THE EVIAN AGREEMENTS ON ALGERIA AND THE LANCASTER AGREEMENTS ON ZIMBABWE: A COMPARATIVE ANALYSIS

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This paper presents a comparative analysis of the Evian Agreements[1] between France and the Algerian Front de Liberation National, and the Lancaster Agreements[2] between the United Kingdom and the Zimbabwean Patriotic Front. Although the Lancaster Agreements were signed seventeen years after the Evian Agreements had come into force, the two sets of Agreements commend themselves to comparison in that both were negotiated and concluded by former colonial powers terminating an era of colonization.[3] Both agreements cover, *inter alia*, nationality, the judicature, the civil service, amnesty, acquired property rights, and ancillary issues. The Evian Agreements also address issues such as trade, economic cooperation, education, and military bases.

Although this paper goes beyond merely contrasting selected rules of constitutional and international law with the Agreements,

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[1] The Evian Agreements were the result of negotiations which took place at Evian (Paris) from 7 March to 18 March 1962, between the French Republic and a Liberation Movement, Front de Liberation Nationale (FLN). They came into force on 3 July 1962, Algeria's day of Independence. France registered the Agreement with the Secretariat of the United Nations on 24 August 1964. *See* Exchange of Letters, March 19, 1962, France-Algeria, 507 U.N.T.S. 25.

[2] The Lancaster Agreements were concluded at the close of a constitutional conference held at Lancaster House (London), from 10 September to 21 December 1979, between the United Kingdom of Great Britain and Northern Ireland and a Liberation Movement, the Zimbabwean Patriotic Front (PF). (The illegal Rhodesian regime on 18 April 1980, Zimbabwe's Independence day. Lancaster Agreements, Nov. 22, 1979; Zimbabwe Rhodesia—United Kingdom, 19 I.L.M. 387 (March 1980).

[3] The historical forces that molded the events in Algeria and Zimbabwe have been well documented. For the limited purposes of this paper, a brief restatement of the facts of the two cases will suffice. Algeria and Zimbabwe, together with Kenya, South Africa and, since the end of World War One, Namibia, were founded as Settlement Colonies and have become so notorious as to warrant judicial recognition. (One may add to this list Angola, Mozambique and Guinea Bissau). Largely because of this factor, the colonized peoples of these countries have had to wage and, in South Africa and Namibia, are still waging wars of national liberation against governments controlled by settlers and, or, by their descendants. Both the Evian and Lancaster Agreements were precipitated by wars of national liberation in Algeria and Zimbabwe respectively. It is interesting to note, at this starting point in comparative analysis, that the first of the Zimbabwe Patriotic Front forces were trained in Algeria, by the FLN, soon after independence in 1962.

its aims are modest. The analysis attempts to reveal and review the philosophical bases for the retention of key colonial institutions and the incorporation of certain legal concepts into the Agreements. This paper examines the constitutional, and in certain respects the colonial international, law embedded in the various policies pursued by France and the United Kingdom, as it was these policies which marked the development, and after the Agreements the abandonment, of colonialism. Both the spirit and letter of these Agreements are assessed, along with the changes brought to the legal orders of Algeria and Zimbabwe. The Agreements are viewed in light of contemporary norms of international law, but the issue is not raised as to whether the Agreements, as Devolution Agreements[4] are in law to be registered as international agreements in accordance with article 102 of the United Nations Charter.[5] The paper does address the issue of the Agreements' conformance with the "Vienna Conventions on Succession of States in Respect of Treaties."[6]

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[4] The International Law Commission has made an incisive observation:

> Devolution treaties may be a disguised means of maintaining a colonial relationship contrary to international law. It will be necessary to consider whether the consent of the former colonies to these treaties was an expression of their free will or the price paid for their emancipation. If a devolution treaty so limits the sovereignty of a new State that the relationship it creates does not differ substantially from the former colonial relationship (unequal treaties), the treaty in question will violate the rule of international law which prohibits colonialism in all its forms and manifestations and is therefore void or voidable.

