic of the Congo', J.A. Fishman/C.A. Ferguson/J. Das Gupta (eds), *Language Problems of Developing Nations* (New York, 1968), 303.

133 B. Yates, 'The Origins of Language Policy in Zaire', 276–277.

134 President Mobutu 7 October 1972, Ethiopia, quoted in 'The Cultural Revolution under the Impetus of Mobutism', B.E. Botombele (for UNESCO), *Cultural Policy in the Republic of Zaire* (Paris, 1976), 53–55.

135 Speech by President Mobutu, November 1973, quoted by K.L. Adelman, 'The Recourse to Authenticity and Négritude in Zaire', *Journal of Modern African Studies,* 13/1 (1975), 135–137 and S. Diallo, '*Jeune Afrique* Fait Parler Mobutu', *Jeune Afrique,* 591 6 May 1972, 19–20, quoted by G. Kabwit, 'Zaire: The Roots of the Continuing Crisis', *Journal of Modern African Studies,* 17/3 (1979), 389.

> of civilization … A People who abandon their language become a crippled People, accepting the most serious dependence, cultural dependence. [*La langue d'un Peuple fait partie de sa personnalité et constitue un elémént actif de son identité humaine … Elle est le miroir reflétant ses valeurs de civilisation … Un Peuple qui abandonne sa langue deviant un Peuple infirme, acceptant la plus grave dépendance, la dépendance culturelle.*][136]

From the outset, therefore, Guinea was intent on turning its education system upside down. In 1959, though bankrupt, Guinea began to reassess its curriculum. For example, the 'Party' determined that 'there was no question of providing literacy training in French, since no one language is more suited than any other to the expression of highly abstract and scientific ideas; rather, every language expresses the ideas and feelings of a civilization'. As part of its campaign against illiteracy and as a means of spreading the practice of writing in indigenous languages, eight national languages were adopted and employed as the languages of instruction in education. Such education as remained in French, and increasingly English, was regarded as a necessary but temporary expedient. Its approach was summarised in a booklet prepared for UNESCO:

> It would be madness to seek the complete liberation of our people from imperialist cultural domination while continuing to use the languages of those who tried to destroy our culture and enslave us. In this context, French, English and Portuguese are a direct threat to the African languages which are one of the most authentic aspects of African culture.[137]

It is with some irony then that Kaba observes that President Touré spoke only French in meetings and, despite a substantial literary output, wrote nothing in an African language.[138]

In contrast, as might have been expected, other than Mali, the sub-Saharan former French colonial territories showed little desire to develop the use of indigenous languages within their education system. Mali's 1962 educational reforms were said to be based on two fundamental objectives: Mass and quality education to meet the needs and realities of Mali and decolonisation of the mind, and the rehabilitation of Africa and its values.[139] On the other hand, Cameroon

136 A.S. Touré, *La Revolution Culturelle* (Geneva, 1972), 149.

137 J.B. Bolibaugh, *Educational Development in Guinea, Mali, Senegal and Ivory Coast* (Washington, 1972), 18–38, V. du Bois, 'Guinea Educates A New Generation', *Africa Report,* 1 July 1961, 3–4, 8, 12 and The Ministry of Education and Culture under the auspices of the Guinean National Commission (for UNESCO), *Cultural Policy in the Revolutionary People's Republic of Guinea* (Paris, 1979), 31–33, 43–44, 48–51, 69–83.

138 L. Kaba, 'The Cultural Revolution, Artistic Creativity, and Freedom of Expression in Guinea', *Journal of Modern African Studies,* 14/2 (1976), 217.

139 Ministère de l'Education Nationale, *La réforme de l'enseignement au Mali* (Bamako, 1965), 10, quoted by J.B. Bolibaugh, *Educational Development in Guinea, Mali, Senegal and Ivory Coast*, 41.

claimed that 'bilingualism offers the people an initial means of unification, facilitating relations among subgroups and relations with the outside world'.[140] Togo, too, expressed concern for its national languages but without taking any obvious measures to support them. As was explained, 'a special effort will have to be made to adapt curricula and teaching content to the problems of our country. This also applies specifically to the development of the teaching of national languages, with the basic aim of preserving and at the same time improving these important cultural elements which are an integral part of our personality.'[141]

Senegal and the Ivory Coast both adopted French as their official language in their independence constitutions and still retained that choice in their respective 2000 and 2001 constitutions. Their approach seems to have been that French should be the language of the elite but among the mass of the population ethnic languages would be spoken in everyday communication. Nevertheless, under some pressure, in 1971 President Senghor was forced to placate a pro-Wolof movement by designating six ethnic languages as national languages. However, the decree still contended that 'it will require at least two generations … to make one of our national languages an effective instrument for the teaching of sciences and technology … replacing French as the official language and … medium of instruction is neither desirable nor possible'. Yet the following year, the government would concede that 'as long as we … continue to teach our children a foreign language … without teaching them first their mother tongue, our people will remain alienated'. Still, as Diallo notes, throughout the 1970s a series of decrees sought to strengthen the role of French in Senegal.[142] President Senghor, whose origins were from the Serer ethnic group, also always made his own personal position very clear: 'I think in French; I express myself better in French than in my mother tongue.'[143]

140 J.C. Bahoken/E. Atangana (for UNESCO), *Cultural Policy in the United Republic of Cameroon* (Paris, 1976), 19–20.

141 K.M. Aithnard (for UNESCO), *Some Aspects of Cultural Policy in Togo* (Paris, 1976), 67.

142 Government Decree No. 71-566 1971 and 72-862 1972, quoted by I. Diallo, *The Politics of National Languages in Postcolonial Senegal* (Amherst, 2010), 2–3, 60–61, C.F. McLaughlin, 'Senegal: The Emergence of a National Lingua Franca', A. Simpson (ed.), *Language and National Identity in Africa* (Oxford, 2008), 84–85, 96, J.B. Bolibaugh, *Educational Development in Guinea, Mali, Senegal and Ivory Coast*, 69–94 and M. Shiohata, 'Exploring the Literary Environment: A Case Study from Urban Senegal', *Comparative Education Review,* 54/2 (2010), 249.

143 L.S. Senghor, 'Le Français; Langue de Culture', *Liberté 1: Négritude et Humanisme* (Paris, 1964), 361, originally published in *Esprit*, 311 November 1962, 841 (reference from N.K. Johnson, 'Senegalese "into Frenchman"? The French Technology of Nationalism in Senegal', W. Safran/J.A. Laponce, *Language, Ethnic Identity and the State* (London, 2005), 135): '*Je pense en franais; je m'exprime mieux en francais que dans ma langue maternelle.*'

The attitude of the Ivory Coast's political leaders and especially that of President Houphouet-Boigny was equally hostile towards national languages. Yace, President of the National Assembly, made it plain that: 'The adoption of French … has been a factor of cohesion within the Ivory Coast where it has favoured the unity of our hundred or so ethnic groups.'[144]

Much the same argument applied to Mozambique. Despite a bitter war against the Portuguese colonial government, at independence Portuguese was still adopted as the national language. Launching the 1978 National Literacy Campaign, President Machel responded to criticism by plaintively asking rhetorically: 'In which language would you like us to launch this Literacy Campaign? In Makwa or Makonde, in Nyanje, Shangane, Ronga, Bitonga, Ndau, or in Chuabo?' The following year, the Minister of Education and Culture was similarly on the defensive. She explained that 'the language which had been used to oppress – could assume a new dimension'. The Rector of the Universidade Eduardo Mondlane went on to explain that: 'The decision to opt for Portuguese … was a well pondered … political decision, aimed at achieving one objective, the preservation of national unity and the integrity of the territory.'[145]

Unsurprisingly, in Malawi, President Banda followed his own path. In 1968, he designated Chinyanja (thereafter known as Chichewa) as the national language and English as the official language of Malawi. Chichewa was the dialect of President Banda's own ethnic group, although he himself, after an absence of more than forty years, had largely forgotten the language. By this time, he rarely spoke anything but English and would therefore use interpreters at his mass rallies. As a result of his decree, all members of Parliament were obliged to pass an English proficiency test and all hearings in the superior law courts had to be conducted in English.[146] To reinforce the importance he attached to English, in 1981 President (Kamuzu) Banda also set up the Kamuzu Academy as Malawi's elite school, 'the Eton of Africa' as it came to be known. Its regula-

144 P. Yace, Addressing the UN 26 April 1976, quoted by D. Turcotte, *La politique linguistique en Afrique francophone: une étude comparative de la Côte d'Ivoire et de Madagascar* (Quebec, 1981), 66 (reference from A.M. Knutsen, 'Ivory Coast: The Supremacy of French', A. Simpson (ed.), *Language and National Identity in Africa*, 164–165).

145 A.J. Lopes, 'Language Policy in Mozambique: A Taboo?' R.K. Herbert (ed.), *African Linguistics at the Crossroads: Papers from Kwaluseni: 1st World Congress of African Linguistics, Swaziland, 18–22 July 1994*, 485–486.

146 B. Mkandawire, 'Ethnicity, Language, and Cultural Violence: Dr. Hastings Banda's Malawi, 1964–1994', *Society of Malawi Journal,* 63/1 (2010), 30, P. Kishindo, 'The Impact of a National Language on Minority Languages: The Case of Malawi', *Journal of Contemporary African Studies,* 12/2 (1994), 137 and T. Moyo, 'The Changing Language Policies and Reversing Language Roles in Malawi: From Colonial Times (1891–1964) to the Present', *Per Linguam,* 17/2 (2001), 1–11.

tions stipulated that all students, who were admitted through a competitive (but corrupt) exam process, should spend four years studying Latin and Greek and debarred Malawians from teaching at the school. Teachers had to be recruited directly from Britain.[147]

The cases of Ghana and Nigeria were different still. In both countries, there was an undoubted enthusiasm for a move to national languages, but this was tempered by the political necessity for ethnic even-handedness. In 1957, therefore, despite a recommendation in favour of conducting primary education in national languages, Ghana came down in favour of an English-only policy at all levels of education. When an attempt was made in Parliament to promote the teaching of Akan in all schools in Ghana, the Deputy Minister of Education replied that 'it is the intention of Government to encourage the development of all our major national languages … in the meantime … members will agree that we have enough on our plate to keep us busy for a few more years without having to worry about a common language'. In due course, though, Ghana felt obliged to adopt nine national languages and, in 1967, it was also determined that early stage education should after all be conducted in one of the national languages; though English would remain the language of higher education and, therefore, of the elite.[148]

A rather similar situation prevailed in Nigeria. In 1961 a motion in Parliament successfully approved the adoption of Hausa, Yoruba and Igbo as national languages, but the government wisely exercised its discretion against the motion. As the impending civil war demonstrated, Nigeria was confronted rather more with the problem of unity than authenticity. It was therefore only in 1977 that the National Policy on Education determined that primary education would be conducted in indigenous languages and secondary education in English. Two years later, the 1979 Nigerian Constitution would make a further concession, that 'the business of the National Assembly shall be conducted in English and in Hausa, Ibo and Yoruba, when adequate arrangements have been made therefor'.

147 Ngũgĩ, *Decolonising the Mind: The Politics of Language in African Literature*, 19 and B. Keller, 'Mtunthama Journal; A Bit of Eton in Africa Stirs a Debate on Learning', *The New York Times*, 29 May 1993.

148 W.H. Whiteley, 'Language Policies of Independent African States', T.A. Sebeok (ed.), *Current Trends in linguistics, VII: Linguistics in Sub-Saharan Africa* (The Hague, 1971), 548–558, E. Ashby, *African Universities and Western Traditions*, 92, A. Anyidoho/M.E. Kropp Dakubu, 'Ghana: Indigenous Languages, English, and an Emerging Identity', A. Simpson (ed.), *Language and National Identity in Africa*, 148, A.B. Bodomo, 'Linguistics, Education and Politics: An Interplay on the Study of Ghanaian Languages', R.K. Herbert (ed.), *African Linguistics at the Crossroads: Papers from Kwaluseni: 1st World Congress of African Linguistics, Swaziland, 18–22 July 1994*, 475 and R.G. Armstrong, 'Language Policies and Language Practices in West Africa', A. Fishman/C.A. Ferguson/J. Das Gupta (eds), *Language Problems of Developing Nations*, 231.

English therefore remained the official language, with Hausa, Igbo and Yoruba employed as agreed in the regional assemblies.[149]

Nor was the language question confined to sub-Saharan Africa. Although the official language of Algeria, Morocco and Tunisia was Arabic, throughout the 1960s, French continued to exert a pull on the elite. For example, Gallagher noted that Algeria's Foreign Minister Khemisti could not speak directly with President Nasser as they had no language in common. King Hassan II, in his opening remarks to a National Conference on Education at Rabat in 1964, also referred to the need to equip 'our children … to become citizens of their country, and of their continent which does not speak Arabic', hence the need for a bilingual education. In a commentary on this debate, *Al Alam*, the Istiqlal journal, complained in terms all too familiar:

> It is truly stifling to speak seven years (*sic.*) after independence of the Moroccanization … of anything whatever; still less of the school, which should have been transformed … from the first hours of our independence … We have inherited as the backwash of colonialism a language of instruction and programs of foreign study. We have kept them like something sacred which cannot be touched. In fact … we follow out a course which colonialism could not dream of applying as strictly.[150]

By the mid-1960s, therefore, van Dyke's summary of African language policies pointed to a continuing constitutional and parliamentary commitment to colonial languages throughout much of sub-Saharan Africa:

> Botswana, Gambia, Ghana, Guyana, Kenya, Lesotho, Sierra Leone, and Uganda all specify that, as a qualification for election … a person must be able to 'speak and … to read the English language with a degree of proficiency' … Malawi and Nigeria name English as the language of parliament. In the Sudan the requirement is that … proceedings 'shall be conducted in Arabic but without prejudice to such use of English as may be convenient' … knowledge of French is a qualification for election … in … Cameroun, Congo (Brazzaville), Mali, Mauritania, and Niger. The qualification is presumably implied in a number of other instances, where French is named as the official language.[151]

149 Federal Ministry of Information, Nigeria, *National Policy on Education* (Lagos, 1977), B.O. Elugbe, 'Literary and Language Development in Nigeria', R.K. Herbert (ed.), *African Linguistics at the Crossroads: Papers from Kwaluseni: 1st World Congress of African Linguistics, Swaziland, 18–22 July 1994*, 458, 475 and A. Simpson/B. Akíntúnde Oyètádé, 'Nigeria: Ethno-linguistic Competition in the Giant of Africa', A. Simpson (ed.), *Language and National Identity in Africa*, 186.

150 C.F. Gallagher, 'North African Problems and Prospects: Language and Identity', J.A. Fishman/C.A. Ferguson/J. Das Gupta (eds), *Language Problems of Developing Nations*, 130–131, 143, 148–149 Notes 15 and 16.

151 V. van Dyke, 'Human Rights without Distinction as to Language', *International Studies Quarterly*, 20/1 (1976), 12–16.

As a way out of this dilemma, the idea of an African language was frequently suggested as a solution. Already at the 1959 Rome Congress it had been proposed that Swahili might be chosen as *primus inter pares* of a limited group of regional languages.[152] The idea was also taken up at the 1971 Dar es Salaam UNESCO Meeting of Experts, 'The Influence of Colonialism on the Artist, his Milieu and his Public in Developing Countries'. Prodded by a paper from Soyinka, the meeting, recognising the cultural importance of language, expressed a desire 'to replace the language of the colonizer as soon as possible in order to … facilitate the eventual adoption of a single language of communication for all Africa … as a step in the process of continental unification'.[153]

Soyinka raised the issue again at FESTAC in 1977, suggesting that the 'adoption of an African language, indigenous to the continent, would strengthen unity among Africans and also give great impetus to "mental decolonization"'; Swahili being his preferred choice. He described how similar proposals had been put forward in 1975 at the founding conference in Accra of the Union of Writers of the African Peoples, which found 'it regrettable that twenty years have been wasted since the Second Congress of African writers in Rome recommended the adoption of one language for African peoples (and) *unanimously* adopted Swahili as the logical language for this purpose'; and also by the All-Africa Teachers Union, which called for a single continental language and proposed Swahili as first among three possible choices. When therefore the question was debated at working group level a decision was found in favour of the promotion of an African continental language with Swahili as the preferred choice of the majority.

Irele, however, described such proposals as 'desperate suggestions' and Soyinka's as 'the most desperate of them all': 'The desperate nature … derives from the conflict that we are all experiencing … between our desire to emancipate Africa from the hold of European languages, and the firmness of that hold in certain significant areas of our contemporary life.'[154] In the case of Swahili, there

152 'Resolution on Linguistics', 435–436.

153 W. Soyinka, *Art, Dialogue and Outrage: Essays on Literature and Culture*, 138–45 and UNESCO SS/01352/180572, Meeting of Experts, 'The Influence of Colonialism on the Artist, his Milieu and his Public in Developing Countries', Dar es Salaam, Tanzania, 5–10 July 1971, 'Final Report', 3 and Annex, 7.

154 W. Soyinka, 'The Scholar in African Society' and Working Group II Report, Section I Sub-theme: Black Civilisation and African Languages, A.U. Iwara/E. Mveng (eds), *Second World Black and African Festival of Arts and Culture, Colloquium on Black Civilization and Education (Lagos, 17th–31st January, 1977) Colloquium Proceedings Vol. 1*, 47–49, 132, 'Obasanjo Opens Black Civilisation Festival', *Africa Diary,* 26 February – 4 March 1977, 8362–8363, 'Meeting of African Writers, Accra, June 1975', 14 (see also preliminary 'Announcement: Declaration of African Writers', *Transition,* 48 (1975), 71) and A. Irele, *The African Experience in Literature and Ideology*, 56–58; Irele gives the title of Soyinka's 1971 paper as 'The Choice and Use of Language – the Only Answer' and his 1977 FESTAC paper as 'The Black Scholar'

was also the further potential problem, discussed more assiduously in East Africa, as to whether it should be regarded as an Arabic or African language and, if the former, the extent to which it might then also be regarded as the language of slavers.[155]

African socialism

Within the sphere of politics, as Wiredu points out, 'Africa's quest for identity' and concomitant desire to assert its particularity is most closely associated with the idea of 'African socialism'.[156] According to Morgenthau, the label 'African socialism' was first employed in the late 1940s by Senghor after he had resigned from the French Socialist party and sought to define his 'socialism' in terms of African socialist values.[157] A major element of those values, and a further expression of African difference, was the rejection of the anti-clericalism of French socialism. In its place, Senghor looked to a humanistic socialism of believers in keeping with what he regarded as the spiritual disposition of the African way of life.[158] However, such was the appeal opened up by the notion of 'African socialism' that, following independence, it took on a life of its own well beyond Senghor's initial conception. By the early 1960s, therefore, it had come to be utilised by many African leaders as a label or justification for the political direction in which they claimed to travel although there was no consensus as to its theoretical basis or programmatic content.

There appear to have been four broad strands of African socialism (with unmistakeable parallels to African Christianity): Socialism with an African face, that is, socialism adapted to African conditions and realities; socialism as an expression of traditional African communal existence, to that extent predating, and therefore having little connection to, Western socialism; and scientific socialism, although, as the applicability of scientific socialism to Africa came

though the FESTAC Report indicates the title given above.

155 A. Nsibambi, 'Language Policy in Uganda: An Investigation into Costs and Politics', 68–70.

156 K. Wiredu, 'Problems in Africa's Self-identification in the Contemporary World', 220.

157 R.S. Morgenthau, 'African Socialism: Declaration of Ideological Independence', *Africa Report,* 8/5 (1963), 4; see also W.A.E. Skurnik, 'Léopold Sédar Senghor and African Socialism', *Journal of Modern African Studies,* 3/3 (1965), 353 who identifies a 1953 Indépendants d'outre-mer congress at Cotonou, Dahomey, a mixed caucus of representatives from the colonial territories organised by Senghor, which agreed on a definition of an 'African doctrine' that provided for a 'happy mixture of African Socialism and spiritual traditionalism' (quoted from *Condition humaine* (Dakar), 25 February 1953).

158 J.L. Hymans, 'The Origins of Leopold Senghor's African Road to Socialism', *Genève-Afrique* 6/1 (1967), 46–47.

under both practical and theoretical strain, it was redefined so as to accommodate African realities and the possibility of an African road to socialism. A further theoretical strand would be asserted in North Africa as Arab or Islamic socialism, the official ideology of Algeria, Egypt, Libya and, at times, Tunisia. On the whole, the one common theme was that African socialism was essentially grounded in the African way of life and was therefore and in that way different from foreign conceptions and models of socialism.

The enthusiasm of African political leaders for African socialism was reflected in an excess of practical and theoretical expositions. Among an *embarras de richesses*, the most prominent were: President Nyerere's *Ujamaa – Essays on Socialism* and the *Arusha Declaration: Socialism and Self-reliance*; President Senghor's *Nationhood and the African Road to Socialism* and *On African Socialism*; President Nkrumah's *Consciencism: Philosophy and Ideology for Decolonisation*; President Kaunda's *Humanism in Zambia and a Guide to its Implementation;* Kenya's *African Socialism and its Application to Planning in Kenya*; and President Obote's *The Common Man's Charter*. Other prominent disquisitions included Algeria's *La Charte d'Alger* and *La Charte nationale* and Colonel Ghadaffi's *The Green Book*.[159] African political leaders, President Senghor in particular, also sponsored a number of conferences on the theme of African socialism and its policy prescriptions, the most significant being those held in Dakar (1962) and Tunis (1975).[160]

159 J.K. Nyerere, *Ujamaa – Essays on Socialism* (Dar es Salaam, 1968) and TANU, *The Arusha Declaration and TANU's Policy on Socialism and Self-reliance* (Dar es Salaam, 1967), L.S. Senghor (trans. M. Cook), *Nationhood and the African Road to Socialism*, and (trans. M. Cook), *On African Socialism* (London, 1964), K. Nkrumah, *Consciencism: Philosophy and Ideology for Decolonisation* (London, 1964), K. Kaunda, *Humanism in Zambia and a Guide to its Implementation* (Lusaka, 1968), Minister of Economic Planning and Development, *Sessional Paper No. 10 African Socialism and its Application to Planning in Kenya* (Nairobi, 1965), Government Printer, *The Common Man's Charter with appendices* (Entebbe, 1970) (part of the *The Move to the Left* series), Jabhat al-Tahrir al-Qawmi, *La charte d'Alger: Ensemble des textes adoptés par le 1er Congrès du Parti du Front de libération nationale* (probably Algiers, 1964), *Charte nationale, Journal officiel de la République algérienne démocratique et populaire, 15e année, no 61 du 30 juillet 1976,* 714–770, http://www.joradp.dz/JO6283/1976/061/FP714.pdf, last accessed 29 December 2015 and M. Qadhdhāfī, *The Green Book Part 1 and 2* (London, 1976).

160 *Présence Africaine, Développement et Socialisme: Colloque sur les politiques de développement et les diverses voies africaines vers le socialisme, Dakar, 3–8 décembre 1962* (Paris, 1963), E. Milicent, 'Vers le socialisme africain, le colloque de Dakar', *Afrique Nouvelle,* 801 14–20 December 1962, 8–9, 'Dakar Colloquium: Search for a Definition', *Africa Report,* 8/5 (1963), 15–18, 'African Socialism Discussed at Dakar', *Africa Report,* 8/2 (1963), 14, A.R. Zolberg, 'The Dakar Colloquium: The Search for a Doctrine', W.H. Friedland/C.G. Rosberg, Jr (eds), *African Socialism* (Stanford,

The aim of the 1962 Dakar Conference was 'to stimulate discussion and to set the guidelines for future conferences rather than to search for precise definitions and conclusions. By prearranged agreement, no final resolutions were passed.' Its report noted that, as with African literature, while 'African socialism proved an elusive concept' and 'no single definition of "African socialism" emerged', there seems to have been 'general agreement' that African socialism could be understood as 'that form of social, political, and economic organization, based on a humanistic conception of man, which could provide the maximum economic progress and reassert the traditional collectivist values of African life'. The conference specifically rejected the conceptions put forward by representatives from Eastern Europe in support of orthodox Marxism 'as being both an alien and somewhat dated philosophy' and, equally, that of the representatives of the Western European socialist parties as 'even more out of touch with African realities' given their irrelevant emphasis on the redistribution of existing wealth rather than the need for the creation of new wealth through economic development.[161]

In his opening address, President Senghor set the tone for the speeches that would follow by his emphasis on African difference:

> It is clear that our socialism can no longer be exactly like that of Marx and Engels which was elaborated about a hundred years ago according to the scientific methods and the circumstances of the nineteenth century and of Western Europe … Our African socialism, then, will be elaborated not in the dependence but in the autonomy of our thought, and it will choose the most scientific, up-to-date and … efficient methods … of the Western world and elsewhere. But … they will be efficient only if adapted to the African situation … above all to our geography, history, culture and psychology.[162]

It was a fundamental point to which President Senghor would constantly return: 'Our Socialism is not that of Europe. It is neither atheistic Communism nor … Democratic Socialism … We have modestly called it the *African Mode*

1964), 113–127, J. Schleimann, 'Colloque sur les politiques de développement et les diverses voies africaines vers le socialisme', *Journal of Modern African Studies*, 1/2 (1963), 242–248 and *Conference of African Socialist Parties on Planned Development in Africa and the African Ways towards Socialism Tunis 1–6 July 1975* (Tunis, 1978).

161 'African Socialism Discussed at Dakar', 14; see also E. Milicent, 'Vers le socialisme africain, le colloque de Dakar', 8–9.

162 L.S. Senghor, 'Les Données du Problëme', *Présence Africaine, Développement et Socialisme: Colloque sur les politiques de développement et les diverses voies africaines vers le socialisme.* Dakar, 3–8 décembre 1962, 11; see also 'Dakar Colloquium: Search for a Definition', 15 and 'African Socialism' (author undisclosed), B(L)102, February 1963, NA DO 153/49 (a slightly different text is given by A.R. Zolberg, 'The Dakar Colloquium: The Search for a Doctrine', 119).

of Socialism';[163] and: 'We have rejected prefabricated models. We have not let ourselves be seduced by Russian, Chinese, or Scandinavian models.'[164] Moreover, reflecting the widely held view of most African political leaders, he also argued that the class struggle did not apply to Africa: 'The social problem today is less a class struggle within a nation than a global struggle between the "have" nations … and the proletarian nations.'[165] Yet, notwithstanding the imperative of African difference, in keeping with his general philosophical approach, President Senghor also envisaged African socialism as a contribution to the Civilisation of the Universal: 'Our ideal is the creation of the Civilization of the Universal, in which our complementary differences will be fused and live on together in symbiosis … We have chosen the African way to Socialism, which will be a synthesis of Negro-African cultural values, of Western methodological and spiritual values, and Socialist technical and social values.'[166]

The African contribution would reveal that Africa 'had already achieved socialism before the coming of the European … our duty is to renew it by helping it to regain its spiritual dimensions'.[167] Just as African Christians were arguing that Africans already lived the Christian message, so, too, African socialists were arguing that Africa lived a socialist life before the coming of Marx and Engels. Much the same argument would be employed with respect to the existence of human rights in pre-colonial Africa.

Other speakers expressed broadly similar sentiments. Rabemananjara, now a Minister in the Malagasy government, declared that 'what we call Malagasy socialism is not a theoretical construction supported by infallible philosophic-economic arguments. It is, basically, a practical, pragmatic socialism … Socialism is the only possible way of development for Madagascar.'[168]

Chabi Mama, sometime Foreign Minister of Dahomey, would also declare that: 'Foreign solutions cannot be adopted and imposed over African reality.'[169] The reality, though, was a succession of economic and political crises, dysfunc-

163 L.S. Senghor, 'Negritude and African Socialism', 15.

164 *Theorie et pratique du socialisme senegalais* (Dakar, 1962), 6, quoted by W.A.E. Skurnik, 'Léopold Sédar Senghor and African Socialism', 354.

165 L.S. Senghor, *On African Socialism*, 132–133.

166 L.S. Senghor, 'Some Thoughts on Africa: A Continent in Development', *International Affairs,* 38/2 (1962), 191 (reference from C.F. Andrain, 'Guinea and Senegal: Contrasting Types of African Socialism', W.H. Friedland/C.G. Rosberg, Jr (eds), *African Socialism*, 173).

167 L.S. Senghor, *On African Socialism*, 49.

168 J. Rabemananjara, quoted by 'Dakar Colloquium: Search for a Definition', 16.

169 Chabi Mama, Mimeographed Colloquium paper, quoted by A.R. Zolberg, 'The Dakar Colloquium: The Search for a Doctrine', 119, and Chabi Mama, *Présence Africaine, Développement et Socialisme: Colloque sur les politiques de développement et les diverses voies africaines vers le socialisme. Dakar, 3–8 décembre 1962*, 39–48.

tional governments and military coups, more than in any other African state, as Dahomey's three major ethnic groups took turns in office. Finally, in 1972, an army coup by Major Kérékou put an end to this charade of political musical chairs. He initially advised that Dahomey would not 'burden itself by copying foreign ideology, and wants neither Capitalism, Communism, nor Socialism', but two years later asserted that: 'Our revolutionary philosophy … and the guideline of our revolutionary action, is marxism-leninism'; and 'the only historical road to development right for the Dahomean people is the socialist road to development'. In 1975, he would rename Dahomey 'The People's Republic of Benin'. This new 'socialist orientation' would be incorporated into the 1977 constitution but with the proviso that it 'must be applied in a living and creative manner to the realities of Benin'.[170]

Mali was represented at the conference by Minister of Development Kouyaté who spoke in support of scientific socialism but with two reservations reflecting African difference: Firstly, that 'socialism can be set up in an industrialized capitalist society, as well as in an agricultural pre-capitalist society'; secondly, that 'this socialist option is not at all contrary to religious faith'. As he therefore explained, Mali's socialism was based on 'two fundamental notions … a movement led by elements not essentially proletariat … and … recognizing spirituality as an integral part of man'.[171]

These reservations essentially followed the line taken by President Keita (Mali) who made it clear that, his support for Marxism-Leninism notwithstanding: 'Our socialism is not a manifestation of the tendency to copy servilely what has been done elsewhere.'[172] It was a point he would also make directly to the Soviet Union in a 1962 speech in Moscow: 'Like you, we are certain of the triumph of socialism … although the conditions of your land and your methods differ somewhat from ours.'[173] In particular, as a devout Muslim, President Keita would explain that: 'Mali and her leaders draw their inspiration for socialist construction from the theory of Marxism-Leninism. But we do not adopt its materialist philosophy, and we do not adopt its atheism, because we are believers'; and to emphasise the point he would add that: 'No religion is more socialist than

170 S. Decalo, *Coups and Army Rule in Africa: Studies in Military Style* (New Haven, 1976), 38–85, 'Full Circle in Dahomey', *African Studies Review,* 13/3 (1970), 445–457 and 'Regionalism, Politics, and the Military in Dahomey', *Journal of Developing Areas,* 7/3 (1973), 449–478 and P.F. Gonidec, *African Politics* (The Hague, 1981), 138.

171 S. Kouyaté, Minister of Development, 'Dakar Colloquium: Search for a Definition', 16.

172 'Speech at Mass Meeting, Bamako, on the First Anniversary of the Dissolution of the Mali Federation 20 August 1961', M. Keita, *A Collection of Speeches* (Bamako/Moscow, 1965), 43.

173 'Speech at Luncheon in the Grand Kremlin Palace, 22 May 1962', M. Keita, *A Collection of Speeches*, 114.

the Moslem religion because it reposes on the principle of the rich giving and sharing, and mitigating the suffering of all others.'[174] Accordingly, when asked if his party could be described 'as a party of Marxist character', President Keita was amused pointing out that 'such terms as "Marxism" and "Communism" were not applicable to Africa. Ninety-two per cent. of the people of Mali were illiterate'; a point he is also alleged to have advised First Deputy Premier Mikoyan (Soviet Union): '*Il faut comprendre que nous ne serons jamais communistes*.'[175] As one of his ministers would explain: 'We do not pretend to have invented socialism in the Twentieth century but simply to have subjected it to the needs of our country.'[176]

African difference was also stressed by President Touré but on a more programmatic basis. He emphasised that: 'Socialism for us is not an end in itself. We do not guide our actions so as to achieve socialism; we adapt socialism to our specific needs … That is why you will not hear about socialism in Guinea.' He also underlined that: 'Africa is essentially "communaucratic" … The voice of African people is not individualistic.'[177]

President Touré's dislike of the term 'African socialism' reflected his concern lest a false impression be gained that Guinea was importing a foreign ideology. He explained at a press conference that:

> Your question implies that we have defined what you call 'African socialism' and that we are making our political orientations and our principles of action dependent on that definition. That is not true … We use the expression *communaucratie* precisely in order to avoid all equivocation and all false analogies … Our solidarity, better known under its aspects of social fraternity, the pre-eminence of group interests over the personal interest, the sense of common responsibilities, the practice of a formal democracy

174 'Speech at the Graduation Ceremony of the Accelerated Course in Journalism in Bamako', 17 March 1962', M. Keita, *A Collection of Speeches*, 97 and 'La Politique du Mali', *Texte intégral de la conférence de presse du Président Modibo Keita à Alger*, 21 August 1964 (Bamako, n.d.), quoted by F.G. Snyder, 'The Political Thought of Modibo Keita', *Journal of Modern African Studies,* 5/1 (1967), 86.

175 B. Crozier, 'Six Africans', *Encounter,* 16/5 (1961), 42 and President Keita, quoted by 'African Socialism' (author undisclosed) B(L)102 February, 1963, 3, NA DO 153/49.

176 Mali Minister, *2e Seminar de l'Union Soudanaise-RDA Bamako les 5–6–7 septembre 1962* (Bamako, undated), quoted by J.N. Hazard, *Mali's Socialism and the Soviet Legal Model* (East-West, Centre, 1967), 29 and M.G. Schatzberg, *The Coup and After: Continuity or Change in Malian Politics Occasional Paper No. 5* (Madison, 1972), 1, 4–5, 12; see also T.M. Callaghy, 'The Difficulties of Implementing Socialist Strategies of Development in Africa: "The First Wave"', C.G. Rosberg/ T.M. Callaghy (eds), *Socialism in Sub-Saharan Africa: A New Assessment* (Berkeley, 1979), 122–124.

177 President Touré quoted by Guinean Delegation to the 1962 Dakar Conference, 'African Roundtable', *Africa Report,* 8/5 (1963), 26 and A.S. Touré, *The Political Action for the Emancipation of Guinean Youth* (Cairo, 1961), 108 (reference from C.F. Andrain, 'Guinea and Senegal: Contrasting Types of African Socialism', 170).

> which rules and governs village life … that is what forms what we call our communaucratic realities.

Much as the African literary community resented foreign critics dictating the terms of reference by which African literature would be judged, so President Touré complained that such questioning of African socialism betrayed the influence of Western intellectual universalism through which Western Communist and Socialist parties had 'culpably filched the complete scientific analysis of the objective historical conditions in which our struggle and theirs ought to be conducted'.[178]

African difference would also feature in the speeches on African socialism of many other African leaders. For example, President Ahidjo claimed that to adopt uncritically 'the leninist-socialist system as practiced elsewhere … would be to deny both our African Personality and our Cameroon Personality … in a word our physical and moral independence'.[179]

In East Africa, too, there was an active debate about African socialism. Not simply in terms of its definition, but as the basis for programmatic policy. Mboya, KANU's Secretary-General and Minister of Justice in the first post-independence Kenyan government, set the tone by drawing attention to the difference between the fundamental bases of European and African socialism and berating those who sought to assert the relevance to Africa of classical Marxist theory:

> African Socialism has an entirely different history from European Socialism. European Socialism was born of the agrarian and industrial revolution, which divided society into the landed and the capitalist on one side and the landless and the industrial proletariat on the other. There is no such division into classes in Africa … where governments consist of the leaders of the workers and peasants.[180]

Locating the argument within the wider African struggle for intellectual revanchism, he decried:

> Africans who call themselves socialists … but … are so blindly steeped in foreign thought mechanics … These so-called 'socialists' peddle and parrot foreign slogans … although Africa is getting rid of Western Colonialism and

178 A.S. Touré, *Textes des Interviews accordées aux représentants de la presse* (Conakry, 1959), 149–151, quoted by C.F. Andrain, 'Democracy and Socialism: Ideologies of African leaders', D. Apter (ed.), *Ideology and Discontent* (Glencoe, 1964), 175, and *La Révolution et l'unité populaire* (Conakry, 1964), 47, quoted by P.F. Gonidec, *African Politics*, 131, and President Touré, *Le Monde* 4 April 1960, quoted by B. Crozier, 'Six Africans', 40.

179 A. Ahidjo, *Contribution à la construction nationale* (Paris, 1964), 75, quoted by P.F. Gonidec *African Politics*, 129.

180 T. Mboya, *Freedom and After* (London, 1963), 167.

> is still fighting against its hangover, known as neo-colonialism, there is yet another fight to be waged – the fight against intellectual imperialism. This fight must be waged now, side by side with the fight for economic independence … When I talk of 'African Socialism' I refer to those proved codes of conduct in the African societies which have, over the ages, conferred dignity on our people … The basic tenets of socialism are universal (but Africa and Europe) spring from a different stimulation and promise.[181]

This revanchist argument was given official sanction in 1965 by a government paper, drafted by Mboya, which sought to define 'African Socialism' and then outline the policy prescriptions that resulted from that definition. It began by explaining that:

> In the phrase 'African Socialism', the word 'African' is not introduced to describe a continent to which a foreign ideology is to be transplanted. It is meant to convey the African roots of a system that is itself African in its characteristics. African Socialism is a term describing an African political and economic system that is positively African not being imported from any country or being a blueprint of any foreign ideology but capable of incorporating useful and compatible techniques from whatever source.
>
> …
>
> Valid as Marx's description was, it bears little similarity to Kenya today … African traditions have no parallel to the European feudal society, its class distinctions, its unrestricted property rights, and its acceptance of exploitation.

Stressing the importance of religion in African tradition and thereby its place within the tenets of African socialism, as other African political leaders had done, it also insisted that 'in African traditional life … religion … provided a strict moral code for the community. This will be a prominent feature of African Socialism'. A further injunction, that would find a place within the ACHPR, also enjoined that: 'African Socialism expects the members of the modern State to contribute willingly … to the development of the nation.'[182]

For President Nyerere, one of the few African leaders to attempt to practise the African socialism he preached, African socialism was, even more, rooted in the African way of life: 'The traditional African family lived according to the basic principles of *ujamaa*. Its members did this unconsciously, and without any conception of what they were doing in political terms.' As for European socialism, that emerged out of circumstances which bore little relevance to the fundamental bases of African social existence:

> European socialism was born of the Agrarian Revolution and the Industrial Revolution which followed it … The European Socialist cannot think of his

181 T. Mboya, 'African Socialism', *Transition,* 8 (1963), 17–18.

182 Minister of Economic Planning and Development, *No. 10 African Socialism and its Application to Planning in Kenya,* 2–7; see ACHPR, Articles 27–29.

> socialism without its father – Capitalism! … African socialism … did not start from the existence of conflicting 'classes' in society … '*Ujamaa*' … describes our socialism. It is opposed to Capitalism … and it is equally opposed to doctrinaire Socialism … We, in Africa, have no more need of being 'converted' to socialism than we have of being 'taught' democracy. Both are rooted in our own past – in the traditional society which produced us.

President Nyerere then went on to emphasise that the definition of Tanzanian socialism as '*ujamaa*' was not 'accidental', or an affectation, it

> was chosen for special reasons … First, it is an African word and thus emphasizes the African-ness of the policies we intend to follow. Second, its literal meaning is 'family-hood' … By the use of the word 'ujamaa', therefore, we state that for us socialism involves building on the foundation of our past and building also to our own design. We are not importing a foreign ideology.[183]

In 1967, President Nyerere would therefore set out in the Arusha Declaration, much as Kenya had done, 'a definition of socialism in Tanzanian terms' and a 'sign-post of the direction in which the nation must travel to achieve its goals'. It would be followed up by more detailed policy statements on specific aspects of the programmatic proposals. In one of several teach-ins on how it should be understood, he explained: 'The Declaration is first of all a reaffirmation of the fact that we are Tanzanians and wish to remain Tanzanian as we develop'; and that 'we start from a full acceptance of our African-ness and a belief that in our own past there is very much which is useful for our future'.[184]

In North Africa, a further variant of African socialism sought to address the compatibility of socialism with Islam. For example, in Algeria, the basis of socialism was set out by the Front de Libération Nationale (FLN) in two major

183 'Ujamaa –The Basis of African Socialism' and 'Socialism and Rural Development', J.K. Nyerere, *Ujamaa – Essays on Socialism,* 11–12, 106 (originally published as J.K. Nyerere, Ujamaa – The Basis of African Socialism (Dar es Salaam, 1962), *Socialism and Rural Development* (Dar es Salaam, 1967)) and 'Introduction', *Freedom and Socialism, Uhuru na Ujamaa: A Selection from Writings and Speeches 1965–67*, 2; for background, see V. Stoeger-Eising, '"*Ujamaa*" Revisited: Indigenous and European influences on Nyerere's Social and Political Thought', *Africa: Journal of the International African Institute,* 70/1 (2000), 118–143 and G. Bennett, 'Patterns of Government in East Africa', *International Affairs,* 45/1 (1969), 82.

184 TANU, *The Arusha Declaration and TANU's Policy on Socialism and Self-reliance*, 'Preface', J.K. Nyerere, *Ujamaa – Essays on Socialism*, viii and *Freedom and Socialism, Uhuru na Ujamaa: A Selection from Writings and Speeches, 1965–67,* 315–316 (Teach-in on the Arusha Declaration, TANU Youth League, Dar es Salaam University, 5 August 1967); see also A. Mohiddin, *African Socialism in Two Countries* (London, 1981). More detailed policy statements were included in J.K. Nyerere, *Education for Self-reliance, Socialism and Rural Development and Freedom and Development* (Dar es Salaam, 1967).

pronouncements: The 1964 *La Charte d'Alger* and the 1976 *La Charte nationale*. In its outline of the fundamentals of Algerian socialism, *La Charte d'Alger* stressed that: 'Socialism in Algeria does not proceed from any materialist metaphysics and has no connection with any dogmatic conception foreign to our national genius … Socialism in Algeria expresses the profound aspirations of the working people and is enriched by contributions from world socialist experience.'[185]

Similarly, in Tunisia, President Bourguiba would explain that: 'Our objective is the good of all … Our method … solidarity and association as members of one family united in all circumstances. This is Neo-Destourian socialism … These qualities are not foreign to us. They were the characteristics of the Prophet's companions in the first century of Islam, who were socialists before the invention of the word'[186] Colonel Ghadaffi (Libya), too, would assert that: 'The Moslem religion is certainly more progressive than communism. It has established the bases of the economy, relationships between workers … Everybody should know that the Moslem religion embraced these ideas before Marx and Lenin.'[187]

Although by the mid-1970s it had become clear that African socialism had failed to meet even the most modest of development expectations, this did not deter many African regimes from adopting even more radical rhetoric and policies and turning to the authority of Marxism-Leninism and 'scientific socialism'. Among these new adherents were Somalia and Ethiopia and, after the collapse in 1974 of the Estado Novo regime in Portugal, Angola, Cape Verde, Guinea-Bissau and Mozambique.

In Somalia, following the 1969 military coup, the Supreme Revolutionary Council's second policy statement declared 'scientific socialism' the ideology of Somalia. President Barre explained that: 'We have chosen (this) because it is the only way for the rapid transformation of the country into a developed and economically advanced nation.' The 'campaign for scientific socialism' was launched in 1972 and sought 'to put an end to the confusion and chaos created by certain elements in their approach to socialism by giving erroneous and misleading definitions'. As to what this meant, President Barre explained that: 'We are trying to apply socialism in accordance with our specific conditions … Our cultural heritage must be preserved … and utilized for the furtherance of our socialist

185 *Jabhat al-Tahrir al-Qawmi, La charte d'Alger: Ensemble des textes adoptés par le 1er Congrès du Parti du Front de libération nationale*, 20–21, 58, *Front de libération nationale, Charte nationale* (Algiers, 1976), Ministry of Culture and Information, *National Charter* (Algiers, 1981) and J.R. Nellis, *The Algerian National Charter of 1976: Content, Public Reaction, and Significance* (Washington, 1980), 17.

186 President Bourguiba, 'Neo-Destourian Socialism', Address 24 June 1961, 'African Roundtable', *Africa Report,* 8/5 (1963), 22.

187 Speech, Muammer Al Gâdafi, 12 December 1970, quoted by P.F. Gonidec, *African Politics*, 133.

objectives'; more specifically: 'As I have mentioned on many previous occasions, our socialism cannot be called Somali Socialism, African Socialism or Islamic Socialism … Our socialism is independent and is governed by its own specific conditions … as laid down by the general principles of scientific socialism.'[188]

In 1975 the Somali Supreme Revolutionary Council was replaced by the Somali Revolutionary Socialist Party, whose more radical programme affirmed that: 'There are not different kinds of socialism. There is only … scientific socialism'; although a proviso allowed that 'objective laws' had to be 'formulated, and then employed in accordance with the special circumstances existing in each country'. However, President Barre also indicated that 'the objective of the Revolution is to guide us to a return to our true Somalian characteristics', the most important of which was Islam. So much so that President Barre advised that 'there is no conflict between Islam and socialism, as they both enshrine the principles of human dignity, mutual respect, cooperation, progress, justice and well-being for all'.[189]

Marxism-Leninism arrived in Ethiopia in 1975 when the Derg declared Marxism-Leninism as the official ideology of Ethiopia. But as different interests jostled for power in the chaos that followed the coup against Emperor Haile Selassie, the detail remained uncertain until at least 1977 when Mengistu assumed control. At that point, a forceful Marxist ideology drawn directly from the Soviet Union became more explicit in terms of rhetoric, political structure and the 'Red terror', though rhetorical theory, as Ottaway noted, was completely detached from Ethiopian reality.[190]

In Mozambique, FRELIMO (Liberation Front of Mozambique), having talked in Marxist terms during the liberation struggle, officially proclaimed adherence to Marxism-Leninism in 1977 at its first post-independence Party Congress. Its party statutes provided that: 'Frelimo is guided by a synthesis of the revolutionary experience of the Mozambican people with the universal

188 'Speech on launch of Socialism Campaign' 30 January 1972 and 'There is Only One Socialism' 9 June 1972, S. Barre, *My Country and My People: Selected Speeches* (Mogadishu, 1974), 73–76, 81–88, L. Pestalozza (trans. Peter Glendening), *The Somalian revolution* (Paris, 1974), 29–37, 73–80, 137–142 and A. Sheik-Abdi, 'Ideology and Leadership in Somalia', *Journal of Modern African Studies,* 19/1 (1981), 163–172.

189 SRSP programme, quoted by P.F. Gonidec *African Politics*, 138–139, and President Barre, 'An interview with the Somali President', A.A. Castagno, *Africa Report*, 16/9 (1971), 25 (reference from D.D. Laitin, 'Somalia's Military Government and Scientific Socialism', C.G. Rosberg/ T.M. Callaghy (eds), *Socialism in Sub-Saharan Africa: A New Assessment*, 202–204).

190 M. Ottaway, 'State Power Consolidation in Ethiopia', E.J. Keller/D. Rothchild (eds), *Afro-Marxist Regimes: Ideology and Public Policy*, 34–35 and 'The Theory and Practice of Marxism-Leninism in Mozambique and Ethiopia', D.E. Albright (ed.), *Communism in Africa* (Indiana, 1980), 132–133.

principles of Marxism-Leninism'. However, lest its Marxism-Leninism degenerate into an ideology of African socialism, FRELIMO warned that: 'It is necessary … to … guard against the chauvinistic deviations of "specific socialisms". We reject the idea that there can be an "African socialism" or a "Mozambiquan socialism". We consciously affirm that there can be no socialism other than scientific socialism.' With no intended irony though, in 1978, President Machel detailed how scientific socialism would be implemented: 'Educated Mozambiquans and government officials … remain attached to old values. They are still mentally colonized, they show that they are enslaved to foreign ideas … they do not trust in the capacity of … Frelimo to develop Marxist-Leninism in an original form on the basis of our experience.'[191]

In much the same way, in Angola, policy was laid down by the 1976 MPLA (People's Movement for the Liberation of Angola) Central Committee Plenum which resolved that: 'To defend and advance the Revolution, we must … clearly define socialism as the highest aim of our Revolution. We must arm all militants with the doctrine of scientific socialism – Marxism-Leninism.' Its Programme of Action then made it clear that: 'As Comrade President Agostinho Neto has said: for the MPLA there exists only one socialism, the socialism of Marx, Engels, Lenin – scientific socialism. Thus for the MPLA, socialism is not called "African Socialism", but refers unequivocally to the ending of the exploitation of man by man.' Rejection of African socialism was reiterated on several further occasions. For example: 'the socialism of MPLA has nothing to do with the phoney versions offered under the names "African socialism" or "Bantu socialism"'; and 'there cannot be an African or European socialism, one socialism for developed countries and others for underdeveloped countries; there is only Scientific Socialism'. Angola's formal adherence to Marxism-Leninism was declared at the MPLA's First Congress in 1977 despite, as Marcum notes, few members having any conception of what that actually entailed. Adherence, it was explained, was grounded in 'popular "trust" in the movement and its guide "Comrade President Agostinho Neto"'.[192]

191 Mozambique, Angola and Guiné Information Centre, *FRELIMO, Central Committee Report to the Third Congress of FRELIMO* (London, 1978), 34 and 'Our Tasks for 1979, Interview with National Press by President Machel', 'Report of the Standing Political Committee to the Fourth Session of the Central Committee of FRELIMO, presented by President Machel' and 'Statutes of Frelimo Ch.1 Art.3', quoted by M. Ottaway, 'The Theory and Practice of Marxism-Leninism in Mozambique and Ethiopia', 124–125; see also M. Hall/T. Young, *Confronting Leviathan: Mozambique since Independence*, 63–68 and H. Howe/M. Ottaway, 'State Power Consolidation in Mozambique' and J.S. Saul, 'Development and Counterdevelopment Strategies in Mozambique', E.J. Keller/D. Rothchild (eds), *Afro-Marxist Regimes: Ideology and Public Policy*, 44–45, 112.

192 *Movimento Popular de Libertação de Angola, Movimento Popular de Libertação de*

Responding to this backdrop of increasing radicalism, President Senghor and President Bourguiba sponsored the 1975 Tunis Conference of African Socialist Parties. Its goal was described in President Bourguiba's opening address which noted that 'the 1960s witnessed a wave of socialist regimes claiming kinship with widely different ideologies' and professing 'to be the custodian of true socialism … many thought that the adoption of socialism was all that had to be done … to solve all the underdevelopment problems that their countries … were facing'. Accordingly, it was 'felt that the time had come to take stock of African experience without any preconceived idea other than the common ideal'.

For his part, concerned with the misguided radicalisation of socialist theory, President Senghor urged Africans to: 'Read and re-read critically, as Africans, and for Africans, the founding fathers of scientific socialism, but also their commentators'; and, in searching for socialist truth, to 'search for it, in Africa, first'. It is evident from an account of the speeches that, again, no common understanding was achieved. The speeches were merely a series of set statements. For example, the Gambian delegate reminded the conference that:

> African socialism is as old as African society … Africans do not need … dialectical reasoning to arrive at socialism … In the twentieth century, we feel that Marxism must not only be modified by our African humanist values but also by the Einsteinian revolution … both Marxism and European socialism must have a different meaning for us in the relativity of our historic space-time.

Whereas the Zambian delegate explained that socialism is the last stage of human development before 'Humanism', as propounded by President Kaunda; and the delegate from the Republic of the Congo that: 'Marxism-Leninism is not a dogma … we take reality into account and … apply its principles with flexibility … uniting the universal Marxist-Leninist truth to the proceedings of the Congolese revolution'.[193]

The reality, though, as Hensbroek observed, is that: 'None of the variants of African Socialism appears to have survived the eclipse of the political leader

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Angola, Documents of the plenary meeting of the MPLA Central Committee, 23–29 October, 1976 (London 1976), 4, 30, Mozambique, Angola and Guiné Information Centre, *People's Power in Mozambique and Guinea-Bissau* Number 5 (London, 1976), 5 (Angola, 'We have chosen socialism', UNITA's Second Conference 15–17 October 1976) and *First Congress of MPLA, Luanda, 4–10 December 1977: Report of the Central Committee: Theses on Education* (London, 1979), 27 and J.A. Marcum, 'The People's Republic of Angola: A Radical Vision Frustrated', E.J. Keller/D. Rothchild (eds), *Afro-Marxist Regimes: Ideology and Public Policy*, 67–83.

193 Speech by President Bourguiba, President Senghor, Gambian delegate (party of President Jawara), Zambian delegate and Congolese delegate, *Conference of African Socialist Parties on Planned Development in Africa and the African Ways towards Socialism Tunis 1–6 July 1975*, 14–15, 23, 36, 101, 172–173, 209.

who proclaimed it.'[194] There is also much sense in Clapham's admonition of the danger of seeing in the speeches and writings of African political leaders ideas that 'can be formulated as systematic conceptual schemes meriting the status of ideologies'.[195]

Yet the key point in the context of the ACHPR is not so much whether African socialism is justified or coherent, but the common feeling of African difference and the imperative that this difference had to be asserted. As several commentaries have therefore pointed out, at the very heart of African socialism is the question of African identity. For example, Friedland and Rosberg concluded that there is 'little homogeneity as yet … in the considerable volume of ideas on African Socialism'. But they then went on to suggest that, nonetheless, this 'potpourri of ideas' seeks to meet 'the often divergent needs of the times' which they connected to a desire to reflect the seemingly classless, communal and egalitarian roots of African society within a drive for modernisation. To that end, they identified three common themes underlying African socialism: the problem of continental identity; the crisis of economic development; and the dilemmas of control and class formation.[196]

Another explanation was put forward by *Afrique Nouvelle*: Economic development; a guiding philosophy for the creation of the 'New African'; foundation of African traditional values; justification for a one-party state avoiding 'sterile opposition'; and anti-capitalism, a third way between Communism and capitalism.[197] And in yet a further analysis of African socialism, Mohan placed an even greater emphasis on the role of identity:

> 'African Socialism' is a three-fold affirmation. It affirms Africa's 'originality', its 'distinctiveness', its 'personality'. It affirms Africa's 'independence', ideologically as well as politically. And it affirms Africa's openmindedness', its rejection of the 'tyranny of concepts', and indeed of 'ideologies', its adaptability and flexibility, in short its eclecticism.'[198]

Summing it up, Achebe would point out: 'You have all heard of the African personality, of African democracy, of the African way to socialism, of negritude, and so on. They are all props we have fashioned at different times to help us get on our feet again. Once we are up, we shan't need any of them any more.'[199]

194 P.B. van Hensbroek, 'African Political Philosophy, 1860–1995 An Inquiry into Families of Discourse' (unpublished PhD thesis, University of Groningen, 1998), 110.

195 C. Clapham, 'The Context of African Political Thought', *Journal of Modern African Studies,* 8/1 (1970), 2.

196 W.H. Friedland/C.G. Rosberg, Jr, 'Introduction: The Anatomy of African Socialism', W.H. Friedland/C.G. Rosberg, Jr (eds), *African Socialism*, 3–9.

197 'African Socialism as Viewed by Various African Leaders', *Afrique Nouvelle,* 950 (1965), 1–32 (trans. Intra-Africa).

198 J. Mohan, 'Varieties of African Socialism', R. Saville/J. Miliband (eds), *Socialist Register* (London, 1966), 228.

199 'Where Angels Fear to Tread', C. Achebe, *Morning Yet on Creation Day*, 70.

The political rhetoric and praxis of intellectual and cultural revanchism

Although at independence the African states were inevitably confronted by a myriad of problems, intellectual and cultural revanchism was nevertheless accorded considerable prominence in the rhetoric of many African political leaders. It may be argued that such prominence reflected the personal predilections of the first generation of African political leaders many of whom were not just political leaders but intellectual figures in their own right. Most famously, President Senghor, but also President Nyerere, who translated Shakespeare's play 'Julius Caesar' into Swahili, and President Kenyatta and Prime Minister Busia (Ghana), whose academic works were published before they attained political pre-eminence.[200] However, there is little doubt that support was also extended by many other African political leaders, including the second generation of African military leaders, implying a more fundamental consciousness. A sense that the 'historic necessity' of the 'African personality' could not be limited to the political sphere alone, it had also to be asserted across the broad spectrum of intellectual and cultural thought and praxis. This sense was famously advanced by President Nkrumah in his definition of neo-colonialism:

> In place of colonialism … we have today neo-colonialism … The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty … the methods … are subtle and varied. They operate not only in the economic field, but also in the political, religious, ideological and cultural spheres … It is this sum total of these modern attempts to perpetuate colonialism while at the same time talking about 'freedom', which has come to be known as *neo-colonialism*.[201]

Despite an obvious limitation on resources, in several notable cases, most obviously Senegal and Ghana, rhetoric seems to have been backed up by policy implementation. Real measures were also adopted at OAU-wide and UN level further underpinning the seriousness attached to intellectual and cultural revanchism. A panorama of these policies was published in UNESCO's series on national cultural policies. While the individual reports are invariably written in a

200 The reference is to *William Shakespeare's Julius Caezar kimetafsiriwa na Julius K. Nyerere* (Nairobi, 1963) (the 1969 Dar es Salaam edn has *Juliasi Kaizari*), J. Kenyatta, *Facing Mount Kenya: The tribal Life of the Gikuyu* (London, 1938), based on a series of essays written while attending Malinowski's anthropology seminars at the LSE, and K.A. Busia, *The Position of the Chief in the Modern Political System of Ashanti: A Study of the Influence of Contemporary Social Changes on Ashanti Political Institutions* (Oxford, 1951), based on his DPhil dissertation at Oxford in Social Anthropology.

201 K. Nkrumah, *Revolutionary Path* (London, 1973), 314–315, 324; the text builds on K. Nkrumah, *Neo-colonialism: The Last Stage of Imperialism* (London, 1965), ix.

breathless style by political acolytes of the regime, what they nonetheless reveal is a desire to couch national cultural policies in revanchist terms.

In the case of Ghana, President Nkrumah assiduously pushed projects aimed at the promotion of Ghanaian and African culture: The Arts Council of the Gold Coast (set up in 1958–59, it became the Institute of Arts and Culture); the National Theatre Movement (1960–63); the George Padmore Research Library on African Affairs (set up in 1961, Padmore's name was dropped following the military overthrow of President Nkrumah); the School of Music and Drama (1962); and the Ghana Film Corporation (1964).[202] His aspirations were set out in his speech at the opening of the Institute of African Studies which suggested that there was a 'need for a re-interpretation … of the factors which make up our past … our Continent is emerging systematically from colonialism and from the yoke of imperialism. The personality of the African which was stunted in this process can only be retrieved from these ruins, if we make a conscious effort to restore Africa's ancient glory'. He also connected the Institute of African Studies with the other cultural institutions: 'I hope … that this Institute, in association with the School of Music and Drama, will link … closely with the National Theatre movement … to develop new forms of dance and drama, of music and creative writing, that are at the same time closely related to our Ghanaian traditions and express the ideas and aspirations of our people.'[203]

Yet, despite these aspirations, some inkling of a less than satisfactory outcome emerges. As Botwe-Asamoah has uncovered, President Nkrumah would come to regret that: 'The Arts Council which I helped to form with such hopes has not … come up to my expectation … it has failed to make sufficient impact on Ghana society. It has failed to give people any vision of the rich store of art and music which we possess'. For example, it emerged that at the School of Music and Drama, far from developing 'new forms of dance and drama', too many students seemed to prefer studying existing European forms.[204]

Some sense of Guinea's cultural policy was foreshadowed already in 1959 in President Touré's paper at the 1959 Rome Congress:

> The imperialists use scientific, technical, economic, literary and moral cultural values in order to maintain their regime of exploitation and oppression … But *decolonization* does not consist merely in liberating oneself from the

202 K. Botwe-Asamoah, *Kwame Nkrumah's Politico-Cultural Thought and Policies: An African-Centred Paradigm for the Second Phase of the African Revolution,* 47–88, 149–208 and G.P. Hagan, 'Nkrumah's Cultural Policy', K. Arhin (ed.), *The Life and Work of Kwame Nkrumah: Papers of a Symposium Organized by the Institute of African Studies University of Ghana, Legon*, 1–26.

203 Ministry of Information and Broadcasting, *Speech by Osagyefo the President at the Opening of the Institute of African Studies on 25th October, 1963*, 8.

204 National Archives, Ghana, NAG/RG3/7/60, quoted by K. Botwe-Asamoah, *Kwame Nkrumah's Politico-Cultural Thought and Policies: An African-Centred Paradigm for the Second Phase of the African Revolution*, 168, 207.

> *presence of the colonizers*: it must necessarily be completed by total liberation from the spirit of the 'colonized', that is to say, from all the evil consequences, moral, intellectual and cultural, of the colonial system.[205]

In the first decade of Guinean independence, though, confronted by more pressing priorities, President Touré promoted few cultural initiatives and indeed seems to have tolerated a wide degree of artistic freedom. The outcome, as Kaba reports, was that: 'Independence gave a new impetus to art … it is not an exaggeration to speak of a cultural renaissance (and) led to an increased awareness of cultural heritage and pride.' However, by 1968, President Touré concluded that Guinean culture had not been sufficiently 'liberated', that it was too elitist and out of touch with the people and that therefore it ought 'to return to the authentic African culture as it is lived by the masses'. The definition of that authenticity would be 'as it is understood by the party's leadership'. Even worse, President Touré felt that Guinean culture was still subject to excessive Western influence: 'Europe should neither dominate nor guide our cultural evolution, for she can do it only at the expense of our independence, our spiritual values and our sense of responsibility.'

In August 1968, President Touré therefore announced a socialist Cultural Revolution. He argued that 'the native intellectual writing in a foreign language thought he was expressing Africa, but was really developing value systems which had no relation with indigenous societies'. Likely with *négritude* in mind, he also complained that:

> There are too many people … who think that no other cultures exist, save those of European origin. What part has the African intellectual played until now? He has used foreign forms of expression and thought to express Africa by using moral criteria and scale of values which bear no relation to African society … That is why it is imperative to abandon and even fight against all the absurd complexes, which people used to persuade themselves that the true intellect had to go and drink at the spirit of Paris, Berlin, London or New York and that only in Europe did true culture exist.[206]

The most immediate outcome of this Cultural Revolution was that President Touré became the sole arbiter of culture. Inevitably, it led to a cultural output dominated by the sycophantic as is most clearly evident in the UNESCO report which proudly describes President Touré as 'the foremost patron of the arts and culture in Guinea' and 'Restorer of the Arts'.[207]

205 S. Touré, 'The Political Leader Considered as the Representative of a Culture', 112–114.

206 Radio Broadcast 1974, quoted by L. Kaba, 'The Cultural Revolution, Artistic Creativity, and Freedom of Expression in Guinea', *Journal of Modern African Studies,* 14/2 (1976), 207–209 and A.S. Touré, *L'Afrique et la Revolution* (Paris, 1967), 250, 256–257.

207 The Ministry of Education and Culture under the auspices of the Guinean National

Tanganyika's cultural policy was announced by Prime Minister Nyerere in his Inaugural Address to Parliament in 1962:

> Of all the crimes of colonialism there is none worse than the attempt to make us believe we had no indigenous culture of our own; or that what we did have was worthless … I have set up this new Ministry (of National Culture and Youth) to help us regain our pride in our own culture … But I don't want anybody to imagine that to revive our own culture means at the same time to reject that of any other country. A nation which refuses to learn from foreign cultures is nothing but a nation of idiots and lunatics.[208]

Following a period of consultation, in 1965 these precepts were enshrined in the Culture Division of the Ministry of Community Development and National Culture: 'Our political and economic independence will not be a reality if Tanzania remains dominated by outside cultural forces.'[209]

In this new cultural firmament, Tanzanian culture was therefore presented as far more than a sentimental glance back at a golden age, it was considered the essence and spirit of any nation making its way in that it provided a basis upon which national unity was to be forged and national development enhanced. This was re-emphasised in 1974 in the UNESCO review of TANU's (Tanganyika African National Union) stewardship of National Culture: 'That a colonised people should, on winning back its independence, put … national culture very high up on their reconstruction agenda, is something very easy to understand. It is a duty'; but, it also warned, 'the indigenous culture of the peoples of Tanzania has meaning only if it has place in the Tanzanian reality of today and can help in the reconstruction of the Tanzania of tomorrow'. This approach was then sarcastically compared with the 'hypocritical Africanisation' of President Senghor's Senegal where 'miserable youth waste their talents trying to play Mozart (on traditional instruments)'. Unlike President Touré, though, President Nyerere did not interfere with Tanzanian culture beyond setting its primary terms of reference.[210] As a result, as Blommaert points out: 'National Culture never became more than a political-rhetorical commonplace. Most people knew what it was not: it was not ethnic, not traditional, not western. But as to what it *was* remained unclear.'[211]

Commission for Unesco, *Cultural policy in the Revolutionary People's Republic of Guinea*, 72, 83.

208 'Inaugural Address to Parliament, 10 December 1962', J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja*, 186–187.

209 Cultural Policy File No. C10, Folio 162 (1965), 2, quoted by L.A. Mbughuni (for UNESCO), *The Cultural Policy of the United Republic of Tanzania* (Paris, 1974), 30.

210 L.A. Mbughuni/G. Ruhumbika, 'TANU and National Culture', G. Ruhumbika (ed.), *Towards Ujamaa: Twenty years of TANU leadership* (Dar es Salaam, 1974), 275–277, 282 and L.A. Mbughuni (for UNESCO) *The Cultural Policy of the United Republic of Tanzania,* 16–29.

211 J. Blommaert, *State Ideology and Language in Tanzania*, 67.

Much the same view of national culture was taken by the MPLA in Angola: 'We must revive our cultural values and reinvigorate them with the scientific knowledge we have gained, creating a new culture based on our own origins but adapted to the new society we are trying to build, and to the new Angolan citizen we want to create.'[212] So too in Cameroon where President Ahidjo specified 'that the culture of the Cameroonian people is visualized in the dual perspective of preserving its roots in the past and adopting a progressive attitude towards the future'. The aim, therefore, of cultural development was 'not to petrify our mode of living in the past, however rich it may be, but to create a Cameroonian cultural personality capable of making history, whilst at the same time remaining true to the authenticity of the solutions that its own genius will find to the manifold problems of its future development'.[213]

In Togo, President Eyadéma set out his policy in what was described as the 'Green Book', which was drafted by Kodjo, then Secretary-General of the ruling Rally of the Togolese People (RPT) party. Its cultural section identified the same fundamental problem that other African political leaders had sought to address: 'Togo is seeking to free itself from a double alienation: alienation derived from acculturation through colonialism (the elites) and alienation resulting from a morbid attachment to ancestral traditions (the masses).' As regards policy, in a clear parallel with President Senghor's approach, the programme concluded that: 'Cultural policy in a developing country is not to be considered as a luxury, something extra which will be bestowed on us as a matter of course once the political and economic issues have been settled.' It therefore envisaged cultural and economic affairs 'as two indissociable partners'; one partner cannot take a step forward without the other. Indeed, President Eyadéma explained: 'We must not think solely of political freedom … we must always bear in mind that there are other freedoms which are not yet complete and which are still to be gained. We mean cultural freedom and economic freedom.'[214]

In the mid-1970s, this process was taken further with an active programme of Africanisation in which foreign names and words were replaced by indigenous words. Setting the tone, President Eyadéma himself changed his first name from Étienne to Gnassingbé. Explaining the importance of this search for a specifically African identity, he said: 'To free our minds is to return to the African sources, to free ourselves from foreign ideologies and examples, which are not

212 'MPLA Political Bureau Declaration', Mozambique and Guinea Information Centre, *People's Power in Mozambique and Guinea-Bissau*, Number 5 (London, 1976), 11.

213 President Ahidjo, Report to the Congress of the Cameroon National Union, Garoua, March 1969, quoted by J. C. Bahoken/E. Atangana (for UNESCO), *Cultural Policy in the United Republic of Cameroon*, 19.

214 K.M. Aithnard (for UNESCO), *Some Aspects of Cultural Policy in Togo*, 10, 19–25.

adapted either to our resources or to our soul and which, finally, hamper our self-expression and our development.'[215]

It was a point that President Kenyatta also emphasised, explaining that 'we fought for independence to free ourselves from foreign rule … we must also liberate our minds and souls from foreign ideas and thought … re-dedicate yourselves today to building a nation deeply rooted in our own thoughts and ideas'. The OAU, he explained, 'exists … to promote a new culture'.[216]

However, perhaps the most poignant manifestation of African cultural revanchism is the Ahiara Declaration of General Ojukwu, Biafra's Head of State, which was inspired by President Nyerere's Arusha Declaration; President Nyerere being the first and one of only a few African leaders to recognise Biafra. Some of the background is described by Achebe, a member of the drafting team, who explained that it aimed 'to capture the meaning of the struggle for Biafran sovereignty', a meaning that had to be understood not only in terms of Biafra's relationship with Nigeria, but also in terms of the black man's historic relationship with the white man.[217]

> We are the latest victims of a wicked collusion between the three traditional scourges of the black man – racism, Arab-Muslim expansionism and white economic imperialism … For this reason, our struggle is a movement against racial prejudice, in particular against that tendency to regard the black man as culturally, morally, spiritually, intellectually, and physically inferior to the other two major races of the world … This belief in the innate inferiority of the Negro and that his proper place … is that of the servant of the other races … still conditions the thinking and attitude of most white governments on all issues concerning black Africa and the black man; it explains the double standards which they apply to present-day world problems; it explains their stand on the whole question of independence and basic human rights for the black peoples of the world.

As one element, therefore, of Biafra's intended policy response to this racism, General Ojukwu explained that: 'We shall aim at elevating our cultural institutions and promoting educational reforms which will foster a sense of national and racial pride among our People and discourage ideas which inspire a feeling of inferiority and dependence on foreigners and foreign interests.'[218]

But of all African political leaders, the most committed to the existential importance of culture was President Senghor. Whereas President Nkrumah had declared the primacy of the political kingdom, President Senghor argued that

215 K.M. Aithnard (for UNESCO), *Some Aspects of Cultural Policy in Togo*, 25.

216 OAU Day 1964, Statement, J. Kenyatta, *Suffering without Bitterness*, 218.

217 C. Achebe, *There Was a Country: A Personal History of Biafra*, 143–149.

218 General Ojukwu, 1 June 1969, *THE AHIARA DECLARATION (The Principles of the Biafran Revolution) by Emeka Ojukwu, General of the People's Army*, http://www.biafraland.com/Ahiara_declaration_1969.htm, last accessed 7 February 2014.

'independence of the spirit, *cultural independence*, is the necessary prerequisite of other independences: political, economic and social'. Indeed, man was nothing without culture and the dignity of a nation and its people depended on their contribution to universal civilisation expressed through their culture:

> Culture is not an appendage of politics, which can be cut without any harm … Culture is the prerequisite and the end of any policy worthy of its name. For what would be the use of raising the standard of living of our masses if it were not also accompanied by a rise in the level of culture? … For what, if not to fill our leisure time with the creation of works of art, which will be spiritual nourishment for our people? *[La Culture n'est pas un appendice de la politique, que l'on peut couper sans dommage. … La culture est le préalable et le fin de toute politique digne de ce nom. Car à quoi servirait l'élévation du niveau de vie de nos masses si elle n'était accompagnée de celle du niveau de culture?… A quoi, si ce n'était pour meubler nos loisirs par la création d'oeuvres d'art, qui seront des nourritures spirituelles pour nos peuples rassemblés?]*[219]

Such was the importance President Senghor attached to culture that Jules-Rosette has calculated that in the early years of independence, President Senghor 'devoted over a third of his nation's budget to promoting the arts'.[220] Senghor himself indicated it was only 25 per cent but Harney believes that the higher number may be correct in that as much as 30 per cent of the budget was allocated to Education and the Ministry of Culture to build museums, art schools, theatres and other cultural institutions.[221] When, in regard to the 1966 Dakar World Festival of Negro Arts (see page 367 below), President Senghor was pressed to justify the cost, he responded that: 'The financial sacrifices that the Festival has cost us should not be a source of regret because this is a question of culture and, let me repeat again, culture is the source and the conclusion of development.'[222]

At the centre of President Senghor's personal outlook and world-view was, of course, his concept of *négritude*.[223] The significance of *négritude* to the process

219 L.S. Senghor, *On African Socialism*, 69 and Parti de la fédération africaine, *Séminaire organisé à l'occasion du congrès de l'union Nationale de la Jeunesse du Mali* (Rufisque, 1960), 68–89 (reference from W.A.E. Skurnik, 'Léopold Sédar Senghor and African Socialism', 365).

220 B. Jules-Rosette/E. Makward, 'LËOPOLD SENGHOR: The Strength of Contradictions', *African Arts*, 35/2 (2002), 1.

221 L.S. Senghor, 'Introduction, F. Axt/E.H.M.B. Sy (eds), *Anthology of Contemporary Fine Arts in Senegal* (Frankfurt, 1989), 20 (reference from E. Harney, *In Senghor's Shadow: Art, Politics, and the Avant-garde in Senegal, 1960–1995* (Durham, 2004), 49).

222 President Senghor, UPS National Congress, late 1966, quoted by D. Murphy, 'Introduction. The Performance of Pan-Africanism: Staging the African Renaissance at the First World Festival of Negro Arts', D. Murphy (ed.), *The First World Festival of Negro Arts, Dakar 1966: Contexts and Legacies* (Liverpool, 2016), 14.

223 The main English-language biographies of Senghor are: J.G. Vaillant, *Black, French, and African: A Life of Léopold Sédar Senghor* and J. L. Hymans, *Léopold Sédar*

of the ACHPR derives from President Senghor's theory of the relationship between the black world and the dominant universalism of the Western world, most especially French universalism. In several pre-war essays, Senghor began to develop his conception of the basis of the accommodation between these two world-views. From the title of one of these essays, based on a public lecture in Dakar in 1937, emerged his famous injunction 'assimilate, don't be assimilated'.[224] Although at this early stage, it was largely a personal injunction, increasingly the idea arose of a synthesis of the two civilisations much as they had already been synthesised within himself. He defended this idea during the 1946 constitutional debate in the French National Assembly, explaining that 'the French Union is a problem of civilisation, but it must not consecrate an imperialism which sterilises civilisation, it must be a joining of civilisations, a crucible of culture … It is a question of the active assimilation of one side and of the other.'[225] Following independence, that sense of a synthesis increasingly evolved into the notion of the Civilisation of the Universal: 'Our ideal is the creation of the Civilisation of the Universal, in which our complementary differences will be fused and live on together in symbiosis.'[226] He envisaged that each civilisation cultivated its own traits which, in the modern, interdependent world, were beginning to come together. None of these civilisations could be considered superior, indeed the Western notion of linear progression from backwardness to modernity was simply misleading, each civilisation had something to contribute to the other and to the symbiotic melting pot of the Civilisation of the Universal.

Many years later, he would also recall that at a conference in Rome in 1960 he had been forced to defend this equivalence against the claims of Western universalism and superiority:

> The Europeans claimed to be the only ones who had envisaged culture in its universal dimensions. From there it was only a step … to maintain that

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Senghor: An Intellectual Biography (Edinburgh, 1971); see also W.A.E. Skurnik, *The Foreign Policy of Senegal* (Evanston, 1972), 188–196, 276–278 which offers an interesting assessment of Senghor's personal psychology.

224 L.S. Senghor, 'Vues sur l'Afrique Noire, ou assimiler, non être assimilés, R. Lemaignen/L.S. Senghor/Prince S. Youtévong, *La Communauté Impériale Française* (Paris, 1945); also published in the anthology *Liberté 1: Négritude et Humanisme*, 39–69; see also J.G. Vaillant, *Black, French, and African: A Life of Léopold Sédar Senghor*, 247 and 'The Problem of Culture in French West Africa', 682–696 and J.L. Hymans, *Léopold Sédar Senghor: An Intellectual Biography*, 24, 260.

225 L. Senghor, *Journal officiel de la République française: Débats de l'Assemblée nationale constituante* (1946), 19 September 1946, 3790–3792 (reference from J.D. Hargreaves (ed.), *France and West Africa: An Anthology of Historical Documents* (London, 1969), 262).

226 Address, Chatham House 25 October 1961, L.S. Senghor, 'Some Thoughts on Africa: A Continent in Development', 191.

> European civilization was identified with the Civilization of the Universal and thus should be adopted as *the* Universal Civilization. We had little difficulty in demonstrating that each 'exotic civilization' had also thought in terms of universality, that Europe's only merit … had been to diffuse *her* civilization throughout the world, thanks to her conquest and techniques.

He then went on to warn that 'if European civilisation were to be imposed, unmodified, on all Peoples and Continents, it could only be by force … As I have said elsewhere, it would be a universal civilisation; it would not be the Civilisation of the Universal.' It was a warning he would repeat to the UNGA in 1961:

> we must oppose any attempt … to make … European civilization, the 'universal civilization' or, worse still, the civilization of the universal … otherwise we of the unaligned world … would then be left only with the lesser role of consumers of civilization and not the greater role of producers. We could not accept such a position. If the 'universal civilization' is to become the civilization of the universal … it must represent a symbiosis of the values of all the different civilizations.

The point was therefore that: 'Today our Negritude no longer expresses itself as opposition to European values, but as a complement to them … If we are missing, Civilisation would lack the rhythm section of its orchestra, the bass voices of its choir.'[227]

It was an outlook that President Senghor would apply to the UDHR, as would other African political leaders, and it explains precisely why Africa needed its own human rights charter.

Given the importance attached to African intellectual and cultural revanchism by so many African political leaders it was only to be expected that it would also be raised at the various inter-African conferences convened by the two major blocs up to and including the unifying 1963 Addis Ababa Conference. It had first been discussed at the 1955 Asian-African Conference as 'Cultural Cooperation', but, as the *Final Communiqué* demonstrated, the expression of shared concern merely served once again to underline the subordinate status of black Africa:

> Some colonial powers have denied to their dependent peoples basic rights in the sphere of education and culture which hampers the development of their personality … This is particularly true in the case of Tunisia, Algeria and Morocco, where the basic right of the people to study their own language and culture has been suppressed. Similar discrimination has been practised against African and coloured people in some parts of the Continent of Africa.[228]

227 L.S. Senghor, *Nationhood and the African Road to Socialism*, 90 and 'Negritude and African Socialism', 13, 22 and UN A/PV.1045 31 October 1961, 536.

228 Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, B. 'Cultural Co-operation'.

In almost all these inter-African conferences, therefore, there was a collective will to establish an African cultural commission to promote cultural cooperation within Africa and African culture beyond, but with two key differences. In those conferences associated with Ghana, cultural cooperation was invariably expressed in terms of the contribution it might make to African (political) unity and would also be accompanied by fulminations against neo-colonialism 'in all its forms'. In contrast, for the Monrovia bloc, African culture was envisaged as an end in itself. In view of the large Francophone contingent, the Monrovia bloc was also less inclined to reference neo-colonialism.

Already at the 1958 Accra CIAS, the provisional agenda included as Item 3 cultural cooperation and exchange as the basis upon which the African states might reach 'a mutual appreciation of their respective cultures' and thereby enhance the prospect for African unity.[229] In his opening address, therefore, Prime Minister Nkrumah laid the ground for the forthcoming discussion. He declared that whereas

> the old forms of colonialism … will all disappear … we are equally determined that the new forms of Colonialism … will not succeed … The Imperialists of today endeavour to achieve their ends not merely by military means, but by economic penetration, cultural assimilation, ideological domination … Colonialism is not dead. It is alive today as ever before with new forms and methods for maintaining its system of domination.

As part of the struggle against this neo-colonialism, he urged a deepening of cultural cooperation between the African states.[230] Reflecting the new awakening, the conference therefore concluded with a resolution which denounced colonialism as 'prejudicial to national culture' and proposed cultural exchanges with the aim of promoting a sense of African unity.[231]

This aspiration was reiterated in the 1959 Sanniquellie Joint Declaration which declared that, within the framework of the proposed Community of Independent African States, a Cultural Council should be established. Further commentary in the accompanying Joint Communiqué explained: 'Considering

229 Draft Provisional Agenda of the Conference of African States, to be held in ACCRA in April 1958, Provisional Secretariat 6 January 1958, NA CO 936/576.

230 'Opening address by Prime Minister Nkrumah', Government Printer, *Conference of Independent African States, Speeches Delivered at the Inaugural Session, 15th April 1958*, 2–7.

231 Resolution IX: 'On the Cultural level, the formulation of concrete Proposals for the Exchange of Visiting Missions between the various Countries, both Government and non-Government, which may lead to first-hand Knowledge of one Country to another, and to a mutual appreciation of their respective Cultures', Government Printer, *Conference of Independent African States, Declarations and Resolutions, 22nd April 1958*, 13–14.

African culture as one of the essential elements in the struggle against colonialism and the assertion of African dignity and personality, we have decided to make the rehabilitation and diffusion of African culture an imperative national duty.'[232] It had already also been given further expression in the 'Basic Principles of the Union of Independent African States' of the Joint Ghana-Guinea Declaration which proposed that 'to bring Africans closer together, the Union will take the necessary measures to coordinate historical research, the teaching of languages and cultural activities designed to promote the harmonious development of African civilisations'.[233] When therefore in July 1961 Ghana, Guinea and Mali announced the 'Charter for the Union of African States', its aims also included a commitment 'to work jointly to achieve the complete liquidation of imperialism, colonialism and neo-colonialism in Africa and the building up of African Unity'. To that end it was determined 'to relentlessly pursue the rehabilitation of African Culture and the development of African civilisation', including frequent cultural exchanges, although no formal African cultural institution was proposed.[234]

The 1961 Charter of Casablanca went a step further in that it not only proclaimed a determination 'to liquidate colonialism and neo-colonialism in all their forms' but sought to establish an African Cultural Committee as one of four standing committees 'with a view to preserving and developing African culture and civilisation and intensifying African cultural cooperation and assistance'.[235]

President Nkrumah was less successful in promoting this vision at the 1960 Addis Ababa CIAS, but a resolution was nevertheless adopted recalling the 1958 Accra CIAS and resolving on 'the establishment of an organisation to be known by the name of "Council for African Educational, Cultural, Scientific, and Economic Co-operation"'.[236]

Support for African cultural revanchism was also extended by the Monrovia bloc at its 1961 Monrovia Conference which resolved: 'That all African and Malagasy States shall recognize the desire to promote the revival of African culture and traditions in the interest of preserving the real African heritage'. More practically though, measures of implementation were to be considered by a

232 Liberian Information Service, *The First West African Summit Conference, Held at Sanniquellie, Coastal Province, Liberian Hinterland, July 15–19, 1959*, 28–31.

233 'Joint Declaration by His Excellency Dr. Kwame Nkrumah, Prime Minister of Ghana, and His Excellency Mr. Sékou Touré, President of the Republic of Guinea', 1 May 1959, NA FCO 141/13649.

234 'Charter for the Union of African States', Ghana Press Release No. 615/61 1 July 1961.

235 Articles 3, 4, 11 'Charter of Casablanca', Kingdom of Morocco, Ministry of Foreign Affairs, *African Conference of Casablanca January 1961, Morocco*, 39–40.

236 'Resolution on Educational, Cultural, and Scientific Matters', Ministry of Information of the Imperial Ethiopian Government, *Second Conference of Independent African States, Addis Ababa, 14–26 June 1960*, 106–107.

technical commission of experts at a meeting in Dakar and therefore the subsequent Charter of the Inter-African and Malagasy States Organisation provided as one of its 'essential objectives' 'Educational and Cultural Co-operation' and committed its members 'to promote and accelerate the consolidation of our … cultures and traditions in the interest of preserving our heritage'.[237]

These prior discussions meant that, by the time of the 1963 Addis Ababa Conference, the idea of confronting neo-colonialism and promoting African culture were widely accepted as important areas of policy for an African regional organisation, and this was reflected in the Ethiopian working draft. Insofar as the draft sought to combine the Casablanca and Lagos charters, and with an obvious eye to President Nkrumah, its preamble therefore referred to a determination 'to resist neo-colonialism in all its forms including political and economic intervention'. In the final draft of the OAU Charter, this wording was not only retained but 'resist' had been strengthened to 'fight' and the limiting sub-clause deleted. The Ethiopian working draft also provided for a specialised African commission for culture. That, too, was retained although it was merged with the Scientific and Health mandates to form an Educational, Scientific, Cultural and Health Commission as one of the OAU's 'Specialised Commissions'. However, such was the enthusiasm, the conference also adopted, on Libya's sponsorship, a supplementary resolution providing for a 'Commission of Experts' to be immediately established 'pending the setting up of the Educational and Cultural Commission'. It has not proved possible to identify whether this commission was ever convened but 'in view of the importance and diversity of the task' of setting up the proposed Educational and Cultural Commission, the OAU Secretariat determined that it required the assistance of an 'advisory council on education and culture', which may have been that 'Commission of Experts'. By 1964, though, the Education and Cultural Commission seems to have been fused with the Conference of African Ministers of Education.[238]

In the longer-term, as a direct consequence of establishing this Specialised Commission, the OAU Administrative Secretary-General was obliged to include in his annual report to the OAU CoM 'the measures to be taken to promote a rebirth of African culture, in order to provide African Unity and independ-

237 'Resolution 1: The means of promoting better understanding and co-operation towards achieving unity in Africa and Malagasy', Federal Ministry of Information, Nigeria, *African Summit in Monrovia*, 17–19, 34–35 and L.A. Marinelli, *The New Liberia: A Historical and Political Survey,* 209–220 Appendix 14 'Charter of the Inter-African and Malagasy Organisation', Lagos, 21 December 1962, Articles, 2, 3 and 23.

238 OAU COMM.1/EMPC/1 17 May 1963 (Ethiopian draft), CIAS/Plen.3: B. Education and Culture (the text gives the resolution, most likely incorrectly, as B) and OAU CM/Res.47 (III).

ence with an authentic cultural basis'. That meant that African culture would be addressed at least once a year at a formal meeting of the OAU.[239]

The African states were also keen to take full advantage of UNESCO to promote African cultural rehabilitation. As UNESCO was supervised by majority voting at its biennial General Conference, it was therefore wide open to African influence over its agenda, priorities and budget allocation and thereby as an agency for African intellectual and cultural revanchism. When, therefore, the OAU's Education and Culture Commission met for the first time in 1964, it passed a resolution providing that before every General Conference the African states should meet to coordinate tactics.[240] At its next meeting, a second resolution proposed that the OAU negotiate a formal agreement with UNESCO.[241] This agreement, signed in 1968, as with the ECA, established the OAU as the primary agency for all educational, scientific and cultural matters falling within the African region and for a mutual exchange of observers at all meetings.[242]

In terms of its programme, in its earliest days, UNESCO had not shown any significant interest in Africa, but by the late 1950s that was beginning to change. It would therefore sponsor the 1956 Paris and 1959 Rome Congresses and also the 1962 Accra First International Congress of Africanists. It also provided financial assistance to the SAC.[243] However, the most (in)famous of UNESCO's African initiatives would be the 'General History of Africa':

> Following their decolonization in the early 1960s, the African countries expressed a strong desire to recover ownership of their past and the production of knowledge regarding their heritage. History was then called upon to affirm their cultural identities and reinforce the common aspiration to achieve African unity … the conventional reading of history needed to be challenged in order to depict a truer picture of the African continent, of its cultural diversity and its contribution to the general progress of Humankind.[244]

239 Opening Address, Administrative Secretary-General, 27 February 1965 OAU Nairobi CoM, CM/PV.2 (IV) Annex 1, 11, NA FO 371/181804.

240 OAU EDC/28/D/Res/17, First Session Education and Culture Commission, Léopoldville, January 1964, NA FO 371/176597.

241 OAU CM/Res.47 (III).

242 UNESCO, Resolutions and Decisions adopted by the Executive Board at its Sixty-Seventh Session (Paris, 4 May – 6 June 1964), 49–50, Seventy-Eighth Session (Paris, 13 May–21 June 1968), 42 and Eighty-First Session (Paris, 21–22 November 1968), 9 and UNESCO, 81 EX/4, Paris 19 November 1968.

243 Resolution 4/03 Assistance for the Society of African Culture, UNESCO, *Records of the General Conference, Twenty-first Session: Resolutions* (Belgrade, 1980), 59.

244 UNESCO, *General History of Africa Vol. 1–8* (Paris, 1981–93) and 'Pedagogical Use of the "General History of Africa" Expert Meeting UNESCO, Paris 16 and 17 March 2009 Concept Note', 2, UNESCO CLT/CPD/DIA/2009/ RP/134; as an example of the academic criticism of this project, see, for example, W. MacGaffey,

The African states were also most assiduous in their insistence that Africa should be recognised as equals within and contributors to the whole and their insistence was therefore reflected in several international cultural 'declarations'. For example, UNESCO's 1966 'Declaration of the Principles of International Cultural Cooperation' announced that: 'Each culture has a dignity and value which must be respected and preserved … Every people has the right and the duty to develop its culture … In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.' At the same time, as a bulwark against potential neo-colonialist threats, the African states also insisted on a provision for cultural autonomy: 'In their cultural relations, States … shall respect the sovereign equality of States and shall refrain from intervention in matters which are essentially within the domestic jurisdiction of any State.'[245]

African insistence on cultural revanchism was also expressed, in even stronger terms, at the 1975 Accra Intergovernmental Conference on Cultural Policies in Africa, organised by UNESCO (with the OAU) and attended by many prominent African intellectuals. Most notably, it denounced 'the arrogance of the colonizer who had oppressed African cultures and his unfounded claim that their fundamental values were worthless … The assertion of cultural identity was considered to be an act of liberation, a weapon in the fight for effective independence … There could be no genuine independence without cultural decolonization.' Its final declaration therefore asserted:

> that on the cultural level, (colonial) domination led to the depersonalization of some of the peoples of Africa, falsified their history, systemically denigrated and opposed African values and attempted to replace African languages progressively and officially by those of the colonial powers; that colonialisation encouraged the formation of an élite, too frequently absorbed and assimilated into the foreign culture, and that a deep division appeared between this élite and the African people at large … that cultural identity serves as a foundation for the independence and the construction of modern African nations; that African culture remains a decisive weapon in struggles for liberation and in the continuing fight against colonialism, racism and apartheid … that the full enjoyment and promotion of human rights can be ensured only in the framework of genuine political, economic and cultural independence.

Rather surprisingly, then, despite the apparently destructive effects of colonial domination on African culture, the conference also concluded that: 'African cultural creativity has never ceased to enrich the cultural heritage of mankind

'Who Owns Ancient Egypt?' *Journal of African History,* 32/3 (1991), 515–519.

245 'Declaration of the Principles of International Cultural Cooperation', UNESCO/OAU SHC.75/Conf.201/Col.4.

and to enhance Africa's presence in the world'.[246] A conclusion that only four years earlier a 1971 UNESCO meeting of cultural experts in Africa had seemingly denied: 'Colonialism interrupted the evolution of the indigenous cultures and deprived mankind for centuries of the Third World contribution to universal culture.'[247]

African political leaders also sought to promote Africa's cultural identity and contribution to the 'cultural heritage of mankind' through exhibitions of African art. In what must have been an enormous personal triumph, in 1966 President Senghor sponsored the third World Festival of Negro Arts at Dakar, following on from the 1956 Paris and 1959 Rome Congresses, finally on African soil and now representing a (largely) independent Africa. It was, of course, supported by subventions from UNESCO and France. Yet, surprisingly, when the Société Africaine de Culture (SAC) first invited Senegal to host the festival, President Senghor declined the honour. It was only after President Keita's political crisis in 1962 had derailed Mali's sponsorship that he agreed to step in. Originally scheduled for April 1964, the Festival was eventually held in April 1966. The designated 'star country' was Nigeria which had been offered this honour by President Senghor to balance the Francophone contribution. President Senghor would also flatter Nigeria by describing it as the 'Black Greece'. As the 'star country', Nigeria was accorded special privileges, but it also imposed on Nigeria the obligation to host the next festival.

Preparations for the Festival were also beset by tensions arising out of black Africa's aggressive desire to assert itself and its identity. In particular the French and African commissioners of the art exhibition's organising committee clashed as Mveng, a Jesuit priest from Cameroon who headed up the African side, sought to assert his primacy. It culminated in a less than generous statement of thanks to the French experts for their role in bringing the project together. President Senghor would also give instructions that only a small number of works should be sourced from North Africa and that these should represent black communities rather than Berber or Arab art.[248]

246 UNESCO, 'Problems and Prospects', Intergovernmental Conference on Cultural Policies in Africa, 27 October – 6 November 1975, Accra (organised by UNESCO with the cooperation of OAU), Annex 1, 1–2 Articles I, II and XI and Final Report, Intergovernmental Conference on Cultural Policies in Africa, 27 October – 6 November 1975, Accra, 7, 23–24 (Declaration of the Intergovernmental Conference on Cultural Policies in Africa).

247 UNESCO SS/01352/180572 'Final Report', Meeting of Experts on 'The Influence of Colonialism on the Artist, his Milieu and his Public in Developing Countries', Dar es Salaam, Tanzania, 5–10 July 1971, 1.

248 O. Nzekwu, 'Nigeria, Negritude and the World Festival of Negro Arts', *Nigeria Magazine,* 89 (1966), 80–82, A.H. Apter, *The Pan-African Nation: Oil and the Spectacle of Culture in Nigeria* (Chicago, 2005), 65–66 and C. Vincent, '"The Real

At the opening debate on 'The functions and significance of negro art in the lives of and for the people' at Senegal's National Assembly, which effectively opened the Festival, President Senghor informed the gathered writers and artists that they were partaking in a venture more revolutionary than the exploration of space. They were participating in a project aimed at the 'elaboration of a new humanity which this time will include the totality of humanity on the totality of our planet Earth'; the 'black world', he explained, was gathered together to find its soul.[249]

In his opening address to the Festival Colloquium, President Senghor would go on to explain that the theme of the Festival was 'the defense and illustration of *Négritude*':

> By helping the defense and illustration of Negro art, Senegal is conscious of helping to build the Civilisation of the Universal … to bring new values to the symbiosis of complementary values by which the Civilization of the Universal is determined, we Negroes need to be ourselves at long last in our dignity, our regained identity. To be ourselves by cultivating our own values as we have rediscovered them in the sources of Negro art … To be ourselves, not without borrowing, not by procuration, but rather by our own personal and collective effort and for ourselves. Otherwise we should merely be poor copies of others.[250]

In his closing address he would elaborate further on the importance he placed on Africa's need for a 'regained identity':

> Some 34 years ago there was a group of young Negro students in Paris who refused to be parrots; they refused to echo Washington, London, Moscow or even Paris. They refused to simply reflect political and cultural ideas invented by other peoples for other peoples … They rescued the word Negro from the abject state it had fallen into, and infinitely more important, the Negro cultural values … summed up in the word '*négritude*'. They swore they would give back its dignity to the word 'Negro' and restore *négritude* to its place, which was not the lowest place, at the universal banquet.[251]

Heart of the Festival": The Exhibition of L'Art nègre at the Museé Dynamique', D. Murphy (ed.), *The First World Festival of Negro Arts, Dakar 1966: Contexts and Legacies*, 45–63.

249 President Senghor, 'Opening address at National Assembly', quoted by D. Murphy, 'Introduction. The Performance of Pan-Africanism: Staging the African Renaissance at the First World Festival of Negro Arts', 1–2.

250 President Senghor, 'Opening address', quoted by J.G. Vaillant, *Black, French, and African: A Life of Léopold Sédar Senghor*, 322–323.

251 'Closing Address', quoted by P. Scipion, 'New developments in French-speaking Africa: Senegal: First World Festival of Negro Arts', *Civilisations,* 16/2 (1966), 257–258 and L.S. Senghor, 'The Function and Meaning of the First World Festival of Negro Arts', *African Forum,* 1/4 (1966), 9.

Yet the Festival would not be a complete triumph for *négritude* or the Civilisation of the Universal. An insight into the underlying differences emerged when Okigbo declined the Festival's first prize for poetry on the grounds that there was no such thing as Negro art, merely good or bad art. A commentator would also note that: 'The French-speaking Africans, especially those in charge of the Colloquium, wanted to talk about art in terms of "Negritude", whilst the European and American scholars … and the Anglophone Africans, who did not understand or care about negritude, wanted to discuss art in black Africa.'[252]

These differences would emerge even more virulently in the subsequent OAU-promoted 1969 Algiers First All-African Cultural Festival.[253] The Festival proceedings were opened by the OAU Administrative Secretary-General with the declaration that the OAU had 'raised the curtain on the greatest event that Africans ever conceived, worked out and offered to the world in the framework of its revolutionary fight against foreign domination and its various effects'.[254] The bar was then set even higher by President Boumédiène (Algeria)'s opening address which declared that:

> Our continent, three-quarters liberated but in full control of its destiny, is undertaking in this first Pan-African Cultural Festival the greatest assemblage of arts and letters in its history … It undertakes equally a new stage in its consistent struggle against every form of domination … The Festival … is at once the primary affirmation of African unity in its thought, spirit, and soul, and a recognition of the role that this Africanness has played in the preservation of our national personalities and in our liberation struggles.[255]

There then followed a sustained attack on *négritude*. In a recorded message, President Touré insisted that: 'There is no black culture, nor white culture, nor yellow culture … Negritude is thus a false concept, an irrational weapon encouraging the irrationality based on racial discrimination.' He described *négritude* and President Senghor as an aberration and a neo-colonialist fifth column within Africa and suggested that the Festival might be seen as a counter-festival to President Senghor's 1966 World Festival of Negro Arts.

252 'Death of Christopher Okigbo', *Transition,* 33 (1967), 18 and 'The First World Festival of Negro Arts at Dakar, Senegal', *Cultural Events in Africa,* 17 (1966), 2.

253 OAU CM/Res.117 (IX) (proposal) and CM/Res.147 (X) (approval); the initial proposal was prepared by the OAU's Educational, Scientific, Cultural and Health Commission, see OAU ESCHC/7.

254 G.W. Shepherd, 'Reflections on the Pan-African Cultural Conference in Algiers', *Africa Today,* 16/4 (1969), 2.

255 President Boumédiène, 'Le Premier Festival culturel panafricain', *Maghreb,* 35 September-October 1969, 9–13, quoted by R.A. Mortimer, 'The Algerian Revolution in Search of the African Revolution', *Journal of Modern African Studies,* 8/3 (1970), 383.

The speech two days later by Keita, head of the Guinean delegation to the Festival, reinforced President Touré's attack. 'Holy Negritude', he argued, was a ridiculous scenario in which:

> The Master transforms his slave into a Negro whom he defines as a being without reason, subhuman, and the embittered slave then protests: as you are Reason, I am Emotion and I take this upon myself … One easily understands why the imperialist propaganda system goes to such trouble to spread the comforting concept of Negritude. Negritude is actually a good mystifying anaesthetic for Negroes who have been whipped too long and too severely to a point where they have lost all reason and become purely emotional.

Although *négritude* was not without support at the Festival, the majority of the other papers were equally dismissive in varying degrees of contempt.[256]

The festival discussions were organised under three panels: 'The Realities of African Culture'; 'The Role of African Culture in the Economic and Social Development of Africa'; and 'The Role of African Culture in the Struggle for Liberation and African Unity'. Their conclusions were incorporated into a 'Pan-African Cultural Manifesto', which echoed many of the issues that had arisen in the individual debates of African intellectual and cultural revanchism:

> We must go back to the sources of our values, not to confine ourselves to them, but … to get rid of archaic and stultifying elements, the fallacious and alienating foreign elements brought in by colonialism, and to retain only those elements which are still valid … Colonization favoured the creation of a cultural elite won over by assimilation, which had had access to the colonial culture, and both supported it and often stood guaranty for it … For the African countries … culture has been and will remain a weapon … armed struggle for liberation was and is a pre-eminently cultural act … Neo-colonialism … although no longer violent, is no less ominous and dangerous, subtle and insidious … for the development and future culture of Africa.[257]

256 A.S. Touré and Mamadi Keita, quoted by B. Lindfors, 'Anti-Négritude in Algiers', *Africa Today*, 17/1 (1970), 5–7, A.S. Touré, *La negritude et la 5ème Colonne*, 2nd edn (Guinea, 1977), 7, 254–255 (author's translation), G.W. Shepherd, 'Reflections on the Pan-African Cultural Conference in Algiers', 1–3 and R.A. Mortimer, 'The Algerian Revolution in Search of the African Revolution', 384–385; see also S.D. Anderson, '"Negritude is Dead": Performing the African Revolution at the First Pan-African Cultural Festival (Algiers, 1969) and A. Apter, 'Beyond Négritude: Black Cultural Citizenship and the Arab Question in Festac 77', D. Murphy (ed.), *The First World Festival of Negro Arts, Dakar 1966: Contexts and Legacies*, 133–150, 156–160.