Report of the 20th Session, [1968] 2 V. B. INT'L L. COMM'N 219, U.N. Doc. A/CN.4/SER.A/1968/Add.1.

[5] U.N. CHARTER, art. 102, para. 1.

[6] The preamble reads, in part:

> Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States. . . .

Article 16 then provides:

> A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of states relates.

Furthermore, when one considers Article 8(1), the legal validity of the Evian and Lancaster Agreements would seem to be in abeyance.

Article 8(1) provides:

> The obligation or rights of a predecessor capital state under treaties in force in respect of a territory at the date of a succession of states do not become the obligations or rights of the successor state towards other states parties to those treaties by reason only of the fact that the predecessor state and successor state have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

This Convention was adopted on August 23, 1978 by a vote of 82 in favour with 2 absten-

Many an international lawyer would whet his knife if he were to recall that at the time of colonization, agreements between the colonial powers and the colonized people were binding on the colonized people but not legally enforceable against the colonial powers.[7] In light of this unbalanced equation, to what extent in the twilight of colonialism can these agreements signed by the colonial powers and the colonized peoples be set aside as unequal treaties in accordance with article 53 of the Vienna Convention on the Law of Treaties?[8] Might we not invoke the "clean slate" doctrine in the international law of state succession to steer clear of neo-colonialism?[9] Vexing as they are, these issues have not yet shed their full polemic value as the process of decolonization continues to be a significant feature of international life.[10]

II. Colonial Jurisprudence and Legislation

Examination of colonial legislation from a standpoint of rules reveals that it consisted of constitutional law blended with raw

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tions (France and Switzerland). U.N. Doc. A/6-Conf. 80/31, *reprinted in* 72 AM. J. INT'L L. 971 (1978).

[7] The colonial powers, especially the United Kingdom, used the "Act of State" doctrine to place such agreements outside the jurisdiction of law courts. *See* Rex v. Crewe (Earl), ex parte Sekgome [1910] 2 K. B. 576; Ol Le Njoye & Others v. Attorney General and Others [1913] 5 E.A.L.R. 70; Sobhuza II v. Miller [1926] A.C. 518; Nyali Ltd. v. Attorney General [1956] 1 Q.B. 1; and Adeyinka Oyekan v. Musendika Adele [1957] 1 W.L.R. 876.

The injustice, and the inequality of states, becomes glaring when one considers the fact that in the event of a breach of the Evian Agreements, France can have recourse to the International Court of Justice. Thus, Chapter IV of the Evian Agreements reads:

> France and Algeria will resolve differences that may arise between them by means of peaceful settlement. They will have recourse either to conciliation or to arbitration. Failing agreement on these procedures, each of the two States may have direct recourse to the International Court of Justice.

Exchange of Letters, March 19, 1962, France–Algeria; 507 U.N.T.S. 25, 41.

[8] Article 53 reads, in part:

> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, U.N. Doc. A/Conf. 39/27 at 289 (1969), 8 I.L.M. 679 (1969). Since the Agreements were entered into by a colonial power and a colony (before Independence, and therefore not a subject of international law) it violates the recognized *jus cogens*, i.e., right to self-determination and sovereignty and equality of States.

[9] *Id. See supra* note 7.

[10] *See, e.g.*, the resolution concerning Namibia:

> Resolves that the relevant Articles of the Vienna Conventions on Succession of States in Respect of Treaties shall be interpreted, in the case of Namibia, in conformity with U.N. resolutions on the question of Namibia.

Report of the International Law Commission 2 May - 7 July 1972, 27th Session Supplement No. 10(A/8710/Rev. 1).

politics and colonial international law.[11] It is meet, at this beginning, to express full agreement with the oft-quoted indictment by Latham;

> [T]he general law of the common-wealth is not ordinary Law. It lies rather on the periphery of municipal law, where it marches with politics, with 'constitutional convention', and with international law. Questions on the margin of a subject necessarily stir more extraneous issues than do points which lie comfortably in the centre of established doctrine; in such frontier regions to require self-sufficiency of legal scholarship is to ensure not its chastity but its sterility.[12]