257 'Pan-African Cultural Manifesto', *Africa Today* 17/1 (1970), 25–28 and 'Pan-African Cultural Manifesto', Hommage à Jean Price-Mars, *Présence Africaine*, 3/71 (1969) , 124–132.

Much of this Manifesto would subsequently find its way into the 1975 Accra Declaration of the Intergovernmental Conference on Cultural Policies in Africa and the 1976 Cultural Charter for Africa.

The 1977 FESTAC was conceived as the follow-up to the 1966 Dakar World Festival of Negro Arts. Originally scheduled for 1970, it was delayed because of the Nigerian civil war but was eventually rescheduled for 1977. By that time, what had been envisaged as an assertion of African cultural values had metamorphosed into a statement of Nigerian oil wealth and leadership in Africa; it is estimated that FESTAC cost Nigeria about US$3bn. On a cultural level, preparations were dogged by persistent disagreements between Nigeria and Senegal based around Nigeria's rejection of *négritude* and President Senghor's desire to renew *négritude*'s triumph. It began with Nigerian rejection of the Festival flag that had fluttered over Dakar in 1966, in effect an emblem of *négritude*; it continued by a renaming of the Festival from the exclusive 'Negro Arts' to the inclusive 'Black and African Culture'; and, even more pointedly, in Nigeria's refusal to countenance Senegal's insistence that North Africans should be excluded from participation in the intellectual aspects (the Colloquium) of the Festival. It led to a serious threat of boycott by not only Senegal, which at one point did announce its boycott, but also the other Francophone states. Senegal's reluctant participation, despite the removal of Diop as Secretary-General of the Festival Committee, was it seems the result of a personal appeal by Soyinka to President Senghor.[258]

General Obasanjo's opening address gives some idea of the extent to which African intellectual and cultural revanchism had been absorbed even by military leaders. He expressed outrage at what he described as the enduring dangers of foreign cultural influence and warned of 'intellectual trading post agents' that 'constitute impediments to Black African development'. These agents, he pointed out, have

> two common characteristics … they possess abundant imitative capacity and they depend on alien recognition and standards for their status … the

258 A. Apter, *The Pan-African Nation: Oil and the Spectacle of Culture in Nigeria*, 65–70, 'Beyond Negritude: Black Cultural Citizenship and the Arab Question in Festac 77', D. Murphy (ed.), *The First World Festival of Negro Arts, Dakar 1966: Contexts and Legacies,* 151–156 and 'The Pan-African Nation: Oil-Money and the Spectacle of Culture in Nigeria', *Public Culture,* 8/3 (1996), 441, K. Whiteman, *Lagos: A Cultural History* (Northampton, 2014), 170–171, R. Ofoegbu, 'Foreign Policy and Military Rule', O. Oyediran (ed.), *Nigerian Government and Politics under Military Rule, 1966–79* (London, 1979), 141–142 and B.H. Edwards, 'Crossroads Republic', *Transition,* 97 (2007), 99–100; see also Editor, 'In retrospect: FESTAC '77', *The Black Perspective in Music*, 5/1 (1977), 105, 'African Arts Festival Begins', *Africa Diary,* 29 January – 4 February 1977, 8322, and W. Soyinka, *You Must Set Forth at Dawn: A Memoir* (Chicago, 2005), 195.

> Colloquium should be seen not as an exercise in revalorization but entirely as a means of achieving mental liberation … Let it be an occasion for rejecting the role of a trading-post agent whose claim to fame is excellence in imitation … Must we think and work in the languages of Europe for ever? … Must we measure the quality of our performance by standards that are foreign?

He added that, by not becoming 'an efficient agent of foreign causes and interests', intellectuals would 'earn for us the dignity we crave for, the recognition we seek and the liberation we are struggling to achieve'.[259] His exhortation was reflected in the reports of the various Colloquium Working Groups. As Amoda noted in his analysis of the Colloquium, they 'all addressed the same problem, the problem of waging a cultural nationalist war of a black and African scope against a Euroamerican Academic Establishment'.[260]

In view, therefore, of this strength of feeling, it was natural that the African states would wish to express their cultural confrontation in a formal declaration. Following the June 1974 Mogadishu CoM, a meeting in 1975 of Ministers of Culture agreed that a 'Cultural Charter for Africa' should be drawn up. Drafting was assigned to a specialist committee of experts that met in June 1975 in Dakar and presented their draft to the 1976 Port Louis OAU AHSG.[261]

Its Preamble connected it to, and borrowed from, UNESCO's 1966 Declaration of Principles, the 1969 Pan-African Cultural Manifesto and the 1975 Accra Declaration of the Intergovernmental Conference on Cultural Policies in Africa. Its aims *inter alia* were stated as being:

> a) to liberate the African peoples from socio-cultural conditions which impede their development … ;
>
> b) the rehabilitation, restoration, preservation and promotion of the African cultural heritage;
>
> d) the combating and elimination of all forms of alienation and cultural suppression and oppression everywhere in Africa, especially in countries still under colonial and racist domination including apartheid;
>
> f) the encouragement of international cultural co-operation for a better understanding among peoples within which Africa will make its original and appropriate contribution to human culture;[262]

259 General Obasanjo, 'Opening remarks' 17 January 1977, A.U. Iwara/E. Mveng (eds), *Second World Black and African Festival of Arts and Culture, Colloquium on Black Civilization and Education (Lagos, 17th–31st January, 1977) Colloquium Proceedings Vol. 1*, 19–21.

260 M. Amoda, *Festac Colloquium and Black World Development* (Lagos, 1978), 2, 27–28; see also S. Osoba, 'The Deepening Crisis of the Nigerian National Bourgeoisie', *Review of African Political Economy*, 5/13 (1978), 64.

261 OAU CM/Res.371 (XXIII) and AHG/Res 82 (XIII).

262 OAU 1976 Cultural Charter for Africa; see also C. Sembène, 'Towards Pan-Africanism:

In consistent OAU fashion, though, notwithstanding the enthusiasm with which it was adopted, the absence of ratifications ensured that it did not come into effect until 1990 despite the 1980 Addis Ababa CoM and the 1981 Nairobi CoM urging ratification.[263] It would, however, demonstrate to the sponsors of the ACHPR an important lesson about the potential trap of the ratification process and therefore prompted the ultimately failed efforts to authorise the ACOMHPR to be set up immediately upon adoption by the OAU AHSG and not to have to await final ratification.[264]

The 1976 Cultural Charter for Africa demonstrated yet again the commitment of African political leaders to the rehabilitation of African culture and the role assigned to the OAU in that process. It also exemplifies the extent to which African revanchist ideas had become central to the theory and praxis of almost all aspects of African political, cultural and intellectual life. Above all, the 1976 Cultural Charter for Africa is a declaration to the outside world of African difference and a demand not only for recognition of that difference but of an appreciation that the universal could not truly be universal unless it had first absorbed an African contribution. It was another rejection of the cosy assumption of Western universalism but expressed in an official pronouncement of the OAU. Significantly, too, as OAU Secretary-General Kodjo pointed out to the June 1981 Nairobi CoM in his commentary on the progress of the drafting process of the ACHPR, the 1976 Cultural Charter for Africa should also be understood as an anticipation of the ACHPR. 'Africa', he explained, 'should underline, in an original instrument, the importance that its peoples attach to the respect of Human dignity and fundamental rights. That concern led to … the adoption … of an African Cultural Charter.'[265]

The idea of the right to difference, of a distinct African conception of human rights, and of the pressing necessity for Africa to present its contribution to the Civilisation of the Universal were all considerations that President Senghor and OAU Secretary-General Kodjo would subsequently convey to the 1979 Dakar Meeting of Experts tasked with the initial responsibility for drafting

Letter from Dakar', *Black World/Negro Digest* (1975), 79–81.

263 CM/Res.776 (XXXIV) and CM/Res.882 (XXXVII).

264 See Volume 2.

265 OAU 'Report of the Secretary-General on the African Charter of Human and People's Rights' CM/Plen/Rapt.Rpt (XXXVII), 55; much the same points are also made in OAU 'Introduction to the Report of the Administrative Secretary-General covering the period from February to August 1969' CM/270 (Part 1) August 1969, 17–18 in relation to the 1969 Algiers First All-African Cultural Festival. In 2006 the AU 2006 Khartoum AHSG replaced the 1976 Cultural Charter for Africa with the Charter for African Cultural Renaissance (Assembly/AU/Dec.94 (VI)). Its Preamble refers to it having been guided by the ACHPR.

the ACHPR.[266] By this time though, their interventions were probably superfluous, they were simply reminders of African resentment at the dominance of Western universalism. It was a reference point which the experts had by then already imbibed from the intellectual and cultural revanchist debates that had dominated African thought and praxis over many years and with which they were therefore already familiar and sympathetic. It was a perspective that had also featured in all the earlier African human rights conferences which had been attended by many of the experts. They therefore knew and intuitively understood what this element of their task entailed and would find for it a place in the draft which they were about to draw up. In due course, too, it would be through the prism of precisely these considerations and a burning desire to assert African dignity and values against Western universalism that the Banjul Ministerial Meetings political drafting review would also deliberate on the content of an African human rights charter. Throughout the long and painful discussions of the drafting process, this would be one of the few areas on which all African political leaders could find common ground and it would therefore be essentially on just such an understanding of the purpose of the ACHPR that final agreement on its adoption could be made possible.

266 OAU (L) President Senghor's opening address to the 1979 Dakar Meeting of Experts CAB/LEG/67/5 and OAU (L) OAU Secretary-General Kodjo's opening address to the 1979 Dakar Meeting of Experts, CAB/LEG/67/4.

Part Two

The OAU and Human Rights

Chapter 5

The OAU Polity and the Domestic Praxis of Human Rights

In a eulogy to the UDHR on the occasion of its fiftieth anniversary, Hannum, with specific reference to Africa, triumphantly proclaimed that: 'The Universal Declaration has served as a model or inspiration for numerous constitutional and legislative provisions … Many African constitutions in the immediate post-independence period made explicit reference to the Universal Declaration of Human Rights.'[1] It is a triumphalism that is widely shared within African human rights commentary. For example, Asante drew attention to the 'Charters of Human Rights' in the independence constitutions of the former British colonial territories and the commitment to the 1789 French Declaration of Rights in the independence constitutions of the former French colonial territories and thereby concluded that the UDHR 'has been a powerful source of inspiration for the founding pattern of African nations … national independence in Africa … arrived in an era replete with concepts of human rights. In these circumstances entrenchment of human rights was virtually automatic.'[2]

A similar conclusion was reached by Mahalu who argued that, although African independence was itself based on the issue of human rights, significantly, it had come about 'at a time when the categories of human rights had expanded and internationalized. In the international atmosphere they had a compelling moral force and found legal interpretation in domestic legislation of various states'. More authoritative, in that he served on the African Court on Human and Peoples' Rights for ten years, is the conclusion drawn by Ouguergouz that the incorporation into the independence constitutions of provisions relating to human rights, 'with or without express reference to the Universal Declaration', was

1 H. Hannum, 'The UDHR in National and International Law', *Health and Human Rights,* 3/2 (1998), 150–151. Of the twenty states identified by Hannum, all except for Equatorial Guinea and Somalia were former French or Belgian colonial territories.

2 S.K.B. Asante, 'Nation-building and Human Rights in Emergent African Nations', *Cornell International Law Journal,* 2/1 (1969), 72–74.

> not a case of mere imitation but … the fruit of a sincere conviction inherited from the anti-colonial struggle. The systematic human rights violations inherent in the colonial system had given birth, in nationalist African circles, to humanitarian aspirations and ideals; once independence had been gained, it was logical for them to be incorporated into legislation. Thus, the first constitutions of the countries formerly under British domination almost all contained an impressive and detailed list of rights and freedoms.

Lest it be thought that he was referring purely to anti-colonial sentiments, Ouguergouz made clear that:

> The first basic texts of the new African States therefore reveal the same desire to solemnly lay down the rights and freedoms of the individual and the same predilection for the classical model. Hence, far from ignoring the concept of human rights, the authors of the African constitutions accorded them pride of place in the supreme legal instruments of their respective countries. This massive adherence of the African countries to the principles laid down by the Universal Declaration of Human Rights, together with a reference to it in the OAU Constituent Charter, clearly show that the Universal Declaration has lost none of its value as a yardstick in the eyes of African leaders.

Ouguergouz and Mahalu's observations were advanced in the specific context of commentary on the origins of the ACHPR. Their aim was to demonstrate a continuum in the minds of African leaders from the UDHR to the ACHPR by way of African independence constitutions and the OAU Charter. Ouguergouz therefore makes it clear that 'the massive adherence' of African leaders to the principles of the UDHR as expressed in African constitutions was 'subsequently confirmed by the African Charter'. Nor is Ouguergouz alone in making this point. Human rights references in African constitutions are widely cited within African human rights commentary with the sole intent of demonstrating an historic path of African empathy with human rights and thereby explaining the origins of the ACHPR as an expression and inevitable corollary of that empathy.

What is most remarkable about these claims is that they are demonstratively repudiated by the painful evidence of the post-independence domestic praxis of African political leaders and the OAU's principle of non-interference. Far, therefore, from demonstrating that 'compelling moral force' or 'sincere conviction', the domestic praxis of Africa's political leaders clearly points in quite the opposite direction. Indeed, if there is a continuum at all, it is rather to be found in the opposition of African leaders to any constitutional restraints on their authority and an insistence on non-interference in their domestic affairs; by other African states, the OAU, the CHR and, eventually, the ACOMHPR.

Indeed, rather astonishingly then, in view of the 'humanitarian aspirations and ideals' on the part of 'nationalist African circles' and of 'the same predilection for the classical model' that he alleges, Ouguergouz acknowledges the discrepancy. He goes on to contrast the 'ardour' with which African states denounced

the violation of peoples' rights inherent in colonialism and racism with their 'lack of interest' in the violation of the human rights of the individual in their own territories. Similarly, Mahalu contradicts his observation of a 'compelling moral force' with his description of African 'double standards' and the tendency of African states to turn a 'blind eye to the flagrant violations of human rights by African countries on African soil'.[3] So too Asante who describes the 'grim catalogue of transgressions' by African states as a 'distressing record'.[4] It was a reality that President Senghor at least readily acknowledged in his opening address to the 1979 Dakar Meeting of Experts. He waved aside all temptation for delusional wishful thinking with the advice that: 'Unfortunately, independent Africa can hardly teach a thing or two on human rights. Let us admit our weakness. It is the best method of getting over it.'[5]

Equally troubling in terms of the alleged causal relationship is that human rights commentators invariably present little or no evidence of the intellectual, political and drafting trail linking the putative 'compelling moral force' or 'sincere conviction' to the human rights references in African independence constitutions let alone the ACHPR. This is hardly surprising as, with few exceptions, they have shown little interest in the drafting process of African independence constitutions and therefore of how and why these references came to be included, what they intended and how they should be understood; and, not least, their subsequent fate. It seems to be simply sufficient to point to human rights references in these constitutions as evidence of the commitment to human rights or the UDHR. For example, Ouguergouz identifies the 'similarities' between the ECHR and the Fundamental Rights chapter in the 1960 Nigerian Constitution as if that was of significance, but provides no explanation of how and why those 'similarities' came about.[6] Similarly, seemingly without much research other than advice from an academic colleague and possibly a 1963 article by Vasak, Huneeus and Madsen advise that the ECHR 'became the basis for the bills of rights of many African states upon independence, following its use as a model for the Nigerian Constitution. Arguably, these would, in turn, inform the making of the

3 F. Ouguergouz, *The African Charter on Human and Peoples' Rights*, 3–9 and C.R. Mahalu, 'Africa and Human Rights', P. Kunig/W. Benedek/C.R. Mahalu (eds), *Regional Protection of Human Rights by International Law: The Emerging African System* (Baden, 1985), 7, 13–17; see also L. Wiseberg, 'Human Rights in Africa: Toward the Definition of the Problem of a Double Standard', *Issue: A Journal of Opinion*, 6/4 (1976), 7.

4 S.K.B. Asante, 'Nation-building and Human Rights in Emergent African Nations', 83.

5 OAU (L) President Senghor's opening address to the 1979 Dakar Meeting of Experts CAB/LEG/67/5.

6 F. Ouguergouz, *The African Charter on Human and Peoples' Rights*, 6–7.

African human rights system'.[7] Much the same criticism can be made in respect of Hannum's linkage of the 1979 Zimbabwe Constitution, which Prime Minister Mugabe would rush to disown soon after independence, with the 'International Bill of Human Rights and the European Convention on Human Rights'.[8]

More interestingly, but otherwise with no obvious explanation, Heyns and Kaguongo identified references in fifteen African constitutions to variations of President Lincoln's aphorism in his 1863 Gettysburg Address 'government of the people, by the people and for the people'.[9] An earlier reference to this aphorism is also to be found in the 1955 Manifesto of the Progressive Party, one of the early political parties to emerge in Uganda, which otherwise made no mention of human rights. Understandably, in a British-crafted document, the aphorism would not be included in the 1962 Uganda independence constitution.[10]

There is no doubt that African independence constitutions drew on, borrowed freely from and referenced Western political texts and constitutions. There were few alternative precedents after all upon which they might draw. For that reason therefore, there is an element of truth in the identification of similarities albeit that it begs the more pertinent question of why and it also fails to explain the coincidence of textual overlap between many of the constitutions. It is undeniable, for example, that, with only a few exceptions, there are consistent patterns and differences between the human rights references of the independence constitutions of the former British and French colonies and, later, the former Portuguese colonial territories. At its simplest, the former French and Belgian colonial territories referenced the UDHR and the former British colonial territories entrenched fundamental rights; whereas the former Portuguese colonial territories, which only became independent in the modern human rights era of the 1970s, largely adopted only such few human rights references as accorded with their notions of revolutionary justice. If it is to be argued that the 'compelling moral force' of the UDHR was a determining factor, this would seem a pattern of coincidences and differences too far, so too the political fate of these

7 A. Huneeus/M.R. Madsen, 'Between Universalism and Regional Law and Politics: A Comparative History of the American, European, and African Human Rights Systems', *International Journal of Constitutional Law,* 16/1 (2018), 141–142; the reference is to K. Vasak, 'The European Convention of Human Rights beyond the Frontiers of Europe', 1206–1231.

8 H. Hannum, 'The UDHR in National and International Law', 150–151; see also page 562 below.

9 C. Heyns/W. Kaguongo, 'Current Developments: Constitutional Human Rights Law in Africa', *South African Journal on Human Rights,* 22/4 (2006), 677; other than the former Belgian colonial territories of Burundi and Rwanda, all were former French colonial territories.

10 D. Low, *The Mind of Buganda: Documents of the Modern History of an African Kingdom,* 183–190.

constitutional commitments. It suggests other factors may have been at play and that a deeper understanding of the background to African independence constitutions is warranted before any conclusions can be drawn.[11]

British colonial territories[12]

In view of long-standing British legal antipathy to the concept of fundamental rights, it is rather extraordinary that the Colonial Office should have acquiesced in, indeed supported, the inclusion of fundamental rights in the independence constitutions of almost all African colonial territories. The only exceptions being the Gold Coast, the first to negotiate independence, and Tanganyika, where the absence of fundamental rights was not for want of Colonial Office trying. As de Smith noted, it represented 'a startling transformation' in attitudes that raised a range of political questions. In his view, although 'only tentative answers can be offered', the initial impetus for their inclusion is to be explained primarily in terms of the demands from the colonial territories themselves who envisaged fundamental rights as a potentially useful mechanism for protecting minorities after independence; that is, not in the classical sense as a means of protection for the individual against the state. Thereafter, though fundamental rights were included even where such tension was largely absent, it was simply 'a manifestation of that familiar process in which the deplorable becomes recognized as the inevitable and is next applauded as desirable'.[13]

Twenty-five years later, with Colonial Office files still embargoed, Hahn's investigation largely concurred with de Smith. He argued that, while 'the truth of the matter is complex', de Smith's intimation that the deplorable had become desirable 'was perceptive and in many ways has been borne out'.[14] A third work, by Simpson, also sought to investigate the transformation, although as an adjunct to his chief focus on the genesis of the ECHR. Simpson warned that history is the product of many 'complicated interrelationships between individuals, institutions, and governments' but suggested that the 'startling transformation' was

11 Unless otherwise indicated, all African constitutions are referenced from either HeinOnline 'World Constitutions Illustrated' (https://libguides.heinonline.org/world-constitutions-illustrated last accessed 15 February 2023) or A.J. Peaslee, *Constitutions of Nations Vol. 1: Africa*, revised 3rd edn (The Hague, 1965) and *Constitutions of Nations Vol. 1: Africa*, revised 4th edn (The Hague, 1974).

12 This section has drawn on C.O.H. Parkinson, *Bills of Rights and Decolonization* (Oxford, 2007); however, unless otherwise stated, all NA document references have been traced back directly to the NA files rather than simply referenced from Parkinson.

13 S.A. de Smith, 'Fundamental Rights in the New Commonwealth I and II', *International and Comparative Law Quarterly,* 10/1 (1961), 83–102 and 10/2 (1961), 215–237.

14 R.K. Hahn, 'Commonwealth Bills of Rights: Their Nature and Origin' (unpublished DPhil Thesis, University of Oxford, 1986), 65–66.

closely linked to British adoption of the ECHR. However, he then also suggested that the human rights abuses of President Nkrumah in Ghana had demonstrated to the Colonial Office that the inclusion of fundamental rights might prove an appropriate means of abating such abuses and that the Nigerian constitutional negotiations had similarly demonstrated the value of fundamental rights for the protection of minorities. Finally, he argued that the Foreign Office had sought to employ human rights instruments as a tool of foreign policy in that the ECHR 'had now become a valued instrument whereby the civilizing mission of British colonialism could be perpetuated in the post-colonial world'.[15]

While some of these explanations may have had some justification, Simpson's assessment of the ECHR's significance was not supported by de Smith, who argued that, on the contrary, it 'had no immediate impact on constitution-making in the Commonwealth'.[16] Nor was it supported by Parkinson, the most recent and most authoritative commentator on the drafting process of the independence constitutions of African colonial territories. Parkinson concluded that the ECHR 'should not be overemphasized' preferring rather to lay stress on its 'silent' appearance and 'its minimal importance outside its function as the preferred model for colonial bills of rights'. He was, however, prepared to suggest that minorities were encouraged in their demands by the existence of the UDHR. More generally, Parkinson identified three phases in the process: The first phase of Colonial Office opposition; the second phase, following the Nigerian constitutional negotiations, in which the inclusion of fundamental rights was encouraged in response to local demands; and the third phase, after 1962, when the Colonial Office decided that all independence constitutions should include fundamental rights as a matter of course.[17]

Sudan

The first British-administered territory in Africa to negotiate independence was the Sudan. Sudan's political landscape was dominated by a religious, ethnic and economic cleavage between North and South made worse by competing political personalities and parties. As a result, the Foreign Office, which carried responsibility for the Sudan, and the British-controlled Sudan Government were loath to consider self-determination for the Sudan before the political relationship between the regions was agreed. In particular, they were concerned

15 A.W.B. Simpson, *Human Rights and the End of Empire*, ix, 865; see also D.V. Cowen, 'Human Rights in Contemporary Africa', *Natural Law Forum*, 9 (1964), 1–24.

16 S.A. de Smith, 'Fundamental Rights in the New Commonwealth II', 217. For the extent to which African constitutions adopted ECHR provisions, see C. Heyns, 'African Human Rights Law and the European Convention', *South African Journal on Human Rights*, 257–258 and K. Vasak, 'The European Convention of Human Rights beyond the Frontiers of Europe', 1221–1222.

17 C.O.H. Parkinson, *Bills of Rights and Decolonization*, 40, 266–273.

that the South should be assured that its African and religious identities and economy would not be threatened by the more numerous, economically more powerful and fervent Muslims of the North. There was also the yet further complication that some of the Northern parties and political leaders supported Egypt's long-standing claim on the Sudan which Egypt based on the 'natural unity which has bound Egypt and the Sudan from time immemorial'.[18]

Sudanese calls for self-determination had begun in earnest following news of the Atlantic Charter announcement and in anticipation of the San Francisco Conference. The resulting pressures persuaded the Sudan Government that the to-date slow movement towards self-government had to be accelerated beyond the Advisory Council for Northern Sudan, which had been set up in 1944.[19] In 1946, therefore, the Sudan Government began to consult with Sudanese political leaders on the detail of the first stage of self-government and on how it might best be introduced.[20] The initial outcome was elections in 1948 to a newly created Legislative Assembly and an Executive Council reporting directly to the Governor-General, the composition of which was divided equally between Sudanese political leaders and government officials.[21] At the same time, however, there was also a lingering sense on the part of the Sudan Government, all too soon dispelled, that this was as far a political advance as was realistic for some years to come and that self-determination itself was still some twenty years away.

Somewhat ahead then of this timetable, in December 1950, the Legislative Assembly adopted a surprise resolution calling for political advance to be accelerated.[22] Governor-General Howe nonetheless responded positively establishing a Constitution Amendment Commission comprising thirteen Sudanese representatives under the Chairmanship of Judge Stanley-Baker. It began to meet in April 1951 and was soon able to make considerable progress. However, in November 1951, its deliberations were brought to an unexpected political impasse as a result of Egypt's unilateral abrogation of the Anglo-Egyptian agreements – the problem being that the condominium arrangement required that

18 HMSO Cmd. 8767, Egypt No. 2 (1953) *Documents concerning Constitutional Development in the Sudan and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government concerning Self-Government and Self-Determination for the Sudan* (London, 1953), 6.

19 *Special Legislative Supplement to Sudan Government Gazette* No. 731 1 September 1943 (Advisory Council for the Northern Sudan Order, 1943).

20 Advisory Council for the Northern Sudan, Proceedings of the Session, First to Eighth Sessions May 1944–March 1948 (the debates with respect to the prospective constitutional changes are in Vol. 7, 62–79 and Vol. 8, 22–100).

21 *Special Legislative Supplement to Sudan Government Gazette* No. 791 19 June 1948 (The Executive Council and Legislative Assembly Ordinance 1948).

22 Legislative Assembly of the Sudan Weekly Digest of Proceedings, First Assembly, Second Session No. 14, 569–570, 580–586, 593–595 (9–16 December 1950).

constitutional changes had to be approved by both the UK and Egypt. It left Governor-General Howe with no option other than to dissolve the Commission although he still published Judge Stanley-Baker's report describing the Commission's deliberations and the significant number of points upon which agreement had been reached.[23]

Notwithstanding this unfortunate turn of events, but encouraged by the apparent wide measure of genuine agreement between the various political groups, Governor-General Howe boldy decided that he should nonetheless still draft a constitutional amendment providing for Sudanese self-government. After taking preliminary advice from the Legislative Assembly and input from the Foreign Office, the Sudan Government published 'An Order to provide for full Self-Government in the Sudan' in March/April 1952. Following a review by the Legislative Assembly in May 1952, leading to only minor changes, the Self-Government Order was submitted to the Egyptian government for approval despite its continuing abrogation of the condominium arrangement. That approval, which would eventually require substantive changes to be made, would not be given until a new Anglo-Egyptian Agreement in February 1953 brought Egypt back into the condominium arrangement fold. It was therefore only in March 1953 that all parties reached broad agreement as to the basis upon which self-government for the Sudan should proceed and the Self-Government Order as amended was passed into law.[24]

The Self-Government Order provided that the transitional period of self-government should be brought to an end 'as soon as possible' and in any case no more than three years after the January 1954 inauguration of the first all-Sudanese Parliament. It further stipulated that the trigger for the final steps

23 *Report on the work of the Constitution Amendment Commission up to the date of its dissolution by the Chairman Mr. Justice R.C. Stanley-Baker* (Khartoum 1951) and Background to Sudan News, Commentary on events in the Sudan November 19th, 1951 to December 17th, 1951, Public Relations Consultant to Sudan Government, December 1951, NA FO 371/96851.

24 SAD 525/13/8 *Civil Secretary's Monthly Letter* 10 May 1952, University of Durham, Palace Green Library, Special Collections, the Sudan Archive, J.W. Robertson Papers, 'Background to Sudan News': "Self-government in the Sudan" 2 April 1952, NA FO 371/96855 and HMSO Cmd. 8767, Egypt No. 2 (1953) *Documents concerning Constitutional Development in the Sudan and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government concerning Self-Government and Self-Determination for the Sudan*, 12–45; see also Chronological note on the introduction of self government in the Sudan, undated, NA FO 371/102700, M.A. al-Rahim, *Imperialism and Nationalism in the Sudan: A Study in Constitutional and Political Development, 1899–1956* (Oxford, 1969), 159–227, M.W. Daly, *Imperial Sudan: The Anglo-Egyptian Condominium, 1934–56*, 206–301, 352–394, P. Woodward, *Condominium and Sudanese nationalism*, 75–166 and A.I. Abushouk, 'The Anglo-Egyptian Sudan: From Collaboration Mechanism to Party Politics, 1898–1956', 215–227.

would be the adoption by the Sudan Parliament of a resolution expressing its desire that the arrangements for self-determination should be put into effect. At that point the Sudan Government would arrange for elections to a Constituent Assembly which would decide in favour of independence or a link with Egypt and draw up a new constitution.[25] In the event, this timetable was effectively set aside in December 1955 by a resolution in the Sudan Parliament declaring Sudan an independent sovereign state and calling upon both condominium partners to recognise this declaration. They did so and thereupon Sudan became independent as of 1 January 1956 under what become known as the Transitional Constitution.[26]

Before its dissolution, the Constitution Amendment Commission had proposed that a Statement of Fundamental Rights and Directive Principles of Government Policy should be included in the constitution. The idea was initiated by Mahgoub, a lawyer sitting at that time as an independent, although he would subsequently serve as both Foreign Minister and Prime Minister of Sudan. At the Commission's second meeting he had put forward a draft constitution of eighty-six sections, thirty of which had been copied from the existing Sudan Ordinance, forty-three from the 1950 Indian constitution and thirteen from other sources, which was accepted as the 'basis of discussion'. Although it is not clear what prompted Mahgoub to put these ideas forward, the most obvious inspiration would seem to be the 1950 Indian constitution. Some general insight into the thinking of Commission members can however be identified from the Commission's interim reports and Judge Stanley-Baker's final report. In the second interim report, as regards the Statement of Fundamental Rights, it was explained: 'The Commission are very anxious to include a statement of these in any constitution. They appreciate – to some extent – the difficulties inherent in such declarations, and are prepared to leave much of the contents and the actual wording to the experts.' It then went on to report that Buth Diu, who in 1951 had formed the Southern Sudan Party, the first political party in the Southern region, 'is concerned to make the provision for freedom of religion more effective'. Judge Stanley-Baker's final report would also explain that: 'All members were anxious that the new Constitution should contain a declaration of the rights which are recognised as necessary for effective social and economic life in a democratic community and which it is usual to state in written Constitutions, particularly in countries where there are substantial minority interests.' At no time was there mention of the UDHR.

25 Self-Government Order, *Special Legislative Supplement to Sudan Government Gazette* No. 854 21 March 1953 and Self-Government Statute 21 March 1953, C.H.A. Bennett (ed.), *Laws of the Sudan Prepared and Arranged for the Law Commission by Sir Charles Cummings* (London, 1956), 13–55.

26 McCorquodale & Co, *The Transitional Constitution of Sudan* (Khartoum, 1955) and HMSO Cmd. 9829, Sudan No. 3 (1956) *Self-Determination in the Sudan Résumé of Developments November 15, 1951 – January 1, 1956* (London, 1956).

Some further insight can be gleaned from the section of Judge Stanley-Baker's final report that describes the Commission's response to the review of the draft constitution undertaken by Professor Harlow who had been brought in by Judge Stanley-Baker to provide expert advice. Predictably for a British constitutional expert, he had reservations about the Statement of Fundamental Rights and the Directive Principles of Government Policy sections. His recommendation that the two sections should be absorbed into one severely truncated statement of 'Fundamental Principles of the Constitution' was rejected by the Sub-committee which had been set up by the Commission to review his recommendations. They explained that: 'Your Sub-committee agree to the spirit of Professor Harlow's recommendations regarding fundamental rights, but they are of (*sic.*) opinion that it is more convenient that such fundamental rights should be set out in the detailed manner followed in the draft Constitution.' As to the Directive Principles of Government Policy, they were similarly 'unable to agree with Professor Harlow':

> In more recent constitutions it had been found desirable to lay down some fundamental directive principles of Government policy which would indicate the sort of Government which the people desired, and which would provide a declared policy of social justice. In … the present draft Constitution care had been taken to exclude anything which was not a practical possibility, e.g. Compulsory Education, but they contained much that would allay the doubts and fears of minorities.

Nevertheless, they 'agreed that both drafts should be put forward as an indication of what members had in mind and that the framing of the declaration should be left to the draftsmen'.

The Sub-committee had also been appointed 'to consider and report on … the draft constitution in the light of the new development in the political situation', that is, the unilateral abrogation of the Anglo-Egyptian agreement by Egypt. Concerned lest this might lead to a slower pace of advance they also recommended the addition of a Preamble encapsulating their hopes for the future:

> the people of the Sudan are solemnly resolved to constitute a full self-government and to secure to all citizens:
>
> Justice, social, economic and political;
>
> Liberty of thought, expression, belief, faith and worship;
>
> Equality of status and opportunities;
>
> And to promote among them all:
>
> Fraternity assuring the dignity of the individual and the unity of the nation to enable them to exercise their right of self-determination.[27]

27 *First and Second Report of the Constitution Amendment Commission* 25 May and

However, Sudanese enthusiasm for the Preamble, the Statement of Fundamental Rights and the Directive Principles of Government Policy was not reciprocated by either the Sudan Government or the Foreign Office. They had not been included in the 1947 India Independence Act and subsequent difficulties arising out of their incorporation into the post-independence 1950 Indian constitution had merely served to confirm the wisdom of British opposition to such constitutional flimflam.

The political question, though, was whether inclusion should now be opposed. For the Foreign Office, wider interests dominated consideration of their response. In general, they were inclined to the view that the constitution was largely a matter for the Sudanese themselves to determine, but they were also concerned about any possible impact on the parallel negotiations for an Egyptian Defence Treaty and the UK's image in the world. It was argued, for example, that a refusal to accept such a statement might expose the UK to criticism in the CHR.[28] Although, therefore, the Self-Government Order would retain some semblance of the section on fundamental rights, the Sub-committee's clearly expressed wishes were barely respected. Under cover of Professor Harlow's report, and with the discretion afforded by the Sub-committee, the Self-Government Order presented to the Legislative Assembly in April 1952 simply excised the Directive Principles of Government Policy and largely followed his truncated conjoining of the two sections under the heading of 'Fundamental Rights'. Nonetheless, the Legislative Assembly accepted the draft without substantive changes. Most likely it was appreciated that agreement would expedite British withdrawal. Egypt, too, subsequently, proposed no amendments to this section.

As for the Colonial Office, though it had been kept broadly informed about the progress of the drafting process, it was only given a copy of the proposed Self-Government Order rather late in the day. Unlike the Foreign Office, it was seriously concerned about the potential impact of several aspects of the draft on its negotiations with the colonial territories. For example, the absence of *ex-officio* ministers in the interim between self-government and self-determination; the provision for fundamental rights; and the reference to 'self-determination'. However, for the greater part, its senior officials grasped that it was now too late to insert their views into the process. At a belated meeting with the Foreign

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23 June 1951, NA FO 371/90111 and *Report on the work of the Constitution Amendment Commission up to the date of its dissolution by the Chairman Mr. Justice R.C. Stanley-Baker*, 4–9, 61–66 (Appendix II: Memorandum on projected measures of constitutional reform in Sudan by Vincent T. Harlow), 74–75 (Appendix III: Sub-committee of the Sudan Constitutional Commission on new features of the Constitution, and the Report of Professor Vincent T. Harlow), 76–80 (Appendix IV: Draft Chapters on Fundamental Rights).

28 Minute, Ledward 15 May 1952, NA FO 371/96855.

Office and the Commonwealth Relations Office, the Colonial Office was forced to concede defeat on the section on fundamental rights insofar as 'it was agreed that although none of those present saw any advantage in including this chapter, it would be more harmful to try to get it excluded now … The Colonial Office position was safeguarded in so far as it could be said that the Statute was produced by the Sudanese themselves.'[29]

As to the self-determination reference, the Colonial Office was rather more successful in carrying through its objections. Although Judge Stanley-Baker's report had noted that it derived from Sudanese concern over the 'method' of independence and 'of ensuring that the right should be freely expressed', that is, guarding against any potential interference in the process by the UK or Egypt, it was too pregnant a term for the Colonial Office to be able to accept. The Colonial Office therefore sought assurance that it would be phrased in such a manner that it would be read as applying to a specific political step rather than a political concept; it therefore finally read 'as a prelude to the exercise by the Sudanese of self-determination in due course'.

As to other possible amendments, the Foreign Office concluded that although there was still time for changes to be proposed, that is even after the Self-Government Order had been approved by the Legislative Assembly: 'It is desirable that such amendments … should be as few as possible and … confined to matters of prime importance. There can be no question of Her Majesty's Government … laying itself open to the accusation of interference in the internal affairs of the Sudan.'[30] In the event, at the last moment, Egypt also began to raise questions about the Preamble and, as a result, rather than delay the process, it was excised from the final March 1953 Self-Government Order and therefore also the Transitional Constitution.[31]

Whereas the constitutional discussions provide ample proof that the Statement of Fundamental Rights was intimately connected to the need to provide the Southern region with assurances as to its likely fate within a unitary state, and also of the influence of the 1950 Indian constitution as a precedent for the

29 Trafford Smith to Allen 24 January 1952, NA FO 371/96851, Lloyd to Strang 9 May 1952, Minute Ledward 15 May 1952, Ledward, Draft Constitution for the Sudan 23 May 1952 and Meeting at Foreign Office with Colonial Office and CRO 'Sudan Draft Statute for Self-Government', 5 June 1952, NA FO 371/96855.

30 *Report on the work of the Constitution Amendment Commission up to the date of its dissolution by the Chairman Mr. Justice R.C. Stanley-Baker*, 66, HMSO Cmd. 8767 Egypt No. 2 (1953) *Documents concerning Constitutional Development in the Sudan and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government concerning Self-Government and Self-Determination for the Sudan*, 18, Minute, Ledward 23 May 1952, NA FO 371/96855 and Ledward to Morris 18 September 1952, NA FO 371/96857.

31 Stevenson, Cairo to Fawzi, Ministry of Foreign Affairs, Cairo, 16 March 1953, NA FO 371/102751/105/411.

modern constitution to which the Sudanese aspired, any inkling of the influence of the UDHR is conspicuous by its absence. Yet, despite the absence of any reference in the negotiations to the UDHR by Sudanese political leaders, the idea of the UDHR as a direct influence proved too enticing an explanation to shrug off. For example, a senior Colonial Office official observed that the inclusion of fundamental rights and a reference to 'the right of self-determination' were 'no doubt … there under the influence of the Universal Declaration'; although, of course, the UDHR does not mention self-determination.[32] Simpson and Parkinson, too, attribute a loose influence to the UDHR, but do not substantiate their attribution with any specific references. In this respect, most likely, they are deferring to the earlier commentary of de Smith.[33] The problem, though, is that de Smith is similarly vague on references and, moreover, inconsistent in his assessment.

On the one hand, de Smith, quoted by Parkinson, suggests that:

> Now that we have acquired hindsight, we can detect the turn of the tide. The Atlantic Charter … the discussions that preceded the adoption of the United Nations Charter, and finally the promulgation of the Universal Declaration … all made an impact on articulate opinion … but their impact was strongest in the … African territories which had just achieved or had still to achieve independence.[34]

But in another article published a year earlier, de Smith not only failed to point to the UDHR, he emphatically argued that 'the most characteristic constitutional safeguard in the dependent territories … was a safeguard for the group rather than for the individual'.[35] Moreover, in his later, more definitive, commentary, de Smith explicitly rejected the influence of the UDHR:

> colonial politicians had little time at first for any problem that was not directly related to the drive for political power. The traumatic experiences of the Second World War, the Atlantic Charter, the United Nations Charter, even the Universal Declaration … failed to stimulate local demand for constitutional bills of rights save in the Indian sub-continent … When, however, there emerged political situations in which a transfer of power could not be effected without guarantees against the prospective abuse of authority by a new set of rulers, precedents already set in the international sphere could be drawn on by the constitution-makers.[36]

32 Lloyd to Strang 9 May 1952, NA FO 371/96855.

33 A.W.B. Simpson, *Human Rights and the End of Empire*, 849, C.O.H. Parkinson, *Bills of Rights and Decolonization*, 71–72 and private communication with Parkinson 4 December 2014.

34 S.A. de Smith, 'Fundamental Rights in Commonwealth Constitutions', *Journal of the Parliaments of the Commonwealth,* 43/1 (1962), 11, NA CO 1032/283 (quoted in C.O.H. Parkinson, *Bills of Rights and Decolonization*, 5).

35 S.A. de Smith, 'Fundamental Rights in the New Commonwealth (I)', 98.

36 S.A. de Smith, *The New Commonwealth and its Constitutions* (London, 1964), 174.

Ultimately, therefore, Parkinson, too, concludes that, while Northern leaders may have been inspired by the UDHR and the 1950 Indian constitution, Sudanese enthusiasm for fundamental rights should be understood primarily as 'an unequivocal statement of Sudan's aspirations to become an independent nation state' and of the need 'to assuage the fears of the minority non-Muslim population in the south and so win their support for self-government' in a unitary state.[37]

Some further insight into the extent to which the process was influenced by the UDHR can be gained from the experience of the lobbying by the Christian churches in support of religious freedom and by women's rights groups on behalf of gender equality; two of the most basic rights in the UDHR. In the case of the Christian churches, lobbying was organised by the British Council of Churches and the Northern Sudan Christian Council. Their intervention derived from fears that the North would actively prevent Muslims from converting and also restrict the teaching of Christianity in public. They therefore sought a strengthening of the reference to freedom of religion. In particular, that Article 18 of the UDHR, which specifically addressed the issue of conversion and teaching in public, should replace the religious freedom clause as set out in the Self-Government Order.[38]

In fact, the Constitution Amendment Commission's wording of this clause had been weakened by Professor Harlow. The Commission had proposed that: 'All citizens irrespective of birth, religion, sex or race are equal before the law; that is to say that there shall not be any arbitrary discrimination between one citizen or class of citizens and another.' Further, that there should be 'equality of opportunity for all citizens in matters of public employment and in … any occupation, trade, business or profession'. The Commission also provided for more specific provisions in relation to the freedom of religion:

> All persons are equally entitled to freedom of conscience and the right freely to prayers and practice religion (*sic.*) subject to public order, morality or health.
>
> The Government shall not impose any disabilities or make any discrimination on the ground of religious faith or belief.
>
> The abuse of religion for political purposes is forbidden; and any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects, is contrary to this Constitution and may be made punishable by law.

In its place, Professor Harlow, ignoring the political intent, though he described its purpose as 'admirable' and expressed his 'keen sympathy', had substituted the much weaker: 'No disability shall attach to any Sudanese by reason

37 C.O.H. Parkinson, *Bills of Rights and Decolonization*, 71–72.

38 Grubb, British Council of Churches, to Foreign Office 21 May 1952 and Morris 26 May 1952, NA FO 371/97044.

of birth, religion, race, or sex in regard to public or private employment or in the admission to or in the exercise of any occupation, trade, business or profession.' He also refined the religious freedom clause so as to provide that: 'All persons shall enjoy freedom of conscience, and the right freely profess (*sic.*) his or her religion, subject only to such conditions pertaining to morality, public order, or health as may be imposed by law.' It was this wording that with only minor amendment would be included in the Self-Government Order.[39]

Lobbying for women's equality was organised in the UK by the Status of Women Committee, a coordinating committee of women's rights lobbying groups. Its members met with the Foreign Office and the Governor-General and also pressed their case in considerable correspondence with, and in parliamentary questions to, ministers. The issue for which they sought redress was the apparent inconsistency between the general equality clause, which provided that there should be no gender disability (although its application was in fact limited to 'public or private employment or in the admission to or in the exercise of any occupation, trade, business or profession'), and the voting qualifications, which provided that only men had the vote; although it could be interpreted that educated women were entitled to vote in the Graduates' Constituency to the extent that, as against the general voting qualifications, no specific mention was made of their exclusion.

The primary argument of the women's rights groups was that the UK, as a signatory to the UDHR, should not give its approval to such a discriminatory measure. They pointed out that Turkey and Pakistan, both Muslim countries, had provided for female suffrage and that the men in the South were as backward as the women so that neither religion nor education could be regarded as legitimate arguments in favour of such discrimination against women. In response, though not in direct reply, the Foreign Office observed that in fact the 1951 Libyan constitution had been promulgated without allowing for female equality and that its electoral law had similarly made no provision for female suffrage. In both cases drafting had been carried out under the auspices of the UN Commissioner for Libya and, thereafter, the Libyan constitution and electoral law had been put before the UNGA but at no point had anyone then criticised either omission (see page 541 below).[40]

39 *Report on the work of the Constitution Amendment Commission up to the date of its dissolution by the Chairman Mr. Justice R.C. Stanley-Baker*, 64, 76–77 and Self-Government Order, *Special Legislative Supplement to Sudan Government Gazette* No. 854 21 March 1953.

40 Self-Government Order, *Special Legislative Supplement to Sudan Government Gazette* No. 854 21 March 1953, Record of a meeting at the Foreign Office on 11th July between a delegation of the Status of Women Committee and Representatives of African and United Nations (Economic and Social) Departments, Ledward 'Female suffrage in the Sudan' 16 July 1952 (and various handwritten comments

The difficulty confronting the Foreign Office was that, irrespective of personal sympathies and the possibility of further embarrassing questions being raised in Parliament, Sudanese social norms did not accept freedom of religion and women's rights to an extent compatible with the UDHR. The Foreign Office was therefore disinclined to press for changes. Accordingly, despite ample opportunity for amendments, at no point did the Foreign Office contemplate making the changes that the two lobby groups had sought. Its fall-back position, and, as it explained to the Status of Women Committee, the limit of the Foreign Secretary's willingness to intervene, was therefore a note to the Acting Governor-General drawing attention

> to the general principles that no disability shall attach … by reason of sex, and that all persons shall enjoy freedom of conscience and the right freely to profess their religion … Her Majesty's Government hope that the Sudanese Parliament will, in due course, give their consideration to the extension of female suffrage in the Sudan (and) that as liberal an interpretation as possible will be given to the freedom of all persons to profess their religion.[41]

After independence, with no concern for the constitution, Sudan moved inexorably towards military dictatorship. The inability of any political party or leader to govern simply exposed the pretensions of unitary authority in the Sudan, just as the Foreign Office and the pre-independence Sudan Government had feared, and resulted in the collapse of post-independence constitutional discussions in 1958. As, however, the negotiations had gone a long way down the road before they collapsed, it is possible to identify what had been proposed by the Sudanese themselves.

While agreement had been reached on a longer list of fundamental rights, in the case of religious freedom, 'freedom of conscience' was excised but the right to 'practice' was added to the existing right to 'profess' one's religion; otherwise the clause was little changed and anyway would probably have had little impact on the reality of religious freedom in the North. Initially, the right of equality had also been left largely unchanged, but it was subsequently excised of gender equality on the advice of Professor Jennings, a constitutional lawyer from the University of Cambridge serving as consultant to the Sudan Government. Professor Jennings explained that he had recommended excising the reference on practical grounds as too many employments were not open to women. As for

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thereon) and Davies to Mackworth-Young L.O. 2006.3/9 31 July 1952, NA FO 371/96857.

41 Egypt No. 2 (1953) *Documents concerning Constitutional Development in the Sudan and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government concerning Self-Government and Self-Determination for the Sudan,* 46 (Appendix 4: Allen, for the Secretary of State for Foreign Affairs, to the Acting Governor-General of the Sudan 22 October 1952) and Allen to Status of Women Committee 24 October 1952, NA FO 371/96857.

voting qualifications, the existing Electoral Law, which excluded women from the vote, was retained. The Preamble proposed by the Sub-committee in 1952 also resurfaced in the initial draft, albeit in a slightly different textual form, but that, too, seems to have been amended away by Professor Jennings. It was therefore only in the 1973 constitution that elements of the 1952 Preamble finally made their appearance.[42]

The military take-over that followed the 1958 breakdown of constitutional negotiations led to the suspension of the Transitional Constitution and a state of emergency. Constitutional Order No. 1 provided that sovereignty was now to be vested in 'the People', but that the 'Supreme Council for the Armed Forces' was 'the Supreme Constitutional Authority'. In turn, the Supreme Council delegated authority to the President. No mention was made of the UDHR. However, when military rule came to a temporary end in 1964, the Transitional Constitution, which largely reiterated the fundamental rights of its predecessor, was brought back into service.[43]

Nonetheless, the Transitional Constitution was, by its very nature, intended merely as a stop-gap and therefore in 1967–68 another attempt was made to agree a permanent structure. In effect, a constitution that accommodated the three critical questions of Sudanese politics – the relationship between North and South, the authority of the President as against the Parliament and the extent to which Sudan was a secular state – but that attempt, too, failed.[44] Failure resulted in a return to military rule in 1969 under President Nimeiri and, again, suspension of the Transitional Constitution.

Two years later, Republican Order No. 5 pronounced a temporary constitutional authority and a provisional constitution pending promulgation of a permanent constitution, Sudan's first, which came into effect in 1973. This seemingly allowed for a generous accommodation of both the Muslim and Christian faiths and an expansive panoply of rights, but made no mention of the UDHR. However, following yet another failed coup attempt in 1975, an amendment was passed which conferred almost unlimited powers on the President and imposed a one-party state system so that these rights were in reality an elaborate façade. As Wai points out, one of the key tenets of the regime was its rejection of Western democracy as unfit for the conditions of Sudan. It would

42 Draft constitution enclosed in Chapman-Andrews to Selwyn Lloyd Despatch No. 57 (10113) 31 May 1958 and Draft constitution of Sudan, Redrafted by Sir Ivor Jennings, K.B.C, Q.C. and Draft Constitution of Sudan, Explanatory Memorandum by the Draftsman enclosed in Bailey to Smith 9 September 1958, NA FO 371/131715.

43 A.J. Peaslee, *Constitutions of Nations Vol. 1: Africa*, Rev. 3rd edn, 844–856 and Y.F. Hasan, 'The Sudanese Revolution of October 1964', *Journal of Modern African Studies*, 5/4 (1967), 491–509.

44 National Committee for the Constitution, *Summary of the Proceedings Sittings No. 1–60 12 February 1967 to 12 November 1967* (Khartoum 1967).

be this regime which participated in the political process of the ACHPR and signed the ACHPR in September 1982.[45]

In April 1985 another military coup brought about another change in regime. The new regime proceeded to appoint a non-lawyer as Chief Justice and closed the Sudan Bar Association and the Sudan Human Rights Organisation before setting up its own human rights organisation under the same name. Yet, in early 1986, it ratified the ACHPR.[46]

The Gold Coast (Ghana)

The first British colonial territory in black Africa to negotiate post-war independence was the Gold Coast, which encompassed the Gold Coast Colony and the Protectorates of Ashanti and the Northern Territories. Whereas in Sudan the Foreign Office's independence negotiations had been subject to broader considerations of British foreign policy, the Colonial Office was largely guided by the specific circumstances of the individual territories but also, to a slightly lesser extent, by parallel negotiations with other colonial territories. Its primary end point objectives were an independence constitution drawn up with as wide a measure of agreement as would assure its post-independence legitimacy and a peaceful hand-over of government to a responsible administration with an elected majority and some prior experience of self-government.

In the Gold Coast, the 1948 'disturbances' had transformed the political landscape. In June 1949, Nkrumah and the younger and more radical UGCC members finally broke with the old guard and formed the CPP. The CPP's slogan was: '"Full Self-Government Now", "Now" being printed in capital letters and usually repeated three times. In contrast the U.G.C.C.'s slogan was "Full self-government within the shortest possible time"'. On the other side, Governor Creasy, unpopular and widely regarded as ineffectual, was recalled in March 1949 after a mere thirteen months in office to be replaced by Arden-Clarke who would arrive in August 1949.[47]

45 A.J. Peaslee, *Constitutions of Nations Vol. 1: Africa*, Rev. 4th edn, 831–842, A.S. Fadlalla, 'The Search for a Constitution', M.A. al-Rahim/R. Badal/A. Hardallo/P. Woodward (eds), *Sudan since Independence: Studies of the Political Development since 1956* (Aldershot, 1986), 41–52, S.A. Hussein, 'Sudan: In the Shadows of Civil War and Politicization of Islam', A.A. An-Na'im (ed.), *Human Rights under African Constitutions: Realizing the Promise for Ourselves* (Philadelphia, 2003), 342–384 and D.M. Wai, 'Revolution, Rhetoric, and Reality in the Sudan', *Journal of Modern African Studies,* 17/1 (1979), 71–93.

46 A.M. Abdelmoula, 'The "Fundamentalist" Agenda for Human Rights: The Sudan and Algeria', *Arab Studies Quarterly,* 18/1 (1996), 1–28.

47 Extract from Special Branch Summary No. 6 from the Office of the Commissioner, The Gold Coast Police Force, Accra 31 March 1949, NA KV 2/1848, G. Padmore, *The Gold Coast Revolution: The Struggle of an African People from Slavery to Freedom*, 66–72, D. Austin, *Politics in Ghana 1946–1960*, 85–92 and 'The Working Committee

The political landscape was further transformed by the Watson Commission of Enquiry into the 1948 'disturbances', which described the existing constitution as having been 'outmoded at birth' and recommended further political reform. In December 1948, this recommendation was accepted by the Colonial Office which therefore instructed Governor Creasy to appoint a constitutional commission to advise on a new constitution. Although British High Court Justice Coussey would chair the Commission, all its members were African including several members of the UGCC old guard as Governor Creasy had made sure that its composition would include both 'traditional' and 'democratic' elements. However, in view of the part he had played in the 'disturbances', there was no place for Nkrumah.[48]

The Coussey Report was published in October 1949 and its recommendations essentially accepted by the Colonial Office which opted for a single legislative chamber with reserved seats for the Chiefs and 'elder statesmen'. This was the second of two possible alternatives put forward by the Commission, the favoured alternative, by a majority of one vote, being a bi-cameral legislature.[49]

The 1950 constitution that followed provided for the election of seventy-five of the eighty-four representatives to a Legislative Assembly, together with three *ex-officio* representatives, who also sat in the Executive Council, and six Special 'Business' Members. As recommended in the report, the Governor retained his reserve powers and, for that reason, the Colonial Office was not prepared to accept the recommendation that the Executive Council should be responsible to the Legislative Assembly and not the Governor.[50] For the equal and opposite reason, therefore, the UGCC representatives had added a dissenting opinion proposing that the Executive Council should be composed of only elected members.[51]

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of the United Gold Coast Convention', 284–297 and C. Arden-Clarke, 'Eight Years of Transition in Ghana', *African Affairs,* 57/226 (1958), 31; see also R.J.A. Rathbone, 'The Transfer of Power in Ghana, 1945–57' (unpublished PhD thesis, SOAS, 1969).

48 HMSO Colonial 231, *Report of the Commission of Enquiry into Disturbances in the Gold Coast*, 17–20, 24, 26–29, 92 (Appendix 11: 'Document known as "The Circle"') and Danquah to Foot 1 January 1949, H.K. Akyeampong, *Journey to Independence and After (J.B. Danquah's letters Vol. II 1949–1951)*, 29–39.

49 HMSO Colonial 248, *Gold Coast: Report to His Excellency the Governor by the Committee on Constitutional Reform 1949* (London, 1949), 55, 61, HMSO Colonial 250, *Gold Coast: Statement by His Majesty's Government on the Report of the Committee on Constitutional Reform, Despatch of 14th October 1949 from the Secretary of State for the Colonies to His Excellency the Governor* (London, 1949), Cabinet, Gold Coast Constitution, Memorandum by the Secretary of State for the Colonies, C P. (49) 199 8 October 1949, NA CAB 129/36/49 and Foreign Office to His Majesty's Representatives Intel No. 387 27 October 1949, Proposals for Constitutional Reform in the Gold Coast, NA DO 35/2221.

50 The Gold Coast (Constitution) Order in Council, 1950, 21 December 1950.

51 HMSO Colonial 248, *Gold Coast: Report to His Excellency the Governor by the*

Nkrumah, however, with no responsibility for the report as a result of his exclusion, was free to denounce the 'bogus and fraudulent constitution' which, he argued, had been imposed upon the country.[52] In response, he convened in November 1949 what he called the All-Ghana (Gold Coast) Representative Assembly, which resolved that 'the Coussey Report and His Majesty's Government's statement thereon are unacceptable to the country as a whole' and demanded that 'the people of the Gold Coast be granted immediate self-government'. It also drew up a memorandum outlining an alternative constitutional structure that provided for no *ex-officio* appointments other than the Minister of Defence. When, in January 1950, these proposals were summarily rejected, Nkrumah declared a campaign of 'Positive Action' as a means of forcing the pace towards self-government. Despite his call for a general strike, other political leaders declined to offer their support and the, by now, well-prepared colonial administration immediately declared a state of emergency that enabled them to limit the immediate damage. The campaign ended with Nkrumah and several of his fellow CPP leaders in jail.[53]

Nonetheless, although Nkrumah had lost the battle, it was the UGCC and Governor Arden-Clarke who were losing the war. In the ensuing February 1951 elections, the CPP gained a majority in the Legislative Assembly by winning thirty-four of the thirty-eight directly elected seats. This left Governor Arden-Clarke with little option other than to release Nkrumah and the other leading CPP prisoners and invite him to form a government. Although he accepted office, Nkrumah cautioned that while the CPP was prepared to give the constitution a try 'as a stepping stone', the outcome would largely depend on the attitude of the Governor to the responsible ministers and the extent to which he wielded the veto.[54]

Committee on Constitutional Reform 1949, 70–72, Lloyd to Strang 9 May 1952, NA FO 371/96855 and Gorell Barnes to Arden-Clarke Secret and Personal 9 October 1952, NA FCO 141/5092.

52 'Our Challenge', Kwame Nkrumah, Convention People's Party, Accra, 30 September 1951, enclosed in Clayton to Burton, 10 October 1951, NA KV 2/1850, 'What I mean by Positive Action' pamphlet issued by Nkrumah in October 1949, quoted by D. Austin, *Politics in Ghana 1946–1960,* 87 and R.S. Saloway, 'The New Gold Coast', *International Affairs,* 31/4 (1955), 471; Saloway was Chief Secretary of the Colonial Administration and subsequently *ex-officio* Minister of Foreign Affairs.

53 CPP, *Election Manifesto 'Vote for Independence Now'* (Accra, 1950), C. Arden-Clarke, 'Eight Years of Transition in Ghana', 31–33, G. Padmore, *The Gold Coast Revolution: The Struggle of an African People from Slavery to Freedom*, 72–78, D. Austin, *Politics in Ghana 1946–1960,* 87–90 and Sentences of Kwame Nkrumah and others, Attachment to Commissioner, Special Branch to Kerr, Ministry of Defence and External Affairs, 20 December 1950 and Arden-Clarke to Cohen, 11 January 1951, NA FCO 141/4932.

54 D. Austin, *Politics in Ghana 1946–1960*, 103–152, G. Padmore, *The Gold Coast Revolution*, 106–122, K. Nkrumah, *I Speak of Freedom: A Statement of African Ideology*,

Once in government though, and notwithstanding its election slogan of 'Full Self-Government Now', as the UGCC opposition began to point out, the CPP seemed to be bedding down rather too comfortably with little urgency directed towards their stated goal. The eventual trigger point was the visit in June 1952 by Colonial Secretary Lyttelton who was greeted by what he described as 'carefully prepared "spontaneous" demonstrators' seeking to express a desire for what 'they variously described as "freedom", "self-government now"'. Yet, as Colonial Secretary Lyttelton made clear, he was only too willing to consider a further step towards self-government: 'It was agreed … that when proposals had been formulated by the Gold Coast Government after consultation with the Chiefs and people of the Gold Coast, they would be examined and discussed between Her Majesty's Government and the Government of the Gold Coast.'[55]

Accordingly, in October 1952, Prime Minister Nkrumah, advised the Legislative Assembly that the time had come for the Gold Coast Government 'to take the initiative' and to 'propose questions upon which consultations with the Chiefs and people should take place'. Among the several constitutional questions he suggested might be discussed were that of the *ex-officio* ministers, the reporting line of the Executive Council and the extent to which the Governor should retain his reserve powers. Comments were therefore invited by March 1953 after which the Gold Coast Government would issue a White Paper on the constitutional reforms it proposed to place before the Colonial Office.[56]

The resulting White Paper was issued in June 1953 together with a resolution requesting that: 'Her Majesty's Government, as soon as the necessary constitutional and administrative arrangements for independence are made should introduce an Act … declaring the Gold Coast a sovereign and independent state within the Commonwealth.' The proposals provided for a single legislative chamber, universal and direct suffrage, an Executive Council (renamed the Cabinet) reporting to the Legislative Assembly and full responsible self-government.

22–23, C. Arden-Clarke, 'Gold Coast Into Ghana: Some Problems of Transition', *International Affairs,* 34/1 (1958), 51 and Report of Press Meeting with Kwame Nkrumah, 15 February 1951, NA FCO 141/4926.

55 Cabinet, Constitutional Developments in the Gold Coast and Nigeria, Memorandum by the Secretary of State for the Colonies, C. (53) 154 13 May 1953, NA CAB 129/61/4.

56 HMSO Colonial 302, *Gold Coast: Despatches on the Gold Coast Government's Proposals for Constitutional Reform exchanged between the Secretary of State for the Colonies and H.E. the Governor 24th August, 1953 to 15th April, 1954* (London, 1954), 2–6, Gold Coast, *The Government's Proposals for Constitutional Reform* (Accra, 1953), 19–23 (Appendix A: Statement by the Prime Minister in the Legislative Assembly 16 October 1952) and Lloyd to Liesching 6 May 1953 enclosing Secret, Revised Draft, Cabinet, Constitutional Developments in the Gold Coast and Nigeria, Memorandum by the Secretary of State for the Colonies and Constitutional Developments in the Gold Coast with particular reference to repercussions in Nigeria, Williamson 26 March 1953, NA CO 554/254.

Wisely, the reserved powers of the Governor in respect of external affairs, security and defence were to be retained, although a committee would advise the Governor on the exercise of those powers. After 'the most careful consideration', with few 'exceptions and reservations', in November 1953, the Colonial Office responded that the proposals were 'in broad principle … generally acceptable' with the result that in April 1954 a new constitution was adopted for the Gold Coast.[57]

As the 1950 constitution had mandated that an election should be held within four years, the next election was due in June 1954. Once again, it was won by the CPP with a big majority.[58] The 1950 constitution had also envisaged that this election would be fought on the basis of an agreed independence constitution a timeline which the White Paper had also sought to highlight in the statement that 'the proposals … are in respect of the limited transitional period which is necessary in order that the requisite … arrangements for independence can be made'. Following the election, therefore, the Gold Coast Government anticipated a renewal of 'negotiations with the United Kingdom Government with a view to the achievement of independence' in the near future.

However, while the 1954 elections reconfirmed the CPP's majority, the British government was still concerned that there was nonetheless a considerable degree of opposition such that it might be argued that the constitution did not enjoy the full support of the people and its representatives. To some extent, opposition had been flagged in the objections listed in the 1953 constitutional proposals, not the least of which was the UGCC stance that an independence constitution could only be agreed at a constituent assembly. This placed the Colonial Office in an awkward position. It was keen to flaunt the independence process in the Gold Coast before world public opinion and the other African colonial territories and it was therefore loath to halt the process to accommodate further negotiations between the opposition and the government. Moreover, the CPP was seen as the only viable territorial-wide political party with whom independence could be negotiated.[59]

57 Gold Coast, *The Government's Proposals for Constitutional Reform*, 6–12 (The Government Proposals), HMSO Colonial 302, *Gold Coast: Despatches on the Gold Coast Government's Proposals for Constitutional Reform exchanged between the Secretary of State for the Colonies and H.E. the Governor 24th August, 1953 to 15th April, 1954*, 2–3 and Gold Coast (Constitution) Order in Council, 1954, 30 April 1954, NA CO 554/261.

58 CPP, *Election Manifesto 'Forward to Freedom with the Common People'* (Accra, 1954).

59 Gold Coast, *The Government's Proposals for Constitutional Reform*, 5–6, 10–11, 43–74 (Appendix D: Texts of Principal Memoranda), D. Austin, *Politics in Ghana 1946–1960*, 200–249 and H.K. Walker, 'The Constitution Debate between Opposition and Government Nationalists in the Gold Coast on the Eve of Independence: The Issues of the Requisites of Political Legitimacy and Liberal Democracy under

Shortly after the 1954 election that opposition was formalised by the formation of a new party, the National Liberation Movement (NLM).[60] It enjoyed most support in the Ashanti and Northern Territories regions. Historically, the Ashanti and Northern Territories were administered quite separately from the Gold Coast Colony and therefore had not been represented in the Legislative Assembly until the 1946 (Ashanti) and 1950 (Northern Territories) constitutions brought them into the fold. The Ashanti, in particular, were a proud people, who, as Governor Burns had noted, found it difficult to accept a subordinate position in the Legislative Assembly when what they perceived as their exclusive affairs were discussed. Nor were their chiefs happy at the prospect of a considerable diminution in their political authority.[61] In that cocoa was the mainstay of the Ashanti economy, they were particularly troubled by the corrupt operations of the Cocoa Marketing Board, run by CPP placemen, which in August 1954 had set purchase prices at one-third of world market levels.[62]

As a result, the Ashanti were now no longer prepared to consider anything other than a devolved and bi-cameral federal structure. If this was not accepted, Ashanti proposed to exercise its right to self-determination as a separate state. Alongside the Ashanti in the NLM was a motley coalition of all the political elements, such as the UGCC intellectuals and the Muslim League, opposing Prime Minister Nkrumah; as an NLM memorandum explained, they sought 'the stamping out of dictatorship and communistic practices'.[63]

Understanding the significance of the NLM's emergence from the Colonial Office's perspective, Prime Minister Nkrumah sought an accommodation through bilateral discussions. When this was rejected, in April 1955 he established a Parliamentary Select Committee to consider all other constitutional options but, as would become its default response, the NLM declined to contemplate any negotiations outside of a constituent assembly. Inevitably, therefore, the Parliamentary Select Committee reported in favour of a centralised structure albeit that, as a sop to the NLM, Regional Assemblies would enjoy the right to comment on legislation prior to enactment.[64]

Parliamentary Institutions' (unpublished PhD thesis, Boston University Graduate School, 1968), 3–7 .

60 R.J.R.R. Rathbone, 'Opposition in Ghana: The National Liberation Movement', University of London, ICOM Studies Postgraduate Seminar 1967–68, 1–14.

61 Memorandum on Constitutional questions in the Gold Coast, Burns to Secretary of State 5 July 1948, NA FCO 141/5145.

62 J.M. Allman, 'The Youngmen and the Porcupine: Class, Nationalism and Asante's Struggle for Self-Determination, 1954–57', *Journal of African History,* 31/2 (1990), 266.

63 D. Austin, *Politics in Ghana 1946–1960*, 253–257, 264 (NLM memorandum 19 October 1954).

64 Government Printer, *Report from the Select Committee on Federal System of*

In August 1955 the NLM issued its own constitutional manifesto which proposed a bi-cameral federal system and complex procedures for constitutional amendments. Its political stance was guided by the Preamble statement that: 'There is not enough consciousness of national identity to make possible … democratic unitary government. In the absence of this consciousness the safest course is to ensure that not all the powers of government are concentrated at the centre, but that a substantial part … is retained in the component territories.' It therefore proposed that: 'The Federal Constitution shall guarantee fundamental human rights to all minority groups including equality of status, opportunity, and of social, economic and political justice, freedom of thought, expression, association, belief, faith and worship, subject to law and morality and good conscience.' In what seems a political dressing-up of the proposals, the final sentence of this listing of rights added the further requirement that: 'The Universal Declaration of Human Rights by the United Nations shall also apply.'[65] As, of course, that meant little to the electorate, in its manifesto for the elections held the following year, the reference was dropped and the NLM merely addressed what it had really meant: 'Ensure that minority rights are protected and that minority rights are written into the constitution and guaranteed'. The 1954 election manifesto of the other main opposition party, the Northern People's Party, declared, without reference to the UDHR: 'We believe in the four basic freedoms which originated from President Roosevelt.'[66]

In view of the increasing opposition, in August 1955, Governor Arden-Clarke advised Prime Minister Nkrumah that: 'Her Majesty's Government will require an assurance that there is a wide measure of agreement … on the form of the constitution at the time when independence is granted.' Nonetheless, Prime Minister Nkrumah, Governor Arden-Clarke and the Colonial Office, were all united in frustration at the refusal of the NLM to accept anything other than a federal structure.[67]

In an effort to break the deadlock, an independent UK constitutional adviser, Bourne, a former Governor in the Indian colonial administration, was sent out

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Government and Second Chamber for The Gold Coast (Accra, 1955).

65 Arden-Clarke to Secretary of State for the Colonies, Secret WAF 97/120/01 9 August 1955, NA DO 35/6170 and Dombo and Amponsah to Arden-Clarke 12 August 1955 enclosing NLM, 'Proposals for a Federal Constitution for an Independent Gold Coast and Togoland' signed by Akoto (Chairman of the NLM) *et alia*, 2, NA FCO 141/5115 (Arden-Clarke's analysis of the NLM's proposals are set out in Arden-Clarke to Lennox-Boyd, Gold Coast Despatch No. 1031, 22 November 1955, Annexure A: The Government's views on proposals for a Federal Constitution, NA DO 35/6170).

66 Manifesto of the Northern People's Party 1954, 13, NA CO 554/1073.

67 Arden-Clarke to Lloyd Secret and Personal 28 July 1955 and Secretary of State to Arden-Clarke No. 45 Secret and Personal 5 August 1955, NA FCO 141/5121.

to the Gold Coast in September 1955 to review all options with a view to reaching a consensus. A deeply suspicious NLM refused to meet with Bourne who thereby concluded, as had the Colonial Secretary in 1949, that 'experience in other countries has shown that fragmentation of existing States is on general grounds, mistaken; on the contrary, the tendency has been towards greater consolidation'. There was no mention of fundamental rights probably for the simple reason that it had not been raised in any of the discussions.[68]

Fully aware that if an agreement could not be reached the Colonial Office would insist on trial by general election, and somewhat apprehensive about his prospects, having been defeated in several by-elections, Prime Minister Nkrumah made one last effort to reach out. In February 1956 he convened a constitutional conference at Achimota, which, once again, the NLM declined to attend, despite the efforts of intermediaries to effect a *rapprochement*. The Achimota Conference, with Bourne in attendance, was therefore left with little option other than to endorse Bourne's recommendations for a centralised structure with advisory regional councils; again, fundamental rights were not mentioned. The Government White Paper that followed in April 1956 also made no mention of fundamental rights, though it did provide for freedom of conscience and religion and property rights.[69]

As a result of the NLM's refusal to negotiate a frustrated Colonial Office concluded that an election was now the only means of determining the will of the people. As agreed with Prime Minister Nkrumah, the election was announced by the Colonial Secretary in May 1956 in the UK Parliament with the further assurance that: 'I have told Dr. Nkrumah that if a General Election is held Her Majesty's Government will be ready to accept a motion calling for independence within the Commonwealth passed by a reasonable majority in a newly elected Legislature and then to declare a firm date for this purpose.' Privately, Prime Minister Nkrumah was assured that a majority of ten to twenty seats would suffice as proof of a wide measure of agreement; his CPP was, after all, by now, the only viable national party capable of bringing the independence process to the prompt end sought by the Colonial Office.[70]

68 Cabinet, The Gold Coast: Constitutional Developments, Memorandum by the Secretary of State for the Colonies C.P. (55) 183 28 November 1955, NA CAB 129/78/33 and Government Printer, *Report of the Constitutional Adviser* (Accra, 1955).

69 Government Printer, *Report of the Achimota Conference* (Accra, 1956) and *Constitutional Proposals for Gold Coast Independence and Statement on the Report of the Constitutional Adviser and the Report of the Achimota Conference* (Accra, 1956); see also K.A. Busia, *Judge for Yourself* (1956), political pamphlet http://home.koranteng.com/writings/judge-for-yourself-busia.html, last accessed 19 January 2015.

70 Lennox-Boyd to Nkrumah Secret and Personal 14 March 1956 and 4 April 1956, Nkrumah to Lennox-Boyd Secret and Personal 20 April 1956 and Foreign Office

In the event, the CPP won the July 1956 election with 71 of the 104 seats and immediately adopted a motion requesting that the British government 'as soon as practicable … provide for the independence of the Gold Coast as a sovereign and independent State'; a vote which the opposition boycotted yet again.[71]

A relieved Colonial Office responded by announcing that the Gold Coast would become independent on 6 March 1957.[72] The NLM immediately countered that, in the absence of an agreed constitution, it would regard the regions of the Gold Coast territory as separate and sovereign states as from that date. It argued that, though the CPP had obtained a national mandate, two of the four regions, Ashanti and the Northern Territories, had voted against the CPP.[73] Moreover, as Allman points out, the Ashanti were still resentful at what they regarded as an unfair allocation of seats in the Legislative Assembly. The 1950 electoral commission had awarded Ashanti a 'perfectly satisfactory' 25 per cent of the seats. However, when the allocations were reviewed by the 1953 Van Lare Electoral Commission on the basis of population, their share was reduced to 20 per cent. The Ashanti view was that their economic importance justified a far greater allocation. This was more than a quibble. It was a difference that might reduce the CPP's majority below the two-thirds threshold that would enable amendments to the constitution to be passed.[74]

Politically wounded, the NLM was now forced to make direct representations to the Colonial Office who agreed to receive an NLM delegation in September 1956. At this meeting, the delegation argued that: 'The term "Gold Coast" did not describe a single nation but simply an administrative area (and that) The need for constitutional safeguards was particularly great.' Accordingly,

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to certain of Her Majesty's Representatives No. 88 Intel Secret 8 May 1956, NA DO 35/6171 and Statement by Secretary of State for the Colonies Lennox-Boyd House of Commons 11 May 1956.

71 3 August 1956, Gold Coast Legislative Assembly Debates, 1956–57, Official Report, First Series Vol. I 30th July – 10th September 1956, 124–179, Foreign Office to certain of Her Majesty's Representatives No. 163 Intel 11 September 1956, NA FCO 141/5117, D. Austin, *Politics in Ghana 1946–1960*, 309, 316–362 and H.K. Walker, 'The Constitution Debate between Opposition and Government Nationalists in the Gold Coast on the Eve of Independence', 48–52.

72 Constitutional Advance in the Gold Coast, Secretary of State for the Colonies, Circular 994/56 17 September 1956, NA CO 554/809 and Foreign Office to certain of Her Majesty's Representatives No. 163 Intel 11 September 1956, NA FCO 141/5117.

73 *Press Release of N.L.M. dated 18th September, 1956*, Akoto, National Chairman, NA FCO 141/5117.

74 J.M. Allman, 'The Youngmen and the Porcupine: Class, Nationalism and Asante's Struggle for Self-Determination, 1954–57', 265, D. Austin, *Politics in Ghana 1946–1960*, 176–180, 202–203 and Government Printer, *Report (with the Legislative Council Decisions thereon) of The Select Committee of the Legislative Council appointed to examine the question of Elections and Constituencies* (Accra, 1950), 15 and *Report of the Commission of Enquiry into Representational and Electoral Reform* (Accra, 1953), 15.

if there was to be only a single chamber, it was necessary that the powers of the proposed Regional Assemblies should be entrenched in the constitution. Moreover, those devolved powers should be of sufficient breadth and depth; rather more along the lines of those granted to Northern Ireland than the London County Council.[75]

Although the Colonial Office was not sympathetic with regard to the Regional Assemblies, it did however agree on the need for safeguards in respect of constitutional amendments and the independence of the judiciary. It was therefore keen for the two sides to resolve these points and advised Prime Minister Nkrumah as such. Nonetheless, the desire for resolution was balanced by the need to look forward post-independence to when Prime Minister Nkrumah's goodwill might be needed in support of British interests and the realistic assessment that following independence Ghana's government could do what it liked – that was what independence meant.[76]

As before, it was incumbent on the Gold Coast Government to take the initiative in putting forward constitutional proposals. Prime Minister Nkrumah therefore arranged for Attorney-General Paterson and Bing (Attorney-General after independence) to prepare draft proposals. In an effort to propitiate the opposition, they included a section on Fundamental Rights comprising seven articles variously adopted (as explained in the notes) from the existing constitution, the constitutions of India and Ireland and Article 2 of the UDHR. This was forwarded to the Colonial Office for comments after which the intention was that it should be discussed with the opposition and then placed before the Legislative Assembly.[77]

Prime Minister Nkrumah also sought an undertaking from the Colonial Office that, if these proposals were to be adopted by the Legislative Assembly, they would form the basis on which the independence constitution would be drafted. To his considerable surprise then, the Colonial Office rejected his proposals. It pointed out that neither time nor protocol allowed for a completely new constitution to be drafted and reminded him that approval had been given solely on the basis of the April 1956 White Paper on which the 1956 election had been fought. In particular, Colonial Secretary Lennox-Boyd advised that codification of fundamental rights could not be contemplated. Not only was it not necessary, but it required more mature reflection than the timetable allowed. Codification should therefore follow after independence as in India.

75 Minute WAF35/2/02 Meeting 20 September 1956 with delegation of Opposition groups in the Gold Coast, NA DO 35/6172.

76 Terry, Note on the form of Constitution for the Gold Coast on independence, 15 September 1956, NA CO 554/820 and Bennett, Regional Assemblies 12 September 1956 and Eastwood to Hadow 17 September 1956, NA CO 554/817.

77 Government Printer, *Secret, Proposals for the Constitution of Ghana* (Accra, 1956), 4–6 (Part II, Articles VII–XIII).

The problem was that as yet the Colonial Office was not minded to sponsor a bill of rights and unwilling to impose such legislation on an independence constitution intended primarily for the purpose of a transfer of power. For Prime Minister Nkrumah, of course, it was hardly an issue of principle, he had after all only included provisions for fundamental rights in order to satisfy the opposition. As far as he was concerned, he had reached a point at which he was prepared to accept any constitution that expedited independence provided it did not overly impede his subsequent room for manoeuvre.[78]

Suitably amended, in October 1956 the Gold Coast Government's proposals were presented to the opposition in a series of meetings. The opposition responded with comments and a set of counter-proposals. Among its counter-proposals was a restatement of the reference in its 1955 proposals that the constitution should secure to all citizens:

> JUSTICE – social, economic and political;
>
> FREEDOM of thought expression, belief, faith, worship, and association (including the formation of political parties)
>
> EQUALITY of opportunity and
>
> RECOGNITION of the rights of minority groups,
>
> SUBJECT to law, morality and good conscience.
>
> The Universal Declaration of Human Rights by the United Nations shall apply.[79]

At that point, therefore, Prime Minister Nkrumah advised of the Colonial Office's rejection of a provision for fundamental rights at the same time suggesting that he himself had supported its inclusion; however, he did not release

78 Governor to Lennox-Boyd Despatch No: 1115 4 October 1956 enclosing Memorandum by the Prime Minister for onward transmission to the Secretary of State: Proposals for the Constitution of Ghana, Bennett 5 October 1956, Undecipherable (probably Eastwood) to Roberts-Wray/Macpherson 9 October 1956, Secret No. 528 Arden-Clarke to Lennox-Boyd 21 October 1956 and Governor to Lennox-Boyd, Proposal for the Constitution of Ghana, Despatch No: 1206 26 October 1956 enclosing Memorandum from the Gold Coast Cabinet Ministers for onward transmission to the Secretary of State, NA CO 554/822, Governor to Secretary of State Telegram 1100 2 October 1956 enclosing *Secret, Proposals for the Constitution of Ghana* and Note of the Government's Proposals for a Constitution for Ghana and Secretary of State to Arden-Clarke, WAF 16/2/028 Secret No. 570 11 October 1956, NA DO 35/6179 and G. Bing, *Reap the Whirlwind: An Account of Kwame Nkrumah's Ghana from 1950 to 1966* (London, 1968), 185–187.

79 The Parliamentary Opposition, Notes and Counter Proposals on The Government's Revised Constitutional Proposals for Gold Coast Independence, 19 October 1956, NA CO 554/825.

the draft wording that had been put before the Colonial Office. It was therefore agreed, without discussion of possible content, that 'the Constitution ultimately should contain full guarantees of Fundamental Rights as in the Indian Constitution but it will be impossible to include these in the Constitutional Order in Council'. Although this ended the debate, the opposition still contended that the Colonial Office should be requested to facilitate the inclusion of 'full Guarantees of Fundamental Rights'.[80]

Following the meeting with the opposition, Prime Minister Nkrumah held further consultations with the Joint Provincial Council of Chiefs and other regional bodies. Once again, he was obliged to advise of the Colonial Office's rejection as two of the regional councils referred to fundamental rights in their submissions: The Joint Provincial Council put forward a proposal based on the NLM's proposals and a heading of 'Freedom of conscience and religion' and the Northern Territories Council submitted a list of eight Fundamental Rights of the individual 'in accordance with natural law'; neither submission referenced the UDHR.[81]

It was, though, a largely perfunctory consultation as the die had already been cast. In November 1956, therefore, the Gold Coast Government released its revised proposals. As was evident from the debate in the Legislative Assembly, the two sides were still far apart though a clear majority for the revised proposals was absolutely assured. The proposals provided for constitutional amendments to require a two-thirds majority in the National Assembly and for the powers of the devolved Regional Assemblies to be limited to those similar to the London County Council.[82]

80 Secret, Discussions of the Government's Revised Constitutional Proposals, Minutes of the Second Meeting 22nd October Minutes GRCP/2, 4–5 and Record of Conclusions reached at the talks between delegations representing the Government and the Parliamentary Opposition on the Government's revised constitutional proposals for Gold Coast Independence and the Parliamentary Opposition's counter-proposals, 29 October 1956, NA CO 554/825.

81 Secret, Discussions of the Government's Revised Constitutional Proposals, Minutes of the First Meeting between the Government and representatives of the Asanteil, The Joint Provincial Council of Chiefs, the Northern Territories Council and the Trans-Volta/Togoland Council … on 30th October, 1956 to consider the Record of Conclusions reached at the talks between delegates representing the Government and the Parliamentary Opposition on the Government's revised constitutional proposals for Gold Coast Independence and the Parliamentary Opposition's counter-proposals together with notes on the points of difference still outstanding, Minutes GRCP/7, Appendix 'D': Views of the Standing Committee of the Joint Provincial Council on the Government Revised Constitutional Proposals and Appendix 'F': The proposed constitutional safeguards for the Northern Territories, NA FCO 141/5161.

82 Government Printer, *The Government's Revised Constitutional Proposals for Gold*

In view of the legislation that would follow upon independence, Prime Minister Nkrumah's presentation in the Legislative Assembly of his attitude towards fundamental rights is instructive:

> Allied to minority rights and of equal importance are the rights of individuals … Above all the Government believe that the courts of law should be absolutely independent of the Executive and should be a bulwark for the defence of the rights of the individual … it is the Government's intention to include these fundamental rights in the constitution once Independence has been granted.[83]

In the final negotiations over the constitution with the Colonial Office, Prime Minister Nkrumah would also continue to stress the weight he attached to 'fundamental rights'; he complained that:

> The whole position in regard to the guarantee of fundamental rights is unsatisfactory owing to the view taken by the United Kingdom Government … The present position is illogical in that fundamental rights in regard to property are guaranteed but not fundamental rights in regard to the individual and it is the Government's intention after Independence to regularise the whole of this question.[84]

For a brief period thereafter the Colonial Office therefore went through a soul-searching reassessment of its policy on fundamental rights, but ultimately determined that in the circumstances the right decision had been taken.[85]

However, there still remained the question of the procedure for constitutional amendments; an issue of considerable importance in view of Prime Minister Nkrumah's majority in the Legislative Assembly. The opposition's prescient fears were set out by Governor Arden-Clarke: Prime Minister Nkrumah would 'establish a republic … a central dictatorship … destroy the independence of the judiciary … drastically curtail the freedom of the individual'. With such fears in mind, the Colonial Office therefore sounded out Prime Minister Nkrumah about extending the two-thirds majority to include a vote in the Regional

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Coast Independence (Accra, 1956), 2, 5, 7, 12, 18; see also K.A. Busia, Gold Coast Independence 26 November 1956, a Memorandum distributed to all Assembly members in advance of the November debate on the Government's revised proposals setting out the opposition standpoint http://home.koranteng.com/writings/gold-coast-independence.html, last accessed 19 January 2015.

83 Press Release No. 1317/56 'Statement made in the Legislative Assembly on Thursday the 15th November by the Prime Minister Dr. Kwame Nkrumah', NA CO 554/823 and K. Nkrumah, *I Speak of Freedom: A Statement of African Ideology*, 79–80.

84 Governor to Secretary of State 16 January 1957 enclosing Secret, Memorandum from the Prime Minister to the Secretary of State 15 January 1957, NA DO 35/6181.

85 The Colonial Office debate is described in some detail by A.W.B. Simpson, *Human Rights and the End of Empire*, 852–857 and C.O.H. Parkinson, *Bills of Rights and Decolonization*, 122–129.

Assemblies or a special assembly, but he made it clear that having won more than two-thirds of the seats in the Legislative Assembly the suggestion was inappropriate: 'The Government … had been entrusted by the electorate with a mandate to alter the constitution if, in their opinion, it does not accord with the needs of the Gold Coast.'[86]

In order to resolve this last outstanding point and to reconcile the opposition, in January 1957 Colonial Secretary Lennox-Boyd visited the Gold Coast.[87] The visit was, to that extent, a success in that both sides expressed acceptance of the constitution that was about to descend upon them, the Colonial Secretary having 'proposed' that the approval of two-thirds of the regions would also be needed.[88] Prime Minister Nkrumah, though, made one last effort to block this provision. He despatched Gbedemah and Botsio, CPP Ministers and close allies, on a frantic visit to London to propose a further refinement, the option of an appeal to a country-wide referendum if the Regional Assemblies failed to reach a two-thirds majority, but this was rejected by the Colonial Secretary.[89] In his memoirs, Bing would record Prime Minister Nkrumah's private response: 'Within a month of Independence we would introduce our own Constitution.'[90]

The Independence Order in Council and Independence Act were passed in February 1957 so that the Gold Coast would become independent as Ghana in March 1957 as a constitutional monarchy with the Queen as head of state and the Governor-General as her representative. In order for entrenched laws to be amended, approval had to be given by a two-thirds majority in the National Assembly and two-thirds of the Regional Assemblies that were to be set up. As

86 Secretary of State to the Governor Secret and Personal, 4 December 1956, NA FCO 141/5141, Secretary of State to Nkrumah Telegram 702 19 December 1956, Memorandum from the Prime Minister to the Secretary of State, 27 December 1956 and Eastwood to Moreton WAF.16/2/033 11 January 1957, NA CO 554/821 and Arden-Clarke 22 January 1957, NA FCO 141/5123.

87 Note of a Meeting between the Secretary of State for the Colonies and the Gold Coast Cabinet held on 24th January 1957, at 3 P.M. and Note of a Meeting between the Secretary of State for the Colonies and members of the Opposition held on 25th January, 1957 at 9 A.M. enclosing 'Memorandum on the constitutional issues submitted to the Secretary of State by the Parliamentary opposition', NA FCO 141/5131.

88 'Statement by the Prime Minister on the United Kingdom Government's White Paper on the proposed Constitution of Ghana' and 'Statement by the Leader of the Opposition on the United Kingdom Government's White Paper on the proposed Constitution of Ghana', February 1957, NA FCO 141/5123.

89 Nkrumah to Lennox-Boyd 5 February 1957, NA CO 554/809 and Secretary of State for the Colonies to Arden-Clarke Personal WAF 16/2/039 Meeting with Botsio and Gbedemah 7 February, NA CO 554/823.

90 G. Bing, *Reap the Whirlwind: An Account of Kwame Nkrumah's Ghana from 1950 to 1966*, 187.

regards fundamental rights, there was no specific listing but there were provisions prohibiting laws 'depriving any person of his freedom of conscience or the right freely to profess, practise and propagate any religion' and against expropriation without adequate compensation – areas mainly of interest to foreign religious groups and white settlers. There were also some minority rights dating back to the 1950 constitution, for example, a prohibition of any laws which would 'make persons of any racial community liable to disabilities to which persons of other such communities are not made liable'.[91]

In his valedictory despatch, Governor Arden-Clarke reviewed the independence process and concluded: 'There has been talk in the Press and elsewhere of Nkrumah's "dictatorial tendencies". I have not myself … noted any strong bent in this direction: indeed I have had on many occasions to stiffen him to take decisions'; adding that it would be 'difficult to envisage the establishment of a dictatorship in this country, be it under the leadership of Nkrumah or anyone else'.[92]

However, even at the time, his conclusion was scorned by the Commonwealth Relations Office's man on the spot, Cumming-Bruce, whose pessimistic assessment of Ghana's post-independence prospects seems to have been widely shared within the Colonial Office and by Colonial Secretary Lennox-Boyd. This led to a furious slanging match during Colonial Secretary Lennox-Boyd's January 1957 visit (and, probably, the foregoing of Governor Arden-Clarke's automatic peerage).[93] Appiah, a former CPP leader who had turned to the NLM in disgust at CPP corruption, for example, would assert that Governor Arden-Clarke, for the sake of his reputation in history and 'ending his career as governor-general rather than as an ordinary governor of a little colony', had purposely favoured Prime Minister Nkrumah such that he had 'shut his eyes to wrongs that in earlier days he would have visited with a vengeance all his own'.[94]

91 HMSO Cmnd. 71, *The Proposed Constitution of Ghana* (London, 1957), Ghana (Constitution) Order in Council, 1957, 22 February 1957 and Ghana Independence Act 7 February 1957; see also Gold Coast (Constitution) Order in Council, 1950, 21 December 1950, Article 36 (2).

92 Governor of the Gold Coast to Secretary of State for the Colonies, Gold Coast: Review of events leading up to Independence, WAF 97/120 /01 17 April 1957, NA DO 153/3 (it was a point he would repeat in response to an audience question recorded in C. Arden-Clarke, 'Eight Years of Transition in Ghana', 36).

93 Notes on the future Gold Coast scene with special reference to external relations after independence, Cumming-Bruce, attached to Note to the Prime Minister, Gold Coast 30 August 1955, NA PREM 11/1367, Cumming-Bruce to Maclennan 30 June 1956 and Cumming-Bruce to Laithwaite 21 July 1956, NA DO 35/6178, and R. Rathbone, 'Casting "the Kingdome into another mold": Ghana's Troubled Transition to Independence', R. Holland/S. Williams/T. Barringer (eds), *The Iconography of Independence: 'Freedoms at Midnight'* (London, 2010), 65.

94 J. Appiah, *Joe Appiah: The Autobiography of an African Patriot* (London, 1990), 247

It must then have come as a surprise to Governor-General Arden-Clarke that, immediately upon independence, Prime Minister Nkrumah set about dismantling the constitutional structure that had been so carefully negotiated. His first target was the Regional Assemblies. In 1958, he rejected the Van Lare Regional Constitutional Commission's recommendations as regards the devolution of powers to the Regional Assemblies. Foolishly, the opposition responded by boycotting the elections to the Regional Assemblies thereby enabling the CPP to win a majority in all five Regions. It meant that when in October 1958 the Regional Assemblies met, it was only to sign their death warrants by approving the removal of the constitutional requirement for the Regional Assemblies to assent to any amendment of the 'entrenched clauses'. Once this barrier was removed, dissolution of the Regional Assemblies followed on as a matter of course.[95]

In recommending the legislation to the National Assembly, Prime Minister Nkrumah explained, in an argument that would subsequently also be employed by other African political leaders, that:

> my Government accepted the Constitution as drawn up in the United Kingdom with the gravest misgivings. We were, however, faced with a situation where independence might well have been delayed had we refused to accept the text which was presented to us … we were convinced that the good sense of the people of Ghana would enable us to alter it … when it became apparent that it was not a workable method for conducting the affairs of the country … in a developing society … the law must be both <u>certain</u> and <u>flexible</u> [96]

The way was now clear for Prime Minister Nkrumah to rewrite the constitution at will.

In January 1960, therefore, Prime Minister Nkrumah announced his intention to present proposals for a new republican constitution. The following

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(reference from J.M. Allman, *The Quills of the Porcupine: Asante Nationalism in an Emergent Ghana* (Madison, 1993), 71–72); see also 'Gold Coast', *Observer,* July 1956 (probably Legum) and 'Irregularities on Gold Coast', *The Times,* 1 September 1956, 6.

95 Government Printer, *Regional Assemblies: Report to His Excellency the Governor-General by the Regional Constitutional Commission* (Accra, 1958) and *Statement of the Ghana Government on the Report of the Regional Constitutional Commission* (Accra, 1958), D. Austin, *Politics in Ghana 1946–1960*, 376–382 and Regional Assemblies Act No. 25 of 1958, The Constitution (Repeal of Restrictions) Act No. 38 of 1958 and The Constitution (Amendment) Act No. 7 of 1959 (reference from W.B. Harvey, 'A Value Analysis of Ghanaian Legal Development Since Independence' (Maurer School of Law: Indiana University, 1964) https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2186&context=facpub, last accessed 13 March 2023).

96 Speech on the Constitution (Repeal of Restrictions) Bill, *Ghana Times,* 4 November 1958, NA DO 153/3.

month a White Paper set out the government's proposals, which were reviewed by the National Assembly which had reconstituted itself as a constituent assembly, and in April 1960 a plebiscite approved the proposed new constitution. The constitution, as amended, enabling legislation having authorised amendments *after* the plebiscite vote, was finally adopted by the National Assembly in June 1960. A further plebiscite elected Nkrumah the first President of Ghana.[97]

The 1960 constitution enhanced the authority of the President beyond parliamentary control. In contrast, fundamental rights were conspicuously absent despite the protestations of the opposition and Prime Minister Nkrumah's assurances and 'sincere convictions'. In its place was Article 13, which required the President 'immediately after his assumption of office' to make a 'solemn declaration' of 'my adherence to the following fundamental principles'; a statement described by Elias as 'a personal proclamation of pious sentiments and aspirations'.[98] These 'fundamental principles' included the sanctity of Ghana's independence other than in furtherance of African unity which 'should be striven for by every lawful means', the will of the people and the guarantee of Chieftaincy in Ghana, and also a truncated listing of individual rights:

> That no person should suffer discrimination on grounds of sex, race, tribe, religion or political belief … That subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived of freedom of religion or speech, of the right to move and assemble without hindrance or of the right of access to courts of law; That no person should be deprived of his property save where the public interest so requires and the law so provides.[99]

However, Article 55 also allowed the President 'whenever he considers it to be in the national interest to … give directions by legislative instrument' which 'may alter any enactment other than the Constitution'.[100]

97 Prime Minister Nkrumah, Proposals for a Republican Constitution, quoted by Egyptian Society of International Law Brochure No. 17, *Constitutions of the New African States: A Critical Survey*, 63–64, Constituent Assembly and Plebiscite Act No. 1 of 1960, D. Austin, *Politics in Ghana 1946–1960*, 387–395 and E. Schwelb, 'The Republican Constitution of Ghana', *American Journal of Comparative Law,* 9/4 (1960), 638–639.

98 T.O. Elias, *Ghana and Sierra Leone: The Development of their Laws and Constitutions* (London, 1962), 56; Elias was at various times Attorney-General, Minister of Justice and a Supreme Court Justice of Nigeria.

99 E. Schwelb, 'The Republican Constitution of Ghana', 648–649 notes that the requirement to provide compensation for deprivation of property was excised from an earlier draft.

100 J.C. Juergensmeyer, 'African Presidentialism: A Comparison of the "Executive" under the Constitutions of the Federation of Nigeria, the Federal Republics of the Congo and Cameroon, and the Republics of Ghana, Chad, Congo and the Entente',

In an exegesis of the 1960 constitution, Bennion, a constitutional adviser on secondment from the UK, who had drafted the constitution under political instruction from Prime Minister Nkrumah and Attorney-General Bing, explained that Article 13 neither binds nor restricts the President or the Parliament.[101] Why that was so, he revealed in a later memoir:

> I received from the Attorney General Geoffrey Bing (the AG) instructions for the drafting of the Constitution on one side of a single sheet of paper. The only firm instruction was that there should not be an operative, enforceable bill of rights. The AG told me to provide a substitute. I gathered that this should have as far as possible the appearance of a bill of rights but should on no account be justiciable as such … I accordingly produced what ended up as Article 13 (Declaration of Fundamental Principles).[102]

In what might be regarded as the final nail in the coffin of the independence constitution, a further plebiscite in January 1964 approved an amendment to the 1960 constitution providing for a one-party state and empowering the President to dismiss the senior judiciary.[103]

Nor were these amendments the only measures that Prime Minister Nkrumah felt were warranted 'to meet the particular needs of Ghana'.[104] Within the first year of independence he also passed the 1957 Emergency Powers and Deportation Acts, which enabled (even Ghanaian) 'subversive elements' to be deported, and the Avoidance of Discrimination Act, which banned political parties based on religion or region and clearly targeted the NLM. In 1958 the Preventive Detention Act also enabled detention for five years without trial for conduct deemed prejudicial to the security of the state – an act copied by several other African countries. Almost immediately upon enactment, it was widely deployed by Prime Minister Nkrumah against his political opponents.[105]

Journal of African Law, 8/3 (1964), 161–163.

101 F. Bennion, *The Constitutional Law of Ghana* (London, 1962), 140–142; see also Government Printer, *Proceedings of the Constituent Assembly: Official Report 14th March–29th June, 1960* (Accra, 1960), 18.

102 F. Bennion, 'Genesis of Ghana's First Republican Constitution', 20 February 2013, https://www.yumpu.com/en/document/read/45859301/genesis-of-ghanas-first-republican-constitution-francis-bennion, last accessed 13 March 2023.

103 Constitution (Amendment) Act No. 224 of 1964 (Articles 1 (a), 44 and 45) and ICJ, Press Statement 'The rule of Law in Ghana' 28 February 1964, NA DO 195/251.

104 Egyptian Society of International Law Brochure No. 17, *Constitutions of the New African States: A Critical Survey*, 63–64.