A preponderance of the evidence shows that French and British imperial policies largely determined the contents of colonial legislation in Algeria and Zimbabwe. It was these imperialist policies which mattered and not, as has always been asserted, whether the territory concerned was denominated a Colony, Protectorate, Protected State, or other political unit of the colonial power.[13]

It is arguably true that Algeria was referred to as a "Colony" in contrast to Morocco and Tunisia which were called "Protectorates." So also Rhodesia was a "Crown Colony" in contradistinction with Zambia and Malawi, which were "Protectorates." One may well add to this list Kenya[14] as a "Colony" in contradistinction with Uganda, which was a "Protectorate", or Tanzania, which was a "Trust" territory. What *in fact* accounted for the anomalous constitutional developments in Algeria and Zimbabwe was the presence, in those territories, of settlers-cum-immigrants.

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[11] The unhappy experience occasioned by colonial rule has given rise to the charge by some African states that international law as it stood was colonial, and therefore, against their interests. *See, e.g.*, Article XIII of the Berlin Act which provides, *inter alia*:

> These provisions are recognized by the signatory Powers as becoming henceforth a part of international law.

G. HERTSLET, 2 A MAP OF AFRICA BY TREATY 476 (3rd ed. 1967).

[12] Latham, *The Law and the Commonwealth*, in W. HANCOCK, 1 SURVEY OF BRITISH COMMONWEALTH AFFAIRS 521 (1937), *quoted in* C. PALLEY, THE CONSTITUTIONAL HISTORY AND LAW OF SOUTHERN RHODESIA 1888-1965 xvii (1966).

[13] Attempts to find a firm definition of a Protectorate may prove unsatisfying. "The simplest way to define a Protectorate is by way of exclusion: if a territory (not being a Trust Territory or governed under Condominium) is under Her Majesty's protection and is not a British Protected State, it is a Protectorate." K. ROBERTS-WRAY, COMMONWEALTH AND COLONIAL LAW 48 (1966).

[14] Kenya was founded (in 1895) as the East Africa Protectorate and became the Colony of Kenya in 1920 in accordance with Imperial policy of settling demobilized British soldiers after World War I. For an elaborate discussion of constitutional developments in Kenya, *See* Y. GHAI & J. MCAUSLAN PUBLIC LAW AND POLITICAL CHANGE IN KENYA 3-34 (1970). *See also* H. MORRIS & J. READ, INDIRECT RULE AND THE SEARCH FOR JUSTICE 41-70 (1972).

Largely due to this presence, Zimbabwe became a Settlement Colony and Algeria a *Colonie de peuplement*. The Anglo-French Imperial policies safeguarded the interests of a small population of European immigrants by denying the *indigenes* common law remedies. These policies molded colonial juristic theory, *la doctrine*, and not vice versa.[15]

It also has been asserted, once again contrary to a preponderance of the evidence, that French colonial policies were different from British policies. The French policy of "assimilation" in Algeria was not materially different from the British policy of "direct rule" in Rhodesia, at least from the standpoint of the practical effect of rules. If ever there was a difference, it was a matter of style and not substance.

Assimilation was defined officially as "that system which tends to efface all differences between the colonies and the mother-land, and which views the colonies simply as a prolongation of the mother country beyond the seas."[16] Thus within the context of colonial jurisprudence and legislation, a French holiday-maker standing on the beach at Gibraltar would gaze at Algeria, across the Strait, as Overseas France. Consequently, Algeria fell outside the jurisdiction of the French Ministry of Colonies and remained administratively under the control of the Ministry of Interior.[17]

The British policy of "direct rule" in Zimbabwe (as contrasted with "indirect rule" employed in, for example, Uganda and Nigeria) approximated "imperial control,"[18] which compares favorably with "assimilation" in Algeria. Zimbabwe, having been colonized by the

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[15] In Zimbabwe and Algeria (as well as many other colonized African states) imperial legislation was enacted by the executive and took the form of orders-in-council and *arrestes* which belonged to the species of *ordonnance et décret-loi*.

[16] Isaac Report to Congress of 1889, *as quoted in* S. ROBERTS, THE HISTORY OF FRENCH COLONIAL POLICY 1870-1925, at 67 (1963). The language barrier, which is largely the result of demarcation between Overseas France and the Crown Colony, has persisted in these pages. I have had to rely on English, instead of French, works on French colonialism in Algeria. Use of original French sources, I submit, could have probably eliminated the mildly condescending trace of what one might call English nationalism, and could have made this analysis more assiduous.

[17] Assimilation has to be viewed in contrast with another species of French colonial policy, "association" (or more appropriately, collaboration) which was applied largely in West Africa. The policy of assimilation, like its British counterpart, indirect rule, provided that even though the colony was carved out for the economic benefit of France, the colonial power had a duty to help the colonized people develop their institutions. In law, the difference between assimilation and association was the progressive constitutional developments towards self-government in the latter. *See* Robinson, *The Public Law of Overseas France Since the War*, 32 J. COMP. LEGIS. & INT'L L. 37-56 (1950).

[18] For a detailed discussion of the constitutional developments, *see* C. PALLEY, THE CONSTITUTIONAL HISTORY AND LAW OF SOUTHERN RHODESIA, 1888-1965 (1966).

multinational British South Africa Company (BSACO), later was placed under imperial control. The settler minority then was granted self-government in 1923. The similarities between assimilation in Algeria and imperial control in Rhodesia are more apparent when one considers the legal position of the indigenes as compared to that of the settlers-cum-immigrants. In French colonial jurisprudence and legislation the law in relation to indigenes was a branch of "native policy."[19] Its administration was a political matter, aimed at uplifting the indigenes, after qualification, to (higher) French civilization. They thus would obtain civil rights as Frenchmen of African-Arab descent. A grant of citizenship to a native Algerian at first meant renunciation of his Islamic personal law. However, even after a 1946 amendment to allow retention by Moslems of their personal law, the majority of Algerians remained faithful to Islam and did not become French citizens.[20]

In this respect, Algerian indigenes occupied a legal position similar to their Zimbabwean counterparts who could not avail themselves of common law remedies in the face of hostile colonial legislation. After the grant of "self-government" to the immigrants, Britain retained a veto over colonial legislation affecting the indigenes. In practice, however, that constitutional power was never exercised effectively by Britain.[21]

In summary form, this was the way imperial policies determined the contents of legislation in the development of colonial legal orders in Algeria and Rhodesia. When wars of national liberation forced France and Britain to reappraise their colonial policies, they adopted policies the implementation of which marked the abandonment of colonialism and the colonial legal orders.

In certain aspects the Evian and Lancaster Agreements are vulnerable to the charge that they do not respect recent trends in contemporary international law. For example, one of the primary goals of instutitionalizing colonial legal orders was to establish and maintain a monopoly in trade. A Berlin Act signatory had the "obligation to establish and maintain in the territories occupied by it, or taken under its protection, an authority sufficient to ensure the maintenance of peace, the administration of justice, respect for rights acquired, and, in the case of necessity, freedom of

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[19] M. HOOKER, LEGAL PLURALISM, AN INTRODUCTION TO COLONIAL AND NEO-COLONIAL LAWS, 197 (1975).

[20] *Id.* at 204.

[21] C. PALLEY, *supra* note 18, at 236, 238, 270-71.

commerce."[22] Viewed from this position, not much has been altered with the advent of decolonization. The Evian Agreements, for instance, secure for France a monopoly of mining rights in petroleum hydrocarbons. The Agreements provide that:

> French interests will be assured, in particular, through the exercise, in accordance with the rules of the Sahara Petroleum Code as it exists at present of rights attaching to mining entitlements issued by France.[23]

The Agreements covered, *inter alia*, amnesty, vested property rights, citizenship, civil service and the judicature. The aims were two-fold: to safeguard the rights of minorities and retain the colonial state apparatus, *l'ordre public colonial*. It is, however, paradoxical that the full strengths of French Civil Law and English Common Law were to be exerted only at independence and thereafter.