105 K.A. Busia, *Ghana's Struggle for Democracy and Freedom: Speeches 1957–69*, comp. by H.K. Akyeampong (Accra, 1978), 31 (The Liberty of the Subject), 37 (The Ban on Christopher Shawcross, Q.C.), 43 (The Emergency Powers Act), 51 (The Avoidance of Discrimination Act), 68 (Amendment of the Ghana Independence Constitution), 87 (The Arrest and Detention of Dr. Danquah and 49 others) and 97 (The

In February 1966, the, by then, deeply unpopular President Nkrumah was overthrown by the military and a National Liberation Council (NLC) assumed power at the same time declaring that it intended to hand-over power to a civilian government within three years. Reassuringly, within a few months the NLC had already made good on its promise to set up the Constitutional Commission to canvass public opinion on the form and content of a new constitution and to submit a draft to a broad-based Constituent Assembly. As a reaction to what were widely seen as President Nkrumah's excesses, the Commission's mandate specifically required that the draft should provide for a separation of powers between the three branches of government and that it 'guarantees the enjoyment by every individual in Ghana of … (i) freedom of opinion and expression, (ii) freedom of assembly and association, (iii) freedom from arbitrary arrest and detention, and (iv) freedom of thought, conscience and religion'.[106]

Supported by thirty-two pages of argument, the Constitutional Commission's January 1968 draft proposals responded by providing for an extensive array of rights. For example, it stressed the need for Ghana to enjoy the rule of law and noted that the 1960 Constitution 'paid lip service to the fundamental freedoms of the individual' and that the Presidential declaration required under Article 13 had 'proved to be worth less than the paper on which it was printed'. It was, as Luckham's analysis demonstrates, a document drafted by the Western-educated intellectuals of the old UGCC party with a range of references that included the UDHR (but only as an adjunct of UN Charter Article 55), the Declaration of Independence, the Bible, Cicero, Burke, Hobbes, Wilkes, Voltaire and even the Leveller, Captain Rainboro (*sic.*), to name but a few.[107]

However, civilian government would survive for a mere three years. Following a further military coup in 1972 by the self-styled National Redemption Council (replaced in 1975 by the Supreme Military Council) led by General Acheampong, the 1969 constitution was suspended. Among the early measures introduced by the new military government were the Preventive Custody Decree, the Subversion Decree and the Prohibition of Rumours Decree, but, unusually for Africa, despite political trials and the use of military courts to try 'subversion',

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Referendum on One-Party State); see also D. Austin, *Politics in Ghana 1946–1960*, 376–382 and *States of Emergency: Their Impact on Human Rights, A Study Prepared by the International Commission of Jurists* (Geneva, 1983), 103–110.

106 Constitutional Commission Decree, 1966, N.L.C.D.102 and Ministry of Information, Ghana Press Release No. 505/66 Appointment of a Constitutional Commission 1 September 1966, NA DO 153/41.

107 Ghana Publishing Corporation, *The Proposals of the Constitutional Commission for a Constitution for Ghana* (Accra, 1968), 43–74 (Chapter VIII 'Liberty of the Individual'), 118, NA FCO 38/145 and R. Luckham, 'The Constitutional Commission', D. Austin/R. Luckham (eds), *Studies in Commonwealth Politics and History No. 3: Politicians and Soldiers in Ghana, 1966–1972* (London, 1975), 62–88.

opposition was led and organised by professional groups centred on the Ghana Bar Association, the universities and the hospitals. Although the military government attempted to restrain these professional groups by means of the 1977 Professional Bodies Registration Decree, they were nonetheless able to force a timetable to be set for the return of civilian government and the appointment in 1977 of an Ad Hoc Committee on Union Government to draft a constitution.

In his opening advice to the committee, General Acheampong would explain, in what was by now a typical African assertion of difference, that: 'The main reason why there is so much instability in Africa is that instead of searching for a form of government that will suit us, we find it easier to transport foreign systems into our countries with little or no modification or adaptation. This is what I think we in Ghana should break away from.'

The constitution that emerged was seemingly approved in March 1978 by a plebiscite. However, in the face of overwhelming criticism of its legitimacy, it was rejected by public opinion and as a result repudiated shortly thereafter.[108]

The failure of this constitutional maneouvering led to the removal of General Acheampong in June 1978 and his replacement by General Akuffo. His removal paved the way for the release of political prisoners, a renewed commitment to a return to civilian government by July 1979 and the reconstitution of the Constitutional Commission whose terms of reference now included the requirement that it should 'guarantee the enjoyment by every person in Ghana of the fundamental rights enshrined in the Universal Declaration of Human Rights'. The Commission's report in November 1978, which largely took the rights provisions of the 1969 constitution as its point of reference, was accepted by the Supreme Military Council and the draft passed to a Constituent Assembly whose members were roughly divided on an equal basis between members from the District Councils, the Supreme Military Council, trade unions and professional bodies.[109]

Although the Constituent Assembly completed its work in May 1979 and elections were set for the following month, in June 1979, General Akuffo was in turn deposed by an Armed Forces Revolutionary Council (AFRC) led by Flight-Lieutenant Rawlings. The AFRC were initially satisfied, as part of what they saw as an anti-corruption house cleaning, to execute members of the former military regime, including Generals Acheampong and Akuffo. They therefore allowed elections to be held as planned and for authority to be transferred to a civilian government in October 1979. Despite the barbarity of the executions, the transfer of authority to a civilian government was therefore widely praised,

108 Ghana Publishing Corporation, 'Report of the Ad Hoc Committee on Union Government' (Accra, 1977), Introduction and 'Ghana', *ICJ The Review,* 20 (June 1978), 1–5.

109 Ghana Publishing Corporation, *The Proposals of the Constitutional Commission for a Constitution for the Establishment of a Transitional (Interim) National Government for Ghana* (Accra, 1978).

not least by the ICJ. However, this honeymoon did not last long as real power remained with the AFRC which in 1981 ended the pretence of civilian rule by taking power and suspending the 1979 constitution.[110]

As a result of this political chaos, despite seeming constitutional support for the UDHR, Ghanaian support for President Senghor's resolution proposing the ACHPR was considerably less effusive than it might otherwise have been. Nor did matters improve by the time of the vote on adoption of the ACHPR at the 1981 Nairobi AHSG. Although a civilian government was (nominally) in place, and despite the tradition of the Ghana Bar Association, Ghana protested virulently to the OAU about the manner in which the ACHPR had been adopted (see page Volume 2, Chapter 2) and would also only adhere to the ACHPR several years after it had come into force.

Nigeria

In terms of both area and population, Nigeria was around six times the size of Ghana, the 1952 census having estimated Nigeria's population at 31 million. It was divided into three Regions each of which was dominated by an ethnic group: The Northern Region, predominantly Hausa and Fulani, comprising 55 per cent of the population; the Eastern Region, predominantly Ibo, comprising about one-quarter of the population; and the Western Region, predominantly Yoruba, comprising about one-fifth of the population. Whereas the North and its political leaders were largely Muslim, with only limited experience of the world outside of Nigeria, the South (the Eastern and Western Regions) inclined towards Christianity and many of its political leaders had been educated abroad in the US or the UK. Economically, too, the Northern Region was less developed than the South.[111] This ethnic, religious, cultural and economic divide, to which Balewa, the Northern political leader, would refer in a speech in the 1948 Legislative Council, would dominate the spirit in which the independence negotiations were conducted:

110 'Ghana', *ICJ The Review,* 23 (December 1979), 5–10, E. Kannyo, *Human Rights in Africa: Problems and Prospects, A Report Prepared for the International League for Human Rights* (Washington, 1980), J. Goldschmidt, 'Ghana Between the Second and Third Republican Era: Recent Constitutional Developments and their Relation to Traditional Laws and Institutions', *Journal of Legal Pluralism,* 18 (1980), 43–61 and N. Chazan, 'Ghana: Problems of Governance and the Emergence of Civil Society', L. Diamond/J.L. Linz/S.M. Lipset (eds), *Democracy in Developing Countries: Africa Vol. Two (*Boulder, 1988), 93–139.

111 K. Ezera, *Constitutional Developments in Nigeria: An Analytical Study of Nigeria's Constitution-Making Developments and the Historical and Political Factors that affected Constitutional Change,* 2nd edn (Cambridge, 1964), 1–12 and A.E. Afigbo, 'Background to Nigerian Federalism: Federal Features in the Colonial State', *Publius,* 21/4 (1991), 13–29.

> The Southern tribes who are now pouring into the north in ever increasing numbers … we … look upon them as invaders. Since 1914 the British Government has been trying to make Nigeria into one country, but the Nigerian people themselves are historically different in their backgrounds, in their religious beliefs and customs and do not show themselves any sign of willingness to unite … Nigerian unity is only a British intention for the country.[112]

Alongside the ethnic, religious, cultural and economic divide, the independence negotiations would also be impeded by a further divide, the bitter personal rivalry between the two main political leaders in the South: Azikiwe (NCNC) in the Eastern Region and Awolowo (Action Group) in the Western Region. Set against them both was the Northern People's Congress (NPC) under the leadership of the Sardauna of Sokoto, and Balewa.

Politically, the call for independence had been initiated and driven by the Western-educated and aggressive political leaders of the South whose resolve was made all the more urgent by the rapid progress of the independence negotiations in Sudan and the Gold Coast. However, the urgency demanded by the South was resisted by the conservative tribal leaders of the North who saw in independence not only a threat to their traditional status and political authority but also the means by which the professional politicians of the South would be enabled to assert domination over the North. The NPC therefore perceived its primary political aim as being 'to save the North for the Northerners'. Moreover, in contrast to the political leaders in the South, the Northern leaders were reluctant to dirty their hands in territorial politics and therefore welcomed colonial rule as their front-line defence.[113]

The British were particularly enthused with the North. Colonial Secretary Lyttleton referred to their 'dignity, courtly manners, high bearing and conservative outlook which democracy and the Daily Mirror have not yet debased' – although a Colonial Office briefing would describe the Sardauna of Sokoto as 'vain and deplorably susceptible to flattery; and his private life is disreputable to an extent that one day someone may blackmail him'.[114]

Azikiwe, on the other hand, was viewed as a dangerous demagogue interested only in personal power. He was a 'man of considerable charm and culture.

112 Balewa, 4 April 1948, Debates in the Legislative Council of Nigeria 1948 Second Session Vol. 1–2, 227 (reference from J.S. Coleman, *Nigeria: Background to Nationalism*, 361).

113 Government Printer, *The North and Constitutional Development in Nigeria* (Enugu, 1966), 5–6.

114 Secret C. (53) 235, Cabinet, The Nigerian Constitution, Memorandum by the Secretary of State for the Colonies, 17 August 1953, NA PREM 11/1367 and Williamson to Johnston 6 January 1955 enclosing 'Basic Brief for the Secretary of State for his visit to Nigeria, January 1955, NA CO 554/840 (reference from C. Ugochukwu Uche, 'Banking "Scandal" in a British West African Colony: The Politics of the African Continental Bank Crisis', *Financial History Review,* 4/1 (1997), 59).

But like many of his lieutenants he is completely unprincipled and ruthless … is lazy, out for money and women, with ambition to become an "international statesman"'. Another assessment, by Benson, the Chief Secretary of Nigeria, was similarly damning: 'Zik (Azikiwe) wants money. Zik is a lazy man … Zik is motivated by one interest only: his own interest. And his own interest is money and the pleasure and the power that money can bring.' In contrast, Awolowo was also dangerous, but at the same time more principled and politically less adroit than Azikiwe.[115]

As a result of these fundamental differences, the independence process was buffeted in turn by the urgency demanded by the South and the brakes insisted upon by the North. The North, though, held most of the cards in that, by virtue of its population, it would likely dominate any territorial legislature. The Southern leaders therefore sought to fashion political parties that could claim to stand above regional loyalties and also to force the break-up of the three Regions into a series of smaller regions in order to dilute the power base of the Northern Region. This strategy would be resisted to the end by the Northern leaders.

The independence process effectively began in earnest in 1947 when the Colonial Office recognised that changes would have to be made to the constitution it had only just imposed. For example, the hitherto separate Northern Region had been brought into the territorial fold and for the first time the Legislative Council was entrusted to an unofficial majority. As a link between the Regions and the Legislative Council, the constitution had also established regional assemblies and, in the case of the Northern Region, a House of Chiefs; a House of Chiefs would also be established in the Western and Eastern Regions in 1951 and 1957 respectively. However, the constitution had also been purposely fashioned so that the Legislative Council was essentially consultative and its membership dominated by the Chiefs or their nominees as against educated public opinion – a state of affairs deeply resented in the South.

The Colonial Office therefore recognised that Governor Richards would have to be quietly removed. At the end of 1947, Governor Richards was therefore replaced by Macpherson, with Foot as the new Chief Secretary. Foot would later record that they 'came to the conclusion that we must at once take a new initiative'.[116] Although it had originally been decreed that the constitution would only be reviewed in 1956, in his first speech to the Legislative Council in August 1948, Governor Macpherson announced that: 'The progress already made has been … so rapid and so sound … accordingly … earlier changes

115 Williamson to Johnston 6 January 1955 enclosing 'Basic Brief for the Secretary of State for his visit to Nigeria, January 1955, NA CO 554/840 and Benson, quoted in 'The African Continental Bank' WAF 71/3/02, September 1955, NA CO 554/1181 (both references from C. Ugochukwu Uche, 'Banking "Scandal" in a British West African Colony: The Politics of the African Continental Bank Crisis', 59).

116 H. Foot, *A Start in Freedom* (London, 1964), 104 (reference from R.D. Pearce, 'Governors, Nationalists, and Constitutions, 1935–51', 302).

should be made.' Moreover, as against his predecessor, he intended to conduct the constitutional review with the widest possible consultation so as to enable 'the expression of public opinion.'[117]

The review process was launched in March 1949 under the auspices of a Select Committee of the Legislative Council that included all the unofficial members and five of the *ex-officio* members with Chief Secretary Foot as its Chairman. However, as Azikiwe pointed out, in effect the review was to be undertaken by the select few whose method of appointment had been at the heart of the original criticism of the 1946 constitution. Yet, as if in pre-emptive rebuttal, Macpherson had proposed that consultation should begin at village level and work its way up to district, provincial and regional level, and then to a Drafting Committee. This initial public consultation was completed in November 1949 and the process therefore moved on to a General Conference, in which fifty of the fifty-three members were Nigerians (including all twenty-five unofficial members), before finally reaching the Select Committee and the Legislative Council.[118]

Of the range of decisions that had to be addressed, some could only be resolved by direct negotiation between the regional leaders. For example, while the General Conference agreed that there should be no major boundary changes, it was unable to agree on the apportionment of representation to the House of Representatives. The Drafting Committee had proposed a 30:22:22 allocation (Northern:Eastern:Western), but the Northern Region delegates had made it clear that they would only accept parity with the Eastern and Western Regions combined. After a walk-out threat had been averted, a recommendation of 45:33:33 was agreed on a majority vote but only on the basis that the objections of the Northern Region delegates were recorded: 'The Northern delegates … wished it to be recorded that the Northern Region should … be given parity … should such parity not be accorded in the Constitution … they dissociate them-

117 Address by Governor Macpherson 17 August 1948, Debates in the Legislative Council of Nigeria 1948 Second Session Vol. 1–2, 12–13 and Immediate No. 889 Secret, Macpherson to Creech Jones 13 July 1948, NA CO 583/286/5.

118 Government Printer, *Review of the Constitution: Regional Recommendations* (Lagos, 1949), Fabian Colonial Bureau MSS Brit.Empire S365 Box 82 File 1B, Bodleian Library of Commonwealth and African Studies at Rhodes House, University of Oxford, No. 2307 Saving 52385/318 Macpherson to Creech Jones 2 October 1949, NA CO 537/4625, S.G.34 Saving Macpherson to Creech Jones 2 February 1950, NA CO 537/5786, Cabinet, C.P. (50) 3 May 1950, Nigerian Constitution, Memorandum by the Secretary of State for the Colonies, NA CO 537/5766, *Nigeria, The Story of the New Constitution: How was the New Constitution Prepared? How will it Work?* (Lagos, 1951) and K. Ezera, *Constitutional Developments in Nigeria*, 105–131; see also reports of the regional constitutional review conferences – a most valuable listing of official publications is given by O. Jegede (ed.), *Bibliography on the Constitutions of Nigeria* (London, 1981).

selves from the other recommendations of this Conference'; moreover, without parity, another Northern Region delegate added, 'it would ask for separation … on the arrangements existing before 1914'.

To assist in the final push, Colonial Secretary Griffiths sent a despatch to Governor Macpherson, though in reality it was aimed at a far wider audience. He noted, with an optimism that events were not to bear out, that 'general agreement has been reached … on all questions except one … the composition of the Nigerian Legislature' and that he had been 'particularly impressed by the wide measure of agreement reached'. In the event, it was only in September 1950 in the Legislative Council, that the South finally conceded parity to the North.[119]

The new constitution came into force in 1951. It provided that the purely advisory Executive Council was replaced by a Council of Ministers comprising six *ex-officio* and twelve unofficial ministers nominated by the Governor but divided equally between the Regions and also for a limited devolution of authority to the regional assemblies. But probably the most important consequence of the new constitution, as Ezera points out, was the impetus it provided for the rapid evolution of political parties based primarily on regional loyalties with the possible exception of the Western Region where Azikiwe's Eastern-dominated NCNC still sought to compete against Awolowo's predominantly Western Action Group.[120]

The 1951 constitution, although it had supposedly obtained a 'wide measure of agreement', did not survive for long. By 1953, it was clear that further changes were needed as political in-fighting on several fronts exposed its flaws. Firstly, an internal NCNC struggle for control revealed the inability of the NCNC to maintain party discipline against the lure of office in both the Eastern Region, where it was in the majority, and the Western Region, where it was in a minority. It placed the colonial administration, which was reluctant to intervene, in an uncomfortable legal quandary and enabled Azikiwe to shift blame from his

119 Government Printer, *Report of the Drafting Committee on the Constitution* (Lagos, 1949), 25, *Nigeria, Proceedings of the General Conference on Review of the Constitution January, 1950* (Lagos, 1950), 221, 236, 244–245, Nigerian Constitutional Review, *Statement of Recommendations made by the General Conference meeting at Ibadan, January 1950 with four minority reports attached thereto* and *Report of the Select Committee of the Legislative Council meeting at Enugu with two minority reports attached thereto 1 April 1950*, Fabian Colonial Bureau MSS Brit.Empire S365 Box 82 File 1B, Bodleian Library of Commonwealth and African Studies at Rhodes House, University of Oxford, Nigeria, Legislative Council Select Committee on the Constitution Review, *Report* (Enugu, 1950) and Nigeria No. 464A, Griffiths to Macpherson 15 July 1950, NA CO 537/5787.

120 Nigeria No17A Macpherson to Griffith 15 May 1951, NA CO 583/307/1, Nigeria (Constitution) Order in Council, 1951 29 June 1951 and K. Ezera, *Constitutional Developments in Nigeria*, 142–145.

dictatorial approach, the primary cause, to the failure of the constitution to resolve hitherto unimagined contingencies; a constitution he described as having been imposed on Nigeria. As the *West African Pilot* pointed out: 'What dangerous thing has been imported into Nigeria as democracy? What kind of parliamentary institutions have been imposed on us under the pretext of giving us a new constitution?'[121]

Nonetheless, the more immediate cause of the collapse was the provocative private member's motion sponsored by Enahoro, an Action Group representative, proposing 'that this House accepts as a primary political objective the attainment of self-government for Nigeria in 1956'. In the first instance, it prompted the Action Group Ministers to resign from the Council of Ministers in order to participate in what they regarded as a debate of fundamental importance and a political crisis when they subsequently demanded reappointment. Thereafter, it opened up regional fault lines. For the Northern Region leaders, self-government so soon was unwelcome and therefore to be resisted. At first, they sought deferral of the motion, but when that was rejected they sponsored an amendment proposing that 'in 1956' should be replaced by 'as soon as practicable'. As the NPC controlled half the votes, there was no prospect of the original motion being adopted and therefore the Southern delegates walked out.[122] A bitter Awolowo condemned the NPC as an 'unfortunate victim of British propaganda to perpetuate British imperialism', a jibe that was countered by the Sardauna of Sokoto by a reference to the amalgamation of North and South into the territory of Nigeria: 'The mistake of 1914 has come to light and I should like to go no further.'[123]

In the face of severe provocation, the Northern Region's representatives retreated home reluctant to remain under political and physical attack. More seriously, the Northern Region's House of Chiefs and House of Assembly passed motions declaring that they were not ready to commit to a fixed date for self-government in 1956. A further motion by the House of Assembly also adopted an outline eight-point programme effectively calling for full regional

121 O.I. Odumoso, *The Nigerian Constitution: History and Development* (London, 1963), 56–77, 81–93 and *West African Pilot,* 10 March 1953, quoted by K. Ezera, *Constitutional Developments in Nigeria,* 156–164; see also A.G.O. Dawodu, *Awo or Zik: Who Won the 1951 Western Nigeria Election?* (Ibadan, 1998) and Governor to The Secretary of State for the Colonies Saving 307 3 February 1953 enclosing Nigerian Secretariat, Notes on trends in the policies of the National Council of Nigeria and the Cameroons and its affiliated bodies, 31 December 1952, NA CO 554/599.

122 Debates 31 March 1953 – 1 April 1953, Nigeria, House of Representatives Debates 1953, 985–1053, A. Bello, *My Life*, 114–148 and No. 675 Saving Macpherson to Lyttleton 24 March 1953 enclosing CM(53) 15th and 16th Meetings Conclusion 4, NA CO 554/260.

123 K. Ezera, *Constitutional Developments in Nigeria*, 166.

autonomy and a central agency as against the existing territorial legislative and executive authority structure. It was essentially an abandonment of federalism in favour of a federation of independent regions. In the South, the Western Region House of Assembly also adopted a motion, but with the diametrically opposite standpoint.[124]

There was also no disguising divisions at a round of information-gathering meetings undertaken in April 1953 by Minister of State for Colonial Affairs Hopkinson (UK). For example, at a meeting with the Northern Region Executive Council, he was advised that, while the North had been persuaded to give the 1951 constitution a chance, 'we will not be so persuaded again … We can no longer work with the other two regions.' The Sardauna of Sokoto also noted that, although they were satisfied with their relations with the colonial administration, 'it seemed to be the habit of the British to pay more attention to those who got up and shout'; and his colleague the Emir of Zaria warned that 'the bringing together of people with different religions could not be done'.[125]

In stark contrast, at his meeting with the Western Region Executive Council, Awolowo warned that their guiding principle was that: 'All human beings are

124 Government Printer, *The North and Constitutional Development in Nigeria*, 6–17, Lieutenant-Governor, Western Region Sharwood-Smith, An Appreciation in Summarised Form of the Reactions of the Northern Region to the present Political Crisis, 10 April 1953, The Secretariat, Northern Region (author illegible) to Dudding, Nigerian Secretariat, Lagos 10 April 1953 enclosing Notes on the Effect of the Political Crisis on Northern members of the House of Representatives (author illegible) 11 April 1953 and Motion, Western Region House of Assembly 14 April 1953, NA FCO 141/13363, 55879/16 9 June 1953 Civil Secretary, Northern Region to Chief Secretary to the Government, Lagos enclosing Motion, Northern House of Chiefs 23 May 1953 and Motions, Northern House of Assembly 22 and 23 May 1953, NA FCO 141/13364, K. Ezera, *Constitutional Developments in Nigeria*, 164–175 and M. Lynn, 'The Nigerian Self-government Crisis of 1953 and the Colonial Office', *Journal of Imperial and Commonwealth History*, 34/2 (2006), 245–261.

125 Extract of Report to be presented by the Northern Executive Council to the Minister of State 30 April 1953 including Memorandum by the Northern Ministers and a Select Committee of the Regional Legislature for the Minister of State for the Colonies the Right Honourable Henry Hopkinson, C.M.G. M.P., NA FCO 141/13364 and Secret E.C.N.R. (53) 12th Meeting, Minutes of a Meeting of the Right Hon. H.L. d'A Hopkinson Minister of State for Colonial Affairs with the Members of the Executive Council 30 April 1953 Northern Region and Governor to Secretary of State for the Colonies, Secret and Personal Telegram No. 575 25 April, 1953, NA CO 554/260. Bello, Sardauna of Sokoto, was content to remain Premier of the Northern Region nominating Balewa as Nigeria's first Prime Minister. Balewa's relationship with Bello was reported in Memorandum, The Position of Chiefs in the Northern Region, Secret and Personal 4024/57 6 February 1957, NA FCO 141/13676: 'The Sultan is my leader and my elder brother. I must therefore never disappoint him.'

born free and equal in dignity and rights', as affirmed by the UN (UDHR Article 1), and this implied the right of people to choose their own rulers. If they had the weapons, they would most certainly have followed the path of the Americans as the means of bringing about change. However, they fully grasped that they lived in the real world and therefore had chosen 1956 as the independence date so as to allow time for the people to prepare for the spiritual struggle that might be needed to overcome the obstacles which would most probably be placed in their path.[126]

The motion was at least a turning point in that it brought out into the open the antipathy of the three Regions towards cooperation at territorial level and therefore the need for a more region-centric approach to the administration of the Regions and the Federal government. In order to pre-empt a possible disintegration of Nigeria, the Colonial Office therefore conceded that 'the Nigerian constitution will have to be radically revised … if possible … by a predominantly Nigerian commission or conference representative of all the regions'. With that end in mind, it was proposed to invite representatives of all the leading political parties to a constitutional conference to be held in London in 1953.[127]

A suspicious Azikiwe and Awolowo initially declined to attend largely on the basis that its terms of reference did not seem to allow for discussion of a timetable for independence. It was therefore only after Governor Macpherson brought the three main party leaders together that agreement was reached on both the relative composition of the Nigerian delegation and the terms of reference which now provided for discussion of the 'defects in the present constitution'; the 'changes required to remedy these defects'; and 'what steps should be taken to put these changes into effect'. However, the NCNC and the Action Group also insisted that the 'question of self-government in 1956' be included on the agenda, it being understood in advance that this did not commit the UK to such a date.[128] The NCNC and Action Group's determination to ensure a full airing of the independence question was further reinforced in a pre-conference pact, an otherwise unholy alliance, by which they agreed to pursue self-government at the conference and that, if it was still opposed by the North, they would insist on secession. At the insistence of the Action Group, it was also agreed that they would decline any discussion at the conference of the status of Lagos, the Federal capital.[129]

126 Personal from Minister of State, 24 April 1953 and Note of a Meeting 26 April 1953 with representatives of the Executive Council of the Western Region, NA CO 554/260.

127 Some conclusions of a meeting at the Colonial Office under the Secretary of State's chairmanship on 15th April, 1953, NA CO 554/260 and Statement by Secretary of State for the Colonies Lyttleton House of Commons 21 May 1953.

128 Note of a meeting held at Government House at 7.45 p.m. on Friday, 19th June, 1953, NA CO 554/262.

129 K. Ezera, *Constitutional Developments in Nigeria*, 176–180.

Despite the pre-conference sabre-rattling, the 1953 London conference was after all able to reach agreement on the relationship between the Regions and the centre based on an extension of the powers of the Regions at the expense of the centre. The North was also able to reconfirm parity representation and its right to determine the electoral rules in the Northern Region. As a result, the South provided for direct elections to the House of Representatives, by universal suffrage in the Eastern Region and by taxpayers in the Western Region, while in the Northern Region voting was limited to male taxpayers by way of an electoral college. It was also decided that Lagos should be taken out of the Western Region and established as a Federal territory, a decision which led to the breakdown of the unholy alliance.[130]

At the resumed 1954 Lagos Conference, it was also finally accepted, with reluctance by the Action Group, that a secession clause should not be included in the constitution but that this did not preclude further discussion nor would it prejudge the issue if raised at the next constitutional conference. Within the Council of Ministers, the number of *ex-officio* ministers was reduced to three, with the Governor no longer in the chair, and ministers would now carry departmental rather than simply collective responsibility.[131] In the elections that followed, the NPC retained control of the Northern Region and a majority in the House of Representatives but the NCNC, in addition to the Eastern Region, also gained control of the Western Region from the Action Group.

As they had agreed in their pre-conference pact, the NCNC and Action Group also put forward a Joint Proposal calling for self-government in 1956. It was easily resisted by Colonial Secretary Lyttleton on the basis that the North 'was unable to depart from its policy of self-government as soon as practicable'. Moreover, the Colonial Office had come prepared and the Colonial Secretary was therefore able to counter with an offer to hold a further conference within three years 'for the purpose of reviewing the Constitution, and examining the question of self-government'. He was also willing to make a commitment that, subject to appropriate safeguards, 'Her Majesty's Government … would in

130 HMSO Cmd. 8934, *Report by the Conference on the Nigerian Constitution held in London in July and August, 1953* (London, 1953); see also African No. 1182 Confidential, Record of Proceedings of the Nigerian Constitution Conference held in London in July and August, 1953, NA CO 879/159.

131 HMSO Cmd. 9059, *Report by the Resumed Conference on the Nigerian Constitution held in Lagos in January and February, 1954* (London, 1954), Eighth Plenary Meeting 28 January 1954 and N.C. (54) 17 22 January 1954 Right of Secession Memorandum by the Action Group Delegation, Minutes of Meetings and Memoranda, Resumed Nigerian Constitutional Conference January–February 1954, Lagos, NA CAB 133/130 and Nigeria (Constitution) Order in Council, 1954, 3 September 1954.

1956 grant to those regions which desired it full self-government in respect of all matters within the competence of the Regional Governments'. Baulked by the North, the South was left with little option other than to acquiesce in this qualified concession.[132]

Unfortunately, three years later, just as arrangements were being made to hold the constitutional conference, serious complaints were laid against Azikiwe, now Premier of the Eastern Region, by members of his party and, as a result, it became politically impossible for the conference to be held before those complaints were investigated. The complaints alleged improper conduct in relation to financial transactions between the Eastern Region government and the African Continental Bank, which was controlled by Azikiwe in his personal capacity. As it was the banking authorities had already been concerned for some time about the management of the African Continental Bank. It 'continues to cause anxiety on a number of counts, not least because of the political complications. The management constantly shows lack of candour in its dealings with Government and has made a number of promises which have not been fulfilled'.[133]

Azikiwe's response to the appointment of an official enquiry was to accuse Colonial Secretary Lennox-Boyd of prejudice and denounce Eastern Region Governor Pleass as 'an obstinate character who cannot adapt himself to contemporary British Colonial Policy and who should not be allowed to continue to roost in a place he had served as Dictator for almost 30 years … We must decide where our money must be banked and you cannot properly interfere in order to protect British banking monopoly.' In fact Governor Pleass had opposed an enquiry as it 'might produce no conclusive result and was bound to lead to

132 HMSO Cmd. 8934, *Report by the Conference on the Nigerian Constitution held in London in July and August, 1953*, 10–11, Eighteenth Plenary Meeting 19 August 1953, N.C. (53) 8 4 August 1953 Joint Memorandum by the National Council of Nigeria and the Cameroons and the Action Group and N.C. (53) 39 17 August 1953 Review of the Constitution Joint Proposal by the NCNC and Action Group, Meetings and Memoranda, Nigerian Constitutional Conference 30th July – 22nd August 1953, London, NA CAB 133/129, Williamson to Gorell Barnes 2 July 1953, Macpherson to Gorell Barnes 15 July 1953, Note of a meeting with the Governor of Nigeria held at Sir T. Lloyd's room at 11.30 a.m. on Tuesday 21st July 1953, Note of a meeting with the Governor of Nigeria held by the Secretary of State at 5.00 p.m. on Wednesday 22 July 1953 and WAF 39/3/03 Brief for the Secretary of State for the Nigeria Constitution Conference, NA CO 554/262, A. Bello, *My Life*, 149–159, K. Ezera, *Constitutional Developments in Nigeria*, 180–199 and O.I. Odumoso, *The Nigerian Constitution: History and Development*, 92–108.

133 Report on the Banking Position in Nigeria as at 31st December 1954, filed 5 April 1955, Bank of England Archive File OV 68/3/23, Loynes to Parsons/Hawker 'Nigeria Eastern Region' 11 July 1956, Bank of England Archive File OV 68/3/90 and Nigeria Country file 1956–1957, Bank of England Archive File OV 68/4.

political trouble'. However, the view was taken that corruption was so rampant an enquiry had to be held to prove the point publicly. An independent tribunal was therefore appointed to investigate the charges.[134]

Its report in early 1957 found that Azikiwe had handed over charge of the bank to a stooge who served at his bidding, and to that extent stayed at the helm, and that 'we are satisfied that he was attracted by the financial power his interest in the Bank gave him'; moreover that 'his conduct in this matter has fallen short of the expectations of honest, reasonable people'. It also found that other Eastern Region officials had not made a proper investigation of the circumstances before approving a loan made by the Eastern Region to the bank. Rather generously, though, the report also concluded that his 'primary motive was to make available an indigenous bank with the object of liberalising credit for the people of this country'. Far, therefore, from pronouncing Azikiwe's guilt, this mitigating assessment gave credence to Azikiwe's claims that he was the victim of British attempts to discredit him and maintain a British banking monopoly.[135]

With the report published, Azikiwe called an election drawing specific attention to the enquiry in the Preamble of the NCNC Manifesto 'The Peoples Mandate (*sic.*)' and suggesting that 'in the final analysis it is YOU the PEOPLE who decide'; which they did by re-electing him. Precisely what Governor Pleass had forecast was most likely to happen.[136]

With Azikiwe's triumphal re-election, the path was at last cleared for the overdue constitutional conference which was finally scheduled for May 1957. It opened with a discussion of regional self-government. Prior to the conference, in line with the Colonial Secretary's 1953 undertaking, the Eastern and

134 Note by the Secretary of State on meeting with Azikiwe 10 November 1955, NA CO 554/1181 and Gray to Williamson 10 July 1956, Tel. No. 123 Secret Governor, Eastern Region, Pleass to Lennox-Boyd 12 July 1956 and Azikiwe to Lennox-Boyd, Banking Policy in Eastern Region 16 July 1956, NA CO 554/1126.

135 Government Printer, *Proceedings of the Tribunal Appointed to Enquire into Allegations of Improper Conduct by the Premier of the Eastern Region of Nigeria in Connection with the Affairs of the African Continental Bank, Limited, and Other Relevant Matters, August–November 1956* (Lagos, 1957), HMSO Cmnd. 51, *Nigerian Tribunal of Inquiry Appointed by Warrant of Appointment Dated the Fourth Day of August, 1956: Report of the Tribunal Appointed to Inquire into Allegations Reflecting on the Official Conduct of the Premier of, and Certain Persons Holding Ministerial and other Public Offices in, the Eastern Region of Nigeria* (London, 1957), 42, C. Ugochukwu Uche, 'Banking "Scandal" in a British West African Colony: The Politics of the African Continental Bank Crisis', 51–68 and C.U. Uwanaka, *Zik & Awo in Political Storm* (Surulere, 1982–83 revised edn), 20–33.

136 'The Peoples Mandate', NCNC Manifesto March 1957, NA CO 957/8 and M. Milne, *No Telephone to Heaven: From Apex to Nadir – Colonial Service in Nigeria, Aden, the Cameroons, and the Gold Coast, 1938–61* (Stockbridge, 1999), 339–350.

Western Regions had given notice of their intention to request self-government. That request was granted as from 8 August 1957. As for the Northern Region, its political leaders remained content for self-government to be deferred until March 1959.[137]

At Federal level, there was agreement on a bi-cameral legislature as was the established pattern in the Regions. Elections to the Upper House, the Senate, was to be based on equal representation as between the Regions, with representatives also for Lagos and the Southern Cameroons and four members nominated by the Governor; while elections to the House of Representatives would again be based on parity between the North and South. The new constitution also provided for the appointment of a Federal Prime Minister enjoying the confidence of the House of Representatives; in turn, the Prime Minister would nominate his own ministers, the *ex-officio* ministers having finally been withdrawn. Although the Governor still retained certain reserve powers, these would now only be exercised on the advice of ministers.

For the first time, the three main parties met ahead of the conference to prepare the ground and establish areas of agreement. This new-found, though temporary, unity was given expression in a unanimous motion adopted by the House of Representatives that 'this House hereby gives the Federal delegates … to the Nigerian Constitutional Conference … a mandate to demand independence for Nigeria within the British Commonwealth in 1959'.[138] Backing up that motion, they submitted a joint memorandum to the conference proposing independence in 1959. It was flatly turned down by Colonial Secretary Lennox-Boyd who argued that it was a request for a 'blank cheque', that before a date could be set it was necessary to assess 'what the face of Nigeria in 1959 would be likely to be'. He also argued that, at that time, only two of the Regions would have been independent and, further, that it was necessary to await the outcome of the several commissions that the conference had just established, not least the Minorities Commission. When the Nigerian delegates expressed their disappointment, he added that he regarded Nigerian independence as a shared

137 *Self-Government for the Western Region* (Ibadan, 1955), WAF 16/165/02 Brief for the Secretary of State for his discussion with Chief Awolowo: Western Region proposals regarding the implementation of the promise of Regional self-government, attached to Note of meeting in the Secretary of State's office on Thursday, March 15th and Friday, March 16th, 1956, NA CO 554/935, Governor, Eastern Region to Lennox-Boyd Eastern Region No. 71 11 April 1957, NA CO 554/1583 and Nigeria Constitutional Conference, Briefs for the Secretary of State, Brief No. 5 WAF/16/3/04 The Division of Nigeria into regions or states – 'fragmentation' 13 May 1957, 49–57 and Brief No. 7 WAF 16/57/09 The structure of the Federal Government and the question of independence 17 May 1957, 61–76, NA CO 879/164.

138 Resolution 26 March 1957, Nigeria, House of Representatives Debates Official Report Session 1957–58, 1407–1483.

goal, the difference merely being one of timing. Under pressure, the Colonial Secretary was forced to concede that if, after the December 1959 elections, the House of Representatives were to make a formal request for independence in 1960, the British government 'will consider it with sympathy and … will do our utmost to meet the resolution in a reasonable and practical manner', but that he would still be guided 'by the way everything was going' in Nigeria at that time. In response, the delegates noted the Colonial Secretary's decision but reserved the right to impress on the British government 'the necessity for granting independence to the Federation of Nigeria not later than 2nd April, 1960'.

The final issue that confronted the conference was the demand from many parts of Nigeria that new regions should be carved out of the existing Regions.[139] However, Colonial Secretary Lennox-Boyd advised that if independence was to be contemplated in 1960 there could be no question of new regions in the interim. It was, though, a sensitive issue and the conference therefore agreed that a Minorities Commission, the Willink Commission, should examine the question of minority fears and what might be done to allay them. Its findings and that of the Fiscal and Boundaries Commissions would be discussed at a resumed conference in 1958.[140]

Following the conference, as the candidate of the NPC, the largest party in the House of Representatives with eighty-nine of the 184 seats, Balewa was appointed Prime Minister. He concluded, however, that, if Nigeria was to achieve independence on 2 April 1960, the three parties would have to cooperate closely

139 The Middle Belt area was, politically, closely linked to Christian missionaries and the Christian population; see A.E. Barnes, 'The Middle Belt Movement and the Formation of Christian Consciousness in Colonial Northern Nigeria', *Church History*, 76/3 (2007), 591–610.

140 African No. 1189 Confidential Proceedings of the Nigeria Constitutional Conference, London May – June 1957, Vol. I Minutes of Plenary Meetings, 12th Meeting 14 June 1957, 13th Meeting 17 June 1957, 17th Meeting 21 June 1957, 19th Meeting 23 June 1957, 20th Meeting 24 June 1957, NA CO 879/166 and Vol. II Conference Memoranda, 163–164 (N.C. (57) 28 27 May 1957 Independence for the Federation of Nigeria: Joint Proposal by the N.P.C., N.C.N.C. and Action Group), 549–550 (N.C. (57) 102 23 June 1957 Statement by Lennox-Boyd), NA CO 879/167, HMSO Cmnd. 207, *Report by the Nigeria Constitutional Conference held in London in May and June, 1957* (London, 1957), 13–14, 24–27, Nigeria, Conclusions of a Cabinet Meeting 22 May 1957, NA CAB/128/31/42, Lennox-Boyd to Prime Minister P.M. (57) 24 22 June 1957, NA PREM 11/2436, Nigeria, Note by the Secretary of State for the Colonies 20 October 1958, NA CAB 129/95/13, Note to Prime Minister, Nigeria 21 October 1958, NA PREM 11/2436, CC(58)76th Conclusion, Extract from Cabinet Conclusions 22 October 1958, NA CO 554/1548, K. Ezera, *Constitutional Developments in Nigeria*, 231–243 and O.I. Odumoso, *The Nigerian Constitution: History and Development*, 111–122.

in government. Accordingly, he invited representatives of both the NCNC and the Action Group to participate in a 'National Government'. Despite the objections of the NCNC to the inclusion of the Action Group and equal and opposite Action Group doubts amid its deep personal and party antipathies with the NCNC, a coalition government was formed and survived until the next round of elections in December 1959.[141]

The first proposal for 'basic constitutional rights' in Nigeria had been put forward by the West African Editors on their 1944 visit to the UK (see page 168 above). Azikiwe had also included a list of 'Basic rights' in the memorandum submitted to the Colonial Office at the time of the NCNC delegation's 1947 visit to the UK and again in the NCNC's 1948 Freedom Charter. None of these proposals were taken seriously by the Colonial Office, but when a similar proposal was put forward at the 1953 London Conference, it was obliged to respond. The proposal was set out in three supplementary memoranda from the Action Group and the NCNC. It took the form of a statement of principle that the constitution should provide for 'certain basic rights' together with a list of rights rather perfunctorily set out on barely one page subsequently supported by a further half page list.

It is no coincidence that there were obvious connections between elements of these 'basic rights' and the political advantage of its sponsors. As Parkinson notes, both the NCNC and Action Group were keen to campaign in the Northern Region and saw 'basic rights' as the means by which the NPC might be legally constrained from obstructing their meetings. Among the rights that were therefore put forward were those that proscribed discrimination by reason of religion or regional connection and facilitated freedom of movement, association and assembly; for example, the constitution 'should contain a declaration of certain basic Human Rights such as Freedom of Movement and of Assembly … in all parts of Nigeria'. Another asserted the 'freedom to own, run or operate a printing press', a concern which can be directly linked to Azikiwe's ownership of the *West African Pilot* and other newspapers.[142]

Further lobbying pressure was exerted by the Christian Council of Nigeria which wrote to all delegates pleading for 'the granting to every citizen …

141 Secret and Personal Robertson to Smith 31 August 1957, NA CO 554/2122 and *West Africa,* 7 September 1957, 855.

142 N.C. (53) 8 4 August 1953 Joint Memorandum by the National Council of Nigeria and the Cameroons and the Action Group, N.C. (53) 27 12 August 1953 Fundamental Rights Joint Memorandum by the Action Group and the N.C.N.C. and N.C. (53) 29 13 August 1953 Right to Freedom Supplementary Joint Memorandum by the Action Group and the N.C.N.C, Meetings and Memoranda, Nigerian Constitutional Conference 30th July – 22nd August 1953, London, NA CAB 133/129 and C.O.H. Parkinson, *Bills of Rights and Decolonization*, 136–137.

freedom to practice, propagate or change his religion', citing the UDHR and a similar clause in the recent Pakistan constitution in support.[143] Although their lobbying made little impression on the 1953 conference, their time would come.

When the discussion opened, Colonial Secretary Lyttleton was at once dismissive. His briefing paper had recorded the standard British objections to fundamental rights and also how in India the subsequent inclusion of such rights had seriously impeded the Indian Government's ability to enact much needed development reforms.[144] He therefore left the conference in no doubt as to his objections: 'Any list would have to be so hedged around with reservations that it would be meaningless.' Moreover, although the Indian constitution had included a declaration of rights, he had never known such a declaration in a British constitution. The conference should 'dismiss any idea of putting such a declaration into the Constitution'. He was supported by the NPC on the grounds that fundamental rights were already included in the constitution and that therefore the incorporation of such a list 'would be a libel on the Nigerian Government. It implied that these rights did not now exist in Nigeria'. Although Awolowo sought more discussion of his proposals: 'The subject was not pursued.'[145]

In his memoirs, Lyttleton described his commentary in greater detail. He recalled that he had advised that 'they could put "God is Love" into the constitution if they so wished but not while I was in the chair' and then described how he went on to debunk the rights in the UDHR one-by-one. After that, he alleged 'the delegates got up and begged that the Conference should hear no more of the Charter'. The outlines of this exchange are verified by a later Colonial Office minute noting that Colonial Secretary Lyttleton had 'managed to laugh the Africans out of … the … proposal … by saying "Why not also put in God is love"'.[146]

However, by the time of their preparatory deliberations four years later for the 1957 London Constitutional Conference, the Colonial Office seems to have undergone a dramatic shift in attitude towards fundamental rights. This shift seems to have come about mainly in response to lobbying by Christian church groups in the UK and Nigeria. For example, in July 1956, a deputation from the International Department of the British Council of Churches called on the Min-

143 Rev. Forster, Secretary to Christian Council of Nigeria to Delegates London Conference on the Constitution of Nigeria and Secretary of State for the Colonies 22 July 1953, NA CO 554/262.

144 WAF 39/3/03 Brief for the Secretary of State for the Nigeria Constitution Conference, NA CO 554/262.

145 Thirteenth/Fourteenth Plenary Meetings 13–14 August 1953, NA CAB 133/129; see also African No. 1182 Confidential, Record of Proceedings of the Nigerian Constitution Conference held in London in July and August, 1953, NA CO 879/159.

146 O. Lyttleton, *The Memoirs of Lord Chandos* (London, 1962), 410–411 (reference from C.O.H. Parkinson, *Bills of Rights and Decolonization*, 1) and Watt 13 December 1956 and Johnston 13 December 1956, NA CO 554/828.

ister of State for Colonial Affairs to press for a provision protecting freedom of religion. Their memorandum recalled the representations they had made over the previous few years and detailed the pressures they faced on the ground, most particularly in the Northern Region.[147] Queen Elizabeth II (UK) on her visit to the Northern Region in February 1956 had also lobbied for freedom of religion: 'I am sure the Government of the Northern Region will always allow its fellow men freedom to worship God in the way that the conscience of each dictates.'[148]

As a result, although opposition to a bill of fundamental rights was still widely held within the Colonial Office, an increasing body of opinion was now prepared to contemplate the prospect with sympathy. Indeed, in this pre-conference period, the Colonial Office seems to have been almost wholly preoccupied with the tactical question of how best to smuggle in a provision for religious freedom into the constitution; either by inclusion in the constitution under discussion or in an Order in Council. Such was the growing intensity of feeling that Williamson, one of the more religiously minded Colonial Office officials, argued that it was 'vital' to secure religious freedom: 'If it is necessary to pay a price for that, we consider that it must be paid.' Smith, another senior official, also argued that, 'legal difficulties' aside, Muslim extremism might be 'on the march' and it would therefore be advisable to secure constitutional protection for the Christian community 'no less substantial than the one Ld. Lugard gave the Muslims in 1903.'[149] Nonetheless, this newly acquired sympathy was not as yet attended by a sense that provision should also be made for other 'rights'. There was, however, an appreciation that any demand for religious freedom would likely prompt demands for a more exhaustive declaration of fundamental rights. It was hoped, therefore, that while it might be necessary to accommodate a Nigerian preference for 'more general and sweeping guarantees of fundamental rights', the line should be held at a declaration similar to that in Sudan's Self-Government Order.

As Parkinson has identified, the Colonial Office's shift towards acceptance of a declaration or bill of rights was further encouraged by changes at the top.

147 WAF 103/416/02 Secret and Personal Williamson to Grey 1 August 1956 enclosing WAF 103/416/02 Confidential Religious Freedom in Nigeria, Deputation from the International Department of the British Council of Churches 16 July 1956 including attachment Memorandum by the British Council of Churches, Religious Freedom in Nigeria, NA CO 554/1184.

148 Briefs for the Secretary of State for the Colonies: Nigeria Constitutional Conference 1957, Brief No. 14 WAF 103/416/02 Provisions for safeguarding religious freedom and declaration of fundamental rights 1 April 1957, 173–178 (Speech by Queen Elizabeth II on 3 March 1956 in reply to welcome address by the Prime Minister of the Northern Region), NA CO 879/164.

149 Grey to Williamson 6 March 1956, Smith to Williamson 8 March 1956, Williamson to Watt and Gorell Barnes 15 March 1956, NA CO 554/1184 and Watt 13 December 1956 and Williamson to Bennett 14 December 1956, NA CO 554/828.

Lennox-Boyd had now replaced the more dogmatic Lyttleton as Colonial Secretary and Robertson, who as Civil Secretary had participated in the Sudan constitutional process, had replaced Macpherson as Governor. Both were rather more sympathetic than their predecessors to the idea of fundamental rights.[150] There was also the straw in the wind that Balewa, having now studied the Indian precedent, was also more sympathetic.[151] The Colonial Secretary's conference brief, whose title clearly pointed to the priority placed on 'safeguarding religious freedom', therefore emphasised that the position had 'changed since 1953, and indeed it will now be to the United Kingdom's advantage to have the matter sympathetically discussed … This is because there is now reason for concern about the future of religious freedom in parts of Nigeria'. It was hoped that the matter would be taken up by the Nigerian delegates, but, if not, it proposed, astonishingly, that the UK should take the initiative.[152]

Discussion at the 1957 London Conference on fundamental rights was led, again, by two memoranda submitted by the Action Group, the first having been amended to take account of the views of the other major parties, although memoranda were also submitted by some of the minor delegations. The outcome was unanimous support for the inclusion of fundamental rights in the constitution but, as became apparent, the devil was likely to be in the detail. It was therefore agreed that 'the Secretary of State's legal advisers should first prepare, in the light of the memoranda submitted to the Conference and the discussion on them, draft clauses for insertion in the constitutional instruments. These clauses should be … considered at a resumed Conference.'[153]

However, almost as soon as the 1957 Conference had ended, the Northern Region began to have second thoughts. The Northern Region Executive Council therefore established a committee 'to consider whether any safeguards will be needed for Northern legislation and custom or practice in view of the proposal for incorporation of a declaration of human rights in the Nigerian constitution'. In carrying out its brief, the committee visited a number of Muslim countries to examine how they dealt with the interface between Muslim law and human

150 C.O.H. Parkinson, *Bills of Rights and Decolonization*, 139–147.

151 Robertson to Williamson 16 December 1955, NA CO 554/1184.

152 Briefs for the Secretary of State for the Colonies: Nigeria Constitutional Conference 1957, Brief No. 14 Provisions for safeguarding religious freedom and declaration of fundamental rights 1 April 1957, 173–178, NA CO 879/164.

153 African No. 1189 Confidential Proceedings of the Nigeria Constitutional Conference, London May – June 1957, Vol. I Minutes of Plenary Meetings, 20th Meeting 24 June 1957, 319–322 and Vol. II Conference Memoranda, 429–31 (N.C. (57) 87 20 June 1957 Fundamental Rights: Proposals by the Action Group delegation) and 554–57 (N.C. (57) 104 23 June 1957 Fundamental Rights: Revised Memorandum by the Action Group), NA CO 879/166–67 and HMSO Cmnd. 207, *Report by the Nigeria Constitutional Conference held in London in May and June, 1957*, 32.

rights. The Northern Region also drew Colonial Secretary Lennox-Boyd's attention to specific aspects of the Action Group's memoranda which went beyond their red lines: Firstly, while the Christian and polytheistic minorities feared oppression from the Muslim majority, the Muslims were equally fearful that over-exuberant religious observances by outsiders against the religious majority might lead to breaches of the peace. The implications of these concerns were tempered, though, by a Press Statement, following a meeting between the Northern Region Premier and Church leaders, which reiterated the Northern Region's support for religious toleration.[154] Secondly, the North made no apology for its discrimination against Southerners in respect of their right to buy land and employment in the Northern Region civil service. It was regarded as the means by which the North could protect itself against growing Southern encroachment and possible domination. In terms of the drafting of fundamental rights, the idea therefore began to be canvassed that such discrimination might be permitted for a period of some years, thereafter it would be reviewed for its continuing suitability. Finally, the North was worried that, for reasons of political advantage, Awolowo would seek to ban political parties based on religious, tribal or ethnic affiliations. As Muslims comprised more than one-third of the population of the Western Region, it was clear he had the opposition United Muslim Party (UMP) primarily in mind.[155]

While taking these concerns on board, the Colonial Office was nonetheless reluctant to begin drafting until it was able to ascertain what the Willink Commission had in mind. The Commission's terms of references had provided that it should 'ascertain the facts about the fears of minorities in any part of Nigeria and … propose means of allaying those fears'. It should then 'advise what safeguards

154 Press Release from Northern Regional Information Service Kaduna 6 November 1957 No. 2693 'Religious Tolerance' and Comments on Note and Supplementary Note on Fundamental Rights (Northern Region) attached to Bell to Eastwood 17 July 1958, NA CO 554/1534 and African No. 1188 Nigeria Constitutional and Political Correspondence 1955–1958, 123–124 (WAF 16/3/042 (No. 35) Grier to Emanuel 16 May 1958 with enclosures 'Interview with the Premier of the Northern Region at 1.00 P.M. on 5th November 1957 (Present included Bishop Mort and Sir Kenneth Grubb), NA CO 879/165.

155 The problem of 'safeguards' for the North in respect of forthcoming constitutional advance in Nigeria, attached to Sharwood-Smith to Williamson 14 May 1957 (note prepared as brief for Balewa), NA CO 554/1596, Personal, Nigeria: Note on Fundamental Rights presented to Nigeria Working Party and Note of a meeting held at 11.00 a.m. on Wednesday, 10th April, 1958, NA CO 554/1534, Northern Region No. 199, Governor, Northern Region to Secretary of State 2 September, 1958, NA CO 554/1535 and WAF 16/3/042 Brief No. 4 Fundamental Rights, African No. 1195 Secret and Personal, Resumed Nigeria Constitutional Conference, September–October, 1958, 57–67, Briefs for the Secretary of State September 1958, NA CO 879/176.

should be included for this purpose in the Constitution of Nigeria'. Only 'as a last resort' should it 'make detailed recommendations for the creation of one or more new States'. The Colonial Office was therefore eager to identify what safeguards would be recommended and how they might relate to the envisaged fundamental rights.[156]

The Willink Commission took evidence in Nigeria over several months from November 1957. What emerges from its final report and the forty-one files in the UK National Archives is the vast volume of petitions and interviews describing religious or ethnic discrimination and, as a solution, calling for the creation of new regions. One of the more damning analyses of how this situation had come about was the Western Region government's memorandum. It suggested that 'one of the greatest fears of minorities in Nigeria is democracy as practiced, in that instead of being a safeguard against domination, it has proved itself to be the greatest engine of domination'. The report therefore acknowledged that in many cases minority fears were justified and that 'almost all the witnesses … were insistent that nothing but a separate state could meet their problems'. Yet ultimately it came down against new regions. It dismissed the idea of 'separation as a remedy for their troubles' and suggested instead that 'unity might have the same effect'. This clearly went against the evidence but accorded with political realities. All three Regions were opposed to a reduction in their territory and, moreover, the creation of new regions would delay independence. The lie of the land was also explained to Willink by Prime Minister Balewa who in a private interview firmly advised that: 'I am all against additional Regions; none of those proposed is satisfactory … It seems to me wrong that when Britain has done so much to create Nigeria … she should, just before giving us independence, cut the country into little bits.' In such circumstances, the report only felt able to propose the creation of Special or Minority Areas within the existing Regions.

The remaining question was therefore what safeguards the Commission would recommend to allay the fears of minorities. Its report noted that they had found almost no interest in fundamental rights as a solution to minority fears, with the exception that 'one group asked only for provision in the Constitution guaranteeing certain fundamental rights. These were the Christian bodies'; although 'other witnesses … would welcome such provisions … but were afraid that they would not be sufficient'. Among the Christian bodies presenting evidence to the Commission were the United Middle Belt Congress, the Hausa Christians and the Kwararrafa Congress, all based in the Northern Region; but there were also private privileged access meetings with the Christian Council of Nigeria and the International Committee of the World Council of Churches who expressed their unease with the Northern Region's attitude towards Christian groups and pressed for a clause providing for religious freedom. Rather

156 HMSO Cmnd. 505, *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them* (London, 1958), 1–2.

inconveniently, then, a paper from the Catholic Church in the Northern Region noted that: 'Never before … in this Region have they had from any Government such cooperation and mutual understanding as today.'

In fact, the Commission was not fully justified in asserting that the Christian bodies were the only witnesses to press for fundamental rights. Several memoranda were put forward by less important groups such as the UMP which proposed not only freedom of religion but detailed provisions for fundamental rights. Another submission, put forward by the NCNC Ijesha Division, advocated a Yoruba Central State to be carved out of the Western Region. Its submission opened: 'We hold that it is the principle of Democracy that all men are created equal and are endowed with certain unalienable rights among which are freedom of speech, of thought and religion, and freedom from fear and from want.'

Astonishingly, then, despite claiming that it had not been pressed for fundamental rights, the Commission recommended their inclusion as a measure that would assist in allaying the fears of minorities.[157] As Amachree therefore points

157 HMSO Cmnd. 505, *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them* (London, 1958), 1–2, 88, 94–97, Willink Commission, Minutes of meetings and evidence, NA CO 957/1–41; specifically, Minutes of a Meeting with Sir Kenneth Grubb at the Deputy Governor-General's Lodge on 24th November, 1957, NA CO 957/1, Counsel for the Action Group, Minutes of the Proceedings of the Minorities Commission sitting at Benin City on 10–18 December 1957, NA CO 957/2, The Commission of Enquiry into minority problems in Nigeria: A Memorandum on minority problems in the Western Region 4 December 1957, Chairman's meeting with Prime Minister 26 November 1957 and Note of a Meeting held at 6.30 p.m. at the House of Representatives, Lagos, on Thursday, 31st January 1958, with a delegation from the Christian Council of Nigeria and The Catholic Church In Nigeria, Declaration, Bell, Catholic Education Adviser, Northern Region, NA CO 957/6, The Constitution of the United Middle Belt Congress, NA CO 957/12, R.J. Hilton (Willink Commission Secretary), NA CO 957/21, NCMC, Ijesha Division, Minorities Enquiry Committee: Evidence, NA CO 957/23, United Muslim Party, Memorandum to the Minorities Commission appointed to examine the problem of Minorities in Nigeria and Human Rights in Nigeria and United Muslim Party, Proposals on Fundamental Rights of citizens of Nigeria and on matters relating to minorities in a self-governing and independent Nigeria, NA CO 957/29, 'Fears of Minorities', Kwararrafa Congress, Northern Region to Mr Commissioner and Members of the Commission 13 October 1957, NA CO 957/31, In the Minorities Commission, Memorandum signed by Yusufu/Tshaku/Samaila on behalf of Hausa and other indigenous Northern Christians, NA CO 957/39 and Pamphlet, *Problems of Nigerian Minorities (Being Independent Commentary on the Proceedings of Sir Henry Willink Commission of Enquiry into the Fears of Nigerian Minorities and on the General Set-up of Nigerian Politics)* (Undated, possibly 1958, Lagos); see also H.D. Danmole, 'Islam and Party Politics in Lagos: A Study of the United Muslim Party 1953–1966',

out: 'The minorities wanted new states. They got instead what they did not request – fundamental rights.'[158] Awolowo, too, made the obvious point: 'What intrinsic and inseparable nexus is there between the fears of the minorities and fundamental human rights? None whatsoever.'[159]

When Willink returned to the UK to write up his report, he met with Eastwood, head of the Colonial Office's West African section. Willink wanted to establish whether his terms of reference allowed for a recommendation in favour of clauses providing for fundamental rights and, if so, whether the Colonial Office had begun to prepare the draft commissioned by the 1957 conference. On his side, Eastwood wanted to know if Willink was intending, as he hoped, to recommend the inclusion of fundamental rights. On learning that this was precisely what Willink had in mind, Eastwood finally began preparation of a draft chapter of fundamental rights.[160]

The draft was prepared by an ad hoc Nigeria Working Group without the initial assistance of lawyers, as Parkinson points out, on a cut-and-paste basis incorporating elements taken from several recent Commonwealth independence constitutions, such as Ceylon, India, Malaya, Pakistan and Sudan, but was mainly based on the ECHR as adapted to Nigerian circumstances. A draft was then sent to Willink who, with only minor amendments and, discourteously, without notice of his intention, incorporated it into his report which was published in August 1958.[161]

One of Willink's more ill-advised additions to the draft was a commentary accompanying the provision for the 'rights to religion' which, in its elaboration of the scope that he envisaged the clause should protect, went much further than the Colonial Office had intended and the North was likely to find acceptable. It was made worse by the insensitive explanation that it reflected 'the provisions suggested to us by the Christian bodies whom we heard'. The Colonial Office was therefore compelled to exclude his commentary and refine the clause in the draft it would put forward to the resumed conference. However, Willink's purloining of the draft had also placed the Colonial Office in an embarrassing position as it was now unable to claim credit for the draft

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Journal of Institute of Muslim Minority Affairs, 11/2 (1990), 334–346 for background on UMP.

158 G.K.J. Amachree, 'Fundamental Rights in Nigeria', *Howard Law Journal,* 11/2 (1965), 475.

159 Awolowo, *Daily Service,* 19 August 1958, quoted by C.O.H. Parkinson, *Bills of Rights and Decolonization*, 161.

160 Eastwood 13 March 1958, NA CO 554/1534.

161 HMSO Cmnd. 505, *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them*, 97–103, Eastwood to Grey 3 July 1958, NA CO 554/1534 and C.O.H. Parkinson, *Bills of Rights and Decolonization*, 152–155.

lest it be accused of collusion.[162] It therefore depicted its draft as an attempt to follow Willink's recommendation, a commendation which it hoped would add credibility to the draft.[163]

The Willink Commission's report was, of course, one of the key issues for the 1958 resumed conference. While there was a lingering unease among some delegates at its failure to recommend the creation of new regions, the conference as a whole was easily persuaded as to the course it should take by Colonial Secretary Lennox-Boyd. He reiterated that the creation of new regions was incompatible with the goal of independence in 1960.[164] There was also the strong reaction of the Sardauna of Sokoto who asserted his absolute objection to either the creation of new regions or a provision allowing for their later creation: he had 'not become the First Premier of the Northern Region to preside over its disruption'.[165]

With this decision made, the path was now clear for consideration of the date for independence. It was apparent though that Nigerian impatience with British reluctance to name the day was coming to a head. The problem for Colonial Secretary Lennox-Boyd, as he explained to the Cabinet, was that: 'It is clear that there are great and probably irreconcilable differences between the major groups and peoples. If the West continues to provoke the North … the threat of an ultimate break-away by the North may become real.' To which a Colonial Office official added: 'The problem, in a nutshell, is how to save Nigeria from herself, without losing her goodwill.' In the final analysis, though, the British government recognised that irrespective of the risks they envisaged an independent Nigeria would face, if the UK wished to maintain good relations with Nigeria after independence, a date had to be announced. Although 2 April 1960 still retained its domestic appeal, Prime Minister Balewa had given private assurances that an autumn date would be acceptable.[166] Colonial Secretary

162 HMSO Cmnd. 505, *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them*, 102–103, Grey to Emanuel 11 August 1958, Barder to Emanuel 12 August 1958 and Emanuel to Grey 14 August 1958, NA CO 554/1534 and Eastwood to Macpherson 27 August 1958, NA CO 554/1535.

163 WAF 16/3/042 No. 2291 Lennox-Boyd to Governor-General, Nigeria and Governors of the three regions, 4 September 1958, NA CO 554/1535.

164 African No. 1194 Confidential, Proceedings of the Resumed Nigeria Constitutional Conference, London September–October, 1958 Vol. I Minutes of Plenary Meetings, 12th Meeting, 167.

165 *Daily Service,* 17 October 1958, 1. The reference is to Prime Minister Churchill's speech at the Lord Mayor's Luncheon, Mansion House, London, 10 November 1942 'The End of the Beginning': 'I have not become the King's First Minister in order to preside over the liquidation of the British Empire' (see https//biblio.org/pha/policy/1942/421110b.html, last accessed 23 March 2023).

166 Nigeria, Note by the Secretary of State for the Colonies 20 October 1958, NA CAB

Lennox-Boyd therefore bowed to the inevitable and advised that if, in early 1960, the newly elected Federal Parliament asked for independence, the British government would agree with a proposed date of 1 October 1960.[167]

The conference then turned to fundamental rights. In addition to the draft from Colonial Secretary Lennox-Boyd, the conference also had before it a further memorandum put forward by Awolowo commenting on the UK draft and proposing further rights. Memoranda were also received from several other interested parties, notably the UMP, anxious at the threat of Awolowo's ban against religious parties, and the United Middle Belt Congress, concerned to protect religious freedom.[168]

Discussion was brisk as by now all sides were committed to the principle and aware of the Northern Region's red lines. The clause on 'Freedom from discriminatory legislation', for example, excluded regional land policy and the regional civil service but with the qualification that this exclusion would be reviewed after ten years and thereafter every five years if continued. It was accepted with little opposition as even the Western Region felt that its own electorate supported discrimination in these respects. The only amendment was that the review would be undertaken by the regional not the Federal government, in effect strengthening the possibility for continuance of the discrimination, though the review period was reduced to five years. The clauses providing for freedom of religion also presented few problems once the Northern Region amendment on propagation was accepted, however, the right to marry was taken out as the Northern Region objected that it conflicted with existing Muslim law.[169]

129/95/13; see also Williamson to Gorell Barnes 5 April 1957, NA CO 554/1583 and Allen, C(58)213-Nigeria, 21 October 1958, NA DO 177/84.

167 Nigeria, Note to Prime Minister 21 October 1958, NA PREM 11/2436, CC(58)76th Conclusion, Extract from Cabinet Conclusions 22 October 1958, NA CO 554/1548 and HMSO Cmnd. 569, *Report by the Resumed Nigeria Constitutional Conference held in London in September and October, 1958* (London, 1958), 37–38.

168 African No. 1194 Confidential, Proceedings of the Resumed Nigeria Constitutional Conference, London September–October, 1958 Vol. II Conference Memoranda, 36–46 (N.C. (58) 9 29 September 1958 Fundamental Rights: Copy of the Secretary of State's despatch), 47–53 (N.C. (58) 10 29 September 1958 Self-government of the Northern Region, copy of Northern Region Sessional paper), 88–97 (N.C. (58) 18 30 September 1958 Fundamental Rights: Memorandum by the Action Group delegation), 173–174 (N.C. (58) 42 30 September 1958 Memorandum by the Northern Peoples' Congress Delegation) and 283–286 (N.C. (58) 74 6 October 1958 (Memorandum on Constitutional Reform 1957 by the United Middle Belt Congress), NA CO 879/174; see also Governor-General to Secretary of State for the Colonies No. 1694 23 September 1958 enclosing United Muslim Party Memorandum on Chief Obafemi Awolowo's threat to legislate against Political Parties based on Islamic Religion, NA CO 554/1609.

169 African No. 1194 Confidential, Proceedings of the Resumed Nigeria Constitutional

One of the few outstanding points of dispute was the issue of a common electoral system, in particular universal adult suffrage, which the Action Group saw as one of its own red lines. As a Colonial Office daily commentary on the conference therefore explained 'votes for girls was moved by Awo'.[170] While, in private, Prime Minister Balewa may not have been opposed to universal suffrage, his leading chiefs most certainly were and therefore the Northern Region was adamant about its position. As for Azikiwe, he gave the Action Group only lukewarm support as he was more concerned not to antagonise the Northern Region. The Willink Commission, though it had received evidence to the contrary from women's groups in the Northern Region, had been equally disinclined to meddle: 'It is unlikely, we believe, that the desire for the vote is widespread among women, since it is a comparatively new idea for men in the Northern Region.' Nor was the Colonial Secretary inclined to intervene, his conference brief having advised that he should avoid irritating the Northern Region on this point.[171]

As for the procedure for an amendment to reserved provisions, which included fundamental rights, unlike Ghana, negotiations were relatively straightforward in that all parties accepted the need for revisions to carry widespread support. It was therefore agreed that amendments had to obtain the approval of a two-thirds majority in both Federal Houses and the concurrence by simple majority in the legislative houses of at least two of the three Regions.[172]

As a final point, Awolowo requested, with the support of the other parties, that the chapter of fundamental rights should be incorporated into the constitution in sufficient time for the run up to the 1959 elections, and this was accepted by Colonial Secretary Lennox-Boyd. For genuine reasons, though, the drafting process was delayed as the Colonial Office was overrun by legal work at this time, prompting the Western Region government to complain bitterly about the priority it had been accorded; all the more so as Colonial Secretary Lennox-Boyd had unwisely promised completion by July 1959 in response to earlier complaints. As

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Conference, London September–October, 1958 Vol. I Minutes of Plenary Meetings, 2nd Meeting, 32–41, 3rd Meeting, 46–54, 27th Meeting, 439–452, 28th Meeting, 457–458, 29th Meeting, 472–482, NA CO 879/173.

170 Gardner-Browne to Grey Pers. 185 17 October 1958, NA FCO 141/13490.

171 African No. 1195 Secret and Personal, Resumed Nigeria Constitutional Conference, September-October, 1958, Briefs for the Secretary of State, NA CO 879/176, 111–116 WAF.189/3/03 Brief No. 10 Electoral system in Nigeria, 111–116 September 1958 and HMSO Cmnd. 505, *Nigeria: Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them*, 59.

172 African No. 1195 Secret and Personal, Resumed Nigeria Constitutional Conference, September–October, 1958, Briefs for the Secretary of State, NA CO 879/176, 61–76 WAF.16/3/050, Brief No. 7 Amendments of the Nigerian Constitution after independence and African No. 1194 Confidential, Proceedings of the Resumed Nigeria Constitutional Conference, London September–October, 1958 Vol. I Minutes of Plenary Meetings, 29th meeting, 472, NA CO 879/173.

a Colonial Office minute noted: 'It is the belief of several people, not only of the Action Group, that the … fundamental rights provisions will enable election campaigns to be fought with greater assurance of freedom from persecution.'[173] In the end, the fundamental rights provisions were finally adopted by an Order in Council in October 1959 barely in time for the December 1959 elections.[174]

It is not clear whether early adoption of fundamental rights proved helpful for the Action Group and the NCNC in their electoral campaigns in the Northern Region. The Action Group won 17 per cent of the vote and twenty-five seats, making it the second-largest party in the Northern Region after the NPC, whereas the NCNC, though it gained a similar share of the vote, won only eight seats through its Northern Elements Progressive Union (NEPU) affiliate. Nonetheless, the NPC was still the largest party in the House of Representatives albeit with fewer seats, 134/142 (depending on the loyalties of 'independent' candidates) out of 312. In theory, this gave the South an opportunity to outflank the North, but, as a result of deep enmities, the NCNC and the Action Group were unable to agree on a coalition that would carry a majority. The NPC therefore joined with the NCNC with Balewa continuing as Prime Minister. As part of that deal, Azikiwe was to become Speaker of the Upper House and, on Governor-General Macpherson's retirement, the first Nigerian Governor-General.[175]

Almost the first act of both Houses of the Federal legislature in January 1960 was a resolution requesting the British government to provide for the independence of the Federation of Nigeria on 1 October 1960.[176] The last step was the Con-

173 Nigeria (Western Region) Despatch No. 44 20 February 1959 Governor, Western Region to Lennox-Boyd, NA CO 554/1535 and WAF. 16/3/042 Federation of Nigeria No. 1434 Lennox-Boyd to Governor-General Robertson 15 July 1959, Nigeria (Western Region) Despatch No. 212 14 August 1959 and Emanuel to Roberts-Wray 31 July 1959, NA CO 554/1536.

174 Nigeria (Constitution) (Amendment No. 3) Order in Council 1959, 23 October 1959.

175 *Daily Service Federal Election Supplement,* 12 December 1959, 1, Robertson to Eastwood 16 December 1959, Robertson to Macleod 20 December 1959 and 21 December 1959, NA CO 554/2123, Memorandum by the Secretary of State for the Colonies, C (60) 25 15 February 1960, NA CAB 129/100/25, Office of the High Commissioner for the United Kingdom, Lagos to Sandys, Secretary of State for Commonwealth Relations 21 November 1960, NA FCO 141/17904 and K. Ezera, *Constitutional Developments in Nigeria*, 240–244.

176 Federation of Nigeria, 14 January 1960, Nigeria, House of Representatives Debates Official Report Session 1960–61 11–22 January 1960, 27–64 and Nigeria, Debates of the Senate Official Report 1/3 25 January 1960, 9–40 (reference from O.I. Odumoso, *The Nigerian Constitution: History and Development*, 122, 132); see also Memorandum by the Secretary of State for the Colonies, C (60) 25 15 February 1960, NA CAB 129/100/25.

stitutional Conference in May 1960 to settle remaining issues after which Nigeria became independent, as had been agreed, on 1 October 1960.[177]

While there is little doubt that the Action Group pushed for fundamental rights, the question may nonetheless be asked as to why the Colonial Office Nigeria Working Group that prepared the first draft opted for an enumeration of rights rather than a declaration along the lines of the Sudan Self-Government Order. One possible answer is that they followed the conference's instruction to take the lead from the Action Group's memorandum. However, the comments of some Colonial Office officials suggest other factors may have come into play. For example, one official bemoaned the consequences of such a rigid constitution for the Nigerians 'aided and abetted' by the Colonial Office 'because they all think that Ghana is going to the bad'. Another recorded that the overbearing restrictions desired by the conference reflected the fact that 'most of the Nigerians there present are frightened that other Nigerians also there present will take strong action against them after independence'. In contrast, another minute argued that '(as the case of Ghana has shown) we need attach I fear very little value to any pledges to the contrary given by present political leaders or enshrined in any written constitution'.[178]

Three years after independence, Nigeria sought finally to 'free' itself from its remaining colonial chains by adopting a republican constitution. To emphasise Nigeria's 'free' status, the 1963 constitution was adopted by a declaration of the Nigerian Parliament giving the constitution 'to ourselves' rather than by an act sanctioned by the UK Parliament. Only limited changes were made to the 'Fundamental Rights' chapter of the 1960 constitution, but in the face of strong opposition from the Nigerian Bar Association, the NCNC rank-and-file and the press, the attempt to import a Ghanaian-style Preventive Detention Act was beaten back.[179]

The postscript to Nigerian independence confirmed the enduring force of regionalism and the fragile support for fundamental rights when set against the struggle for political power. As the Colonial Office had feared, ethnic and religious tensions did not wither away with independence and the 'unity' on which Willink had placed such hopes proved illusory. Over the next few years, therefore, crisis succeeded upon crisis, prompted to a great extent by internecine

177 African No. 1200A Proceedings of the Nigeria Constitutional Discussions, London, 10th–19th May 1960, NA CO 879/186, HMSO Cmnd. 1063, *Nigeria Constitutional Discussions, May 1960 held in London* (London, 1960), Nigeria Independence Act 29 July 1960 and Nigeria (Constitution) Order in Council, 1960 16 September 1960.

178 Snelling, Nigerian Constitutional discussions: Fundamental Rights 1 October 1958, NA DO 35/10447 and Laithwaite 12 August 1958 and Snelling 21 October 1958, NA DO 177/84.

179 Federation of Nigeria, *Proposals for the Constitution of the Federal Republic of Nigeria Sessional Paper No. 3 of 1963* (Lagos, 1963) and K. Ezera, *Constitutional Developments in Nigeria*, 284–291.

conflict within the Action Group ruling party in the Western Region. It led to the creation of a fourth region, the Mid-West region, carved out of the Western Region, the trial and imprisonment of Awolowo and other Action Group leaders on charges of treason, the falsification on all sides of the 1963 census so as to obtain a larger proportion of seats in the House of Representatives and a dubious outcome to the chaotic 1964 elections.[180] Finally, in January 1966, the military stepped in, murdering the Sardauna of Sokoto and Prime Minister Balewa in the process. After a second military (counter) coup, the National Assembly formally accepted that Parliament was unable to maintain law and order and that it was therefore legally acceptable and necessary for the military to step in. When, thereafter, it proved impossible to reach a negotiated political settlement of the regional question, in May 1967 the Eastern Region seceded as the Republic of Biafra.

Following the military take-over, Decree No. 1, 1966 suspended the Parliament and Executive of the Federal and Regional governments though it retained the Fundamental Rights section of the 1963 constitution. Yet, at the same time, the Federal Military Government was authorised to make laws conducive to 'peace, order and good government' defined in the widest terms. Moreover, the 1966 State Security (Detention of Persons) Decree not only derogated application of fundamental rights with respect to its operations but also denied the courts jurisdiction over any application to set aside acts made pursuant to this decree; in 1966 alone, there would be fifty-eight detentions. It was also provided that a military decree took precedence over the constitution. As further protection, in 1970 the Federal Military Government passed the Federal Military Government (Supremacy and Enforcement of Powers) Decree reiterating its absolute law-making authority and rendering invalid any court of law decision that sought to invalidate a decree issued by the Federal Military Government. Despite Nigeria's long-standing tradition of the rule of law, the courts would largely accept military authority and these decrees with few challenges.

By 1975, it was clear that General Gowon, the military head of state, was reneging on his promise to return Nigeria to civilian rule by 1976, the excuse being Nigeria's 'political immaturity' – in essence, the assessment reached by the Colonial Office many years earlier. He was therefore shortly thereafter overthrown by General Muhammed who moved to reiterate the commitment to a return to civilian rule and to that end set up a Drafting Committee to draft a new constitution. In its guidance terms of reference, the committee was advised that: 'We are committed to a Federal system of Government; and a free democratic and lawful system of Government which guarantees fundamental human rights.' Its report led to the formation of a constituent assembly

180 D.G. Anglin, 'Brinkmanship in Nigeria: The Federal Elections of 1964–65', *International Journal,* 20/2 (1965), 173–188.

in 1976 and on completion of the assembly's deliberations in 1978 the lifting of a ban on political parties and elections in 1979. Significantly, the 1979 constitution that emerged from this process followed its predecessors by including an extensive chapter on fundamental rights.[181]

As Nigeria was supposedly on the path to re-establishing civilian rule, the country would provide strong support for Decision 115 at the 1979 Monrovia AHSG and, thereafter, throughout the whole ACHPR process. However, the fragility of its commitment to human rights was apparent yet again when, in 1983, a few months after Nigeria had ratified the ACHPR, the military moved in again.

Central Africa

In Central Africa the debate over a Bill of Rights first emerged in the context of a formal review of the 1953 constitution of the Federation of Rhodesia and Nyasaland.[182] The Federation comprised the Protectorates of Northern Rhodesia and Nyasaland and the self-governing colony of Southern Rhodesia (Zimbabwe). While each of these territories had retained their individual juridical status, responsibility for certain matters such as external affairs, defence, immigration, financial and economic affairs, inter-territorial roads and railways and communications had been assigned to the Federation. In a token effort to protect African interests, the Federation also provided for an African Affairs Board comprising three European members and one African member from each of the three territories. Its primary task was to make representations to the Federal government on matters of interest to Africans and report on discriminatory aspects in any legislation which would thereupon be reserved for approval by the British government.

181 Federal Government Printer, *An Address by the Head of the Federal Military Government, Commander-in-Chief of the Armed Forces at the Inaugural Session of the Nigerian Constitutional Drafting Committee on Saturday 18th October, 1975* (Lagos, 1975), 6 and Federal Ministry of Information, *Report of the Constitution Drafting Committee containing the Draft Constitution Vols 1 and 2* (Lagos, 1976), D.O. Aihe, 'Fundamental Human Rights and the Military Regime in Nigeria: What Did the Courts Say?', *Journal of African Law,* 15/2 (1971), 214–215, 223 and W.C.S. Phillips, 'Nigeria's New Political Institutions, 1975–9', *Journal of Modern African Studies,* 18/1 (1980), 1–22; see also E.M. Joye/K. Igweike, *Introduction to the 1979 Nigerian Constitution* (London, 1982), W.I. Ofonagoro/A. Ojo/A. Jinadu (eds), *The Great Debate: Nigerian Viewpoints on the Draft Constitution, 1976/1977* (Lagos, 1977) and Nigerian Bar Association, Human Rights Committee, Pius J.O. Anigboro (ed.), *Workshop on Fundamental Rights Provisions of the Constitution of the Federal Republic of Nigeria, 1972: Proceedings at the National Arts Theatre, Iganmu, Lagos 3rd–5th February, 1982* (Lagos, 1982).

182 The Federation of Rhodesia and Nyasaland Act 14 July 1953 and The Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953, 1 August 1953.

The Federation's structure had been a compromise half-way house to full amalgamation. However, in the hope that full amalgamation might be pushed through, Article 99 of the 1953 Constitution provided for an appraisal of the political structure: 'Not less than seven nor more than nine years from the date of the coming into force of this Constitution, there shall be convened a Conference … for the purpose of reviewing this Constitution.' In 1959, therefore, to prepare the ground for this Conference, Prime Minister Macmillan appointed an Advisory Commission, the Monckton Commission. Its terms of reference provided that it should: 'In the light of the information provided by the Committee of Officials and of any additional information the Commission may require … advise … on the constitutional programme and framework best suited to the achievements of the objects in the constitution of 1953, including the Preamble.' Only five of its twenty-three members were African.[183]

The submission by the Committee of Officials, Federal, territorial and Colonial Office, was drawn up following extensive Preparatory Meetings. Although expressed in neutral terms and claiming not to endorse any suggestions or to have taken political implications into account, it was simply 'an objective survey', it nevertheless put forward pointed observations as to 'fresh or alternative safeguards … which might be incorporated in the Constitution'. In particular, it advised that the African Affairs Board did not enjoy the confidence of the African majority and that safeguards should be extended to the whole community and that they should also reflect the implications arising out of constitutional advance; code for the need to provide safeguards for the white settler community ahead of independence. It therefore gave special prominence to a Bill of Rights and a Council of State to review prospective legislation for unfair discrimination. In due course, the Monckton Commission's report on 'safeguards' would draw heavily on this 'objective survey'.[184]

The Monckton Commission would take on board an enormous volume of evidence, recorded in five volumes of more than 1,200 pages – original submissions and records are also kept in eleven extensive files in the UK National Archives.[185] Its report also noted that further evidence had not been published at the request

183 HMSO Cmnd. 1148, *Report of the Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland* (London, 1960), 6; Viscount Monckton was a former Conservative Minister and at the time Chairman of the Midland Bank (now the UK arm of HSBC).

184 Article 99, Review of the Constitution of the Federation of Rhodesia and Nyasaland, Minutes of Meetings, NA CAB 133/274, Papers, NA CAB 133/275 and Minutes and Papers, NA CAB 133/276 and HMSO Cmnd. 1150, *Report – Appendix VII Possible Constitutional Changes (Report by Committee of Officials)* (London, 1960), 4, 7–17.

185 HMSO Cmnd. 1151, *Report – Appendix VIII Evidence Vols I–V* (London, 1960) and Monkton Commission files, NA CO 960/33–43.

of witnesses because they had been intimidated and feared reprisals, and that but for the boycott by the United National Independence Party (UNIP), led by Kaunda, and the African National Congress party (NRANC), led by Nkumbula, in Northern Rhodesia and by the Malawi Congress Party (MCP), led by Banda, in Nyasaland, more evidence would have been submitted. The Commission's objectivity is best grasped by its description of the African parties boycotting the Commission as 'some of the extreme African nationalist parties'.[186]

The main reason for the boycott was that the Monckton Commission's terms of reference did not allow for recommendations on the future of the Federation as a whole. However, opposition in Northern Rhodesia and Nyasaland was so overwhelming and so central to the evidence presented by Africans that the Commission felt obliged not only to report this fact but to make appropriate recommendations. In essence, it argued that 'the continued association of the three territories is of vital importance to their inhabitants' and it was therefore essential 'to secure the greatest possible measure of support for a new form of federal association'. This new form, it thought, should specifically provide for legal recognition of the right to secession as it might have a 'very favourable effect and might be decisive in securing a fair trial for the new association'.[187]

As a result of the boycott, the evidence was greatly one-sided in favour of the white settlers except as regards Southern Rhodesia where the balance was overwhelming. Nonetheless, the evidence barely evinced enthusiasm for a Bill of Rights or safeguards. With the exception of Senior Chief Chikwanda (Northern Rhodesia), who supported a Bill of Rights as an end in itself, only a few African submissions proposed some form of minority safeguard. Even so, that was purely on the basis that, as the African Affairs Board was a failure, and (regrettably) the Federation would most likely persist, some protection was needed. The main body of submissions proposing safeguards or a Bill of Rights came from groups representing the Asian or white settler communities (and the Eurafrican Society representing 'the interests of people of mixed descent'), though invariably with the proviso that they placed little faith in safeguards. For example, the Settlers' and Residents' Association of Nyasaland observed that: 'On occasions it has been stated that, in the event of African self-government being granted, minority interests would be safeguarded. Such assurances are of no value. The fact that it is considered to be necessary to safeguard minority interests indicates misgivings about the stability of a future African Government.' Similar doubts were expressed by Polley, MP, Southern Rhodesia. The main exception was the supposedly multi-racial Capricorn African Society, which supported a

186 HMSO Cmnd. 1148, *Report of the Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland*, 6–11.

187 HMSO Cmnd. 1148, *Report of the Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland*, 98–105 and HMSO Cmnd. 1149, *Appendix VI Survey of Developments since 1953* (London, 1960).

Bill of Rights as a measure promoting 'goodwill' or for 'recovering goodwill of those who at present desire the dissolution of Federation', although the draft Bill of Rights they put forward seemed to contain rather more sentiments of goodwill than any actual rights.

It is also noticeable that, having first visited Northern Rhodesia and received some expressions of interest in a Bill of Rights from the white settler community, many of the subsequent comments on 'safeguards' taken in evidence in Nyasaland were initiated not so much by witnesses but by leading questions posed by Commission members. Only one witness referred to the African struggle for independence and freedom as inspired by the 'Charter of Human Rights'; while another witness, with a less-than-perfect recollection of the text, referred to the Atlantic Charter.

As background, then, to its recommendation on safeguards, the Monckton Commission Report explained that: 'Africans do not trust the legislatures of the present; Europeans have great doubts about the legislatures of the future. Many … witnesses who appeared before us insisted that … new or more effective safeguards should be provided and fundamental human rights guaranteed.' It therefore recommended that a Bill of Rights, 'drawn up in accordance with the traditions of the English-speaking world and the current practice of the multiracial Commonwealth', should be entrenched in the constitution in such a way as to be binding on both the Federation and the individual territories. It also took up the Commission of Officials' suggestion that a Council of State might be set up to scrutinise proposed legislation for unfair discrimination.

In contrast, the Minority Report by Chirwa and Habanyama, two African members, opposed the continuation of Federation, which had been imposed in disregard of African opinion. They argued that no change in its structure was likely to bring about a shift in African opinion. However, they agreed on the 'utmost importance' of a Bill of Rights but only because of the disastrous state of affairs inherent in the continued imposition of Federation. A Bill of Rights would therefore 'help to reassure Europeans and Asians who find themselves outnumbered by Africans in all three Territories. We consider also that irrespective of race there is an urgent need for the ordinary citizen to have some protection against the alarming growth of repressive legislation and police powers which have taken place in the Federation since 1953.' This last point was indicative of several African submissions which drew attention to the colonial government's repression and the absence of freedom of speech and drew a comparison with Nazi Germany and Hungary.[188]

188 HMSO Cmnd. 1148, *Report of the Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland*, 8, 16–22 79–89, 139–156 and Cmnd. 1151, *Appendix VIII* Vol. I Evidence Northern Rhodesia, Introduction, 83, Vol. II Evidence Northern Rhodesia, 30–31, 182, 244, Vol. III Evidence Nyasaland, 98, Vol. IV Evidence Southern Rhodesia, Vol. V Evidence Southern Rhodesia and

In the event, the acrimonious 1960 Review Conference survived for not much longer than it took delegates to endure the opening speeches. There could be no meeting of minds and it was also clear that Prime Minister Macmillan's 'Winds of Change' speech earlier that year had shifted the balance of power away from the white settlers towards independence.[189] After the sixth meeting a walk-out by the African delegates killed the conference. They returned but only because Colonial Secretary Macleod had threatened to suspend the impending Northern Rhodesia Constitutional Conference. Still, with little prospect of compromise, Colonial Secretary Macleod was forced to adjourn the conference. Although a Bill of Rights was never debated, some sense of how Africans understood equal rights was touched upon by Sithole (Southern Rhodesia) in his opening conference address:

> Now I turn to the concept of equal rights for all civilised men. This is one of the ideas our European politicians often used to give an appearance of racial equality, to cover an actual state of racial inequality … we have thousands of civilised Africans … who do not enjoy equal rights with other civilised men of Central Africa. The African now reads the actual historical meaning of equal rights … as equal rights for all Europeans, but not for Africans … The African therefore rejects outright the idea of equal rights for all civilised men … as a device of perpetuating white supremacy.[190]

Technically, the Review Conference was adjourned to an unspecified date in 1961 as it was recognised that no agreement was possible until the three Territories could be represented by governments elected under more representative constitutions.[191] However, after Banda's 1961 election victory in Nyasaland and Kaunda's election victory in the 1962 Northern Rhodesia election,

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United Kingdom (London, 1960), Palley, MP (undated) and Memorandum by Capricorn African Society, Central African Branch (undated), Appendix A: Draft Bill of Rights, NA CO 960/33, Southern Rhodesia Asian Organisation, Memorandum January 1960 and The Action Group, Memorandum, NA CO 960/34, Naik on behalf of Asian Group, Memorandum, NA CO 960/36 and Hammer to Morgan (on secondment to Monckton Commission) 4 July 1960, NA CO 1032/283.

189 H. Macmillan, *Pointing the Way, 1959–1961* (London, 1972), 124, 473–482 (Appendix 1: Address by Harold Macmillan to Members of both Houses of Parliament of the Union of South Africa, Cape Town, 3 February 1960); a reference to 'Winds of Change' had already been made by Prime Minister Macmillan on 10 January 1960 in Accra but had not been picked up. A further transcript of the speech is in NA DO 35/10572.

190 Rev. N. Sithole (Southern Rhodesia), Federation of Rhodesia and Nyasaland Constitutional Review Conference, N.R.C. (60) 6th Meeting 12th December 1960, 14, NA CAB 133/205.

191 Sandys, Secretary of State for Commonwealth Relations and Prime Minister Macmillan, Federation of Rhodesia and Nyasaland Constitutional Review Conference, N.R.C. (60) 11th Meeting 17th December 1960, 12–13, NA CAB 133/205.

two of the three Federation territories were governed by African parties totally opposed to Federation and accordingly all prospect of a resumption of the Review Conference disappeared.

In December 1962, First Secretary of State Butler therefore accepted the inevitable and conceded what had been tacitly recognised already for several months, Nyasaland's right to secede from the Federation, though he still hoped to hold the line at Northern Rhodesia.[192] His hopes were dashed, however, when, in March 1963, Prime Minister Kaunda insisted that Northern Rhodesia should also be entitled to secede. As a result, when the Review Conference reconvened in June 1963 it was merely to agree the method of the Federation's dissolution.[193] The focus had therefore to turn away from the Federation towards consideration of the constitutional advance of the individual territories.

Nyasaland was the poorest of the three territories. It was of significance only in that the terms of its political advance would set a precedent for the more significant territory of Northern Rhodesia. African political leadership in Nyasaland was in the hands of Banda who in 1958 was persuaded by popular clamour to return to Nyasaland from a self-imposed exile abroad of over thirty years. He immediately took charge of the Nyasaland African Congress (NAC) but, shortly thereafter, the increasing level of political agitation and civil disobedience stung the colonial government into declaring a state of emergency in which Banda and other senior NAC colleagues were arrested. The NAC was also banned though it would soon re-appear as the MCP. With both sides anxious to push ahead, following the visit in March 1960 by Colonial Secretary Macleod, it was agreed that a constitutional conference should be held later in 1960. As without Banda the conference would have little meaning, in April 1960 Banda was released from detention.

Although it was as yet a somewhat early stage of constitutional advance, a Colonial Office paper to the conference nevertheless proposed that discussion of the 'device of a Bill of Rights' might be considered appropriate. Keen to allay the suspicions and fears of both the colonial government and the Colonial Office as to their post-independence intentions, this proposal was also supported by the MCP's submission which suggested: 'That certain fundamental human rights be written into the revised constitution on the Nigerian model.' Responding, Colonial Secretary Macleod welcomed the MCP's suggestion but invited the conference to conclude that a Bill of Rights was not as yet appropriate at the present stage of Nyasaland's constitutional development. Taking its cue, the conference

192 Statement by First Secretary of State Butler, House of Commons 19 December 1962.

193 Northern Rhodesia Constitution, Letter handed to Sir Roy Welensky by High Commissioner on Sept. 9th, Alport to CRO 12 September 1961, NA DO 154/27, HMSO Cmnd. 2093, *Report of the Central Africa Conference, 1963* (London, 1963) and Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963 10 December 1963.

found little cause for disagreeing 'that in order to preserve fundamental human rights, provisions should be written into the revised constitution on the model of … the Nigerian constitution … while such a provision would not be appropriate to the next stage of constitutional advance … a study of the matter might usefully be started'.[194]

This conclusion should be seen in the context of the Devlin Commission of Inquiry report into the February/March 1959 disturbances and State of Emergency which had resulted in fifty-one deaths. The report described the fear of witnesses to provide testimony and noted: 'Nyasaland is … a police state, where it is not safe for anyone to express approval of the policies of the Congress party … and where it is unwise to express any but the most restrained criticisms of government policy.' Clearly, while it retained responsibility for government, the Colonial Office had no wish to be held to account by a Bill of Rights. It was, however, to be foisted on an independent Nyasaland.[195]

The next stage in Nyasaland's political advance, internal self-government, was to be negotiated at the 1962 Nyasaland Constitutional Conference. In the August 1961 election, the MCP had won all the lower roll seats and so was the sole African representative; the white settlers were represented by the United Federal Party (UFP) led by Blackwood. In advance of the conference, Banda, who was now in a strong bargaining position, met with First Secretary of State Butler and Governor Jones for an informal exchange of views. He warned that, notwithstanding the MCP's previous submission to the 1960 Constitutional Conference, he was not in favour of a Council of State 'but would be prepared to acquiesce in provision for a Bill of Rights though he was not particularly enamoured with the case for such a Bill … the only real safeguard for the minority communities was for them to win the confidence and friendship of

194 Nyasaland Constitutional Conference, N.C. (60) 10 29th July 1960, The Judiciary, Memorandum prepared by the Malawi Congress Party, 1, N.C. (60) 11 29 July 1960, Background Paper, Paper prepared by the Colonial Office for information of the Conference, Paragraph 23, N.C. (60) 14 2 August 1960, Local government; the position of Chiefs; the Civil Service; The Judiciary; Bill of Rights, Memorandum by the Secretary of State and N.C. (60) 12th Meeting 3 August 1960, 2–4, NA CAB 133/234 and HMSO Cmnd. 1132, *Report of the Nyasaland Constitutional Conference, Held in London in July and August, 1960* (London, 1960), 3, 8.

195 HMSO Cmnd. 814, *Report of the Nyasaland Commission of Inquiry*, 1, 3–4, P.C. Band/G.W.Kayira, 'The 1959 State of Emergency in Nyasaland: Process and political implications', *Society of Malawi Journal,* 65/2 (2012), 1–19 and C. Baker, *The State of Emergency: Crisis in Central Africa, Nyasaland 1959–1960* (London, 1997) and 'The Mechanics of Rebuttal: The British and Nyasaland Governments' Response to the Devlin Report 1959', *Society of Malawi Journal,* 60/2 (2007), 28–47; see also C. Baker, 'Dr. Banda's Arrest and Detention, 1959–1960', *Society of Malawi Journal,* 49/3 (1996), 1–14.

the Africans'.[196] This did not, however, deter First Secretary of State Butler from putting a paper before the conference recommending that it should consider both a Bill of Rights and a Council of State. Describing earlier experiences in Africa, and the general content of bills of rights, he proposed the Ugandan provisions as a precedent (they were based on the Nigerian precedent). His opening address also stressed that: 'It is also vital to do everything in our power to preserve the interests and the confidence of the minorities who make such a valuable contribution to the country and to its economy.' In a separate paper, the UFP also proposed a Council of State.[197]

Discussion opened with the UFP presenting its case for a Bill of Rights and a Council of State. In reply, Banda suggested that the UFP was suffering from a guilty conscience in that it was afraid of African retaliation. He compared the UFP's claims for protection against their failure when in power to accord Africans similar protection, much as Sithole had done at the 1960 Review Conference, though he added that he had no intention of retaliating or confiscating land. However, a 'Council of State would be nothing other than a "European Affairs Board"' and as the African Affairs Board had shown this had not worked and neither would a Council of State, 'he would not accept one'. In his view: 'The only guarantee for minority groups was the goodwill of the African majority.' His colleague Chirwa was even less enthusiastic. The MCP did not like a Bill of Rights, an independent and competent judiciary was sufficient. When discussion then moved on to the implications of a Bill of Rights on land claims by Africans and the white settlers, Chirwa also stressed that land transfers to white settlers had not always been properly authorised, while Banda made it clear that a Bill of Rights could not be allowed to impede the on-going conversion of private land into African Trust Lands.

In terms of the detail of a Bill of Rights, a Working Party agreed rather quickly on the basic outline based on the Uganda precedent. However, as the two sides still disagreed about a Council of State, First Secretary of State Butler proposed that, in the interim stage before independence, prospective Bills could be scru-

196 Note on the Second Meeting between the Secretary of State, the Governor of Nyasaland and Dr. Banda at the Secretary of State's house on Monday, 2nd July, 1962, NA DO 183/467.

197 Brief No. 2 Nyasaland Constitutional Conference, Proposals for a Self-Governing Constitution, Brief for the First Secretary of State, Central African Office, November 1962, NA DO 183/95 and Nyasaland Constitutional Conference, 1962, N.C.C. (62) 2 13 November 1962, Statement by the First Secretary of State, N.C.C. (62) 3 13 November 1962, Fundamental Rights and a Council of State, Memorandum by the First Secretary of State and N.C.C. (62) 8 19 November 1962, Suggestions for a Council of State, Memorandum by the United Federal Party Delegates, NA DO 183/96.

tinised by a legal adviser attached to the Governor's personal staff. Reflecting on the negotiations in his closing speech, Blackwood felt obliged to record that: 'I feel that it is largely due to our insistence on a Bill of Rights that one has been obtained'.[198] As agreed, therefore, a Bill of Rights was incorporated into the 1963 constitution and retained in the 1964 independence constitution.[199]

Almost immediately after independence, Prime Minister Banda's authoritarianism was challenged by widespread popular unrest and a revolt by senior members of the Cabinet who had for some time sought a more collegiate, less dictatorial, style of government. Their revolt was not only ruthlessly put down but, as a further step, Prime Minister Banda also initiated a number of constitutional amendments aimed at reinforcing his authority. They included rescission of the two-thirds majority necessary for constitutional amendments, preventive detention in the interests of defence, public safety and public order, a restriction on existing citizenship rights and an end to the political independence of the Attorney-General. In the debate on his proposed amendments, Prime Minister Banda justified adoption by reference to the independence negotiations:

> when I was negotiating our independence … I ignored all the minor things such as for example, citizenship, fundamental rights, Director of Public Prosecutions … I was in a hurry for our independence and I wanted it now and therefore I wasn't going to wait. So I said to Mr Butler … All right, you have your way … But … I give notice here and now that I accept this constitution only during the time that we are just having this particular constitution. As soon as we are independent … I cannot promise to keep these provisions … Mr Butler didn't argue. He said, 'Yes, I know that'.[200]

198 Nyasaland Constitutional Conference, 1962, N.C.C. (62) 5th Meeting 14 November 1962, 6th Meeting 15 November 1962, 8th Meeting 19 November 1962, 11th Meeting 22 November 1962, 12th Meeting 23 November 1962 and 13th Meeting 23 November 1962, NA CAB 133/234, Nyasaland Constitutional Conference, 1962, N.C.C. (62) 10 22 November 1962, Report of the Working Party on Fundamental Rights and N.C.C. (62) 11 21 November 1962, Amendments to the Draft Report of the Conference, Memorandum by the United Kingdom Delegation, NA DO 183/96 and HMSO Cmnd. 1887, *Report of the Nyasaland Constitutional Conference Held in London in November, 1962* (London, 1962), 7–9, 21–23.

199 The Nyasaland (Constitution) Order in Council, 1963, 8 May 1963, The Schedule to the Order: The Constitution of Nyasaland, *Nyasaland Gazette Supplement*, 1 July 1964, Government Notice No. 215 and The Malawi Independence Act, 1964, 10 June 1964.

200 *In the Parliament of Malawi Official Report of the Proceedings First Session – Third Meeting* 29 October 1964, 221–223 (reference from R.K. Hahn, 'Commonwealth Bills of Rights: Their Nature and Origin', 48–50), Nyasaland (Constitution) Amendment Act No. 1 of 1964 and S. Roberts, 'The Constitution of Malawi', *Journal of African Law,* 8/3 (1964), 178–184.

Shortly thereafter, Prime Minister Banda also announced his intention to draft a new constitution declaring Malawi a Republic. This had already been flagged in pre-independence discussions with First Secretary of State Butler who had warned the Cabinet that this would certainly mean Prime Minister Banda removing the negotiated constitutional safeguards.[201] In the Government paper setting out the constitutional proposals, it was further explained that: 'When Malawi became independent … the Independence Constitution conferred upon it by the British Government included a comprehensive Bill of Rights … The Malawi Government itself accepted this document with considerable reserve considering that a Bill of Rights was an unrealistic, illusory and ineffectual safeguard for minority groups.' However, there was no real need for a Bill of Rights because: Existing laws were sufficient; as a member of the UN, Malawi had guaranteed respect for the rights set out in the UDHR; and a Bill of Rights would invite conflict between the legislature and the judiciary.[202]

This new constitution was initially drafted by a Constitutional Committee which reported to the National Convention of the MCP. It was, of course, unanimously adopted by the MCP and passed to the Malawi Parliament for final approval. It provided that the MCP would be the only party authorised and replaced the Bill of Rights with the statement that: 'The Government and the people of Malawi shall continue to recognize the sanctity of the personal liberties enshrined in the United Nations Universal Declaration of Human Rights.' A further constitutional amendment in 1970 provided that President Banda 'shall hold the office of President for his lifetime'.[203]

If Nyasaland was poor and in economic terms no great loss to the white settlers of the Federation, Northern Rhodesia was quite another matter and accordingly political advance was resisted by the joint efforts of the white settler communities of Northern and Southern Rhodesia at every turn. In 1957, for example, the Northern Rhodesia Legislative Council adopted, as had several other colonial territories, the Emergency Powers (Amendment) and Societies Ordinance Acts,

201 C (63) 156 17 September 1963, Cabinet, Nyasaland and Northern Rhodesia Constitutional Questions, Memorandum by the First Secretary of State, NA CAB 129/114/56 and Pers. No. 286, Constitution, Neale to Tennant 3 December 1963, NA DO 183/64.

202 Government of Malawi, *Proposals for the Republican Constitution of Malawi* (Zomba, 1965), 14.

203 Republic of Malawi (Constitution) Act No. 23 of 1966, The Second Schedule: The Constitution of the Republic of Malawi Article 2(iii), 4(i) and (ii) (Article 2(iv) and (v) provide, respectively, for specific protection against deprivation of property without fair compensation and equal rights and freedoms for all persons regardless of color, race or creed), Constitution (Amendment) Act No. 35 of 1970, Article 9 (President for life) and J. McCracken, *A History of Malawi, 1859–1966* (Woodbridge, 2012), 429–452.

together with several other measures, designed to reinforce government control over political activity and, more specifically, to frustrate the NRANC. The following year the Colonial Office's constitutional proposals, with elections scheduled for March 1959 in mind, would also derisorily dismiss the NRANC's representations for majority control and propose instead a modest political advance that ensured a continuing white settler majority in the Legislative Council.[204]

Divided as to its response, and as a consequence the suitability of Nkumbula's over-accommodating leadership, the NRANC split with Kaunda and the more militant members breaking away to form the Zambian African National Congress Party (ZANC). The final straw had been Nkumbula's decision that the NRANC should contest the election against Kaunda's recommendation of a boycott. As a result, in March 1959, just days before the election, ZANC was banned and its leaders arrested and deported to remote areas of the country.

In part as a result of ZANC's successful election boycott, but also the deliberately high franchise threshold, fewer than 8,000 of the Colonial Office's target of 25,000 Africans registered to vote. It was therefore inevitable that the United Federal Party (UFP), the party of the white settlers, would win a majority. As for the NRANC, its only successful candidate was Nkumbula and there is every reason to believe that he was only elected with the connivance of the colonial government and the UFP. However, far from encouraging moderate support, as the Colonial Office had intended, the one-sided result and ZANC ban merely served to validate ZANC's militant stance. In August 1959, therefore, following further NRANC internecine protest against Nkumbula's leadership, ZANC re-emerged in a new guise with an enhanced membership as UNIP. As in Nyasaland, the election also prompted a more aggressive African protest whether by boycotts of European businesses or outright violence. In the face of such protest, in September 1960, Colonial Secretary Macleod was forced to recognise, against UFP objections, that alongside the Review Conference he should also convene a Northern Rhodesia constitutional conference to consider the next step of political advance that until recently he had foresworn for the foreseeable future.[205]

Despite lengthy pre-conference soundings taken by Governor Hone (Northern Rhodesia), and a Christmas adjournment to allow for further discreet negotiations, the 1960 Northern Rhodesia Constitutional Conference ended much as it had begun, in mutual acrimony and with both sides unrepentantly divided over the principle of majority rule and the right to secession from the Federation. Just as African political leaders had walked out in protest at the Review Conference,

204 HMSO Cmnd. 530, *Northern Rhodesia: Proposals for Constitutional Change* (London, 1958) and Northern Rhodesia (Legislative Council) Order in Council, 1959 23 January 1959.

205 This section has drawn extensively on D.C. Mulford, *The Northern Rhodesian General Election 1962* (Nairobi, 1964) and *Zambia: The Politics of Independence 1957–1964* (Oxford, 1967).

so the UFP and Dominion Party (DP), in essence the Northern Rhodesia colonial government, declined to attend the conference when it resumed in early 1961. The Colonial Office was therefore forced to impose a settlement on both sides. Its initial proposals, which it set out in February 1961, were denounced by both sides but particularly by the UFP and they were therefore refined in their favour in June 1961.[206]

It was then the turn of UNIP to condemn the outcome as a betrayal. Launching UNIP's 'master plan' of positive action at its July 1961 annual conference, the party declared: 'We have Power', and its motto asserted that: 'When we call the country to action, every man, woman & child shall follow our lead'.[207] The colonial government's over-vigorous response resulted in the death of twenty-seven and the arrest of over 1400 Africans and serious damage to local property infrastructure.[208] The violence only receded when, after a meeting between Kaunda and Colonial Secretary Macleod, it was announced that the Colonial Office was willing to consider further representations but only if the disturbances immediately ceased. When, in October 1961, that condition was deemed to have been met, negotiations resumed and shortly thereafter Colonial Secretary Maudling visited Northern Rhodesia to meet with all political parties. He was greeted by a letter from Kaunda declaring that the 'time has now come to introduce … a CLEAR AFRICAN MAJORITY'.[209]

These negotiations resulted in the announcement in February 1962 of further constitutional proposals, this time more favourable to the African majority. Accepted only with reluctance by UNIP, the new constitution was introduced in August 1962 and elections held in October 1962 on a far wider franchise.[210] Due

206 HMSO Cmnd. 1295, *Northern Rhodesia: Proposals for Constitutional Change* (London, 1961), HMSO Cmnd. 1301, *Northern Rhodesia Statement by the Secretary of State for the Colonies on Proposals for Constitutional Change* (London, 1961) and HMSO Cmnd. 1423, *Northern Rhodesia Proposals for Constitutional Change* (London, 1961).

207 'Address by Kaunda, National President to the territorial annual conference of the United National Independence Party meeting at Mulungushi 9th July 1961', *Freedom* (Lusaka, 1961), ICOM Special Collections, Senate House Library, University of London.

208 Government Printer, *An Account of the Disturbances in Northern Rhodesia, July to October, 1961* (Lusaka, 1961), 1, 70–73.

209 No. 111 Intel, Northern Rhodesia Constitution, From Foreign Office to Certain of Her Majesty's Representatives 4 September 1961 and Text of Statement to be issued 17.30 today Wednesday 13th September 1961, NA DO 154/27, NR.3 Brief for First Secretary of State's Visit to Central Africa, Northern Rhodesia: Northern Rhodesia Constitution, May 1962, NA DO 183/62 and Kaunda, UNIP National President to Secretary of State for Colonies Maudling 22 October 1961, NA DO 154/28.

210 Statement by Colonial Secretary Maudling, House of Commons 28 February 1962 and Northern Rhodesia (Constitution) Order in Council, 1962, 30 August 1962.

to the threshold provisions, on the first round of elections some seats remained unfilled so that it was only after the second round in December 1962 that a conclusion could be drawn as to the state of play between the parties; even so, some seats still failed to meet the threshold level and were therefore left unfilled. UNIP had polled 25,000 more votes than the other parties combined, but in terms of seats, the decisive balance between UNIP and the UFP was held by the NRANC. It was only after prolonged courting by both sides that the NRANC finally agreed to join with UNIP in a coalition government.[211]

Following the election, Kaunda immediately began to lobby for secession, as had already been conceded to Nyasaland, and for a new constitution providing for further political advance. In his speech to the Legislative Council introducing the motion for a new constitution, and condemning the existing constitution as undemocratic, Kaunda referenced UDHR Article 21 which asserted that: 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' and that: 'The will of the people shall be the basis of the authority of government'.[212] References to the UDHR were also included in the opening recital of the Preamble of UNIP's constitution which declared that: 'The United Nation's (*sic.*) Declaration of Human Rights are (*sic.*) being flouted in Northern Rhodesia and the Africans are deprived of the fundamental rights of man.'[213]

Kaunda's demands were met all too soon. Dissolution of the Federation was announced in March 1963 and in October 1963 it was agreed that further constitutional amendments would provide for internal self-government as of January 1964. Thereafter, an election would be held on the basis of universal suffrage. That election was won by UNIP with fifty-five seats against the ten seats each for the NRANC and the reserved seats. Kaunda was thereby appointed Prime Minister of Northern Rhodesia and independence the next short step in Northern Rhodesia's political advance.[214]

211 Drace-Francis to Byatt, 'The Northern Rhodesia Constitution of 1962', 1 November 1973, Annex II: History of the introduction and implementation of the 1962 Northern Rhodesian Constitution and Annex III: The 1962 General Election: Northern Rhodesia, NA FCO 36/1379.

212 Kaunda, Legislative Council debate 14 February 1963, Northern Rhodesia, Legislative Council Debates 15 January – 20 March 1963, 1003–1006 and Pers. No. 42 Political Situation Governor, Lusaka to Central Africa Office, London 16 February 1963, NA DO 183/62.

213 Constitution of the United National Independence Party, Northern Rhodesia, ICOM Special Collections, Senate House Library, University of London.

214 Written answer by Secretary of State for the Colonies Sandys, House of Commons 24 October 1963, Announcement, Northern Rhodesia's new Constitution 5 November 1963, NA DO 183/64, The Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963, 21 December 1963 and Northern Rhodesia (Constitution) Order in Council, 1963 1 January 1964.

To finalise the arrangements, a conference was held in May 1964 at which time independence was set, at Prime Minister Kaunda's behest, for 24 October 1964, United Nations Day. In the course of these discussions, Prime Minister Kaunda advised the Colonial Office that Northern Rhodesia wished to bypass the constitutional monarchy stage and become independent as a Republic. In its discussion of this request, to which it had no real objection, the Colonial Office noted, as a point in favour, that when, after independence, colonial territories had adopted a republican constitution, they had invariably taken the opportunity to remove safeguards negotiated prior to independence.[215]

With the political stakes much higher in Northern Rhodesia, Prime Minister Kaunda was all too conscious of the need to assuage the Colonial Office's concerns as to UNIP's post-independence intentions towards the white settler community. The heart of this problem, UNIP explained, was:

> Sir Roy's campaign … to deceive the Europeans here, the British public and the entire world that a man cannot be a nationalist without being a racialist who will carry his racialism to the extent of denying other races … certain rights which all civilized people cherish as inalienable and which by the Universal Declaration … have been enshrined in the hearts of all freedom-loving people.[216]

UNIP's counter-offensive was two-pronged. Firstly, it made a conscious effort to attract white voters by encouraging them to imagine a viable future under African rule. For example, in the 1962 election, at some personal political cost, Kaunda ensured that some of UNIP's more radical members were kept off its candidates list. Secondly, he promoted UNIP's commitment to the UDHR and a Bill of Rights as safeguards for minority interests. In October 1960, therefore, prior to the 1960 Constitutional Conference, UNIP issued a Declaration of Fundamental Human Rights listing fourteen specific human rights. It was described as 'not a concession to any one group or community but rather an appreciation of U.N.I.P.'s belief in the dignity and freedom of the individual'.[217] Further publicity was gained from a 'discussion' with Morris, a member of the liberal Central African Party, in which Kaunda explained: 'I believe in fundamental human rights. I

215 HMSO Cmnd. 2365, *Report of the Northern Rhodesia Independence Conference, 1964* (London, 1964), Whitely to Governor Hone 3 December 1963 and CAO.50/501/03 Jamieson to Barltrop 20 March 1964, NA FCO 141/13989, Northern Rhodesia (Constitution) (Amendment No. 2) Order in Council, 1964 30 July 1964 and Zambia Independence Act, 1964 31 July 1964.

216 National Council to Governor and Secretary of State 5 March 1962 enclosing Resolution of the National Council on the new Maudling Constitution, FCO 141/13966.

217 *UNIP Policy* (undated, Lusaka), 3–5 (UNIP Declaration of Fundamental Human Rights issued October 1960) (see also D.C. Mulford, *The Northern Rhodesian General Election 1962*, 191 (Appendix II)).

hold with the American Founding Fathers that "All men are created equal, and they are endowed by the Creator with certain inalienable rights." When we are in power this will be our guiding philosophy, and therefore the members of no race need fear victimization or oppression.'[218]

These public statements were supplemented by the constitutional proposals UNIP put forward. For example, in discussions with Governor Hone ahead of the 1960 Northern Rhodesia Constitutional Conference, UNIP proposed that the constitution should include fundamental laws that provided for 'individual freedoms to all people regardless of race, colour or sex … based on the Universal Declaration of Human Rights';[219] and in 1961, UNIP again made a commitment to the UDHR: 'On individual rights the United Nations' Declaration of Human Rights shall apply equally to all sections of the community and shall form part of the constitution.'[220]

Yet in formal negotiations with the Colonial Office, UNIP was less sympathetic and rather more vigilant to ensure that its post-independence room for manoeuvre was not constrained by a Bill of Rights or a Council of State. As Governor Hone therefore reported, although in principle UNIP would accept a Bill of Rights, they were 'doubtful of the need for a Council of State as well as the proposed Bill of Rights and feared that a Council of State would come into conflict with the legislature and that it would be inconsistent with the sovereignty of the State when it became independent'. In contrast, the accommodative NRANC accepted a Bill of Rights and thought a Council of State worthy of consideration.[221]

The first formal discussion of a Bill of Rights took place during the 1960–61 Northern Rhodesia Constitutional Conference. In his opening speech and at the conference itself, Colonial Secretary Macleod sought agreement on the principle that the constitution should include 'a Bill of Rights designed to safeguard the rights of individuals and the interests of minorities … because it would

218 K. Kaunda/C. Morris, *Black Government? A Discussion between Kenneth Kaunda and Colin Morris* (Lusaka, 1960), 95, 111.

219 UNIP to Hone 13 October 1960, Note of an informal discussion with representatives of the United National Independence Party about possible changes in the Northern Rhodesia Constitution 14 October 1960 and Note of an informal discussion with representatives of the African National Congress about possible changes in the Northern Rhodesia Constitution 17 October 1960, NA FCO 141/14026.

220 UNIP, *Northern Rhodesia, Constitutional Proposals and Policies* (Lusaka, 1961), 4.

221 Note of meeting held on Tuesday, 25 October, Present Secretary of State and Hone, NA FCO 141/14020 and National Council to Governor and Secretary of State 5 March 1962 enclosing Resolution of the National Council on the new Maudling Constitution, FCO 141/13966; see also L.S. Zimba, 'The Constitutional Protection of Fundamental Rights and Freedoms in Zambia: A Historical and Comparative Study' (unpublished PhD thesis, University of London, 1979), 223.

clearly demonstrate the determination of all political parties to protect the rights of minorities'. His speech elicited polite support from the African leaders. For example, Chief Mpanza stressed that there should be safeguards for minorities in the form of a Bill of Rights though 'individuals had a responsibility to act so as to gain the confidence of all'. While Kaunda also supported a Bill of Rights, only too aware of what the Colonial Office understood this to mean, he added that it should be designed not as a safeguard for minorities but to protect the rights of the individual 'regardless of race or colour'. On this basis 'once a Bill of Rights had been included in the constitution there was no reason for minorities to concern themselves … UNIP … had no intention of removing one form of oppression to replace it by another'; however, he saw no need for a Council of State. Yet when it came to the discussion, Katilungu, an NRANC delegate, otherwise considered sound by the Colonial Office as it had appointed him to the Monckton Commission, suggested that this discussion was premature as a Bill of Rights was more appropriate at the internal self-government stage. Colonial Secretary Macleod persisted though, arguing that some declaration in principle would be valuable. In the event, it was decided that the time was not right, African political leaders had more pressing matters to ponder, but it was accepted that Colonial Secretary Macleod's counsel should be recorded in the conference report.[222]

Of course, the Colonial Office was by now committed to a Bill of Rights. Colonial Secretary Macleod had already advised Prime Minister Macmillan: 'There would be a Bill of Rights and the appropriate safeguards, perhaps including a Council of State, but this depends to a large extent on what happens in the Southern Rhodesia and Federal Conferences.'[223] That would be made clear in the constitutional proposals kept in reserve by the Colonial Office and tabled in response to the political deadlock between the two sides. Although the Colonial Office was more generally not in favour of a Bill of Rights before the internal self-government stage, where there was a sizeable white settler community, as in Northern Rhodesia and Kenya, their protection assumed the higher priority.[224]

222 Northern Rhodesia Constitutional Conference, N.R.C. (60) 1st Meeting 19 December 1960, 5–6, N.R.C. (60) 2nd Meeting 19 December 1960, 1–2, N.R.C. (61) 2nd Meeting, 2 February 1961, 1, N.R.C. (61) 4th Meeting, 14 February 1961, 1, 3–4, N.R.C. (61) 8th Meeting, 17 February 1961, 4, N.R.C. (61) 12th Meeting, 27 February 1961, 5, Northern Rhodesia Constitutional Conference, NA CAB 133/235 and HMSO Cmnd. 1295, *Northern Rhodesia: Proposals for Constitutional Change*, 3.

223 PM (61) 20 re Northern Rhodesia Constitutional Conference, Macleod to Prime Minister 7 February 1961, Appendix A, NA CO 1015/2351.

224 Northern Rhodesia Constitutional Conference, N.R.C. (61)3 Draft White Paper Proposals for Constitutional Change in Northern Rhodesia 14 February 1961 and N.R.C. (61)4 United Kingdom Plans 14 February 1961, NA CAB 133/235 and

As nothing had been agreed at the 1960/61 Constitutional Conference, and the Colonial Office was disinclined to convene a further conference, a Bill of Rights could not be included in the 1963 constitution which Kaunda was now demanding without some prior consultation. Informal discussions were therefore initiated by Governor Hone as soon as the 1962 elections had been concluded.[225] Thereafter, letters outlining the key principles with an explanatory memorandum prepared by the Colonial Office were sent out for comment to the main political parties and other worthy institutions, such as the Lusaka Chamber of Commerce and Industry, whose Secretary replied that:

> My Chamber has few illusions regarding the effectiveness … of a Bill of Rights in any proposed constitution. The object of a Bill of Rights appears to be the protection of minority groups differing from the indigenous, and it is agreed that enforcement is impossible to achieve … It is felt, however, that it is a good thing to incorporate such a Bill … since it needs a positive act on the part of the Government to interfere with it and this can be publicised … the value of such a Bill to the individual is doubtful.[226]

When therefore First Secretary of State Butler visited Northern Rhodesia in early 1963 for consultations on the next stage of political advance, he was presented with a Joint NRANC/UNIP memorandum on constitutional advance agreeing to a Bill of Rights but with the proviso that the courts not a Council of State should judge the legality of Bills.[227]

By July 1963 discussions were sufficiently advanced for the leaders of the three main parties to come together in a series of meetings with the Governor to discuss the final terms of the new constitution which was to include a Bill

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HMSO Cmnd. 1301, *Northern Rhodesia: Statement by the Secretary of State for the Colonies on Proposals for Constitutional Change*, Paragraph 11.

225 Executive Council, E.C. (63) 22 31 January 1963, Constitution: A Bill of Rights and a Council of State, Note by the Chief Secretary, E.C. (63) 6th Meeting 11 February 1963, Extract from Conclusions Item 3. Constitution: A Bill of Rights and a Council of State, S/S.107/111 'Consultation on a Bill of Rights and a Council of State' Chief Secretary to the Government to UFP 22 February 1963 enclosing Annexure "A" 'Fundamental Rights and a Council of State', Memorandum by the Legal Advisors to the First Secretary of State and Northern Rhodesia Government Press Release No. 235 'A Bill of Rights and a Council of State' 27 February 1963, NA FCO 141/14004.

226 Symnes, Lusaka Chamber of Commerce and Industry to Hone 18 April 1963, NA FCO 141/14004.

227 Draft Brief, First Secretary of State's Vsit (*sic.*) to Central Africa, Central African Office, January 1963, NA DO 183/87 and Clerk of Legislative Council to Chief Secretary 24 January 1963 enclosing Joint NRANC-UNIP memorandum to the Rt. Hon. R.A. Butler and Constitutional progress in Central Africa: Record of a Meeting between the First Secretary of State and Joint U.N.I.P./A.N.C. parties 25 January 1963, NA FCO 141/14018.

of Rights based on the Nyasaland rather than the Southern Rhodesia model.[228] However, despite his stubborn opposition, Kaunda was finally bullied into accepting a constitutional council.[229] These terms were then incorporated into the 1963 Order in Council.[230] The sense that emerges from these discussions is of a leader with an eye on the main goal of independence being forced to compromise, but only for the present.

Discussions were still fraught ahead of the May 1964 Constitutional Conference although by now Prime Minister Kaunda enjoyed a comfortable majority and the principle of independence had been conceded. Nonetheless, the Colonial Office expressed concern at the proposals put forward by the Northern Rhodesia Government and advised Prime Minister Kaunda that he might wish to rethink the provisions on the powers of the President, the independence of the judiciary and method of constitutional amendment. He was also warned that, unless there was some 'give' in his proposals, the conference might be postponed. Thus encouraged, compromises were readily agreed ahead of the conference but not as regards the demand for abolition of the Constitutional Council, a position he continued to maintain at the conference itself.[231] After an initial discussion, the question was kicked out to a committee but the outcome was hardly in doubt. The committee finally recommended that the Constitutional Council should be abolished and replaced by an on-demand tribunal to review legislation if requested by seven or more members of Parliament. Such a request would never be made.[232]

228 Governor Hone to Butler 5 August 1963 enclosing A New Northern Rhodesia Constitution: Report by the Governor of Northern Rhodesia on the consultations with Dr. Kaunda, the leader of the United National Independence Party, Mr. Nkumbula, the leader of the African National Congress and Mr. Roberts, the leader of the National Progress Party, on a new constitution for Northern Rhodesia, NA DO 183/63 and Record of Meetings between His Excellency and the leaders of the three political parties held at Government House to discuss a new constitution for Northern Rhodesia, July/August 1963, NA FCO 141/14024.

229 Chief Secretary Thomas 5 November 1963, Northern Rhodesia, *Hansard Official Verbatim Report of the debates of the Legislative Council* First Session of the Twelfth Legislative Council (Resumed), 2–4 and Announcement: Northern Rhodesia's New Constitution, Central African Office 5 November 1963 and Northern Rhodesia Constitution, Tennant to Secretary of State 21 November 1963, NA DO 183/64.

230 Northern Rhodesia (Constitution) Order in Council, 1963 1 January 1964, Schedule to the Order, Chapter 1.

231 Independence Constitution, Governor, Lusaka to Secretary of State for Commonwealth Relations Saving No. 158 17 April 1964 with attached Memorandum on Orders in Council and the Independence Constitution for Northern Rhodesia for discussion at meetings between the Prime Minister, the leaders of political parties, and a committee of the House of Chiefs, Pers. No. 156, Governor Hone to Snelling 25 April 1964 and Watson to Secretary of State 22 and 28 April 1964, NA DO 183/77.

232 Northern Rhodesia Independence Conference, 1964, N.R.I. (64)2 4 May 1964

After independence, the constitutional safeguards survived only so long as they did not impede the business of politics. Between 1968 and 1971 the Zambian government decided on a major programme of nationalisation. It was also sensitive to continuing African anger at the colonial distribution of property. Anxious, therefore, to ensure that the constitution would not impede its 'development' programmes, in 1969 the government called 'a referendum to end all referenda' to terminate the requirement for a referendum to be held before Fundamental Rights could be amended. In a booklet *Why the Referendum???,* the Government explained that the proposed constitutional amendments were justified on the basis that the Government could be trusted not to deny the very rights for which it had fought before independence but that the Government had 'accepted in principle the need to amend the section in the Constitution dealing with compulsory acquisition of property'.[233] A further explanation was also published by President Kaunda:

> my Government has absolutely no intention whatsoever to amend any part of the constitution … it would be contrary to my pledges, to the commitment which the United National Independence Party has made since 1960 … as a matter of fact the clauses which appear in the Constitution guaranteeing human rights have their origin in UNIP manifestos issued before independence … It is not the British Government who wanted to guarantee your rights in the Constitution. It is the Zambian leadership which was keen to clearly indicate the seriousness of their intentions. What the British Government did in submitting the Constitution was to take advantage of our human outlook to entrench types of clauses in the Constitution which were intended to further and protect their economic and financial interests here than to guarantee the success of your cause, which is my cause.[234]

As UNIP enjoyed a virtual monopoly in the National Assembly, the threshold for constitutional amendments clearly presented no problem, and once the legal requirement for a referendum was removed, UNIP was in a position to pass constitutional amendments at will.

Memorandum by the Northern Rhodesia Government containing proposals for the Independence Constitution for Northern Rhodesia and N.R.I. (64)23 14 May 1964 Report by the Committee on the Protection of Human Rights, NA DO 183/78, N.R.I. (64) Record of the 2nd, 9th and 13th Plenary Meetings and U.K. Eyes Only, Minutes of the 2nd, 9th and 13th Plenary Sessions, NA DO 183/79, Northern Rhodesia (Constitution) (Amendment No. 2) Order in Council, 1964 30 July 1964 and HMSO Cmnd. 2365, *Report of the Northern Rhodesia Independence Conference, 1964* (London, 1964), 5–6 (Annex B).

233 Constitution (Amendment) Act (No. 3) 1969 and S. Wina, Minister of Information, Broadcasting and Tourism, *Why the Referendum???* (Lusaka, 1969), 2.

234 Zambia Information Services, *Background No. 32/69: The President Explains the Referendum* (Lusaka, 1969).

Unsurprisingly, President Kaunda's professions of virtue were soon overtaken by events. All too soon his economic reforms were widely perceived as having been not so much concerned with development as the means by which the UNIP elite might enrich themselves. By 1971, therefore, resignations from UNIP in protest against corruption and tribal rumblings combined to bring about the formation of the United Progressive Party (UPP). UNIP had always assumed that it would be able to maintain a one-party state through the ballot box, but it was now faced with the prospect of an NRANC and UPP coalition and possible defeat. The party therefore turned to alternative means to cement its position: a formal one-party state, the banning of the UPP and the detention of its leaders.[235]

As the opening move, in March 1972, President Kaunda appointed the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia. Its terms of reference seemed to offer reassurance in that they provided for certain 'principles as cardinal, inviolable and built-in safeguards of One-Party Participatory Democracy in Zambia'. They included: 'The supremacy of the rule of law and independence of the Judiciary'; 'The fundamental rights and freedoms of the individual shall be protected as now provided under … the Constitution'; and 'The right of the individual to freely choose leaders and representatives to Parliament'.[236] However, the government then refused to accept its key recommendations. For example, the government was not prepared to accept limitations and safeguards on its ability to detain without trial; it noted that 'at this stage in the nation's development and in view of Zambia's geo-political position in Southern Africa these recommendations could not be implemented without detriment to Zambia's security and sovereignty'. Nor was it prepared to accept a limit of two five-year terms on the President's term of office or that some constitutional amendments should require a referendum.[237] The inevitable outcome, as Pettman observed, was that in December 1972 the standing orders of the National Assembly were suspended to rush through constitutional amendments relating to the one-party state without debate. They

235 W. Tordoff, 'Zambia: The Politics of Disengagement', *African Affairs,* 76/302 (1977), 61–62, M. Larmer, '"A Little Bit Like a Volcano": The United Progressive Party and Resistance to One-Party Rule in Zambia, 1964–1980', *International Journal of African Historical Studies,* 39/1 (2006), 49–83, B.C. Chikulo, 'Elections in a One-Party Participatory Democracy', B. Turok (ed.), *Development in Zambia: A Reader* (London, 1979), 201–213 and M.B. Ndulo/R.B. Kent, 'Constitutionalism in Zambia: Past, Present and Future', *Journal of African Law,* 40/2 (1996), 259–268.

236 Republic of Zambia, *Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia* (Lusaka, 1972).

237 Government Printer, *Government Paper No. 1 of 1972: Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia: Summary of Recommendations accepted by Government* (Lusaka, 1972).

provided for UNIP's supremacy over the government and UNIP's Central Committee's supremacy over the Cabinet.[238] The following year a new constitution codified these amendments. Although nominally rights provisions were retained, in practice, they were largely useless as a means of protection against the all-powerful one-party state.

In an address to party leaders in 1972, President Kaunda lauded the success of this constitutional process: 'The choice for this nation has been between dictatorship on the one hand and democracy on the other. We have chosen democracy with all its shortcomings.'[239] The following year, he went on to provide yet further justification which paralleled that of other African political leaders and anticipated, once again, the critical argument of the ACHPR process:

> We have looked at various political systems in the world. We have found that each political system was evolved to suit certain socio-cultural conditions and different from our own in Zambia. We inherited a multi-party system … at independence. It was foreign, imported and imposed … a multi-party system is not a pre-condition for a genuine democratic system of Government nor is it suited to Zambia.[240]

Kenya

In Kenya, African disinclination to accept representation within the colonial government and legislature at the paltry level on offer obliged Colonial Secretary Lennox-Boyd to visit Kenya in November 1957. Following that visit, he agreed to the addition of a further six African members to the Legislative Council who, for the first time, would be selected by direct elections. Moreover, four Africans would also be appointed as ministers. He also announced his intention to create a Council of State: 'In order to protect any one community against discriminatory legislation harmful to its interests.' He described these arrangements as 'designed to meet the main needs, aspirations and anxieties of the people of Kenya as a whole.'[241]

238 J. Pettman, *Zambia: Security and Conflict* (London, 1974), 239 and 'Zambia's Second Republic – The Establishment of a One-Party State', *Journal of Modern African Studies*, 12/2 (1974), 231–244 and Constitution (Amendment) Acts 3, 4 and 5.

239 'A Nation of Equals' – The Kabwe Declaration, President Kaunda, Address to the National Council of the United National Independence Party at the Hindu Hall, Kabwe 1–3 December 1972, 4.

240 'Power to the People', Opening Address by K.D. Kaunda to the Seventh (Extraordinary) General Conference of the United National Independence Party, Mulungushi Rock 25 August 1973, S.V. Mubako, 'Zambia's single-party constitution search for unity and development', Paper presented at the Third International Congress of Africanists, Addis Ababa, Ethiopia (9–19 December 1973) and L.S. Zimba, 'The Constitutional Protection of Fundamental Rights and Freedoms in Zambia', 72–73, 185.

241 HMSO Colonial Office Cmnd. 309, *Kenya: Proposals for New Constitutional*

Following those elections, the eight African members agreed to come together as the African Elected Members Organisation (AEMO) in a united front. Intent on majority rule and independence, they agreed to refuse ministerial appointments until a constitutional conference was convened and Kenyatta, who had been in detention since March 1953, was released. In June 1958 they also put forward their own constitutional proposals to Colonial Secretary Lennox-Boyd. When they were rejected, they responded with a further boycott of the Legislative Council.[242]

In April 1959, therefore, Colonial Secretary Lennox-Boyd was forced into retreat once again. He conceded that if certain pre-conditions were met 'the Government will arrange for a conference to be held at an appropriate time'; however, he also made clear, in anticipation of the negotiations to come, that, while Kenyan government policy aimed at the 'progressive abolition of racial and tribal land barriers', it would also have to provide for 'suitable safeguards against the economic or political exploitation of all those who hold rights in the land'. It fell to his successor, Colonial Secretary Macleod, to announce in November 1959 that the Constitutional Conference would be held in January 1960 albeit with Kenyatta remaining in detention.[243]

Despite their success in forcing the Colonial Office to accept a renegotiation of the terms of the constitutional advance imposed in 1958, the unity of the African elected members soon began to crack under the strain of political differences and personal rivalries. These rivalries were compounded by the unintended consequence of the Kenyan government's 1952 decision, in response to the Mau Mau insurgency, to ban political parties. It meant that African political groupings had of necessity developed on a regional, in effect tribal, basis. These strains led to the formation in July 1959 of the 'moderate' Kenya National Party (KNP), led by Ngala, Muliro and Arap Moi, and in August 1959 of the more 'radical' Kenya Independence Movement (KIM), led by Kiano, Mboya and Odinga with Kenyatta (in prison) in the background. However, at least for the duration

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Arrangements (London, 1957), 2–4, HMSO Cmnd. 369, *Kenya: Despatch on the New Constitutional Arrangements* (London, 1958), 4–5 and Kenya (Constitution) Order in Council, 1958, 3 April 1958.

242 Kenya Constitutional Conference, 1960, K.C. (60) 2 18 January 1960 (Present constitutional arrangements and constitutional policy statements on Kenya by Her Majesty's Government, Appendix B: Despatch No. 1948 Lennox-Boyd to Governor, Kenya 24 November 1958), NA CO 822/2357 and Odinga, Chairman, AEMO to Governor Baring 4 December 1958, NA FCO 141/5902. For background on the formation of the AEMO and the boycott, see J.O. Odinga, *Not Yet Uhuru: The Autobiography of Oginga Odinga* (London, 1967), 143–150.

243 Reply to debate by Secretary of State for the Colonies Lennox-Boyd, House of Commons 22 April 1959 and Reply to debate by Secretary of State for the Colonies Macleod, House of Commons 2 November 1959.

of the 1960 Constitutional Conference, they were agreed that they should join together in one united delegation.

There was a similar division among the white settlers as between the hardline United Party (UP), whose obdurate leaders Briggs and Roberts sought a halt to constitutional advance, and the more accommodating liberal New Kenya Party (NKP), led by Blundell, which sought a *modus vivendi* with the African majority. The other racial group was the Asian community albeit their delegation was of no real political significance. These two non-African communities comprised less than 1 and 2 per cent, respectively, of the population of Kenya.[244]

To prepare the ground for the conference, the Colonial Office appointed an independent adviser, Mackenzie, who had previously served as a constitutional adviser in Tanganyika: 'To consult with political opinion of all shades with a view to affording advice to the participants at the forthcoming Constitutional Conference'; his view would also be sought on the conference agenda. As preparation for his enquiries and consultations, the Colonial Office advised him of what it regarded as the basic principles underlying further constitutional advance. In particular, that 'we must establish a political society in Kenya which accepts that power must be shared between the races and that it is not sufficient to rely on normal guarantees under the law of individual rights'. As to specific safeguards, it merely envisaged that 'a more leisurely examination of these for the "next round" might well be agreed'.[245]

In what may be regarded as clear proof of the underlying aim of safeguards, Mackenzie initially concurred with the Colonial Office line that '"safeguards" for the present are provided quite well by the official majority, the expatriates and the Council of State … it is in the next stage … that one should negotiate a "rigid" constitution for a self-governing Kenya'.[246] However, in the course of his meetings, the NKP put forward proposals suggesting that constitutional change had to include safeguards, the most obvious being a Bill of Rights. Their submission and other discussions seem to have persuaded Mackenzie to report that: 'Almost everyone talks of a Bill of Rights, and this is probably quite practicable. But it may be complex in itself.' He therefore concluded that the conference would turn mainly on four issues one of which would be a 'guarantee of individual and

244 C. Gertzel. *The Politics of Independent Kenya, 1963–8* (London, 1970), 10 and G. Wasserman, *Politics of Decolonization: Kenya Europeans and the Land Issue 1960–1965* (Cambridge, 1976), 27–43. This section has drawn widely on R.M. Maxon, *Kenya's Independence Constitution: Constitution-Making and End of Empire* (Lanham, 2011) and *Britain and Kenya's Constitutions, 1950–1960* (Amherst, 2011).

245 HMSO Cmnd. 960, *Report of the Kenya Constitutional Conference held in London in January and February, 1960* (London, 1960), 4 and Note for the Kenya Constitutional Adviser, Attitude of Her Majesty's Government, 2, NA CO 822/2353.

246 For a further note on constitutional issues in Kenya, see Mackenzie October 1959, NA CO 822/1427.

communal rights' and therefore that 'probably a "bill of rights" will be needed in the end; and time spent on preliminary discussion would not be wasted'.[247] Inexorably, therefore, discussion of 'safeguards' slowly crept onto the agenda of this early-stage Constitutional Conference.[248]

Bowing to the inevitable, the issue of 'safeguards' was introduced by Colonial Secretary Macleod in his opening statement to the 1960 Constitutional Conference. He proposed that a committee should be set up to consider how to provide for safeguards, but at the same time advised:

> I believe it would be right for this Conference to consider safeguards … But safeguards, although important, are by no means the only, or perhaps the best, insurance. One would like to see a situation in which it is accepted as the natural order of things that individuals, of whatever community, have a full opportunity to play their part in the administration of their country.[249]

Almost all the delegates responded with expressions of support for a Bill of Rights; however, invariably, they also followed the Colonial Secretary in cautioning that the effectiveness of such safeguards relied on the will of the majority. The African delegation's main aim was to demonstrate that they were fit for government but also to provide assurances to the white settler community; but for the white settler community, a Bill of Rights was seen almost exclusively in terms of providing protection for its property interests. Thus, for example, in a wide-ranging response, Kiano recalled that the safeguarding of individual rights had been a key element of the manifesto of the African elected members since 1957 and that a Bill of Rights had been included in their June 1958 proposals. Nonetheless, he was concerned that the underlying issue was mutual suspicion of intentions 'indeed a desire for minority safeguards amounted to an expression of no confidence in the majority and aggravated, instead of allaying, communal suspicions'. Africans wanted a Bill of Rights: 'But a Bill of Rights could not be brought into force until certain reforms had been made to remove privileges existing under the present social and political structure, and until the colonial form of government had been abolished.' Finally, referring to the UK's adherence to the 'Convention on Human Rights', possibly the UDHR, he stressed that: 'When Kenya became independent the Africans intended that Kenya should also subscribe to it.' In fact, Kenya would be one of the very last states to ratify the ACHPR (in 1992).

247 Mackenzie to Buist 29 September 1959 and Secret, Mackenzie 30 September 1959, NA CO 822/1427 and Background Note by Professor Mackenzie: Public Opinion in Kenya (undated probably December 1959) NA CO 822/235/3.

248 Kenya Constitutional Conference, Note by the East African Department, Part B. Agenda (undated, probably December 1959), NA CO 822/2353.

249 Kenya Constitutional Conference, 1960, K.C. (60) 3 20 January 1960 (Speech by Secretary of State for the Colonies 20th January 1960), NA CO 822/2357.

A similar warning was given by the otherwise moderate Muliro who noted that:

> The only safeguard to which anyone could look forward with confidence was political integration, since as long as specific safeguards and guarantees were written into the constitution the Africans would not consider themselves truly self-governing. If certain communities were seeking specific safeguards during the transition to independence then the fewer those safeguards the better, because otherwise those communities would find the position more difficult when all safeguards were removed.

Nyagah, another African delegate, also expressed his support but with the identical caveat that: 'A Bill of Rights would go some way to allaying the fears of individuals, of whatever race … But it was necessary to examine and remove the root causes of Kenya's problems. The chief of these related to the land situation.'

Of the other delegations, Madan, an Asian delegate, 'agreed with the demands for a Bill of Rights and for an independent judiciary but also felt that the only ultimate safeguard was the goodwill of the African people'. So too the Asian Elected Members who noted 'that safeguards of minorities must in the last resort rest upon the goodwill of the majority and the effective safeguarding of the rights of the individual … Accordingly, human and fundamental rights of the individual must be declared and set out in whatever Constitution is brought into force.' Roberts also expressed the limited faith of the white settlers in a Bill of Rights noting that '"safeguards", were of a temporary nature and were always regarded with suspicion … A Bill of Rights was of no value if there was no faith in the government.' Finally, Zafrud-Deen, an Arab delegate, brought up the question of religious freedom which, 'he wished to emphasise', was 'provided for in the United Nations Charter (*sic.*)'.[250]

Once the main part of the conference had been concluded, discussion turned to the question of safeguards which, at Colonial Secretary Macleod's suggestion, was passed to a 'Committee on Safeguards'. It was at this point that the deep divide came to the fore and the Colonial Office was forced into a round of individual meetings so as to enable an agreement to be reached. The perspective of the delegations is summarised in a conference update from the Colonial Office:

> Conference pretty well agreed there should be a Bill of Rights … But hitch came, when we got on to property rights. Slade wants … no expropriation unless for normally understood public purposes. Africans say they cannot inhibit future Government from undertaking desirable 'land reforms' …

250 Kenya Constitutional Conference, 1960, K.C. (60) Record of the Fifth Plenary Session 25 January 1960, Record of the Sixth and Seventh Plenary Sessions 26 January 1960, Record of the Eleventh Plenary Session 28 January 1960 and Record of the Twelfth and Thirteenth Plenary Sessions 29 January 1960, NA CAB 133/212 (see also NA CO 822/2358) and Kenya Constitutional Conference 1960 Document 4, Constitutional Proposals of the Asian Elected Members, undated, NA CO 822/2359.

> They had not come here to discuss land issues … We have suggested … unilateral declaration by H.M.G. that next constitutional advance … will be conditional on suitable safeguards going in the Constitution. Blundell etc. will not have this in view of H.M.G.'s historic inability to keep promises … United Party are more concerned with getting compensation underwritten.[251]

In essence, Colonial Secretary Macleod advised Prime Minister Macmillan, it boiled down to a difference between a strict 'public purposes' test demanded by the white settlers and the 'public interest' test sought by the African delegates. The related issue, pushed mainly by the UP, was for compensation to be underwritten by the Colonial Office.[252]

Part of the UP's urgency was its fear that the Colonial Office sought an early independence for Kenya. Moreover, however reasonable the African delegates might be at the conference, on their return to Kenya, they would likely be pressured by their more radical supporters. The NKP similarly insisted that, however accommodating it might wish to be, unless it was happy with the property rights provisions, it could not consent to the overall constitutional settlement. In contrast, in the African delegation's meeting, Ngala explained that their understanding was 'that the object of the recent discussions was to agree general propositions on property rights for inclusion in the Conference Report as a guide to those who would be drafting a Bill of Rights, and that the detailed wording … would be discussed at later stage. They were not prepared to discuss land policy as such.'

In the direct face-to-face discussion at the Committee on Safeguards, Mboya made this position absolutely clear, that 'the Bill of Rights should not entrench the position of those enjoying a privileged position, nor perpetuate a system that was basically unjust. It should be within the power of the Government of Kenya to bring in legislation to remove injustices. The Courts should be left to interpret "Public purposes" in the light of changing circumstances.'

Equally adamant, Slade (NKP) enquired whether they intended 'that the Government should be empowered to expropriate any land for distribution to the landless'. Mboya and Muliro responded that 'the Bill of Rights must not interfere in any way with the ability of a future government of Kenya to carry out land reforms including the resettlement of the landless'. Ngala went further, saying that 'claims of land ownership and property rights are in dispute and have been in dispute since the establishment of white settlement. The Bill of Rights … cannot be used to overlook the dispute. The Bill can only apply in the protection of property rights NOT in dispute.'[253] He was also quoted as saying:

251 Secretary of State for the Colonies to OAG, Kenya Personal No. 34 18 February 1960, NA CO 822/2354.

252 Macleod to Prime Minister 20 February 1960 enclosing Property Rights: Suggested Formula for Report, NA PREM 11/3030.

253 Kenya Constitutional Conference 1960, Document 4, Constitutional Proposals of

'I do not see why the Conference should go any further in discussing the land interests of one race in particular.'[254]

In the end, no agreement could be reached. It was therefore left, once again, to the Colonial Secretary to set out his intentions based on the discussions that had taken place:

> legal provisions are needed in the proposed constitution … to provide for the judicial protection of human rights … Her Majesty's Government consider it important to include protection for property rights … founded on the principle that that there should be no expropriation of property except … for purposes to the benefit of the country … Full and fair compensation should be given to the owner of any property expropriated, together with the right of recourse to the Courts.

The provisions, he went on to advise, would be drafted by the Colonial Office based on the Nigerian precedent and the draft prepared by Thurgood Marshall, the constitutional adviser to the African delegation, taking into account 'the special circumstances of Kenya'. However, it was the detail which could not be agreed and, at this stage, that was to be left to the Colonial Office.[255]

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the Asian Elected Members, undated, Document 22, Record of a meeting between the Secretary of State and the United Party 9th February 1960, 11 February 1960, Document 33, Record of a meeting between the Secretary of State and the New Kenya Group, 15 February 1960, Document 36, Record of a meeting between Lord Perth and the United Party Representatives 18th February 1960, undated, Document 37, Record of a Meeting between Sir John Martin, the New Kenya Group, the Asian and Arab Constituency Elected Members and the United Party 17th February 1960, 20 February 1960, Document 38, Record of a meeting between Sir John Martin and the United Party 17th February 1960, 20 February 1960 and Document 39, Record of a meeting between Sir John Martin and the African Constituency Elected Members 19th February 1960, 20 February 1960, NA CO 822/2359 and K. C. (S) (60) Committee on Safeguards 1st and 2nd Meetings, NA CAB 133/212 (see also NA CO 822/2359).

254 *East African Standard,* 19 February 1960, quoted by G. Wasserman, *Politics of Decolonization: Kenya Europeans and the Land Issue 1960–1965*, 64.

255 HMSO Cmnd. 960, *Report of the Kenya Constitutional Conference held in London in January and February, 1960*, 8–11 and Kenya Constitutional Conference, 1960, K.C. (60) 16 21 February 1960 (Speech by Secretary of State for the Colonies 21 February 1960), NA CO 822/2357 and Kenya Constitutional Conference, 1960, Committee on Safeguards, K.C. (S)(60)2 2 February 1960 (Proposed draft of Bill of Rights preliminary statement by Dr. Thurgood Marshall), Kenya Constitutional Conference, 1960, K.C. (S)(60)5 16 February 1960 (Bill of Rights: Draft for inclusion in the Conference Report) and K.C. (60) 16th Meeting, Record of the Sixteenth Plenary Session on 21 February 1960, NA CAB 133/212; Thurgood Marshall was then merely a famous African-American lawyer.

As Munene has therefore observed, the inclusion of a Bill of Rights in the 1960 Kenyan pre-independence constitution was wholly attributable to the Colonial Office:

> They made this a precondition to independence … a bill of rights was not a priority issue for African leaders … Their prime concern was independence, the transfer of power to Kenyans … The Kenyan Bill of Rights, therefore, like those of many former British colonies, cannot be said to be representative of a set of higher values emanating from, and subscribed to, by the Kenyan people. Indeed, it was meant to be nothing more than a bulwark against political power in the hands of 'natives', primarily to protect the interests of European settlers.[256]

Following the conference, the Colonial Office also announced that, with the elections due to be held in February 1961, it was ending the ban on African political parties; though it was not yet prepared to release Kenyatta. Foreign Secretary Home would describe him 'as a thoroughly evil man who had been convicted of managing Mau Mau and was to that extent responsible for its appalling brutalities'. He could therefore not be trusted and it was even more important to provide for constitutional safeguards under a Government which he might control.[257]

The removal of the ban served as the catalyst for the ending of the African unity arrangements and the formation of two new party groupings. The Kenya African National Union (KANU), led by Gichuru, Odinga and Mboya (although Kenyatta was still regarded as its leader), was dominated by the Kikuyu and Luo tribal groups that together comprised about 55–60 per cent of the population of Kenya. While the Kenya African Democratic Union (KADU), led by Ngala, was supported by a broad coalition of the remaining non-Kikuyu tribes united in concern at the prospect of a Kikuyu tribal dictatorship.

Although KANU won two-thirds of the votes cast at the 1961 election, no party achieved an outright majority. As the largest party KANU was offered the first opportunity to form a government but refused office until Kenyatta was released thereby opening the door to KADU. Although initially KADU, too, insisted on Kenyatta's release, the lure of office proved too great and it eventually formed a government with the support of the NKP and other smaller parties.[258]

Over the next few months, in an effort to agree a basis for the next step in constitutional advance, protracted discussions were held, first, between KADU

256 A.W. Munene, 'The Bill of Rights and Constitutional Order: A Kenyan Perspective', *African Human Rights Law Journal,* 2/1 (2002), 142.

257 Conclusions of a Meeting of the Cabinet 21 February, 27 July and 9 November, 1961 NA CAB 128/35, C (61) 114 25 July 1961, Jomo Kenyatta, Memorandum by the Secretary of State for the Colonies, NA CAB 129/106/14 and C.P.C. (61) 11th Meeting 7 November 1961, NA CAB 134/1560.

258 G. Bennett/C.G. Rosberg, *The Kenyatta Election: Kenya 1960–1961* (London, 1961).

and KANU and, then, after agreement had been reached, under the aegis of a Governor's Conference, on a broader political basis.[259] By mid-October, though, that agreement had collapsed as differences between KADU and KANU over land and the basis of the proposed coalition resurfaced and at this point KADU began to look to a more regionally based constitutional structure. Governor Renison was therefore forced to report that an agreement was not in sight as KADU was driven by 'fear of … Kikuyu/Luo domination' which they were 'determined to prevent'. Rather than wait until independence when KANU might 'establish a dictatorship on the Ghanaian model', they preferred to defer constitutional advance until appropriate safeguards could be established. In contrast: 'KANU is avid for power. It aims to be firmly in the saddle at independence, and its scruples in regard to minority interests thereafter are, at best, suspect and more likely non-existent. Its objective is a unitary state, with an all-powerful, KANU central government.'[260]

Despite the wide gulf between the two sides, they were both nonetheless agreed on the desirability of a further constitutional conference. When, therefore, Maudling, the new Colonial Secretary, visited Kenya in November 1961, he responded positively and set a date for early 1962. In a public statement, he announced what he hoped might be achieved:

> There must clearly be a stable and competent Central Government … But more than this is clearly needed. If the rights of individuals are to be safeguarded, and if there is to be confidence that they will be, Kenya will need in addition other governing authorities with their own defined rights which … are entrenched and written into the Constitution; and the Constitution must be one that cannot be so changed that the purposes agreed at the Constitutional Conference are frustrated.[261]

In private though, the British government was far less optimistic. Indeed, such was the lack of confidence in the conduct of the government of an independent Kenya that even the possibility of maintaining troops in Kenya after independence was discussed, though ultimately discarded as unrealistic.[262] As

259 R.M. Maxon, *Kenya's Independence Constitution: Constitution-Making and End of Empire*, 48–53 and G. Wasserman, *Politics of Decolonization: Kenya Europeans and the Land Issue 1960–1965*, 88–95. The meeting reports of the Governor's Conference are in NA CO 822/2237–2238.

260 Nairobi, Ref. No. G.H. 1961/23/II Renison to Secretary of State for the Colonies Maudling 13 October 1961, NA CO 822/2237.

261 HMSO Cmnd. 1700, *Report of the Kenya Constitutional Conference, 1962* (London, 1962), 6–8 (Statement by the Secretary of State for the Colonies on 29 November 1961) and Kenya Constitutional Conference, 1962, K.C.C. (62) 15 20 February 1962 (Statement by the Secretary of State for the Colonies on 29 November 1961), NA CAB 133/213.

262 Cabinet Conclusions CC (61) 63, 16 November 1961, NA CAB 128/35/63; see also

a further indicator of its concern, the Colonial Office also commissioned an assessment of the means by which President Nkrumah had circumvented the agreed safeguards so as hopefully to draw appropriate lessons for the Kenya negotiations at hand.[263]

Ahead of the 1962 Constitutional Conference, therefore, a somewhat disdainful consensus had been reached about the political value of a Bill of Rights. All sides were agreed on the need for a Bill of Rights but they were also all agreed that post-independence it would probably not serve as a check on government behaviour. Interested parties would have to look to other means to safeguard their interests.

The Colonial Office position had largely been set by the Kilmuir Land Titles Cabinet Committee, which recommended that provisions to protect property should be entrenched in the constitution. Other safeguards were also mooted. For example, a Treaty of Guarantee, or an international treaty, and Governor Crawford (Uganda), who was updated regularly on all the East and Central African independence negotiations, even proposed a Commonwealth convention of human rights.[264]

The NKP, of course, sought assurances on property rights though its more hardline members were increasingly coming to the view that the war was already lost as the Colonial Office would increasingly disregard their views in the face of the KANU/KADU confrontation. They were therefore mainly concerned that compensation should be underwritten by the British government as they recognised that: 'For political and other reasons a considerable reallocation of land must take place very quickly'; they therefore pressed for a Land Fund with £30 million funding spread over five years.[265]

C.P.C. (61) 12th Meeting 15 November 1961, NA CAB 134/1560.

263 Monson to Martin Constitutional Safeguards 24 October 1961, NA CO 822/2238.

264 P.M. (60) 42 Macleod to Prime Minister 11 July 1960, NA PREM 11/4329, KL (60) 2nd Meeting 15 September 1960, KL (60) 4 13 September 1960, Possible safeguards for property rights, Memorandum by the Secretariat and KL (60) 6 13 September 1960, Possibilities of obtaining land guarantees in Tanganyika, Memorandum by Secretary of State for the Colonies, Minutes and Paper, Committee on Land Tenure in Kenya, NA CAB 134/2147, Crawford to Buist 8 September 1960, NA CO 822/2189 and Steel to Morgan 8 March 1961, NA CO 822/2316.

265 Prime Minister c (60) 166 Kenya Land Policy 14 December 1960, NA PREM 11/4329, Monson to Martin 8 March 1961, NA CO 822/2316, Statement by Secretary for the Colonies Macleod, House of Commons 20 December 1960, Colonial Policy Committee: Kenya Constitutional Conference, draft of C.P.C. (62) 3 1 February 1962, NA CO 822/2238 and C.P.C. (62) 3rd Meeting, Cabinet Colonial Policy Committee, Minutes of meeting on 2 February 1962, NA CAB 134/1561. In early 1961, Prime Minister Macmillan initiated an exchange on Anglo-French cooperation on 'arranging effective guarantees for the rights of white minorities in former colonies'.

On the African side, KADU now became less interested in the minutiae of a Bill of Rights and more interested in a constitutional structure based on '*majimbo*' (regionalism) as the core of its safeguards framework. This would mean extensive discussions over the allocation of executive and legislative authority between the centre and the regions. In particular, as it was clear that land redistribution was inevitable, KADU wanted control over that process assigned to the regions. At the same time it also sought a bi-cameral legislative structure, with an upper house largely elected on a regional basis, and constitutional amendment provisions that would restrict the ability of any future Kenyan government to legislate based on a simple majority.

Of course, KANU calculated its position on the opposite premise, that after independence it would form the Government of Kenya. Nonetheless, it was aware that a Bill of Rights was the price demanded for independence. Moreover, if it was to exact the best deal from the Colonial Office referee, it would have to overcome the association of its leaders with Mau Mau (Kenyatta) and Communism (Odinga). It therefore took every opportunity to express its commitment to a Bill of Rights. Already in its 1960 party constitution it had declared its 'Aims and Objects' as being 'to promote and encourage respect for human rights and for fundamental freedoms for all'.[266] Possibly more worryingly, in its 1960 Manifesto, KANU also observed that: 'Democracy must manifest the African personality and all that goes to make the African … Because democracy is applicable, it is also adoptable.'[267] However, KANU's commitment was more definitively detailed in its 'Statement of Policy', timed to coincide with the run up to the 1962 Constitutional Conference. Its statement was intended so that 'all doubts and misapprehensions about KANU's future policy may be removed from the minds of the people'. It promised that KANU wanted to ensure 'freedom from fear and want', and to that end laid down a long list of rights it wished to see entrenched, and also committed to an independent judiciary. But it then went further:

> if there are any other fundamental rights which it is considered would promote the happiness and prosperity of the people, guarantee their property rights and help to promote the growth and development of the country, K.A.N.U. will have no objection to have them included in the list

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He was quickly shot down on the basis that the French were extremely unpopular with the African Commonwealth countries and such arrangements were unrealistic; the exchange is in NA PREM 11/3336. The lobbying efforts for a land fund are described by G. Wasserman, *Politics of Decolonization: Kenya Europeans and the Land Issue 1960–1965,* 48–49, 68–70, 77–87, 105–118, 122–132.

266 Constitution and Rules of the Kenya African National Union, Aims and Objects, f) (as adopted, Kiambu, March 1960), NA CO 822/2238,

267 *The KANU Manifesto for Independence, Social Democracy and Stability*, November 1960, 12–13.

> of fundamental rights. Generally, K.A.N.U. accepts as the basis of constitutional guarantees the U.N.O.'s Universal Declaration of Human Rights.[268]

At the same time, although it argued over some of the detail, its delegation proved quite amenable in accepting wording that ostensibly went a long way in providing assurances to the opposition and the white settler community. Clearly KANU were prepared to play the long game if it meant that independence would thereby be accelerated. However, like KADU, KANU recognised that the key issue would be '*majimbo*'. On this issue, KANU was reluctant to compromise.

The Colonial Office's problem was therefore how to bridge the gap between the two parties. It proved a bridge too far. After four weeks, a frustrated Colonial Secretary Maudling advised that:

> this Conference will never succeed if we try to produce a constitution which will avoid any conceivable danger that may arise from the possible malevolence of any group or party. I doubt if we could … foresee and guard against all dangers … This is not to say that there is no need for safeguards for minorities and for the rights of the individual … but they must not be so designed as to make the progress of a united Kenya nation impossible.[269]

In his report to Cabinet on the conference he would go on to say that, 'in my opinion with justification', KADU do not believe that KANU, once in office, had any intention of keeping their undertakings and so looked for protection in what they describe as a 'defence in depth'.[270]

In the circumstances, therefore, the conference seemed to place only limited importance on the Bill of Rights. Whereas in their conference proposals KANU had largely reiterated their pre-conference statement, KADU, as KANU observed, made only a perfunctory reference to the Bill of Rights in their delayed conference submission. KANU attributed that to broad agreement between the two parties on the principles, but they also observed that the implication of a lack of detail was an underlying want of confidence in a Bill of Rights. This want of confidence was clearly expressed by Ngala in his opening statement. Playing to the fears of the Colonial Office, he noted that:

> We are determined to have a constitution under which civil and political rights of the individual … will be safeguarded … Some emergent countries in Africa have experienced many difficulties in the realisation of their freedom and in the maintenance of the liberty of the individual … We wish to build a country in which dictatorship is impossible.

268 Kenya African National Union-Statement (January 1962), NA CO 822/2238; see also R.M. Maxon, *Kenya's Independence Constitution: Constitution-Making and End of Empire*, 294 Note 109 for further contemporary references.

269 Kenya Constitutional Conference, 1962, K.C.C. (62) 19 12 March 1962 (Memorandum by the Secretary of State for the Colonies), NA CAB 133/213.

270 C (62) 53 Cabinet, Kenya Constitutional Conference, Memorandum by the Secretary of State for the Colonies 19 March 1962, NA CAB 129/109/3.

He elaborated on the context of his statement at the next meeting when he referred to the need for the constitution to aim at 'preventing domination by a political party, group, tribe or individual'. Mboya immediately pounced on this remark, asking whether this meant a permanent coalition government irrespective of the will of the electorate as expressed through elections. Although Ngala demurred at this interpretation, it was in fact precisely what he sought. Okondo, another KADU delegate, similarly pointed out that: 'Since the constitution could be amended by a 51 per cent majority, there was no guarantee of the maintenance of individual liberty. The KANU document laid the seeds of dictatorial government. The judiciary would be at the mercy of the Head of State … it had not worked with credit in some newly independent states.'[271]

This assessment was backed up by the other minorities. The Kenya Coalition Parliamentary Group's memorandum, for example, welcomed the idea of a Bill of Rights and an independent judiciary, but also observed that 'it would be only too easy for a party in power to amend the constitution to serve its own ends and thus gain absolute power … We do not consider that the mere existence of a Bill of Rights or an Independent Judiciary provide adequate safeguards against abuse of power.' The Kenya Indian Congress also advised that they: 'Consider a Bill of Rights enforceable by the Courts is very important … They have not been able to satisfy themselves that the present Bill of Rights covers these points.'[272] Finally, drawing on his Colonial Office briefing, Colonial Secretary Maudling would also query KANU's proposal for extensive derogation of the Bill of Rights to be permitted in 'the interests of security of Kenya.'[273]

271 Kenya Constitutional Conference, 1962, K.C.C. (62) 3 14 February 1962 (Memorandum by the K.A.N.U. Delegation) K.C.C. (62) 4 14 February 1962 (Memorandum by the K.A.D.U. Group), K.C.C. (62) 10 16 February 1962 (Memorandum by Kenya Coalition on KANU/KADU Constitutional Proposals), K.C.C. (62) 12 16 February 1962 (Notes on K.A.N.U.'s reaction to K.A.D.U.'s proposals as related to the Constitution: Speech by Mr Kenyatta), K.C.C. (62) 16 20 February 1962 (Further Constitutional Proposals, Memorandum by the KADU Parliamentary Group) and K.C.C. (62) Record of First and Second Meetings on 14 February 1962, Record of Sixth Meeting on 19 February 1962, Record of Tenth Meeting on 21 February 1962 and Record of Thirteenth Meeting on 23 February 1962, NA CAB 133/213.

272 K.C.C. (S.G.) (62) 2 26 February 1962 Kenya Coalition Parliamentary Group, NA CO 822/2381, Personal No. 24 Renison to Secretary of State for the Colonies enclosing Note on Kenya Indian Congress 15 January 1962, NA CO 822/2238. Representations to the conference were also received from a group of Kenyan women, see K.C.C. (62) 14 19 February 1962 (Memorandum on behalf of the African Women to the Kenya Constitutional Conference in London February 1962), NA CAB 133/213.

273 Kenya Constitutional Conference, 1962, Record of Tenth Meeting on 21 February 1962 and K.C.C. (62) 19 12 March 1962 (Memorandum by the Secretary of State for the Colonies), NA CAB 133/213.

Discussion of the Bill of Rights was delegated to a 'Committee on a Bill of Rights' which was asked: 'To consider and report to the Conference on the provisions to be included in a Bill of Rights.' As all parties were largely agreed, and with their eyes on quite a different ball, discussion was relatively benign in tone. Its final report proposed that the constitution of Kenya should be based on the Ugandan Bill of Rights as amended to reflect Kenyan circumstances. In the main, these amendments served to strengthen the provisions providing protection for property rights. For example, compensation was to be 'full' rather than 'adequate' and the right to freedom of movement in and out of the country and the right to transfer compensation out of the country was made more explicit; other amendments were relatively minor but biased in favour of greater freedom or protection.[274]

However, as Colonial Secretary Maudling recognised, the conference had ended in failure. The limit of agreement reached was acceptance of a framework for the Kenya Constitution which the Colonial Office had tabled as a last resort; although, as Odinga would record, Kenyatta – who had been released from prison in August 1961 – had privately advised the KANU delegation that: 'We might be forced to accept a constitution we did not want, but once we had the government we could change the constitution.'[275] This framework provided for a Bill of Rights based on the committee's report, an independent judiciary and right of appeal to the Judicial Committee of the Privy Council in the UK; amendments to the constitution would require a 75 per cent majority in the Upper House, 90 per cent in the case of entrenched provisions; and the declaration of a state of emergency would, after a period of time, require the endorsement of a substantial majority in both Houses. It also specified the creation of six regions with legislative and executive authority though the allocation of that authority as between the centre and regions was left for further negotiations.

Finally, in an effort to encourage compromise, and possibly even detach Mboya from Kenyatta and Odinga, Colonial Secretary Maudling also insisted on a National Government under the joint leadership of Ngala and Kenyatta which would be able to 'settle in discussion with Her Majesty's Government … the details of a constitution based on this agreed framework'. As soon as the details had been agreed and implemented, a general election would be held; thereafter negotiations would begin on arrangements for Kenyan independence.[276]

274 Kenya Constitutional Conference, 1962, K.C.C. (BR)(62) 1st Meeting, Committee on a Bill of Rights, Record of First Meeting on 1 March 1962, K.C.C. (BR)(62)1 28 February 1962 (Terms of Reference and Composition) and K.C.C. (BR)(62)5 29 March 1962 (Draft Report), NA CAB 133/214, HMSO Cmnd. 1700, *Report of the Kenya Constitutional Conference, 1962,* 16–19 (Appendix II), 19–25 (Appendix II Annex A) and HMSO Cmnd. 1970, *Kenya Constitution: Summary of the Proposed Constitution for Internal Self-Government* (London, 1963), 3.

275 J.O. Odinga, *Not Yet Uhuru: The Autobiography of Oginga Odinga*, 229.

276 HMSO Cmnd. 1700, *Report of the Kenya Constitutional Conference, 1962*, 16–19

Responsibility for negotiations was assigned to the Kenyan Council of Ministers. Its decisions were transmitted to the Colonial Office legal team which prepared a draft which was then sent back to Kenya for further review. With these negotiations moving slowly, Colonial Secretary Maudling visited Kenya in July 1962 to inject some urgency but ended up having to advise both parties that if agreement could not be reached the Colonial Office would be forced to impose its own solution. However, his warning and even a Council of Ministers resolution in November 1962 had so little effect that in practice many decisions would be taken by the drafting team in London – and, finally, by Sandys, the new Colonial Secretary, during his February 1963 visit.[277] An agreement would therefore eventually be reached only in March 1963.[278] Both sides had reason to be satisfied; KADU had seemingly established its 'defence in depth' and KANU could look forward to the prospect of government and independence.

As promised, elections were held in May 1963, fought by KANU on a platform of an immediate advance to independence and by KADU on the basis of *majimbo*; the result was an outright victory for KANU and the appointment of Kenyatta as Prime Minister. KANU's election manifesto had pledged that it 'will steadfastly uphold the rule of law and guarantee the position of every citizen according to the Bill of Rights … We shall not countenance oppression by minorities or by majorities'.[279]

After this success, KANU was now determined to press home its claims. In talks with Colonial Secretary Sandys, it was agreed that an independence conference would be held in September 1963 and shortly thereafter independence would be effected in December 1963.[280] As this was a tight schedule, pre-

(Appendix II); see also C (62) 53 Cabinet, Kenya Constitutional Conference, Memorandum by the Secretary of State for the Colonies 19 March 1962, NA CAB 129/109/3.

277 Minute, Steel to McPetrie 6 September 1962, NA CO 822/2239, Steel to Webb 13 September 1962, NA CO 822/2252, Statement by Secretary of State for the Colonies Sandys on his predecessor's recent visit to Kenya, House of Commons 17 July 1962 and Extracts from Minutes 56th (Constitutional) Meeting, Kenya Council of Ministers 22 November 1962, NA CO 822/2255.

278 HMSO Cmnd. 1970, *Kenya Constitution: Summary of the Proposed Constitution for Internal Self-Government* (London, 1963), Kenya Order in Council, 1963 18 April 1963 and R.M. Maxon, *Kenya's Independence Constitution: Constitution-Making and End of Empire,* 113–175. The records of the constitutional discussions in Kenya in 1963 with the Colonial Secretary are in NA CO 822/3216.

279 KANU Election Manifesto, *What a KANU Government Offers You* (Nairobi, 1963), 18, KADU, *Election Policy 1963* (Nairobi, 1963) and C. Sanger/J. Nottingham, 'The Kenya General Election of 1963', *Journal of Modern African Studies,* 2/1 (1964), 1–40 (reference from C.J. Gertzel/M. Goldschmidt/D. Rothchild (eds), *Government and Politics in Kenya: A Nation Building Text* (Nairobi, 1969), 127–128).

280 Joint Statement by the Kenyan Minister for Justice and Constitutional Affairs and the Colonial Secretary 24 June 1963, NA CO 822/3218.

conference discussions were chaired by Governor Macdonald so as to resolve as many issues as possible. They proved slow and unproductive and ended with KADU walking out. All the while both sides sought to lobby the Colonial Office – KADU to retain the constitution, KANU to force amendments. At the same time, KANU made every effort to delay the operational implementation of the devolution of powers that had been agreed only a few months earlier.[281]

The 1963 Independence Conference was held in much the same acrimonious spirit as previous constitutional conferences as KADU continued its desperate rearguard action. In their opening speeches Ngala insisted on the previously agreed principle that no substantive constitutional change to the 1962 framework should be considered, while Prime Minister Kenyatta demanded that the rights of the majority must be respected; indeed, prior to the conference, KANU had even suggested to the Colonial Office that the opposition should be represented by only a token delegation.[282] The changes sought by KANU aimed at a more limited regional devolution and a lower threshold majority for constitutional amendments of 65 per cent, for the Bill of Rights to allow compulsory acquisition of land 'for a public purpose' and for derogation of fundamental rights 'in the interests of, inter alia, "the security of Kenya"'.[283]

Despite much Colonial Office scuttling between the two delegations, both were unmoved and from Kenya word came that KADU was considering secession and KANU a unilateral declaration of independence.[284] It was a tough call, as Colonial Secretary Sandys lamented in the conference report. He was ultimately

281 R.M. Maxon, *Kenya's Independence Constitution: Constitution-Making and End of Empire*, 187–227. The records of the Independence Conference preparatory talks are in NA CO 822/3144.

282 Note of Secretary of State's Final Meeting with Mboya Delegation on Thursday 20th June 1963, NA CO 822/3218.

283 Minute, Steel to Kitcatt 29 August 1963, NA CO 822/3144, Kenya Constitutional Conference, Draft Brief No. 1 Basic changes in the Constitution, East African Department, September 1963, NA CO 822/3145, K.C.C. Draft Brief No. 8: Brief on Human Rights: Official Eyes Only, undated, NA CO 822/2368, Personal No. 840 Monson to Webb Amendment of the Constitution 29 August 1963 and Kenya Constitutional Conference, Draft Brief No. 5 Procedure for Amendment of Constitution, East African Department, September 1963, NA CO 822/3102, Kenya Independence Conference, 1963, K.I.C. (63) 1st and 8th Meetings, Record of the First Meeting on 25 September 1963, Speech by Ngala and Prime Minister Kenyatta and Record of the Eighth Meeting on 19 October 1963, Statement by the Secretary of State for the Colonies, K.I.C. (63) 3 25 September 1963 (Future amendment of the independence Constitution, Memorandum by the Government of Kenya), K.I.C. (63) 11 26 September 1963 (Necessary features of the Kenya Independence Constitution, Memorandum by KADU) and K.I.C. (63)12 26 September 1963 (Future amendment of the Independence Constitution, Memorandum by the European Delegation), NA CAB 133/215.

284 Murumbi to Deputy Prime Minister Butler 16 October 1963, NA CO 822/3139.

persuaded by a letter from Prime Minister Kenyatta advising that if KANU's points were not accepted 'we would declare in advance that we are not committed to the constitution'.[285] Also, by Colonial Office advice that concessions had to be made to KANU if violence was to be averted and the goodwill of an independent Kenya secured.[286] Alongside a range of technical amendments, Colonial Secretary Sandys therefore acceded to KANU's demands for an extension of the powers of central government and reduced majorities for constitutional amendments. There was little discussion on amendments to the Bill of Rights.[287]

In his acceptance of the package, Prime Minister Kenyatta advised Colonial Secretary Sandys that: 'It is not our intention to seek to make further amendments to the constitution except in so far as subsequent experience shows these to be absolutely necessary'; he also advised that he wished 'to reaffirm our intention to transfer to the Regions with all possible speed the departments and services still remaining to be handed over … not later than 31st December, 1963'.[288] On this basis Kenya became independent on 12 December 1963.[289]

Immediately after the independence conference, KADU began to disintegrate as its leaders saw the writing on the wall and defected *en masse* to KANU – only one MP, Shikuku, refused to join KANU and remained as an independent until 1969.[290] This meant that KANU was now able to obtain the threshold majorities for amendments to the constitution and therefore, notwithstanding Prime Minister Kenyatta's undertakings, the process of amendment began in earnest only a few months after independence.

Over the next few years amendments completely overturned the constitutional settlement agreed at independence. In 1964 Kenya became a Republic and Kenyatta President with augmented powers over the judiciary and public

285 HMSO Cmnd. 2156, *Kenya Independence Conference* (London, 1963), 4–9 (Statement by the Secretary of State for the Colonies at the final Plenary Session) and Prime Minister Kenyatta to Sandys 14 October 1963, NA CAB 21/5461.

286 Personal No. 586 Acting Governor to Secretary of State for the Colonies 15 October 1963, NA CO 822/3139.

287 HMSO Cmnd. 2156, *Kenya Independence Conference* (London, 1963), 7–9, 12–24 (Annex D Amendments and Additions to be made to the Constitution).

288 HMSO Cmnd. 2156, *Kenya Independence Conference* (London, 1963), 10 (Annex B Kenyatta to Sandys re further amendments of constitution 19 October 1963), 11 (Annex C Kenyatta to Sandys re implementation of '*majimbo*' 19 October 1963).

289 Kenya Independence Act, 1963 3 December 1963 and Kenya (Independence) Order in Council, 1963 5 December 1963.

290 Personal Statement by Ngala and Prime Minister's Statement by Prime Minister Kenyatta, 10 November 1964, Government of Kenya, Official Report, House of Representatives, The National Assembly, First Parliament Second Session (cont), Vol. III, Part III, cols. 4415–4417 (reference from C.J. Gertzel/ M. Goldschmidt/D. Rothchild (eds), *Government and Politics in Kenya: A Nation Building Text*, 110–111) and C. Hornsby, *Kenya: A History Since Independence* (London, 2012), 94–96 Note 10.

service appointments. Further amendments dismantled the '*majimbo*' structure that, in any event, contrary to the constitution and its pre-independence pledges, KANU had failed to implement, abolished the special provisions for amendments relating to the regions and fundamental rights, decreased the majority needed for all amendments to 65 per cent and reduced to a simple majority the previous 65 per cent threshold needed for a declaration of a state of emergency and extended its duration limit from two to three months. A further amendment, along with changes to the 1960 Preservation of Public Security Act, enabled the President to override certain fundamental rights including detention without trial, censorship and control of the press. Finally, in 1966, the last vestiges of '*majimbo*' were removed with the merger of the Senate and House of Representatives and in 1968 by the abolition of the Provincial (formerly Regional) Councils.

Other amendments were prompted by factional in-fighting. In 1966, Mboya outmanoeuvred Odinga within KANU prompting Odinga and twenty-eight MPs to leave and set up the Kenya People's Union (KPU) as a radical alternative to KANU, which responded by further amendments in 1966, reinforced in 1967, whereby an MP who switched party allegiance mid-term was obliged to resign his seat. These amendments were complemented by further repressive measures aimed against the KPU including the banning of meetings and a refusal to register party branches; the KPU would be formally banned in 1969. It was now the turn of Odinga to cry foul. In the Wananchi Declaration, which set out the KPU's programme, the KPU declared that they would 'guarantee all *basic human rights*' but these seemed to be rather narrowly defined in terms of their wider aim of promoting what they called real socialism. Somewhat self-servingly, the KPU Manifesto for the 1966 by-elections arising out of the resignations condemned 'the infringement of Constitutional Rights by the present Government' and warned: 'The people of Kenya must beware of the gradual attrition of their freedoms and the establishment of a Dictatorship. The KPU stands for the Defence of the Constitution.'[291]

Opposition to KANU would finally be abolished in 1982, a year after the adoption of the ACHPR at the 1981 Nairobi AHSG, when Kenya was constitutionally established as a one-party state.[292]

291 *Wananchi Declaration: The Programme of the KENYA PEOPLE'S UNION* (no date, Nairobi) and *K. P. U. Manifesto for 1966 By-Elections: Bull! – Freedom! – Socialism!* (Nairobi, 1966), 2–3.

292 C. Gertzel. *The Politics of Independent Kenya, 1963–8*, 35, 144–148, 152–153, 166, 174–176, H.W.O. Okoth-Ogendo, 'The Politics of Constitutional Change in Kenya since Independence, 1963–69', *African Affairs,* 71/282 (1972), 9–34, J.B. Ojwang, *Constitutional Development in Kenya: Institutional Adaptation and Social Change* (Nairobi, 1990), 229–231 (Appendix 2: Post-independence constitutional changes), S.D. Mueller, 'Government and Opposition in Kenya, 1966–9', *Journal of Modern African Studies,* 22/3 (1984), 399–427, Y.P. Ghai/J.P.W.B. McAuslan, *Public Law and*

While Peter points out that the Bill of Rights 'is the only area of the Constitution which has been left intact', the more apposite point is perhaps made by Ghai and McAuslan in their extensive survey: 'It is hard to escape the conclusion that the Bill of Rights has had little impact on government and administration in Kenya … the trend has been in the direction of whittling down the effectiveness of the Bill of Rights.' Why then, they ask, has it not been repealed? Their conclusion is that repeal is just not necessary and would be a needless statement of opposition to human rights. As it is, 'all the powers the Government considers necessary for its survival and the implementation of its programme can be, and presumably have been, obtained through bypassing the Bill, or where necessary amending it'.[293]

Tanganyika

The only colonial territory to resist Colonial Office cajolery to incorporate fundamental rights into its independence constitution was Tanganyika which differed from most of the other colonial territories in several essential respects. In the first instance, Tanganyika was a UN Trust Territory and therefore the Colonial Office was obliged to defend its administration at the UN Trusteeship Council and the UNGA. Most critically though, its population, estimated at seven to eight million at the time of the 1948 census, was so diverse in terms of religious and ethnic background, with 127 tribal groups identified, that the prospect of any

Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present (London, 1970), 407–456, P.L.O. Lumumba, 'A Journey through Time in Search of a New Constitution', K. Mbondenyi/P.L.O. Lumumba/S.O. Odero (eds), *The Constitution of Kenya: Contemporary Readings* (Nairobi, 2011), 22–35, N. Kamunde-Aquino, *Kenya's Constitutional History* (2014) http://cbgoumaadvocates.co.ke/wp-content/uploads/2017/11/Kenyas-Constitutional-History.pdf, last accessed 13 March 2023, *History of Constitution-making in Kenya* (2012) https://www.kas.de/c/document_library/get_file?uuid=4990bd18-d7e5-3606-f173-6d0418ec8d27&groupId=252038, last accessed 13 March 2023, G. Muigai, 'Constitutional Government and Human Rights in Kenya', *Lesotho Law Journal: A Journal of Law and Development,* 6/1 (1990), 114–129, P. Anyang' Nyong'o, 'State and Society in Kenya: The Disintegration of the Nationalist Coalitions and the Rise of Presidential Authoritarianism 1963–78', *African Affairs,* 88/351 (1989), 229–251, K. Good, 'Kenyatta and the Organization of KANU', *Canadian Journal of African Studies,* 2/2 (1968), 115–136, Kenyan Institute of Administration, *A Guide to the Constitutional Development of Kenya* (Nairobi, 1969), 30–36 and K.G. Adar/I.M. Munyae, 'Human Rights Abuse in Kenya under Daniel Arap Moi, 1978–2001', *African Studies Quarterly,* 5/1 (2001), 1–17.

293 C.M. Peter, 'Fundamental Rights and Freedoms in Kenya: A Review Essay', *African Journal of International and Comparative Law,* 3/1 (1991), 62 Note 4 and Y.P. Ghai/J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present*, 455.

one group dominating political power or of political fracture along ethnic, religious or regional fault lines was never a realistic prospect. Moreover, there was only a small European community, most of whom were employed in colonial administration not farming. Even the much larger Asian community accounted for less than 1 per cent of the population. Accordingly, many of the tensions that beset the independence negotiations of the other British colonial territories were largely absent.

At least in the immediate post-war period, political activity in Tanganyika had been relatively muted. While the Tanganyika African Association (TAA) had managed to hold several territorial conferences during the war, by 1948 it was effectively dormant. Mziray, the TAA Honorary Secretary in Dar es Salaam, for example, wrote a circular letter to branches complaining that the TAA's activities had come to a standstill, it had no clear aims, its financial situation was dire and no proper records seemed to have been kept of resolutions adopted at the 1945 and 1946 annual conferences.[294] African opinion had been galvanised only in respect of two issues, 'Federation' (with Kenya) and the continuation of UK trusteeship. However, with trusteeship status established in 1946 and improved economic conditions, there were few other national issues upon which African opinion felt the need at this time to unite in opposition against the colonial government. On the contrary, there seemed to be a shared appreciation that Tanganyika was best served by the UK trusteeship. In practice, therefore, political advance was effectively left to the discretion of the colonial government.[295]

By 1948 membership of the Legislative Council had been widened to include four Africans and three Asians together with seven European unofficial members, all of whom were nominated by the Governor. Effective control, though, remained with the fifteen official members. On two occasions the Colonial Office proposed an unofficial majority, but this was refused by the African and Asian members who, alert to the dangers of the Colonial Office bearing gifts, recognised this offer as a Trojan horse for European domination and Federation.[296] However, even though there was little domestic pressure for change, Tanganyika could not remain isolated from developments in the other British colonial territories.

294 U. Lohrmann, *Voices from Tanganyika*, 106.

295 This section has drawn on J. Listowel, *The Making of Tanganyika*, J. Iliffe, *A Modern History of Tanganyika*, 485–576 and 'Breaking the Chain at its Weakest Link: TANU & the Colonial Office', G.H. Maddox/J.L. Giblin (eds), *In Search of a Nation: Histories of Authority and Dissidence in Tanzania* (Oxford, 2005), 168–197, G.A. Maguire, *Toward 'Uhuru' in Tanzania: The Politics of Participation* (Cambridge, 1969), 112–384, U. Lohrmann, *Voices from Tanganyika* and J.C. Taylor, *The Political Development of Tanganyika* (Stanford, 1963).

296 Cohen to Twining 1 November 1949, quoted by J. Iliffe, 'Breaking the Chain at its Weakest Link: TANU & the Colonial Office', 170.

In November 1949, therefore, the recently arrived Governor Twining appointed a Committee on Constitutional Development to which all unofficial members of the Legislative Council were appointed: 'To review the present constitutional structure … and to make recommendations for future constitutional developments.' As a part of its review, the committee established a subcommittee whose remit was to visit the main centres of population in order to ascertain local opinion on the trajectory of political advance. Although the Sub-committee reported that: 'Not as much interest was shown by the general public … as had been expected', representations were made by the newly formed Action Group which had taken over the TAA Dar es Salaam branch. They presented a memorandum proposing an extension of local government with a small African majority. These local and regional councils would also function as an electoral college for the Legislative Council in which half the unofficial members would be African, though there would still be an official majority. After a period of twelve years, these electoral colleges would give way to a common electoral roll for elections of a majority of members of the Legislative Council. The memorandum was, of course, derisorily dismissed in the introductory report on the grounds that they had stated that 'all other races should eventually lose all political rights'.

The committee carried out its task at a leisurely pace only releasing its report in 1951. Its lead recommendation proposed a decentralisation of government to regional councils which 'will not only increase the efficiency of government but will provide a means by which the people of the Territory can play an increasing part in the administration'. A recommendation that accorded rather closely with Governor Twining's view that 'before the indigenous people as a whole can assume any responsibilities in … central government, the local government system … must be fully and firmly established'. The committee also proposed a substantial restructuring of the Legislative Council. While an official majority would be maintained, membership was to be enlarged and limited elections introduced although only after an electoral commission had recommended an appropriate electoral structure and regional councils had been established for a period of time so as to enable a wider pool of Africans to gain experience of government. As an adjunct to these recommendations, it was also proposed that an African be appointed to the Executive Council.[297]

297 Despatch from the Governor of Tanganyika No. 88 with attachment 'Memorandum on Development of local government in Tanganyika' 20 September 1950, 11, NA CO 691/210/1, Government Printer, *Administration of Tanganyika: Legislative and Administrative System* (Dar es Salaam, 1950), *Tanganyika: Report of the Committee on Constitutional Development 1951 and Despatch of 22nd March, 1951, from His Excellency the Governor to the Secretary of State for the Colonies AND Despatch of 25th July, 1951 from the Secretary of State for the Colonies to His Excellency the Acting Governor* (Dar es Salaam, 1951), Introduction and Terms of Reference, 2, 5–7, 17–21,

These recommendations were accepted with the proviso that the Legislative Council would only be enlarged three years after regional councils had been formed and direct elections introduced. The next step was to invite Mackenzie, Professor of Politics at Manchester University, 'to consider and make recommendations with regard to an electoral system for the Legislative Council'. His report proposed that elections should be held in a small number of constituencies on a common electoral role but on a tripartite (African, Asian, European) basis in which all electors would have to vote for a candidate in each of the three reserved sections.[298] In the interim, in June 1952, well in advance of the elections, the Colonial Secretary also announced, as recommended, a restructuring of the Executive and Legislative Councils as 'a settlement which is designed to last for a considerable period'. As from the end of 1954, therefore, the Executive Council was expanded so as to include three *ex-officio* and two African, Asian and European members. The Legislative Council was similarly expanded to thirty-one official members and thirty unofficial members divided equally on a racial basis. Initially, until the electoral system was set up, the members of both councils would be nominated by the Governor.[299]

There was also movement on the African side. In the early 1950s, a dormant TAA was revived by a younger generation intent on independence and reinforced by grievances over misguided land policies.[300] As Iliffe noted, the TAA was the embodiment of an idea which had not died, it was merely that determination and popular support had been wanting and were now being revived. The key decision to elect Nyerere President was taken in 1953 and the following year, at the first national conference for seven years, the decision was also made to reform the TAA as the Tanganyika African National Union (TANU).[301]

35–36, 39–40, *Tanganyika: The Constitutional Debate 1951* (Dar es Salaam, 1951), J. Listowel, *The Making of Tanganyika*, 186–194 and 'Committee on Constitutional Development: Report and Despatches to the Secretary of State', quoted by C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 30.

298 *Tanganyika Constitutional Development Commission: Report of the Special Commissioner Appointed to Examine Matters Arising out of the Report of the Committee on Constitutional Development* (Dar es Salaam, 1953), 69–70.

299 Statement by Secretary of State for the Colonies Lyttleton, House of Commons 25 June 1952, Minute Lennox-Boyd 21 February 1952, NA CO 822/606, Secret Ref. S.1462 30 May 1952 Governor Twining to Colonial Secretary Lyttleton and Tanganyika: Statement by His Excellency the Governor to Legislative Council on Wednesday, the 27th August, 1952, NA CO 822/607 and EAF/208/14/01 Tanganyika No. 882, Lyttleton to Twining 20 June 1952, NA FCO 141/17820.

300 Government Printer, *The Meru Land Problem* (Dar es Salaam, 1952) and K. Japhet/E. Seaton, *The Meru Land Case* (Nairobi, 1967).

301 J. Iliffe, *A Modern History of Tanganyika*, 483–516, J. Listowel, *The Making of Tanganyika*, 218–236, A.J. Temu, 'The rise and triumph of nationalism', I.N. Kimambo/A.J.

In his 1955 address to the UN Trusteeship Council Nyerere explained the import of this change: 'The Tanganyika African National Union, which took over from the African Association about ten (*sic.*) years ago, is a new organisation in the sense that it is a political organisation, whereas the former was semi-social and semi-political.'[302] TANU now began to position itself as an African territorial party opposed to the tripartite electoral system on the grounds that it was a racially motivated system that denied the undeniable – Tanganyika was an African country. Its constitution therefore provided for twelve 'Aims and Objects', the first of which was: 'To prepare the people of Tanganyika for self-government and independence.'[303]

If, on the colonial government's side, one eye was always fixed on the independence negotiations of the other East and Central African colonial territories, TANU was always alive to the potential offered up by the UN Trusteeship Council. United Nations Visiting Missions would travel to Tanganyika in 1948 and thereafter every three years until 1960. In 1948, the TAA was poorly organised and had made little impression on the mission, but by 1951 the mission was able to report on a revived TAA although it also felt, as the colonial government had advised, that its representative basis was still too narrow. That revival, as TANU, was even more evident in 1954 and there were therefore the first intimations of a timetable for independence even though that was envisaged as still being many years away.[304]

Temu (eds), *A History of Tanzania*, 200–202 and D.A. Smith, *The Influence of the Fabian Colonial Bureau on the Independence Movement in Tanganyika* (Athens, 1985), 28–30.

302 Speech by Nyerere to the Trusteeship Council 7 March 1955, UN T/PV.592, 26. It is not clear why it is reported that TANU took over the TAA ten years prior. Most likely it is a reporting error as in his next sentence Nyerere said that: 'During the last ten months in which we have become a really political organisation we have tried to organize ourselves.'

303 ABJ.22 Stapledon to Gorell Barnes 26 November 1955 enclosing Tanganyika African National Union: Attachment The Tanganyika African National Union Constitution (see also Twining to Lennox-Boyd 8 September 1954) and Summary of the Territorial Conference of the TAA held at Dar es Salaam on 6–10 July 1955, NA CO 822/859.

304 UN Trusteeship Council, Visiting Mission to Trust Territories in East Africa, Report on Tanganyika and (together with) Related Documents Supplement No. 3: 1948 T/218 and T/218Add.1; 1951 T/1032; 1954 T/1169; 1957 T/1401; and 1960 T/1550, EAF 185/95/101 14 December 1954 Tanganyika: The largest and most important of the Trust Territories, 17 June 1955 Tanganyika: Trusteeship Council and Constitutional Advance and Memoranda by Governor of Tanganyika, Sir Edward Twining, for Secretary of State for the Colonies 14 December 1954, NA CO 822/1071; see also A.O. Adebiyi, 'The Role of the United Nations Visiting Missions in the Decolonisation of East Africa, 1948–1960' (unpublished M. Litt.

Encouraged by the report of the 1954 mission, Nyerere sought to press home his advantage by directly addressing the UN Trusteeship Council, in March 1955 and June 1957, and the UNGA's Fourth Committee in December 1956. In his speeches, Nyerere stressed that Tanganyika was an African country and that TANU represented African public opinion contrary to the assertions of the colonial government who claimed that TANU represented only the few and that 'moderate' opinion, the chiefs, were more representative. In his 1955 speech, Nyerere argued that:

> The foundation on which we want to see all constitutional development built is the firm belief that although Tanganyika is multi-racial in population, it is primarily African. We have accepted the principle of parity of representation on our Legislative Council, but we have accepted it on the understanding that it is a transitional stage towards a more democratic form of representation.[305]

In 1956 he went further insisting that 'the Government should make a declaration that Tanganyika would be developed as a democratic state; since 98 per cent of the population were Africans, it would therefore be primarily an African state'.[306] Nyerere's comments infuriated the Colonial Office, especially Governor Twining, who felt the need to publish a formal denunciation. Nyerere would reiterate these points in 1957 while pointing out: 'So we do not have a statement … that our country is going to be democratic. We have not even been promised that when Government changes the present form of representation it shall be changed in the direction of increasing African representation.'[307] In all his UN speeches, though, he made no mention of the UDHR or human rights to support the case for independence.

Within Tanganyika, Governor Twining was virulently hostile towards the growing influence of TANU. He took great exception to its African-only stance which he saw as a threat to his vision of a multi-racial Tanganyika. With an eye on the elections due in two years time, and despite a duty of political neutrality, during a private meeting with unofficial members of the Legislative Council, he reacted to TANU's growing influence by inducing the creation in 1956 of the United Tanganyika Party (UTP) as a multi-racial alternative. Colonial Secretary Lennox-Boyd was made aware of these talks and was therefore complicit in Governor Twining's improper interference. For a brief time, the UTP was able

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thesis, University of Oxford, 1984).

305 Speech by Nyerere to the Trusteeship Council 7 March 1955, UN T/PV.592.

306 Speech by Nyerere to the UNGA, 20 December 1956, UN Official Records Fourth Committee 579th Meeting, 149–151 (A/C.4/SR.579).

307 Speech by Nyerere to the Trusteeship Council 18 June 1957, UN T/PV.818, Government Printer, *Some Comments on Mr. Nyerere's speech at the Fourth Committee of the United Nations* (Dar es Salaam, 1957), NA FCO 141/17860 and TANU, *That Notorious Speech (Kilio Cha Uhuru)* (Dar es Salaam, 1957).

to attract some support from African leaders, including African unofficial members still unsure of the outcome of the political struggle, and the chiefs, who saw TANU as a threat to their status. However, all too soon it became apparent that the UTP was a political failure and its support began to drain away. Other, legislative, measures were also taken with the sole aim of suppressing TANU. By 1958, this legislation had enabled the colonial government to close ten TANU branch associations, TANU being the only society to be banned under this legislation, and to impose a six-month speaking ban on Nyerere.[308]

It seems most likely that had it not been necessary to defend such actions in the UN, more severe measures would have been taken against TANU. As Governor Twining explained to the Legislative Council in May 1954 in a fulmination against self-seeking, self-appointed political leaders stirring up the people against authority: 'This cannot be allowed to continue and Government will not tolerate such activities which are contrary to the best interests of the people and are designed to damage, if not destroy, good government.'[309] Ironically, President Nyerere would employ exactly the same argument when, a few months before the first post-independence elections, he banned meetings of the African National Conference party in the Lake region.

As had earlier been agreed, following the recommendations of the Committee on Constitutional Development, in April 1956 Governor Twining finally announced that restricted elections to the Legislative Council would be held in 1958 and 1959.[310] The following year he also announced that after those elections a Post Elections Committee would be established to consider whether further

308 GH. 1033/2 Secret Twining to Lennox-Boyd 31 October 1955 and EAF 46/7/61 Lennox-Boyd to Twining 7 December 1955, NA CO 822/859, Ref: ABC.83/5/05. No. 476 Secret Twining to Lennox-Boyd 2 May 1956, NA CO 822/1071, Grattan-Bellew to Mathieson 18 March 1957, enclosing Minute, Governor to Chief Secretary 16 March 1957, NA CO 822/1361, A. Ross, 'The Capricorn Africa Society and European Reactions to African Nationalism in Tanganyika, 1949–60', *African Affairs,* 76/305 (1977), 529–534, J. Iliffe, *A Modern History of Tanganyika*, 521–522 and 'Breaking the Chain at its Weakest Link: TANU & the Colonial Office', 171–178, J. Listowel, *The Making of Tanganyika*, 165–166, G.A. Maguire, *Toward 'Uhuru' in Tanzania: The Politics of Participation*, 163–195, 349, D.A. Smith, *The Influence of the Fabian Colonial Bureau on the Independence Movement in Tanganyika*, 27, 39–40 and C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 36–38; see also Lord Twining, 'The Last Nine Years in Tanganyika', *African Affairs,* 58/230 (1959), 20–21.

309 Governor Twining, Address, 12 May 1954, Tanganyika, Legislative Council, Council Debates (Hansard) Official Report Twenty-Ninth Session, First Vol. of Session 1954/1955, 3–5.

310 Governor Twining, Address 25 April 1956, Tanganyika, Legislative Council, Council Debates (Hansard) Official Report Thirty-First Session, First Vol. of Session 1956/1957, 10–11.

constitutional changes should be made. Rather foolishly, though, as a last throw of the dice, the colonial government sought a highly restrictive franchise for these elections, but was successfully opposed by both the African unofficial members and the UTP, who regarded it as politically counter-productive. Even so, participation was limited to fewer than 60,000 voters, though this still meant that Africans were in the majority.

The elections were to be held in two rounds; five constituencies in September 1958 and a further five in October 1959. Each would return three members, one in each section (African, Asian and European), and voters were required to vote in all three sections. As preparations were being made, Governor Twining and the Colonial Office began belatedly to reconsider the mandatory tripartite vote, but, after considerable internal debate, Colonial Secretary Lennox-Boyd fatally refused to alter course.

On the TANU side, there was a growing demand for responsible government by the end of 1959 and therefore considerable unease as to whether to endorse the electoral system by participation or to boycott it in concert with a campaign of civil action until this demand was conceded. Persuaded by Nyerere at its 1957 Tabora conference, TANU narrowly decided to participate. As Nyerere argued, a boycott would simply have left the field open to the UTP, but it was also now evident that, if sufficient numbers of Africans registered, they would be in the majority and therefore enable TANU to win the election; in the event, 68 per cent of the voters were African.[311] It was also evident that mandatory voting had played into TANU's hands. The appeal of this scheme had been to mask the potentially absurdity whereby a European member might get elected with a few hundred votes while an African member would require several thousand. However, because of mandatory voting, African numbers meant that Asian and European candidates needed TANU's endorsement if they were to have any chance of being elected.[312]

As a result, in the first round in September 1958, TANU won the five African seats but TANU-endorsed candidates also won eight of the ten European and Asian seats. TANU immediately demanded that either the second round be

311 J. Listowel, *The Making of Tanganyika*, 303–309 and J. Iliffe, *A Modern History of Tanganyika*, 555–558 and 'Breaking the Chain at its Weakest Link: TANU & the Colonial Office', 178–182.

312 Governor's Deputy to Secretary of State for the Colonies and Governor, Tanganyika 3 February 1958 and Grattan-Bellew to Mathieson 12 March 1958, NA FCO 141/17891, Ref No. 93/57/26 TANU, Nyerere to Lennox-Boyd 15 October 1957 enclosing TANU, Memorandum to the Right Honourable Mr. Lennox-Boyd, Secretary of State for the Colonies 19 October 1957, Record of Interview granted by the Secretary of State for the Colonies to Mr. Julius Nyerere, President of T.A.N.U. at 10. a.m. on 21st October, 1957, Dar es Salaam, 22 October 1957 and Ref. No. 18/57, Vol. II/114 Nyerere to Lennox-Boyd 22 October 1957, NA CO 822/1446.

brought forward or a constitutional conference be held to agree a constitutional structure based on direct elections. The Colonial Office refused a constitutional conference but agreed to bring forward the next round to February 1959. This time, TANU won all fifteen seats.

The election results put Nyerere in a strong position to demand further constitutional reform. His prospects were further enhanced by Governor Twining's retirement in July 1958 and replacement by Turnbull, who, as Chief Secretary in Kenya, had been directly involved in putting down the Mau Mau revolt. While this might have seemed an ominous appointment, Governor Turnbull's experience had in fact persuaded him that there should be no repeat in Tanganyika. TANU's position was also strengthened by an alliance in the Legislative Council of all elected members who had won their seats with TANU's support, the Tanganyika Elected Members Organisation (TEMO).

Nyerere's main demand was for recognition that Tanganyika was an African country. It was a principle that he had consistently asserted from his first appearance at the UN and his first meeting with the Colonial Office in September 1956.[313] TANU's election manifesto also clearly declared its opposition to the principle of racial parity, the tripartite system and the restricted franchise and denounced the delay in further constitutional reform as 'the HUMILIATION of unmitigated Colonial Rule'.[314] The Colonial Office had been unmoved but after the first round of elections it was forced to grudgingly concede acceptance of majority rule. In his first address to the Legislative Council in October 1958, Governor Turnbull was therefore able to announce that 'the Africans are … an overwhelming majority in Tanganyika and … it is right and proper … that African participation both in the legislature and in the executive should steadily increase. It is not intended … that parity should be a permanent feature of the Tanganyika scene.'[315]

The opportunity for further reform presented itself when the scheduled Post Elections Committee was set up. This time, TANU controlled the committee's composition. The party's memorandum to the committee accepted reserved seats for Europeans and Asians but only on a temporary basis to escape a charge

313 Tanganyika African National Union: Schedule of Resolutions passed at Tanganyika African National Union's Annual General Meeting, 1955, 'LEGCO Majority for Africans urged by TANU', *Tanganyika Sunday News,* 2 September 1956, Mathieson, Note of Conversation with Mr. Julius Nyerere, 7 September, 1956 and Gorell Barnes to Macpherson 12 September 1956, NA CO 822/859.

314 Commissioner of Police to Ministerial Secretary, Office of Chief Secretary 22 July 1958 enclosing TANU Policy/Election Manifesto, NA FCO 141/17816.