III. Pre-Independence Arrangements

The striking similarities and, in some respects, dissimilarities,[24] of the Evian and Lancaster Agreements are found not only in their substantive provisions but in certain pre-independence arrangements. The pre-independence arrangements were necessary in both cases for the implementation of a cease-fire and the subsequent conduct of "free and fair" elections. As conduits these arrangements were to ensure peace, order, and minimum disruption of the *l'ordre public colonial*.

The Lancaster Agreements envisaged an interim administration headed by a British Governor with unlimited legislative, judicial

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[22] H. MORRIS & J. READ, *supra* note 14, at 43 (quoting S. CROWE, THE BERLIN WEST AFRICAN CONFERENCE 1884-1885, at 187 (1942)).

[23] For details, *see* "Declaration of Principles on Cooperation for the Exploitation of the Wealth of the Saharan Subsoil," Exchange of Letters, *supra* note 1, at 65.

[24] As part of the process of implementing the recognized principle of right to self-determination in international law, the French Government, unlike its British counterpart, organized a referendum at which the French people had to vote on whether or not the Algerian people, like the French themselves, should govern themselves. Paragraph 1 of the General Declaration of the Evian Agreements reads as follows:

> The French people by the referendum of 8 January 1961, recognized the right of the Algerians to choose, through a vote by direct and universal suffrage, their political destiny in relation to the French Republic.

If one adopts one canon of interpretation, *inclusio unius est exclusio alterius*, it means that the economic destiny of Algeria was left firmly in the hands of France. This much is in evidence throughout the Agreements, especially in "Declaration of Principles on Cooperation for the Exploitation of the Wealth of the Saharan Subsoil." Exchange of Letters, *supra* note 1, at 65.

and executive powers.[25] The Provisional Executive in Algeria was an Algerian President with only limited administrative powers. The High Commissioner, representing the French Republic, was the "depository of the powers of the Republic of Algeria, particularly in matters of defense, security and the maintenance of law and order in the last resort."[26] Unlike the British Governor in Zimbabwe, the Provisional Executive in Algeria could "direct the administration of Algeria," and had the task of "admitting Algerians to positions in the various branches of that administration."[27] The British Governor had no such powers, as in the words of the Lancaster Agreements the "pre-independence period should not be concerned with the remodeling of the institutions of government."[28]

The Evian Agreements provided for establishment during the transition period of a Court of Law and Order, which consisted of an equal number of European and Moslem judges.[29] The Lancaster Agreements provided for retention of the colonial judiciary.[30] Apart from mere representation on the Election and Cease-fire Commissions, the African majority had no significant role to play in the interim administration. Rhodesian Ministries were responsible for day to day administration.

Both Agreements had provisions for the return of war refugees and other displaced persons from neighboring countries. The Evian Agreements clearly tied the vote on self-determination in Algeria to the burden of cooperation with France. Having stated categorically in the General Declaration that the independence of Algeria in cooperation with France was the solution for which the situation called,[31] it then declared:

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[25] It may not be cynical for one to note that the British Governor, Lord Soames, was the British Ambassador to France when the Evian Agreements were negotiated and signed. From his record of performance in office, Lord Soames had certainly learned lessons from the French experience in Algeria, and his appointment seemed apposite.

[26] Exchange of Letters, *supra* note 1, at 33.

[27] *Id.*

[28] Lancaster Agreements, *supra* note 2, at 398.

[29] Exchange of Letters, *supra* note 1, at 33.

[30] Lancaster Agreements, *supra* note 2, at 396. The colonial judiciary consisted of judges appointed by the Rhodesian government. Even on the day of Independence, the Prime Minister-elect, was sworn in by Chief Justice Hector McDonald. *See* Smiley, *Southern Africa, Zimbabwe and the Rise of Robert Mugabe*, 58 FOREIGN AFF. 1060 (1980).