315 Opening Address by Governor Turnbull 14 October 1958, Tanganyika, Legislative Council, Council Debates (Hansard) Official Report 34th Session First Vol. of Session 1958–59, 3–11 (reference from C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 42).

of racism and educate the community on the need to respect all communities; but it also demanded a universal franchise for what were previously African seats but which were now to be designated 'open' seats. Finally, it demanded a majority of unofficial ministers. These demands were included in the Post Elections Committee's report which recommended that there should be seventy-one seats, of which eleven were to be reserved for Asian, ten reserved for European candidates and the remaining seats designated as 'open'. It also recommended a lower franchise threshold that would increase the electorate to 900,000.[316]

Nonetheless, throughout 1959, Colonial Secretary Lennox-Boyd sought to hold the line against an African majority in the Council of Ministers and an unofficial majority in the Legislative Council. As an interim measure, in July 1959, Governor Turnbull agreed that five of the twelve ministers would be unofficial members on a 3:1:1 racial basis but TANU warned that they would resign from the Council of Ministers and organise a programme of Positive Action if responsible government was not granted by the end of 1959.[317]

The Colonial Office line was therefore held (barely) at least until the October 1959 UK general election after which Macleod replaced Lennox-Boyd as Colonial Secretary. With the full support of Prime Minister Macmillan, Colonial Secretary Macleod sought a withdrawal from Britain's colonial commitments. He therefore gave approval for Governor Turnbull to announce in his December 1959 address to the Legislative Council that after the elections, which would be brought forward from 1962 to September 1960, there would be an unofficial majority in the Council of Ministers, that the franchise would be extended to include all taxpayers and that a majority of the Legislative Council would be elected on a common roll.[318]

The September 1960 election was a triumph for TANU whose candidates (often unopposed) won all but one of the seventy-one elected seats. As agreed,

316 Ref No. 89/63 TANU Constitutional Proposals enclosing Memorandum submitted to the Government of Tanganyika and the Post Elections Committee 13 June 1959, NA CO 822/1449, Government Printer, *Report of the Post Elections Committee 1959* (Dar es Salaam, 1959), 8–9, 13–14, 20 and C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 49–55.

317 Webber to Gorell Barnes 10 June 1959 and Note (TANU's proposals for constitutional advance as set out in the TANU memorandum of the 13th June and amplified in Mr. Nyerere's letter of the 18th June to the Governor), Fletcher-Cooke 22 June 1959, NA CO 822/1449.

318 Fletcher-Cooke, Chief Secretary to Webber 17 August 1959 and Paper, Background on Tanganyika 27 October 1959, NA CO 822/1450, Note of a meeting in the Secretary of State's room at 3.30 p.m. on Monday, 16th November, CC(59)60th Conclusions Tanganyika: Extract from conclusions of a Meeting of the Cabinet 26 November 1959 and No. 134 Intel From Foreign Office to certain of Her Majesty's Representatives 11 December 1959, NA CO 822/1451 and Address by His Excellency the Governor to the Legislative Council on the 15th December, 1959, NA FCO 141/17875.

ten unofficial members were appointed to the Council of Ministers and Nyerere became Chief Minister, but an emboldened TANU now wanted more and demanded that a date be set for independence in 1961. In October 1960, therefore, Governor Turnbull responded by announcing that a conference would be held in March 1961 to agree the process of independence.[319]

The conference negotiations proved unusually friendly as Chief Minister Nyerere had grasped the strength of his position and Colonial Secretary Macleod was keen to be relieved of responsibility for Tanganyika. There was also a sense in the Colonial Office that Tanganyika would not be ready for self-government any time soon and so it was irrelevant whether independence was set for 1961 or 1965. What was more important for the UK was the goodwill of an independent Tanganyika. The outcome was agreement on internal self-government from May 1961 and independence in December 1961 now brought forward from 1962.[320] A final constitutional conference in June 1961 completed the arrangements for independence leading to an ending of the trusteeship and independence on 9 December 1961.[321]

The preliminary agenda for the March 1961 Constitutional Conference had envisaged discussion of 'The Constitution at self-government' and 'Matters to be settled before independence'. Among the 'Matters to be settled' was 'whether the constitution should make provision for the protection of fundamental human rights on the lines of the Nigeria and Sierra Leone independence constitutions'. It was included as a matter of course because, by now, the Colonial Office's default position was that all independence constitutions should incorporate fundamental rights safeguards. However, in the case of Tanganyika, the Colonial Office also had an ulterior motive. Inclusion of such safeguards, especially property rights, was seen as setting a precedent for the independence negotiations with the other East and Central African colonial territories. This emerges most clearly in the draft agenda in which land rights are the only rights identified under the discussion heading of 'Inclusion of Fundamental Rights Provisions'.[322]

319 Opening Address by Governor Turnbull 11 October 1960, Tanganyika, Legislative Council, Council Debates (Hansard) Official Report 36th Session (First Meeting), 3.

320 HMSO Cmnd. 1360, *Report of the Tanganyika Constitutional Conference, 1961 Held in Dar es Salaam March, 1961*, 3, 8, HMSO Reference Pamphlet, *Tanganyika: The Making of a Nation* (1961) and Fletcher-Cooke to Monson 10 November 1960, NA CO 822/2300.

321 UNGA 1609/15 21 April 1961 and UNGA 1642/16 6 November 1961 and Tanganyika (Constitution) Order in Council, 1961 28 November 1961. For June 1961 constitutional conference, see CO 822/2420.

322 Monson to Turnbull EAF 71/746/03 24 February 1961 enclosing 'Matters which will require settlement before independence for Tanganyika', Tanganyika Constitutional Conference, 1961: Agenda, T/C Agenda/61 (Revised) and Tanganyika Constitutional Conference, 1961: Matters to be settled on independence, Conference Paper No. 6 Appendix A. T/C.6/61 (A), A. Constitutional, 4(h), NA CO 822/2414.

It is also evident from the Kilmuir Land Titles Cabinet Committee notes. At its first meeting, it was observed that if agreement could be reached with Tanganyika, whose political leaders were now regarded as moderate, 'we could in arguing with Mboya and Co. in Kenya point to Tanganyika as a respectable precedent'.[323]

The possibility of a statement in the independence constitution in respect of fundamental rights had also been flagged in an early draft of Governor Turnbull's October 1960 address to the Legislative Council, on which the comment 'what would it be worth, I wonder?' was scribbled, though in the end, it is not clear why, no such mention was made.[324] Moreover, astonishingly, no effort seems to have been made to ascertain Chief Minister Nyerere's views. Most likely, it was simply assumed that he would have no objection. To considerable consternation, therefore, just prior to the conference, Deputy Governor Fletcher-Cooke apprised the Colonial Office that Tanganyikan ministers might after all object on the grounds that there were no minorities in Tanganyika. The Colonial Office therefore started to scramble around for reasons to justify a Bill of Rights. As to property safeguards, this was not a subject which anyone had yet dared broach with Chief Minister Nyerere.[325]

The Colonial Office had had every reason to be optimistic. In the first instance, the 1947 UN Trusteeship Agreement had already accommodated certain rights.[326] In a range of declarations and TANU documents, Nyerere had also expressed his support for human rights. Soon after its formation, for example, TANU had translated the UDHR into Swahili and, as the colonial government reported: 'The Swahili version of the Declaration of Human Rights became widely known as "the laws of T.A.N.U."'.[327] It was followed up at TANU's 1955 Annual Conference by a resolution protesting against recent legislation limiting 'freedom of speech and of freedom to public (*sic.*) and write feelings which they wish the Government to know about' and proposing that TANU and the government

323 Minute, Kenya: Land Committee, First Meeting, Buist to Monson, Galsworthy and Pearson 26 August 1960 and Crawford to Buist 8 September 1960, NA CO 822/2189.

324 Permanent Secretary to Chief Secretary 9 July 1960, NA FCO 141/17817 and Opening Address by Governor Turnbull 11 October 1960, Tanganyika, Legislative Council, Council Debates (Hansard) Official Report 36th Session (First Meeting), 3–22.

325 Steel to Morgan 23 February 1961, Draft letter, Morgan to Deputy-Governor Fletcher-Cooke, February 1961, Monson to Martin 8 March 1961, EAF 71/7/024 Secret and Personal, Monson to Turnbull 10 March 1961 and Secret and Personal, Personal No. 175 Secretary of State to Minister of State from Tanganyika 30 March 1961, NA CO 822/2316.

326 HMSO Cmd. 7081, Treaty Series No. 19 (1947) *Tanganyika, Text of Trusteeship Agreement as Approved by the General Assembly of the United Nations*, Articles 13 and 14.

327 Grattan-Bellew to Mathieson 18 March 1957, 4, NA CO 822/1361 (reference from U. Lohrmann, *Voices from Tanganyika*, 63).

should 'do what it can to publicise the report on the doctrine of human rights of the United Nations Organisation.'[328] At a press conference in 1956, Nyerere had also contrasted TANU and the UTP's attitude towards human rights: 'They believe in equal rights for all civilized men, with the emphasis on "civilized"; we believe in the Universal Declaration of Human Rights. We believe that a man is a man irrespective of his colour or social status.'[329] TANU's amended 1960 constitution had also defined TANU's task as being 'to build the free nation of Tanganyika in accordance with the rights of all men' and laid down that one of TANU's purposes was 'to grant every person his due respect and rights as promised in the Declaration of Human Rights'.[330]

Chief Minister Nyerere had also sought to affirm human rights within the Pan-African Freedom movement. In September 1958, at the inaugural meeting of the Pan-African Freedom Movement of East and Central Africa (PAFMECA), he argued that the conference should make it known that it supported democracy, non-discrimination, the rule of law, independence of the judiciary and the 'consistent observation of the declaration of the Universal Human Rights (*sic.*) and the UN Charter'. As a result, these commitments were included in 'The Freedom Charter of the Peoples of East and Central Africa'. At the 1959 PAFMECA meeting, he also declared, though in the context of self-determination: 'Here we are, building up the sympathy of the outside world on the theme of Human Rights. We are telling the world we are fighting for our rights as human beings. We gain the sympathy of friends all over the world … Does anyone really believe that we ourselves will trample on human rights?'[331] At the time of independence,

328 Tanganyika African National Union: Schedule of Resolutions passed at Tanganyika African National Union's Annual General Meeting, 1955 and ABJ.22 Stapledon to Gorell Barnes 26 November 1955 enclosing Tanganyika African National Union: Attachment The Tanganyika African National Union Constitution (see also Twining to Lennox-Boyd 8 September 1954) and Summary of the Territorial Conference of the TAA held at Dar es Salaam on 6–10 July 1955, NA CO 822/859.

329 'Mr Nyerere's Press Conference: Very Few Tanganyikans Take U.T.P. Seriously', *East Africa and Rhodesia,* 25 October 1956, 262, NA CO 822/859

330 SF.311/505a Director of Special Branch to Permanent Secretary, Ministry of Security and Immigration, 28 June 1960 enclosing 'The New T.A.N.U. Constitution', NA FCO 141/17928.

331 'Pan-African Freedom Movement of East and Central Africa (PAFMECA)', *International Organization,* 16/2 (1962), 446–448, Tanganyika Police Ref.SF360/E.A/66a Copy No. 3, 'Conference of East African political leaders at Mwanza from 15th to 18th September, 1958' Special Branch Headquarter, Dar es Salaam 20 October 1958, 16–17, Appendix A: Minutes of the First Meeting of the Pan African Freedom Movement, Appendix B: Proposed Constitution of the Pan African Freedom Movement of East and Central Africa and Appendix C: The Freedom Charter of the Peoples of East and Central Africa signed 18 September 1958 and The Approved Constitution of the Pan African Freedom Movement of East and Central Africa,

too, in a warning against triumphalism, Prime Minister Nyerere would remind TANU members that 'we have based our struggle on our belief in the equality and dignity of all mankind and on the Declaration of Human Rights'.[332]

There is therefore good reason to believe that Nyerere's support for human rights was essentially genuine. However, there is also a sense that his support encompassed other priorities and different perspectives than simply support for the individual *qua* individual. For example, Prime Minister Nyerere's first address to the UNGA in December 1961 declared that: 'We shall try to use the Universal Declaration of Human Rights as a basis for both our external and our internal policies.' Significantly, the main theme of his speech was racial discrimination.[333] Similarly, in a 1960 lecture at Wellesley College, Massachusetts on the theme of freedom, he suggested that Africa had the 'moral strength' to become the champion in the world for 'democracy and personal freedom'. To do so, Africa 'must maintain the highest democratic standards within her own territories', albeit that one-party rule is not necessarily undemocratic and quite natural to a territory emerging from colonialism under a nationalist movement. He went on to interpret freedom as including freedom from oppression and exploitation whether by fellow citizens, foreign governments or by any government of Africa. Finally, he also identified 'the conflict between East and West as basically one between rights of the individual and rights of the state … African society based on membership in a genuine community or family, fundamentally solves the conflict between the individual and society'.[334]

Aware by now of a likely refusal, the March 1961 Constitutional Conference left the question of fundamental rights in abeyance for consideration at the June 1961 Constitutional Conference along with other technical issues that had to be settled before independence.[335] In the interim, Governor Turnbull and Colonial Secretary Macleod sought to persuade Chief Minister Nyerere of the desirability of incorporating safeguards for fundamental rights into the constitution. The Colonial Office deliberated with great thought as to the argument they felt would most appeal before finally concluding that he should be advised that world public opinion and the UN were looking on and that

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'Chairman's Opening Address to the PAFMECA Conference, September, 1959', NA CO 822/1338 and J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja*, 70.

332 'Independence Message to TANU, Uhuru,' J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja*, 139.

333 'Independence Address to the United Nations 14 December 1961', J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja*, 146.

334 U.S.I.S. Press Release: 'Nyerere predicts Africa's role in world affairs' 18 February 1960, FCO 141/17767.

335 HMSO Cmnd. 1360, *Report of the Tanganyika Constitutional Conference, 1961 Held in Dar es Salaam March, 1961*, 8.

the incorporation of fundamental rights would redound to the prestige of an independent Tanganyika.[336]

The final decision was debated by the Tanganyika Cabinet ahead of the June 1961 conference. A paper prepared by Attorney General Brown, an English lawyer, posed the question: 'Should the constitution make provision for the protection of fundamental human rights on the lines of the Nigeria and Sierra Leone independence constitutions?' His paper drew specific attention to the resolution of the recent 1961 ICJ Lagos conference in favour of an African human rights charter (see Volume 2, Chapter 2) and left little doubt as to the decision which he felt the Cabinet should take. However, his advice was rejected: 'The Cabinet recommended that human rights clauses should not be written into the constitution, but … there would be no objection to a brief preamble.'[337]

Perplexed, Colonial Secretary Macleod and the Colonial Office asked Attorney General Brown privately to shed some light on the reasons underlying this decision. He advised of three principal objections: It was a device for minority problems which did not exist in Tanganyika; that post-independence 'they didn't want to be tangled up with a lot of lawyers'; and they were mindful of the precedent it might set for the Kenya independence negotiations. Attorney General Brown also explained that the idea for a preambular reference had come from Chief Minister Nyerere 'who believed that it would have a beneficial effect if children were taught to recite the Preamble daily!' Dazed, the Colonial Office pondered whether they ought to ignore the rejection by incorporating fundamental rights and daring the Tanganyikan government to repeal it.[338]

Many years later, former Attorney General Brown detailed the potential legal problems that the government had sought to avoid. He explained that it was felt that the legal system had been imposed on them from the outside and continued to be dominated by expatriate lawyers and judges. Accordingly any conflict between the government and judiciary would inevitably result in an undermining of the whole legal system at a time when Prime Minister Nyerere was still determined to educate Tanganyikans on the need to respect the rule of law.[339]

336 EAF 71/7/024 Secret and Personal, Monson to Turnbull 25 May 1961 and Undecipherable to Monson 2 June 1961 enclosing Turnbull to Nyerere 2 June 1961, NA CO 822/2316.

337 Cabinet Paper No. 28 of 1961, 'The Constitution at Independence: Memorandum by the Prime Minister 31 May 1961, Appendix, 5–7 and Extract from the Minutes of the Cabinet Meeting of 5th June, 1961, NA FCO 141/17819 and Personal No. 255 Turnbull to Secretary of State for the Colonies 7 June 1961, NA CO 822/2316.

338 Minute, Monson to Lord Perth and Martin 20 June 1961, NA CO 822/2316.

339 Interview with Roland Brown 24 February 2005, quoted by C.O.H. Parkinson, *Bills of Rights and Decolonization*, 232.

Wambali also quotes Kawawa, who was Prime Minister in 1962 when Nyerere resigned temporarily and again from 1972 to 1977, that within TANU there was a consensus that a Bill of Rights should be rejected as it was unnecessary in the circumstances of Tanganyika, once again citing three main objections: Firstly, that TANU had always believed in human rights and its constitution aspired to promote that end; secondly that, as the United Kingdom did not have one, there was no obvious rationale for Tanganyika to provide for one; and, thirdly, that TANU sought national unity in an independent Tanganyika and therefore wanted to discourage any unnecessary conflicts in the young state.[340] In the event, therefore, Colonial Secretary Macleod decided that no purpose would be served by pressing Chief Minister Nyerere further.[341]

As Chief Minister Nyerere was prepared to accept a statement in the Preamble, it was agreed that the Colonial Office would provide the first draft. It was prepared by Steel 'partly on the UN declaration, partly on Trinidad, partly on Sierra Leone' and, as finally agreed, declared that:

> WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace:
>
> AND WHEREAS the said rights include the right of the individual, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to life, liberty, security of the person, the enjoyment of property, the protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, and respect for his private and family life:
>
> AND WHEREAS the said rights are best maintained and protected in a democratic society where the Government is responsible to a freely-elected Parliament representative of the people and where the courts of law are independent and impartial:.
>
> Now, therefore, this Constitution, which makes provision for the government of Tanganyika as such a democratic society, is hereby enacted by the Constituent Assembly of Tanganyika.[342]

340 M.K.W.B. Wambali, 'Democracy and Human Rights in Tanzania Mainland: The Bill of Rights in the Context of Constitutional Developments and the History of Institutions of Governance' (unpublished PhD thesis, University of Warwick, 1997), 145.

341 T.D. (61)1, Tanganyika pre-independence discussions: Constitutional matters to be settled before the drafting of the Tanganyika Independence Order in Council 13 June 1961, NA CO 822/2420.

342 T.D. (61) 2nd Meeting Tanganyika Pre-Independence Discussions, Summary Record of the Second Plenary Session 27 June 1961, NA CO 822/2420, Steel 1 August 1961, NA CO 822/2316 and Government Printer, *The Constitution of Tanganyika* (Dar es Salaam, 1961), 1.

Over the next few years further refinements of the explanations justifying refusal were advanced in Tanganyikan government papers. In January 1962, only weeks after independence, it was proposed that Tanganyika should become a Republic. In his explanations of the underlying intent, Prime Minister Nyerere argued that: 'For Tanganyika … the British Monarchy has always been a foreign institution … The attainment of independence has greatly increased the sense of alienation from the Crown.' It was therefore necessary to dissolve that link and establish a constitution based on four basic principles: 'As far as possible, our institutions must be such as can be understood by the people'; 'The Executive must have the necessary powers to carry out the functions of a modern state'; 'Parliament must remain sovereign'; and 'The Rule of Law must be preserved'. He then explained why a Bill of Rights would not be included in the new constitution: 'The Government believes that the Rule of Law is best preserved not by formal guarantees in a Bill of Rights which invite conflict between the executive and the judiciary, but by independent judges administering justice free from political pressure.' [343]

This argument was also advanced by Prime Minister Kawawa in the National Assembly: 'A Bill of Rights merely invites conflict between the executive and the Judiciary; that is the kind of luxury which we could hardly afford to entertain. Government holds the view that the independence of the Judiciary can and should best be secured by providing security of tenure to Judges.'[344] For the time being, though, the Preamble to the Constitution was not redrafted.

Further explanations emerged with the decision in 1964 to appoint a Presidential Commission 'to recommend … what form the One Party State should take in Tanganyika' and the constitutional changes that would thereby be needed. As part of its terms of reference, President Nyerere set down some basic principles to guide its work; for example: 'There shall be the maximum political freedom for all citizens within the context of a single national political movement.' He also wrote two papers 'The National Ethic' and 'Guide to the Commission on a One Party State' which were circulated to all members of the Commission. In 'The National Ethic', President Nyerere described 'certain ethical principles which lie at the basis of the Tanganyika Nation', the first of which was 'The fundamental equality of all human beings and the right of every individual to dignity and respect', and it was followed by a more detailed listing of basic rights and duties.[345]

343 Government Printer, *Proposals of the Tanganyika Government for a Republic* (Dar es Salaam, 1962), 1, 3, 6.

344 Kawawa, 28 June 1962, Tanganyika, Parliamentary Debates (Hansard), National Assembly Official Report First Session (Second Meeting), 1087–1088 (reference from G.K. Madafa, 'The Adoption of a Bill of Rights in Tanzania's Constitution: Why 1984 and Not Before? (unpublished M.LL thesis, Newcastle University, 1991), 95).

345 Government Printer, *Report of the Presidential Commission on the Establishment of a*

With the Commission established, a notice in the *Tanganyika Gazette* invited all citizens to put forward submissions for modifications to the constitution. Its invitation was taken up by the Tanganyika Law Society whose submission included a list of 'basic and inalienable rights of the human being' which, they argued, should be incorporated into the constitution.[346]

In dismissing their submission, the Presidential Commission's report noted that a Bill of Rights had already been considered and rejected twice: 'However, in view of the importance we attach to providing adequate safeguards for the individual we have thought it right to re-examine once again this possibility.' Having re-examined the possibility, the Commission provided three main explanations for its renewed rejection.

Firstly, a Bill of Rights was fraught with danger in that it opened up the possibility that lawyers would substitute the letter for the spirit of the law. Insofar as 'events cannot always be foreseen', all constitutional safeguards may inadvertently serve 'to protect those whose object is to subvert and destroy democracy itself'. This risk in a young nation was unacceptable. The alternative was a Bill of Rights drawn up so loosely as to provide little protection for the individual and thereby bring the process itself into disrepute.

Secondly, 'a Bill of Rights would invite conflict between the Judiciary and the Executive and Legislature' by dragging the Judiciary into 'political controversy' and exposing the rule of law to undue conflict; this was all the more sensitive in that the Judiciary 'was of almost entirely expatriate origin' and 'it is likely to be some years before the Judiciary is accepted by the public as an entirely indigenous institution'.

Thirdly, the government had 'dynamic' and 'revolutionary' development plans and these should be considered 'political decisions best taken by political leaders responsible to the electorate' and not decisions subject to judicial review.

It concluded by pointing to the UK as a 'striking example' in that: 'Behind this decision is our belief that the rights of the individual in any society depend more on the ethical sense of the people than on formal guarantees in the law.' Accordingly, it was recommended that it was sufficient that 'a statement of the ethical principles which bind together leaders and people should be included in the new constitution in the form of a preamble'.[347]

The recommendations of the Presidential Commission laid the foundations for the 1965 Interim Constitution. It retained the Preamble of the earlier con-

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Democratic One Party State (Dar es Salaam, 1965), 1–5.

346 *Tanganyika Gazette,* 7 February 1964, 92 and 21 February 1964, 124, 'A Stand on the Rule of Law in Tanganyika', *Bulletin of the ICJ,* 20 (1964), 49–52 and O. Bhely-Quenum, 'Africa and Human Rights', *Transition,* 18 (1965), 18–19.

347 Government Printer, *Report of the Presidential Commission on the Establishment of a Democratic One Party Stat*e, 30–32 and C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 201–207.

stitutions but with three subtle differences. Firstly, 'the right of the individual' was replaced by 'the rights of all men' and reference to 'fraternity and concord' added. Secondly, the listing of rights was cut; for example, there was now no place for 'security of the person', 'freedom of assembly' or 'respect for … private and family life'. Thirdly, though 'men' were entitled 'to receive a just return for their labour', duties were now added and 'men' were now put under an obligation to the State to manage its resources 'for the benefit of its citizens as a whole and so as to prevent the exploitation of one man by another'.

As Article 3 of the Interim Constitution also proclaimed TANU as the only political party, the First Schedule to the constitution presented TANU's Constitution. In its Preamble, in an obvious inconsistency with the Preamble of the Interim Constitution, the rights of the individual were restored and emphasised by the second of its 'principal aims and objects' which was: 'To safeguard the inherent dignity of the individual in accordance with the Universal Declaration of Human Rights'; albeit the reference to 'dignity' indicates a less than complete endorsement and points rather more to a specific focus on racial discrimination.[348]

These references were repeated in the TANU 'Creed' set out in the 1967 Arusha Declaration but, by 1975, reflecting by now the full implications of the Arusha Declaration and the socialist path which Tanzania was intending to take, the Preamble in the constitution was further amended. It now asserted that 'freedom, justice, fraternity and concord are founded upon … the recognition of the equality of all men and of their inherent dignity … and the adherence by all men to the fundamental principles of socialism and self-reliance'. The final paragraph was also amended to reflect these changes with the declaration that 'such rights are best maintained and protected and such duties are most equitably disposed in a democratic and socialist society'.[349]

Ten years later, when the 1977 constitution came to be drafted, all pretence at the sovereignty of Parliament so publicly asserted in 1962 was set aside. As described by Shivji, after discussions within TANU and the Afro-Shirazi Party (ASP), the ruling party of Zanzibar, a Constituent Assembly was formed whose members were appointed by President Nyerere. However, the first draft was prepared by a TANU Party Committee described as a Constitutional Commission. Its draft was submitted to TANU's National Executive Committee before arriving fully formed at the Constituent Assembly which adopted it on the same day on which it was presented. When placing the constitution before the Constituent Assembly, Prime Minister Sokoine reminded its members of their obligations:

348 Interim Constitution of Tanzania, 1965. See page 505 below for the 1964 union between Tanganyika and Zanzibar and the resulting change of name to Tanzania.

349 President Nyerere of Tanzania, *The Arusha Declaration and Tanu's Policy on Socialism and Self-reliance,* Part 1: The TANU 'Creed' and An Act to amend the Interim Constitution of Tanzania, 1965, 11 June 1975.

> in exercising our authority we ought to be conscious of its limitations … We Tanzanians, in our wisdom, have determined without hesitation that the Party shall be the ultimate authority in the country. Therefore this Constituent Assembly has full powers to reject or amend these Government proposals if it feels they are contrary to, or in conflict with, the Party directives. On the other hand, if these proposals correctly implement the Party's wishes, I beg the Assembly to accept them without a moment's hesitation.[350]

The Preamble to the 1977 constitution was now more expansive in terms of both rights and duties but with an enhanced emphasis on socialism. It declared: 'That Socialism and Self-reliance are the only way to build a society of men who are free and equal'; 'That every community has the duty … To ensure that Government owns the principle resources of the economy' and 'To ensure that Government rules on foundations of democracy and socialism'; and that 'every community' had the duty 'To establish and perpetuate the dignity of all men in accordance with the Universal Declaration of Human Rights'. It may, therefore, be understood rather more as a manifesto for Tanzanian socialism than a commitment to the human rights of the UDHR.[351]

A greater understanding of the flexibility sought by President Nyerere to implement his 'dynamic' and 'revolutionary' plans was also becoming evident as a result of a series of measures aimed at asserting unfettered party control. This derogation of even a modicum of constitutional rights was justified by President Nyerere by the argument that: '*This is our time of emergency*, and until our war against poverty, ignorance and disease has been won, we should not let our unity be destroyed by a desire to follow somebody else's "book of rules"'.[352] This was precisely the issue that M'baye would address in his 1978 *problematique* of the balance between the right to development and human rights (see Volume 2, Chapter 2).

In the first instance, President Nyerere began a process of constitutional amendments that would lead to a one-party state in which the National Assembly merely rubber-stamped decisions taken by TANU's National Executive. Whereas in 1962 the Republican Constitution had provided that the election of the first President would be open to a popular vote, henceforth the President would be elected by a hybrid electoral college of the National Assembly. The President was also endowed with a series of extensive powers that negated the

350 Sokoine, 25 April 1977, *Hansard*, 11, quoted by I.G. Shivji (ed.), *Constitutional and Legal System of Tanzania: A Civics Sourcebook* (Dar es Salaam, 2004), 53–55.

351 1977 Tanzania Constitution (not published in English, English translation commissioned by British High Commission, Institute of Advanced Legal Studies Library, University of London) and B.P. Srivastava, 'The Constitution of the United Republic of Tanzania 1977 – Some Salient Features Some Riddles', Special Issue on the Constitution and the State in Tanzania, *Eastern Africa Law Review: A Journal of Law and Development,* 11–14 (1978–81), 78–79.

352 J. Nyerere, 'One-Party Rule' *Spearhead* (Dar es Salaam, November, 1961), quoted by P. Sigismund (ed.), *The Ideologies of Developing Nations* (New York, 1963), 199.

claim previously put forward in the government's proposals that 'Parliament must remain sovereign'. For example, the Cabinet was now only advisory and then only on such matters as were referred to it, and even then its agenda could be set by the President. Moreover, the National Assembly no longer enjoyed the right to appoint ministers. These were now 'under the direction of the President'.

This process went further in the 1965 Interim Constitution which proclaimed that: 'There shall be one political party in Tanzania' and 'all political activity … shall be conducted by or under the auspices of the Party' so that only TANU and ASP party members qualified to sit in the National Assembly. This was the answer to one of the questions posed by the Presidential Commission in their invitation to participate in the process of drafting a new constitution; it had asked whether both the National Assembly and National Executive of TANU should continue to exist and if so what the relationship should be. Finally, in 1975 'the functions of all the organs of State' were also placed 'under the auspices of the Party'.[353] A circular to members of the National Assembly went further when it advised that they could not:

– criticize government policies in principle, they could only debate the practical detail relating to implementation;

– criticize policy decisions of the Party's National Executive Committee (NEC);

– speak contemptuously of Party principles or ideology;

– question the authority of the Party over Parliament.[354]

In 1968, therefore, when some members refused to acquiesce in their reduced status, they were harangued by a junior Minister: 'I want to make it clear that it is the party which is supreme and all MPs are expected to work under the leadership of the party … It is high time the MPs should know where they come from and it is beyond any doubt that this parliament belongs to TANU.' As a result of their protest, the MPs were ejected from TANU and thereby disqualified from membership of the National Assembly.[355]

The independence of the National Assembly was further compromised in 1977 when the National Assembly effectively became a committee of the National Conference of the Party. Article 3 of the constitution also consolidated

353 Interim Constitution of Tanzania, 1965, Government Printer, *Report of the Presidential Commission on the Establishment of a Democratic One Party State*, 4 and An Act to amend the Interim Constitution of Tanzania, 1965, 11 June 1975.

354 TANU circular quoted by R. Martin, *Personal Freedom and the Law in Tanzania* (Nairobi, 1974), 52 (reference from K. Ong'Wamuhana, 'Party Supremacy and the State Constitution in Africa's One-party States: The Kenya-Tanzania Experience', *Third World Legal Studies*, 7/4 (1988), 86–88).

355 Tanzania National Assembly Debates 1 October 1968, quoted by P. Msekwa, *Towards Party Supremacy* (Dar es Salaam, 1977), 34–49.

previous amendments whereby: 'All political activity in … Tanzania' and 'All the business of all the Organs of State' shall be conducted 'either by or under the guidance and supervision of the Party.'[356]

In parallel with his control over political power, President Nyerere also asserted control over all mass organisations such as the trade unions. Already in 1962 a series of laws limited the right to strike and, following the 1964 Army mutiny, over 200 trade union leaders and activists were detained or banished. Trade union activity was brought even more firmly under TANU's supervision following the forced dissolution of the independent trade union federation and its replacement by the Tanganyika Federation of Labour (TFL), which was to be affiliated to TANU. All other trade union activity was banned and in 1967 collective bargaining itself was abolished.[357]

In 1962 a range of other measures had been adopted. The Preventive Detention Act in particular allowed for unlimited detention at the whim of the Minister for Home Affairs with no right to legal representation or appeal to a court and with no obligation on the part of the Minister even to make public the detention. Moreover, the Minister was not obliged to act on the advice put forward by the Special Committee supervising these detention orders.[358] While

356 1977 Tanzania Constitution, Article 54 (1); see J.S.R. Cole/W.N. Denison, *Tanganyika: The Development of its Laws and Constitution* (London, 1964), C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 201–215, H.G. Mwakyembe, 'The Parliament and the Electoral Process', I.G. Shivji (ed.), *The State and the Working People in Tanzania* (Dakar, 1986), 28–29, 41–48 and E. Seaton/J.S. Warioba, 'The Constitution of Tanzania: An Overview' and B.P. Srivastava, 'The Constitution of the United Republic of Tanzania 1977 – Some Salient Features Some Riddles', Special Issue on the Constitution and the State in Tanzania, *Eastern Africa Law Review: A Journal of Law and Development,* 11–14 (1978–81), 35–127.

357 W.H. Friedland, 'Co-operation, Conflict, and Conscription: TANU-TFL Relations', J. Butler/A.A. Castagno (eds), *Boston University, Papers on Africa: Transition in African Politics* (New York, 1967), 67–103, W.B.L. Kapinga, 'State Control of the Working Class through Labour Legislation', I.G. Shivji (ed.), *The State and the Working People in Tanzania*, 87–106, C. Pratt, *The Critical Phase in Tanzania 1945–1968: Nyerere and the Emergence of a Socialist Strategy*, 189–194, I.G. Shivji, 'Introduction: The State of the Constitution and the Constitution of the State in Tanzania', Special Issue on the Constitution and the State in Tanzania, *Eastern Africa Law Review: A Journal of Law and Development,* 11–14 (1978–81), 16–18 and T. Mwaikusa, 'Genesis of the Bill of Rights in Tanzania', *African Journal of International and Comparative Law* 3/4 (1991), 687–689.

358 An Act to provide for Preventive Detention, 5th October, 1962, No. 60 of 1962, K. Ong'Wamuhana, 'Human Rights in Tanzania: A Constitutional Overview' and L.T. Kalunga, 'Human Rights and the Preventive Detention Act 1962 of the United Republic of Tanzania: Some Operative Aspects', Special Issue on the Constitution and the State in Tanzania, *Eastern Africa Law Review: A Journal of Law and*

President Nyerere had some qualms about this legislation, those qualms seem to have been easily tempered:

> Take the question of detention without trial … you are imprisoning a man when he has not broken any written law, or when you cannot be sure of proving beyond reasonable doubt that he has done so. You are restricting his liberty, and making him suffer materially and spiritually, for what you think he intends to do, or is trying to do, or for what you believe he has done. Few things are more dangerous to the freedom of a society than that.[359]

Despite these honeyed words, with the assistance of the Kenyan authorities, the Act was used to detain Tumbo, a trade union leader and member of the National Assembly, who thought he had managed to avoid detention by fleeing to Mombasa.

President Nyerere also declared openly that:

> in the idealistic sense of the word, it is 'better' that ninety-nine guilty men should go free rather than one innocent man being punished. But in the circumstances of a nation like ours other factors have to be taken into account … conditions may well arise in which it is better that ninety-nine innocent people should suffer temporary detention than that one possible traitor should wreck the nation … Our ideals must guide us, not blind us.[360]

As Ong'Wamuhana has therefore pointed out, despite constitutional references to 'the rights of all men to protection of life, liberty, security of the person, the enjoyment of property … these basic human rights have at best remained merely aspects of policy … devoid of any legal force.'[361]

Terretta has also identified a fascinating exchange with the International League for the Rights of Man (ILRM), which had expressed concern at Tanzania's use of the Preventive Detention Act. In his reply, Malecela, Tanzania's UN representative, suggested that the ILRM should focus its efforts elsewhere, for example, in the US on the Ku Klax Klan, South Africa and the Portuguese colonial territories, and that:

> My country certainly subscribes to the questions of human rights but as to whether or not there has been a violation of human rights in Tanzania it is a matter of the Tanzanians themselves which they can also express through their elected governments.

Development, 11–14 (1978–81), 240–325 and C.M. Peter, 'Incarcerating the Innocent: Preventive Detention in Tanzania', *Human Rights Quarterly,* 19/1 (1997), 113–135.

359 'Opening of the University College Campus 21 August 1964', J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja,* 312–313.

360 'Opening of the University College Campus 21 August 1964', J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja,* 305–315.

361 K. Ong'Wamuhana, 'Human Rights in Tanzania: A Constitutional Overview', 240–280; see also Amnesty International, *The Human Rights Situation in Tanzania* (1977, London) and I.G. Shivji, *State Coercion and Freedom in Tanzania* (Lesotho, 1990).

> While I appreciate the help you extended to our people … to help people petition the UN is one thing and to criticize a law that has been passed by the Parliament is another thing … Who are you then to suggest to us that this law is not good for the Tanzanians? … it is not your organisation which will tell us what laws are good for Tanzania but the people of Tanzania themselves … Tanzania has always refused and still refuses the interference in our internal affairs from any quarter…[362]

Nor were such measures constrained by the ACHPR, which was signed and ratified by Tanzania in May 1982 and February 1984 respectively. For example, in response to a government campaign against 'economic sabotage', several hundred people were arrested in late March 1983. President Nyerere made clear his distrust of the courts' ability to handle such crimes and announced that they would be detained and not taken to court. The following month the National Assembly passed a law specifically to deal with these 'economic saboteurs'. It redefined some existing offences as 'economic offences', added other offences into the mix, and then gave retrospective effect to arrests and detention for acts that were lawful when committed. It also set up special tribunals in which neither bail nor legal representation was permitted and with no right of appeal. The Act was repealed after one year possibly, according to Mwaikusa, because it also threatened the ill-gotten gains amassed by senior TANU party leaders.[363]

In 1985, too, the Preventive Detention Act was amended to allow applications to the High Court, probably in anticipation of appeals based on the 1984 Bill of Rights, but, as Peter notes, the authorities merely used alternative means to the same end.[364] President Nyerere was at this time also indifferent to the legal requirement to obtain approval for legislation before implementation. As he outlined in his 1982 New Year's Eve message, 'you will already have heard of the new taxes which come into force tomorrow … These tax measures will be debated in the parliament in its next meeting, but in the meantime they have to be paid by everyone.'[365]

It was only in 1984 that President Nyerere and the Chama Cha Mapinduzi (CCM), the ruling party formed by the merger of TANU and the ASP, finally

362 New York Public Library, ILRM Box 27, Malecela, Permanent Mission of the UR of Tanzania to the UN to Mr. Jan Papanek, 22 September and 15 October 1965, quoted by M. Terretta, 'From Below and to the Left? Human Rights and Liberation Politics in Africa's Postcolonial Age', *Journal of World History,* 24/2 (2013), 389–416.

363 Economic Sabotage (Special Provisions) Act, 1983 and T. Mwaikusa, 'Genesis of the Bill of Rights in Tanzania', 688–689.

364 Preventive Detention (Amendment) Act, 1985 and C.M. Peter, 'Incarcerating the Innocent: Preventive Detention in Tanzania', 118–135.

365 President Nyerere, New Year's Eve Message 31 December 1982, quoted by G.K. Madafa, 'The Adoption of a Bill of Rights in Tanzania's Constitution: Why 1984 and Not Before? 118; see also WJB MacDermot to President Nyerere 21 April 1983 responding to this legislation.

conceded the principle of a Bill of Rights. According to Mbunda, it was called the 'Bill of Exceptions' because of its excessive clawbacks and circumscription of rights.[366] It had come about, as Peter describes, as a result of the decision to open up the debate on potential changes to the constitution albeit along strict lines of reference. For example, when the Tanganyika Law Society organised a seminar on the constitution, these lines were crossed. Participants openly argued for multi-party democracy and, reflecting the public mood, a Bill of Rights in the constitution. In his closing speech, therefore, Attorney General and Minister for Justice Warioba, who had helped draft the ACHPR at the Banjul Ministerial meetings, warned the lawyers that they had to adhere to the guidance given by CCM as to which areas of the constitution were open to debate. This was felt most keenly by Dourado, a former Attorney-General of Zanzibar, who, as a result of his contribution to that debate, was detained under the 1962 Preventive Detention Act and held in custody for over a hundred days.

Dourado was not the only victim of the 'open' debate. In the course of the consultation, the CCM received over 9,000 proposals in the main calling for radical changes to the constitution. Not only were there demands for a Bill of Rights but there were also calls to end the one-party monopoly. This was, of course, rejected. Nonetheless, in 1985, Mapalala initiated a post-consultation campaign 'Appeal for Revocation of the One-Party Law'. The CCM's response was to detain without trial Mapalala, and several of his colleagues with whom he had consulted, under the 1962 Preventive Detention Act, re-arresting them upon their release. A subsequent attempt by Mapalala to register a Civil Rights Movement with the Registrar of Societies would also be refused.[367]

Why a Bill of Rights was conceded is not completely clear. In a 1987 address, Attorney General and Minister for Justice Lubuva, attempting to justify what had hitherto been the unjustifiable, advised that it was a 'consequential result of the national moral growth' and that 'it was not as a result of any external pressure exerted upon the government … Rather … it was a genuine government's own initiative (*sic.*) However … there has been lively public debate on various constitutional changes … the government could not overlook.' Several alternative explanations have also been suggested.[368]

366 L.X. Mbunda, 'The Bill of Rights in Tanzania: Strategies for the Protection and Promotion of Fundamental Rights and Freedoms in a Multi-Party Tanzania', C.K. Mtaki/M. Okema, *Constitutional Reforms and Democratic Governance in Tanzania* (Dar es Salaam, 1994), 147.

367 C.M. Peter (ed.), *Human Rights in Tanzania: Selected Cases and Materials* (Koln, 1997), 14 Note 68 and *Human Rights in Africa: A Comparative Study of the African Human and People's Rights Charter and the New Tanzanian Bill of Rights* (New York, 1990), 30–31 and H.G. Mwakyembe, *Tanzania's Eighth Constitutional Amendment and its Implications on Constitutionalism, Democracy and the Union Question* (Munster, 1995), 154–156.

368 'An Address by the Hon D Z Lubuva, Attorney-General and Minister for Justice, to

As Shivji has pointed out, the initial list of recommended constitutional amendments proposed by the National Executive Committee made no mention of a Bill of Rights. He speculated that, while public opinion may have played a part, it had been ignored in the past. It was therefore more realistic to assume that the Bill of Rights had only come about because Zanzibar, which enjoyed semi-autonomous status, had insisted that it should be included in its own constitution irrespective of whether it was included in the Union constitution and that such a divergence would have proven embarrassing.[369] Peter agrees but adds that, in view of President Nyerere's strong criticisms a few years earlier against President Amin and other African leaders, and the recent adoption of the ACHPR, the failure to include a Bill of Rights would have cast doubt on his sincerity.[370] While Mwaikusa suggested that, as the amendment also limited a President to two terms of five years, it was connected to preparations for President Nyerere's imminent retirement from office; he would resign in 1985 and there was a fear that there would otherwise be no constraint on his successor. Moreover, that it was also necessary, in a turn of policy, to give investors frightened off by nationalisation and the Arusha Declaration security for their property rights and investment.[371]

In parallel with the amendment, the government also adopted a Constitution (Consequential, Transitional and Temporary Provisions) Act allowing a three year temporary suspension of the application of the Bill of Rights in respect of existing laws so as to enable a review of these laws in the context of the Bill of Rights provisions. In the event, some three years later, the review had not brought about a change in any existing law leaving some obvious inconsistencies, the one-party state being the most blatant, but it was nevertheless decided not to extend the suspension.

The 1984 constitutional amendment itself included both a listing of rights and of duties. It also included, in a section on 'Fundamental Objectives and Directive Principles of State Policy' another reference to the UDHR, once again specifically conjoined with 'human dignity':

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the Faculty of Law, University of Dar-es-Salaam on 16 October 1987: Reflections on Tanzania's Bill of Rights', *Commonwealth Law Bulletin*, 14/2 (1988), 853–854.

369 Department of Propaganda and Mass Mobilisation, Chama Cha Mapinduzi, 1983 National Executive Council Proposed Amendments to the Union Constitution and the Zanzibar Revolutionary Government Constitution (Dar es Salaam, 1983) and I. Shivji, 'Rights-Struggle and the Bill of Rights in Tanzania', *Zimbabwe Law Review*, 5 (1987), 131–132.

370 C.M. Peter (ed.), *Human Rights in Tanzania: Selected Cases and Materials*, 875–887 and 'Constitutional Making Process in Tanzania: The Role of Civil Organisations', A Case Study Prepared for the Civil Society and Governance in East Africa Project (Tanzania Side) December, 1999 https://www.eldis.org/document/A11422, last accessed 13 March 2023.

371 T. Mwaikusa, 'Genesis of the Bill of Rights in Tanzania', 690–692.

> The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasises the application of socialist principles … Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring
>
> (a) that human dignity and other human rights are respected and cherished;
>
> …
>
> (f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights.[372]

Zanzibar

Unlike Tanganyika, Zanzibar, which in 1964 joined with Tanganyika to form the United Republic of Tanzania, was deeply divided along Arab-African ethnic and class fault lines. The Sultan and ruling elite were largely Arab whereas the majority, some 75 per cent of the population according to the 1948 census, were African, and deeply resentful of their lowly economic and political status. There was also a small Asian community that preferred to focus on its business interests, but with a real concern that, in the event of racial conflict, it would likely become the target of African economic resentment. Juridically, Zanzibar had become a British Protectorate in 1890 and therefore, although the Sultan remained the head of state, its government was effectively under the control of a British Resident acting as a quasi-Governor.

During the mid-1950s an agreement was reached by the Colonial Office with Zanzibar's 'racial associations' on a programme of constitutional reform that, initially at least, would provide for an increase in unofficial Legislative Council members from eight to twelve. Significantly though, it was intended that six of these twelve members would be elected in single-seat constituencies on a common electoral role in elections to be held in 1958. With that and future elections presumably in mind, the 'racial associations' metamorphosed into political parties: The Zanzibar Nationalist Party (ZNP), an Arab party formed in 1955; the Afro-Shirazi Union (later the ASP), an African party formed in February 1957; and the Zanzibar and Pemba People's Party (ZPPP), formed as a break-

372 Act No. 15 of 1984 (Fifth amendment), 20 October 1984 (signed 15 March 1985), incorporated into 1977 constitution in unofficial translation by H.L. Brahim 23 September 1995, 1977 amended constitition s6-33 in K. Holzinger/F.Kern/D. Kromrey (2013), 'Database of the Constitutions of Sub-Saharan Africa (DCSSA)' https://www.polver.uni-konstanz.de/holzinger/forschung/drittmittelprojekte/traditional-institutions-in-sub-saharan-africa/daten bank, last accessed 8 August 2016, G.K. Madafa, 'The Adoption of a Bill of Rights in Tanzania's Constitution: Why 1984 and Not Before? 126 and C.M. Peter, *Human Rights in Tanzania: Selected Cases and Materials*, 4–14.

away from the ASP in 1959. In contrast with Tanganyika, independence would therefore be negotiated under the shadow of a life and death ethnic struggle for political power.[373]

The 1958 election was won by the ASP which claimed five of the six elected members, the sixth being an independent Asian. Following the election, the momentum for constitutional advance began to accelerate but in an unhealthy climate of ethnic violence. Although it had been agreed that for the next round of elections there should be a further increase to eight elected seats, following the ZPPP break-away from the ASP and representations made to Colonial Secretary Macleod at the time of his 1959 visit, a consensus was reached that the election should be postponed until a Constitutional Commissioner made recommendations for the next stage in constitutional advance. This was the 1960 Blood Report which eventually recommended that all twenty-one Legislative Council members, other than the five appointed and three *ex-officio* members, should be chosen by election.[374] These recommendations were largely accepted by the Colonial Office and adopted in late 1960 ahead of the proposed January 1961 elections. Fatally, though, the electoral system was amended to allow for twenty-two elected members.[375]

Although it was not raised with British Resident Mooring in their pre-publication meeting,[376] the Blood Report also noted that: 'Much concern was expressed to me by local people that, with constitutional advance, personal and political freedoms will be endangered. This fear cannot be ignored.' However, the source of this concern is not obvious as, of the submissions included in the report, only the Muslim Association proposed a Bill of Rights, and then largely on the basis of precedent, that is 'in the light of happenings in other countries which have achieved independence'; but it also went on to suggest that its essential rationale was 'for the safety of the minorities, for their person, prospects, business and equal opportunities in all walks of life'. For the present though,

373 This section has drawn on S.G. Ayany, *A History of Zanzibar: A Study in Constitutional Development 1934–1964* (Nairobi, 1970), M. Haj, *Zanzibar: The Last Years of the Protectorate – A Constitutional and Political Account* (Muscat, 2006), M.F. Lochnie, *Zanzibar: Background to Revolution* (Princeton, 1965) and A. Clayton, *The Zanzibar Revolution and its Aftermath* (Hamden, 1981); see also J. Campbell, 'Multiracialism and Politics in Zanzibar', *Political Science Quarterly,* 77/1 (1962), 72–84.

374 Government Printer, *Report of the Constitutional Commissioner Zanzibar 1960* (Zanzibar, 1960), 3–4, NA FCO 141/7165.

375 Zanzibar Protectorate, Legislative Council (Elections) (Amendment No. 2) Decree, 19 October 1960 and Legislative Council Constitutional Reforms 1960, Sessional Paper No. 14 of 1960, Councils (Amendment) (No. 2) Decree, 31 October 1960, NA CO 822/2327.

376 Note of a Meeting held at the Residency on Monday 16 May, 1960 (Attended by Mooring, Robertson and Blood), NA CO 822/2325.

Blood concluded that existing safeguards were sufficient but that: 'The time for including in the constitution comprehensive provisions relating to the protection of human rights will come when Zanzibar reaches the status of an Internally Self-governing State.'[377] It therefore drew specific attention to the 1959 Resumed Nigerian Constitutional Conference as a possible precedent for Zanzibar. When, however, the Legislative Council came to debate the report, there was no discussion of safeguards and only al-Shariff Musa (ASP) expressed his perfunctory approval of the report's recommendation for a Bill of Rights.[378]

Unfortunately, the January 1961 elections produced a tied outcome leading to a second election in June 1961, this time with an added seat to ensure that such a result could not be repeated. It was won by the ZNP/ZPPP coalition with thirteen of the twenty-three seats albeit with less than 50 per cent of the votes cast. The election had been fought in a hostile racial atmosphere and the outcome was therefore contested by a bitter ASP certain that it was the result of intimidation and cheating.[379] As a result, the violence descended into even more savage disturbances forcing the colonial government to appoint a commission of enquiry.[380] However, with all sides anxious for further political advance, there was still widespread support for a constitutional conference to discuss a basis for internal self-government leading to independence.

Ahead of this conference, the three parties held Joint Discussions under the Chairmanship of the British Resident in an effort to reach pre-conference agreement on a range of matters not least a Bill of Rights.[381] The Zanzibar Government's memorandum 'Fundamental Human Rights' to the 1962 Constitutional Conference would subsequently explain: 'At an early stage of the Joint Discussions … it was decided in principle that a Bill of Human Rights should be brought before

377 Government Printer, *Report of the Constitutional Commissioner Zanzibar 1960* (Zanzibar, 1960), 10, 18–19, 31–33, 44–45, NA FCO 141/7165.

378 Zanzibar Ref. 2831/1 No. 462 Saving British Resident to Secretary of State for the Colonies Debate on Constitutional Commissioner's Report 3 August 1960, NA CO 822/2326, S.1571/9/II Mooring to Monson 11 August 1960, S.1571/9/II No. 579 British Resident to Secretary of State for the Colonies 21 September 1960 and EAF 71/8/01 Secretary of State for the Colonies to British Resident 26 October 1960, NA CO 822/2325.

379 J. Campbell, 'Multiracialism and Politics in Zanzibar', 84–86.

380 HMSO Colonial 353, *Report of a Commission of Inquiry into the Disturbances in Zanzibar during June 1961* (London, 1961) and L.E.Y. Mbogoni, *Aspects of Colonial Tanzania History* (Dar es Salaam, 2013), 189–200.

381 Joint Discussions: Minutes of the Eighth and Tenth Meetings 10 and 22 November in the Council Chamber, Boit-el-Ajaib, Joint Discussions: Memorandum on Human Rights Legislation, 1961 and Z.C.C. (62)3 Zanzibar Constitutional Conference, 1962: Joint Discussions on Constitutional matters, Note by the Secretary-General, 20 March 1962, NA CO 822/2454.

the Legislature.'[382] With the decision made in principle, a Working Committee was set up to study the UDHR and independence constitutions and to recommend what should be included in the proposed constitution.[383] As the Ugandan constitutional discussions had already borne fruit, in a paper to the Working Committee the Colonial Office outlined the Uganda fundamental rights provisions and proposed that they should be used as the basis for the independence constitution.[384] The proposal was accepted by the Working Committee all of whose recommendations would ultimately be accepted by the Joint Discussions meeting. There is though more than a passing thought that discussion of a Bill of Rights had been prompted by the Colonial Office, led by the British Resident and aided and abetted by the recommendation in the Blood Report.

The brief prepared for the UK delegation to the 1962 Constitutional Conference in respect of the Bill of Rights set out the line the Colonial Office recommended should be taken. It noted, as had the Blood Report, that there was no present need for fundamental rights as existing provisions were sufficient but that: 'It is, however, considered generally desirable that all emergent territories should make provision for fundamental human rights at or about the stage of the introduction of self-government.'[385]

Ahead of the conference, therefore, the Colonial Office advised that it was intent on a conference statement that all parties had agreed on the need for 'human rights provisions'.[386] This was not a problem in that conference memoranda from the Zanzibar Government and the opposition Afro-Shirazi Parliamentary Group reaffirmed that 'safeguards … embodied in the Constitution of Sierra Leone may be incorporated in the Constitution of the Independent State of Zanzibar'.[387] In view of the Joint Discussions and the support of the Colonial Office, there was therefore need for only a brief technical discussion on the detail before agreement was reached that a Bill of Rights should come into force at the internal self-government stage.[388]

382 Z.C.C. (62)6 Zanzibar Constitutional Conference, 1962, Fundamental Human Rights, Memorandum by Zanzibar Government 19 March 1962, NA CO 822/3148.

383 TS.71/159/1 Robertson to Morgan 28 February 1962 enclosing Note, Joint Discussion, Report of the Working Committee, NA CO 822/2336.

384 Joint Discussions: Memorandum on Human Rights Legislation, undated, NA CO 822/2454.

385 Zanzibar Constitutional Conference, Fundamental Human Rights, Brief for United Kingdom delegation 12 March 1962, NA FCO 141/18948.

386 EAF 71/8/017 Morgan to Robertson 20 February 1962, NA CO 822/2336.

387 Z.C.C. (62)6 Zanzibar Constitutional Conference, 1962, Fundamental Human Rights, Memorandum by Zanzibar Government 19 March 1962 and Z.C.C. (62)7 Zanzibar Constitutional Conference, 1962, Constitutional Development, Memorandum by the Afro-Shirazi Parliamentary Group 22 March 1962, 7, NA CO 822/3148.

388 Zanzibar Constitutional Conference Z.C.C. (GC) (62) 3rd Meeting, Record of Third Meeting 28 March 1962, NA CO 822/2458, Z.C.C. (62) 7th Meeting Zanzibar

However, the 1962 Constitutional Conference would otherwise end in deadlock as the two main parties could not agree on the franchise, the number of seats or whether an election should be held before or after the date of internal self-government. They were also unable to agree on the terms of a coalition to negotiate the final step of independence. Faced with this impasse, the Colonial Secretary attempted a temporary adjournment to allow both sides to come together. When even that failed he could do no more than advise that, although he would have been prepared to consider further constitutional advance, in the absence of agreement, he was unable to set a date for either internal self-government or independence.[389] Nonetheless, the conference had reached agreement on a range of issues and therefore, on their return to Zanzibar, British Resident Mooring was able to slowly bring the three sides together culminating in the June 1963 Constitution providing for internal self-government and a July 1963 election.[390] It would once again be won by the ZNP/ZPPP, albeit with only 45 per cent of the vote.[391]

Almost immediately after the election, arrangements began to be made for a constitutional conference to agree the final terms for independence. As previously, inter-party discussions were held under the auspices of the British Resident and concluded with a wide measure of agreement on the amendments necessary for independence. As the fundamental rights provisions had already been included in the June 1963 Constitution, in that respect only minor changes were needed most, of which were once again agreed in advance.[392]

Constitutional Conference, Record of Seventh Meeting 6 April 1962, NA CO 822/2457 and HMSO Cmnd. 1699, *Report of the Zanzibar Constitutional Conference, 1962 Held in London March and April, 1962* (London, 1962), 6.

389 HMSO Cmnd. 1699, *Report of the Zanzibar Constitutional Conference, 1962 Held in London March and April, 1962*, 7–8.

390 Laurence to Webber 7 December 1962 enclosing records of three meetings on constitutional issues and Webber to Mooring 21 January 1963, NA CO 822/2329 and Legal Supplement (Part I) to the *Official Gazette of the Zanzibar Government*, Vol. LXXII, No. 4273, of 14th June, 1963.

391 No. 488 Guidance Zanzibar Constitutional Development Foreign Office to certain of Her Majesty's Representatives 23 August 1963, NA CO 822/3122. The results of the 1961 and 1963 elections, albeit with minor discrepancies from notes in the NA files, are set out in J. Mosare, 'Background to the Revolution in Zanzibar', I.N. Kimambo/A.J. Temu (eds), *A History of Tanzania*, 235 Table 4; see also *A Concise Political and Electoral History of Zanzibar* (undated, unsigned) https://docplayer.net/59523383-A-concise-political-and-electoral-history-of-zanzibar.html, last accessed 13 March 2023.

392 Zanzibar Independence Conference, Paper No. A/4 Ref: DBR/P.7/S3/11/11 Entrenchment of Human Rights Provisions, British Resident's Office Robertson 26 August 1963, Extracts from Minutes of the Joint Discussions on papers considered up to and including Saturday, 31st August 1963, Summary of Joint Discussions

However, at the September 1963 Constitutional Conference, the ASP began to press for further amendments covering limitations on a declaration of emergency, the suspension of Fundamental Rights and provision for a right of travel; and, in addition, that compulsory property purchases should merely require 'adequate' rather than 'prompt' or 'full' compensation. Responding, the UK Legal Adviser complained that: 'In principle it would undermine the provisions we have insisted on in Kenya and in Central Africa and … we do not in this country subscribe to the political philosophies which adopt expropriation as a policy.' In the event, with the support of the Zanzibar Government, and the Uganda constitution precedent, it was eventually accepted that 'prompt and adequate' should replace 'full' compensation, with somehow 'prompt' eventually falling away.[393] Finally, the conference reconfirmed that Zanzibar should become independent on 10 December 1963.[394]

In the event, these negotiations would prove irrelevant. One month after independence, on 12 January 1964, the Arab-led government was overthrown in a coup and the unpopular Sultan sent into exile. In his valedictory despatch, British High Commissioner Crosthwait attributed the coup to 'essentially an upsurge of African Nationalism motivated … by black African resentment at continued domination after "Independence" by their former Arab masters'.[395] As anticipated by the Muslim Association, there was considerable looting of Asian shops.

Two weeks later the constitution was abrogated and in April 1964 union with Tanganyika announced. Probably in direct imitation of the TANU creed, in due course the ASP's amended rules provided that it was only through socialism that Zanzibar could rid itself of 'ignorance, poverty and disease' and that one

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in Zanzibar prior to conference in London, Afro-Shirazi Party, Proposals Concerning the Constitution of an independent Zanzibar, 3–4 and Zanzibar Independence Conference 1963, Legal Adviser's Note on agreed proposals relating to constitutional amendments and on Opposition proposals, NA CO 822/3148.

393 HMSO Cmnd. 2157, *Zanzibar Independence Conference, 1963* (London, 1963), 3, 5–6, Zanzibar Independence Conference Draft U.K. Brief No. 6, Opposition Proposals concerning fundamental rights, Z.I.C. (63)1 19 September 1963, Zanzibar Independence Conference, 1963, Administrative Arrangements: Note by the Secretary-General with attached 'Report on Informal Discussion with Zanzibar Ministers of proposals submitted by Afro-Shirazi party and Z.I.C. (63)3 20 September 1963, Zanzibar Independence Conference, 1963, Proposals concerning the constitution of an independent Zanzibar, Memorandum by the Afro Shirazi party, NA CO 822/3149 and U.K. Eyes only, Unofficial Record of the 2nd and 5th meetings of the Zanzibar Conference, NA CO 822/3150.

394 *Official Gazette of the Zanzibar Government* No. 4320, 5 December, 1963, 'The Constitution of the State of Zanzibar, Zanzibar Act 1963, 3 December 1963'.

395 C.R.O. Ref.: 2EA 56/111/1 Zanzibar: Mr. T. L. Crosthwait's Valedictory Despatch 24 August 1964, NA PREM 11/5208.

of its aims was: 'To protect human dignity in these islands by adhering to the provisions of the United Nations Charter for human rights.' In reality, Zanzibar was now a one-party state and the ASP on its way to becoming one of the more repressive regimes in Africa.[396]

French colonial territories

French Community states

With the exception of North Africa and Madagascar, the Atlantic Charter had evoked little response in the French colonial territories. Nonetheless, the basis upon which the association between France and its colonial territories should be ordered in the post-Atlantic Charter world had still to be determined. In the first instance, that determination was imposed by the 1946 French constitution over the heads of almost all African political leaders whose aspirations for equality and greater autonomy it so contemptuously dismissed. As, unlike their counterparts in the British colonial territories, few African political leaders envisaged independence as an option, in the immediate post-war period, they were therefore left with little scope for protest or action beyond bluster at the political margin.

By the mid-1950s, though, the political landscape had changed dramatically opening the door once again to the prospect of a greater measure of autonomy. In France, the Fourth Republic was forced to come to terms with its bloody defeat in Indo-China and a brutal war of independence in Algeria. In Africa, Sudan and Libya had become independent, and by March 1956 France was similarly being pressured to renounce her Protectorates over Morocco and Tunisia. In 1958 France would also be pushed to concede a greater degree of autonomy to the UN Trust Territory of Togo than it had conceded to its other colonial territories. Elsewhere in Africa, the Gold Coast was close to independence and many other British colonial territories were also in the advanced stages of the

396 Forestal-Thompson, Zanzibar Revolution, 'A Report by Mr. A.A.E. Forestal-Thompson, ex-Permanent Secretary Prime Minister's Department, Zanzibar' 10 February 1964 and Zan.75/18/5 Eccles to Chitty enclosing A Note on the Zanzibar Revolution 13 February 1964, NA DO 213/92, G.W. Triplett, 'The Politics of Revolutionary Inequality', *Journal of Modern African Studies,* 9/4 (1971), 612–617, Afro-Shirazi Headquarters, *The History of Zanzibar Africans and the formation of the Afro-Shirazi Party* (Dar es Salaam, c. 1964–65), 17, D. Petterson, *'Revolution in Zanzibar': An American's Cold War Tale* (Colorado, 2002) and Amnesty International, *The Human Rights Situation in Tanzania*; for the US CIA's assessment of the causes of the coup, see CIA, Intelligence Study, 'Zanzibar: The Hundred Days Revolution', Directorate of Intelligence 21 February 1966 https://www.cia.gov/readingroom/docs/esau-28.pdf, last accessed 13 March 2023.

independence process. These major changes could not but be felt in France's colonial territories and, understandably, they increasingly prompted demands for a revision of the 1946 constitutional settlement.

The first measure of reform was the 1956 *Loi Cadre* (Reform Act). In commending these reforms, Minister for Overseas France Deferre explained that the transformation of the politics of the British colonial territories had contributed to the growth of impatience among the peoples of French West and Equatorial Africa; but he was also careful to make clear that the reforms were intended 'to maintain and reinforce for many years the necessary union between Metropolitan France and the peoples of the overseas territories'. It was nonetheless a significant turning point in that, in effect, self-government was, for the first time, devolved to the domestic assemblies of the colonial territories. Moreover, while a Governor would still preside over the territorial Executive Council, an African elected member would be appointed his deputy and effective head of the territorial government. The reforms also brought in universal suffrage and abolished the separate electoral colleges. Significantly, though, the reforms bypassed the administrative level of the Grand Councils of French Equatorial Africa (AEF) and French West Africa (AOF) and thereby foreshadowed their eventual demise.[397]

The reforms had been drawn up by a working group that had included Senghor and Houphouet-Boigny, whose political importance as leader of the Rassemblement démocratique africain (RDA) and of the Ivory Coast territory had been recognised by his appointment as the first black French government Minister. While both supported devolution of authority, Senghor had opposed the delegation of that authority to the territories on the basis that it fostered the 'balkanisation' of Africa. He argued that, to promote economically viable African territories, authority should have been delegated at the level of the Grand Councils. The differences between these African political leaders were not merely administrative or political though, but also personal and economic. On a personal level, both looked back to their fateful differences in 1946 and forward to their on-going rivalry for political influence in Paris and within Africa. Economically, it pitted Senegal, the seat of the AOF Grand Council, against the Ivory

397 Minister for Overseas France Deferre, *Journal officiel, Débats parlementaire*, Assemblée Nationale 21 March 1956, 1108–1112 (reference from M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', 28–32), *Décret n°56-619* of 23 June 1956, *Journal officiel, Lois et décrets* (1956), 5782–5784, J.H. Gilmer, 'The French Union Overseas and Trust Territories', *Civilisations,* 7/2 (1957), 237–250, K. Robinson, 'Constitutional Reform in French Tropical Africa', *Political Studies,* 6/1 (1958), 45–69, G. Devernois, 'French Union 1957–1958: Algeria, Sahara, Overseas and Trust Territories', *Civilisations,* 8/2 (1958), 293–299 and *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961*, Reel 4, OSS R&A, 'Reform in French Black Africa: A New Approach to Colonialism' 27 June 1957.

Coast which, as the richest AOF territory, was obliged to subsidise the poorer AOF territories. Ultimately, though, France sided with Houphouet-Boigny. Its interests were better served by divison than by the creation of two large African blocs which by virtue of their size alone would enable them to challenge French authority and alleviate their economic dependency.

However, far from ending the debate, the 1956 *Loi Cadre* merely signalled that constitutional reform was now back on the political agenda. It therefore fuelled further political in-fighting among African political groups. In the main, the conflict centred on the competing visions of association but, at this point, independence, too, began finally to emerge as a political alternative. It was as yet too sensitive an issue for an African political leader to dare speak its name, but the left, the trade unions, students and the radical parties, felt no such compunction and pressed for it to be given more immediate consideration.

Support for Senghor was particularly evident at the RDA's third inter-territorial conference in Bamako in September 1957 although, not being a member, he was not in attendance. His ideas dominated the conference and won overwhelming support, Houphouet-Boigny almost alone dissenting. More radical still, a delegate from the African students union in Paris demanded a debate on outright independence. As Houphouet-Boigny responded by sulking in his tent for three days, the conference was put on hold until RDA leaders were able to negotiate a compromise that would maintain the illusion of unity. The eventual compromise provided that Houphouet-Boigny would be re-elected President of the RDA but, as Touré explained in the conference's closing speech, 'he will support in the government not his own ideas, but those defended by the RDA'. It also provided that the final conference resolution would be sufficiently ambiguous so as to enable each side to interpret it in their own way:

> The Congress considers that independence is an inalienable right giving Peoples the power to dispose of their own sovereignty according to the wishes of the masses … The Congress, considering that … the participation of black Africa in a large political and economic bloc is a factor of strength and independence for all the members of this bloc, proposes the building up of a Franco-African community … To achieve these ends the Congress proposes … the creation of a federal State, composed of self-governing states with a Federal Government and a Federal Parliament.[398]

In February 1958, therefore, the Minister for Overseas France felt obliged to respond to this clamour by meeting with African political leaders to review the 1956 reforms. It concluded with a consensus that the next step should be a round-table meeting to consider further reforms. With that meeting in mind, the African parties came together in Paris for preliminary discussions. They were

398 G. Devernois, 'French Union 1957–1958: Algeria, Sahara, Overseas and Trust Territories', 300–302.

intended to serve two purposes: firstly, to identify whether it would be possible to unify all parties under a single banner and, secondly, to agree a programme for the round-table meeting. Despite a second meeting in Dakar in March 1958, such unity proved a step too far, but agreement was at least reached on a 'minimum political programme':

– internal autonomy for the various groups or non-grouped territories

– creation at the level of the present groups of territories (AOF or AEF), or of any other group to be formed, of federal institutions organised by the participating territories themselves on the basis of a voluntary surrender of territorial sovereignty

– creation of a Federal Republic comprising France, the groups of territories and the non-grouped territories on the basis of absolute equality with recognition of the right to independence

– eventual creation of a confederal union uniting the Federal Republic to States already independent or 'on the road leading to independence'.[399]

However, in May 1958, all discussion was halted as an army coup in Algeria brought the French Fourth Republic to an end. In response to the coup the National Assembly appointed de Gaulle Prime Minister and head of the government with a mandate to draft a new constitution which would then be subject to ratification by a referendum carried out in both France and the colonial territories; the date of the referendum eventually being set for 28 September 1958.[400]

Detailed drafting was assigned to a Comité consultatif constitutionnel (CCC).[401] One of the key issues was, of course, the nature of the association

399 G. Devernois, 'French Union 1957–1958: Algeria, Sahara, Overseas and Trust Territories', 300–302.

400 G. Lisette, *Le combat du Rassemblement démocratique africain pour la décolonisation pacifique de l'Afrique noire*, 301–306 (RDA, Bamako Conference), F. Cooper, *Citizenship between Empire and Nation: Remaking France* and *French Africa, 1945–1960*, 214–278, M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', 28–32, W.J. Foltz, *From French West Africa to the Mali Federation*, 73–83, E. Mortimer, *France and the Africans 1944–1960: A Political History*, 234–240, 270–296 and A.R. Zolberg, *One-party Government in the Ivory Coast* (Princeton, 1964), 173–182, 219–225; see also W.A.E. Skurnik, 'France and Fragmentation in West Africa: 1945–1960', *Journal of African History,* 8/2 (1967), 317–333.

401 N. Wahl, 'The French Constitution of 1958: II. The Initial Draft and Its Origins', *American Political Science Review,* 53/2 (1959), 358–382, *Travaux préparatoires de la constitution: Avis et debats du Comité consultatif constitutionnel* (Paris, 1960), G. Lisette, *Le combat du Rassemblement démocratique africain pour la décolonisation pacifique de l'Afrique noire*, 337–353 (Documents and Reports of the CCC deliberations: Lisette attended as an RDA representative) and G. Devernois, 'Birth and Development of the Franco-African Community', *Civilisations,* 9/2 (1959), 208–210.

binding France with its colonial territories, a task that in the first instance was passed to one of its two working groups. Senghor and Tsiranana (Madagascar) were chosen to represent the overseas territories on this working group as was Houphouet-Boigny in his *ex-officio* capacity as a government Minister.

Once again, Houphouet-Boigny and Senghor offered different visions though both supported the self-government arrangements that were now largely in place. Houphouet-Boigny pressed for a federal government and assembly in which the colonial territories would be represented, Senghor a more confederal structure, a quasi-independence, in which the federal institutions merely served as a forum for issues of common interest and those matters assigned for decision at the federal level. Senghor also renewed his call for the African territories to enter into the new constitutional arrangement as members of the AOF and AEF Federations rather than as individual territories.

However, other African political leaders, such as Touré, were now beginning to think in terms of a structure of independent states freely consenting to a loose association. As he made clear:

> *We shall not renounce our Independence; we shall not renounce our Liberty*. Using our independence, we want to yield the exercise of certain attributes of this independence to a vaster ensemble, so that our state of freely consented interdependence confers on our actions a value and extent conforming to our interests. *We have already affirmed that France remains the Nation with which we intend to link our destiny*.[402]

In September 1958, the newly drafted constitution proposed a French Republic and an association which, at Tsiranana's subsequent suggestion, was termed the French 'Community' rather than 'Federation'. The two key institutions of the French Community were to be the Executive Council, comprising the heads of state of the member states and ministers responsible for issues of common interest, and a consultative Senate, composed of representatives of the legislatures of the member states. Member states would be autonomous and self-governing but the French Community would be responsible for areas deemed of common interest such as foreign affairs, defence, common economic and financial policy, justice and higher education. The colonial territories would therefore no longer be represented in the National Assembly. It was a step towards the association advocated by Senghor, but, as membership was to be at the level of the individual colonial territories, Senghor had lost a key battle to Houphouet-Boigny – an unwinnable battle given France's interest in perpetuating African dependency. As foreshadowed by the 1956 reforms, the Grand Councils were finally buried. In a sop to Senghor, though, the constitution allowed colonial territories to join the French Community on a joint or several basis.

402 A.S. Touré, *Expérience guinéenne et unité africaine* (Paris, 1959), 47–48 (Speech, Fourth Congress of the PDG, 5–8 June 1958) (reference and translation from W.J. Foltz, *From French West Africa to the Mali Federation*, 89).

As to the question of independence, Prime Minister de Gaulle took a firm line. There would be no option to become independent first as Touré was seeking. Prime Minister de Gaulle also insisted that the referendum was a one-time choice. The 'right to independence' was implied in the option to reject the constitution. If it was rejected, it would have 'consequences' as membership of the French Community and France's hand of friendship were incompatible with independence; (for now at least) France would not subsidise independent states. An attempted compromise by the CCC, which would have allowed French Community member states to become independent after five years, was at first rejected. However, after strong African representations that a one-time choice would encourage Africans to reject the constitution, Prime Minister de Gaulle reluctantly accepted that member states could opt for independence at any time though this would mean leaving the French Community. This last-minute change, Mortimer suggests, came about following Prime Minister de Gaulle's private conversation with Boganda, President of the AEF Grand Council (subsequently the first Prime Minister of the Central Africa autonomous territory), who advised that, if the constitution implied total renunciation of independence, it was likely to be rejected by as many as five colonial territories, one of which he thought would be Senegal.[403]

Towards the end of August 1958, even before the constitution had been finalised, Prime Minister de Gaulle flew to Africa to promote a positive vote in the forthcoming referendum. In Madagascar, he was confronted by a sizeable body of opinion inclined towards independence. Tsiranana had sought to assure France that: 'Our nation is too small to leave the French orbit, and we do not think that independence for Madagascar is viable at present.' Yet, as he awaited Prime Minister de Gaulle, he confessed: 'When I let my heart talk, I am partisan of total and immediate independence; when I make my reason speak, I realize that it is impossible.'[404] As it was, Prime Minister de Gaulle's speech received only a lukewarm reception and this together with his subsequent private conversation with Boganda may have persuaded him to be more flexible about the choice laid before the colonial territories in his next speech at Brazzaville, French Congo:

403 *Loi Constitutionelle, Journal officiel, Lois et décrets* (5 October 1958), 9151–9172, E. Mortimer, *France and the Africans 1944–1960: A Political History*, 303–317, G. Lisette, *Le combat du Rassemblement démocratique africain pour la décolonisation pacifique de l'Afrique noire*, 337–339 and G. Devernois, 'Birth and Development of the Franco-African Community', *Civilisations,* 9/2 (1959), 216–222.

404 Tsiranana, *Le Monde,* 24 June and 23 July 1958, quoted by V. Thompson/R. Adloff, *The Malagasy Republic: Madagascar Today*, 96–100, M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', 32, E. Mortimer, *France and the Africans 1944–1960: A Political History*, 314 and M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', 32–35.

> What is proposed is that the Metropolis and the Overseas Territories should together form a Community in which each member will have full and free self-government. Whoever should desire *independence* will be able to have it immediately by voting 'NO' in the referendum … Within this Community, if some territory feels, at the end of a certain time, that it is ready to exercise all the charges and duties of independence – very well!

Moving on to Abidjan, Ivory Coast, he was, naturally, well received by Houphouet-Boigny, but in Conakry, Guinea he was greeted by calls for independence. The situation was made worse by Touré's speech of welcome and his blunt response. Touré sought to explain that Guinea did not want to choose between independence and France but wanted independence in association with France, but, if a choice was necessary: 'We shall never renounce our legitimate right to independence.' In reply, Prime Minister de Gaulle merely repeated that: 'No one is compelled to join this Community which France proposes. Independence has been spoken of … independence is at Guinea's disposal: she can take it on 28th September by saying "NO".' Three days later, Touré declared that: 'We have indicated to General de Gaulle that we prefer Poverty in liberty to wealth in slavery.' In Dakar, Senegal, where Senghor was conspicuous by his deliberate absence, Prime Minister de Gaulle was also subjected to anti-French demonstrations though, ironically, he was protected by Senegalese Second World War veterans.[405]

Despite these rumblings, the referendum resulted in overwhelming majorities in favour of the proposed constitution except in Niger and Madagascar where over 20 per cent of the votes supported independence. Algeria voted by more than 96 per cent in favour as a result of the boycott by the FLN but

405 A.S. Touré, *Expérience guinéenne et unité africaine*, 74–81 (Speeches by Touré and Prime Minister de Gaulle 25 August 1958), 88–89 (Radio Speech by Touré 28 August 1958), Prime Minister de Gaulle's speeches at Brazzaville and Conakry and Tsiranana, Press Conference, 21 August 1958, quoted by M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', 32–35, *Voyage officiel en Afrique Equatoriale Française du Général de Gaulle, Président du Conseil des Ministres, Discours prononcé à Brazzaville par le Général de Gaulle au Stade Éboué 24 août* 1958 (Brazzaville, 1958), F. Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960*, 279–325, W.J. Foltz, *From French West Africa to the Mali Federation*, 88–93, A.R. Zolberg, *One-party Government in the Ivory Coast*, 219–233, E. Schmidt, *Cold War and Decolonization in Guinea, 1946–1958* (Athens, 2007), 146–153, Touré and comments by de Gaulle, J. Lacouture, *Cinq Hommes et la France* (Paris, 1961), 348–353, quoted by E. Mortimer, *France and the Africans 1944–1960: A Political History*, 316–317 and Report of Prime Minister de Gaulle's tour and speeches, *La Documentation Française, Chroniques d'Outre-Mer* No. 49 October 1958, 3–36. Prime Minister de Gaulle's itinerary was 21–26 August 1958: Fort-Lamy, Tananarive, Brazzaville, Abidjan, Conakry and Dakar (see G. Devernois, 'Birth and Development of the Franco-African Community', 210).

probably also due to electoral fraud. The only territory to reject the constitution, by an overwhelming majority, was Guinea.[406]

Yet, on both sides of the referendum, the vote did not tell the whole story. All African political leaders grasped that development required economic support from France. Berg has estimated that French budgetary subsidies to French West Africa amounted to between one-quarter and one-third of annual expenditures and that public capital investment in the ten years to 1956 had been of the order of US$750 million – $1 billion, 70 per cent of which had been contributed by France. Even this level of subsidy underestimated the dependency as many colonial territories were over-integrated and over-reliant on trade with France.[407] In such circumstances, independence was a drastic step, all the more so if transfer subsidies from the Ivory Coast and Gabon also ceased. It is fitting, therefore, to recall that economic calculation, alongside the claim later made by M'baye that self-determination was the first human right.

The other key decision that African political leaders faced was whether, if they opted for independence, they would be able to get the vote out. If they failed, their political prospects would be terminal. For example, a US report noted that: 'African satisfaction with French concessions is in general becoming increasingly short-lived because of pressure from younger elements – mainly trade unionists and students. Younger intellectual elite is opposed to the assimilationist views of the older African elite.'[408] But in an overwhelmingly rural and therefore conservative society this younger radical elite was confronted not only by assimilated political leaders but also by a tribal elite reluctant to jeopardise its political leadership and forego French economic support and, importantly, better placed to mobilise rural votes. There was also the further factor that, as O'Brien points out, in the 1958 referendum, 'there appears to have been some resuscitation of the practice of administrative interference in the electoral process'.[409]

In Guinea, although his speech had seemed uncompromising, and notwithstanding Prime Minister de Gaulle's perception at the time of his visit, it seems that Touré had not yet decided which way to jump. The decision, according to Schmidt, was only taken at the Democratic Party of Guinea (PDG) Territorial Conference two weeks before the referendum. Under pressure, and despite RDA

406 G. Devernois, 'Birth and Development of the Franco-African Community', 213.

407 E. Berg, 'The Economic Basis of Political Choice in French West Africa', *American Political Science Review,* 54/2 (1960), 394–395.

408 *OSS/State Department Intelligence and Research Reports XIII Africa: 1941–1961,* Reel 4, OSS R&A, 'Reform in French Black Africa: A New Approach to Colonialism' 27 June 1957.

409 D.C. O'Brien, 'The Limits of Political Choice in French West Africa: 1956 to 1960', *Civilisations,* 15/2 (1965), 206–226 and M. Crowder, 'Independence as a Goal in French West African Politics: 1944–60', 39–41; see also L. Hahn, *North Africa, Nationalism to Nationhood*, 236.

representatives urging acceptance, Touré chose to side with the overwhelming sentiment of the conference.[410] In his speech he defiantly declared that: 'It will fall to us to preserve, for Guinea and for Africa, the honor of African Man … We shall vote "No".'[411] Key to that decision, though, was his expectation that he would prevail in the referendum vote.[412]

The decision was also finely balanced in Senegal and Soudan/Mali. Senghor was under strong pressure to opt for independence. In July 1958, the Cotonou conference that he had organised had come out in favour of 'immediate independence' – though Senghor himself had stressed the economic value of association and therefore the risks of independence. It was because of this strength of feeling that Senghor had decided to stay away from Dakar during Prime Minister de Gaulle's visit. Ultimately, though, the politically astute Senghor, and Keita in Soudan/Mali, opted for acceptance. In supporting acceptance, Senghor argued, correctly as it turned out, that: 'My "Yes" will be a stage on the road to independence.' Both leaders were also cautious of French influence and the lengths to which the French were prepared to go, not least in the enhanced military presence that the French were now parading. They were therefore very concerned at their likely political fate if opposed by the French administration and army together with the conservative marabouts and chiefs. Senghor was also personally attached to France and reluctant to see himself cut adrift.[413]

In Niger, too, although Bakary had been a supporter of Senghor's federalism and inclined towards independence, his decision to reject the constitution was also taken only two weeks before the referendum. His letter to Prime Minister de Gaulle giving the reasons underlying this decision explained that the

410 E. Schmidt, 'Cold War in Guinea: The Rassemblement Démocratique Africain and the Struggle over Communism, 1950–1958', *Journal of African History,* 48/1 (2007), 97, 118–119.

411 S.A. Touré, *Expérience guinéenne et unité africaine*, 180, Speech, Territorial Conference of the PDG, Conakry 14 September 1958 (reference from T. Hodgkin/R. Schachter, 'French-speaking West Africa in Transition', *International Conciliation,* 528 (1959–61), 420).

412 J. Suret-Canale (trans. C. Hurst), *Essays on African History: From the Slave Trade to Neo-colonialism* (London, 1988), 148–178 and E. Schmidt, *Cold War and Decolonization in Guinea, 1946–1958*, 158–176, 'Top Down or Bottom Up? Nationalist Mobilization Reconsidered, with Special Reference to Guinea (French West Africa)', *The American Historical Review,* 110/4 (2005), 975–976, 1002–1003 and 'Anticolonial Nationalism in French West Africa: What Made Guinea Unique?, *African Studies Review,* 52/2 (2009), 15–16.

413 W.J. Foltz, *From French West Africa to the Mali Federation*, 93–95, W.J. Foltz, 'Senegal' and T. Hodgkin/R.S. Morgenthau, 'Mali', J.S. Coleman/C.G. Rosberg (eds), *Political Parties and National Integration in Tropical Africa* (Berkeley, 1964), 25–26, 238–241 and E. Mortimer, *France and the Africans 1944–1960: A Political History*, 311–312.

structure of the constitution would lead to the balkanisation of Africa and did not allow in sufficiently clear terms for the right of every territory to become independent whenever it chose. Moreover, French insistence that rejection would lead not only to immediate independence but would also be followed by a swift and complete French retreat was a blackmail and, as such, an insult to African dignity. It advised that what Niger sought, as did Guinea and Senegal, was independence, not in order to secede, but in order to negotiate with France entry into the French Community on equal terms. Bakaray did not survive the election for long.[414]

Following the referendum result, France proclaimed Guinea's independence on 29 September – Guinea itself would only declare independence on 2 October 1958. To Guinean astonishment, France then gave notice of its intention to withdraw all French personnel and assets (including office light bulbs) within two months. It also rejected Guinea's application to join the French Community as an independent state. At the same time, it sought actively to obstruct Guinea's application for membership of the UN.[415]

For those territories that had voted 'Yes', two fundamental decisions now had to be made within the four month time limit required by the constitution. Firstly, whether to become an Overseas Department or join the French Community as a member state; and, secondly, whether to join individually or as part of a bloc. As in the limited time period there was little possibility of negotiating a federation, all twelve territories proclaimed themselves Republics and opted for member status on an individual basis.

Over the next two months, intense negotiations between Senghor and his federalist allies, and Houphouet-Boigny on the other side, merely confirmed that there was still little common ground between them. Undeterred, in December 1958, Senegal and Soudan/Mali invited all AOF states to a conference in Bamako to discuss a new federation although Dahomey and Upper Volta were

414 F. Fuglestad, 'Djibo Bakary, the French, and the Referendum of 1958 in Niger', *Journal of African History,* 14/2 (1973), 313–330 (323 'Lettre du Sawaba au Général de Gaulle', Niamey, 15 Sept. 1958), K. Walraven, 'From Tamanrasset: The struggle of Sawaba and the Algerian connection, 1957–1966', *Journal of North African Studies,* 10/3–4 (2005), 507–527 and 'Decolonization by Referendum: The Anomaly of Niger and the Fall of Sawaba, 1958–1959', *Journal of African History,* 50 (2009), 269–292, E. Mortimer, *France and the Africans 1944–1960: A Political History*, 317–324, 343–344 and I. Wallerstein, 'How Seven States were Born in Former French West Africa', *Africa Report,* 1 March 1961, 3–4.

415 E. Schmidt, *Cold War and Decolonization in Guinea, 1946–1958*, 170–176, E. Mortimer, *France and the Africans 1944–1960: A Political History*, 329–335, UN Security Council S/4133 9 December 1958, UNGA 13/1325 and UN A/PV.789 12 December 1958; Guinea's sponsors would be Iraq and Japan, joined subsequently by Ghana and Haiti.

the only states to answer that call. The conference concluded with an agreement to reassemble two weeks later in January 1959 in Dakar with a view to finalising arrangements for a federation. On that date the AOF Grand Council met to wind itself up and metamorphose into a Federal Constituent Assembly. To great enthusiasm a constitution was drafted in three days, based on a draft that Senegal had been preparing since October 1958, and adopted by acclamation. A few days later it was ratified by the Soudan/Mali and Senegal Assemblies.[416]

Yet despite a strong emotional pull and grassroots support for federation, both Dahomey and Upper Volta were too poor to contemplate arrangements that would be economically damaging. Under strong pressure from Houphouet-Boigny and France, the costs of joining the federation were spelled out and alternative inducements offered. As a result, although the Upper Volta Assembly adopted the new Mali Federal Constitution at the end of January 1959, one month later it also backed a territorial Constitution that made no mention of federation. As for Dahomey, in mid-February 1959, its territorial assembly simply adopted a territorial constitution. To reinforce this new alliance, Houphouet-Boigny drew Niger, Dahomey and Upper Volta into a loose Conseil de l'Entente grouping.

The AEF states also attempted to negotiate a federation. However, Gabonese opposition, personal ambitions, and political and ethnic differences ensured that little more than the 'Union douanière équatoriale', which was signed in January 1959, was politically feasible. Within the framework of, by then, independence discussions, further discussions on federation were attempted in the first half of 1960 but once again all that proved possible was the formation in May 1960 of the grand-sounding but limited 'Union des républiques d'Afrique centrale' without Gabon's participation.[417]

However, with Ghana and Guinea independent, and serving as a permanent reproach, it was unlikely that the French Community settlement could stem for long the rising aspirations for African independence. Initially, Senghor was

416 *Fédération du Mali, Constitution Fédérale* 17 January 1959, F. Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960*, 328–336 and W.J. Foltz, *From French West Africa to the Mali Federation*, 161–163.

417 Agreement for the establishment of the Council of the Entente, Abidjan, May 1959, Niger, *Journal officiel,* 15 June 1959, 352, *Conférence des chefs d'états de l'Afrique équatoriale, Secrétariat-général, recueil des conventions relatives aux organismes communs aux quatre états de l'Afrique équatoriale* (1963), Charter of the Union of Central African Republics, Fort-Lamy, May 1960, Chad, *Journal officiel* 15 June 1960, 272–273, quoted by L.B. Sohn (ed.), *Basic Documents of African Regional Organizations Vol. 2* (Dobbs Ferry, 1972), 642–646, 671–675, 901–902, G. Devernois, 'Institutional Developments in the French Community', *Civilisations,* 9/3 (1959), 374–379, V. Thompson, *West Africa's Council of the Entente* (Ithaca, 1972), 10–25, L.K. Mytelka, 'A Genealogy of Francophone West and Equatorial African Regional Organisations', *Journal of Modern African Studies,* 12/2 (1974), 297–320 and E. Mortimer, *France and the Africans 1944–1960: A Political History*, 357–359.

cautiously reluctant, on economic grounds, to accede to the majority (and Soudanese) view that the French Community should be transformed into a commonwealth of independent states.[418] However, after informal soundings had been taken with the French government, it was agreed in September 1959 that both territories should write to President de Gaulle requesting sovereignty for their Mali Federation. To Houphouet-Boigny's disgust, President de Gaulle approved this request at the December 1959 French Community Executive Council meeting in Saint-Louis, Senegal and again at the Mali Federal Assembly in Dakar: 'This state of Mali will take what is called Independence, but I prefer to call International Sovereignty.'[419] Formal negotiations were opened in January 1960 and concluded by April 1960. As the French Community Constitution had to be amended so as to allow for independence within the French Community, the date of independence was set for 22 June 1960.

President de Gaulle's acceptance of the principle of independence within the French Community opened the floodgates. The Mali Federation's request was immediately followed by those of Madagascar, Mauritania and the Central African States; finally, in June 1960, the four Conseil de l'Entente states also declared their intention to apply for independence. Madagascar therefore became independent in June 1960, a few days after the Mali Federation, the other states, with the exception of Mauritania, in August 1960. Mauritania had initially sought an independence date in 1961 but faced with the earlier date of the other states decided to bring their date forward to November 1960. In the event, the Mali Federation would not survive for long leaving Senegal and Mali to go their separate ways – their differences were just too great to overcome.[420]

Once the French Community Constitution had been ratified, the next step was for the territories to draft their own internal constitution. From a start date of 4 October 1958, when the French Community Constitution was formally adopted by the French National Assembly, all the twelve states finalised adoption of their constitution by March 1959. In almost all cases, a first draft was

418 President Senghor, *Parti de la fédération africaine, Congrès constitutif du Parti de la fédération africaine, Dakar, les 1er, 2 et 3 juillet 1959* (Dakar, 1959), 8–9.

419 President de Gaulle, Sixth Meeting of the Executive Council of the French Community, Saint-Louis 12 December 1959, quoted by A.R. Zolberg, *One-party Government in the Ivory Coast*, 242 Note 72 and President de Gaulle, Federal Assembly, Dakar 13 December 1959, quoted by E. Mortimer, *France and the Africans 1944–1960: A Political History*, 343–371.

420 F. Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960*, 325–413, W.J. Foltz, *From French West Africa to the Mali Federation*, 97–196 and 'Senegal', 26–27 and G. Devernois, 'Birth and Development of the Franco-African Community', 213–215 and 'The Evolution of the Franco-African Community', 10/1, 89–90, 98–104, 10/2, 248–250, 10/3, 350–361 and 10/4, 489–500 (1960).

prepared by the government, in several cases within a month, and then passed to a constitutional review committee before reaching the territorial assembly, now styled Constituent Assembly, for adoption. This was essentially the path followed by the French Community Constitution. Only in Upper Volta was the constitution endorsed by what could only have been a token referendum.[421]

The constitutional drafting process was therefore tightly controlled by the ruling party, if not the party leader and head of government alone. In turn, the constitutional review commission, usually described as 'advisory' or 'consultative', was also invariably hand-picked to limit dissent. There was also a RDA coordinating committee in Paris which aimed 'to harmonize the constitutions of R.D.A.-dominant states'. For example, in the Ivory Coast, commission members were chosen on the basis of their standing in the territorial assembly or the RDA; but, as Zolberg points out, final approval rested with Houphouet-Boigny alone.[422] Similarly, in the CAR, the drafting process was limited to the government and a ten-man constitutional review committee, and in Upper Volta it was arranged that the vote on the constitution would be held when many representatives were absent so that the final vote was 37:2 out of seventy elected members; while Dahomey's constitution was produced in barely ten days.[423] In most territories therefore the opposition was barely able to participate in the process and any attempt at amendment in the Constituent Assembly was easily repelled. Thus, for example, in Madagascar, opposition demands for a Constituent Assembly or a referendum were simply swatted away.[424]

The starting point for the territorial constitutions was of course the French Community Constitution. This was not merely a question of time. As Le Vine points out: 'The resemblance … was certainly more than nominal; the text of several of the African constitutions, especially in sections dealing with the presidency, followed the French document almost word for word.' Not only was it a structure with which the territories were familiar but at this point, too, the French political process had felt the need for a powerful presidency, a preference much in keeping with the personal inclinations of African leaders.[425]

As regards human rights, the French Community Constitution had clearly felt no obligation to mention the UDHR; it did however reference the French historical conception of the Rights of Man in its Preamble: 'The French people solemnly proclaim their attachment to the Rights of Man and to the principles

421 G. Devernois, 'Institutional Developments in the French Community', 372–373.

422 A.R. Zolberg, *One-party Government in the Ivory Coast*, 250–259.

423 W.J. Foltz, *From French West Africa to the Mali Federation*, 101–105, 109–112 and E. Mortimer, *France and the Africans 1944–1960: A Political History*, 350–354.

424 V. Thompson/R. Adloff, *The Malagasy Republic: Madagascar Today*, 101–103.

425 V.T. Le Vine, 'Cameroons, Togo, and the States of Formerly French West Africa', P. Duignan/R.H. Jackson (eds), *Politics and Government in African States 1960–1985* (London, 1986), 84–85.

of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946.' This was largely a reworking of the Preamble of the Constitution of 1946 which had declared that 'the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights. They solemnly reaffirm the rights and freedoms of man and the citizen enshrined in the Declaration of Rights of 1789 and the fundamental principles acknowledged in the laws of the Republic.'

Unsurprisingly, therefore, with the exception of Madagascar and Congo-Brazzaville, which issued its constitution in parts rather than a whole, all the member states largely followed the precedent set by the French Community Constitution. This meant some form of statement, invariably in the Preamble, expressing adherence or attachment to the Rights of Man, fundamental rights or, in the case of Dahomey, fundamental liberties of man, and also the principles of democracy. The source of these rights was variously ascribed to one or more of the 1789 Declaration of the Rights of Man and of the Citizen (1789 Declaration) and the Preambles of the 1946 French and the 1958 French Community Constitutions.[426]

Dahomey, Gabon, Ivory Coast, the Mali Federation (and, individually, Senegal and Soudan/Mali) and Upper Volta also referenced the UDHR, while Madagascar merely claimed to have been 'inspired' by the UDHR. Given the absence of a reference to the UDHR in the French Community Constitution, the decisions to reference it would seem to require explanation. Clearly, Senghor and Houphouet-Boigny were the most worldly in outlook of the African leaders – Tsirinana and Keita, too, to only a slightly lesser extent, in that all had been prominent in French politics and had assisted in the drafting of the French Community Constitution. If Senghor, though, may be regarded as having had one eye turned in the direction of independence at this time, the same cannot be said of Houphouet-Boigny. However, both leaders must clearly have recognised the value of the reference which a few weeks earlier Guinea had been the first to include in its independence constitution. Reference to respect for the UDHR had also been included in the 1958 Statuts of Cameroun and Togo and they too may have provided a relevant precedent though, as UN Trust Territories, inclusion may have been rather more linked to their status. In the case of the Ivory Coast, too, Houphouet-Boigny may simply have appropriated the reference from the Mali Federation constitution which had been agreed well before completion of the Ivory Coast constitution. As for Dahomey and Upper Volta, it seems a more obvious case of imitation, most likely of the Mali Federation constitution which they had only recently acclaimed in mid-January 1959. Given

426 The 1958–59 constitutions of the twelve African colonial territories are referenced from *Constitutions des États de la Communauté: Textes recueillis et présentés par P.F. Gonidec* (Paris, 1959).

the timelines for adoption, after rejecting the Mali Federation, they would have had little time to do more than cut and paste their constitutions from the precedents provided by the other French West African states. The RDA coordinating committee, too, was most likely also a factor.[427]

A more interesting question is why the 1958 Guinea and the 1959 Mali, Senegal (though not the 1959 Mali Federation constitution) and Ivory Coast constitutions, and eventually a total of fifteen African constitutions, also referenced President Lincoln's dictum 'government of the people, by the people and for the people' – and why the Ivory Coast excluded 'by the people', even more so as the omission was seemingly rectified in its 1960 independence constitution. Again, Guinea's lead would seem the most likely explanation. Zolberg also suggests that such references should be understood as representing a desire to acquire legitimacy through references to democratic principles although, in the case of Guinea, it seems little more than a blatant attempt to attract Western support as a counter to French obstruction of its UN membership application. For the more Francophile Senghor and Houphouet-Boigny, beyond imitation, there are no other obvious explanations.

Yet, notwithstanding the references to rights, there is little reason to imagine that it was an endorsement of human rights as envisaged by the UDHR. In the case of the Ivory Coast, Houphouet-Boigny was quite open about how democracy and human rights would be interpreted. He warned of the dangers of 'an immoderate love of democracy and liberty' and declared that: 'I want it known here and on the borders of the Community … that here, in the Ivory Coast, we will not put up with the licence of liberty, nor with the licence of democracy.'[428] During the drafting review by the constitutional review committee, its President also commented that: 'Democracy is a system of government for virtuous people. It seldom works even in very mature countries. Why should we expect it to work here? We must be realistic. Our people are ignorant (and) must approve the alternatives debated by an elite.' Houphouet-Boigny would also advise the constitutional review committee that: 'I am not against *any* opposition I have defined the framework within which it could operate. Within the framework of the Community … there is room for a policy of opposition, but not outside it. As long as the masses trust us, we will stand for no opposition … that questions the regime which we have freely chosen.'[429] It was a perspective that twenty

427 A.R. Zolberg, *One-party Government in the Ivory Coast*, 251.

428 *Discours de M. le Ministre d'Ëtat Houphouet-Boigny, Geo, Andre Stadium, 7 September 1958* (Abidjan, 1958), 24–25, quoted by A.S. Alexander, Jr, 'The Ivory Coast Constitution: An Accelerator, not a Brake', *Journal of Modern African Studies,* 1/3 (1963), 294–295 (A. R. Zolberg, *One-party Government in the Ivory Coast*, 253 gives the source as a speech of 6 September, 1958).

429 President of the Constitutional Committee of the Territorial Assembly, Interview Mme C. Alliali, 1959, quoted by A.R. Zolberg, *One-party Government in the Ivory*

years later President Senghor would also commend in his opening address to the 1979 Dakar Meeting of Experts.[430]

Independence in mid-1960 necessitated a further round of constitutional drafting though many of the key decisions had already been settled by the 1958 territorial constitutions. The process was therefore more straightforward. This time around, though, the constitutions were to be drawn up for independent states and therefore, with UN membership in mind, many more African states felt it appropriate to reference the UDHR. Senegal and Mali, for example, had separated on 20 August 1960 but one month later had adopted new constitutions which repeated their attachment to, respectively, fundamental rights and the rights and liberties of man and of the citizen as set out in the UDHR, and, in the case of Senegal, the 1789 Declaration, that reference now having been dropped by Mali. The four Conseil de l'Entente states met in August 1960 and agreed to adopt a common text. Drafting meetings were therefore held in September and October 1960 in Abidjan and Cotonou respectively and the resulting text adopted in November 1960. Its Preamble closely followed that of the 1959 Ivory Coast constitution which expressed an attachment to the principles of democracy and the Rights of Man as defined in the 1789 Declaration and the UDHR, as did the preamble in the constitution of Chad and also those of Gabon and Congo-Brazzaville, although without reference to the principles of democracy. By comparison, Mauritania limited its attachment to the principles of democracy as defined by the 1789 Declaration and the UDHR; the Central African Republic (CAR) its solemn attachment to the Rights of Man and the principles of democracy, but not to the UDHR; and Madagascar, again, proclaimed that its constitution had been inspired by the UDHR.

Over the twenty-year period between independence and adoption of the ACHPR in 1981 many of these constitutions would be amended or abolished. Of the twelve French Community territories, only the Ivory Coast, Mauritania (despite a coup in 1978) and Senegal retained their original independence constitutions throughout this period, though, of course, they were amended. Gabon in 1961 and Chad in 1962, notwithstanding civil wars, drafted new constitutions but otherwise retained them for the rest of this period. In the remaining seven states, military coups sooner or later heralded new constitutions.

In 1966 Colonel Bokassa seized control of the CAR. He immediately abolished the constitution, dissolved the National Assembly and proclaimed his authority to rule by decree. In 1976, he adopted a constitution which transformed the CAR into the Central African Empire (CAE), which he described

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Coast, 250–262 and 'Ivory Coast', J.S. Coleman/C.G. Rosberg (eds), *Political Parties and National Integration in Tropical Africa*, 87.

430 OAU (L) President Senghor's opening address to the 1979 Dakar Meeting of Experts CAB/LEG/67/5.

as a parliamentary monarchy, and declared that its people solemnly adhered to the UDHR. Other military regimes such as Mali under Lieutenant Traoré in 1974 and Upper Volta under Lieutenant Colonel Lamizana in 1970 also adopted constitutions that continued to proclaim an attachment to the UDHR. Benin, too, after each coup, the last being that of Lieutenant-Colonel Kérékou in 1977, continued to insist in the Preamble of its attachment to the principles of the UDHR. In contrast, in Niger, following a coup in 1974 by Chief of Army Staff Kountché, the constitution was abolished, the National Assembly dissolved and all political parties banned thereby renouncing the principles of democracy as defined in the UDHR to which its 1960 constitution had proclaimed an attachment. Renunciation was expressed more directly by Congo-Brazzaville (Republic of the Congo) as its 1969 Constitution, after the coup by Lieutenant Ngouabi, deleted its preamble reference to the UDHR. Demonstratively, its 1979 Constitution, promulgated after further coups in 1977 and 1979, expressed its adherence to the principles and fundamental objectives of the UN and OAU Charters but not the UDHR (though it was one of the first to adhere to the ACHPR). Similarly, in 1975 in Madagascar, following the 1974 coup and the appointment of Lieutenant-Commander Ratsiraka as head of the Supreme Revolutionary Council, a new constitution was promulgated which claimed to be inspired not as previously by the UDHR but by the socialist principles enunciated in the 'Charte de la révolution socialiste malagasy'.[431]

Guinea

As Guinea had rejected the French Community Constitution, its independence constitution was hurriedly drafted in ten days by a constitutional commission under the guidance of Touré and the PDG and adopted forty days later by the National (Constitutional) Assembly after a two-hour debate. It would survive until 1982.[432]

Following independence, as Guinea was confronted by active French obstruction of its application to join the UN, it was almost certainly with the UN in mind that the Preamble of its new constitution affirmed Guinea's '*adhésion totale*' to the UN Charter and the UDHR; and for good measure it added in

431 The independence constitutions of the French Community territories are referenced from D.G. Lavroff/G. Peiser (eds), *Les constitutions africaines* (Paris, 1961); see also G. Devernois, 'The Evolution of the Franco-African Community', *Civilisations,* 10/4 (1960), 498–499 and 'The Evolution of the Franco-African Community', *Civilisations,* 11/1 (1961), 79–97 and 1977 Benin Constitution, N.G. Mensah, *Droit constitutionnel et institutions politiques. Vol.3: Évolution politique et constitutionnelle de la République Populaire du Bénin* (Cotonou, 1982), 159–197 (Appendix 1).

432 I. Kane, 'Guinea: Building the Rule of Law for Social Development', A.A. An-Na'im (ed.), *Human Rights under African Constitutions*, 98.

bold capitals: 'The principle of the Republic of Guinea is "GOVERNMENT OF THE PEOPLE, BY THE PEOPLE AND FOR THE PEOPLE".'[433]

With Guinea's application to the UN having been accepted, Guinea's representative, Telli, in his maiden address to the UNGA, advised that: 'By the very terms of its constitution, our young State subscribes unreservedly to the United Nations Charter and the Universal Declaration of Human Rights; it accepts all the obligations they entail, considers itself capable of respecting them, and is prepared to do so.'[434] Guinea was also most assiduous in ratifying the International Covenants. It was among the first African states to do so though it did not ratify the Optional Protocol. It was also the second state (after Mali) to ratify the ACHPR.

To all outward appearances, therefore, Guinea might be regarded as a state committed to human rights. Yet such outward appearances disguised the reality that Guinea not only had no sympathy for the UDHR, but was virulently opposed to it. For example, rather than according the individual 'pride of place', President Touré emphasised that: 'In our Republic personal liberty is viewed from the perspective of its practical usefulness for society.' Worse, he argued that the UDHR was a project of Western neo-imperialism: 'An attempt to solve specific African problems out of context, according to some half-understood universal concept, neglects the especially important social factors …. It is … absurd to conceive of the African or the African nations acting in terms that are supposed to be universal but actually are only relative, depending on particular historical or social conditions.' Moreover, that 'defining the rights of man is an abstraction, for that right differs from country to country'. Guinea's UDHR reference may therefore best be understood in terms of President Touré's explanation that: 'Western discourse will be used, but only when it serves our purpose.'[435]

Guinea's attitude was even clearer at the May 1979 Arusha Conference on the African Refugee Problem, held sixteen months after Guinea had ratified the International Covenants, when its delegation reserved approval of the confer-

433 *Journal officiel de la République de Guinée* numéro spécial 12 November 1958, 1 and *Documents on African Political History, 1938–1970 Comp. by Dr. Ruth Schachter Morgenthau* Part 1 Reel 15.

434 UN Security Council S/4122 Application from Guinea 3 December 1958, UNGA 13/1325 12 December 1958 and UN A/PV.789 12 December 1958, 569. Coincidentally, Malik, who had helped draft the UDHR, was in the UNGA Chair when the vote on Guinea's membership was taken and personally congratulated Guinea for the reference to the UDHR.

435 A.S. Touré, 'Africa's Future and the World', *Africa on the Move*, 126 and President Touré, *International Herald Tribune,* 19 June 1979, 2, quoted by C. Tomuschat, 'Is Universality of Human Rights Standards an Outdated and Utopian Concept?' R. Bieber/D. Nickel (eds), *Das Europa der Zweiten Generation: Gedächtnisschrift für Christoph Sasse* (Kehl am Rhein, 1981), 587; see also P.F. Gonidec, *African Politics*, 216.

ence recommendation that called 'upon all African States which have not done so, to accede to and implement the various Human Rights instruments adopted within the framework of the United Nations'. Its justification was that: 'Guinea was of the opinion that the use of the concept of Human Rights on the international political scene is incompatible with the rights of peoples and furthermore, is used as a weapon of perturbing the process of a harmonious historic evolution of independent African States.'[436]

In 1982 Guinea went further by excising the UDHR reference in its new constitution which was adopted one day after Guinea had officially adhered to the ACHPR. As Article 17 explained, its commitment was no longer deemed to derive from the UDHR, rather that: 'The rights and duties of citizens are founded on the principle of solidarity'; a solidarity expressed in bold capitals as: 'UN POUR TOUS, TOUS POUR UN'. The opportunity was also taken to exclude some civil and political rights from the constitution and the reference to 'government of the people, by the people and for the people'. At least it was now back in the French fold with the nod to Dumas rather than Lincoln.[437]

In practice, too, Guinea's respect for its constitution was sadly lacking. For example, the 1978 Amnesty International (AI) Report noted the existence of an estimated 2,000–4,000 political prisoners, though it suspected that the number might actually be much higher. The fate of countless other prisoners was also well beyond determination, most notably Telli who had served as Guinea's UN representative and OAU Administrative Secretary-General and advised the UNGA of Guinea's unreserved acceptance of the UDHR. Amnesty International also suggested that around one million people had left Guinea, an estimate that the International League for Human Rights (ILHR) thought should be doubled.[438] Yet, in a 1977 meeting with Vice President Mondale, Prime Minister Beavogui (Guinea) claimed that: 'President Sékou Touré and Guinea share fully your views on human rights (and) that Guinea would be pleased to have a U.S. delegation visit his country to look into the human rights situation there.' Deputy Secretary of State Christopher, however, was not persuaded:

436 L.G. Eriksson/G. Melander/P. Nobel (eds), *An Analysing Account of the Conference on African Refugee Problem, Arusha, May 1979* (Uppsala, 1981), 52, 62; see also Scandinavian Institute of African Studies, *The Recommendations from the Arusha Conference on the African Refugee Problem* (Uppsala, 1981).

437 *Deuxième constitution de la République populaire et révolutionnaire de Guinée* (Conakry, 1982).

438 Guinea, Amnesty International, Briefing Paper No. 14 (Nottingham, 1978), 4–7 and *Amnesty International Report 1977* (London, 1977), 74–76 and International League of Human Rights, *Communication to the United Nations on a Consistent Pattern of Violations of Human Rights in the Republic of Guinea* (New York, 1977); see also 'Justice in Guinea', *ICJ The Review,* 7 (December 1971) Special Africa Number (probably written by MacDermot), 4–9.

> Sékou Touré is aware of the inconsistencies between Guinea's professions of support for the rights of man and the practices of his government … Guinea's first line of defense against criticism has been … to justify Guinea's repressive actions on internal security grounds while emphasizing Guinea's underlying respect for human rights. Sékou Toure bitterly and publicly attacked the ILHR report by denouncing its authors as agents of western intelligence services. However, it is possible that Guinea is prepared to improve its human rights situation for tangible benefits, particularly aid and investment.[439]

In a rare moment of long overdue candour, a 2010 UN report also noted, inaccurately, that each of Guinea's constitutions had reaffirmed Guinea's attachment to the UDHR: 'However, a lack of political will has affected the implementation of … human rights. That deficiency has led to serious and massive human rights violations by successive Governments.'[440]

Cameroun

The two territories of the Cameroons were established as UN Trust Territories in 1946 under the respective supervision of France and the UK, effectively as an extension of their 1922 Mandate from the League of Nations. France administered Cameroun, the main territory of the Cameroons, while the UK administered the smaller, separate territories of Northern and Southern Cameroons. As a UN Trust Territory, Cameroun presented France with a rather different political challenge to that of the French Community states in that its colonial policies could not simply be imposed but were subject to the scrutiny of the UN Trusteeship Council.[441]

France's commitment in the UN Trusteeship Agreement and the more general obligations of trusteeship set out in the UN Charter to support political advance leading to independence gave seeming encouragement to the emergence in 1948 of the Union des populations du Cameroun (UPC). Under the leadership of Um Nyobè and Moumié, the UPC not only sought independence but also unification of the three Cameroon territories. Acutely aware of the possibilities of the platform provided by the UN, the UPC pressed its case

439 *FRUS 1977–1980 Vol. XVII Part 2, Sub-Saharan Africa*, Documents 26: Memorandum From Vice President Mondale to President Carter 29 June 1977 and 28: Memorandum From Acting Secretary of State Christopher to Vice President Mondale 5 August 1977 (see also Document 41: Telegram From the Embassy in Guinea to the Department of State 7 August 1978).

440 Draft Report of the Working Group on the Universal Periodic Review: Guinea 6 May 2010, UN A/HRC/WG.6/8/L.3, 3–4 (the review was presented by Guinea itself).

441 League of Nations, *British and French Mandates for the Cameroons* (Geneva, 1922), UNGA 1/63 13 December 1946 and UN A/151/Rev.2 (British Trusteeship Agreement) and A/155/Rev.2 (French Trusteeship Agreement) 13 December 1946.

through petitions and annual appearances before the UN Trusteeship Council. However, within Cameroun, it was unable to achieve the electoral success it felt was warranted. This was, in part, the result of official disapproval expressed through administrative and electoral interference, but the UPC's radical socialist platform also played into the conservative hands of the Catholic Church in the South and the Muslim chiefs in the North. When, therefore, in May 1955, demonstrations led by the UPC turned into violent riots, the government was handed a ready excuse to ban the UPC as Communists and arrest its leaders, though many managed to escape into the Southern Cameroons. With little scope for legal opposition, the only option was armed opposition in a civil war that would extend well beyond independence.

The advance towards independence may therefore only realistically be attributed to the 1956 *Loi Cadre* reforms. In the December 1956 elections to the territorial assembly that followed these reforms, the banned UPC could do little more than urge its supporters to boycott the election. This left the field open to the French-supported Bloc démocratique camerounais of Mbida and the Union camérounaise of Ahidjo who came together after the election in a coalition government. Their immediate task was to negotiate a constitution. Whereas Mbida was prepared to accept the draft put forward by France, Ahidjo, who was increasingly taking on the independence mantle of the UPC, insisted on a greater degree of autonomy. Other political groups wanted to go even further and demand independence. The outcome in April 1957 was the '*Statut du Cameroun*' which provided for self-government, except in certain reserved areas, but as a transitional step to independence – at Cameroun insistence, the statute would define Cameroun not as a territory but a 'State under Trusteeship'. No mention was made of the UDHR.

Mbida became the first Prime Minister, but in February 1958 he was abruptly replaced by Ahidjo. His removal was largely brought about by the intrigues of French High Commissioner Ramadier, but it was also made possible by Mbida's loss of support arising out of his insistence, against the tide, that independence was at least ten years away. In the event, a few months later, as events unfolded in France, Prime Minister Ahidjo took the opportunity to demand full internal autonomy and an agreed independence date. The demand was readily accepted by Prime Minister de Gaulle and therefore possibly paved the way for the other French colonial territories. The resulting *statut* providing for full internal autonomy would come into force from 1959 with independence itself scheduled for 1960. This time, looking forward, its Article 5 referred to respect for the principles and fundamental freedoms set out in the UDHR and the UN Charter.[442]

442 *Statut du Cameroun, Décret No. 57–501* of 16 April 1957, *Journal officiel, Lois et décrets* (1957), 4112–4116 and *Statut du Cameroun, Décret No. 58–1375* of 30 December 1958, *Journal officiel, Lois et décrets* (1958), 1213–1214.

With independence imminent, in October 1959, in a tempestuous series of Legislative Assembly debates, Prime Minister Ahidjo sought and was granted temporary emergency powers for six months (*plein pouvoirs*). They were intended to enable him to govern by means of decrees and to oversee the drafting of a constitution with the aid of a forty-two member consultative commission half of whom would be chosen on a regional basis and the other half appointed by the government on the (alleged) basis of their expertise. The constitution was then to be submitted for approval to a referendum, and confirmation by the Legislative Assembly. This was largely in line with the French constitutional process of the previous year. In support of his request, Prime Minister Ahidjo argued that 'we find ourselves in an exceptional situation which requires exceptional solutions only a government with complete responsibility endowed with *plein pouvoirs* … will be able to resolve the problem of the hour'. The opposition counter-proposed a round-table conference of all parties leading to a constituent assembly which would then draft a constitution, but was overwhelmingly outvoted. As many had warned, the emergency powers proved to be anything but and would be renewed at six-monthly intervals well beyond adoption of the ACHPR in 1981.

The independence constitution was therefore effectively drawn up by Prime Minister Ahidjo's French advisers. It was reviewed briefly by the Council of Ministers before being passed on to an abject Consultative Commission from which several members felt compelled to resign in protest at the procedure that was being followed; others simply refused to take part in the charade. The Commission completed its review within thirteen days, recommending only minor amendments. As Awasom noted: 'Of the fifty-two articles … forty-eight were "purely and simply copied from the constitution of the Fifth French Republic", with care taken to exclude the liberal and democratic clauses in favour of authoritarian ones.' Le Vine's assessment was much the same: 'Beyond its long preamble, the constitution bore a remarkable similarity to that of the Fifth French Republic'; and, he added: 'There is some question whether the constitution was more the child of political exigency than of mature reflection … thus … accounting largely for following the French model so closely.' The opposition in exile would describe the constitution as anti-democratic 'worked out not by the people's elected representatives, but by French technical experts'.

The constitution was then endorsed by a referendum a mere three weeks later in February 1960. In line with the 1958 *Statut* and the precedent set by the newly independent French West African territories, the new constitution also proclaimed its adherence to the fundamental freedoms as set out in the UDHR and UN Charter.[443]

443 M. Atangana, *The End of French Rule in Cameroon* (Lanham, 2010), V.T. Le Vine, *The Cameroons: From Mandate to Independence* (Berkeley, 1964), 141–192, 225–227, N.F. Awasom, 'Politics and Constitution-Making in Francophone Cameroon, 1959–1960', *Africa Today,* 49/4 (2002), 3–30, R. Joseph, *Radical Nationalism in Cameroun:*

As Cameroun was advancing towards independence, the people of the British Cameroons were invited by the UNGA to take part in a plebiscite 'in order to ascertain the wishes of the inhabitants … concerning their future'. In the Northern Cameroons, the plebiscite in November 1959 resolved, unexpectedly, against joining the Northern Region of Nigeria in favour of deferring a decision to a later date. A second plebiscite had therefore to be held in February 1961 which, this time, came down in favour of joining Nigeria rather than Cameroun. The Southern Cameroons plebisicite took somewhat longer to arrange as the options to be offered were more complex and it was some time before they could be agreed. It was finally determined that the plebiscite (also in February 1961) should offer a straight choice between unification with Cameroun or Nigeria, independence was thereby not an option. In due course, the plebiscite opted for Cameroun though Mortimer suggests that the voting numbers as between Northern and Southern Cameroons support the likelihood of French vote-rigging. Following the referendum votes, the UNGA determined that its trusteeship for the Northern Cameroons should be terminated in June 1961 and that of the Southern Cameroons in October 1961 to allow for negotiations with Cameroun, and the UK as the existing administering authority.[444]

The question of the Southern Cameroons' future had already been well flagged during the course of the Nigerian independence process. Following the 1949–51 review, it was agreed that the Southern Cameroons should elect representatives to Nigeria's Eastern Region, but by the time of the 1953 Conference its political leaders had begun to think in terms of a separate region within the Nigerian Federation as a step towards reunification with French Cameroun. In 1956, as Nigeria was itself moving closer to self-government and independence, Southern Cameroons political leaders met at Bamenda to discuss their future status and agree a mandate for the forthcoming Nigerian Constitutional Conference. They concluded by reiterating their desire to maintain a separate identity but in view of the financial benefits accruing from their links with Nigeria the majority did not as yet envisage secession. Nonetheless, they advised the Colonial Office that the Southern Cameroons' participation in political advance

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Social Origins of the U. P. C. Rebellion (Oxford, 1977), 171–350, E. Mortimer, *France and the Africans 1944–1960: A Political History*, 113, 125–126, 212–218, 242–246, 299–302, 336–340 and V.G. Fanso, 'Anglophone and Francophone Nationalisms in Cameroon', *The Round Table,* 88/350 (1999), 281–288.

444 UNGA 13/1349 13 March 1959 (Independence), 13/1350 13 March 1959 (referendum), 14/1352 16 October 1959 (Referendum), 14/1473 12 December 1959 (referendum) and 15/1608 21 April 1961 (unification), N.F. Awasom, 'The Reunification Question in Cameroon History: Was the Bride an Enthusiastic or a Reluctant One?' *Africa Today,* 47/2 (2000), 91–119 and J.H. Vaughan, Jr., 'Culture, History, and Grass-Roots Politics in a Northern Cameroons Kingdom', *American Anthropologist, NS,* 66/5 (1964), 1078–1095.

should be such as would be compatible with their ultimate aim of reunification with Cameroun. Accordingly, when Nigeria became independent in October 1960, a separate Order in Council was passed for the Southern Cameroons as a holding measure awaiting the decision of the plebiscite. In keeping with the 1960 Nigerian Constitution, it included a chapter on fundamental rights.[445]

Ahead of the plebiscite in February 1961, therefore, the constitutional arrangements offered by Nigeria were on the table.[446] In contrast, the offer from Cameroun was not at all clear. Despite repeated attempts by colonial officials to persuade Prime Minister Foncha (Southern Cameroons) to negotiate with Cameroun prior to the plebiscite, he not only dismissed their advice but complained angrily at the temerity of their interference. It was only in mid-1959 that Prime Minister Ahidjo and Prime Minister Foncha met for the first time but, as Prime Minister Ahidjo was not minded to negotiate at this time, the meeting achieved little of note. Some progress was made over the next eighteen months although in June 1960 Prime Minister Foncha felt it necessary to write to President Ahidjo setting out his 'reunification' proposals and warning that further delay in meeting might be interpreted as 'disinterestedness' on the part of Cameroun.[447] This prompted President Ahidjo to invite Prime Minister Foncha to a meeting at Yaoundé which concluded with a communiqué setting out the Federal structure on offer in which each state would have its own government and legislature with only minimum powers allocated to the Federal government. Prime Minister Foncha would therefore campaign for unification with French Cameroun on the basis of what he called the United Cameroons Federal Constitution.[448]

445 HMSO Cmd. 8934, *Report by the Conference on the Nigerian Constitution held in London in July and August, 1953* (London, 1953), 9–10, 22–23 (Annex VI), HMSO Cmd. 9059, *Report by the Resumed Conference on the Nigerian Constitution held in Lagos in January and February, 1954*, 4, 54–55 (Annex III), HMSO Cmnd. 207, *Report by the Nigeria Constitutional Conference held in London in May and June, 1957*, 30–32, HMSO Cmnd. 569, *Report by the Resumed Nigeria Constitutional Conference held in London in September and October, 1958*, 30–33 and HMSO Cmnd. 1063, *Nigeria Constitutional Discussions, May 1960 held in London*, 4, S.305/S.1/75 Brayne-Baker to Gardner-Brown 19 June 1956 enclosing Report on the Constitutional Conference held in the Community Hall, Bamenda from May 28th to June 1st 1956, NA FCO 141/1600 and The Southern Cameroons (Constitution) Order in Council, 1960, 16 September 1960, 29–37 (Chapter VII Fundamental Rights).

446 Field to Robertson No. CC.7 8 August 1960 enclosing Outline Proposals for a Constitution in the event of unification between the Cameroun Republic and the British Cameroons and Southern Cameroons: Future Constitutional Development, Governor-General of the Federation of Nigeria to the Secretary of State for the Colonies WAF 16/440/03 25 August 1960, NA CO 554/2249.

447 Prime Minister Foncha to President Ahidjo 9 June 1960, NA CO 554/2249.

448 Record of tripartite talks in Yaoundé August 4–7, 1960 (undated and unsigned)

For others, though, it was rather too light on details and therefore some Southern Cameroons political leaders began to realise that their bargaining position would have been stronger if they had been able to negotiate unification as an independent state. It was, however, too late, as independence was now not an option the UN felt the plebiscite should offer. Nonetheless, the UN Plebiscite Commissioner was so concerned at the lack of transparency of what was on offer from Cameroun as to ask Prime Minister Foncha and Cameroun for further clarification. They simply referred back to the communiqué, but it was now too late to cancel the plebiscite.[449]

As for President Ahidjo, he understood the advantage he would gain once the plebiscite vote had found in favour of 'reunification' with Cameroun and was therefore only too happy to be vague. There is also reason to believe that President Ahidjo was more interested in unification with his closer ethnic kin in the Northern Cameroons than the Christians in the Southern Cameroons. He may also have been concerned that, without the Northern Cameroons, there was the potential for the Southerners in Cameroun to unite with the Southern Cameroons to outvote the Northerners in Cameroun. He may therefore have not been overly troubled if the negotiations had failed and it may also have been for precisely this reason that Cameroun would subsequently challenge the result of the Northern Cameroons plebiscite at the International Court of Justice (ICOJ).[450] On the other hand, it is still a matter of some debate as to why Prime Minister Foncha adopted such an inept negotiating strategy but it is widely believed that it was related to the promises made to him by President Ahidjo as regards future political office – after reunification, he was appointed Vice-President of Cameroun and Prime Minister of Western Cameroun.[451]

Once the referendum decision had been reached, formal constitutional negotiations were opened. They began on the Southern Cameroons side at a conference in Bamenda in June 1961. The draft to be presented to President Ahidjo envisaged a loose federation although Prime Minister Foncha at least was aware that President Ahidjo would insist on a far tighter structure with the longer-term

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and Yaoundé to Foreign Office King No. 161 8 August 1961, NA CO 554/2266.

449 UN A/4727 UNGA Fifteenth Session, Report of the UN Plebiscite Commissioner for the Cameroons under United Kingdom Administration 8 April 1961, 31–57 and Official Printer, *South Cameroons Plebiscite, 1961: The Two Alternatives* (Cameroon, 1961).

450 D.H.N. Johnson, 'The Case concerning the Northern Cameroons', *International and Comparative Law Quarterly,* 13/4 (1964), 1143–1192 and 'The Northern Cameroons Case', *Duke Law Journal,* 3 (1964), 550–561.

451 N.F. Awasom, 'Negotiating Federalism: How Ready Were Cameroonian Leaders before the February 1961 United Nations Plebiscites?' *Canadian Journal of African Studies,* 36/3 (2002), 425–459 and J. Percival, *The 1961 Cameroon Plebiscite: Choice or Betrayal* (East Lansing, 2008).

aim of a unitary state; indeed there is some reason to believe that Prime Minister Foncha had received the Cameroun proposals in advance but had chosen not to disclose them to his political colleagues. The conference also produced a wish list for the forthcoming constitutional negotiations that included the retention of the constitutional chapter on fundamental rights.[452]

Direct negotiations with President Ahidjo were conducted shortly after the Bamenda conference, at Foumban in July 1961. There, for the first time, the Cameroun proposals were presented to the Southern Cameroons delegation and, after three days of study, they reverted with their own 'recommendations'. President Ahidjo graciously acceded to some recommendations but made clear that he would be the final arbiter of what was acceptable. As Awasom points out, there was no prospect of President Ahidjo unwinding the system he had only recently imposed in order to replace it with the liberal-minded constitution the Colonial Office had willed to the Southern Cameroons. As for a chapter incorporating fundamental rights, in his closing remarks, President Ahidjo expressed happiness at how close the two views were but rejected the Southern Cameroons request as he regarded the reference to Cameroun's adherence to the principles of the UN and respect for fundamental rights as sufficient. The 1961 Cameroun Federal Constitution therefore did no more than repeat the reference in the Preamble of the 1960 Cameroun Constitution.[453]

452 Record of the all party conference on The Constitutional Future Of The Southern Cameroons held at the Community Hall, Bamenda from 26th to 28th June, 1961, NA CO 554/2265.

453 Constitutional Proposals issued by the Government of the Southern Cameroons as a basis for discussion, Field to Eastwood No. CC.84/Vol. III 26 July 1961 enclosing Meeting of the Southern Cameroons Delegation, Draft revision of the Cameroun Constitution, Amendments to and Comments on the Draft Proposed Constitution of the Federal Republic of Cameroun and Final speech by President Ahidjo (all relating to Foumban Conference) and Comparison between draft constitutions for the Federal Cameroon Republic (undated and unsigned), NA CO 554/2265, V.T. Le Vine, *The Cameroons: From Mandate to Independence*, 193–214 and 'Unifying the Cameroons', *West Africa,* 15 July 1961, 774–775, V.G. Fanso, 'Anglophone and Francophone Nationalisms in Cameroon', 288–296, V.J. Ngoh, *Southern Cameroons, 1922–1961: A Constitutional History* (Aldershot, 2000), 122–169 and *Constitutional Developments in Southern Cameroons, 1946–1961: From Trusteeship to Independence* (Yaoundé, 1990), 137–140, 184–217, Debate between Professors Fanso and Ngoh, 27 September 2011, http://www.langaa-rpcig.net/+Prof-Fanso-Vs-Prof-Victor-Julius+.html, last accessed 29 July 2015, F.M. Stark, 'Federalism in Cameroon: The Shadow and the Reality', N. Kofele-Kale (ed.), *An African Experiment in Nation Building: The Bilingual Cameroon Republic since Reunification* (Boulder, 1980), 101–132 and R. Frodin, 'Flies in the Trusteeship Ointment: A Review of Trusteeship in the British Cameroons and the Plebiscite that Terminated it', *American Universities Field Staff Reports West African Series Vol. IV/1,* 25 February 1961, Enugu, Nigeria.

The unitary constitution envisaged by President Ahidjo was finally adopted in 1972 at which time the state was renamed 'United Republic of Cameroon'. It was revealed by President Ahidjo to the Political Bureau in May 1972 and approved twenty-two days later by a referendum. In 1984, 'United' was deleted so that it was now 'The Republic of Cameroun'. Affirmation of Cameroun's attachment to the fundamental freedoms embodied in the UDHR together with a listing of rights was included in the Preamble of all these constitutions, yet, notwithstanding these protestations of faith, Cameroon did not ratify the ACHPR before it came into force.[454]

Togo

The two parts of Togo, East and West, were also established as UN Trust Territories in 1946 under the respective supervision of France and the UK.[455] Initially, the French administration was confronted by a pan-Ewe party, the Comité de l'unité togolaise (CUT) led by Olympio, which sought not so much independence as Ewe reunification under British UN trust authority. The CUT would therefore receive support from Prime Minister Nkrumah who also had his own high hopes at this time of integrating the Ewe within the Gold Coast. The French reacted by promoting a pro-French party, the Togolese Party of Progress (PTP), under Grunitzky, Olympio's brother-in-law, which in 1951 defeated the CUT in the territorial assembly elections.[456]

In June 1954, in a premptive move, the UK wrote to the UN Trusteeship Council advising that it considered the objectives of trusteeship had been attained in British Togoland and that the UN might therefore wish to ascertain the wishes of the people as to their future. It was a convenient assessment as it was hoped that, by holding out the prospect of independence, British Togoland might be encouraged to opt for unification with the Gold Coast which was itself moving towards independence.[457] This unexpected move pushed France to adopt new arrangements for French Togoland in April 1955 providing for a limited degree of domestic autonomy.[458] By now though, the CUT had evolved

454 C.M. Fombad, *Constitutional Law in Cameroon* (Alphen aan den Rijn, 2012).

455 UNGA 1/63 13 December 1946.

456 This section has drawn extensively on E. Mortimer, *France and the Africans 1944–1960: A Political History*, 113–116, 202–205, 241–242, 297–299; see also J. Kent, *The Internationalization of Colonialism: Britain, France and Black Africa, 1939–56* (Oxford, 1992), 239–262.

457 Forwarded Draft Letter from the Permanent United Kingdom Representative at the United Nations Headquarters, New York, to the Secretary-General, to be transmitted on June 21st, 1954 enclosing Explanatory Memorandum, 'The Future of Togoland under United Kingdom Trusteeship' and Press Release 'The future of Togoland under United Kingdom Trusteeship' (undated but likely June 1954), NA FCO 141/5025.

458 *Loi N° 556–426* of 16 April 1955, *Journal officiel, Lois et décrets* (1955), 3832–3837.

into an independence party and it therefore denounced the French response as totally inadequate, and decided to boycott the elections in anticipation of French administrative interference. As a result, the PTP won an overwhelming victory. They, in turn, responded by demanding full internal autonomy but without reunification with British Togoland so as to remain 'within the French system'.

Although, in the light of the British letter to the UN, France and the Togo government now also began to express an interest in terminating the trusteeship agreement, a UN mission to Togo in August/September 1955 reported that opinion as to the next step was divided and therefore before termination could be considered the wishes of the peoples should be ascertained by a plebiscite. In December 1955, this advice was accepted by the UNGA and plebiscites were scheduled for both Trust Territories.[459] The plebiscite in May 1956 in British Togoland opted in favour of unification with the Gold Coast. France, however, was keen to retain French Togoland and therefore, in partnership with Grunitzky, a series of reforms were passed culminating in August 1956 in a new constitution establishing Togo as an autonomous Republic within the French Union; the initial proposal had been for an 'autonomous territory' but the Togo territorial assembly had insisted on 'autonomous Republic'.[460]

It was approved in October 1956 by a referendum but, as it had not offered voters the option of independence and had not been supervised by the UN, its legitimacy was questioned. The joint French and Togo government request to terminate the trusteeship was therefore rejected. Instead, the UNGA pressed the Togo government to establish its proposed new territorial assembly by means of elections based on universal suffrage 'as soon as possible' so that the wishes of its people might be established. It also demanded that France should cede even more authority to the Togo government.[461] In February 1958, therefore, another constitution was adopted in which France conceded self-government to Togo along the lines subsequently adopted by the 1958 French Community structure.[462] However, against French expectations, the elections in April 1958

459 UN T/1238 Trusteeship Council Official Records Seventeenth Session 1956: Supplement No. 2 (United Nations Visiting Mission to Trust Territories of Togoland under British Administration and Togoland under French Administration, 1955: Report on Togoland under French administration, together with related documents) and UNGA 10/944 15 December 1955 (plebiscites).

460 *Statut du Togo*, *Décret No*. 56–847 of 24 August 1956, *Journal officiel, Lois et décrets* (1956), 8173–8176.

461 UNGA 11/1044 13 December 1956 (Union with the Gold Coast), 11/1046 23 January 1957 (French Togoland), 12/1182 29 November 1957 (elections) and G. Devernois, 'French Union 1957–1958: Algeria, Sahara, Overseas and Trust Territories', *Civilisations*, 8/2 (1958), 307–310 and 'The Franco-African Community', *Civilisations*, 8/4 (1958), 588–589.

462 *Statut du Togo*, *Décret No*. 58–187 of 20 February 1958, *Journal officiel*, *Lois et décrets* (1958), 1960–1962.

were won by Olympio who soon thereafter met with Prime Minister de Gaulle to agree a date, subsequently set for April 1960, for termination of the trusteeship and independence.

In view of the UN's role, it might have been expected that the UDHR would be acknowledged in Togo's 1956 *Statut*, but it was not. However, in due course, the first article of the 1958 *Statut* and constitution would finally declare that it was founded on respect for the principles set out in the UDHR and the Preamble of the 1946 French Constitution. Independence itself was effected by the April 1960 constitution which simply amended the existing constitution to reflect Togo's status as an independent state and there was therefore little scope for any further mention of the UDHR.[463] However, in the independence constitution of April 1961, the first sentence of the preamble was refined so that it now read that the Togolese were firmly attached to the principles which inspired the UDHR – not the UDHR itself – and reference to the Preamble of the 1946 French Constitution dropped.

After President Olympio's assassination in January 1963 and Grunitzky's return as President, another constitution was adopted in May 1963 which followed the other French West African states in its preambular assertion that the Togolese peoples are solemnly attached to the principles of democracy and the Rights of Man as defined by the UDHR. It was therefore only in the 1979 constitution that the declaration was finally made that Togo adheres to the UN and OAU charters, the Communauté économique des États de l'Afrique de l'Ouest and, last of all, the UDHR.

North African colonial territories

Libya

When the Second World War ended, the territories of Cyrenaica and Tripolitania found themselves under the temporary control of a British military administration and the territory of Fazzan in the more possessive grip of a French military administration. From the outset, at the first meeting of the Council of Foreign Ministers (of the five permanent members of the UN Security Council) in September 1945, it became apparent that a solution to the disposition of these territories would not be straightforward. Over the next four years an array of solutions would therefore be proposed by a multitude of interested parties. For example, independence was an obvious option but there was no consensus as to whether it should be jointly or severally. The other option was for some form of trusteeship but, once again, it was not clear what form that should take or who should be appointed as the administering authority.

463 UNGA 13/1253 14 November 1958 (independence) and 14/1416 5 December 1959 (independence).

The difficulties arose at several levels. Firstly, disposition was running up against the interests of several major powers: France sought the cession of Fazzan to Algeria; the UK had committed to the Amir of Cyrenaica in 1942 that 'the Senussi in Cyrenaica will in no circumstances again fall under Italian domination', but its desire for an independent Cyrenaica also suited its interests in on-going negotiations for military bases;[464] and the Soviet Union claimed a right to trusteeship over Tripolitania. Secondly, there was little agreement between the three territories as to the form of the final disposition. Finally, several outside parties, notably the Arab League, Pakistan and the Latin American states also took an active interest in the negotiations.[465]

While discussions were on-going, Italy signed a Peace Treaty with twenty 'Allied and Associated Powers' in which it agreed to renounce possession of its African colonial territories. In an annex to the treaty, the Soviet Union, the UK, the US and France agreed to determine the disposition of these territories 'in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments'. Importantly, they also agreed that, if they could not reach a decision within a year, they would turn the decision over to the UNGA. The significance being that a decision could be made on a two-thirds majority vote without risk of a veto from one of the four major powers.[466]

In 1949, therefore, the UNGA finally determined that independence should be on a joint basis of the three territories constituted as Libya and that a constitution should be drafted by a National Assembly. To assist in the process, UN Assistant Secretary-General Pelt from the Netherlands was appointed UN Commissioner for Libya together with an Advisory Council of Ten made up of the representatives of interested UN member states, the three Libyan regions and 'minorities'.[467]

464 Secretary of State for Foreign Affairs Eden, Reply to Question, House of Commons 8 January 1942.

465 B. Rivlin, 'Unity and Nationalism in Libya', *Middle East Journal,* 3/1 (1949), 31–44 and 'The Italian Colonies and the General Assembly', *International Organization,* 3/3 (1949), 459–470, C.G. Haines, 'The Problem of the Italian Colonies', *Middle East Journal,* 1/4 (1947), 417–431 and A. Dearden, 'Independence for Libya: The Political Problems', *Middle East Journal,* 4/4 (1950), 395–409.

466 Treaty of Peace with Italy, Article 23, Annex XI (Joint Declaration by the Four Powers) entered into force 15 September 1947, https://reparations.qub.ac.uk/assets/uploads/m-ust000004-0311.pdf, last accessed 13 March 2023.

467 UNGA 4/289 21 November 1949. The most detailed account of the process is given by A. Pelt, *Libyan Independence and the United Nations: A Case of Planned Decolonization* (New Haven, 1970); see also R. Khalidi, *Constitutional Development in Libya* (Beirut, 1956) and 'Constitution of the United Kingdom of Libya: Background and Summary', *Middle East Journal,* 6/2 (1952), 221–228.

After due deliberation the Advisory Council of Ten agreed to constitute a Committee of Twenty-One, comprising seven members from each region, to work out an appropriate plan. In turn this committee resolved that the constitution should be drawn up by a National Assembly of sixty members nominated on an equal basis between the three regions. At the outset, the National Assembly decided that Libya should be a bi-cameral constitutional monarchy under Sayyid Muhammad Idris al-Mahdi al-Sanusi, the Amir of Cyrenaica. Once that key decision was settled, the constitution was rapidly drafted by an eighteen-member Committee of the Constitution and a sub-committee of six, two from each province, with support from UN Commissioner Pelt, before being submitted to the National Assembly and adopted in October 1951.[468]

In his report, UN Commissioner Pelt recorded that in drafting the chapter on fundamental rights and freedoms the working group used as its basis 'the relevant chapters of the Constitutions of Egypt, Transjordan, Iraq, Lebanon and Syria, and the Universal Declaration of Human Rights'. He also recorded in his memoir that the first draft of this chapter, which was used as a basis of discussion, was prepared by the UN Legal Adviser. There may also have been a second draft prepared by his UN colleague seconded to the Cyrenaica delegation. As always with UN representatives, it is therefore not clear whether they pushed the UDHR or subsequently elevated it in importance or whether it was simply one of several texts utilised in the drafting process. Certainly, in view of Libya's expected application to the UN, such a source cannot be discounted, but how influential it was is not clear. In any event, the UDHR could hardly have been particularly influential as it was not mentioned in the constitution. Moreover, women were denied the vote and the equality clause conspicuously failed to include gender equality. What is certain though is that human rights were not a major concern, the primary concern being the status of Italian and Jewish residents in the independent state of Libya.[469]

468 Constitution of the United Kingdom of Libya, *The Official Gazette of the United Kingdom of Libya No. Extraordinary* 7 October 1951 and Electoral Law for the election of the Libyan Federal House of Representatives, Law No. 5 of 6 November 1951, *The Official Gazette of the United Kingdom of Libya,* 3/1 6 November 1951 and R. Khalidi, 'Constitution of the United Kingdom of Libya: Background and Summary', *Middle East Journal,* 6/2 (1952), 221–228.

469 UN A/1340 First Annual Report of the United Nations Commissioner in Libya: prepared in consultation with the Council for Libya (1950), UN A/1949 Second Annual Report of the United Nations Commissioner in Libya: prepared in consultation with the Council for Libya (1951), 16, 536–547, 974 (Annex XIII lists the UN personnel involved in this process which points to Omar Loutfi and Marc Schreiber as the possible authors of the first drafts) and UN A/949 Add.1 Supplementary Report to the Second Annual Report of the United Nations Commissioner in Libya: prepared in consultation with the Council for Libya (1952), J. Wright, *Libya:*

In 1969, following the military coup by the Free Officers Movement that would eventually lead to Colonel Ghadaffi taking control, the constitutional situation changed once again. The Provisional Constitution Declaration of the Libyan Arab Republic that was announced in December 1969 itemised few rights as compared to the 1951 Constitution; for example, while freedom of opinion was included, it was guaranteed only 'within the limits of the people's interests and the principles of the revolution'. More generally, economic, social and cultural rights were accorded a greater priority than civil and political rights. There was still no mention of the UDHR.

The key themes that would emerge from the coup were the need to remove foreign influences and a commitment to Arab unity. As a first step, the government negotiated the withdrawal of all foreign military bases and the step-by-step nationalisation of the oil sector. In 1973, in a speech at Zawara, Colonel Ghadaffi would go on to proclaim his fundamental political platform aimed at the removal of foreign influences, Libya's Cultural Revolution, with emphasis on five key points: Abolition of all laws and the substitution of laws made by the people based on Islamic precepts; a purge of all sick people who sought to subvert the revolution by the importation of foreign and alien ideas; freedom of the people but not of the enemies of the people; carrying through the revolution into the administration of government; and the declaration of cultural revolution against all foreign books and ideas which misled the people and made them doubt their own Islamic and Arab heritage. The principles of the Cultural Revolution would be set out in 1976 in the 'Third International Theory' which was published as part of the *Green Book*. It noted that: 'The Libyan Arab People have endured harsh sufferings from reactionist ideological domination, Eastern and Western ideological invasion and infiltration.' The first part of the *Green Book*, 'The solution of the problem of democracy', also offered an analysis of the failure of Western democracy and in the process rejected Western models of human rights.[470]

No doubt with such principles in mind, an amendment to Libya's constitution was adopted in January 1977 which, as described in Libya's 1977 Initial Report to the Human Rights Committee (HRC), revoked its Constitutional

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A Modern History (London, 1982) and *The Emergence of Libya: Selected Historical Essays* (London, 2008), 328–337 and M. Khadduri, *Modern Libya: A Study in Political Development* (Baltimore, 1963), 111–179.

470 The General Secretariat of the General People's Congress of Libya, 'Qadhafi's Historic Speech at Zawara', Tripoli, 15 April 1973 quoted by S.G. Hajjar, 'The Jamahiriya Experiment in Libya: Qadhafi and Rousseau', *Journal of Modern African Studies,* 18/2 (1980), 181–200, M.M. Ayoub, *Islam and the Third Universal Theory: The Religious Thought of Mu'ammar al-Qadhdhafi* (London, 1987), 32–37, World Center for the Studies and Researches of the Green Book, *The Great Green Charter of Human Rights of the Jamahiriyan Era* (Tripoli, 1988) and M.B. Fergiani, *The Libyan Jamahiriya* (London, 1983), 111–129.

Declaration in favour of the Holy Koran whose coverage in respect of human rights, it suggested, was wider and more comprehensive.[471]

In a parallel constitutional development, moves towards Arab unity were initiated in April 1971 when the heads of state of Egypt, Libya and Syria met in Benghazi and announced their intention to establish a 'Confederation of Arab Republics'. After further discussions, a draft Constitution and Declaration were issued in August 1971 and adopted after the Confederation was approved by referendums in each of the three states. While Articles 12 and 13 provided for a listing of rights, no mention was made of the UDHR (nor was there any mention of the UDHR in the 1956, 1958 or 1971 constitutions of Egypt).[472]

The Protectorates of Tunisia and Morocco

The UNGA's 1949 resolution on Libyan independence was understood by both France and nationalist leaders in the other North African territories as a turning point in that it forced France to begin negotiations with Tunisia and Morocco on the terms of a new relationship. At this early stage, France envisaged a gradual increase in autonomy with a view to eventual absorption within the French Union. In contrast, the nationalist leaders grasped that independence was now only a matter of time and autonomy merely the first step on the path to independence. Over the next few years, therefore, nationalist leaders pushed for independence while France desperately sought to identify local partners willing and able to confer legitimacy on the limited reforms it was prepared to concede.

France's most obvious partners were the traditional leaders whose authority was also threatened by the nationalist parties, Neo Destour in Tunisia and Istiqlal in Morocco. In Tunisia, Moncef Bey had died in exile in France in 1948. As Muhammad Bey, his successor, felt less secure in his position he recognised the mutual benefit of partnership with France. As a result, in 1952 he made little protest when the colonial authorities sought to stem the tide of protest by arresting many of the more prominent nationalist leaders, including Bourguiba. In Morocco, though, France was forced to contend with the prestige of Sultan Muhammad V who worked with Istiqlal to promote independence. Invited to Paris for negotiations in December 1950, he grasped French intentions but countered with his own demand that the French abrogate the Protectorate – a demand he would formally reiterate in 1952. However, his refusal to denounce the anti-French violence instigated by the Istiqlal brought him into increasing conflict with many traditional leaders concerned at the breakdown in public order and the ebbing away of their authority. In August 1953, they therefore supported

471 UN CCPR/C/1/Add.20 24 January 1978 (Initial reports of State Parties due in 1977 Addendum), 1.

472 Ministry of Information, *Draft Constitution of the Confederation of Arab Republics August 20, 1971* (Cairo, 1971).

el-Glaoui, the Pasha of Marrakesh, who, with French collusion, deposed Sultan Muhammad V in favour of the 'French Sultan'. Sultan Muhammad V was then spirited away into exile first in France and then in Madagascar.

All too soon, though, under considerable nationalist pressure, confronted by far greater problems in South East Asia and, in November 1954, the Algerian uprising, France was finally forced to recognise that it would have to step aside although it still hoped to retain both territories within its sphere of influence. In July 1954, therefore, France announced that it accepted the principle of Tunisian autonomy, the terms of which were incorporated into a formal accord signed in June 1955. The accord enabled the two main nationalist leaders, Bourguiba and ben Youssef, to return from exile but at the same time it also exacerbated the tensions between the two leaders. The ben Youssef faction opposed the accord as a betrayal and in an effort to secure Muhammad Bey's support nominated him as the prospective head of an independent Tunisia. On the other side, Bourguiba, who had been involved in the negotiations with France, grasped that French support was the means to political power and therefore accepted autonomy as a step on the short road to independence. The power struggle was finally resolved by ben Youssef's dismissal from the Neo Destour party and, thereafter, following his call to violence, by the repression of his faction. At the same time, in late 1955, Muhammad Bey, increasingly anxious about his political prospects if, as was likely, Bourguiba won the impending elections, attempted to side-step the proposed Constituent Assembly as the means by which a constitution was to be drawn up but was 'persuaded' to stay his hand and approve the decree authorising elections to the Constituent Assembly scheduled for April 1956.

The political struggle in Morocco was resolved in a less brutal manner in October 1955 when, under pressure from Istiqlal protests and after negotiations with the French had failed to suggest an alternative, el-Glaoui announced his support for the restoration of Sultan Muhammad V. The latter's return put him in a strong negotiating position all the more so as France preferred to negotiate independence with him rather than Istiqlal. In order to further strengthen his position, France therefore agreed in December 1955 to accept a government formed by Sultan Muhammad V, with Istiqlal participation, and to negotiate independence in early 1956. These negotiations led to an announcement in March 1956 of the abrogation of the Protectorate and, as was the intention, this enhanced the political standing of Sultan Muhammad V.

Following Sultan Mohammed V's return to Morocco in November 1955, it became clear that the 1955 French-Tunisian accord had been overtaken by events. With the similar aim of bolstering Bourguiba's position in the forthcoming elections, despite several periods of arrest and exile he was still considered more sympathetic to France than his rival ben Youssef, in March 1956 France therefore announced that as with Morocco it would terminate its Protectorate and recognise Tunisia's independence. Elections to the Constituent Assembly were held within a week of independence and returned the National

Front of the Neo Destour party in all ninety-eight seats. As a result, Bourguiba became Tunisia's first Prime Minister.

The Neo Destour party had taken its name from the 1857 'Pacte fondamental' and Tunisia's first constitution of 1861 which had established a constitutional monarchy. The political mandate now entrusted to the Constituent Assembly was therefore to update that first constitution. However, the process was soon mired in interminable wrangling and within a few months, under Bourguiba's guidance, the Constituent Assembly's mood changed, leading in July 1957 to a decision to abolish the monarchy and proclaim a Republic. A provisional government was therefore established with Bourguiba at its head. In the absence of a constitution, which was still being drafted, President Bourguiba announced that he would simply assume the former powers of the Bey. However, once in power, he was content to let the drafting process slide while he cemented his personal political authority, in particular his right to govern with discretionary powers – the dispute with France over its continuing occupation of the port of Bizerte merely served to distract further from the delay. A new constitution was therefore finally adopted only in June 1959. There was no mention of the UDHR, indeed, its preamble proclaimed 'that a Republican regime is the best guarantee of respect for human rights'. Moreover, as Moore explains, ambitious social rights were dropped during the drafting as was the political commitment to inclusion of the right to strike. The pledges to free education and medical care that had been included in earlier drafts were similarly set aside.[473]

In commending the constitution to the Constituent Assembly, M. Ali Balhawan, its Chief Rapporteur explained:

> We have done our utmost to reconcile between the need for establishing a genuine regime which would abolish anarchy, resolve outstanding problems and overcome all difficulties, and between the need to ensure to all citizens the guarantees which would secure for them their liberties and their rights … A strong executive authority is the primary guarantee of individual and group liberties, the best security of their rights.
>
> The freedom of the individual is closely related to that of society. If the former is considered sacred so is the latter … Freedom is not the equivalent of anarchy. In it is inherent a unique form of order, whereby the freedom of each person ends where that of the other begins … It therefore requires a good deal of human progress, political and social training, which would

473 C.H. Moore, *Tunisia Since Independence: The Dynamics Of One-party Government* (Berkeley, 1965), 71–81, R. Ikeda, 'French Policy towards Tunisia and Morocco: The International Dimensions of Decolonisation, 1950–1956' (unpublished DPhil thesis, University of London, 2006), J.H. Gilmer, 'French Union: North Africa – Negro Africa – Indochina', *Civilisations,* 6/2 (1956), 261–266, S.G. Miller, *A History of Modern Morocco* (Cambridge, 2013), 150–173 and D.W. Ling, *Tunisia: From Protectorate to Republic* (Bloomington, 1967), 164–194.

> promote among individuals and the people as a whole a spirit of conciliation and a respect for the opinion of others.[474]

Over the next few years President Bourguiba would therefore continue to prioritise order in much the same terms as President Houphouet-Boigny. In 1958 he advised party members that: 'We accept honest criticism and constructive opposition … but if liberty is to lead to the deliberate ruin of the prestige of the state, we cannot admit it. We are responsible for the destiny of the people now and in the future. We do not recognize in anybody the right to menace the prestige of the state.'[475] A further speech in March 1963 made clear his views on human rights: 'None of the rights which are conventionally called the natural rights of the individual must take precedence when it is … the life of the Nation. I indict the partisans of the old traditional principle according to which certain liberties exist prior to the advent of the state.'[476]

Lest there should be any doubt, a few weeks later, in May 1963, President Bourguiba reordered the device of the Tunisian Republic from '*Liberté, ordre, justice*' to '*Ordre, liberté, justice*'. The National Assembly probably also had order in mind when they adopted in March 1976 a further constitutional amendment proclaiming President Bourguiba President for life: '*en considération des services éminents … l'Assemblée Nationale proclame le Président Habib BOURGUIBA Président de la République à vie*'.[477]

In Morocco, although Sultan Muhammad V's nationalism and martyrdom, his success in finally negotiating independence and Morocco's long-standing monarchical tradition secured his political pre-eminence, there were nonetheless other equally long-standing constitutional traditions. Sultan Muhammad V therefore felt the need to affirm his commitment to a constitutional monarchy on his return in November 1955: 'Morocco will enjoy democratic institutions … based on the declaration of human rights.'[478] Istiqlal too, in their December 1955 Congress, stressed the desirability of a Bill of Rights although after independence the 'party's references to political and civil rights were noticeably more qualified'.[479]

474 Balhawan, second reading of constitutional draft, 27 January 1958, quoted by 'The Tunisian Constitution', *Middle East Journal*, 13/4 (1959), 443–448.

475 Speech to party delegates reported in *Le Petit Matin*, 5 October 1958, quoted by K. Callard, 'The Republic of Bourguiba', *International Journal,* 16/1 (1960/1961), 30.

476 Speech by President Bourguiba 28 March 1963, quoted by P.F. Gonidec, *African Politics,* 206.

477 *Loi N° 63–20* 30 May 1963, *Journal officiel de la République Tunisienne, Lois et reglements* No. 26 31 May 1963, 753 https://www.pist.tn/jort/1963/1963F/Jo02663.pdf, last accessed 13 March 2023, and *Loi Constitutionelle N° 75–13* 19 March 1975.

478 Speech by Sultan Muhammed V, Rabat 18 November 1955, quoted by N.A. Ziadeh, *Whither North Africa?* (Aligarh, 1957), 71–72.

479 D.E. Ashford, *Political Change in Morocco* (Princeton, 1961), 147.

However, after independence, Sultan Muhammad V, notwithstanding repeated affirmations of his commitment, deliberately slowed progress towards a constitution and elections. The developing splits within Istiqlal, buttressed by his personal standing, all served to lessen the urgency to make good on his commitment. For example, the National Consultative Assembly, which was set up in 1956, made little effort to consider a constitution during the three years of its existence. As a result of this delay and change in the country's title to the Kingdom of Morocco in 1957, no doubt the declaration of a Republic in Tunisia was also a factor, the question began to be asked as to whether the monarchy should be abolished or retained as a figurehead as the left-wing Istiqlal breakaway party, Union nationale des forces populaires (UNFP), now proposed. Under pressure therefore from the liberal opposition parties, in October 1958, King Muhammad V issued a Royal Charter of Public Liberties: 'Desirous of permitting Our subjects to exercise the basic liberties and to enjoy the rights of man. We will guarantee freedom of opinion, of expression, of reunion and association. This guarantee will be limited only by the respect due to the monarchical regime, the safety of the State and the imperative of the general interest.' It would be followed by specific *dahirs* (edicts) on the freedoms of the press, association and assembly, albeit that they were based on previous French colonial legislation and only authorised what was specifically permitted.[480]

Progress on drafting a constitution would take longer. A new constitutional council was only appointed in May 1960 though this time with a promise that its deliberations would be concluded by the end of 1962. As an appointed and not an elected council, it was permanently boycotted by the Parti démocratique de l'indépendance (PDI) and the UNFP. In the event, the council would play only a minor part as, in May 1961, on the death of King Muhammad V, his son King Hassan II succeeded to the throne and took control. As an interim measure he issued a Fundamental Law providing for a limited array of rights and proclaiming its attachment to the principles of Bandung and its fidelity to the League of Arab States and to the UN Charter, but made no mention of the UDHR. He then passed drafting responsibility for the new constitution to a coterie of French constitutional experts that included his former law professor at Bordeaux University. The resulting constitution would be duly approved by a referendum in December 1962. It included a broad range of rights divided into 'Political Rights' and 'Economic and Social Rights', probably in imitation of the International Covenants that were being drafted at this time, but, again, with no mention of the UDHR. Subsequent amendments would be 'laid down' by King Hassan II after soundings described as ranging from the non-existent to the extremely reduced.[481]

480 Royal Charter of 1958, quoted by I.W. Zartman, *Morocco: Problems of New Power* (New York, 1964), 213–238.

481 W.A. Beling, 'Some Implications of the New Constitutional Monarchy in Morocco',

Voting in the election that followed adoption of the constitution was undoubtedly rigged so as to ensure King Hassan II a majority. As a consequence, the only means by which dissatisfaction could be expressed was protest in the streets. Over the next few years, therefore, in response to continuing economic failure, opposition grew in intensity particularly after the government's violent suppression of mass demonstrations. In response, in 1963, King Hassan II arrested the UNFP leaders and then in 1965 suspended the constitution and dissolved the National Assembly under cover of a state of emergency.

The announcement in May 1969 of his intention to introduce a new constitution and to put it before a referendum in July 1970 therefore came as a surprise. Less surprisingly, the proposed constitution made few concessions to popular opinion and, if at all, strengthened the power of the monarchy. A few days before the referendum Istiqlal and UNFP therefore joined forces in a National Front movement to oppose what they regarded as the feudal and oppressive character of the proposed constitution. Even though it was widely opposed, official figures for the referendum indicated that it had apparently won an even greater degree of approval than the 1962 constitution. All the same, after coup attempts in 1971 and 1972 and negotiations with opposition parties, yet another constitution was promulgated only two years later in 1972.[482]

Neither of these constitutions would reference the UDHR. However, the 1970 constitution also included a new article which described the King as the 'Supreme Representative of the Nation' and provided that: 'The King has the responsibility for safeguarding the Rights and the Liberties of the citizens, communities and organizations'; this was amended in the 1972 constitution to: 'He shall be the protector of the rights and liberties of citizens, of social groups and of territorial units'. The perspective which informed King Hassan II's approach to these responsibilities was made clear in his 1978 autobiography. In essence, it differed little from the arguments put forward by other African political leaders: 'The conception of democracy cannot be, and is not, the same thing in London, Paris, Stockholm, Moscow, New York, Tokyo – Rabat. A universal system of government is only possible if men and manners are everywhere the same … We will not allow any doctrine to undermine the moral and religious values of the nation.'[483]

Middle East Journal, 18/2 (1964), 163–179.

482 L. Storm, *Democratization in Morocco: The Political Elite and Struggles for Power in the Post-independence State* (London, 2007), 13–44, I.W. Zartman, *Destiny of a Dynasty: The Search for Institutions in Morocco's Developing Society* (Columbia, 1964), 18–25, D.E. Ashford, *Political Change in Morocco*, 148–153, J. Damis, 'The Moroccan Political Scene', *Middle East Journal,* 26/1 (1972), 25–36 and 'Morocco: Political and Economic Prospects', *The World Today,* 31/1 (1975), 36–46 and D.A. Marx, 'North Africa's Constitutions at the 50-year Mark: An Analysis of their Evolution', *Journal of North African Studies,* 15/4 (2010), 485–488.

483 King Hassan II (tr. A. Rhodes), *The Challenge: The Memoirs of King Hassan II of*

Algeria

After a long, bloody, civil war, and an overwhelming vote for independence in the January 1961 referendum, France finally conceded independence in July 1962. The Front de Libération Nationale (FLN), which had led the military struggle for independence, immediately assumed responsibility for government but was unprepared and divided, and therefore the immediate outcome was a struggle for power. It resulted in political authority being wrested away from Prime Minister Benkhedda, formerly head of the FLN in exile, by the FLN's Political Bureau led by Ben Bella. Ben Bella's mandate was endorsed in the September 1962 elections to the National Constituent Assembly (NCA) at which point he became Prime Minister and, in 1963, President. Initially, the drafting of Algeria's new constitution was assigned to the NCA and its honorary President, Abbas; indeed, the one-year mandate of the NCA, subsequently extended by a further year, was precisely that of drafting a constitution. However, as Prime Minister Ben Bella made clear: 'I think it is necessary to define the relations between the assembly, the government and the party. These relations are based on a clear principle: the government and the assembly have a role of execution; but the elaboration of the political thought of the nation is reserved for the party.'[484]

Prime Minister Ben Bella's decision to assign drafting responsibility to the NCA had not been well received by many FLN members. They felt that as the victors of the independence struggle responsibility should have been assigned to them alone. In their view, what was required was a political charter setting out fundamental principles and only then a constitution which should be drawn up by a FLN party congress. To some extent such principles had already been agreed at the June 1962 FLN Congress and documented in the 'Tripoli Programme', though it was only at the April 1964 FLN Congress that they were more completely debated and formalised in *La Charte d'Alger*.[485] In the event, a dysfunctional NCA became bogged down as guerrilla fighters struggled to come to terms with their new roles and the FLN contended with the internal struggle for power. As a result, little progress was made in evaluating the constitutional proposals and this opened the door for the FLN's Political Bureau to take control.

In August 1963 it thereby emerged that the FLN Political Bureau had drafted a constitution and presented it to party meetings without prior consultation with the NCA. Even so, Quandt was informed by a prominent FLN leader that, even within the FLN, participation in the drafting of the constitution had been limited. As one of those meetings had been held at a cinema, during the NCA

Morocco (London, 1978), 73–79.

484 Speech by Ben Bella to NCA 12 December 1962, quoted by D. Ottaway/M. Ottaway, *Algeria: The Politics of a Socialist Revolution* (Berkeley, 1970), 73–74.

485 *Jabhat al-Tahrir al-Qawmi, La charte d'Alger: Ensemble des textes adoptés par le 1er Congrès du Parti du Front de libération nationale.*

debate on the FLN Political Bureau's constitutional draft, Abbas would complain that: 'The constitution of a country is too important for it to be presented in a cinema.' In reply, Ben Bella retorted: 'To all those who do not want to accept the Party under the pretext of "democracy" or for other reasons, to those who want a permanent debate … well, I will say that it is precisely for such individuals that certain articles in our constitution have been contained.' When, therefore, the draft was tabled before the NCA, the debate lasted no more than one week and resulted in only a few minor changes. It was adopted a mere twelve days later in September 1963 in a national referendum. The constitution therefore opens with: 'The National Liberation Front has proposed, The National Constituent Assembly has debated and adopted, The people have approved.'

The new constitution established the FLN as the sole arbiter of Algeria's policies and aspirations. Alongside a short listing of rights, its Article 11 proclaimed that: 'The Republic adheres to the Universal Declaration of the Rights of Man'; this is most likely a reference to the UDHR rather than to the 1789 Declaration. However, it continued: 'Convinced of the necessity of international co-operation, it will give its support to any international organization which corresponds to the aspirations of the Algerian people', which suggests that adherence is rather more particular than general. As it was though, two years later, in June 1965, President Ben Bella was, in turn, ousted by Boumédiènne who immediately suspended the constitution, abolished the National Assembly and governed as head of the Revolutionary Council.

It was only in 1975 as economic failure fuelled protest at Boumédienne's autocratic style of government that planning began for a national charter that would define the basis upon which a new constitution would be drafted. After careful preparation within the Revolutionary Council and the FLN, under the formal authority of a High Commission on National Charter, the *Charte nationale* was issued in April 1976, adopted by the FLN National Congress on 19 June 1976 and approved on 27 June 1976 by a referendum. Interestingly, Nellis' analysis of the 'Themes of Submission' of the public review process of the *Charte nationale* does not detect any interest in human rights. If at all, although stress was laid in the *Charte nationale* on the desirability of equality for women and therefore of women's rights, several submissions opposed such a step as unwarranted. Following adoption of the *Charte nationale*, a constitution drafting commission was appointed by and under the control of the ruling Revolutionary Council. It met in closed sessions over a period of four months and its recommended draft was adopted first by the FLN and then by a referendum in November 1976. Although a more elaborate listing of rights were 'guaranteed', the 1963 reference to the UDHR disappeared in that Article 86 states that Algeria subscribes to the principles and objectives of the UN Charter, but makes no mention of the UDHR.[486]

486 *Charte nationale, Journal officiel de la République algérienne démocratique et populaire,*

Portuguese and Spanish colonial territories

In April 1974 the so-called 'Carnation Revolution' brought to an end the Estado Novo regime that had governed Portugal for over forty years, and brought to the fore the question of the future of Portugal's colonial territories in Africa. Although there was some talk of a union or federation or of a partial disengagement, by October 1974, President Gomes, in a speech to the UNGA, made clear Portugal's commitment 'to initiate the irreversible and definitive process of decolonization in the Territories under Portuguese administration. We shall not consent any longer to bartering the freedom of our collective conscience for grandiose dreams of sterile imperialism'.[487]

Mozambique

In September 1974, the Lusaka Accord, an agreement between FRELIMO (Liberation Front of Mozambique) and the Portuguese government, recognised FRELIMO as the legitimate representative of the Mozambican people and settled that, after a period of transitional government, there would be a complete hand-over of government responsibility to FRELIMO without the need for elections. Independence was set for 25 June 1975, the anniversary of FRELIMO's founding in 1962.[488] Shortly before independence, a constitution was adopted. Little is known about the drafting process other than, as its Preamble explains, it was 'proclaimed by acclamation' of FRELIMO's Central Committee on 20 June 1975.

In 1962, when FRELIMO was still seeking international support for its independence struggle, the 'General Declaration' issued by its First Congress had proclaimed 'its complete agreement with the Universal Declaration of the Rights of Man and with the principles of coexistence proclaimed by the Bandung Conference'.[489] However, now, in its 1975 independence constitution, whereas it was prepared to affirm that Mozambique 'accepts, observes and applies the principles of the UN and OAU Charters' and 'recognised' the 1974 'Charter of Economic Rights and Duties of States' adopted by the UNGA (see page 631

15e année, no. 61 du 30 juillet 1976, 714–770, Ministry of Culture and Information, *National Charter*, D. Ottaway/M. Ottaway, *Algeria: The Politics of A Socialist Revolution*, 71–79, J.R. Nellis, *The Algerian National Charter of 1976: Content, Public Reaction, and Significance*, 25 (Table II), 43–45, W.B. Quandt, *Revolution and Political Leadership, Algeria, 1954–1968* (Cambridge, 1969), 164–243 and D.A. Marx, 'North Africa's Constitutions at the 50-year Mark: An Analysis of their Evolution', 488–489.

487 UN A/PV.2269 17 October 1974, 685.

488 The South African Institute of International Affairs, *FRELIMO and the Transitional Government of Mozambique, The Lusaka Agreement, Policy Statement of Samora Machel, President of FRELIMO* (Bramfontein, 1974), 1–4.

489 FRELIMO, *First Congress, Dar es Salaam, 23–28 September 1962: Documents* (Paris, 1962), 9.

below), reference to the UDHR was missing in action. Similarly to that of Algeria, the constitution also provided that the political line of the new state was to be determined by FRELIMO which laid down as its main aim the elimination of 'the structures of colonial and traditional oppression and exploitation and the mentality which underlies them'.[490] It also listed an array of rights, although stress was placed as much on duties as individual rights. In any event, as Hall and Young point out, the rights were largely cosmetic and intended merely for external show. In common with several other newly independent African Lusophone states, the constitution was intended to be understood as an expression of a programme for revolutionary action rather than as a body of law to which the government felt itself bound.[491]

Angola

The political situation in Angola was far more chaotic than in Mozambique as three liberation movements, the National Front for the Liberation of Angola (FNLA – supported by South Africa and the US), the People's Movement for the Liberation of Angola (MPLA – supported by the Soviet bloc and Cuba) and the National Union for the Total Independence of Angola (UNITA – supported by the US), contended for power. In January 1975 the Alvor Accords set out the framework for the transition from Portuguese rule to an independent Angola. It provided that within nine months a transitional government incorporating all three liberation movements should draft a basic law and organise elections to a constituent assembly which would then take responsibility for drafting a constitution.[492] As first the Alvor Accords and then the June 1975 Nakuru Agreement broke down, Angola descended into a prolonged civil war. The battle for control of Luanda, Angola's capital, was won by the MPLA and therefore on the due date established for independence in November 1975 it unilaterally assumed responsibility for government and adopted a constitution.

490 Central Committee Report 'The History of FRELIMO and of the Struggle for Revolutionary Transformation', Mozambique, Angola and Guiné Information Centre, *FRELIMO, Central Committee Report to the Third Congress of Frelimo* (London, 1978), 21; see also Mozambique, Angola and Guiné Information Centre, *Principles of Revolutionary Justice: The Constitution: Documents on Law and State in the People's Republic of Mozambique* (London, 1979), 21–22, 27. The process of people's justice and its underlying principles are described by A. Sachs/G.H. Welch, *Liberating the Law: Creating Popular Justice in Mozambique* (London, 1990) who were prominent in the process by which law students were sent out to act as prosecutors and judges.

491 M. Hall/T. Young, 'Recent Constitutional Developments in Mozambique', *Journal of African Law,* 35/1–2 (1991), 102–115.

492 'Developments in Angola, Cape Verde and Sao Tome and Principe', UN, *Decolonization,* 2/4 (1975), 17–32 (Alvor Agreement).

Adoption of the constitution and its style followed much the same pattern as that of Mozambique. Once again, as described in its Preamble, the constitution was adopted by 'acclamation' of the MPLA's Central Committee on the day preceding independence although a much earlier MPLA political pamphlet had assigned future responsibility for formulating the 'first political constitution of the Republic of Angola' to the National Assembly. The new constitution established the MPLA as the legitimate representative of the Angolan people 'responsible for the political, economic, and social leadership of the nation' and declared that, in anticipation of its membership, Angola 'respects and applies the principles' of the UN and OAU Charters. Although it included a list of rights, there was no mention of the UDHR which, in the circumstances of the on-going civil war, could scarcely have been a major consideration. However, ironically, for no doubt different reasons, the MPLA's Programme Majeur declared that it would 'guarantee protection in accord with the Universal Declaration to all foreigners who respect the laws in effect in the country'; the obvious question being why such protection would not be afforded to ordinary Angolans.[493]

Guinea-Bissau

The need to play up to the UN when legitimacy was still an open question is clearly evident in a comparison between Guinea-Bissau's first two constitutions. In its independence constitution, drawn up in 1973 when the country was still seeking to cement its sovereigny, reference was made to the UDHR. It was qualified though by the need to accommodate the constitution's 'revolutionary democratic objectives' and the 'aim' of fundamental rights, which it described as 'personal development and the progress of society'. Upon independence that constitution was adopted at the first meeting of the National Assembly following the proclamation of independence in January 1975.

A further constitution was adopted in November 1980 but within a matter of days a military coup consigned it to the dustbin of history and it never came into effect. It was therefore only in 1984 with the return of civilian rule that a new constitution was drafted. The draft was prepared by the Partido Africano da Independência da Guiné e Cabo Verde and adopted by the National Assembly. Although it was based on the 1980 constitution, Bastos suggests that the fundamental rights section was based on the 1976 Portugal constitution, not merely as a guide but on account of the legal training of the drafters. However, with independence now firmly established, it was no longer necessary to reference the UDHR even though Article 16 of Portugal's 1976 constitution had allowed

493 *Mouvement populaire de libération de l'Angola,* Constitution and Programs (no details likely early 1960s, identified by ICOM Special Collections, Senate House Library, University of London, as an English translation of *Mouvement populaire de libération de l'Angola, Statuts et programme* (Paris, undated), 13–17).

that: 'The provisions of the Constitution and laws relating to fundamental rights shall be interpreted and applied in accordance with the Universal Declaration of Human Rights.'[494]

Equatorial Guinea[495]

The independence process in Equatorial Guinea was largely precipitated by Spain's admission to the UN in 1955. Membership of the UN meant that, for the first time, Spain's stewardship of its colonial territories was opened to international scrutiny. As with the Colonial Office, Spain's colonial administration opposed such outside interference, whereas Spain's Foreign Ministry, like the Foreign Office, was more disposed to accede to the diplomatic necessity of making available the information demanded under Article 73(e) of the UN Charter. Spain's initial response to requests for information was to argue, as Portugal was arguing in respect of its own African colonial territories, that Equatorial Guinea was an integral part of Spain and therefore outside the scope of the UN Charter. However, by 1960, Spain's beleaguered UN delegation felt it could no longer defend its government's policy and therefore without authority unilaterally committed Spain to provide the requested information, a commitment which Spain's government promptly disowned.

Largely as a result of continuing anti-colonialist pressure at the UN and stirrings of resentment within Equatorial Guinea itself, in 1963 Spain was finally persuaded to concede a modest degree of autonomy – the 1963 Regimen de Autonomía de Guinea Ecuatorial. While some nationalists were thereby persuaded into cooperation, to a far greater extent it merely served to encourage the growing independence movement. It also did little to deter UN pressure now routed through the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Special Committee) which sponsored a series of UNGA resolutions demanding immediate independence. In order to deflect this criticism, in 1966, Spain invited the committee to visit Equatorial Guinea to see first-hand the support it claimed for its policy of autonomy. However, to Spain's surprise, the mission reported that, in fact, there was rather more support

494 F. Loureiro Bastos, 'Introduction to the Constitution of the Republic of Guinea-Bissau' https://www.up.ac.za/media/shared/Legacy/sitefiles/file/47/15338/guinea_bissau_country_report.pdf, last accessed 13 March 2023.

495 This section has drawn extensively on A. Campos, 'The Decolonization of Equatorial Guinea: The Relevance of the International Factor', *Journal of African History,* 44/1 (2003), 95–116, R. af Klinteberg, *Equatorial Guinea-Macías Country: The Forgotten Refugees* (Geneva, 1978), S. Cronje, *Equatorial Guinea, the Forgotten Dictatorship: Forced Labour and Political Murder in Central Africa* (London, 1976), 10–14 and A. Artucio, *The Trial of Macías in Equatorial Guinea: The Story of a Dictatorship* (Geneva, 1979), 4–9.

for independence than Spain had indicated. Spain responded to this set-back by convening a Constitutional Conference for October 1967 although, as Campos points out, neither the basis of representation nor its agenda or purpose was ever properly established. As a result, the conference achieved little. It was adjourned in November 1967 with no indication as to when it would be reconvened although a provisional agreement seems to have been reached by the majority of parties present that a provisional government should be established which, after the Spanish withdrawal, would be responsible for drafting an independence constitution.[496]

Now on the case, the UNGA passed a further resolution urging Spain to reconvene the conference in order to arrange a transfer of power and set a date for independence no later than July 1968.[497] Spain complied and in March 1968 the conference recovened. However, the reconvened conference was as disordered as the first with the Equatorial Guinean delegation deeply divided into several factions. To expedite the process, the Spanish delegation proposed that drafting of a constitution should be delegated to a sub-commission which it ensured would be dominated by pro-Spanish representatives. It was intended that this draft, which included reference to Equatorial Guinea's adherence to the UDHR, should be reviewed in full plenary session but in the disorder it was seemingly agreed by acclamation without a vote. The constitution was therefore defended by the pro-Spanish faction led by Ondó Edu, President of the semi-autonomous Governing Council, but denounced by the faction around Macías Nguema Vice-President of the Governing Council. While a referendum approved the constitution 'imposed' by Spain, Nguema's faction won the election.

496 UN A/AC.109/99 20 October 1964 (Special Committee Resolution of 16 October 1964), UNGA 20/2067 16 December 1965, 21/2230, 20 December 1966 and 22/2355 19 December 1967, UN General Assembly Official Records 19th Session 1964–65 Annex No. 8 (Part 1) Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, A/5800/Rev.1, 281–291, Resolution on Fernando Po and Rio Muni UN A/AC.109/99 16 October 1964, Special Committee Meeting, Algiers, 20 June 1966, UN A/AC.109/SR.451 30 September 1966, 5 (reference from A. Campos, 'The Decolonization of Equatorial Guinea: The Relevance of the International Factor', 107), UN General Assembly Official Records 20th Session 1965 Addendum to agenda item 23 Annexes A/6000/Rev.1 (Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples), Resolution UN A/AC.109/186 21 June 1966, UN A/AC.109/L.348 3 November 1966 (Report of the Sub-Commission on Equatorial Guinea), 563–599 and UN General Assembly 21st Session 1966 A/6300/Add.7 25 November 1966 (Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples).

497 UNGA 22/2355 19 December 1967.

As a result, the 1968 independence constitution survived only briefly. In a detailed report on the situation in Equatorial Guinea, af Klinteberg reported that it survived merely seventy-five days, the opposition leaders survived not much longer. With unfettered control, in 1970 now-President Nguema would declare Equatorial Guinea a one-party state; in 1971 he repealed parts of the constitution and assumed all direct powers of government and legislation; in 1972 he became 'President for life' and 'Grand Master of Education, Science and Culture'; and in 1973 he drew up a constitution, which was ratified by a referendum and formalised his already absolute power. No reference was made to the UDHR. It was only after the 1979 coup against President Nguema that the 1982 constitution sought to demonstrate its credentials by once again referring to Equatorial Guinea's adherence to the UDHR. Nonetheless, as the International Commission of Jurists (ICJ) reported to the Commission on Human Rights (CHR) in 1983, against the recommendations of the UN's Special Rapporteur on Equatorial Guinea, the new constitution 'was drafted solely by a 20-member Commission designated by the Supreme Military Council', which had led the coup, without discussion with any other representatives or groups. This, the ICJ argued, lent weight to opposition claims that the constitution was designed primarily to maintain the coup leaders in government indefinitely.[498]

It seems inordinately evident that with the exception of Nigeria, and possibly Sudan, human rights convictions played little or no part in the drafting process of the independence constitutions of the African colonial territories. Indeed, other than in the case of the British colonial territories, it seems reasonable to suggest that human rights were hardly ever a consideration. To all intents and purposes, the drafting process was, understandably, dominated by the primary consideration of political power which, constitutional amendments and repressive legislation would demonstrate even more clearly, remained the overwhelming priority of African leaders up to and well beyond adoption of the ACHPR. Moreover, while independence and, thereafter, amended constitutions may have continued to accommodate rights provisions, fundamental or otherwise, and to affirm adherence to the principles of the UDHR or to the UDHR itself, such protestations were, from the outset, no more than an illusory veneer of outward-facing constitutional respectability. Many African leaders, for example, saw no contradiction between the UDHR and military dictatorship or a one-party state so that frequently both would be accommodated within the same constitution. As M'baye would point out:

498 UN E/CN.4/1983/NGO.4 31 January 1983 (written statement by the ICJ) (reference from H. Tolley, Jr., *The U.N. Commission on Human Rights* (London, 1987), 116) and 'Equatorial Guinea', *ICJ The Review* 29 (1982), 3–6.

> It is true that, immediately upon gaining international sovereignty, African countries expressed unreserved acceptance of the (UN) Charter … and the Universal Declaration … They drew up constitutions which expatiated at length on the principles and rules governing human rights … But behind this imposing façade of constitutions, laws and regulations which have been carefully polished over and over again, the grim realities are quite different.[499]

There can also be little doubt that the drafting process and text of the independence constitutions were in large part determined by the historic relationship of the colonial territory with the colonial power. While there were exceptions to this general rule, in the main, the former French and British colonial territories followed much the same drafting process as a group and adopted many of the same provisions. The entrenchment of fundamental rights in the independence constitutions of the former British colonial territories and references to the 1789 Declaration and the UDHR in the independence constitutions of the former French colonial territories are therefore rather more to be explained by a shared process than any shared convictions. To a lesser, but nonetheless discernible, extent, the former Portuguese colonial territories would also follow a broadly shared path. Thereafter, of course, constitutional paths diverged though hardly in the direction of enhanced constitutional support for human rights.

In the case of the former British colonial territories, as Parkinson has pointed out, the evidence strongly suggests that, after Awolowo's initial prompting, much of the push for entrenchment of fundamental rights stemmed from the Colonial Office.[500] Although, in the early stages, Colonial Secretary Lyttleton may have baulked at the idea, the Colonial Office soon shifted its stance and embraced the idea though its enthusiasm seems to have been inspired rather more by concern for the Christian church in Nigeria, the lesson of post-independence Ghana, and settler property rights in East and Central Africa than a fundamental faith in entrenched rights or any expectation they would have much effect. As a result, as McPetrie, a senior legal adviser at the Colonial Office, noted, 'neither H.M.G. nor, I think, the territories that came along the pipe-line after Nigeria could have been expected to throw the question of how to protect Human Rights back into the melting pot'.[501] Yet that was exactly what Tanganyika would do and therefore in November 1961 Lord Perth, Minister of State for Colonial Affairs, proposed that in future negotiations the Colonial Office should insist on

499 K. M'baye, UN (G) HR/Liberia/1979/BP.2, 5–6; see also K. M'baye, 'Africa and Human Rights' (1980) trans. US Inter-African Affairs, 5–6 and 'Human Rights in Africa', 591–592.

500 C.O.H. Parkinson, *Bills of Rights and Decolonization*, 170–173, 247.

501 Sir James McPetrie, quoted by R.K. Hahn, 'Commonwealth Bills of Rights: Their Nature and Origin', 64, and Hammer GHM 174/476/01 20 December 1961, NA CO 1015/2347.

'human rights clauses' within the constitution rather than in a Preamble.[502] His minute prompted a department-wide policy review whose conclusion, set out in a departmental note, proposed that:

> unless there are overriding local objections … it is desirable that an independence constitution should include human rights provisions, and that this object is likely to be more easily achieved if their inclusion can be initially secured at the internal government stage, or perhaps even earlier in the case of territories such as Kenya where it is particularly important to try to safeguard the interests of minorities.

It then went on to explain that, in the case of Tanganyika, there had been no possible sanction open to the Colonial Office to support its insistence on a Bill of Rights but that in future negotiations two sanctions suggested themselves: Post-independence financial aid and the threat of delay in moving to the stage of internal self-government and independence.[503]

Although the push may have originated from the Colonial Office, clearly the support of African political leaders was a necessary pre-condition. With the obvious exception of Tanganyika that support was largely forthcoming. Most African political leaders understood that the primary political question that entrenched rights were intended to address was the provision of safeguards for minorities. To a great extent, therefore, entrenched rights, however carefully crafted, were little more than a transitory accommodation between prospective governments and ethnic minorities (not least white settlers) or political opponents. They were the price to be paid for facilitating independence rather than an endorsement of human rights. As African political leaders grasped all too well the threat in the Colonial Office's departmental note, they invariably adopted the obvious expedient of pre-independence acquiescence, but after independence, as masters of their own house, they simply disowned or amended these obligations.

This reality was recognised by contemporaries who grasped that, far from revealing African empathy, entrenched rights were indicative of a more realistic political assessment that constitutional safeguards were unlikely to be respected. As Gordon-Smith, a Colonial Office lawyer, observed in his analysis of the concept of entrenched rights, 'it involves saying that the local legislature is not to be trusted'.[504] Indeed, that was precisely the fear of ethnic and political minorities, particularly in the Gold Coast and Kenya, who therefore placed a greater value on the dispersion of political power than on entrenched safeguards.

502 Perth to McPetrie 27 November 1961 and McPetrie to Bourdillon 28 November 1961, NA CO 1015/2347.

503 Colonial Constitutional Note C.C.N.23 'Human Rights provisions in Colonial Constitutions', 26 September 1962, NA CO 1032/283.

504 Gordon-Smith 30 December 1955, NA CO 554/1184.

This was also the view of African jurists. Elias, for example, cautioned at the time that: 'The mere entrenchment of provisions of fundamental rights in a constitution does not in itself guarantee that they will necessarily be enforced after independence.'[505] While Ezejiofor, too, wondered: 'How efficacious are these Bills of Rights in safeguarding the liberties of the individuals in their own countries? … it is much too early to give a definite and reliable answer to this question.'[506] Years later, Okoth-Ogendo's response would be: 'I think we now know that they don't and cannot.'[507] Nonetheless, what is most striking is the speed and ease with which they were ignored or swept away.

In the wide-ranging post-mortem on this state of affairs by African legal commentators, Okoth-Ogendo also suggested that few African governments valued constitutions as anything other than rhetoric, while Ghai and McAuslan suggested that in Africa constitutionalism and public law are perceived as being of only 'ephemeral' concern.[508] More specifically, Nolutshungu argued that: 'Although all African states attach some importance to their constitutions … only very few can be said to abide by them with any consistency. None consider themselves much bound by them.' In his view, the issue is essentially a question of power: 'The failure of constitutional government to develop is not the result of popular needs or demands but of governments seeking to escape the constraints imposed by constitutions, laws, and the rights and expectations of citizens.'[509] Much the same point is made by Ghai who notes that in Africa: 'One person or one-party rule dominates the political system … The denial of human rights is part of a wider spectrum of undemocratic and authoritarian rule … There is, despite occasionally outward forms of liberal constitutional guarantees and institutions (mostly remnants from the period of decolonisation), an absence of constitutionalism and the rule of law.'[510] With the benefit of hindsight,

505 T.O. Elias, 'The New Constitution of Nigeria and the Protection of Human Rights and Fundamental Freedoms', *Journal of the ICJ,* 2/2 (1959/60), 46.

506 G. Ezejiofor, *Protection of Human Rights under the Law* (London, 1964), 247.

507 H.W.O. Okoth-Ogendo, 'National Implementation of International Responsibility: Some Thoughts on Human Rights in Africa', *East African Law Journal,* 10/1 (1974), 15.

508 H.W.O. Okoth-Ogendo, 'Constitutions Without Constitutionalism: Reflections on an African Political Paradox', D. Greenberg *et alia* (eds), *Constitutionalism & Democracy: Transitions in the Contemporary World* (Oxford, 1993), 65–66 and Y.P. Ghai/J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present*, v.

509 S.C. Nolutshungu, 'Constitutionalism in Africa: Some Conclusions', D. Greenberg *et alia* (eds), *Constitutionalism & Democracy: Transitions in the Contemporary World* (Oxford, 1993), 366.

510 Y. Ghai, *The Rule of Law in Africa: Reflections on the Limits of Constitutionalism* (Bergen, 1990), 1.

Ambassador Boaten (Ghana) would therefore wistfully regret that 'it was not realistic to match up the idealistic pronouncements of the constitutions of many countries, including his own, against the real problems in the newer nations'.[511]

For the former French colonial territories, other than Algeria, the Protectorates of Morocco and Tunisia and, possibly, Guinea, the starting point for their independence constitution was, quite obviously, the French Community Constitution. Its Preamble had expressed a solemn adherence to the principles of the 1789 Declaration and, in one form or another, that adherence was included in the 1959 territorial and independence constitutions of most of the French Community territories. In view of this blanket adoption it seems unlikely that, insofar as it was given any consideration at all, it signified much more than a desire to acknowledge their historic and future relationship with France – in many cases, too, French advisers or French-trained lawyers were involved in the drafting process and accordingly it was an obvious reference point. With time, therefore, although reference to the 1789 Declaration would be retained well beyond the ACHPR by, for example, Chad, Gabon, the Ivory Coast and Senegal, other African states, as they became more radicalised, for example, Benin, Burkina Faso, Cameroon, Congo-Brazzaville and Mali, seemed to have no qualms about deleting the reference in subsequent constitutions.

The additional reference to the UDHR was almost certainly the result of the example set by Guinea in its 1958 independence constitution and subsequently the 1959 territorial constitutions of Senegal/Mali and the Ivory Coast. While Guinea was clearly motivated by its desire for UN membership, it can only be guessed that Senegal and the Ivory Coast may have seen the reference as an endorsement of their new status and impending application for UN membership. There is in any event no indication that either President Senghor or President Houphouet-Boigny were committed to or had any particular interest in human rights at this time. Indeed, throughout the drafting process of the constitutions of the former French colonial territories, there is hardly any evidence of consideration for human rights. It simply did not register on any scale of importance, with the possible exception of the Southern Cameroons. Further down the road, as constitutions were amended and military and one-party states became the norm, it is hard to deny Henkin's apothegm that reference to the UDHR was a hypocritical pretence of respectability, the homage vice pays to virtue.[512]

511 Ambassador Boaten, US Mission UN, Meeting with African Ambassadors on Amnesty resolution 19 November 1975 USUN 6172. US National Archives, Document No: 1975USUNN06172, https://aad.archives.gov/aad/createpdf?rid=258564&dt=2476&dl=1345, last accessed 4 December 2016.

512 L. Henkin, *The Age of Rights* (New York, 1990), xviii; Henkin's reference is to F. de la Rochefoucauld (trans. J.W. Willis Bund and J. Hain Friswell), *Reflections, or Sentences and Moral Maxims* (1898), 217 Maxim 218.

It seems quite natural that, as UN Trust Territories, Cameroun, Somalia and Togo should express an adherence to the UDHR as a matter of course although, equally, Libya and Tanganyika did not. As for the former Portuguese colonial territories, they became independent in the era of human rights, but their Marxist programmatic approach to their constitutions left even less room for the Western individualism of the UDHR. Guinea-Bissau might be considered an exception in that its unofficial 1973 constitution included a commitment to the UDHR, but, with UN membership assured, when its constitution was rewritten in 1984, it too found no place for the UDHR.

On this basis the idea that human rights references in African constitutions should be understood as signifying empathy with the UDHR would seem to be essentially baseless. Even more so Ouguergouz's specific claim that African leaders inherited 'a sincere conviction' towards the UDHR as a direct result of the 'anti-colonial struggle'. Indeed, there is a strong case for the exact opposite argument that, largely as a result of their political radicalisation and experience during the anti-colonial struggle, those states that had struggled the most were more likely to be especially resistant towards the UDHR as it had contributed nothing to their fight for independence and was rather more associated with imperialism. It is striking that the most violent anti-colonial struggles were played out in Algeria, Angola and Mozambique, yet none of these three states would reference the UDHR, entrench rights in their independence constitutions or ratify the ACHPR before it came into force. So too with the former British colonial territories. The most intense anti-colonial struggles were fought in Kenya and Zimbabwe and, while both acquiesced in the Colonial Office's diktat to provide for entrenched rights, it is clear that post-independence these rights had little impact on establishing effective constraints on the ability of their governments to do largely as they pleased. Only Zimbabwe, hardly the ideal example, would ratify the ACHPR prior to its coming into effect. In comparison, the former French colonial territories, other than Algeria, can hardly be described as having had to fight for independence. Indeed, even after independence, most were only too keen to maintain a continuing relationship with France, yet as a group they were the most prominent of all the colonial territories in declaring their adherence to the UDHR.

What rather emerges from this overview is an overwhelming sense of the triumph of human rights form over human rights praxis: a reality in which human rights are largely honoured in the breach irrespective of constitutional limitations. Yet, even though this reality is a far cry from any hint or suggestion of African empathy with the UDHR or human rights, ironically, there is every reason to imagine that this triumph of human rights form may well have been a significant factor in facilitating African acceptance of the ACHPR. It demonstrated the limitations of legal form and it would seem reasonable to suppose that African political leaders would have been encouraged in the belief that they could therefore accept the ACHPR with equanimity. After all, they would have

much international prestige to gain and minimal downside as they would have as little to fear from a watered-down human rights charter controlled by the OAU AHSG as from the human rights references in their constitutions.

Ironically, too, African acceptance of the ACHPR can also be seen to have benefited from African political revanchism's increasing questioning of the relevance of Western constitutional forms inherited from colonialism to the African condition and a corresponding sense that a more African approach was needed. While most obviously the more radical states, Algeria, Angola, Guinea, Mali and Mozambique, led the way in adopting constitutional forms that they argued would eliminate the last vestiges of colonialism in their political system, many of the former British colonial territories also began to reject elements of their 'imposed' constitutional structures.

In the first instance, they set aside the residual sovereignty of the monarchy, thereafter they began to remove the panoply of entrenched rights. When putting forward the case for a new constitution, Prime Minister Nkrumah argued that a new constitution was needed which should be 'designed to meet the particular needs of Ghana and to express the realities of Ghana's constitutional position' and that it should not be 'copied from the constitution of any other country';[513] President Kaunda declared that: 'We inherited a multi-party system in this country at Independence. It was foreign, imported and imposed';[514] and, shortly after independence, Prime Minister Mugabe would also claim that the constitution had been imposed by the British government at the 1979 Lancaster House conference and therefore: 'There were many features … which we disliked … But our aim was to achieve our independence … Accordingly, and with great reluctance, we compromised … We played no part in the drafting of the constitution itself.' It was to that extent, he explained, British rather than Zimbabwean in origin and there was therefore every justification for the constitution to be suitably redrawn.[515] So too in Malawi, and in Swaziland where, in 1968, five years after independence, the Swazi National Council advised King Sobhuza II that

513 Egyptian Society of International Law Brochure No. 17, *Constitutions of the New African States: A Critical Survey*, 63–64.

514 President Kaunda, 'Power to the People', Opening Address by K.D. Kaunda to the Seventh (Extraordinary) General Conference of the United National Independence Party, Mulungushi Rock 25 August 1973, 7.

515 R.G. Mugabe, 'The Parliament of Zimbabwe and Some Aspects of the Constitution', *The Parliamentarian,* 65 (1984), 1–8 (reference from R.K. Hahn, 'Commonwealth Bills of Rights: Their Nature and Origin', 62). In a meeting with Prime Minister Thatcher in 1979, President Nyerere warned that irrespective of the constitutional discussions then taking place, just as Tanzania had done, the government of Zimbabwe could amend the constitution immediately if it so chose (Record of the Prime Minister's discussion with President Nyerere over a working dinner at 10 Downing Street on 14 September 1979 at 20:30, NA FCO 31/2664).

the nation 'would like to be completely sovereign and independent and not have the Father Christmas type of independence'. In response he repealed the 1968 constitution and announced that all power would now vest with him in collaboration with his Council of Ministers. As he explained: 'That the Constitution has permitted the importation into our country of highly undesirable political practices alien to and incompatible with the way of life in our society … I and my people heartily desire at long last … to achieve full freedom and independence under a constitution created by ourselves for ourselves in complete liberty, without outside pressures.'[516]

On the one side, this questioning of the suitability of Western constitutional models led to a one-party system being widely lauded as more appropriate to the African way of democracy and the nature of African society than the confrontational opposition style politics of the Western world and becoming the norm in most African states. On the other side, it encouraged the view that would increasingly find favour with African political leaders that the ACHPR process was a means by which Africa could present for the first time its own perspective on universal human rights. More immediately, as Chapter 6 is about to describe, it not only justified African states taking Africa's revanchist fight to the heart of the human rights discourse at the UN with the intention of directly confronting the *bona fides* of human rights and the UDHR as a universal reference point, but also the need to reinterpret and redefine the existing Western consensus in a manner that incorporated African interests and values.

516 H. Kuper, *Sobhuza II, Ngwenyama and King of Swaziland: The Story of an Hereditary Ruler and his Country* (London, 1978), 335–336.

Chapter 6

The OAU Polity and the International Praxis of Human Rights

The African states and the UDHR

It is particularly noticeable that the attachment to the UDHR proclaimed in African constitutions is largely absent from African pronouncements, conference declarations or UN resolutions. Indeed, whenever reference is made to the UDHR or to human or fundamental rights, it is invariably qualified or limited in context to self-determination, apartheid or racial prejudice, or simply referenced to the UN Charter. Such a qualified endorsement first emerges in the *Final Communiqué* of the 1955 Asian-African Conference which referenced human rights in three of its seven sections. In the section on 'Human Rights and Self-Determination', it declared

> its full support of the fundamental principles of Human Rights as set forth in the Charter of the United Nations and took note of the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations
>
> (and)
>
> its full support of the principle of self-determination of peoples and nations as set forth in the Charter of the United Nations … which is a pre-requisite of the full enjoyment of all fundamental Human Rights.

The other references affirmed 'that the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation'; and that one of the principles upon which international relations should be founded was: 'Respect for fundamental human rights and for the purposes and principles of the Charter of the United Nations.' The conference also endorsed a 'Basic Paper on Racial Discrimination', which was not part of the *Final Communiqué* but was 'considered … as being part of its decisions', in which racial segregation and discrimination were deplored as 'a gross violation of human rights', but no reference was made to the UDHR. At best, therefore, the references to the UDHR are a qualified nod.

Moreover, in its main reference, support is only extended to 'the fundamental principles of human rights' which in any event are said to derive from the UN Charter not the UDHR.

Human rights were also mentioned in the opening conference address of several delegation leaders. In the case of Indonesia and Lebanon (both referenced the UN Charter, not the UDHR), Afghanistan, China, Jordan, Thailand and Turkey, the context is clearly self-determination or racism. Only three direct references were made to the UDHR, in each case with a specific target in mind: Egypt suggested that under the UN Charter and UDHR 'the treatment by any state of any national or ethnic group has ceased to be a matter of domestic jurisdiction'; Japan surmised that the aim of the UDHR tallied exactly with the chief objective of the conference, which it described as the promotion of 'neighbourly amity and mutual understanding among peoples of the Asian-African region'; and the State of (South) Vietnam appealed to the UDHR in support of the right of free movement between the two zones of Vietnam. In a related reference, Iran, with its oil reserves in mind, suggested that the definition of self-determination should include 'permanent sovereignty over the natural wealth and resources', as the most recent drafts of the International Covenants had by then already affirmed, and further that 'economic sovereignty is the basis of political sovereignty', indeed they are 'interdependent'.[1]

What these speeches indicate is that human rights other than in a limited context was not an issue that had to be addressed. While, therefore, Burke is right that eleven delegations 'invoked human rights', it is at best an optimistic construal of the intent of those invocations; indeed, in the closing speeches, human rights were hardly mentioned.[2] It is also noticeable that, other than *Pravda*, the conference press reports in the UK National Archives hardly mention human rights. Moreover, Jack's account – he attended as an observer on behalf of the ILRM – also failed to mention human rights.[3]

1 Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, C. 'Human Rights and Self-Determination', D. 'Problems of Dependent Peoples' and G. 'Declaration on the Promotion of World Peace and Cooperation' and Centre for the Study of Asian-African and Developing Countries, *Collected Documents of the Asian-African Conference April 18–24, 1955* (Jakarta, 1983), 3–131 (Opening Addresses), 145–146 (Basic Paper on Racial Discrimination), 149–189 (Closing Addresses).

2 R. Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia, 2010), 18; see also R. Burke, '"The Compelling Dialogue of Freedom": Human Rights at the Bandung Conference', *Human Rights Quarterly,* 28/4 (2006), 947–965.

3 Moscow Daily Press Review 26 April 1955, NA FO 371/116983 and H. Jack, *Bandung: An On-the-Spot Description of the Asian-African Conference* (Chicago, 1956).

Discussion of 'Human Rights and Self-Determination' and the other sections in which reference was made to 'fundamental human rights' was allocated to the Political Committee, the primary committee to which delegation heads were assigned. 'Human Rights' and 'Self-Determination' were conjoined as the two sub-items under this discussion heading as were 'the question of Palestine and the question of racialism' indicating even more the direction of travel.

The Political Committee's deliberations began with 'a rather woolly discussion about a definition of Human Rights' before moving on to the main issue which was whether reference should be made to the UDHR in the *Final Communiqué*. India opened the discussion by proposing that 'the broadest aspects … the broad principles' of human rights should be considered before any specific problem such as Palestine was discussed: 'The first thing we have to decide is thwat (*sic.*) we propose to do in our respective countries, what responsibilities we take upon ourselves, to the best of our ability, in relation to human rights … Let us tell the world what we stand for and what we propose to do.' India was supported by the Philippines, Lebanon, Iraq and Turkey which proposed that the best way to proceed might be for the conference to express its support for the UDHR. The discussion therefore began to consider that suggestion. The main division, as Jansen points out, was between the aligned and non-aligned states: Ceylon, Iran, Iraq, Lebanon, Pakistan, Sudan, Thailand, Turkey and the State of Vietnam were all in favour of a reference to the UDHR while Afghanistan, India, Indonesia and the Democratic Republic of (North) Vietnam were opposed; Japan expressed general support for human rights but thought reference should be made to the UN Charter; and, finally, China expressed broad approval of a reference but with the proviso that, as it had not been properly represented at the UN when the UDHR was drawn up, it could not be expected to make up its mind about it in a matter of hours at this conference. Premier Chou en-Lai (People's Republic of China) therefore posed the question: 'Why stir up a controversy?' Rather surprisingly, despite the warning against participating in the conference debate, the Gold Coast came out in favour of an affirmation of the principles set forth in the UDHR and an accompanying declaration that the delegations should go back to their respective countries to implement these principles. One can only shudder at what Prime Minister Nkrumah's reaction would have been.

In an attempt to bring order to the discussion Lebanon and Iran therefore proposed a compromise statement in which the conference would express 'its support to the general principles of human rights especially as set forth in the Universal Declaration'. This was supported by a proposal from Pakistan which declared support for the UDHR and urged all Asian and African countries to 'take appropriate steps for the implementation of Human Rights'. At that point, because of the time this question was consuming and the discord it was sowing, the meeting was adjourned and Lebanon, Thailand, Pakistan, India and China assigned to come up with a suitable wording. In the end, as Burke describes, in a

private conversation, Malik (Lebanon), who had participated in the drafting of the UDHR, was able to persuade Premier Chou en-Lai to accept the compromise wording. If he had not agreed, there would have been no mention of the UDHR as Pakistan had insisted that all decisions had to be unanimous. However, what the compromise revealed was that the weasel wording of the 'principles' of human rights was designed and would establish a precedent as a means of avoiding a direct commitment to the UDHR.[4]

The next Asian-African Conference took ten years to bring together. At India's suggestion, and despite an Indonesian proposal to return to Bandung, it was agreed that the second conference should be held in Africa, more precisely Algiers in 1965. In the face of tensions arising out of possible Soviet participation, over fierce Chinese objections, and a range of other on-going political conflicts between various prospective participants, it was becoming clear that the conference would only subject the veneer of unity to further strain. However, as events turned out, just as the conference was due to meet, there was a coup in Algeria against its internationally popular President Ben Bella and, as a result, the conference was postponed (indefinitely).[5]

However, a Foreign Ministers' Preparatory Conference had been held in 1964 in Jakarta to agree a provisional agenda and it is possible therefore to gain some insight into the topics that would have featured. Again, there is little room for doubt as to the context in which human rights was to be discussed. The guiding principle was 'the continuing struggle against all forms of colonialism, racial discrimination and foreign economic exploitation'; while the agenda item of 'Human Rights' included only two topics: 'Racial discrimination and apartheid' and 'Genocide'.[6]

4 *Uncorrected Verbatim Record of the Proceedings of the Meeting of Heads of Delegations, Asian-African Conference 1955*, Papers presented to St. Antony's College, Oxford by G.H. Jansen, Supplementary speech by Premier Chou en-Lai at the Asian African Conference, quoted by Foreign Languages Press, *China and the Asian-African Conference (Documents)* (Peking, 1955), 21, The Afro-Asian Conference at Bandung, Morland to Macmillan 4 May 1955 D 2231/319, NA CO 936/350, Secret, Report on Asian-African Conference – Bandung (no date or author is indicated), NA DO 35/6099, G.H. Jansen, *Afro-Asia and Non-alignment*, 191–197, D. Kimche, *The Afro-Asian Movement: Ideology and Foreign Policy of the Third World* (Jerusalem, 1973), 68 and R. Burke, *Decolonization and the Evolution of International Human Rights*, 20–25; see also C.P. Romulo, *The Meaning of Bandung* (Chapel Hill, 1956).

5 G.H. Jansen, *Afro-Asia and Non-alignment*, 393–400 and D. Kimche, *The Afro-Asian Movement: Ideology and Foreign Policy of the Third World*, 190.

6 A.S. Rye, 'Second Asian-African Conference: Final Communiqué of the Preparatory Meeting of Ministers "Introduction"', *Asian Studies: Journal of Critical Perspectives on Asia,* 2/1 (1964), 131–136 and 'Afro-Asian Conference', *OAU Review,* 1/1 May 1964, 42–44.

Dissimulation was even more apparent in the seminal 1960 UNGA resolution 'Declaration on the Granting of Independence to Colonial Countries and Peoples' which borrowed from the *Final Communiqué*, notably 'D. Problems of Dependent Peoples': 'The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.' The absence of any reference to the UDHR in relation to 'fundamental human rights' is, again, telling; although, as the UDHR had not condemned colonialism, it is perhaps hard to imagine what such a reference might have added. More damning, though, is that when reference was made, the intention was clearly to limit the scope of its application. In language that borrows from the *Final Communiqué*, and anticipates the first three recitals of OAU Charter Article III 'Principles', the Declaration asserted that the UDHR was to be observed 'strictly … on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity'.[7]

What this wording suggests is that, from the outset of their engagement on the international stage, the African states were opposed to the idea that human rights were a trump card entitling the UN to interfere in a member's internal affairs except in the case of racial discrimination or apartheid where they were not only prepared to reference the UDHR, but they also saw no need to limit its application. In resolution after resolution, therefore, the African states would demand that South Africa be held to account by the UDHR.

More than twenty years later, only a few weeks after adoption of the ACHPR by the 1981 Nairobi AHSG, the African states reaffirmed their opposition to any interference in the internal affairs of states, except in the case of 'colonial domination', in the 'Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States'. This was the culmination of an initiative first proposed in 1975. It was supported by the developing countries but particularly the African states who sought to target its application at South African intervention in Southern Africa. In its final form, it stressed absolute opposition to intervention in the internal or external affairs of any state albeit that it was the right and duty of all states to support the right of peoples under colonial or foreign domination or racist regimes to wage both political and armed struggle

7 UNGA 15/1514 14 December 1960; in contrast, J.P. Humphrey, 'The Universal Declaration of Human Rights: Its History, Impact and Juridical Character', B.G. Ramcharan (ed.), *Human Rights: Thirty Years after the Universal Declaration – Commemorative Volume on the Occasion of the Thirtieth Anniversary of the Universal Declaration of Human Rights* (The Hague, 1979), 34 interprets the reference to the UDHR as an endorsement and as evidence of the juridical consensus of states towards the UDHR rather than as a limitation of its scope.

for self-determination. Moreover, at the prompting of the African states, a clause was also included which provided that it was: 'The duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States, of exerting pressures on other States, or creating distrust and disorder within and among States or groups of States.' This was, of course, precisely the accusation that Equatorial Guinea and the CAE had levelled with respect to the 1503 reviews raised against them at the CHR (see pages 589 below). Indeed, it may be said to encompass the very *raison d'être* of the CHR.[8]

Reference to the UDHR was also included in the resolutions of several African conferences held from 1958 until the 1963 Addis Ababa Conference. Perhaps the only unequivocal endorsement of the UDHR emerged from the 1958 Accra and 1960 Addis Ababa Conference of Independent African States (CIAS) meetings. In its opening 'Declaration', the 1958 Accra CIAS solemnly reaffirmed 'our unswerving loyalty to the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration of the Asian-African Conference held at Bandung'. In its resolution 'Exchange of Views on Foreign Policy', it also affirmed as one of its 'fundamental principles': 'Adherence to the principles enunciated at the Bandung Conference, namely … Respect for the fundamental human rights and for the purposes and principles of the Charter of the United Nations'; and a second resolution, 'The Future of the Dependent Territories in Africa' called upon the colonial powers 'to refrain from repression and arbitrary rule … and to respect all human rights as provided for in the Charter of the United Nations and the Universal Declaration'.[9]

The 1960 Addis Ababa CIAS would also reference the UDHR in two resolutions. Its resolution, 'The Strengthening of International Peace and Security in Conformity with the Charter of the United Nations and the Bandung and Accra Resolutions', reaffirmed the 1958 Accra CIAS Declaration's 'unswerving loyalty' to the UN Charter, the UDHR and the Bandung and Accra Conferences declarations, though the resolution seemed to be primarily concerned with an appeal for disarmament and the discontinuation of nuclear tests. A second resolution, 'Eradication of Colonial Rule from Africa', similarly reiterated the *Final Communiqué* section on 'Problems of Dependent Peoples', declaring that subjugation of peoples constituted a denial of fundamental rights, but this time it was suggested that this was not only contrary to the UN Charter but also the UDHR.

8 UN A/PV.2409 18 November 1975, 908, UN A/C.1/34/L.56 and A/C.1/34/L.57 3 December 1979 included in UN A/34/827 13 December 1979 (Report of the First Committee) and UNGA 36/103 9 December 1981.

9 Government Printer, *Conference of Independent African States, Declarations and Resolutions, 22nd April 1958* (Accra, 1958), 1 (Declaration), 3 (Exchange of Views on Foreign Policy), 5 (The Future of the Dependent Territories in Africa).

In both conferences, therefore, the UDHR was endorsed to a degree that would never be repeated, although in places it was qualified in a manner and context that suggested the African states did not have domestic governance in mind.[10]

The nearest the African states came to a similarly unequivocal commitment to the UDHR was the *Charter of the Inter-African and Malagasy States Organisation*, a draft of which was initially approved by the January 1962 Lagos Conference. The wording of the Preamble declared that member states were: 'Anxious to affirm our adherence to the Charter of the United Nations and the Convention of Human Rights.'[11] But, after comments had been received and a final review by the Council of Ministers, the text, signed in December 1962 in Lagos, now signalled a weaker commitment. It declared that the member states were merely 'anxious to reaffirm the faith of our people in the principles of the Charter of the United Nations and the Universal Declaration'.[12]

Rather unexpectedly, though, a strong reference emerged out of the 1958 Accra AAPC. Its Provisional Agenda proposed that the conference's 'uncompromising demands' in respect of the 'multi-racial territories of East and Central Africa' must include 'Implementation of the Universal Declaration of Human Rights of the United Nations'.[13] In effect, this was merely a call for the UDHR to be applied to colonial territories. However, as Sklar reported, when it came up for discussion in the conference's Committee 2, which was responsible for drawing up the resolutions on 'Imperialism and Colonialism' and 'Racialism and Discriminatory Laws and Practices', Rewane, a delegate of the Action Group (Nigeria), joined with delegates of the United Party of Ghana, the opposition party led by Busia, and the Liberian True Whig Party of President Tubman in proposing:

> that all independent African States should be advised to give legislative sanction to the Universal Declaration … that African member-states of the

10 Ministry of Information of the Imperial Ethiopian Government, *Second Conference of Independent African States, Addis Ababa, 14–26 June 1960*, 103 (Eradication of Colonial Rule from Africa), 107 (The Strengthening of International Peace and Security in Conformity with the Charter of the United Nations and the Bandung and Accra Resolutions).

11 Federal Ministry of Information, Nigeria, *Conference of Heads of African and Malagasy States 25th–30th January 1962, Proposed Charter of the Inter-African and Malagasy States Organisation*.

12 L.A. Marinelli, *The New Liberia: A Historical and Political Survey*, 209–220 (Appendix 14: 'Charter of the Inter-African and Malagasy Organisation', Lagos, 21 December 1962), and 'Charter of the Inter-African and Malagasy Organisation', Lagos, 23 December 1962', L.B. Sohn (ed.), *Basic Documents of African Regional Organizations Vol. I*, 55–61.

13 Provisional Agenda of the All-African People's Conference: Aims and Objects, K. Nkrumah, *Revolutionary Path*, 132–133.

> United Nations should 'use their good offices to secure that the "Universal Declaration …" becomes part and parcel of the fundamental or organic law of all member states of the United Nations', and that a permanent Commission on Human Rights be set up by the All-African Peoples' Conference 'with powers to receive and to report to it progress made in the implementation, as well as any denial, of fundamental human rights in any part of the continent of Africa'.[14]

It was accepted by Committee 2 and therefore the conference resolution 'Imperialism and Colonialism' included several human rights clauses:

> 5. That fundamental human rights be extended to all men and women in Africa and that the rights of indigenous Africans to the fullest use of their lands be respected and preserved.
>
> 7. That independent African states ensure that fundamental human rights and universal adult franchise are fully extended to everyone within their states as an example to Imperial Nations who abuse and ignore the extension of those rights to Africans.
>
> 9. That a human rights committee of the Conference be formed to examine complaints of abuse of human rights in every part of Africa and to take appropriate steps to ensure the enjoyment of the rights by everyone.

Although Clause 7 is possibly unequivocal, the justification is not human rights *per se* but the example it sets; the other paragraphs and the recitals preceding the main body of the resolution strongly point to the resolution's real target, the 'Imperialists'. More than likely this shift was driven by the editorial prerogative of Padmore as the conference ringmaster. This construction is strongly supported by another resolution, 'Racialism and Discriminatory Laws and Practices', in which the conference followed more closely the context of the Provisional Agenda. It declared that 'the Universal Declaration … is being flouted in Africa and Africans are deprived of the rights of man', and that 'the overwhelming majority of the populations of the dependent territories have been made conscious of their rights under the Universal Declaration'.[15]

This interpolation was, however, only a temporary aberration. In the All-African People's Conference (AAPC) meetings in Tunis (1960) and Cairo (1961), there were repeated demands for self-determination and opposition to apartheid but nothing more was heard about the UDHR or an African human rights committee, only a contextual reference to human rights and self-determination in the 1960 AAPC Resolution on Northern and Southern Rhodesia.[16]

14 R.T. Sklar, *Nigerian Political Parties: Power in an Emergent African Nation*, 274 n98.

15 Government Printer, All-African People's Conference, *Conference Resolution on Imperialism and Colonialism*, 1–2, 7–8 and C. Legum, *Pan-Africanism: A Short Political Guide*, 246–253 (Appendix 22: The All-African Peoples' Conference).

16 Permanent Secretariat, *All-African People's Conference, Tunis, 25th–30th January 1960*,

The initial draft of the OAU Charter put forward by Ethiopia to the 1963 Addis Ababa Conference was deliberately based on the 1961 Casablanca and 1962 Lagos Charters so as to balance the philosophies of the two blocs. Its primary aim was to address the issue of African 'unity' and therefore it probably did not envisage that any useful purpose would be served by a reference to the possibly contentious issue of human rights or the UDHR. However, the fifth recital of the Preamble declared that signatories were: 'Persuaded that the Charter of the United Nations, to the principles of which we reaffirm our adherence, provides a beneficial basis for peaceful positive co-operation among States.' The first review by the Sub-committee of the Foreign Ministers, on the suggestion of Foreign Minister Wachuku (Nigeria), decided that the UDHR should be added to this recital, to bring it into line with the 1962 Lagos Charter. He also suggested, unsuccessfully, that it should open with the slightly stronger: 'Anxious to reaffirm our attachment to …' The Special Committee of the Foreign Ministers then altered 'beneficial basis' to the weaker 'solid foundation' and, so as to induce President Nkrumah to sign, the heads of state also moved the recital down the pecking order to new recital eight. As a corollary, Foreign Secretary Fawzi (Egypt) proposed adding, as one of the 'Purposes' in Article II.1, 'and to further international cooperation by encouraging respect for human rights and the United Nations Charter' though the final wording would emerge as, again, the softer: 'To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights'.[17]

Insofar as these drafting meetings clearly deliberated on the precise wording that should apply to the UDHR reference, the wording seems unnecessarily clumsy, if not weasel in intent, if outright endorsement was intended. Moreover, the Monrovia bloc states had already declined an outright endorsement in the 1962 Lagos Charter and, as for the Casablanca bloc states, goodwill towards the UDHR would have been in even shorter supply. As Amate has pointed out, the mood of the meeting is evident in the Special Committee of the Foreign Ministers' decision to drop the recital added to the Preamble by the Sub-committee of the Foreign Ministers which expressed a belief 'that the aim of government is the well-being of the governed' – the only recital to be dropped.[18] At best,

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50–51 and C. Legum, *Pan-Africanism: A Short Political Guide*, 223–262 (Appendix 22: The All-African Peoples' Conference).

17 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Volume 1, Section 1*, COMM.1/EMPC/1 17 May 1963 (Ethiopian draft), CIAS/Comm/Report/1 24 May 1963 (Sub-Committee of the Special Committee of Foreign Ministers) and CIAS/SP.COMM/CHARTER (Special Committee of Foreign Ministers) 24 May 1963 and OAU Summit Conference of Independent African States: Drafting Committee on the Charter CIAS/COMM.1/DRA/SR.1 24 May 1963, 3–6.

18 C.O.C. Amate, *Inside the OAU*, 60.

therefore, it is yet another weasel commitment to the 'principles' of the UDHR and limited in its context to 'peaceful and positive co-operation' or 'international cooperation'.

It is also possible that the recital was aimed at quite a different purpose in that the wording seems to follow the UN Charter which proclaims that one of the UN's purposes was: 'To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.' That in turn linked up with the argument the African states were deploying in the UNGA – that apartheid, colonialism and poverty were international problems whose very existence was incompatible with international cooperation. The added reference to the UDHR might therefore have been particularly directed at South Africa and the remaining colonial states.

Further evidence of the OAU's regard for the UDHR is revealed in its Solemn Declaration on General Policy adopted in 1973 on its tenth anniversary: 'We have re-affirmed our faith in the principles of the charter of the United Nations and in the Universal Declaration of Human Rights, and have decided to foster international cooperation by co-ordinating our action with that of the United Nations.' This demonstrates, once again, the OAU's continuing reluctance to endorse the UDHR outright and in any event to connect any such reference to 'international cooperation' not domestic governance. This unbending disposition would continue to be reflected even in the 2000 Constitutive Act of the African Union in that its Article 3, 'Objectives', references the UDHR once again in the specific context of 'international cooperation' and assigns responsibility for the promotion and protection of human rights to the ACHPR 'and other relevant human rights instruments'.[19]

Even more incriminating is the context of the reference to the UDHR in the wording of Decision 115 at the 1979 Monrovia AHSG which might have been expected to aspire to the paradigm of the UDHR. Minded to influence the AHSG in its support, mention of the UDHR is only made by reference to the OAU Charter and in the opening recital a deliberate decision seems to have been taken to ground human rights in the UN Charter not the UDHR. The resolution therefore begins: 'Recalling the United Nation's (*sic.*) Charter in which the people of the United Nations proclaimed "their faith in fundamental human rights"'.[20]

Yet, despite the consistent evidence of the OAU's refusal to endorse the UDHR outright, there is an enduring reluctance by many human rights commentators to acknowledge that refusal. Kunig, for example, sees the Preamble

19 OAU CM/ST.9 (XXI) and https://au.int/sites/default/files/treaties/7758-treaty-0021_-_CONSTITUTIVE_ACT_OF_THE_AFRICAN_UNION_E.pdf, last accessed 13 March 2023.

20 OAU (L) AHG/Dec.115 (XVI) Rev.1.

reference in the OAU Charter to the UDHR as 'a straightforward reference'.[21] Such wishful thinking is damningly dismissed by Ndiaye in his analysis of the place of human rights in the OAU Charter. He observed that:

> The Charter … does not appear to attach a particular significance to human rights although they are referred to in several articles … most of the efforts of (the OAU) have focused upon the right of peoples to self-determination and the struggle against racial discrimination … recognition of human rights in general is purely formal … For the first fifteen years or so of its existence it did not appear to have been unduly concerned with human rights except when denouncing the violation of such rights in the former Portuguese colonial territories, Rhodesia, Namibia and the Union of South Africa.[22]

Much the same point was made by Seck, former President of the Senegalese Bar Association, Founding President of the African Institute of Human Rights in Dakar and another close associate of M'baye, who commented that the OAU 'was not at all concerned with human rights; there is no mention of human rights in its basic document'. But he went on to note that: 'In its preamble, however, there are references to the Charter of the United Nations and the Universal Declaration of Human Rights, which is sufficient enough to open a considerable field of enquiry and activity for all those concerned with this problem.' The point was also made by Elias in his paper to the 1979 UN Monrovia Seminar: 'It is significant that the Organization of African Unity paid scant regard to the inclusion of fundamental human rights in the provisions of its Charter.'[23]

There are several reasons why the African states were unwilling to endorse the UDHR outright and why their demands for 'human rights' would invariably be grounded on the UN Charter. Indeed, as will become increasingly clear, it would not be excessive to suggest that the African states, supported by African educated opinion, would stridently refuse to acknowledge any obligation to the UDHR in a range of UN forums: Firstly, however insincere or inconsistent, at least the UN Charter acknowledged the right to self-determination, whereas the UDHR did not. Secondly, the lofty language of the UN Charter, backed up by the voting strength of the African Group, offered considerable scope for reinterpreting its meaning regardless of the original intent or context. As Quaison-Sackey would point out, as there was no prospect of a revision of the UN Charter,

21 P. Kunig, 'The Protection of Human Rights by International Law in Africa', *German International Yearbook,* 25 (1982), 141–142.

22 B. Ndiaye, 'The Place of Human Rights in the Charter of the Organization of African Unity', K. Vasak (ed.), *The International Dimension of Human Rights Vol. 2*, revised and edited for the English edn by P. Alston (Westport, 1982), 601, 607–608.

23 M. Seck, 'A Plea for Human Rights Education in Africa', *Human Rights Law Journal,* 11/3–4 (1990), 284 and T.O. Elias, UN (G) HR/Liberia/1979/BP.1, 10.

Africa 'had to discover minor apertures in the wall of the Charter, seep through the foundations, and gradually widen the breach until the torrent came pouring through'.[24] That scope for reinterpretation therefore accommodated most of the revanchist aims sought by the African states and made reference to the UDHR unnecessary. Moreover, thirdly, the UDHR was seen as largely irrelevant, running counter even, to Africa's situation and interests and to the African way of life; and, fourthly, it controverted the overriding principle of sovereignty and non-interference. The attitude of mind of the African states was appositely summed up by Awolowo: 'The OAU have paid scant or no regard at all to the Universal Declaration of Human Rights. The facts in support of this assertion are too concrete, African-wide and notorious to require any proof.'[25] Yet, at the same time, apartheid was deemed *sui generis* and an affront of such magnitude that it transcended the principle of non-interference, an argument that even the UK finally accepted in 1960, and brought the UDHR back into play. On this basis, Africa turned the tables on its accusers and denounced Western refusal to confront apartheid as an example of the double standards as it was applied against black Africa.

One of the few exceptions to African disregard for the UDHR was the political lobbying of the UN by Cameroun's UPC. References to the UDHR had, of course, been made during the independence process. For example, Kaunda and Kenyatta would both make a commitment to the UDHR during the independence negotiations, but these were rather more intended as virtue signalling of post-independence intentions than an argument in support of the case for independence. A minor exception might be the 1960 appeal to the UN by the MPLA which accused Portugal of 'violating the spirit of the United Nations Charter and offending against the Universal Declaration of Human Rights'.[26] As Moyn has therefore observed: 'The surprising fact … is that postwar anticolonialists rarely invoked the phrase "human rights" or appealed to the Universal Declaration of 1948 in particular.'[27]

In the case of the UPC, however, Terretta has identified the extent to which it sought to present its case in terms of the UDHR with help from international

24 A. Quaison-Sackey, *Africa Unbound: Reflections of an African Statesman*, 129.

25 Chief Obafemi Awolowo, 'The Problem of Africa: The Need for Ideological Reappraisal', *Kwame Nkrumah Memorial Lecture First Series,* 46.

26 Executive Committee of the *Mouvement populaire de libération de l'Angola, Appeal to the Member States of the United Nations* June 1960, 5.

27 S. Moyn, *The Last Utopia: Human Rights in History* (Cambridge, 2010), 85; see also R. Afshari, 'On Historiography of Human Rights: Reflections on Paul Gordon Lauren's *The Evolution of International Human Rights: Visions Seen*', *Human Rights Quarterly,* 29/1 (2007), 1–67 and J. Eckel, 'Human Rights and Decolonization: New Perspectives and Open Questions', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development,* 1/1 (2010), 111–135.

human rights groups: 'Urban members appealed to Western human rights advocates within an international dialogue … women led the way in appropriating the principles of the United Nations, especially those expressed in the Universal Declaration of Human Rights.' Such was the volume of petitions, more than 45,000 in 1956 alone, the year after the UPC was banned, that the UN Trusteeship Council was forced to adopt a new review procedure. Its solution was to summarise the complaints by category and then to review them collectively rather than individually as had hitherto been the practice. Indeed, as Lohrmann identified, when the UN Trusteeship Council was overwhelmed by the deluge of petitions in 1955–56, it advised its Secretariat to 'dispose' of them.[28]

In relation to the UDHR, Terretta has detailed three petitions in particular: The first advises that 'to be found in possession of a book issued by the UN is regarded as a crime in our Trust territory' and then describes an incident in which an officer in the process of arresting a petitioner 'snatched from him a book entitled Universal Declaration of Human Rights and burned it'; a second sought copies of 'the UN Charter, the Trusteeship Agreement for East Kamerun, the Trusteeship Agreement for West Kamerun, the Universal Declaration of Human Rights, and the rules of procedure of the General Assembly, to enable me to know better my country's international position'; a not dissimilar petition requested 'the transmission of the records of all the debates on the Kamerunian question in the Trusteeship Council and the Standing Commission on Petitions from 1952 onwards, the reports of the Trusteeship Council for 1955, and the report of the famous Dorsinville Visiting Mission, so that I may be informed about the Kamerunian question'; and the third from the Babimbi branch of UDEFEC (Union démocratique des femmes camerounaises), the women's wing of the UPC, drew attention to violations of the UDHR and protested against the UN's failure to supervise observance of the UDHR in their Trust Territory. Terretta also identified a petition by Tonmo, a leading UPC activist, addressed to the 1958 UN Visiting Mission, seeking the withdrawal of French troops, an amnesty for the UPC and free elections to be supervised by the UN. It signs off: 'Long live a unified, independent Kamerun, Long live international rights, Long live all of black Africa, Long live human rights!'

While this evidence makes a compelling case for the use of the UDHR as the basis of UPC claims, the idea that these petitions reflected a more profound commitment to the UDHR would seem a step too far. There may be a case, as Terretta argues, that the women identified with the equality of women and the 'special care and assistance due to motherhood' set out in the UDHR, but no

28 UN Trusteeship Council Official Records 17th Session 1956 Annexes, Agenda Item 4, UN T/L.647 (Interim Report of the Committee on Communications from the Cameroons under French administration), 90–94, UN Trusteeship Council Resolution 1494(XVIII) 8 June 1956 and U. Lohrmann, *Voices from Tanganyika*, 35–42.

evidence of an understanding, let alone a conceptual sympathy, for the idea of universal human rights. Moreover, the petitions seem excessively contrived and well beyond the capacity of rural petitioners. It is therefore hard to see in these petitions anything beyond the guiding pen of the UPC. More than likely, as Terretta acknowledges, the UPC, banned from political activity and pursued by the French military, grasped that the UN represented one of the few outlets through which it might pursue its case, and the UDHR as its most powerful petard.[29]

In a similar but unrelated study, Lohrmann tried to assess the extent of African awareness of the UDHR in Tanganyika. He concluded that the main medium through which information was transmitted was the UN Visiting Missions. Otherwise, Africans had little information available to them largely because the UN disseminated information in English rather than Swahili, although TANU had translated the UDHR into Swahili (see page 490 above).[30] It is hard to imagine that the situation was very much different in the Cameroons. The point is also made indirectly in the report of the 1955 Visiting Mission to Togo which noted that it had:

> gained the impression that, while the majority of the population seemed to know of the existence of the United Nations, they were not always very clear as to its objectives and, in particular, those of the International Trusteeship System. On a number of occasions, particularly at meetings with traditional chiefs and at public assemblies, the Mission noticed that the name 'United

29 New York Public Library, ILRM Box 1, File: Cameroon (1958 Sept.–Dec.), Folder 3, Jean Tonmo, *Comité de base de l'UPC à Sevenjongo* I, Douala, 30 Oct. 1958 to the President and Members of the UN Visiting Mission to Kamerun, Petition from Mrs. Geneviéve Magapgo 3 December 1956 c/o Central Council of UDEFEC, UN T/PET.5/L.320 (1957) and Petition from Mrs. Marguerite Madefo 9 July 1959, UN T/PET.4 and 5/46 (1959), quoted by M. Terretta, 'We Had Been Fooled into Thinking that the UN Watches over the Entire World: Human Rights, UN Trust Territories, and Africa's Decolonization', *Human Rights Quarterly,* 34/2 (2012), 329–360, Petition from Babimbi branch of UDEFEC 13 December 1954, UN T/PET.5/409, Petition from A. Langue 4 April, 1955, UN T/PET.5/573, Petition from Minella, General Secretary of WIDF 14 October 1955, UN T/PET.5/818 and Petition by Nyoth 13 July 1956, UN T/PET.5/919, quoted by M. Terretta, *Cameroonian Women, the Act of Petitioning, and the Creation of a Popular Nationalism, 1949–1960* (Madison, 2004), 15, 21, 23, 40, 57–58, and M. Terretta, *Nation of Outlaws, State of Violence: Nationalism, Grassfields Tradition, and State Building in Cameroon* (Athens, 2014), 103, *Petitioning for Our Rights, Fighting for Our Nation: The History of the Democratic Union of Cameroonian Women, 1949–1960* (Bamenda, 2013), 141–144 and 'From Below and to the Left? Human Rights and Liberation Politics in Africa's Postcolonial Age', 389–416; see also R. Joseph, *Radical Nationalism in Cameroun: Social Origins of the U. P. C. Rebellion*, 197–201.

30 U. Lohrmann, *Voices from Tanganyika*, 39–65.

> Nations' was translated by such expressions as the organization 'in America' or 'in New York'. On enquiry, it ascertained that the local languages had no words for translating 'United Nations'.[31]

The OAU and the CHR

The importance which the San Francisco Conference attached to human rights was indicated in the Preamble of the UN Charter which asserted the determination of 'the peoples of the United Nations … to reaffirm faith in fundamental human rights' and Article 1 which provided that 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion' was one of the 'Purposes' of the UN. How this was to be met was set out in Article 62, which assigned responsibility to the Economic and Social Council (ECOSOC), and Article 68, which obliged ECOSOC to set up a commission 'for the promotion of human rights'. It was on the basis of this authority that ECOSOC established the 'nuclear' CHR in 1946.

In its report, the 'nuclear' CHR recommended that 'the Commission should consist of highly qualified persons' and 'that all members of the Commission on Human Rights should serve as non-governmental representatives, appointed by the Council out of a list of nominees submitted by the Member States of the United Nations'; the representative of the Soviet Union alone dissenting. ECOSOC's rapid rejection of this recommendation was an early indicator of the level of control that member states intended to assert over the CHR.[32]

However, an ambivalence as to what the human rights mandate meant in practice was also built in to the UN structure most directly by Article 2.7 which imposed a limit on the UN's right to intervene in matters of domestic jurisdiction:

> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are *essentially* (italics added) within the domestic jurisdiction of any state … but this principle shall not prejudice the application of enforcement measures under Chapter VII (Action with respect to threats to the peace, breaches of the peace, and acts of aggression).

Article 2.7 was put forward by the four sponsoring powers, the US, the Soviet Union, the UK and China as an amendment to the San Francisco Conference's

31 UN T/1238 Trusteeship Council Official Records Seventeenth Session 1956: Supplement No. 2 (United Nations Visiting Mission to Trust Territories of Togoland under British Administration and Togoland under French Administration, 1955: Report on Togoland under French administration, together with related documents), 29.

32 UN ECOSOC E/27 22 February 1946 (Establishment of CHR and Sub-Commission), 1–2, UN E/38/Rev.1 21 May 1946 (Report of the Commission on Human Rights to the 2nd Session of the Economic and Social Council (Revised)), 8 and UN ECOSOC E/RES/9(II) 21 June 1946.

main working paper, the Dumbarton Oaks Proposals for a General International Organization. It had initially allowed that the proposed International Organization would have no authority to intervene in 'matters which by international law are *solely* (italics added) within the domestic jurisdiction of the State concerned'. The driving force behind this amendment was public opinion in the US which had demanded that reference be made in the Charter to fundamental freedoms and human rights, references which until then had been deliberately excluded. However, if they were to be included, it had to be made clear that there could be no possibility of interference in member states' internal affairs. For the US, who initiated the amendment, such a clause was needed to allay any doubts the US Congress might have about the UN, while the UK was most reluctant to open the door to intervention in its colonial territories; Soviet support for the amendment needs no explanation.[33]

Further amendments were put forward by Greece, which proposed that determination of what constituted domestic jurisdiction should be made by the ICOJ, and Belgium, which proposed that such a determination should be made by the UN itself on the basis of international law. Both these amendments were voted down and the amendment proposed by the sponsoring powers was overwhelmingly accepted. Member states, big and small, it seems, were keen to limit intervention in their domestic affairs.[34] Ambivalence was also evident in the refusal of the member states to adopt the UDHR as a binding obligation, it was to be merely 'a common standard of achievement'.

The balance between these mutually exclusive principles, human rights and non-interference, has therefore been a matter of political interpretation (and majority voting). As Schwelb remarked,

> neither the vagueness and generality of the Human Rights clauses of the Charter nor the domestic jurisdiction clause have prevented the United

33 Document 1 G/1 (Dumbarton Oaks Proposals for a General International Organization, Chapter VIII Arrangements for the Maintenance of International Peace and Security including Prevention and Suppression of Aggression) and Document G/29 Amendments proposed by the Governments of the United States, the United Kingdom, the Soviet Union, and China Chapter II Principles 5 May 1945, *UNCIO Vol. 3*, 1–22, 623 and A.W.B. Simpson, *Human Rights and the End of Empire*, 239–268; see also *UNCIO Vol. 21* for legislative history and discussion for each clause of the UN Charter, L.M. Goodrich/E.I. Hambro, *Charter of the United Nations: Commentary and Documents* (London, 1949), 110–121, L.M. Goodrich, 'The United Nations and Domestic Jurisdiction', *International Organization,* 3/1 (1949), 14–28 and Foreign Office memorandum on the History, Interpretation and Application of Article 2, paragraph 7 of the United Nations Charter, May 1963, NA DO 183/20.

34 Meetings Commission I/1 19 May 1945, Document 423 I/1/20, Amendment by the Australian Delegation to proposed Paragraph 8 of Chapter II (Principles), Document 969 I/1/39 14 June 1945 and Document 1019 I/1/42 16 June 1945 including Greek and Belgian amendments, *UNCIO Vol. 6*, 310–312, 436–440, 507–513.

> Nations from considering, investigating and judging concrete human rights situations, provided there was a majority strong enough and wishing strongly enough to attempt to influence the particular development.[35]

Initially, therefore, to pre-empt the political problems that would most certainly arise from any meaningful review of communications, in 1947 the CHR announced what has been called its self-denying ordinance. While requesting the UN Secretary-General to 'inform the writers of all communications concerning human rights … that their communications would be brought to the attention of the Commission on Human Rights', it at the same time recognised 'that it has no power to take any action in regard to any complaints concerning human rights'.[36]

Over the next twenty years several attempts were made to encourage a more active approach to human rights communications. All these attempts would founder in the face of outright opposition from member states. For example, in 1949, a report from UN Secretary-General Lie suggested that the CHR might wish to reconsider its self-denying ordinance in the light of the UDHR and because it 'is bound to lower the prestige and authority not only of the Commission on Human Rights but of the United Nations in the opinion of the general public', but nothing came of his plea.[37] Again, in 1958–59, when the CHR formally reconsidered its stance, it not only endorsed its 1947 decision, but also instructed the UN Secretary-General that in future when replying to communications he should now also advise that the CHR has no power to take action.[38] This approach would be followed by the CHR until in the early 1960s

35 E. Schwelb, 'The International Court of Justice and the Human Rights Clauses', *American Journal of International Law,* 66/2 (1972), 341 (reference from W. Weinstein, 'Africa's Approach to Human Rights at the United Nations', *Issue: A Journal of Opinion,* 6/4 (1976), 15).

36 UN ESCOR Second Year 4th Session 1947 Supplement No. 3: Report of the CHR to the Economic and Social Council on the First Session of the Commission held at Lake Success, New York from 27 January to 10 February 1947, E/259, 4–6 and ECOSOC Resolution 75 (V) 5 August 1947, UN ESCOR 5th Session 1947 Resolutions adopted by the Economic and Social Council during its 5th session from 19 July to 16 August 1947 E/573 (also included in UN E/CN.4/27 23 October 1947, Note by the Secretary-General, Commission on Human Rights: Communications concerning human rights).

37 UN E/CN.4/165 2 May 1949, Report by the Secretary-General on the present situation with regard to communications concerning human rights, 5.

38 UN ESCOR 26th Session 1958 Supplement No. 8: CHR Report of the Fourteenth Session, E/3088, 25–26 (CHR Resolution 10 (XIV) 8 May 1958), UN E/CN.4/782 5 February 1959 (Report of the Committee on Communications), UN ESCOR 28th Session 1959 Supplement No. 8: CHR Report of the Fifteenth Session E/3229, 30–32 (CHR Resolution 13 (XV) 8 April 1959) and ECOSOC Resolution 728 F (XXVIII) 30 July 1959 UN ESCOR 28th Session 1959 Supplement No. 1: Resolutions E/3290, 19.

the admission into the UN of the newly independent African states dramatically altered the interpretation of that ambivalence.

Humphrey, Director of the UNDHR, therefore described the communications procedure as 'probably the most elaborate wastepaper basket ever invented'.[39] Much the same opinion was expressed in 1970 by UN Ambassador Baroody (Saudi Arabia). In his view, the Human Rights Communication Unit was 'one of the most abortive in the United Nations' and he complained that it had 'been operating for many years with practically no fruitful results'. He analysed the c. 52,000 communications that had been received during the period June 1967 to June 1970 and reported that only c. 200 had received a response from the government against whom the complaint had been made. His recommendation was therefore that the unit be abolished.[40]

In contrast, although the CHR may have been constrained in its handling of communications, other UN bodies were not only encouraged to investigate communications but to publicise the outcome. Most obviously, UN Charter Article 87(b) authorised the UNGA and the UN Trusteeship Council to 'accept petitions and examine them in consultation with the administering authority'. This disparity in approach reflected the responsibility of the UN for the Trust Territories and the obligations that this entailed. However, quite separately, the African states were also increasingly able to deploy their voting strength to establish new UN agencies in areas that reflected their particular interests with representation heavily weighted in their favour either directly or by the inclusion of sympathetic member states. Invariably, these agencies would then be authorised to set their own rules of procedures and thereby set aside what had hitherto been viewed as protected areas of domestic jurisdiction.

Notably in respect of the Special Committee, the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa and the Committee on the Elimination of Racial Discrimination, petitions were therefore not only encouraged but actively investigated by a support structure funded by the UN. For example, in the case of the Committee on the Elimination of Racial Discrimination, the African states were insistent that it should be

39 J. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, 1984), 28.

40 Ambassador J.M. Baroody, 'Sub-division of the Report on the reorganization of the United Nations pertaining to the Division of Human Rights' 14 May 1971, 13–15; see also T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights* (Aldershot, 1982), 2–13, E. Schwelb, 'The International Court of Justice and the Human Rights Clauses', 345, R. Burke, *Decolonization and the Evolution of International Human Rights*, 61–69 and W. Korey, *NGOs and the Universal Declaration of Human Rights: 'A Curious Grapevine'* (New York, 1998), 53–55 and 'The Key to Human Rights Implementation', *International Conciliation*, 37/570 (1968), 11–20; see also UN E/2206 14 April 1952 'Communications concerning human rights', Note by the Secretary-General.

empowered to 'receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations … from … Trust and Non-Self-Governing Territories and all other territories to which General Assembly Resolution 1514 (XV) applies'; that is, even in respect of member states that had not ratified the Convention. In much the same way, Korey reported, the Special Committee considered itself authorised to invade the terrain of the CHR to the extent that it issued questionnaires investigating 'the statutory and constitutional safeguards, if any, in regard to the observance of human rights and fundamental freedoms'. This level of inquiry was, of course, not open to the CHR in response to petitions complaining of human rights violations by the African states. The conclusion drawn by Korey was 'that the domestic jurisdiction argument has constituted no obstacle to a determined majority that has the acquiescence or support of the major powers'.[41]

Following on from their success in creating specialised UN agencies directed at colonialism and apartheid, the African states moved on to co-opt the CHR directly while sidestepping any obligation they themselves might be thought to owe by reason of the UDHR. As M'baye would point out, insofar as Africans had 'played but a minute part in the preparation of the Universal Declaration', the UDHR had therefore been designed primarily to confront 'a racism practiced by white men against white men'. It had not been applied for the benefit of the African colonial territories and, now, post-independence, it was also, understandably, inappropriate to African conditions and African interests.[42] Moreover, the notion of interference conflicted with the basic principles of the OAU: Non-interference and African dominion over matters of purely African regional concern. The African Group would therefore obstruct any attempt to bring an African government to account before the CHR. It was, simply, another element of African revanchism's confrontation with the post-war settlement.

The fulcrum of the African Group's assault on the CHR was its voting majority in the UNGA. As of 1968 the African states alone comprised one-third of UN membership. However, the African Group was also invariably able to call on the Arab states, with whom there was a corresponding understanding on Israel, and also the Soviet bloc and other developing countries. Although it took a little while longer to filter down, enlargements and quota reassessments also gradually brought about a commensurate level of African representation in the UN's subsidiary agencies resulting in a majority that was able to dominate the

41 UNGA 16/1654 27 November 1961, 17/1810 17 December 1962 (Special Committee), 17/1761 6 November 1962 (Apartheid) and 20/2106 21 December 1965 (International Convention on the Elimination of All Forms of Racial Discrimination, Article 8) and W. Korey, 'The Key to Human Rights Implementation', 32–33; see also J. Carey, 'The United Nations' Double Standard on Human Rights Complaints', 792–803.

42 K. M'baye. 'Human Rights in Africa', 585–586.

ECOSOC, CHR and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter Sub-Commission). Thus, ECOSOC's membership was expanded from eighteen to twenty-seven in 1963, coming into effect in August 1965, with seven of the nine additional seats assigned to Asian and African states, and to fifty-four in 1971, at which point the Asian, African and Soviet blocs together controlled thirty-one of the fifty-four seats. Membership of the CHR was increased from eighteen to twenty-two in 1961, to thirty-two in 1966 and forty-three in 1978. In 1962, the three blocs held nine of the twenty-two seats but after 1966 eighteen of the thirty-two seats, and after 1978 twenty-five of the forty-three seats. Similarly, the Sub-Commission was increased from twelve to fourteen in 1959, to eighteen in 1965 and twenty-six in 1968 so that the three blocs controlled fifteen of the twenty-six seats; the first time regional quotas had determined what had hitherto been seen as the domain of experts serving in a personal capacity.[43]

African pressure on ECOSOC and the CHR to reassess their hitherto-limited operational scope to investigate communications began in earnest in June 1965 when a Special Committee resolution sought to draw the attention of the CHR to the evidence it had gathered of human rights abuses in the Portuguese colonial territories, South West Africa and Southern Rhodesia.[44] Picking

43 UNGA 18/1991 and 18/1992 17 December 1963 and 26/2847 20 December 1971 (ECOSOC enlargement), UN ECOSOC Resolution 845 (XXII) 3 August 1961, ESCOR 34th Session 1961 Supplement No. 1: Resolutions, UN E/3555, 31–32, Resolution 1147 (XLI) 4 August 1966, ESCOR 34th Session 1966 Supplement No. 1: Resolutions, UN E/4264, 37 and Resolution 36/1979 10 May 1979, ESCOR First Regular Session of 1979 Supplement No. 1: Resolutions UN E/1979/79 226–227 (CHR enlargement), Resolution 11(XV), ESCOR 28th Session 1959, Supplement No. 8: CHR Report of the 15th Session UN E/3229, 29–30, Resolution 4(XXI), ESCOR 39th Session 1965, Supplement No. 8: CHR Report of the 21st Session UN E/4024, 121–126 and Resolution 9(XXIV), ESCOR 44th Session 1968, Supplement No. 4: CHR Report of the 24th Session UN E/4475, 93–95, 168 (see also ESCOR 16th session 1953, Supplement No. 8: CHR Report of the 9th Session, 25–26) and ECOSOC Resolution 1334 (XLIV) 31 May 1968, ESCOR 44th Session 1968 Supplement No. 1: Resolutions, UN E/4548, 18 (Sub-Commission enlargement), H. Tolley, Jr., *The U.N. Commission on Human Rights*, 15 (Table 2.1), 33 (Table 3.1), 56–57 (Table 4.1), 102 (Table 6.1), 164 (Table 8.1) and 'Decision-making at the United Nations Commission on Human Rights, 1979–82', *Human Rights Quarterly,* 5/1 (1983), 29 (Table 3), D.A. Kay, 'The Impact of African States on the United Nations', 21 Table 1 and M.E. Tardu, 'Symposium: International Human Rights; United Nations Response to Gross Violations of Human Rights: The 1503 Procedure', *Santa Clara Law Review,* 20/3 (1980), 566–567.

44 Letter dated 21 July 1965 from the Chairman of the Special Committee addressed to the President of the Security Council, 28 July 1965 (Special Committee Resolution 18 June 1965), UN S/6567; see also Report of the Special Committee on the

up on this resolution, an ECOSOC resolution in March 1966 invited the CHR to debate 'the question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid* in all countries, with particular reference to colonial and other dependent countries and territories'. The resolution, sponsored by Algeria, Cameroon, the Soviet Union and Tanzania, initially proposed to limit debate to colonial and other dependent territories, effectively Southern Africa, but, in what would prove to be a significant amendment, the Western states were able to insist that any such mandate had to allow for the inclusion of 'all countries'.[45]

The response of the CHR was immediate. By the end of March 1966 it had passed a resolution seeking authority from ECOSOC beyond the limitation hitherto imposed by the 1947 self-denying ordinance. It also advised 'that, in order completely to deal with the question of violation of human rights and fundamental freedoms in all countries, it will be necessary to consider fully the means by which it may be more fully informed of violations of human rights with a view to devising recommendations for measures to halt them'.[46] In August 1966, ECOSOC therefore adopted a resolution, followed by a UNGA resolution in October 1966, inviting ECOSOC and the CHR 'to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they may occur'.[47]

With the UNGA resolution in hand, negotiations began in the CHR and the Sub-Commission on the new mandate. After considerable consideration, a CHR resolution in March 1967 requested ECOSOC to authorise the CHR and Sub-Commission 'to examine information relevant to gross violations of human rights and fundamental freedoms' and to make a 'thorough study and investigation of situations which reveal a consistent pattern of violations of human rights'. In anticipation of ECOSOC's approval, the CHR invited the Sub-Commission to initiate the process by which it would 'bring to the attention of the Commission any situation which … reveals a consistent pattern of violations of human rights and fundamental freedoms, in any country, including policies of racial discrimination, segregation and apartheid, with particular reference to colonial

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Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples), UN A/6000/Rev.1 15 November 1965.

45 ECOSOC Resolution 1102 (XL) 4 March 1966, UN ESCOR 41st Session 1966 Supplement No. 1: Resolutions E/4176, 6.

46 UN ESCOR 41st Session 1966 Supplement No. 8: CHR Report on 22nd Session, E/4184, 51–53 (CHR Resolution 2 (XXII) 25 March 1966).

47 ECOSOC Resolution 1164 (XLI) 5 August 1966, UN ESCOR 41st Session 1966 Supplement No. 1: Resolutions E/4264, 26–27 and UNGA 21/2144 26 October 1966.

and other dependent territories'.[48] In June 1967, ECOSOC gave its approval but it was also accompanied by a precise pointer as to the road along which it wished the CHR and its Sub-Commission to travel by authorising the CHR to 'make a thorough study of situations which reveal a consistent pattern of violations of human rights, *as exemplified by* (italics added) the policy of apartheid as practiced in the Republic of South Africa and in the Territory of South West Africa … and racial discrimination as practiced notably in Southern Rhodesia'. The Sub-Commission report was also to be made on the basis 'of the information made available to it', suggesting that it could accept evidence from a wide array of sources. Its findings would be passed to the CHR which could make recommendations to ECOSOC.[49]

The pointers in the CHR and ECOSOC resolutions ought to have made clear to the 'experts' of the Sub-Commission that the target of this new mandate was Southern Africa. Lest there be any doubt, the CHR also established an Ad Hoc Working Group of Experts to investigate charges of torture and ill-treatment of prisoners in South Africa. Its terms authorised the CHR Chairman, at that time a Soviet representative, to appoint its members and it was therefore packed with sympathetic 'experts'. Suitably emboldened, the following year its mandate was extended to also include Namibia, Southern Rhodesia and the Portuguese territories in Africa.[50]

Several months later, the Sub-Commission, for the present still staffed rather more by 'experts' than government representatives, responded to its new powers by bringing to the attention of the CHR several situation which, it felt, revealed a consistent pattern of violations of human rights and fundamental freedoms. However, in addition to the violations in Southern Africa and the Portuguese colonial territories, it also identified 'glaring examples of situations

48 UN ESCOR 42nd Session 1967 Supplement No. 6: CHR Report on 23rd Session E/4322, 131–132 (CHR Resolution 8 (XXIII) 16 March 1967).

49 ECOSOC Resolution 1235 (XLII) 6 June 1967, UN ESCOR 42nd Session 1967 Supplement No. 1: Resolutions E/4393, 17–18; see also T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights*, 244–280.

50 ECOSOC Resolution 1236 (XLII) 6 June 1967 and Communication 3 February 1967 from the Acting Chairman of the General Assembly's Special Commission on the policies of Apartheid of the Government of the Republic of South Africa, UN ESCOR 42nd Session 1967 Supplement No. 1: Resolutions E/4393, 18, UN ESCOR 42nd Session 1967 Supplement No. 6: CHR Report on 23rd Session E/4322, 55–79 (CHR Resolution 2 (XXIII) 6 March 1967) and UN ESCOR 44th Session 1968 Supplement No. 4: CHR Report on 24th Session, E/4475, 145–146 (CHR Resolution 2 (XXIV) 16 February 1968); see also J.G. Pilon, 'The U.N. and Human Rights: The Double Standard', *Backgrounder: The Heritage Foundation* 183 11 May 1982, 9, http://s3.amazonaws.com/thf_media/1982/pdf/bg183.pdf, last accessed 14 October 2015.

which reveal consistent patterns of violations of human rights' in Haiti and Greece and recommended that a Special Committee of Experts should investigate these two situations.[51]

The response by the two accused states demonstrated the wisdom of the original 1947 decision. The Haitian delegation denounced the charges, warned that this was an attempted diversion from any investigation of apartheid and observed that one power had been accused of genocide in Vietnam and another had been accused of religious persecution of Jews. The Greek delegation revealed that it had been approached by Biafran representatives. As a result, Nigeria denounced the Sub-Commission's report as interference and Tanzania accused it of having misinterpreted its mandate, which was Southern Africa, and threatened an investigation into human rights abuses in the United States and Vietnam. While a compromise was reached, whereby the Haiti and Greece referrals were dismissed for lack of evidence, at Senegal's suggestion, Tanzania also instigated an increase in the Sub-Commission from eighteen to twenty-six members of which twelve were to come from Africa and Asia and three from Eastern Europe. In this way the African states could be sure that the Sub-Commission would no longer be able to act independently of their interests.[52]

However, this debacle left the Sub-Commission in limbo as regards the scope of its mandate in respect of communications. Further negotiations resulted in

51 Report of the 20th Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, UN E/CN.4/947 4 December 1967, 30–41.

52 UN E/CN.4/SR.964–73 20–27 February 1968 and UN ESCOR 44th Session 1968 Supplement No. 4: CHR Report on 24th Session E/4475, 58–79. The detail of the process leading up to the 1503 review arrangements is described by W. Korey, *NGOs and the Universal Declaration of Human Rights: 'A Curious Grapevine'*, 67–70 and 'The Key to Human Rights Implementation', 20–24, H. Tolley, Jr., *The U.N. Commission on Human Rights*, 55–82, 'Decision-making at the United Nations Commission on Human Rights, 1979–82', 27–57 and 'The Concealed Crack in the Citadel: The United Nations Commission on Human Rights' Response to Confidential Communications', *Human Rights Quarterly,* 6/4 (1984), 426–433, T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights*, 14–39, R. Burke, *Decolonization and the Evolution of International Human Rights*, 78–91, R.S. Clark, 'Human Rights Strategies of the 1960s within the United Nations: A Tribute to the Late Kamleshwar Das', *Human Rights Quarterly,* 21/2 (1999), 320–327, J. Salzberg, 'The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities: A Functional Analysis of an Independent Expert Body Promoting Human Rights' (unpublished PhD thesis, New York University, 1973), 22–37, 253–272, P. Alston, 'The Commission on Human Rights', P. Alston (ed.), *The United Nations and Human Rights: A Critical Appraisal* (Oxford, 1992), 145 and I. Guest, *Behind the Disappearances: Argentina's Dirty War against Human Rights and the United Nations* (Philadelphia, 1990), 439–441 Appendix 5.

amended proposals to the CHR in 1969 and to ECOSOC in 1970.[53] Finally, in 1971, after a report by the Sub-Commission, new procedures were agreed. These provided for an initial assessment to be made by a Sub-Commission Working Group. Its recommendation would be reviewed by the Sub-Commission and thereafter, if appropriate, by the CHR.[54] Commonly described as the 1503 procedure, at Tanzania's behest, they were to be conducted on a strictly confidential basis. Although it would not be possible to limit investigations to Southern Africa, in practice obstruction through delay, dismissal or inadmissibility of NGO reports would severely compromise this procedure as regards an investigation of an African state. In 1977, for example, the US CHR representative testified before the US House Subcommittee on International Organizations on how he had been told that the 1503 process 'had proven to be futile and dangerous, a device for a kind of neo-Western imperialism aimed at developing countries'.[55] Indeed, such was the degree of opposition within the CHR to any meaningful level of investigation that, as Gonzales reports, even the very existence of the Sub-Commission itself came under some threat. [56]

Nonetheless, as an unintended consequence of the wider scope allowed the CHR it was impossible to prevent referrals of individual African states from being brought to the attention of the Sub-Commission. Although referrals were, nominally, confidential, in time human rights commentators were able to identify that several African states came to be referred: Burundi 1973, Tanzania

53 Report of the 21st session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, UN E/CN.4/976 18 November 1968, 24–37, UN ESCOR 46th Session 1969 Supplement unnumbered: CHR Report on 25th Session E/4621, 192, 212–14 (CHR Resolution 17 (XXV) 17 March 1969), UN ESCOR 48th Session 1970 Supplement No. 5: CHR Report on 26th Session E/4816 1970, 77, 96–97 (CHR Resolution 7 (XXVI) 13 March 1970) and ECOSOC Resolution 1503 (XLVIII) 27 May 1970, UN ESCOR Resumed 48th Session 1970 Supplement No. 1A: Resolutions E/4832/Add.1, 8–9.

54 Report of the 23rd session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, UN E/CN.1040 23 October 1970, 75–90 and 24th session UN E/CN.4/1070 6 October 1971, 7–35. The 1503 Procedure is described in UN A/10235 Report of the Secretary-General 7 October 1975, 13 and M.E. Tardu, 'Symposium: International Human Rights; United Nations Response to Gross Violations of Human Rights: The 1503 Procedure', 559–602.

55 'Review of the United Nations 33d (*sic.*) Commission on Human Rights', Hearing before the Subcommittee on International Organizations of the Committee on International Relations House of Representatives Ninety-Fifth Congress First session, 19 May 1977.

56 T.D. Gonzales, 'The Political Sources of Procedural Debates in the United Nations: Structural Impediments to Implementation of Human Rights', *New York University Journal of International Law and Politics,* 13/3 (1981), 427–472.

1973, Uganda 1974, 1976–81, Equatorial Guinea 1975–79, Malawi 1976–79, Ethiopia 1977–81, the Central African Empire 1980–81, Mozambique 1981 and Benin, 1984; at the time of their referrals, Ethiopia and Uganda were represented on the CHR.[57]

In the event, the outcome of the African referrals merely served to demonstrate the ease with which the African states were able to evade investigation. For example, the charge of genocide in Burundi was dropped after a year; as was the question of forced marriages in Tanzania because there were 'too few' violations; Mozambique's response was deemed satisfactory; and after a period of review it was decided that Ethiopia no longer warranted consideration. As for Malawi, President Banda contemptuously refused to cooperate. In a *note verbale* to the UN Secretary-General, he justified Malawi's non-cooperation on the grounds that the allegations were baseless and accordingly refused even to send a representative to answer questions at the CHR review. As a result, in 1980, the CHR finally submitted a public recommendation to ECOSOC seeking to shame Malawi for its non- cooperation but, as the complaints referred to events in 1973–75, and no further complaints had been reported, it was agreed that the review should be closed.[58] The two most important African 'test' cases were, therefore, Equatorial Guinea and Uganda. In both cases, no action was taken in advance of the overthrow, respectively, of President Nguema and President Amin, and it is doubtful whether action would have been possible if they had not been overthrown.

57 H. Tolley, 'The Concealed Crack in the Citadel', 442 (Table 1), 446 (Table 2) and *The U.N. Commission on Human Rights*, 77 (Table 4.2), Report on United Nations Human Rights Sub-Commission 29th Session, Geneva, August 1976, Whitaker 7 August 1976, NA FCO 58/1014 and Commission on Human Rights: Cases under the '1503' Procedure, Callan to various 8 February 1978, NA FCO 58/1384 (which largely substantiate Tolley's tables); see also T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights*, 39–45, T.J. Farer, 'The United Nations and Human Rights: More than a Whimper Less than a Roar', *Human Rights Quarterly,* 9/4 (1987), 586 (Appendix I: Twenty-eight Governments Subject to Commission Decisions Under Resolution 1503 from 1978 to 1984) and J. Donnelly, 'Human Rights at the United Nations 1955–85: The Question of Bias', *International Studies Quarterly,* 32/3 (1988), 294 (Table 8).

58 UN ESCOR 1980 Supplement No. 3: CHR Report on 36th Session E/1980/13, 202–203 (CHR Decision 10 (XXXVI) 7 March 1980) approved by ECOSOC Resolution 1980/31 2 May 1980, UN ESCOR Organizational and First Regular Session 1980 Supplement No. 1: Resolutions E/1980/80, 21, *Yearbook of the United Nations 1980*, 829–830, H. Tolley, 'The Concealed Crack in the Citadel', 442–458, M.E. Tardu, 'Symposium: International Human Rights; United Nations Response to Gross Violations of Human Rights', 580–581 and J.G. Pilon, 'The U.N. and Human Rights: The Double Standard', 11.

Communications denouncing Equatorial Guinea were first received by the CHR in late 1974 and followed up by further communications in early 1975. Equatorial Guinea responded by denouncing these allegations as based on 'a few subversive conversations … with individuals unknown to the … Government of … Equatorial Guinea' and 'a few small groups of unsuccessful individuals … paid by colonialists and imperialists with the sole object of restoring … the hateful and repugnant colonial past'. In rejecting further allegations received later in 1975, Equatorial Guinea would also argue that they 'do not deserve to be considered' and that it 'had repeatedly proclaimed its support for the Universal Declaration … and Article 2 (e) of its Constitution guaranteed all citizens the exercise of their fundamental rights'. In 1976, therefore, the CHR accepted the Sub-Commission's recommendation that there was an insufficient basis for evidence of a 'consistent pattern of gross violations'.

Unfortunately for President Nguema, it then emerged that not only had communications been received by the Sub-Commission that had not been forwarded to the CHR at the time of its 1976 review, but that subsequently even more communications with supporting materials identifying specific human rights violations had been received. At the 1977 CHR review, Equatorial Guinea was therefore forced to reject these allegations again which, it said, 'could have no other source and no other authors but the champions of colonialism and imperialism and their devoted puppets in the desperate pursuit of diabolical aims'. More pointedly, Equatorial Guinea referred to Article 2.7 and its rejection of 'any act by the United Nations or any of its specialized agencies which defers to or tends to take into account the ambitious concerns of the servants of colonialism'.

Despite Equatorial Guinea's spirited defence and counter-allegation of neo-imperialism, the CHR found these answers 'unsatisfactory' and proposed to keep the case under review. The UN Secretary-General also requested clarification of 'certain points' and requested a mission to Equatorial Guinea by his 'Personal Representative', but that too was rejected on the grounds that there was no case to answer and that in any event investigations of such allegations were contrary to Article 2.7. As a result, in 1978, over Egypt and Libya's objections, Senegal and the Ivory Coast were nonetheless able to win a vote in the CHR warning Equatorial Guinea that it would go public on its investigation if it continued to refuse to provide a satisfactory response on these 'certain points'.[59]

59 UN (closed sessions) E/CN.4/SR.1400 24 February 1977, E/CN.4/SR.1403 28 February 1977 and E/CN.4/SR.1405 28 February 1977, NA FCO 58/1149 and UN E/CN.4/R.30 6 February 1978, Confidential Decision UN E/CN.4/R.42 7 March 1978, 3, Briefing 34th UN Human Rights Commission: Uganda (undated) and UK Mission Geneva to FCO Telegram No. 6 34th Human Rights Commission 10 March 1978, NA FCO 58/1386 and UN E/CN.4/R.43/Add.1 1 November

When, in 1979, Equatorial Guinea reaffirmed its rejection of the process and the CHR review, the CHR closed the 1503 investigation and opened discussion under a new (more public) '1235' investigation. It also appointed a Special Rapporteur with 'the task of making a thorough study of the human rights situation in Equatorial Guinea, based on such information as he may deem relevant, and to report thereon'. He would arrive several months after President Nguema had been overthrown.[60]

The first attempt to arraign Uganda was made in 1972 by James, the UK 'expert' on the Sub-Commission, following the expulsion of the Ugandan Asians. He proposed an obsequious letter to President Amin expressing the hope that in view of President Amin's well-known support for human rights some amelioration of the Ugandan Asians' situation might be possible. However, his proposal was dismissed on a 14:1 vote over the Nigerian representative's objection that: 'He did not feel "the matter was related to human rights".'[61] James' efforts were supplemented in the UNGA by Foreign Secretary Douglas-Home (UK), but Ibingira (Uganda) also dismissed his claims and emphasised that 'we do not

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1978, NA FCO 31/2488. For more detailed information on the Equatorial Guinea referral process, see M.E. Tardu, 'Symposium: International Human Rights; United Nations Response to Gross Violations of Human Rights', 563–565, 575–579, 584–585, 587–589, 594–597, R. Fegley, 'The U.N. Human Rights Commission: The Equatorial Guinea Case', *Human Rights Quarterly,* 3/1 (1981), 34–47 and H. Tolley, *The U.N. Commission on Human Rights*, 78–80; a wonderful insight into conditions in Equatorial Guinea in 1978 is provided by Saunders, a FO official, 'Reflections on a visit to Equatorial Guinea from 6 to 10 July 1978' 13 August 1978, NA FCO 59/1595.

60 UN ESCOR 1979 Session Supplement No. 6: CHR Report on the 35th Session, E/1979/36, 122 (CHR Resolution 15 (XXXV) 13 March 1979), UN ESCOR 1980 Session Supplement No. 3: CHR Report on 36th Session E/1980/13, 194–195 (CHR Resolution 33 (XXXVI) 11 March 1980), ECOSOC Resolution 1980/137 2 May 1980, UN ESCOR 1980 Session Supplement No. 1: Resolutions E/1980/80, 43, 'Study of the Human Rights Situation in Equatorial Guinea by Professor Fernando Volio Jiménez, Special Rapporteur', UN E/CN.4/1371 12 February 1980, 1–10 and 'The Human Rights Situation in Equatorial Guinea, Report of Professor Fernando Volio Jiménez', UN E/CN.4/1439, 19 December 1980 and *Yearbook of the United Nations 1981*, 938–939.

61 Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights on its Twenty-Fifth Session, UN E/CN.4/1102 28 September 1972, 22–24 (reference from W. Korey, 'The Expulsion of Asians from Uganda', R.B. Lillich/H. Hannum (eds), *International Human Rights: Problems of Law, Policy, and Practice*, 3rd edn (Boston, 1995), 28–32) and H. Jack, 'The United Nations and the Expulsion of the Asians from Uganda: A Case Study in Insufficiency', WCRP Report, World Conference on Religion for Peace (1972), 6, quoted by W. Weinstein, 'Africa's Approach to Human Rights at the United Nations', 18.

accept the right of a Member State to challenge the right of another State to exercise its sovereign rights under Article 2, paragraph 7'.[62]

Nonetheless, Uganda was now in the spotlight and, notwithstanding its repeated denials, from 1974 to 1976 the ICJ submitted five communications to the CHR and in 1974 and 1977 published two major reports on Uganda. In 1978, further reports would be submitted by other international NGOs.[63] This weight of evidence persuaded the Sub-Commission to refer Uganda to the CHR in 1975 but, by then, President Amin had become OAU Chairman and therefore the CHR 'decided to postpone the matter for a year, apparently in order to give the Ugandan government further time to reply'.

In 1976, having received further communications from the ICJ, the Sub-Commission decided to renew its referral to the CHR. As part of the ensuing CHR review, in an unprecedented step, Uganda was permitted to make a private submission through Minister of Justice Lule: 'Uganda went to great lengths to cooperate … and this carried the day … No delegation questioned the Working Group's judgement that no action under 1503 procedure was need (*sic.*); the case was therefore dismissed.' This allowed President Amin to crow that Uganda had been 'cleared' by the CHR but it did not prevent the Sub-Commission, later that year, from responding to yet further communications from the ICJ by, once again, referring Uganda to the CHR. This time, it also recommended that a more open procedure be instituted by means of an ad hoc committee which should undertake a 'thorough study of human rights violations in Uganda'. However, again, the referral failed as, in the interim, President Amin had used his status as OAU Chairman to obtain one of the African quota seats on the CHR and in response to Minister of Justice Lule's continued offer of cooperation the 1977 CHR review merely proposed to keep Uganda under review.

Although it seemed that action against Uganda could be continually deferred, the mood was dramatically changed in February 1977 following the murder of Archbishop Luwum, Primate of the Anglican Church in Uganda, and two government ministers. It persuaded Western member states to renew their efforts to force a 1503 investigation and the UN Secretary-General to request 'an impartial international investigation'. The UN Secretary-General's request was derisorily

62 UN A/PV.2042 (Douglas-Home), 11–12 and A/PV.2043 (Ibingira) 27 September 1972.

63 ICJ, *Violations of Human Rights and the Rule of Law in Uganda* (Geneva, 1974) and *Uganda and Human Rights: Report of the International Commission of Jurists to the United Nations* (Geneva, 1977), Amnesty International, *Human Rights Violations in Uganda* (London, 1978) and M.H. Posner (Lawyers Committee for International Human Rights), *Violations of Human Rights in Uganda, 1971–1978: Testimony Prepared for the Subcommittee on Foreign Economic Policy of the United States Senate Committee on Foreign Relations* (New York, 1978); see also *Report on Current Activities of the ICJ* July 1973 – June 1974, 7 and July 1974 – June 1975, 3.

dismissed by President Amin, who indicated that delegates to an Asian, Caribbean, Pacific Group Economic meeting then being held in Kampala were free to observe the situation for themselves, but, in the CHR, Uganda came under greater pressure. In late 1977, having obtained political asylum in the UK, Lule also testified that he had lied to the CHR in 1976 and that: 'Uganda is one huge jail with Amin as the chief jailer.' This revelation immediately resulted in another 1503 investigation referral from the Sub-Commission and two open CHR resolutions tabled by Canada and the UK, although by a substantial majority discussion of these resolutions was assigned to a private session in view of the Sub-Commission's 1503 referral. The Nordic states also tabled a censure motion in the UNGA Third Committee calling for an investigation into the 'repeated gross violations of human rights' by Uganda.

As a result of these open resolutions, which reflected frustration with the blocking tactics of the African states, it was clear that the Ugandan referral had been 'outed' and a compromise had to be reached on the next step in the process. After a meeting with Ambassador Oyono (Cameroon), the President of the Africa Group, the Nordic states agreed to suspend their motion on the basis that Uganda would be discussed at the CHR in 1978. However, Harriman, the Nigerian Ambassador, was quoted as saying that 'many African members did not necessarily oppose the resolution "but when we act, we act on the basis that we don't want Africa put on the carpet"'. Less encouragingly, as Korey reported, 'an African spokesman denounced any effort that would have "an African State which is exercising its sovereignty to pass before the bar of justice of our Organization"'.

In 1978, M'baye (Senegal) was voted in as Chairman of the CHR. Almost immediately, under pressure from Western states and human rights NGOs, he was forced into disclosing the names of all seven states under 1503 investigation as a pre-emptive response to the threat that CHR protocol would be set aside and Uganda alone named publicly. Yet, although further information was presented, and notwithstanding the 1977 understanding, Uganda still denied the CHR permission for an 'impartial investigation'. The Western states however were keen to see a Special Rapporteur appointed and continued to press the point with some success. All the same, it was only after agreement had been reached in the African Group, under pressure from M'baye, and on the strict condition that there would be no public disclosure of the process, that the African states eventually made concessions. They agreed that the CHR should request the UN Secretary-General, in consultation with M'baye, to appoint an 'eminent African personality' to undertake 'an impartial international investigation'. At the same time, M'baye was also able to persuade President Amin that he should receive this envoy as the alternative was an open CHR discussion.

The appointment took some time to make as several potential appointees from Nigeria declined the poisoned chalice. Finally, it was accepted by Judge Onyeama (Nigeria) who arrived in Uganda in September 1978 and met with the

government appointed Uganda Human Rights Committee to make arrangements for the investigative visit. In the event, in April 1979, President Amin was overthrown by Tanzanian military forces and it was therefore only after his removal, in which it had conspicuously failed to play a part, that the CHR finally requested the assignment of a Special Rapporteur to study the human rights situation in Uganda.[64]

64 ICJ Report on CHR 32nd Session, Item 13b: 1503 procedure, 17 March 1976, NA FCO 58/1016, Report of the Sub-commission on Prevention of Discrimination and Protection of Minorities on its 29th session UN E/CN.4/1218 7 October 1976, UN (closed session) E/CN.4/SR.1403 28 February 1977, 12, E/CN.4/SR.1405 28 February 1977, 2–5, E/CN.4/SR.1424 16 March 1977, 2–6 and E/CN.4/SR.1425 14 March 1977, 2–4, NA FCo 58/1149, UN E/CN.4/R.43/Add.1 1 November 1978, Simpson-Orlebar UND, Uganda: UNCHR 25 February 1977, Bottomley UK Mission, 25 and 26 February 1977 and Richard to FCO Telegram No. 172 25 February 1977, NA FCO 58/1174, Interview Report 13 April 1977 Godfrey Serunkuma LULE: presently Ugandan Minister of Finance, White Brief (unattributed), Uganda and the UN Committee on Human Rights, 2 March 1977 and UN Press Release 'Exchange of communications between Secretary-General and Uganda President' 29 April 1977, NA FCO 58/1176, UK UN Mission Telegram 9 December 1977, NA FCO 58/1384, *Yearbook of the United Nations 1977*, 701–702, UN ESCOR 62nd Session 1977 Supplement No. 6: CHR Report on the 33rd Session E/5927, 15–18, UN ESCOR 64th Session 1978 Supplement No. 4: CHR Report on the 34th Session, E/1978/34, 47–50, 34th Human Rights Commission Round-up to 15 February 1978 FCO Tel. No. 97 of 15 February 1978, Callan UND, FCO 93/1733, CHR: round up after first week, Bottomley 16 February 1978 and General: UN Human Rights Commission (undated but referring to 1978 session), NA FCO 93/1302, UK Mission Geneva 34th Human Rights Commission 10 March 1978 and Briefing by FCO Commonwealth Senior Officials Meeting Kuala Lumpur 28–30 November 1978 CSOM (78) 1 (h), NA FCO 65/2050, General Impressions of the 34th Session of the CHR Unwin to Beattie 10 March 1978, UN E/CN.4/R.30 6 February 1978 and E/CN.4/R.42 7 March 1978, 9 (Decisions adopted at the 34th session of the Commission on Human Rights in closed session: Confidential decision relating to Uganda), Mission Geneva to FCO Telegram No. 6 10 March 1978, IOC (78) 25 Human Rights: 34th Session of the United Nations Human Rights Commission Geneva: 6 February to 10 March 1978 Personal report of Sir Keith Unwin, UK Representative, 10 May 1978 and Record of a call by Mr Luard Under-Secretary of State on Mr van Boven, Director of UN Human Rights Division on 16 May 1978, NA FCO 58/1386, 35th UN Commission on Human Rights: Item 12: Violations of Human Rights in any part of the world: 1503 procedure Tel No. 7 Saving of 20 March 1979, NA FCO 31/2488, Ayume Solicitor-General to Senon (*sic.*) UNDHR 2 August 1978 UN (G) G/SO 211 (3), ICJ, *Uganda and Human Rights*, vii–xv, Amnesty International, *Human Rights Violations in Uganda*, 2, *Africa Research Bulletin,* 15 January 1978, 4678–4679, *Uganda: The Human Rights Situation: Hearings before the Subcommittee on Foreign Economic Policy of the Committee on Foreign*

The OAU and human rights at the UN beyond the CHR

Beyond the CHR, the African states also sought to confront Western human rights universalism in a range of other UN human rights initiatives such as the International Covenants and a UN Human Rights Commissioner. The key consideration at all times was a refusal to contemplate any outside interference in their internal affairs while demanding that right against the remaining colonial powers in Southern Africa.

The International Covenants

Although almost all African states had not participated in the drafting of the UDHR, they were able to participate in the final drafting stages of the International Covenants and, in view of their majority in the UNGA, they were in a position to block any wording with which they were uncomfortable. As it was, the two key issues for the African states, self-determination and development, had already been accommodated in the drafts with which they were presented upon their entry into the UN. For example, it had already been agreed in 1952, on the initiative of thirteen Arab and Asian states, that Article 1 (of both covenants) would assert that: 'All peoples have the right of self-determination.' The colonial powers had sought to oppose its inclusion, or to reassign the reference to the Preamble, but they were defeated by a tactical manoeuvre whereby the CHR, still with a Western majority, was instructed to include the reference by the UNGA where the majority was, by then, firmly anti-colonialist.[65]

Supplementing this new right of 'political' self-determination, Chile had successfully proposed that Article 1 of the International Covenants should also include 'economic' self-determination: 'All peoples may … freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation.' The intention was that states should have the right to review natural resource contracts and to nationalise assets. While

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Relations United States Senate Ninety-fifth Congress Second Session, June 1978 (1978), W. Korey, 'UN Human Rights: Illusion and Reality', *Freedom at Issue,* 42 (1977), 29–31 and 'The U.N.'s Double Standard On Human Rights; The U.N.'s Rights Failures', *The Washington Post* 22 May 1977, 133–134 and T.D. Gonzales, 'The Political Sources of Procedural Debates in the United Nations: Structural Impediments to implementation of Human Rights', 466. For the powerlessness of the CHR to act, see also T. E. McCarthy, Special Assistant to Director, UNDHR to Sister Rose Veronica 22 November 1976, UN (G) G/SO 211 (5); see also Senegal's view of the workings of the 1503 procedure in UN E/CN.4/1275/Add.l 26 January 1973, 13–16.

65 UNGA 6/545 5 February 1952, M. Neal, 'The United Nations and Human Rights', *International Conciliation,* 30/489 (1953–1955), 131–132 and B. Rivlin, 'Self-determination and Colonial Areas', 207–212.

that 'inalienable right' would eventually feature regularly in UNGA resolutions and declarations, and later in the ACHPR itself, at this initial stage its scope was still a matter of debate. In 1958, therefore, the UNGA created a Commission on Permanent Sovereignty over Natural Resources to consider this 'inalienable right' as a basic constituent of the composite right to self-determination, hence its inclusion in Article 1 (Self-determination) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). The Commission's report and an accompanying report by the UN Secretariat culminated in 1962 with a UNGA resolution instituting this new 'inalienable right'.[66]

In another concession to the African states, Article 2.3 of the ICESCR also limited their prospective obligations: 'Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.' With some justification, therefore, Rateb could observe that: 'A number of UN resolutions, declarations and conventions have defined and widened the sphere of its (the UDHR's) application.'[67]

In view of these features, it might be thought that the African states had every incentive to vote for the International Covenants. They did so, with the exception of Botswana, Gabon, The Gambia, Kenya and Uganda, which failed to vote in any of the three composite resolution votes; Cameroon which did not vote on the ICCPR; and the CAR which did not vote on the ICESCR. However, typically, as of September 1979, only thirteen (of fifty) OAU member states had ratified both covenants.[68] More ominously, and as a telling portent, five African states voted against and a further seven abstained on Part C which called for ECOSOC to consider the 'establishment of national commissions on human rights or the designation of other appropriate institutions to perform certain functions pertaining to the observance of the International Covenant(s)'. That meant that more than one-third of OAU member states were not prepared to support Part C.[69]

66 The status of permanent sovereignty over natural wealth and resources, Study by the Secretariat and Report of the Commission on Permanent Sovereignty over Natural Resources, UN A/AC.97/5/Rev.2 1962 and UNGA 13/1314 12 December 1958 and 17/1803 (XVII) 14 December 1962.

67 Rateb, 1969 UN Cairo Seminar UN (G) G/SO 216/3 (17) BP.A.

68 C.E. Welch, Jr., 'The O.A.U. and Human Rights: Towards a New Definition', *Journal of Modern African Studies,* 19/3 (1981), 414 and W. Weinstein/L. Jones/F. McCoy, *African Perspectives on Human Rights* (Washington, 1980), Annexe II; ratification status of the International Covenants are available on http://indicators.ohchr.org, last accessed 2 May 2016.

69 UNGA 21/2200 (A-C) and UN A/PV.1496 16 December 1966. Algeria, Congo-Brazzaville, Guinea, Mali and Tanzania voted against; Burundi, Ethiopia, Libya, Mauritania, Sudan, Togo and Tunisia abstained.

The African states were however particularly assiduous in the debates dealing with the implementation provisions of the ICCPR which therefore had to be 'totally recast' from the structure envisaged prior to their entry into the UN. While they were prepared to accept an oversight committee, the HRC, to review the mandatory State reports, they were only prepared to do so on the basis that it was given no quasi-judicial role, fact-finding competence or the right to receive communications. Nor was it to be authorised to make recommendations, it could only make 'general comments' which would be passed to the state submitting the report and ECOSOC. However, as a compromise, they accepted that the ICCPR should allow State Parties to choose to opt-in to compliance review procedures and to accept communications from other State Parties to the Covenant – this was the Optional Protocol. The African states defended their stance on the usual grounds that African needs were different and that they had not been afforded the opportunity to participate fully in the drafting process: 'States which had recently become independent needed strong Governments, in order to consolidate their new structures and combat under-development. The national interest must take precedence over individuals' interests' (Togo); 'many new States were not yet able to defend themselves and needed strong governments, the creation of a system which might weaken the authority of national governments should be avoided' (Zaire/Democratic Republic of the Congo); 'provisions concerning human rights should be examined critically and objectively, especially when, as in the present instance, they had been drafted by bodies which would no longer be regarded as representative of the United Nations' (Tanzania); and 'a committee with obligatory competence would be a sword of Damocles hanging over the heads of the young nations, which would fear that that committee might at any moment intervene in their domestic affairs. The time had not yet come when the States which had recently gained their independence could give up their sovereignty with complete confidence' (Guinea). In any event, as Guinea and Tanzania assured the UN, there was no need for concern, they supported the UDHR and this was reflected in the protections afforded in their constitutions.[70]

70 Draft International Covenants on Human Rights, Report of the Third Committee, UN A/6546 13 December 1966, A/C.3/L.1379/Rev.1/Corr.1 (Article 40 vote) 11 November 1960, UN A/C.3/SR.1420 11 November 1966, A/C.3/SR.1440 30 November 1966 and A/C.3/SR.1455 12 December 1966 (references from F. Jhabvala, 'The Practice of the Covenant's Human Rights Committee, 1976–82: Review of State Party Reports', *Human Rights Quarterly,* 6/1 (1984), 81–106 and 'Response to John P. Humphrey's Letter in 6 Human Rights Quarterly 539 (1984)', *Human Rights Quarterly,* 7/2 (1985), 242–244) and R. Burke, *Decolonization and the Evolution of International Human Rights*, 69–78); see also J. Carey, 'The United Nations' Double Standard on Human Rights Complaints', 795–801.

Unsurprisingly, then, these state reports and reviews were largely useless. In the main, the first state reports of the few African states that had adhered to the ICCPR largely claimed that, aside from a few local idiosyncrasies or problems arising out of under-development, their practices were fully compliant with the ICCPR. Such claims were rarely challenged. For example, when Madagascar's initial state report was reviewed, its representative declared that: 'All citizens were protected from exploitation, but no fundamental right or freedom could be invoked by a citizen who had not fulfilled his duty to the community and no right could be invoked which impeded the construction of the socialist order.' In the Tanzanian review, its representative responded to questions about the one-party state system by stressing 'that human rights were not a prerogative of any particular ideology, system of government or of law, but rather an attitude of a people and their leadership … anyone who violated human rights … was referred to the relevant branches of the Government for sanctions and that democracy in the one-party state … was in full operation'.[71]

Other African states were even more dismissive. In 1983, for example, the HRC sought to review Guinea's initial state report. Despite a reluctance to review a report in the absence of a representative, it was finally decided that, having failed to show up four times, the review should proceed irrespectively. Guinea's two-page initial state report asserted that: 'The citizens of Guinea feel no particular need to refer to or invoke the provisions of the Covenant in the courts, since they are embodied in the national legislation, which is at a distinctly more advanced stage.' Moreove, that, notwithstanding ICJ and Amnesty reports, 'slavery, torture and arbitrary arrest are unknown'. As for Zaire, despite seven reminders, its initial state report which was due by 1978 had still to be filed as of 1985.[72]

UN Human Rights Commissioner

The idea of an UN Human Rights Commissioner was first mooted by Uruguay in 1950–51 but made little headway.[73] It was revived in the mid-1960s by the State

71 Report of the Human Rights Committee, General Assembly Official Records 33rd Session, Supplement No. 40, UN A/33/40 (1978), 43 (Madagascar) and 36th Session UN A/36/40 (1981), 47 (Tanzania).

72 Report of the Human Rights Committee, General Assembly Official Records 39th Session UN A/39/40 (1984), 29 (Guinea) and UN CCPR/C/6/Add.5 19 August 1980 (reference from J. Donnelly, 'International Human Rights: A Regime Analysis', *International Organization,* 40/3 (1986), 610).

73 UN A/C.3/L.74 and Add.1 1–2 November 1950, A/C.3/L.76 1 November 1950 and A/C.3/L.93 3 November 1950 and Bases of the Proposal to Establish a United Nations Attorney-General for Human Rights: Memorandum Submitted by Uruguay, UN A/C.3/564 20 December 1951. A proposal had been made in 1947 by Cassin (France) but as he was not acting on his government's instructions

Department in informal discussions with NGOs but it was only when the idea was taken up by Costa Rica in 1965 that realistic progress was made possible. Costa Rica proposed that ECOSOC should appoint the CHR to report on the idea and mechanics of a UN Human Rights Commissioner.[74] In turn, the CHR delegated responsibility to a working group, but, as it failed to include a Soviet bloc or African representative, other than Dahomey and Senegal, who were known to be sympathetic, it was criticised for being unrepresentative; though Macdonald suggests that its composition may have been determined as much by the refusal of those opposed to cooperate as by manipulation on the part of its sponsors.[75] Inevitably, then, the working group's report recommended the creation of a UN Human Rights Commissioner and its report was approved by the CHR.[76]

However, when the report came to be more widely debated, it was no longer possible to obfuscate the key issue of the commissioner's authority to deal with communications, and it was therefore battered by amendments from member states still opposed to the idea. For example, Tanzania argued that 'in defining the powers of the High Commissioner, a study must be made of the compatibility of those powers with the requirements of Article 2, paragraph 7 of the Charter and the rights of any State … to invoke Article 2, paragraph 7 as a defence'. As the debate continued, it became clear that the majority of African states would not support the proposal and therefore African unity obliged the six African states on ECOSOC to abstain; only Dahomey and Senegal felt an obligation, as members of the working group, to vote in favour.[77] Although, therefore, the proposal was adopted by ECOSOC, when it was sent to the

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not much weight can be attached to his proposal (references from J.E. Lord, 'The United Nations High Commissioner for Human Rights: Challenges and Opportunities', *Loyola of Los Angeles International and Comparative Law Journal,* 17/2 (1994–95), 330–332 and T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights*, 117–119).

74 UNGA 20/2062 16 December 1965.

75 R.St.J. Macdonald, 'The United Nations High Commissioner for Human Rights', *The Canadian Yearbook of International Law,* 5 (1967), 84–85.

76 UN E/CN.4/934 8 February 1967 (Working Group report) and UN ESCOR 42nd session 1967 Supplement No. 6: CHR Report of the 23rd session E/4322 1967, 171–172 (CHR Resolution 14 (XXIII) 22 March 1967), 195 (proposed Resolution IV for ECOSOC).

77 ECOSOC Resolutions 1237 and 1238 (XLII) 5 June 1967, UN ESCOR 42nd session 1967 Supplement No. 1: Resolutions E/4393, 18–19 (references from R.St.J. Macdonald, 'The United Nations High Commissioner for Human Rights', 84–117, J.E. Lord, 'The United Nations High Commissioner for Human Rights: Challenges and Opportunities', 332–336, W. Korey, *NGOs and the Universal Declaration of Human Rights: 'A Curious Grapevine'*, 56–60) and UN A/8035 28 August 1970 (Note by Secretary-General), 24.

UNGA, as the UN Secretary-General's 1969 study of member states' views made clear, its prospects were not encouraging.[78]

Over the next three years, apart from a further study by the UN Secretary-General, the idea was effectively blocked as opponents repeatedly managed to postpone discussion.[79] In 1970 there was a limited discussion in the UN's Third Committee but it was timed out and the decision deferred for consideration in 1971. Much the same happened in 1971 when a ten-state resolution initiated by Sweden, with the support of Lesotho and Madagascar, sought to force a decision in 1972 by endorsing an intention 'to give the highest priority to the consideration of this item with a view to the possibility of its conclusion', but this was decisively rejected. In the debate prior to the vote, Ghana and Nigeria had argued that the idea was overly ambitious and required further study. They therefore proposed that 'with a view to the possibility of its conclusion' be deleted and Somalia also requested a vote on the phrase 'the highest priority' with the result that both were deleted. The death blow was delivered by Sudan, supported by Algeria, which proposed that a period of reflection would be appropriate and that discussion should accordingly be deferred to 1973. In an effort to win over the African states, the sponsors, notably Sweden, had provided that the Commissioner's terms of reference should 'give special attention to violations of human rights arising from racial, ethnic and religious discrimination and from colonial and alien domination', but even this inducement was not enough to sway African votes. Twenty-five African states voted against the proposal with only five in favour and six abstaining.[80]

From 1973 to 1975 further attempts were made to revive the idea but all that could be achieved was another review of the views of member states by the UN Secretary-General, largely ignored by the African states, and a promise of debate by the UNGA in 1977.[81] In 1977, therefore, a further UNGA resolution was sponsored by a cross-section of fifteen member states including The Gambia, Lesotho and Senegal. Once again, to gain African support, it provided for 'special concern' to be given to apartheid, racial discrimination and racism and at the same

78 UN A/7498 18 July 1969 (Note by Secretary-General).

79 UN A/8035 28 August 1970 (Note by Secretary-General).

80 UN A/C.3/L.1851 and A/C.3/L.1921 8 December 1971 (Ten-state resolution), UN A/C.3/L.1923 9 December 1971 (Ghana and Nigeria amendment), UN A/8594 15 December 1971 (Report of Third Committee), UN A/PV.2025 18 December 1971, 9–14 (Sudan amendment) (references from T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights*, 117–135 and R.St.J. Macdonald, 'A United Nations High Commissioner for Human Rights: The Decline and Fall of an Initiative', *The Canadian Yearbook of International Law*, 10 (1972), 40–64) and R.S. Clark, *A United Nations High Commissioner for Human Rights* (The Hague, 1972), 39–59.

81 UNGA 28/3136 4 December 1973, 29/3221 6 November 1974 and 30/3451 9 December 1975 and UN A/10235 7 October 1975 (Report of UN Secretary-General).

time it tried to side-step the issue of communications. Nonetheless, it was still lost on a procedural vote proposed by Cuba. Only thirteen African states voted against the Cuban resolution, the majority supporting the blocking resolution. Even then, Kenya's Foreign Minister Waiyaki advised Under-Secretary of State Luard (UK) that, while Kenya had been one of the few African states to support the resolution, 'Kenyan opinion was divided. Those opposed felt that a High Commissioner would interfere in internal affairs of governments and tell them what to do.'[82] On the other side, Marico (Mali) had argued that a 'universally acceptable definition had not been found for the rights enunciated in the Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights' and that the individualistic concept of society, 'praiseworthy as it might be … had no claim to universal truth'. Houngavou (Benin) argued that 'the notion of human rights currently being discussed by the Committee was not shared by all members', rather they were invoked by 'the adherents of' imperialism … to justify interference in the internal affairs of other States'; and Rakotonaivo (Madagascar), now representing a Marxist government, suggested that: 'History had shown that the forces of imperialism and reaction had used the pretext of defending human rights when they had really been attempting to impose their own concept of such rights.'[83]

82 UN A/C.3/32/L.25 9 November 1977, and subsequent amendments UN A/C.3/32/L.25/Rev.1 16 November 1977, A/C.3/32/L.35 and REV.1 22 and 24 November 1977, A/C.3/32/L.36 and REV.1 23 and 25 November 1977, and UN A/32/423 13 December 1977, 14–32 (Report of the Third Committee) (references from T.J.M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights*, 127–129 and J.E. Lord, 'The United Nations High Commissioner for Human Rights: Challenges and Opportunities', 336–342) and Note 5 December 1977 Evans (PS to Luard) to Simpson-Orlebar 'Note of conversation between Luard and Dr Waiyaki (Kenya)', NA FCO 58/1158; see also J.E. Lord, 'The United Nations High Commissioner for Human Rights: Challenges and Opportunities', 339–341, and T. van Boven, 'The United Nations High Commissioner for Human Rights: The History of a Contested Project', Background Paper, Symposium on The United Nations High Commissioner for Human Rights: The First Ten Years of the Office, and the Next 18 February 2003. .

83 UN A/C.3/32/SR.50 17 November 1977, 7 (Marico), 17 (Houngavou) and A/C.3/33/SR.59 28 November 1977, 5 (Rakotonaivo) (references from R. Burke, *Decolonization and the Evolution of International Human Rights*, 129–141) and UN A/C.3/32/L.35 and Rev.1 22 and 24 November 1977, UN A/C.3/32/L.36 and Rev.1 23 and 25 November 1977 (subsequent amendments); see also T. van Boven, 'The United Nations High Commissioner for Human Rights: The History of a Contested Project', Background Paper, Symposium on The United Nations High Commissioner for Human Rights: The First Ten Years of the Office, and the Next 18 February 2003.

One further attempt was made at the CHR in the February–March 1979 session three months before Decision 115 was put to African political leaders. The report noted pithily that 'opinion was divided'. This hardly suggested a favourable backdrop against which approval for Decision 115 proposing an African regional human rights charter might be sought from the OAU AHSG.[84]

It is difficult to interpret the efforts of Western governments to utilise UN bodies to uphold the UDHR as other than a failure. This was recognised by human rights representatives who complained bitterly throughout the 1970s about the betrayal of the UN's human rights mandate. For example, Garment, the US representative on the CHR, described 'a deeply ingrained double standard' which was only to be expected from 'those whose attachment to the values of human rights is at best theoretical'.[85] Van Boven, the Dutch representative on the CHR and Sub-Commission and Director of the UN Division of Human Rights in 1978, also described how the 1503 'procedure appeared to be very promising but due to many procedural technicalities, its time-consuming character and above all the inability or unwillingness of the Commission on Human Rights to act effectively, high expectations made way for strong disappointment'; he therefore concluded that 'the Organization is politically and structurally hindered' and that 'in the United Nations the political context determines the pertinence of human rights violations'.[86]

Summing up the then-current state of 'human rights' at the UN in a 1979 encomium on the thirtieth anniversary of the UDHR, Moskowitz, a senior NGO representative, suggested that:

> the term has become a slogan wrapped in language that had long surrendered much of its ability to describe reality … Different connotative values placed on the same words aid and abet different meanings of the text … When texts are wrenched out of their orbits in order to fill ellipses shaped by governments and different criteria enter into the making of moral judgements, we cannot yield to the notion of implementation without taking deep thought … A spirit of revisionism is abroad at the United Nations which questions many of the fundamental premises on which the International Bill of Rights was erected.

84 UN ESCOR 1979 Session Supplement No. 6: CHR Report on the 35th Session, E/1979/36, 49.

85 Garment, quoted by J.G. Pilon, 'The U.N. and Human Rights: The Double Standard', 2.

86 T.C. van Boven, 'United Nations and Human Rights: a Critical Appraisal', A. Cassese (ed.), *UN Law/ Fundamental Rights: Two Topics in International Law* (Alphen aan den Rijn, 1979), 128, 132.

Indeed, Korey records that in August 1975 when the Director of the UN Division of Human Rights was asked to list the accomplishments of his division, he replied 'that he could not immediately think of any'.[87]

These assessments provide ample confirmation that, at last, the Africa states were successfully asserting themselves on the world stage.

The African revanchist reinterpretation of the canons of universal human rights

If, in negative terms, the African states were succesfully evading scrutiny of their human rights record, in positive terms, they were now able to impose their own interests and conceptions on human rights discourse at the UN. In particular they sought to put South Africa and the other remaining colonial territories in the human rights dock and to demand their due in development support and a rebalancing of the world economic order. The argument of African revanchism was that if they had had the opportunity to participate in the drafting of the UDHR, it was precisely such provisions which they would have demanded. They were therefore simply asking for a redress of the imbalance in the content of universal human rights. The first step had been the 1960 'Declaration on the Granting of Independence to Colonial Countries and Peoples', but after 1963 a fully empowered OAU actively sought a reinterpretation of the canons of universal human rights along a far broader front.

The basis of that reinterpretation was debated at the 1963 Addis Ababa Conference which largely reconfirmed the primary aspirations of African revanchism as they were already being pursued at the UN: self-determination and development. The inevitable outcome, therefore, as Kay notes, based on an analysis of speeches by African representatives at the UN from 1960 to 1966 was that: 'On no issue other than decolonization and economic development did the African states in general place strong and consistent demands on the United Nations.' Akpan, taking that analysis a little further, would similarly conclude that from 1960 to 1974 the three primary goals of the African Group were: Political freedom; elimination of racial discrimination; and economic and technical assistance for economic progress.[88]

87 M. Moskowitz, 'Implementing Human Rights: Present Status And Future Prospects', B.G. Ramcharan (ed.), *Human Rights: Thirty Years after the Universal Declaration – Commemorative Volume on the Occasion of the Thirtieth Anniversary of the Universal Declaration of Human Rights*, 109–111 and W. Korey, 'UN Human Rights: Illusion and Reality', 31.

88 D.A. Kay, 'The Impact of African States on the United Nations', 26–28 and *The New Nations in the United Nations, 1960–1967*, 46–48 (Tables III.1–3) and M. Akpan, *African Goals and Diplomatic Strategies in the United Nations: An In-depth Analysis of African Diplomacy* (North Quincy, 1976).

Self-determination

Self-determination, which had not seemed so urgent to Francophone African leaders in 1958, now emerged as the emotional heart of the 1963 Addis Ababa Conference. In his opening address, Emperor Haile Selassie recalled a sentiment already voiced by several other heads of state: 'Our liberty is meaningless unless all Africans are free … racial discrimination constitutes a negation of the spiritual and psychological equality which we have fought to achieve and a denial of the personality and dignity which we have struggled to establish for ourselves as Africans.'[89]

In this, and other sentiments voiced at the conference, there was a real sense of a shared political past, several of the leaders having been imprisoned during the anti-colonial struggle, and a corresponding desire to pursue the liberation of the remaining African colonial territories. Thus, President Abboud would suggest that: 'We are gathered today to strive for the liberation of … this dear Continent where colonializm (*sic.*) wages its last desperate battle'; while President Tombalbaye (Chad) explained that: 'African Unity means all the forces of the continent united for the total liberation of the continent.' It was an emotion that seems to have rescued the conference from failure largely as a result of the speech by President Ben Bella. He recalled the support he had received in the course of Algeria's liberation struggle and redirected the hearts and minds of the heads of state back towards the urgency of agreement with the plea: 'So let us all agree to die a little … so that the peoples still under colonial domination may be freed.' Cervenka described this as the 'Spirit of Addis Ababa' and attributed the success of the conference to this speech.[90] Much later, Kodjo, invoking Fanon,

89 OAU SUMMIT/CIAS/GEN/INF/3, 2, 9. This sentiment seems to have been expressed first by Prime Minister Nkrumah at Ghana's Independence Day celebrations: 'Ghana's freedom would be meaningless if it was not linked with the total liberation of the entire continent of Africa', K. Nkrumah, *I Speak of Freedom: A Statement of African Ideology*, 107. Wakely, Office of the High Commissioner, Accra to Allen 28 March 1958, NA FO 371/131238 was unable to locate the source of this phrase, or connect it to the independence speech, but noted it could have come from any of Prime Minister Nkrumah's speeches. It was also voiced by President Touré at the UNGA: 'African freedom is indivisible and … Guinea's independence is therefore inseparable from that of the other African peoples', UN A/PV.837, 551 5 November 1959 (reference from M.S. MacDonald, 'The Challenge of Guinean Independence 1956–1971' (unpublished PhD Thesis, University of Toronto, 2009), 58). Ojike's valedictory article in *West African Pilot,* 13 January 1947, 2 would also declaim: 'AFRICA NOT FREE … I am not free; for no man is free until his people are free'; it might therefore have provided the original inspiration.

90 OAU SUMMIT CIAS/GEN/INF/5, 1, SUMMIT CIAS/GEN/INF/24, 1, SUMMIT CIAS/GEN/INF/27, 2 (often quoted as: 'We must all agree to die a little') and Z. Cervenka, *The Organisation of African Unity and its Charter*, 12–13;

reflected on the enduring pre-eminence of this emotion for many of the African leaders in the immediate post-independence period: 'The last generation of Africans made political struggle for decolonization an ideal.'[91]

The importance attached to self-determination, in fact in its widest sense, was therefore reflected in its positioning as the opening line of the preamble of the OAU Charter: 'Convinced that it is the inalienable right of all people to control their own destiny …' Within the body of the OAU Charter, 'self-determination' never appears, but it can otherwise be identified in Article II 'Purposes', which refers to the eradication of all forms of colonialism from Africa, and Article III 'Principles' which asserts the: 'Absolute dedication to the total emancipation of the African territories which are still dependent.' The first two resolutions also addressed the issue of decolonisation: 'Decolonization': 'Reaffirming that it is the duty of all African Independent States to support dependent peoples in Africa in their struggle for freedom and independence …'; and 'Apartheid and Racial Discrimination': 'Unanimously convinced of the … urgent necessity … to put an end to the South African Government's criminal policy of apartheid …' Its importance was underlined further by the creation of a Liberation Committee that convened one month later, several months before even the OAU General Secretariat had been fully established. The conference's closing day, 25 May, was also designated as Liberation Day for the whole of Africa. Nonetheless, as Amate describes, there was often a yawning chasm between support extended by rhetoric and the practice of many member states who did not always uphold the 'commitment' to 'absolute dedication'.[92]

By 1963 though, most of the UK, French and Belgian colonial territories were either independent or well down the road to independence. Within a few years Spain would also bow to African pressure in respect of Equatorial Guinea, although it retained control of the Spanish Sahara region until 1975. In effect,

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see also C.O.C. Amate, *Inside the OAU*, 63, J. Woronoff, *Organizing African Unity*, 143 and K. van Walraven, *Dreams of Power: The Role of the Organisation of African Unity in the Politics of Africa 1963–1993*, 143, who gives the same quotation and an assessment of its importance to the success of the conference based, possibly, on the original report in *Le Monde,* 26/27 May 1963. The speech is also highlighted in Russell to Lord Home, The African Heads of State Conference at Addis Ababa 4 June 1963, NA PREM 11/4603.

91 E. Kodjo, *Africa Today*, 65; it seems likely that the reference is to F. Fanon (trans. C. Farrington), 'On National Culture', *The Wretched of the Earth*, Penguin Classics edn (London, 2001), 166: 'Each generation must, out of relative obscurity, discover its mission, fulfil it, or betray it'.

92 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1, Section 1,* CIAS/Plen.2/Rev.2 24 and 25 May 1963, Resolution A: Decolonization and B: Apartheid and Racial Discrimination and C.O.C. Amate, *Inside the OAU*, 211–399; see also Z. Cervenka, *The Organisation of African Unity and its Charter*, 18–20.

therefore, only four colonial regimes remained: The Portuguese colonial territories, Southern Rhodesia, South West Africa and South Africa.

The Portuguese colonial territories essentially comprised Angola and Mozambique and the smaller territories of Cape Verde, Guinea-Bissau and São Tomé and Príncipe. There was little scope for negotiation as Portugal refused to discuss the question of independence on the basis that they were not colonies but overseas provinces of Portugal. As a result, the liberation movements that emerged were left with little alternative other than armed struggle. However, in the UN, they were at least able to call on the African states to pressure Portugal.[93]

African pressure begun in earnest in 1960 following closely on from the admission of the sixteen newly independent African states. Resolutions were immediately adopted by the UNGA requiring Portugal to provide information as required by Article 73(e) of the UN Charter followed in 1961 by a further resolution establishing a UN Committee of Seven to review all relevant information on those territories. In 1963, after several attempts, the African states also finally succeeded in obtaining ECOSOC's approval for the expulsion of Portugal from the Economic Commission for Africa (ECA) (see page 228 above).

Over the next ten years, on an annual basis, the African states would sponsor UNGA resolutions condemning Portuguese colonialism. Similar resolutions were also sponsored in respect of Southern Rhodesia (until 1979) and South West Africa and South Africa (beyond 1985).[94] In an effort to escalate the pressure, in 1963 and 1965, the African states also secured resolutions in the Security Council denouncing Portugal but without the sanctions which they sought to have imposed. As a fall back, in 1965, the African states nonetheless received the largely symbolic support of a UNGA resolution urging a broad range of sanctions including a boycott of all trade, the breaking-off of diplomatic and consular relations and the closure of ports to all Portuguese ships and landing and transit facilities to Portuguese aircraft. More successfully, the resolution would lead to a small 'aperture' in the UN Charter with its appeal to all UN agencies, notably the World Bank and the IMF, 'to refrain from granting Portugal any financial, economic or technical assistance'. The following year this appeal was reiterated in a resolution requesting the UN Secretary-General to consult with the World Bank to ensure that the will of the UNGA was respected.[95]

As a result, neither the IMF nor the World Bank extended loans or credits to Portugal. In addition, as from 1966, the World Health Assembly and the

93 B.C. Reis, 'Portugal and the UN: A Rogue State Resisting the Norm of Decolonization (1956–1974)', *Portuguese Studies,* 29/2 (2013), 251–276.

94 The only exception was the UN's Nineteenth session of 1964–65 when 'an understanding' was reached 'to the effect that issues other than those that can be disposed of without objection will not be raised' (*Yearbook of the United Nations 1964*, 37).

95 UNGA 20/2107 21 December 1965 and 21/2184 12 December 1966 and Security Council Resolutions 180 31 July 1963 and 218 23 November 1965.

UNESCO General Conference resolved to withhold all technical assistance from Portugal and to suspend its right to participate in their activities. This was effectively sanctions through the back door in that the majority within the UNGA and its agencies were able to assert their will against the veto of the Security Council. However, without the consent of the Security Council, UNGA resolutions could do little more than urge a boycott; there was little prospect of enforcement. While these measures had some effect, the collapse of the Estado Novo regime in Portugal in 1974, which led to independence, was largely induced by the financial and social cost to Portugal of the prolonged wars of independence rather than any resolutions at the UN.

As with the Portuguese colonial territories, African agitation against Southern Rhodesia became more insistent after 1960. In a series of UNGA resolutions, the African states argued that Africans had been denied participation in Southern Rhodesia's government and administration. They had not been consulted about the 1961 constitution and therefore the UK's contention that Southern Rhodesia had been self-governing since 1923 was a complete fiction. Southern Rhodesia was in reality a non-self-governing territory. A constitutional conference should therefore be convened, to which all political parties should be invited, if the rights of the majority were to be upheld.[96] As for the constitutional safeguards incorporated in the 1961 constitution, Uganda argued that: 'What the Africans want in Southern Rhodesia are not constitutional safeguards. These have been shown, in the racist context that prevails in Southern Africa, not to be worth the paper on which they are written.'[97]

Following elections in December 1962, it became clear that Southern Rhodesia was giving serious consideration to independence with or without UK approval. The African states responded by advising the Security Council of their urgent concern that the UK might be minded to hand-over further powers to the minority government in Southern Rhodesia so as to facilitate an independence which would undoubtedly be on terms prejudicial to the African majority. While the Security Council was prepared to listen, an African-sponsored resolution was vetoed by the UK and the African states were therefore able to achieve no more than sympathetic expressions of support at the UNGA.[98] Nonetheless,

96 UNGA 16/1747 28 June 1962 and 17/1760 31 October 1962.

97 UN A/PV.1163 31 October 1962, 652.

98 UNGA 18/1883 14 October 1963 and 18/1889 6 November 1963; see also H.R. Strack, *Sanctions: The Case of Rhodesia* (Syracuse, 1968), L.T. Kapungu, *United Nations and Economic Sanctions against Rhodesia* (Lexington, 1973), M. Akpan, *African Goals and Diplomatic Strategies in the United Nations: An In-depth Analysis of African Diplomacy*, 50–72, M.S. McDougal/W.M. Reisman, 'Rhodesia and the United Nations: The Lawfulness of International Concern', *The American Journal of International Law,* 62/1 (1968), 1–19, J.W. Halderman, 'Some Legal Aspects of Sanctions in the Rhodesian Case', *International and Comparative Law Quarterly,* 17/3 (1968),

in October 1964, the British government assured the Special Committee that not only would it not sanction independence without the consent of the majority, it shared their concerns about a possible unilateral declaration of independence (UDI). When, therefore, the situation deteriorated, in May 1965, the African states were finally able to secure a Security Council resolution strongly requesting the UK not to permit or acquiesce in an UDI and to convene a constitutional conference. It had no effect as in November 1965 the Southern Rhodesia government finally announced its UDI.[99]

The independence declaration prompted two resolutions from the UN Security Council condemning the illegal action and urging all member states not to recognise the minority state. Further resolutions in 1966 called for an oil embargo and selective sanctions to be applied, although the UK still vetoed such sanctions. It was only in March 1968, when Southern Rhodesia executed five African political prisoners, that the Security Council approved a broad ban on trade, finance and transportation and a Special Committee of the Security Council was set up to report on the extent of its implementation by member states. While further sanctions would be imposed in 1976 and 1977, in the main, Southern Rhodesia was able to limit the effect of sanctions due to the support it received from Portugal and South Africa. As in the case of Portugal, therefore, it was not action in the UN that brought about negotiations in 1979 but the psychological and financial cost of the guerrilla war.[100]

South West Africa (later Namibia) was a League of Nations Mandate Territory assigned to South Africa. When in 1946 the UN came to review the disposition of mandate territories, South Africa argued that its mandate had lapsed with the League of Nations and it therefore sought consent to absorb the territory. The UNGA refused and informed South Africa that South West Africa had to be handled by the UN Trust Territory system.[101] When South Africa refused to accept this decision, the UNGA applied to the ICOJ for an advisory opinion on the legal status of South West Africa, and South Africa's obligations arising out of that legal status. In 1950 the ICOJ determined that the UN Charter did not impose any obligation on South Africa to place South West Africa into the UN Trust Territory system but that South Africa's obligations arising out of its

672–705, J. Hopkins, 'International Law – Southern Rhodesia – United Nations – Security Council', *The Cambridge Law Journal,* 25/1 (1967), 1–5 and W. Minter/E. Schmidt, 'When Sanctions Worked: The Case of Rhodesia Reexamined', *African Affairs,* 87/347 (1988), 207–237.

99 UN A/5800/Add.1 (part II) 30 December 1964, 15 and UN Security Council Resolution 202 6 May 1965.

100 UN Security Council Resolutions 216 12 November 1965, 217 20 November 1965, 221 9 April 1966, 232 16 December 1966, 253 29 May 1968, 388 6 April 1976 and 409 27 May 1977.

101 UNGA 1/65 14 December 1946.

mandate, such as submission of reports and petitions, had not lapsed but had devolved onto the UN which now carried supervisory responsibility. The UN responded by setting up the Ad hoc Committee on South West Africa with authority to examine reports on the territory and petitions and to confer with South Africa on how to move forward.[102]

In 1953, with little progress having been made, the UN put in place a more permanent supervisory structure, the UN Committee on South West Africa, 'until such time as an agreement is reached between the United Nations and the Union of South Africa'. After the entry into the UN of the African states, it was 'upgraded' in 1961 as the Special Committee on South West Africa.[103] In reality, though, South Africa had annexed the territory as already in 1949 the white citizens of South West Africa had been enfranchised and alloted six seats in the South African Parliament.

As negotiations dragged on with seemingly little prospect for resolution, Ethiopia and Liberia sought a further opinion from the ICOJ. They argued that in its conduct and administration South Africa had violated the responsibilities of its mandate and it should therefore be withdrawn. By a majority of one, in December 1962, the court found against South Africa's contention that it had no competence to hear the case, but, in July 1966, following the death of the Egyptian judge, that decision was effectively reversed. The court now declared that although it had the competence to hear the case, Ethiopia and Liberia had no legal right or interest in the matter of their claims. Their claim to be representing the interests of the international community was a moral not a legal interest.[104] This decision, in particular, convinced the African states that they could not rely on the ICOJ as its decisions were based on precedents over which they had had no say and which were prejudicial to African interests. As a result, in the International Convention on the Elimination of All Forms of Racial Discrimination, in their letters of ratification, six African states reserved their position on Article 22 which stipulated arbitration by the ICOJ.[105]

In disgust at the ICOJ decision, the African states immediately secured adoption of a UNGA resolution declaring that, as South Africa had disavowed its mandate and, in any event, its administrative conduct was contrary to the UDHR, its mandate was terminated. South West Africa was now to be the

102 UNGA 4/338 6 December 1949 and 5/449 13 December 1950.

103 UNGA 8/749 28 November 1953 and 16/1702 and 1704 19 December 1961.

104 The advisory opinions of the International Court of Justice are available at https://www.icj-cij.org/decisions, last accessed 13 March 2023.

105 The six African states were Egypt, Libya, Madagascar, Morocco, Mozambique and Rwanda; see UN Treaty Collection https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en, last accessed 13 March 2023 (reference from C. Heyns, *Human Rights Law in Africa: Vol. 1* (The Hague, 1996), 51).

direct responsibility of the UN. To carry out that responsibility, the UNGA established the Ad hoc Committee on South West Africa, to advise on how the country might best be administered. On the advice of that committee, in 1967 a UN Council for South West Africa was set up and a Commissioner for South West Africa appointed. The following year the UNGA also changed the name of the territory to Namibia and recognised the South West Africa People's Organisation (SWAPO) as the legitimate representative of the Namibian people with UN observer status. In 1971, at the further instigation of a 1970 Security Council resolution, the ICOJ would rule that the continued presence of South Africa in Namibia was illegal.[106] Yet, despite consistent opposition at the UN to its continued occupation, South Africa still declined to accept the ruling and no military force was ever applied against its illegal occupation. It was only in 1990 that South Africa finally conceded defeat and Namibia became independent.[107]

At the centre of the African states' campaign though was apartheid. Ferguson, for example, estimated that: 'From 1946 to 1978 in the General Assembly alone, there have been more than 400 resolutions concerning the racial policy of South Africa.' Another estimate by Stultz identified that: 'From 1946 through 1984 … the General Assembly passed no fewer than 215 resolutions dealing principally, or exclusively, with South Africa, not including the very many others that referred to South African race relations in passing or in some more general context.' A South African survey also found that, in 1973 alone, 'fully 12 per cent of *all* resolutions adopted by the General Assembly contained attacks on South Africa in one form or another'.[108] As Amate therefore noted: 'Debates at the UN

106 UNGA 21/2145 17 November 1966, Fifth UNGA Special Session Resolution 2248 19 May 1967 and 22/2372 12 June 1968 and UN Security Council Resolution 284 29 July 1970

107 For greater detail on the Namibia issue, see B. O'Linn, *Namibia: The Sacred Trust of Civilization, Ideal and Reality* (Windhoek, 2003), G.M. Rocha, *In Search of Namibian Independence: The Limitations of the United Nations* (Boulder, 1984), I.E. Sagay, *The Legal Aspects of the Namibian Dispute* (Ife, 1975), T.O. Elias, *Africa and the Development of International Law*, 88–106, S. Slonim, *South West Africa and the United Nations: An International Mandate in Dispute* (London, 1973), A.J. Pollock, 'The South West Africa Cases and the Jurisprudence of International Law', *International Organization,* 23/4 (1969), 767–787, V.J. Belfiglio, 'The Issue of Namibian Independence', *African Affairs,* 78/313 (1979), 507–522 and G.J. McDougall, 'International Law, Human Rights, and Namibian Independence', *Human Rights Quarterly,* 8/3 (1986), 443–470.

108 C.C. Ferguson, 'The United States, the United Nations and the Struggle against Racial Apartheid', N.K. Henever (ed.), *The Dynamics of Human Rights in U.S. Foreign Policy* (New Brunswick, 1981), 203–214, N.M. Stultz, 'Evolution of the United Nations Anti-apartheid Regime', *Human Rights Quarterly,* 13/1 (1991), 1–23 and South African Institute of Race Relations, *A Survey of Race Relations in South Africa 1974* (Johannesburg, 1975), 118 (reference from N.M. Stultz, 'The Apartheid Issue

soon became dominated by African issues sometimes taking up as much as two-thirds of the time of the General Assembly … The *apartheid* issue was given a prominence and priority unprecedented in the history of the UN.'[109]

The 1960 admission into the UN of the African states apart, the transforming moment in the anti-apartheid campaign came in March 1960 when at Sharpeville, a black township, white policemen fired into a crowd killing an estimated seventy and wounding a further 180 Africans.[110] The immediate response was a Security Council resolution deploring South Africa's apartheid policies. A further resolution authorising sanctions against South Africa was also included on the agenda of the UN's Special Political Committee, though it would only be debated in 1961. It was justified by the need for 'appropriate recommendations designed to secure adherence to the provisions of the Charter as well as to the Universal Declaration of Human Rights'. While it was approved by a majority, the section on sanctions failed to achieve the necessary two-thirds majority and the resolution was therefore withdrawn and a more anodyne resolution submitted in its place. One small victory though was the change of heart of the UK. During the Special Political Committee debate, the UK declared that: 'While the importance attached by the United Kingdom to Article 2, paragraph 7 … remained undiminished, it regarded apartheid as being now so exceptional as to be *sui generis*.' As a result, the UK would consider resolutions against South Africa on their merits. However, with great foresight, it also observed that, at present, the policies of the South African government did not endanger international peace and security and that: 'There was some danger that such phrases might become a kind of standard incantation introduced, almost as a matter of routine, into General Assembly resolutions.'[111]

Later in 1961 the African states would make a further failed attempt to obtain UNGA approval for sanctions against South Africa, this time also calling for South Africa's expulsion from the UN. It was only in 1962 in a third resolution that the requisite majority was finally reached. The resolution called on member states to adopt sanctions against South Africa and requested the Security

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at the General Assembly: Stalemate or Gathering Storm?' *African Affairs,* 86/342 (1987), 25–26).

109 C.O.C. Amate, *Inside the OAU*, 378, 395.

110 T. Lodge, *Sharpeville: An Apartheid Massacre and its Consequences* (London, 2011) and *Black Politics in South Africa since 1945* (Johannesburg, 1983), 201–230.

111 UN Security Council Resolution 134 1 April 1960, UN A/4419 21 July 1960 (The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa), 4, *Yearbook of the United Nations 1960,* 142–152, UN A/4728 12 April 1961 (The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa: Report of the Special Political Committee), UN A/SPC/SR.242 5 April 1961, 76–77 and UNGA 15/1598 13 April 1961.

Council 'to take appropriate measures, including sanctions'. It also set up a Special Committee on the Policies of Apartheid of the Government of South Africa which, in 1966, in an indication of the priority the African states were able to impose, was supplemented, in a further UNGA resolution, by the appointment of a special unit on apartheid within the UN Secretariat whose purpose was to liaise with the Special Committee on Apartheid.[112]

Notwithstanding the 1962 UNGA resolution, the Western permanent members of the Security Council nevertheless showed no inclination to support sanctions. As a result, in 1963 and 1964, while the Security Council was prepared to call on all member states not to provide arms to South Africa, it would refuse African demands for more substantial sanctions. It was, however, prepared to appoint an expert committee to advise on measures that might be taken.[113]

By the early 1970s a flood of UNGA resolutions continued to exhort member states to impose sanctions. Other measures adopted by the UNGA included the 1963 Declaration and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, which came into force in January 1969, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, which came into force in July 1976, and the nomination of the year from 21 March 1978 as International Anti-apartheid Year. (Although the bar for triggering the 1965 and 1973 conventions was remarkably low, they only came into force as a result of their ratification by a predominant majority of non-African states – the African states shouted loudly but were backward in coming forward with ratifications.)[114]

As it was clear that the US, the UK and France would continue to veto a trade embargo, indeed they and other UN member states, not least several African states, were still trading with South Africa, the African states turned their focus towards a broader-based campaign across all UN and multilateral agencies with a view to expelling South Africa from the world community. The African view was summed up in a 1974 UNGA resolution recommending that 'the South African regime should be totally excluded from participation in all international organizations and conferences under the auspices of the United Nations so long as it continues to practice apartheid and fails to abide by United Nations resolutions concerning Namibia and Southern Rhodesia'.[115]

112 UNGA 17/1761 6 November 1962 and 21/2144 26 October 1966.

113 UN Security Council Resolutions 181 7 August 1963, 182 4 December 1963 and 191 18 June 1964 and UN S/6210 2 March 1965 (Report of Expert Committee); see also L. Taapopi/T.A. Keenleyside, 'The West and Southern Africa: Economic Involvement and Support for Liberation 1960–1974', *Canadian Journal of African Studies,* 13/3 (1980), 347–370.

114 UNGA 18/1904 20 November 1963, 20/2106 21 December 1965, 28/3068 30 November 1973 and 32/105 14 December 1977.

115 UNGA 29/3324 16 December 1974; see also R.B. Ballinger, 'UN Action on Human

One of the first multilateral agencies in which action was taken was the International Labour Organization (ILO). At its annual conference from 1959 to 1962 the South African delegation's credentials were challenged and already in 1960 South Africa was forced to decline an invitation to a regional conference in Lagos. In 1961, South Africa's racial policies were condemned and the point made that its membership was therefore 'not consistent with the aims and purposes of the Organization' and the ILO's Governing Body was accordingly requested to advise South Africa to withdraw. As the ILO constitution had no provision for expulsion, the ILO's Governing Body was only able to pass on the conference resolution without comment to South Africa which responded by declaring that it had no intention of withdrawing.

Matters came to a head at the 1963 annual conference when the South African delegate's right to speak was challenged. Although the ILO's Legal Officer and Secretariat explained that there were no grounds on which his right to speak could be opposed, the African and Arab states walked out and the conference's Nigerian Chairman resigned. Negotiations failed to move the Director-General from the principle that attendance was a constitutional right of membership though he accepted that in regional meetings South Africa's credentials might be rejected. However, when, in February 1964, the ILO began moves to amend its constitution to allow for suspension or expulsion, South Africa decided the time had finally come to withdraw. Nonetheless, the 1964 ILO conference still adopted constitutional amendments authorising the ILO to expel or suspend any member so treated by the UN or suspend any member found by the UN 'to be flagrantly and persistently pursuing in its legislation a declared policy of racial discrimination such as apartheid'. It also adopted by acclamation a 'Declaration concerning the Policy of "Apartheid" of the Republic of South Africa'. Typically, the amendments never came into effect because of insufficient ratifications.[116]

Within the Food and Agriculture Organization (FAO) the steps to expel South Africa followed much the same pattern. In early 1963, with the support

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Rights in South Africa', E. Luard (ed.), *International Protection of Human Rights* (London, 1967), 258–259.

116 CRO to UKM NY and Geneva Z. No. 60 Saving 'International Labour Organisation and South Africa' 29 December 1964, NA DO 181/161 (see also NA FO 371/161059), A.E. Alcock, *History of the International Labour Organisation* (London, 1971), 316–337, R. Higgins/T. Parfitt, 'Notes of the Month', *The World Today,* 19/12 (1963), 507–510, R.E. Bissell, *Apartheid and International Organizations* (Boulder, 1977), 50–52, 80–84, 88–90 and L.B. Sohn, 'Expulsion or Forced Withdrawal from an International Organization', 1412–1416. The Resolutions, Declaration on apartheid and proposed constitutional amendments are available on the ILO website https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_441871.pdf, last accessed 13 March 2023.

of the Director-General, an FAO African Regional Conference determined that South Africa should not be invited. It was followed by a constitutional amendment, proposed by Ghana, which would have allowed for expulsion on a two-thirds majority vote. Although Ghana's amendment failed to obtain a two-thirds majority, the decision to exclude South Africa from African regional events was reiterated and African states also decided that they would walk out whenever a South African or Portuguese delegate spoke. As a result, South Africa decided that, because of 'political victimisation', no purpose was served by continued membership and it withdrew in 1964.[117]

At the World Health Organization (WHO), South African participation was challenged in 1962 when Senegal refused a visa to the South African representative for an African Regional WHO conference. As a result, from 1962 to 1964 all African regional conferences were held in Geneva. Although the May 1963 WHO Assembly had only reluctantly accepted the legality of Senegal's refusal, by March 1964 the African states began to press the Executive Board to draw up constitutional amendments allowing for the expulsion of members violating WHO principles, in particular a health policy based on racial discrimination. This time, however, South Africa did not withdraw, possibly because the Executive Board could not agree on the necessary changes. The problem was therefore passed to the 1965 WHO Assembly which adopted an amendment to Article 7 of the WHO constitution providing that: 'If a Member ignores the humanitarian principles and the objectives laid down in the Constitution, by deliberately practising a policy of racial discrimination, the Health Assembly may suspend it or exclude it from the World Health Organization.' However, again, as of 1985, sufficient ratifications to meet the two-thirds threshold had not been received.[118]

At an operational level, though, the African states continued to oppose South Africa's apartheid policy. In 1975 and 1983 they encouraged the WHO to publish studies that identified apartheid as a prejudicial factor in the health of the black majority in South Africa. Alongside these studies, the WHO Assembly also adopted resolutions granting financial support to the liberation movements in

117 R.E. Bissell, *Apartheid and International Organizations*, 87–88, South African Institute of Race Relations, *A Survey of Race Relations in South Africa 1964* (Johannesburg, 1965), 128 and E.K. Kouassi, 'The OAU and International Law', 56.

118 'South Africa's attitude towards the WHO: Statement made by DR. the Hon. H.F. Verwoerd on the 26th March, 1964, NA FCO 371/178318, Official Records of the World Health Organization No. 143 *Eighteenth World Health Assembly, Geneva, 4–21 May 1965, Part I: Resolutions and Decisions, Annexes* (Geneva, 1965), 32–33, 136–145 (Annexes 13 and 14) and R.E. Bissell, *Apartheid and International Organizations*, 84–86, 90–92, 122; see also WHO, *Handbook of Resolutions and Decisions of the World Health Assembly and the Executive Board Vol. 1: 1948–1972* (Geneva, 1973).

Southern Africa. In support of the increasing campaign for a new international economic order (see page 630 below), in 1979, the WHO was also prevailed upon to produce a discussion paper, 'Health and the New International Economic Order'.[119]

The expulsion of South Africa was also pursued at the 1964 Vienna Universal Postal Union (UPU) Congress. At its opening a number of delegates adopted an informal 'declaration' asserting the expulsion of South Africa on the basis that its delegates represented a minority regime. After confusion over the legal standing of this 'declaration', a formal vote resolved that there was no legal basis for South Africa's removal or expulsion. Further resolutions expelling or excluding South Africa were attempted in 1969 and 1974 but it was only in 1979 that they seemed finally to have succeeded. However, in 1981, that decision too was reversed and South Africa reinstated on the basis that membership was the entitlement of all UN members.[120]

Action was also taken at the chaotic 1964 African Regional Conference of the International Telecommunications Union (ITU) which was held in Geneva as the African states had refused to provide an entry visa to a South African delegate. An Algerian resolution to expel South Africa and Portugal was adopted but, when both delegations refused to leave, the conference descended into farce as, in turn, the African and Asian and the Western delegations walked out in protest. Finally the UN Secretariat staff walked out as they were unwilling to support a conference acting contrary to the ITU's constitution, which allowed for neither expulsion nor suspension, and the meeting was forced to adjourn indefinitely.

The question was therefore left to the 1965 ITU Montreux Plenipotentiary Conference. It was initially resolved that the conference did not have the authority to vote on a resolution proposing South Africa's exclusion. However, the legal basis of that determination was disputed and the US therefore put forward a new resolution to settle the matter. This time it was determined that the conference was after all competent to vote on this issue with the result that two resolutions

119 WHO, 'Health Implications of Apartheid', Preliminary study by the Director-General, Executive Board Provisional agenda item 7.1.1 EB55/39Add.l 8 January 1975, WHO, *Apartheid and Health* (Geneva, 1983) and WHO TDs/NIEO/7 9.1 'Health and the New International Economic Order', August 1979.

120 H.G. Schermers, 'Some Constitutional Notes on the Fifteenth Congress of the Universal Postal Union', *International and Comparative Law Quarterly,* 14/2 (1965), 637, Universal Postal Union, *Documents of the 1969 Tokyo Congress* (London, 1973), 132–133 (resolutions 1024 and 1025) and *Documents of the 1974 Lausanne Congress* (Berne, 1975–76), 892–894 (Proposal 0033), South African Institute of Race Relations, *A Survey of Race Relations in South Africa 1964*, 132–133, J.C. Heunis, *United Nations versus South Africa: A Legal Assessment of United Nations and United Nations Related Activities in Respect of South Africa* (Johannesburg, 1986), 480–483 and R.E. Bissell, *Apartheid and International Organizations,* 93–94.

resolving that South Africa should be excluded from all African regional conferences and the Plenipotentiary Conference were adopted. A further resolution condemned Portugal, but not to the extent of exclusion from ITU conferences.

At the next Plenipotentiary Conference in Malaga-Torremolinos in 1973, further resolutions were adopted this time seeking to exclude both Portugal and South Africa 'from the Plenipotentiary Conference and from all other conferences and meetings of the ITU' and declaring that they were no longer entitled to represent African territories within the ITU and that liberation movements recognised by the UN should be entitled to attend in their place as observers. In support of this resolution the CAR delegate expressed his state's deep respect for the principle of legality but noted that the UN Charter entailed a commitment to human rights and self-determination which both South Africa and Portugal were violating and 'we are convinced that the law of our Organization must be a forward-looking law and not one that defends retrogressive trends going against the current of history and arousing universal reprobation'. The protest by the Western states that such action was contrary to the ITU's constitution and that the question ought to be referred to the ICOJ were unsuccessful in the face of a determined majority.[121]

At UNESCO's 1954 General Conference, South Africa announced its withdrawal 'having regard to the general criticism of the activities of the Organization … and also the interference in South Africa's racial problems by means of Unesco publications'. To no avail, South Africa had argued that such criticisms were contrary to Article 1 of UNESCO's constitution which laid down that 'the Organization is prohibited from intervening in matters which are essentially within (states') domestic jurisdiction'. Nonetheless, notwithstanding its withdrawal, with the entry of the African states, criticism of apartheid was escalated. A resolution at the 1960 General Conference declared that 'colonialism in all its

121 Resolutions 44–46, *ITU: Final Protocol to the Convention, Additional Protocols to the Convention, Resolutions, Recommendation and Opinions, Montreux 1965,* 227–230, Resolutions 29–31, *ITU: Final Protocol, Additional Protocols, Resolutions, Recommendation and Opinions, Malaga-Torremolinos 1973*, 228–231, Resolutions 4 and 14, *ITU: Final Protocol, Additional Protocols, Optional Additional Protocol, Resolutions, Recommendation and Opinions, Nairobi* 1982, 230–231, 243–244, *The Morning Electron: The Daily Newspaper of the Plenipotentiary Conference* 4–6 20–22 September 1965, Report by the Administrative Council to the Plenpotentiary Conference Montreux 1965, 128–129, ITU Documents Nos 148-E, 151-E, 155-E, 156-E, 157-E and 158-E 27–29 September, 1965, Minutes of the Second to Seventh Plenary Meeting, 17–21 September 1965, ITU, Document No. 158-E 5 October 1973, Minutes of the Ninth Plenary Meeting, Wednesday, 26 September 1973, R.E. Bissell, *Apartheid and International Organizations*, 122–124, South African Institute of Race Relations, *A Survey of Race Relations in South Africa 1964*, 133–134 and E.K. Kouassi, 'The OAU and International Law', 55–56. ITU documents can be referenced from http://www.itu.int/en/history/Pages/PlenipotentiaryConferences.aspx?conf=4.10, last accessed 23 March 2023.

forms and all its manifestations must be speedily abolished' and that UNESCO 'has a vital part to play in promoting the freedom and independence of colonial countries and peoples'. Its Secretary-General was therefore instructed to give the promotion of freedom and independence an 'increasingly prominent place' in UNESCO's activities.[122]

This instruction would be taken up with considerable energy by sponsorship of numerous anti-apartheid conferences and seminars, notably the 1978 World Conference to Combat Racism and Racial Discrimination. Alongside such substantial funding, in 1966 the General Conference also resolved to withdraw assistance from South Africa, Portugal and Southern Rhodesia, in line with the 1965 UNGA resolution requesting UN agencies to withdraw all economic and technical support, and to support the UNESCO Executive Board's decision to put Portugal's application for membership on hold pending a review of education in Portugal's colonial territories in Africa and, against the advice of its Legal Counsel, to reject Portugal's contention that this decision should be referred to the ICOJ for arbitration.[123]

In sport, action against South Africa was similarly a matter of majority voting. After 1961 South Africa was excluded from the Commonwealth Games and as of 1964 from the Olympic Games. Individual sports associations also took action; the world football body, FIFA, for example, banned South Africa in 1961 only to withdraw the ban in 1963 and then re-impose it in 1964 as the Asian and African bloc asserted itself.[124] Such measures were stimulated by regular resolutions in

122 Article 1, UNESCO Constitution 1945 (reference from S.R. Davis, 'Documentary Study of the Politicization of UNESCO', *Bulletin of the American Academy of Arts and Sciences,* 29/3 (1975), 12–13), UNESCO 42 EX/43 9 November 1955, (Report by the Director-General of the activities of the organization March–November 1955), 1–2 and Resolution 8.2 adopted 12 December 1960, *Records of the General Conference, Eleventh Session: Resolutions* (Paris, 1960), 74–75.

123 UNGA 20/2105 20 December 1965, Resolutions 11 and 20 adopted 28 November 1966, *Records of the General Conference, Fourteenth Session: Resolutions (*Paris, 1966), 94–96, 106, Resolution 8 adopted 7 November 1970, *Records of the General Conference, Sixteenth Session: Resolutions* (Paris, 1970), 79–82, UNESCO 14C/34 22 July 1966 (Correspondence and papers in respect of Portugal), D.G. Partan, *Documentary Study of the Politicization of UNESCO* (Cambridge, 1975), 113–148, S. Dutt, *The Politicization of the United Nations Specialized Agencies: A Case Study of UNESCO* (Lewiston, 1995), S.R. Davis, 'Documentary Study of the Politicization of UNESCO', 13–15 and Notes, 'Expulsion, Suspension, Forced Withdrawal, and Forced Nonparticipation', *Digest of International Law,* 13 (1968), 246–247.

124 B. Kidd, 'The Campaign against Sport in South Africa', *International Journal,* 43/4 (1988), 644 (Table 1 South Africa's position in the Olympic federations), C. Korr/M. Close, *More than Just a Game: Football v Apartheid* (London, 2008), 54 and R.E. Lapchick, *The Politics of Race and International Sport: The Case of South Africa* (Westport, 1975).

the UNGA. In 1968, for example, a resolution requested 'all States and organizations to suspend cultural, educational, sporting and other exchanges with the racist regime and with organizations or institutions in South Africa which practice apartheid' and this was followed by further resolutions in 1971, 1975 and 1976 in support of an international sports boycott of South Africa. In 1977 the UNGA also adopted the 'International Declaration against *Apartheid* in Sports' and in 1985 the 'International Convention against Apartheid in Sports', which came into force in 1988.[125]

In the final analysis though, the campaign against South Africa in the UN would depend on the search for Quaison-Sackey's 'minor apertures in the wall of the Charter'.

At some point, it was identified that, if apartheid were deemed a threat to international peace and security, the UN Security Council could override Article 2.7 and take action under Chapter VII which allowed for armed intervention or economic and political sanctions. A threat to international peace and security might also justify expulsion from the UN under Article 6. Ironically, in 1946 the 'nuclear' CHR had proposed to ECOSOC that the CHR 'might aid the Security Council in the task entrusted to it by Article 39 of the Charter by pointing to cases where violation of human rights may constitute a threat to the peace'. As this would have compromised the discretion reserved to the permanent members of the Security Council, the CHR's generous offer was declined. But for this refusal, it would undoubtedly have provided a basis on which South Africa and Portugal could have been expelled.[126]

Unfortunately, what constituted a 'threat to international peace and security' was essentially a political question which could not be answered by majority vote in the UNGA, only by the permanent members of the Security Council. The high point of this aperture was therefore the 1977 Security Council resolution which banned the sale of arms to South Africa but only on the basis that it was the acquisition of arms rather than apartheid that constituted the threat to the maintenance of international peace and security.[127]

Another possible aperture was the authority delegated to the Security Council to take action in response to an 'act of aggression'. As it proved impossible to agree what this entailed at the time the UN Charter was negotiated, it was left, effectively, for the Security Council to define it on a case-by-case basis until agreement on a formal definition could be reached. Formal agreement

125 UNGA 23/2396 2 December 1968, 26/2775 29 November 1971, 30/3411 28 November 1975, 31/6 9 November 1976, 32/105, 14 December 1977, 36/172 17 December 1981 and 40/64 10 December 1985.

126 UN E/38/Rev.1 21 May 1946 (Report of the Commission on Human Rights to the 2nd Session of the Economic and Social Council (Revised)), 5 (reference from W. Korey, 'The Key to Human Rights Implementation', 30).

127 UN Security Council Resolution 418 4 November 1977.

continued to elude the UN for many years with the result that discussions were suspended in 1957 pending entry into the UN of the African states.[128] As soon as the African states became involved, the definition began to be looked at in quite a different light and with a new momentum reflecting African priorities. Those priorities were notably highlighted when, in defence of Indian action against Portugal in Goa, India's representative, Menon, declared that: 'Colonialism is permanent aggression.' If colonialism was aggression, it followed that any action taken against colonialism and apartheid could be justified as self-defence.[129]

Nonetheless, it still took another seven years from 1967 to 1974 for the fourth Special Committee on the Question of Defining Aggression to recommend a definition. This definition, in both the Preamble and specifically Article 7, made clear that aggression included any measures that might 'prejudice the right to self-determination, freedom and independence'; conversely, actions in support of self-determination by, for example, the liberation movements, would fall outside of the definition, as justifiable self-defence. Indeed, it went even further in that liberation movements were permitted to 'seek and receive support'. It was a remarkable reinterpretation of the UN Charter and UDHR's accommodation of colonialism and another victory for African revanchism and evidence of its sway over the UN system.[130]

In the event, though, the end game came from quite another 'aperture' and was remarkably simple. Article 6 provided that: 'A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.' Although this provision had been accepted by the San Francisco Conference, the idea of expulsion had proved contentious and therefore to be successful it required both a recommendation

128 47th Meeting US Delegation 19 May 1945, *FRUS 1945 Vol.I General: The United Nations*, 808 and UNGA 12/1181 29 November 1957; see also Department of State, *Charter of the United Nations: Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State* 26 June 1945, 91–92.

129 The quotation from Menon is attributed to press briefings as reported by A.A. Mazrui, 'The United Nations and Some African Political Attitudes', *International Organization,* 18/3 (1964), 505–506 and R.P. Anand, 'Attitude of the Asian-African States toward Certain Problems of International Law', *International and Comparative Law Quarterly,* 15/1 (1966), 65.

130 UNGA 22/2330 18 December 1967 and 29/3314 14 December 1974 and Report of the Special Committee on the Question of Defining Aggression 11 March – 12 April 1974, GAOR 29th Session Supplement No. 19 UN A/9619 (reference from V. Cassin/ W. Debevoise/H. Kailes/T.W. Thompson, 'The Definition of Aggression', *Harvard International Law Journal,* 16/3 (1975), 589–613); see also E. Wilmshurst, 'Definition of Aggression', http://legal.un.org/avl/pdf/ha/da/da_e.pdf, last accessed 11 February 2016.

from the Security Council and approval by a two-thirds majority of the UNGA. In practice, such a step was unlikely to ever be successful.[131]

Nonetheless, for the African states, this was merely another hurdle erected by the post-war settlement which had to be overcome. Already in November 1962, when the resolution on the Special Committee on the Policies of Apartheid of the Government of South Africa was debated, there had been rumblings about expelling South Africa. A more concrete discussion was had the following year when objections to South Africa were raised in the UN's Credentials Committee by Algeria and Liberia, but were voted down. A further attempt in the Credentials Committee was made in December 1965 and when this too failed it was taken up again when the Credentials Committee's report came before the UNGA. Against considerable opposition and the threat of South Africa's withdrawal from the UN, the report was however approved but a threatening tone was added by an amendment noting that approval signified no more than, for the present, the UNGA had decided not to take a decision on South Africa's credentials.[132]

For a few years there was an uneasy peace but from 1970 on hostilities resumed as under African pressure the UNGA became more determined to oppose the Credentials Committee. During the debate, the UN Legal Counsel advised that, unless there was a dispute over rival claimants, refusal to accept credentials for the sole purpose of excluding a member state was contrary to the UN Charter. Accordingly, Hambro (Norway), UNGA President, ruled that such a resolution would not be sufficient to exclude South Africa.[133] Possibly to counter that argument, a 1973 UNGA resolution looked to establish

131 Meetings of Committee I/2/27 Document 441 19 May 1945 (Presidents of Commission 1 and 2 agree that withdrawal/suspension should be discussed), I/2/30 Document 501 23 May 1945 (Drafting Sub-Commission established), I/2/33 Document 529 23 May 1945 (Report of Sub-Commission), I/2 37 and 37(1) Documents 581–582 24–25 May 1945 (Support for expulsion fails to reach two-thirds threshold), I/2/62 Document 941 13 June 1945 and I/2/78 Document 1087 18 June 1945 (Re-vote on inclusion of suspension provision), *UNCIO Vol. 7*, 70, 73, 86–88, 99–101, 193–196, 277–281; see also R.B. Russell/J.E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945*, 350–355 and Department of State, *Charter of the United Nations: Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State* 26 June 1945, 49–50.

132 UN A/PV. 1210 20 September 1963, UN A/5676 14 December 1963 (Report of the Credentials Committee), UN A/6208 20 December 1965 (Report of the Credentials Committee), UNGA 20/2113 21 December 1965 and A/PV.1407 21 December 1965, 9–16.

133 UN A/8142 28 October 1970 (Report of Credentials Committee), UN A/8160 11 November 1970 (Statement of UN Legal Counsel) and UNGA 25/2636 13 December 1970.

counter-claimants. It declared that 'the South African regime has no right to represent the people of South Africa' and that the liberation movements recognised by the OAU were the authentic representatives of the African people.[134]

The next step, in September 1974, was therefore for the Credentials Committee itself to accept the argument put forward by Senegal that the South African delegation had been appointed by a government that was 'the product of racial criteria and represented only a very small fraction of South Africa's population' and that the credentials of South Africa's delegation should therefore be refused.[135] It did so and the refusal was thereupon gratefully seized on by the UNGA but failed by virtue of the veto in the Security Council from France, the UK and the US.[136]

However, the question was then re-opened at the UNGA by the Tanzanian representative who sought a ruling from UNGA President Bouteflika (Algeria) as to the significance of the Security Council's vote. Bouteflika ruled that although the question of membership of the UN was initially a matter for the Security Council, it would be a betrayal of the UNGA's consistent rejection of South Africa to permit their participation in the work of the UNGA. His ruling was at once challenged by the US but upheld by a large majority. Thereafter, notwithstanding the appointment as UNGA President of representatives of member states who had voted against Bouteflika's ruling, his ruling was never reversed even when, in 1979, South Africa attempted to speak in the UNGA on Namibia. Once again, African revanchism had found an aperture in the UN Charter.[137]

Development

As African political leaders understood only too well, they were in desperate need of development assistance. It may be recalled that, for the French colonial territories, in 1958 the question of independence could not be answered in isolation from the question of whether France would continue to support those territories opting for independence. Although, by comparison, African

134 UNGA 28/3151 14 December 1973.

135 UN A/9779 28 September 1974 (Report of Credentials Committee), 2–3

136 UN A/9779 28 September 1974 (Report of Credentials Committee), 4, UNGA 29/3206 and 3207 30 September 1974 and UN S/PV.1808 30 October 1974 (Security Council vote).

137 UN A/PV.2281 12 Nov 1974; see also L.B. Sohn, 'Expulsion or Forced Withdrawal from an International Organization', 1397–1401, N.M. Stultz, 'Evolution of the United Nations Anti-Apartheid Regime', 17–19, A. Abbott/F. Augusti/P. Brown/E. Rode, 'The General Assembly, 29th Session: The Decredentialization of South Africa', *Harvard International Law Journal*, 16/3 (1975), 576–588, J.C. Heunis, *United Nations versus South Africa: A Legal Assessment of United Nations and United Nations Related Activities in Respect of South Africa*, 189–250 and *Yearbook of the United Nations 1974*, 106–118.

political leaders in the British colonial territories placed a far higher premium on independence than development, nonetheless, they too grasped the extent of the economic problems for which they themselves would shortly have to carry political responsibility. The point was made by Nyerere in his first broadcast upon taking office as Chief Minister in 1960: 'A hungry people cannot be really free for freedom to starve is a mockery of freedom.' It was a theme to which he would continually return: 'Freedom and development are as completely linked together as are chicken and eggs! … without freedom you get no development, and without development you very soon lose your freedom.' Liberation, he argued, was a four-stage process in which freedom from external economic domination and freedom from poverty were the second and third stages.[138]

By 1961, in his maiden speech to the UNGA, President Senghor made essentially the same point:

> It is obvious that nominal independence has no meaning … unless it is supplemented by economic independence … Legal independence without economic independence is but a new form of dependency … It is the duty of the United Nations, if it desires to maintain peace and secure real decolonization, to organise economic aid from the developed to the underdeveloped States.[139]

As the question of development had already been discussed at the 1955 Asian-African Conference, and its importance recognised by its positioning as the first item of the conference's *Final Communiqué*,[140] it was only to be expected that it would also be discussed at the 1963 Addis Ababa Conference.[141]

The conference speeches testify to a widespread appreciation of Africa's economic position and, for most, a realistic recognition that assistance from

138 Text of Chief Minister's Nationwide Broadcast Saturday 3, 1960, NA CO 822/2044, Paper published by President Nyerere distributed to TANU National Executive Committee meeting 16 October 1968, J.K. Nyerere, *Freedom and development: A Selection from Writings and Speeches 1968–1973* (Dar es Salaam), 1973), 58 and Pamphlet (no other details given), 'The Process of Liberation, Address given by President Julius K. Nyerere to the Convocation of Ibadan University, Nigeria 17 November 1976', Judith Hart Papers 2/61, Labour History Archive and Study Centre, People's History Museum, Manchester.

139 UN A/PV.1045 31 October 1961, 540.

140 Permanent Mission of the Republic of Indonesia to the United Nations, *The Final Communiqué of the Asian-African Conference Press Release* 24 April 1955, 'A: Economic Cooperation'.

141 OAU *Proceedings of the Summit Conference of Independent African States, Addis Ababa, May 1963 Vol. 1, Section 1,* Agenda proposals Confidential Agenda /Conf/1–13 12–16 May 1963 and Confidential Agenda/12 17 May 1963 (Agenda of the Preparatory Conference of Foreign Ministers) and *Section 2* SUMMIT/CIAS/GEN/INF/1 22 May 1963 (Agenda for the Summit Conference of African Unity).

the developed world was an integral part of any possible remedy. For example, the King of Burundi regretted that 'we have need of technical assistance which can come to us only from the advanced states'. President Bourguiba, too, noted: 'Co-operation with the industrialized countries … is not only desirable but inevitable … fear of a revival of colonialism … can be justified from the sentimental point of view … But … is unrealistic (it) might well keep newly liberated countries in a state of … prolonged dependence.' However, as President Bourguiba suggested, there was also an equal concern that economic assistance brought in its train neo-colonialism. Prime Minister Balewa, for example, pointed out that: 'We have not the necessary capital … Therefore, we find it absolutely necessary to rely on outsiders … we must take every care … there is a fear … we may have colonialism in a different form.' This concern was most stridently expressed in President Nkrumah's conference speech: 'No independent African State today by itself has a chance to follow an independent course of economic development, and many of us who have tried … have had to return to the fold of the former colonial rulers.' If the OAU was to operate as an offensive shield against neo-colonialism, it was necessary, President Nkrumah argued, that African unity should be solid and profound.

Without expressing support for his vision of African unity, several heads of state therefore acknowledged the important role that the OAU might play as a bulwark against the economic neo-colonialism outlined by President Nkrumah. President Bourguiba, for example, envisaged that the aim of the OAU was 'to complete the decolonization of the continent … To mobilize all material and moral resources … to combat underdevelopment … To set the seal on the political and economic emancipation of Africa'; Prime Minister Obote explained that 'we have gathered here to … advance … the revolt against foreign rule and economic and social domination'; while President Ahidjo talked of 'the economic liberation of the developing countries'; and President Tombalbaye reflected that: 'The reconversion of present economic structures … is the sine qua non of our self-assertion in the world.'[142]

These sentiments would find a place in the OAU Charter. The Preamble, for example, asserted a 'responsibility to harness the natural and human resources of our continent for the total advancement of our peoples' and a determination 'to fight against neo-colonialism in all its forms'; and Article II of the need 'to coordinate and intensify … cooperation and efforts to achieve a better life for the peoples of Africa' and 'to eradicate all forms of colonialism from Africa'. These would also be reflected in two conference resolutions. The resolution 'Areas of cooperation in economic problems' encouraged cooperation within

142 OAU SUMMIT CIAS/GEN/INF/16, 3, SUMMIT CIAS/GEN/INF/8, 3, SUMMIT CIAS/GEN/INF/35, 4, SUMMIT CIAS/GEN/INF/36, 10, SUMMIT CIAS/GEN/INF/8, 1, SUMMIT CIAS/GEN/INF/15, 1, SUMMIT CIAS/GEN/INF/10, 7 and SUMMIT CIAS/GEN/INF/24, 2.

Africa and in negotiations with the consumer countries so as to improve the terms of international trade. A second resolution, 'Africa and the United Nations', recognised the significance of the UN as 'an important instrument … for the promotion of the economic and social advancement of all peoples'.[143]

One of the first areas of focus for the OAU was the ECA. Once all non-African states had been removed, the next step was to establish African authority over economic policy formulation by subordinating the ECA to the OAU. At its first meeting in December 1963 the OAU's Economic and Social Commission established the principles which should govern its relationship with the ECA: Firstly, the OAU should act as the policy-making body and the ECA confined to 'technical and advisory functions'; and secondly, allocations of development funding should be determined by the recipient states not the donor states and therefore the OAU should advise on allocation priorities.[144] In his opening address to a 1965 meeting of the ECA, President Kenyatta would therefore remind the delegates that 'the Commission must gear itself to African objectives, adopting practices and seeking solutions that meet the needs of Africa. The purpose of the awakening Africa must be to redress all the economic injustices of centuries past … we must never … permit ourselves to be harnessed to some foreign ideological system'.[145]

As the ECA was a UN body, the OAU had first to negotiate with the UN. In October 1965 therefore the African states sponsored a UNGA resolution requesting the UN Secretary-General to explore 'the means of promoting co-operation' between the UN and OAU. This led in November 1965 to an initial agreement on a process of 'mutual consultation'.[146] However, anxious to establish full control, already at the February 1967 ECA Lagos meeting the idea was floated that the November 1965 agreement should be redrafted so as to establish

143 OAU SUMMIT CIAS/Plen.2/Rev.2 Resolutions C: Africa and the United Nations and E: Areas of cooperation in economic problems.

144 OAU Document ECOS/17/RES/3(I), 13 December 1963, quoted by I. Wallerstein, 'The Early Years of the OAU: The Search for Organizational Preeminence', *International Organization,* 20/4 (1966), 778–780.

145 'Opening Speech to ECA, 9 February 1965, Nairobi, J. Kenyatta, *Suffering without Bitterness*, 267, J.S. Magee, 'ECA and the Paradox of African Cooperation', *International Conciliation,* 580 (1970), 32–34 and I. Wallerstein, 'The Early Years of the OAU: The Search for Organizational Preeminence', 778–780; for a biography of Gardiner, see M. Sherwood, 'Robert Kweku Atta Gardiner (1914–1994): An Unrecognised Ghanaian Pan-Africanist Par-Excellence', *Contemporary Journal of African Studies,* 2/1 (2014), 27–57.

146 UNGA 20/2011 11 October 1965 and UN A/6174 'Co-operation between the United Nations and the Organization of African Unity: Report of the Secretary-General, Annex (Agreement between the United Nations and the Organization of African Unity on co-operation between the latter and the United Nations Economic Commission for Africa) 12 December 1965.

clearly the ECA's subordination. Although the idea was set aside, because the ink was only just dry on the cooperation agreement, as the Foreign Office report on the meeting warned, the OAU would continue to bring pressure to bear on the ECA.[147] It was therefore only a matter of time before the OAU moved to complete its control over the ECA. That moment would not be long in coming. In February 1969 the ECA was finally forced to accept a resolution conceding that it should be 'constantly guided by decisions of the Assembly of Heads of State and Government of the OAU in economic and social matters'.[148]

However, the key question would be, how would the developing states manage to organise their protest against the post-war arrangements for international trade on the international stage? The Asian-African forum that had seemingly been initiated with so much promise at Bandung in 1955 had failed to generate any further momentum and finally fell by the wayside after the debacle of the failed 1965 conference at Algiers.[149] Such was the extent, though, of mutual self-interest, it was inevitable that other avenues of cooperation would be opened up.

The first such opening, the non-aligned movement (NAM), was initiated by President Tito (Yugoslavia) at a conference in Belgrade in 1961 with the backing of President Nasser who had hosted the preparatory conference in Cairo. Of the twenty-five states represented, eleven were African. As was standard practice, the conference concluded with a declaration encompassing the range of issues discussed and the resolutions that had been adopted. In the economic section, the developing countries were encouraged to come together 'to remove the economic imbalance inherited from colonialism and imperialism' and 'to demand just terms of trade'. It also proposed an international economic conference at which developing countries might discuss their common problems and 'the most effective measures to ensure the realization of their economic and social development'. The Declaration also insisted that 'recipient countries must be free to determine the use of the economic and technical assistance which they receive and to draw up their own plans and assign priorities'.[150] Importantly, the conference was followed up by a UNGA resolution inviting the UN Secretary-General to consult with member states with a view to convening a UN confer-

147 Powell-Jones 22 February 1967, NA FCO 61/436.

148 UN E/CN. 14/453, 140–141 Res/190 (IX) 10 February 1969 'Relations with the Organization of African Unity' (reference from Z. Cervenka, *The Unfinished Quest for Unity: Africa and the OAU*, 176–182).

149 R.A. Mortimer, *The Third World Coalition in International Politics*, 2nd updated edn (London, 1984), 20–22.

150 First Conference of Heads of State or Government of Non-Aligned Countries, Belgrade, September 1961: Declaration, O. Jankowitsch/K.P. Sauvant, *The Third World Without Superpowers: The Collected Documents of the Non-aligned Countries Vol. 1* (New York, 1978), 6.

ence 'on international trade problems relating especially to primary commodity markets' and a further resolution designating the 'current decade' as the UN Development Decade.[151]

The economic aspects of the Belgrade Declaration were also followed up by the 1962 Cairo Conference on the Problems of Economic Development which attracted a larger attendance of thirty-one states. Thirteen were African and, but for the split between the African blocs, it seems likely that more African states would have attended. The conference concluded with the Cairo Declaration of Developing Countries, which, once again, encouraged developing countries to come together and extended further support to the idea – now under active consideration at the UN – of an international conference on international trade.[152]

As negotiations for this conference began to take shape, seventeen developing states on the UN's Preparatory Committee set out their thoughts in a 'Joint Statement' which was annexed to a UNGA resolution welcoming progress on the conference. It had by then though metamorphosed into the 'Joint Declaration of the Developing Countries' on behalf of seventy-five developing countries, the first statement of what would become the Group of 77.[153] Shortly thereafter, in August 1962, agreement was reached 'to convene a United Nations Conference on Trade and Development' (UNCTAD).[154]

The most significant outcome of the 1964 UNCTAD Geneva conference was the formation of the Group of 77 which announced itself in its 'Joint Declaration of the Seventy-Seven Developing Countries'; thirty-two of the seventy-seven countries were African. It described UNCTAD 'as a significant step towards creating a new and just world economic order' and insisted that: 'The injustice and neglect of centuries need to be redressed.'[155] Importantly, too, the developing countries moved to consolidate the institutional arrangements for trade and development by establishing UNCTAD as 'an organ of the General Assembly' with an obligation to convene at intervals of no more than three years.[156]

151 UNGA 16/1707 and 1710 19 December 1961 (a Second United Nations Development Decade was declared as from 1971 by UNGA 25/2626 24 October 1970).

152 UN A/5162 16 August 1962 (Cairo Declaration).

153 UN E/3756 ESCOR 36th Session 1963 (Joint Statement of 17), quoted by A.G. Moss/H.N.M. Winton (eds), *A New International Economic Order: Selected Documents, 1945–1975* (New York, 1976), 11–17 and UNGA 18/1897 11 November 1963.

154 ECOSOC Resolution 917 (XXXIV) 3 August 1962, ESCOR 34th Session 1962, Supplement No. 1: Resolutions, E/3671, 7–8.

155 Joint Declaration of the Seventy-Seven Developing Countries 15 June 1964, website of the Group of 77 at the UN http://www.g77.org/doc/Joint%20Declaration.html, last accessed 7 March 2016 and K.P. Sauvant, *The Group of 77: Evolution, Structure, Organization* (New York, 1981) and 'The Early Days of the Group of 77', *UN Chronicle,* 51/1 (2014), 27–33 https://www.un.org/en/chronicle/article/early-days-group-77, last accessed 13 March 2023.

156 UNGA 19/1995 30 December 1964, D.A. Kay, *The New Nations in the United Nations,*

It now became the practice of the Group of 77 to hold Ministerial Meetings in advance of every UNCTAD meeting so as to coordinate policy. The First Ministerial Meeting was therefore held in 1967 in Algiers. As the host, President Boumédiène set the tone in his opening address: 'The principal confrontation in today's world is between imperialism and the Third World.'[157] The meeting also closed with a declaration, the Charter of Algiers, which observed that little progress been made since the 1964 UNCTAD meeting and that the disparities between the developed and undeveloped world had widened. It reiterated, echoing the Atlantic Charter, that: 'The international community has an obligation to rectify these unfavourable trends and to create conditions under which all nations can enjoy economic and social well-being, and have the means to develop their respective resources to enable their peoples to lead a life free from want and fear.' Alongside an analysis of the problems needing to be addressed, it also laid out a comprehensive 'Programme of Action' for both development assistance and a restructuring of the terms and basis of international trade.[158]

Further declarations would follow Ministerial Meetings in Lima (1971), Manila (1976) and Arusha (1979). They would all follow a broad pattern of a Declaration and Programme of Action. In view of the large African contingent at these meetings, the declarations would employ many phrases that featured widely in the major African political texts and declarations such as the OAU Charter and later the ACHPR. For example, at Manila it was argued that: 'International economic relations should be based on full respect for the principles of equality among States, and non-intervention in internal affairs, on respect for different economic and social systems and on the right of each State to exercise full and permanent sovereignty over its natural resources and all its economic activities.' Also, that 'the implementation of the new international economic order is essential for the promotion of justice and the maintenance of peace and international co-existence, owing to the ever-increasing interdependence of nations and peoples'; an argument that was already being deployed by M'baye in support of the 'Right to Development' (see page 633 below). Summarising the basis on which the diversity of interests and political systems divided the members of the Group of 77 yet enabled them to cooperate successfully, President Nyerere, in his opening address to the 1979 Arusha Fourth Ministerial Meeting, explained that:

1960–1967, 95–100, R.A. Mortimer, *The Third World Coalition in International Politics*, 12–73 and C. Murphy, *The Emergence of the NIEO Ideology* (Boulder, 1984).

157 President Boumédiène, 'El Moudjahid' 11 October 1967, quoted by R.A. Mortimer, *The Third World Coalition in International Politics*, 26–27.

158 First Ministerial Meeting of the Group of 77, Charter of Algiers, Algiers, 10–25 October 1967, website of the Group of 77 at the UN http://www.g77.org/doc/algier~1.htm, last accessed 7 March 2016.

> What we have in common is that we are all, in relation to the developed world, dependent – not interdependent – nations … We are ashamed to admit it; but economically we are dependencies – semi-colonies at best – not sovereign States … the object is to complete the liberation of the Third World countries from external domination. That is the basic meaning of the New International Economic Order.

He also drew attention to the historically unfair international rules: 'The so-called neutrality of the world market-place turned out to be a neutrality between the exploiter and the exploited, between a bird of prey and its victim.'

Yet despite the unity of the Group of 77 and its ability to secure adoption of resolutions and policies at the UN and its agencies, the practical achievements of negotiations at UNCTAD were disappointing as the various declarations lamented: 'The hopes which we had entertained when the Charter of Algiers was adopted in 1967 have been frustrated (Lima, 1971)'; 'Noting with deep disappointment that very few concrete results have been obtained … (Manila, 1975)'; and 'express deep disappointment and grave concern that the negotiations undertaken … have not yielded the expected results so far and that no significant progress has been achieved … (Arusha, 1979)'.[159]

As, therefore, throughout the 1960s and into the 1970s, political independence translated into political responsibility for economic failure, African grievances intensified. A State Department analysis assessed that 'there is a growing sense of economic and political grievance against the developed countries and a search for ways to organize economic pressure against the rich. The Africans want greater control over their own natural resources and foreign enterprises.' Moreover, it was a grievance with 'an unmistakeable, emotional element'.[160]

It was a grievance that in fact had already been spelled out in 1961 by Fanon, with whose writings most of the first generation of African leaders were familiar:

> We are not blinded by the moral reparation of national independence, nor are we fed by it. The wealth of the imperial countries is our wealth too …

159 C.M. Ahmia (ed.), *The Group of 77 at the UN: The Collected Documents of The Group of 77: Vol.VI Fiftieth Anniversary Edition* (New York, 2015), 43–96 (Declaration and Principles of the Action Programme, Lima, 1971), 97–134 (Declaration and Programme of Action, Manila 1975), 135–212 (Programme of Collective Self-Reliance and Framework for Negotiation, Arusha, 1979) and K.P. Sauvant, *The Group of 77: Evolution, Structure, Organization*, 103 (Table 1: The members of the Group of 77, Fall 1980), 131–136 (Annex II: Opening address by President Nyerere to the 1979 Arusha Fourth Ministerial Meeting of the Group of 77); as Sauvant shows in Table 1, by 1980 50 of the 122 members of the expanding Group of 77 were African.

160 'US African Policy, 27 June 1975, Action Memorandum To: The Secretary Kissinger From: W. Lord/E. Mulcahy', *FRUS 1969–76 Vol. E-6 Documents on Africa, 1973–1976*, Document 29.

> Europe has stuffed herself inordinately with the gold and raw materials of the colonial countries … help should be … the realization by the colonized peoples that *it is their due*, and the realization by the capitalist powers that in fact *they must pay*.[161]

It was an accusation that President Nasser would also echo at the 1963 Addis Ababa Conference:

> the (UAR) finds (foreign aid) to be an obligation upon those who preceded in progress a right based on human interdependence and the consolidation of peace … the United Arab Republic considers this aid to be a tax due to others by the big powers with a colonial past, in compensation for the looting to which numerous peoples in Africa … have and are still being exposed … so that prosperity might be a monopoly by others, while they would be left with the monopoly of poverty.[162]

President Nyerere would also repeatedly refer to 'the conflict between the "haves" and "have-nots" of the world'. In a speech to a preparatory meeting of the NAM, he argued: 'When we really consider the modern world, and its divisions between the haves and have-nots, not one member of this Conference is anything but a pauper. And like paupers, we shall really win a decent and secure livelihood and maintain our dignity and independence, only if we act together.'[163] In 1974, he would go on to argue that: 'I believe that the poor nations have the right to demand assistance from the rich nations as a matter of justice and in compensation for continuing exploitation … the case for compensation payments arises out of the inherent injustice involved in the present international trading and monetary systems'; and he suggested that there was a case for historical compensation, expressly citing Chile's right to compensation for the destruction and despoliation of the Inca civilization.[164]

With UNCTAD proving less than satisfactory and the Group of 77 forum constrained by the need to carry the more moderate states, the challenge was

161 F. Fanon, *The Wretched of the Earth*, 80–81.

162 OAU SUMMIT CIAS/GEN/INF/26, 3 (see also speech by Prime Minister Abboud, SUMMIT CIAS/GEN/ INF/5, 3).

163 President Nyerere, 'Non-Alignment in the 1970s', Opening Address to Preparatory Meeting of the non-aligned countries, Dar es Salaam 13 April 1970, quoted by L. Zang, 'The Contribution of African Diplomacy to the Non-Aligned Movement and the Group of 77', *African Journal of International Affairs*, 1/1 (1998), 11; see also J.K. Nyerere, *Freedom and Unity, Uhuru na Umoja*, 135.

164 President Nyerere, Speech at New Zealand Institute of International Affairs, 'Aid and Development from a Recipient's Point of View', 18 March 1974, published in *Daily News (Tanzania)*, 21 March 1974, President Nyerere's State Visits, British High Commissioner, Dar es Salaam Kellas to Ewars, EAD 10 April 1974 and British High Commissioner, New Zealand Mortimer Wheeler to De Courcy Ireland, S.W. Pacific Department 22 March 1974, NA FCO 31/1760.

therefore taken up by the more radical NAM in which the African states were increasingly prominent. Although the NAM had not met since Cairo (1964), it had remained active and at the beginning of the 1970s it began to actively push for changes in the structure of international trade and the level of development assistance. Formal meetings were held in Lusaka (1970) and Algiers (1973) which meant that, after the first meeting in Belgrade (1961), the next three meetings had all been held in Africa reflecting the increasing role played by the African states and the significance they attached to the issue of development. In fact, African participation had increased from the eleven of twenty-five states at Belgrade to forty out of seventy-three states at Algiers.

Already at Lusaka there had been a concerted push on economic issues and the conference declaration accordingly expressed its conviction that 'the persistence of an inequitable world economic system inherited from the colonial past and continued through present neo-colonialism poses insurmountable difficulties in breaking the bondage of poverty and shackles of economic dependence'.[165] However, the main push would only come after what the 1972 Rabat OAU CoM's 'Declaration on the United Nations Conference on Trade and Development' described as the 'disappointing results' of UNCTAD III.[166] It was at that meeting, in his report on UNCTAD III, that OAU Administrative Secretary-General Telli 'suggested that the only solution to the economic crisis that faced the world was the establishment of a new international economic order'; the first time the phrase was used at an international gathering.[167]

As Mortimer notes, Algeria therefore made a particular effort to encourage attendance at the 1973 Algiers NAM Conference with the result that it attracted twenty or so more states than attended Lusaka (1970) and over twice that number were represented by the head of state or government. Once again, the aggressive opening address by President Boumédiène set the tone.[168] It concluded with an economic declaration and programme of action demanding a new international

165 O. Jankowitsch/K.P. Sauvant, *The Third World Without Superpowers: The Collected Documents of the Non-aligned Countries Vol. 1,* 80–131 (Lusaka).

166 OAU CM/St. 7(XIX) 'Declaration on the United Nations Conference on Trade and Development'.

167 C.O.C. Amate, *Inside the OAU*, 562–563; R.W. Cox, 'Ideologies and the New International Economic Order: Reflections on Some Recent Literature', *International Organization,* 33/2 (1979), 257 argues that: 'The demand for a New International Economic Order … can be formally dated from the Algiers conference of the Non-Aligned countries in 1973', while B. Gosovic/J.G. Ruggie, 'Overview: Origins and Evolution of the Concept', Towards a New International Economic and Social Order, *International Social Science Journal* (UNESCO), 28/4 (1976), 639–646 give it a wider more nebulous origin in the evolving demands of developing countries.

168 President Boumédiène, 'El Moudjahid' 7 September 1973, quoted by R.A. Mortimer, *The Third World Coalition in International Politics*, 38–39.

economic order to 'meet the requirements of genuine democracy' and calling for a special session of the UNGA to be devoted exclusively to development problems. It also proposed that the Group of 77 should be the primary forum for cooperation but that NAM should catalyse action.[169]

As host of the 1973 Algiers NAM conference, President Boumédiène was also President in Office of the Group of Non-Aligned Countries. He therefore used his position to follow up on the call by the conference to secure the agreement of the UNGA for what would become the Seventh Special Session, scheduled for September 1975.[170] However, in the intervening period, the impact of OPEC's oil price increase on economic activity and its effect on developing countries prompted a similar call for another Special Session from a much wider and diverse group of states. Sensing an ideal platform, President Boumédiène proposed that this Sixth Special Session should be devoted to a 'Study of the problems of raw materials and development'.

Opening the UNGA Sixth Special Session debate in April 1974, President Boumédiène summarised the resentment felt by the developing countries:

> the colonialist and imperialist Powers accepted the principle of the right of peoples to self-determination only when they had already succeeded in setting up the institutions and machinery that would perpetuate the system of pillage established in the colonial era … it is an order as unjust and as outdated as the colonial order to which it owes its origin and substance.[171]

The UNGA Sixth Special Session therefore concluded with the adoption of two resolutions: The first, the 'Declaration on the Establishment of a New International Economic Order', summarised the principles upon which the developing countries based their demand for changes in the international economic order:

> The greatest and most significant achievement during the last decades has been the independence from colonial and alien domination of a large number of peoples and nations … However, the remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its forms continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and all the peoples involved.

169 O. Jankowitsch/K.P. Sauvant, *The Third World Without Superpowers: The Collected Documents of the Non-aligned Countries Vol. 1*, 189–327 (Algiers).

170 UNGA 28/3172 17 December 1973 and UN A/9541 and A/9541/Corr.1 5 and 8 February 1974 (Request for the convening of a Special Session of the General Assembly, Message dated 30 January 1974, addressed to the Secretary-General by His Excellency Mr, Houari Boumédiène); see also R.A. Mortimer, 'Global Economy and African Foreign Policy: The Algerian Model', *African Studies Review,* 27/1 (1984), 1–22.

171 UN A/PV.2208 10 April 1974, 3 (President Boumédiène).

It also established that the NIEO should be founded on the 'full respect' for a number of political principles; for example, sovereign equality, self-determination, broadest cooperation of all states, the right of all states to determine their own economic and social system, regulation of transnational corporations, permanent sovereignty over natural resources, the right of all states under occupation to regain control and receive compensation and restitution and a range of development measures. Many of these principles would be included in the ACHPR.

The second resolution, the 'Programme of Action on the Establishment of a New International Economic Order', then laid out the measures needed to improve the situation.[172] The two resolutions were supplemented at the end of 1974 by an UNGA resolution providing for a code of conduct for states in their economic relations subsumed in a 'Charter of Economic Rights and Duties of States', an idea which had first been proposed by Mexico at UNCTAD III.[173]

The pressure was maintained ahead of the UNGA Seventh Special Session. As part of the preparatory work for the special session, a working group of experts was assigned to identify structural changes at the UN to make the system 'fully capable of dealing with problems of international economic co-operation in a comprehensive manner'.[174] The opening paragraph of its May 1975 report, headed 'Why restructuring', explained that:

> the United Nations has reached a turning point … The founders of the United Nations … defined the first purpose of the United Nations as the maintenance of international peace and security. At the same time they recognized that peaceful and friendly relations among nations also require co-operation in the economic and social area … the intimate relationship between peace and security issues and economic and social issues is clearer than ever.

The report also proposed that a Director-General for Development and International Economic Cooperation post should be established and allocated to a developing country.[175]

172 UNGA 3201 and 3202 (S-VI) 1 May 1974.

173 UNGA 29/3281 12 December 1974 and Resolution 45 (III), UNCTAD III 18 May 1972, *Proceedings of the United Nations Conference on Trade and Development Third Session Santiago de Chile, 13 April to 21 May 1972 Vol. 1: Report and Annexes*, Annex I.A. The official records of the elaboration of the charter and the deliberations of the working group are available on the UN Audovisual Library of International Law website http://legal.un.org/avl/ha/cerds/cerds.html, last accessed 1 March 2017.

174 UNGA 29/3343 17 December 1974.

175 UN E/AC.62/9 28 May 1975 'A new United Nations structure for global economic co-operation: Report of the group of Experts on the structure of the United Nations system'.

Initially, the report's recommendations were unacceptable to the developed states. The UNGA Seventh Special Session therefore passed on the experts' report to the Ad Hoc Committee on the Restructuring of the Economic and Social Sectors of the United Nations System for further review.[176] This committee was finally able to reach agreement and issue its report in December 1977. In broad terms, many of the recommendations of the working group of experts were accepted and it was therefore promptly endorsed by the UNGA which also urged speedy implementation of the recommendations.[177] In his statement on the report, Mills (Jamaica), as spokesman for the Group of 77, in sentiments that accorded closely with those of African revanchism, observed that: 'Developing countries have seen this work on restructuring as the first real opportunity they have had, as relative newcomers to membership in the United Nations, of participating in the shaping of the system in an area of fundamental importance to them.'[178]

The right to development and the prioritisation of human rights

Alongside these practical negotiations, the African states also sought the UN's formal imprimatur on the rationale underlying their demands for a just economic order, in effect an African economic revanchist reinterpretation of the UDHR and the UN's human rights mandate. It would take two main forms: The first was the positing of a new human right, the 'right to development'; and the second a reassessment and prioritisation of the relative ordering of existing human rights, an issue that would subsequently dominate the ACHPR process.

The conception of an international law of development may possibly have first emerged from within French academic circles. But, as M'baye would point out, this was no more than a rather general theory in support of development for developing countries.[179] A more politically concrete vision of development had

176 UNGA 3362 (S-VII) 16 September 1975. This section has closely followed the account provided by R. I. Meltzer, 'Restructuring the United Nations System: Institutional Reform Efforts in the Context of North-South Relations', *International Organization,* 32/4 (1978), 993–1018 and B. Gosovic/J.G. Ruggie, 'On the Creation of a New International Economic Order: Issue Linkage and the Seventh Special Session of the UN General Assembly', *International Organization,* 30/2 (1976), 309–345.

177 UN GAOR 32nd Session 1977–78 Supplement No. 34 (A/32/34): Report of the Ad Hoc Committee on the Restructuring of the Economic and Social Sectors of the United Nations System Part I and II 14/17 December 1977 and UNGA 32/197 21 December 1977.

178 UN A/32/PV.109, 1758 20 December 1977.

179 K. Ginther, 'Re-defining International Law from the Point of View of Decolonisation and Development and African Regionalism', *Journal of African Law,* 26/1

been suggested by Thiam, Senegal's Foreign Minister, in his speech to the 1967 Algiers First Ministerial Meeting. He argued that it was necessary to end the old colonial pact in which rights were lost, and even today continued to be lost. In its place he argued: '*Nous devons proclaimer … pour les nations du Tiers-Monde le droit au développement.*' What this right of development involved was never fully spelled out and seemingly not taken up beyond his speech.[180]

It was only taken up in 1971 when Vasak, Secretary-General of the International Institute of Human Rights (IIHR), later Director of the Division of Human Rights and Peace (1976–81) of UNESCO, invited his friend M'baye, First President of the Supreme Court of Senegal, subsequently a member of the CHR from 1972 to 1981, to deliver the 1972 IIHR Inaugural Lecture. As M'baye was uncertain about the subject matter upon which he might lecture, Vasak proposed that he might wish to speak on human rights and development and it was therefore at that lecture that M'baye first proclaimed the 'Right to Development'.[181]

Rather modestly, M'baye acknowledged that the right which he was proposing was not an original concept. He noted that the Algerian Justice and Peace Commission had proposed that the UDHR should be completed by a 'right to development' and also linked his concept to the NIEO which, he argued, was a necessary pre-condition of the right to development. He would also describe the idea as having '*témérité*' and as late as 1978 'admitted that the association of "development" and "right" is somewhat venturesome … Yet a new right is being fashioned before our very eyes.'[182]

(1982), 58–59, W. Benedek, 'The Lomé Convention and the International Law of Development: A Concretisation of the New International Economic Order?' *Journal of African Law,* 26/1 (1982), 75–81, O. Schachter, 'The Evolving International Law of Development', *Columbia Journal of Transnational Law,* 15/1 (1976), 1–16 and K. M'baye, 'Emergence of the "Right to Development" as a Human Right in the Context of the New International Economic Order', Meeting of Experts on Human Rights, Human Needs and the Establishment of a New International Economic Order Paris, 19–23 June 1978, UNESCO SS-78/CONF.630/8, 1 (earlier drafts are in the MPP archive files).

180 D. Thiam, Speech to First Ministerial Meeting of the Group of 77, Algiers, October 1967, 'L'Afrique demande un droit international d'un nouveau', *Verfassung und recht in übersee,* 1/1 (1968), 52–54 (reference from K. Ginther, 'Re-defining International Law from the Point of View of Decolonisation and Development and African Regionalism', 58–59.

181 Interview with Karel Vasak, 15 June 2011, Strasbourg and Inaugural Lecture to the Third Study Session of the International Institute of Human Rights, 3 to 21 July 1972, Strasbourg, K. M'baye, 'Le Droit du développement comme un droit de l'homme', *Revue des droits de l'homme,* 5 (1972), 503–534.

182 K. M'baye, 'Le droit du développement comme un droit de l'homme', 505 and 'Emergence of the "Right to Development" as a Human Right in the Context of the New International Economic Order', Meeting of Experts on Human Rights,

In setting out his conception, M'baye claimed to have been inspired by a number of commentators on 'development'. For example, he quoted Adiseshiah, an Indian development economist, who saw 'development' as 'moral and spiritual as well as material and practical. It is an expression of the wholeness of man serving to his material needs … at the same time as his moral requirements' – this same quotation by 'my friend Adiseshiah' would be employed by President Senghor in his opening address to the 1979 Dakar Meeting of Experts.

Further elements of President Senghor's philosophy can also be identified in M'baye's homily: 'Economic growth … is meaningless … if it does not at the same time take account of educational and cultural progress and if it does not generally illustrate and develop the values of group civilization and the part they can play in "universal civilization"'. He therefore proposed that 'development' is 'a right of every man … Every man has a right … to live better' and defined the 'right to development' as the prerogative of all people and individuals to enjoy in just measure the goods and services produced thanks to the effort of solidarity of the members of the community.

The substance of M'baye's argument, though, is that the right to development is the collective right owed by the international community that arises out of historic exploitation and continued inequalities which threaten international peace and security – a connection that underlay President Roosevelt's freedom from fear and want. It derives, he suggested, from the post-war move towards a system of international relations based on solidarity which demands greater equality. Moreover, it is a right which inheres in UN Charter Articles 1, 2, 55–56, thereafter UDHR Articles 22 and 29 (though in his various writings M'baye also references Articles 22–27, but, strangely, not Article 28 which provides that: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'), ICESCR Articles 2 and 16 and the UN 'Charter of Economic Rights and Duties of States'. As a result, he suggested, the right to development has descended from 'the sphere of morals to that of law'.[183]

Human Needs and the Establishment of a New International Economic Order Paris, 19–23 June 1978, UNESCO SS-78/CONF.630/8, 1, 5, 12–14.

183 OAU (L) President Senghor's opening address to the 1979 Dakar Meeting of Experts CAB/LEG/67/5, UNGA 16/1710 19 December 1961, K. M'baye, 'Emergence of the "Right to Development" as a Human Right in the Context of the New International Economic Order', Meeting of Experts on Human Rights, Human Needs and the Establishment of a New International Economic Order Paris, 19–23 June 1978, UNESCO SS-78/CONF.630/8, 1–14 and UN E/CN.4/AC.34/WP.15 27 November 1981 (Working paper submitted to Working Group of governmental experts on the right to development). The argument is also elaborated in 'Rapport introductif de M. Kéba Mbaye', *Revue sénégalaise de droit* numéro spécial 22 December 1977 (1978), 19–51 and 'Chairman's Opening Remarks', *Development, Human*

Practical impetus was given to this new right when, in 1977, M'baye sponsored a resolution in the CHR, drafted with Vasak's assistance, that recommended to the UN Secretary-General that, in cooperation with UNESCO and other UN agencies, he investigate the 'international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs'.[184] This was the first time that the 'right to peace' had been proposed, though, as Vasak explained, he and M'baye thought the idea was a complete nonsense. It had been included for the sole purpose of attracting support for the resolution from the Soviet bloc states.[185]

Rights and the Rule of Law: Report of a Conference Held in The Hague on 27 April–1 May 1981 Convened by the International Commission of Jurists (Oxford, 1981), 6; see also M'baye's exposition of the basis of the right to development in UN E/CN.4/SR.1488 22 February 1979 CHR 35th session, Summary record of the 1488th meeting 20 February 1979, H. Gros-Espiell, 'The Right to Development as a Human Right', Seminar on Universalism and Regionalism in the Field of International Protection and Promotion of Human Rights, UNESCO, Caracas, 31 July – 4 August 1978, 8, https://unesdoc.unesco.org/ark:/48223/pf0000036972, last accessed 13 March 2023 and K. Vasak, 'Revisiter la troisième génération des droits de l'homme avant leur codification', *Hector Gros Espiell Amicorum Liber* (Brussels, 1997), 1655. The theory has been widely critiqued by, for example, J. Donnelly, 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development' and 'The Theology of the Right to Development: A Reply to Alston', *California Western International Law Journal,* 15/3 (1985), 473–509, 519–523, K. Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse', *Wisconsin International Law Journal,* 16/2 (1997–1998), 353–420 and P. Alston, 'Conjuring up New Human Rights: A Proposal for Quality Control', *American Journal of International Law,* 78/3 (1984), 607–621. Vasak's collaboration with M'baye is recorded in MPP K. Vasak, 'Kéba le Grand des droits de l'homme' (prepared as a eulogy for an encomium after M'baye's death in 2007).

184 UN ESCOR 62nd Session 1977 Supplement No. 6: CHR Report of the 33rd Session E/5927, 10–12, 74–75 (CHR Resolution 4 (XXXIII) 21 February 1977, adopted without a vote) and ECOSOC Decision 229 (LXII) 13 May 1977, UN ESCOR 62nd Session 1977 Supplement No. 1: Resolutions and Decisions E/5988, 40. E.G. Bello, 'Article 22 of the African Charter on Human and Peoples' Rights', E.G. Bello/B.A. Ajibola, *Essays in Honour of Judge Taslim Olawale Elias Vol. 1 Contemporary International Law and Human Rights* (Dordrecht, 1992), 459 also refers to Vasak's involvement in drafting the 1977 CHR resolution. A list of UN documents in respect of the process leading up to the 1986 UNGA resolution on the right to development is in http://legal.un.org/avl/ha/drd/drd.html, last accessed 20 April 2016.

185 Interview with Karel Vasak, 15 June 2011, Strasbourg.

Further support was extended by Vasak in his capacity as Director of the Division of Human Rights and Peace at UNESCO. Firstly, he published a series of articles proclaiming the right to development as part of the third generation of what he termed 'the three generations of human rights', a concept which soon established itself as a classic exposition of the history of human rights in the twentieth century.[186]

Secondly, in 1978, he sponsored a UNESCO Meeting of Experts on Human Rights, Human Needs and the Establishment of the New International Economic Order in Paris. As the meeting report explained: 'The work of the meeting and the papers presented were part of the implementation by Unesco of resolution 4 (XXXIII) of the United Nations Commission on Human Rights insofar as they constitute the beginning of an in-depth study of the issues raised in paragraph 4 of that resolution'. M'baye chaired this meeting which was attended by fifteen, no doubt carefully chosen, delegates, twelve NGO observers and ten representatives of UNESCO and other UN agencies. Naturally, the meeting strongly supported the 'right to development' as envisaged by M'baye. Its Final Report observed that:

> The definition of a human right is conditioned by overall historical processes which are characterised in the post-war world by decolonization, resource-sharing, and the emergence of the New Economic International Order. Hitherto human rights concepts have manifested Eurocentricity in that … those operative at the international level have usually been derived from Western socio-political settings and cosmologies.

What this meant was that M'baye's CHR resolution drafted together with Vasak invited Vasak at UNESCO to advise the UN Secretary-General on the validity of the 'right to development'. In turn Vasak invited M'baye to chair the expert meeting which would form the basis of that advice upon which the UN Secretary-General's investigation would base its conclusion. In this way, the 'right to development' was born.

In due course, the UN Secretary-General's report, which leant heavily on the arguments put forward by the 1978 UNESCO conference, and resolutions sponsored by the African states at the UNGA and CHR, found in favour of a moral duty of reparation for under-development caused by colonial and neo-colonial exploitation. It also found, as M'baye had argued, 'that there is a close relationship between the establishment of a New International Economic Order

186 K. Vasak, 'A 30-year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights', *UNESCO Courier* (November, 1977), 29, 32 and 'For the Third Generation of Human Rights: The Rights of Solidarity', Inaugural Lecture to the Tenth Study Session of the International Institute of Human Rights, Strasbourg, 1979 published as 'Pour une troisième génération des droits de l'homme', C. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles* (The Hague, 1984), 837–845.

and realisation of the right to development'.[187] The report was discussed by the CHR in 1979 and 1980 leading to further resolutions sponsored by African states reiterating that 'the right to development is a human right' and that 'the existing unjust international economic order' is an 'obstacle … for the implementation of human rights and fundamental freedoms'.[188]

In what would have been a stunning victory for African revanchism if it had been carried through, in reaction to the UN Secretary-General's report, M'baye also proposed that developed countries might be hauled before the CHR for consistently failing to observe the right to development:

> whereas previously that right had been left to the initiative of States, the International Covenant on Economic, Social and Cultural Rights had introduced the idea that it might be reinforced by supervision … it might even be subject to a consistent pattern of gross violations which would justify the application of the procedure laid down in Economic and Social Council resolution 1503 (XLVIII).[189]

To maintain momentum, ECOSOC also accepted the CHR's 1979 resolution requesting a follow-up report from the UN Secretary-General on the regional and national dimensions of the right to development as a human right.[190] This report provided more support to the right of development although Senegal and other African states were initially critical as it failed to assign a sufficient priority to the right, an 'error' which was ameliorated in the final, amended, report.[191] The CHR also sponsored a 1980 seminar on the effects of the unjust economic order

187 UN E/CN.4/1334 1979 2 January 1979 'The International dimensions of the Right to Development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the new international economic order and the fundamental human needs', Report of the Secretary-General; see also Views and comments of the economic organs of the United Nations submitted in accordance with paragraph 5 of Commission resolution 4 (XXXIII), Note by the Secretary-General, UN E/CN.4/1272 22 December 1977.

188 UN ESCOR 1979 Session Supplement No. 6: CHR Report on the 35th Session, E/1979/36, 26–29, 106–109 (CHR Resolution 4 and 5 (XXXV) 2 March 1979; Resolution 4 was adopted without a vote; Resolution 5 was adopted with a roll-call vote) and UN ESCOR 1980 Session Supplement No. 3: CHR Report on 36th Session E/1980/13, 3, 31–36, 162–166 (CHR Resolution 6 and 7 (XXXVI) 21 February 1980).

189 UN E/CN.4/SR.1488 22 February 1979, 7.

190 ECOSOC Decisions 29 and 30 10 May 1979, UN ESCOR 1979 Session Supplement 1: Resolutions and Decisions of the Economic and Social Council E/1979/79, 46.

191 UN E/CN.4/1421 13 November 1980, UN E/CN.4/1488 31 December 1981 (The regional and national dimensions of the right to development as a human right: study) and UN E/CN.4/SR.1614 27 February 1981 CHR 37th Session, Summary record of the 1614th meeting 24 February 1981, 11–16.

on developing countries which added its endorsement of the right to development. In the course of the seminar debate, it was argued (identity undisclosed), much as M'baye had done in his response to the UN Secretary-General's 1979 report, 'that by denying the right to development, the international community was responsible for a mass violation of human rights'.[192]

Over the next few years, a series of UNGA resolutions, described by Donnelly as 'an annual ritual', would therefore reiterate that 'the right to development is a human right' and connect this right with an obligation to support the NIEO. Finally, in 1986, a UNGA resolution formally proclaimed the 'right to development' as a human right.[193]

The second form was the questioning of whether implementation of civil and political rights in developing countries was constrained by under-development and accordingly whether economic rights at the state level should therefore be prioritised. It is perhaps ironic for all sides that this food-first-ethics-later argument was precisely the excuse used by many of the colonial regimes to justify the denial of civil and political rights to the African majority. For example, in 1949–50, in the debate over Federation, Welensky had argued that: 'Political rights, after all, mean very little to a man with an empty stomach. If we are genuinely concerned about the Africans, let us give them economic development and political rights can come later.'[194]

The assault on the prioritisation of human rights was initiated by the 1968 Tehran International Conference on Human Rights. Most of the African speakers, notably Alemayehou, the OAU representative, claimed to support the UDHR but dwelt rather more on its failure to realise the final independence of all African colonial territories or to prevent apartheid in South Africa. At the same time, they sought to reorder the emphasis of human rights towards 'development' and economic rights. Edibiyi (Nigeria), for example, expressed outrage at the UDHR's failure to end discrimination based on race, religion and sex and pointed to further discrimination between rich and poor nations: 'None more than the Africans were aware of the indissoluble link between human rights and

192 UN ST/HR/SER.A/8 Seminar on the effects of the existing unjust international economic order on the economies of the developing countries and the obstacle that this represents for the implementation of human rights and fundamental freedoms, Geneva, 30 June – 11 July 1980, 21.

193 J. Donnelly, 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development', 476; see, for example, UNGA 34/46 23 November 1979, 35/174 15 December 1980, 36/133 14 December 1981, 37/199 18 December 1982 and 41/128 4 December 1986 (by 1981, the right to development had become 'an inalienable human right').

194 Welensky, quoted by R. Hall, *Zambia 1890–1964: The Colonial Period* (London, 1976), 96.

economic development. For the full enjoyment of human rights, better economic and social conditions were a vital precondition.' Further comments on the failures of the UDHR as regards apartheid were advanced by Makasa (Zambia) and Koske (Kenya), and Ould Erebih (Mauritania) who also observed that:

> The representative of Kenya had rightly said that political rights could not be dissociated from other rights … His delegation shared the view of those who believed that until a certain minimum level was reached, it was not only futile but even presumptuous to talk of human rights … His country's insistence on the importance of economic, social and cultural rights was reinforced by the knowledge that human rights were fully respected in the countries of Africa.

Ominously, he, too, noted that 'most of those instruments had been drawn up without the new independent countries and before their accession to international life' and therefore texts such as the UDHR 'did not always take account of the special circumstances of the developing countries and their well known problems'.

In two conference resolutions the failure of human rights was therefore laid squarely at the door of the developed world. The resolution 'Economic Development and Human Rights' proclaimed 'that the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and that there is a profound inter-connexion between the realization of human rights and economic development'; accordingly, 'universal enjoyment of human rights and fundamental freedoms would remain a pious hope unless the international community succeeds in narrowing this gap' (between the standards of living in the economically developed and developing countries). The second resolution, 'Realization of economic, social and cultural rights', which referenced the UN Charter not the UDHR, similarly noted that 'in the modern world the enjoyment of civil and political rights and freedoms also requires the realization of economic, social and cultural rights and that these human rights and fundamental freedoms are closely interconnected and interdependent'. It therefore concluded that 'the problems of economic, social and cultural rights should receive due and increasing attention in the activities of the United Nations and its specialized agencies'.

These resolutions were reflected in the conference's final proclamation which noted that: 'The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community'; and that: 'Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights, is impossible.' It also impossible not to notice that a conference to celebrate the twentieth anniversary of the UDHR failed to endorse the UDHR in its proclamation, it merely affirmed 'its faith in

the principles of the Universal Declaration of Human Rights and other international instruments in this field'.[195]

Following the conference the CHR with ECOSOC concurrence immediately authorised a study on the potential role of the CHR in facilitating the realisation of the economic, social and cultural rights of the UDHR and the International Covenants taking into account the special problems of developing countries.[196] Despite African sponsorship, only ten African states responded to a request for information; even fewer provided statistical information. After some delay, including amendments to the conclusions to make it more acceptable to its sponsors, the final report was released in 1975. Among several observations that in many respects foreshadow the 1980 Brandt Report, it noted the linkage between the implementation of human rights in developing countries and development but also stressed that the sovereignty of states had to be respected including the need to move beyond existing 'foreign' models of development:

> Although there can be but one definition of 'human rights and fundamental freedoms', the term … conveys different needs and expectations and a different order of priorities for those living below the poverty line as compared with those enjoying higher standards of living … Foreign models do not provide a satisfactory solution to the unique economic, social, cultural and political problems of each country … particularly in developing countries, the limited resources available and other factors … will often make it advisable to establish priorities appropriate to the social, economic, political and cultural conditions and circumstances of the country concerned.[197]

195 UN A/CONF.32/SR.5 5th meeting 24 April 1968, A/CONF.32/SR.14 14th meeting 30 April 1968, A/CONF.32/41 1968 (Declaration and Resolutions), 4–5, 14, 16–17 and UN A/CONF.32/L.3 15 February 1968 (Elias paper), 20–21; see also J. Donnelly, 'Recent Trends in UN Human Rights Activity: Description and Polemic', *International Organization,* 35/4 (1981), 633–655 and R. Burke, 'Some Rights Are More Equal than Others: The Third World and the Transformation of Economic and Social Rights', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development,* 11 June 2014, 11–12 http://humanityjournal.org/issue3-3/some-rights-are-more-equal-than-others-the-third-world-and-the-transformation-of-economic-and-social-rights-2, last accessed 13 March 2023 and 'From Individual Rights to National Development: The First UN International Conference on Human Rights, Tehran, 1968', *Journal of World History,* 19/3 (2008), 275–296.

196 UN ESCOR 46th Session 1969 Supplement: CHR Report on 25th Session E/4621, 188–191 (CHR Resolution 14 (XXV) 13 March 1969), confirmed by ECOSOC Resolution 1421 (XLVI) 6 June 1969, UN ESCOR 46th Session Supplement: Resolutions E/4715, 17.

197 'The Widening Gap: A Study of the Realization of Economic, Social and Cultural Rights', UN E/CN.4/1108 5 February 1973 and Add. 1–10 5 January – 20 March 1973, 'Revised observations, conclusions and recommendations' UN E/CN.4/1131 18

However, perhaps the quintessential moment of African revanchism's breach of the UN's historic human rights mandate was the otherwise rather anodyne UNGA resolution in December 1977 'Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms'. The resolution was nominally sponsored by Iran and Argentina, happy to deflect attention away from their own indiscretions, but was fully supported by the African Group with only Chad and the Ivory Coast abstaining. Its preamble placed the UN Charter at the heart of 'promotion and respect of human rights'. While it claimed to be 'bearing in mind' the UDHR, its application was limited to the Atlantic Charter dictum of 'freedom from fear and want' which, it suggested, 'can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights'. Rather pointedly, it suggested that the thirtieth anniversary of the UDHR 'should be marked by an over-all analysis of existing problems in the field of human rights … taking into account the experiences and contributions of both developed and developing countries'. It then laid down the factors the future work of the UN should take into account, mainly based on the 1968 Tehran International Conference and the 1975 study report: 'All human rights and fundamental freedoms are indivisible and interdependent'; 'The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible'; and 'human rights questions should be examined globally, taking into account both the over-all context of the various societies in which they present themselves … as well as … the development and well-being of the society'. Restating the demands of the African states, it also laid down that:

> the international community should accord … priority to the search for solutions to the mass and flagrant violations of human rights … resulting from apartheid, from all forms of racial discrimination, from colonialism, from foreign domination and occupation … as well as from the refusal to recognize the fundamental rights of … every nation to the exercise of full sovereignty over its wealth and natural resources.

Moreover, that 'the realization of the new international economic order is an essential element for the effective promotion of human rights … and should also be accorded priority'.[198]

January 1974 and 'The realization of economic, social and cultural rights: Problems, policies, progress' UN E/CN.4/1108/Rev. 1 (1975), 102, 108, 292, 295; the process is described by J. Donnelly, 'Recent Trends in UN Human Rights Activity: Description and Polemic', 637–639. The reference is to the 1980 Brandt Commission report, *North-South: A Programme for Survival: Report of the Independent Commission on International Development Issues* (Cambridge, 1980).

198 UNGA 32/130 16 December 1977.

The resolution left two veteran human rights NGO representatives wondering what had become of their world thirty years after the UDHR. Moskowitz, for example, described it as a 'shattering dénouement'.[199] Van Boven would also query: 'A pertinent question is whether the Universal Declaration is still a valid and pertinent international instrument, particularly in the light of the concepts of General Assembly resolution 32/130.' He would also grumble: 'I do not care so much about the term "right to development"', and wondered to what extent an inconsistency may exist between the quest for development and the promotion and protection of human rights. As he was, by then, Director of the UN's Division of Human Rights, and although his comments were expressed in a personal capacity, his opinion was of significance and may have influenced his distrust of M'baye's ACHPR initiative (see Volume 2, Chapter 2). In a subsequent commentary, he also speculated whether the international community had 'acquiesced in an erosion of the concept of human rights … We cannot avoid putting these questions … when we discuss … the African Charter'; he was reluctant though to express the obvious conclusion and went on to suggest that 'in dealing with these intricate issues we should also be mindful of the unique nature of the African Charter which was drawn up in an effort to combine universal values with African concerns'.[200]

199 M. Moskowitz, 'Implementing Human Rights: Present Status and Future Prospects', 109–130.

200 T.C. Van Boven, 'United Nations Policies and Strategies: Global Perspectives?' B.G. Ramcharan (ed.), *Human Rights: Thirty Years after the Universal Declaration – Commemorative Volume on the Occasion of the Thirtieth Anniversary of the Universal Declaration of Human Rights,* 90–91, 'The Right to Development and Human Rights', *ICJ The Review,* 28 (1982), 49–56, 'The Relations between Peoples' Rights and Human Rights in the African Charter', *Human Rights Law Journal,* 7/2–4 (1986), 185–186 and Seminar on Human Rights & Development Co-operation, December 1980, mimeograph issued by the Nederlandse Organisatie voor Internationale Ontwikkelingsamenwerking, NOVIB, The Hague, quoted by P. Nobel, 'Notes on the Right to Development in Africa', P. Nobel (ed.), *Refugees and Development in Africa Seminar Proceedings No. 19, Scandinavian Institute of African Studies* (Uppsala, 1987), 49 http://www.diva-portal.org/smash/get/diva2:274056/FULLTEXT01.pdf, last accessed 16 March 2016.

Conclusion

It is somewhat surprising that the 1977 UNGA resolution should come as a shock to international human rights activists. The African states had after all been fairly consistent in their approach to human rights on the international stage. An approach that cannot simply be reduced to the natural desire of dictators to evade outside scrutiny as, for example, suggested by Howard when posing the otherwise reasonable question: 'Is the argument that civil/political liberties may be suspended in favour of economic rights in underdeveloped African countries a reflection of basic economic and human needs, or is it a self-serving justification for the centralized power of an elite? May civil and political rights ever justifiably be suspended?'[1]

The answer is that African political leaders saw this question in altogether different binary terms and therefore largely rejected the UDHR. In the first instance, the UDHR had accommodated colonialism and apartheid and its application had not been extended to the colonial territories. It therefore played only a minor part in the decolonisation process, the preferred references being the Atlantic Charter and the self-determination clauses of the UN Charter. Thereafter, as the decolonisation process moved on, African political leaders repeatedly reminded the Western world that the African states had not contributed to the formulation of the UDHR's content. What had therefore emerged was an ethical playbook wholly at odds with the political and economic priorities of the newly independent but underdeveloped African states and the African way of life. It therefore followed that Africa could not accept that the current set-up of human rights was universal in any sense.

There was also a sentiment, as had been argued in the debate within the Christian church in Africa and in respect of African socialism, that Africans had always had a sense of human rights going back to pre-colonial African societies. It was therefore patronising to suggest that Africa needed to be taught human rights.[2] Even Asante, despite his support of the UDHR, felt that: 'The concept of

1 R. Howard, 'The Full-Belly Thesis: Should Economic Rights Take Priority over Civil and Political Rights?' *Human Rights Quarterly*, 5/4 (1983), 467–468.

2 For a discussion of African pre-colonial rights, see, for example, K. Wiredu, 'An Akan Perspective on Human Rights', A.A. An-Na'im/F.M. Deng (eds), *Human Rights in Africa: Cross-Cultural Perspectives* (Washington,1990), 243–260, L. Marasinghe,

human rights is by no means alien to indigenous African legal process. The African conception of human rights was an essential aspect of African humanism sustained by religious doctrine and the principle of accountability to the ancestral spirits.'[3] M'baye would also point out that 'pre-colonial Africa possessed a fitting system of rights and freedoms, although there was neither the recognition nor the clear formulation of such rights and freedoms as they are recognized, formulated and analyzed today'.[4] Summing up, the Beninese philosopher Hountondji argued that: 'Europe certainly did not invent human rights, any more than it invented the idea of human dignity … It thus produced, not the thing, but discourse about the thing … the work of expression concerning this idea the project of its formulation.'[5]

Accordingly, African political leaders, empowered by their newly gained political independence, which they were now reluctant to concede, made it absolutely clear that they were not prepared to permit neo-colonialist human rights

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'Traditional Conceptions of Human Rights in Africa', C.E. Welch, Jr./R.I. Meltzer (eds), *Human Rights and Development in Africa*, 32–45, T. Fernyhough, 'Human Rights and Precolonial Africa', 39–73 and D.M. Wai, 'Human Rights in Sub-Saharan Africa', A. Pollis/P. Schwab (eds), *Human Rights: Cultural and Ideological Perspectives* (New York, 1979), 115–144. The idea has been mocked under the tag 'merrie Africa' by A.G. Hopkins, *An Economic History of West Africa*, 27 (reference from T. Fernyhough, 'Human Rights and Precolonial Africa', 40); see also O.C. Eze, *Human Rights in Africa: Some Selected Problems* (Lagos, 1984), 13. In a speech on human rights in Africa, Nguema, first President of the ACOMHPR, observed that there were immense obstacles to the application of human rights in Africa which were 'of a historical, ideological and psychological order' but also that many African leaders saw human rights as a neo-colonialist attempt to tamper with African sovereignty. He also noted that human rights were also seen as totally alien in that they were based on a Christian God which did not exist in precolonial African society. There was also a 'mental barrier' arising out of the structure of traditional African society. To ask Africans to overcome these barriers and accept the Western conception of human rights was therefore 'to ask them to make an almost impossible leap'. The only solution was for Africa to retain its specificity while enriching itself with the universal – precisely the point that President Senghor made in his opening address to the 1979 Dakar Meeting of Experts (see I. Nguema, 'Specificity and Universality in Human Rights – An ACP-EEC Cultural Foundation Seminar', *Courier ACP-EC,* 114 (1989), 9–10).

3 S.K.B. Asante, 'Nation-building and Human Rights in Emergent African Nations', 73, 83.

4 K. M'baye, 'La conception Africaine du droit', Private paper Fondation Kéba Mbaye, Dakar (undated, probably c. 1971–72), 8–10, 'The African Conception of Law', *International Encyclopedia of Comparative Law,* 2 (1974), 138–157 and 'Human Rights in Africa', 588.

5 P. Hountondji, 'The Master's Voice – Remarks on the Problems of Human Rights in Africa', UNESCO, *Philosophical Foundations of Human Rights* (Paris, 1986), 323.

interference masquerading as universalism to have any say over their way of life, their internal affairs or control over their economic rights. The Western world would henceforth have to acknowledge that they no longer enjoyed a monopoly of understanding of human rights and would now have to take African realities and priorities into account. They could no longer assume that Western definitions and interpretations of human rights were the standard by which the content and application of human rights should be judged. For it to be regarded as universal, an African perspective had to be admitted into the mix. That perspective is what the African states sought to have recognised with self-determination and development at the forefront but with African social values also included in the mix. It was, after all, no more than Africa was demanding across the spectrum of its revanchist confrontation with the commanding heights of Western universalism. Moreover, if, as Duranti points out in his excellent commentary on the ECHR, one of the main aims of the ECHR was to consecrate the principles of 'European civilisation', it seems only reasonable that Africa should be entitled to follow a similar path.[6] In due course it would therefore be the task of any future African human rights system to make good the omissions of Western so-called universalism by providing for a content that was driven by the needs and realities of Africa.

6 M. Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention*.

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