[31]

> Since the formation, after self-determination, of an independent and sovereign State appears to be in line with the realities of the Algerian situation and, in these circumstances, co-operation between France and Algeria corresponds to the interests of the two countries, the French Government considers, together

> The vote on self-determination will enable the electors to make known whether they wish that Algeria should be independent and, in that case, whether they wish that France and Algeria should co-operate under the conditions defined by the present Declarations.[32]

In such a situation, as provided for under the Evian Agreements, a vote for self-determination meant a "yes" vote for economic cooperation with the French Republic. In the view of the French Government, the independence of Algeria and its future economic cooperation with the French Republic were delivered hand in hand.

The Lancaster Agreements, on the other hand, more adroitly tied constitutional guarantees to election of Members of Parliament. Zimbabwean voters were asked to choose their leaders and not whether Zimbabwe should be independent. The purpose of the elections was a peaceful competition for power[33] with the Governor as midwife, thus avoiding the grim uncertainties of the caesarean alternative of civil war. However, there were no economic cooperation agreements attached to the independence constitution.

IV. Amnesty

The amnesty issue is an important feature of both the Evian and Lancaster Agreements because they were negotiated settlements.[34] The issue is more exacting in the case of Zimbabwe due to the rather unusual and de jure constitutional developments in that country.

In Zimbabwe, the amnesty covers "any act (including any act by way of conspiracy or incitement) preparatory or incidental to the purported declaration of independence and of the later Rhode-

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> with the F.I.N., that the independence of Algeria in co-operation with France is the solution for which the situation calls. The Government and the F.I.N. have therefore defined this solution, by mutual agreement, in Declarations which will be submitted to the electors for approval at the time of the vote on self-determination.

Exchange of Letters, *supra* note 1, at 31.

When one reads the above cited section of the Declaration in conjunction with the first paragraph of the same Declaration (*see supra* note 23), one obtains the general impression that by tying the role on self-determination with the burden of co-operation, the French Republic had the necessary *mens rea* to control the economic destiny of Algeria.

[32] *Id.*

[33] Lancaster Agreements, *supra* note 2, at 398.

[34] In the case of Algeria, the amnesty is incorporated as substantive provisions of the main Agreements under the subtitle "Personal Safety." Exchange of Letters, *supra* note 1, at 43. In the case of Zimbabwe, the amnesty stands as a separate agreement, forming part of a "package deal." The difference in form does not give an indication that the legal validity is diminished in either case.

sian constitutions."[35] The sweep of coverage is all embracing in so far as the activities of the Rhodesian regime were concerned, as it includes "any act which would have been lawful" if the post-1965 constitutional provisions "had been lawfully made."[36]

Broader that the Algerian amnesty, the Zimbabwean amnesty covers acts or attempted acts by African nationalists to overthrow the Rhodesian government.[37] Thus it includes "any act done on or after November 11th, 1965, in the conduct or on the orders of any organization having the purpose of resisting, frustrating or overthrowing the Administration purporting to be the Government of Rhodesia."[38] There was no need under international law or morality to indemnify acts of nationalist fighters. To do so would, by implication, be dancing to political propaganda that the nationalists were "terrorists" in Zimbabwe (and *"terroristes provacateurs"* in Algeria). The amnesty indemnifies acts of conviction and execution of those who resisted joining the rebellion against the British Crown.[39] Moreover, it includes "any act done in good faith on or after" November 11th, 1965, for the purpose of resisting or combating organizations which had conducted resistance against the illegal regime.[40]

The Algerian amnesty does not indemnify past acts of nationalist fighters specifically. Rather, it provides in general terms that "no one may be harrassed, sought after, prosecuted or converted, or be subjected to penal sentence, summary punishment or any discrimination whatsoever, for acts committed in connection with

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[35] *Rhodesia: Cease-Fire Agreement*, 16 AFRICA RESEARCH BULL. 5511-12 (1979).

[36] *Id.* at 5512.

[37] See the rather interesting case of R. v. Sithole (1965) 2 S. AFRICAN L. REP. 29 (1965). In that case, one nationalist leader distributed leaflets, entitled "Clarion Call to Arms," in which he called upon the African people of Zimbabwe to take up arms, including "bows and arrows" and resist the intended Unilateral Declaration of Independence. The defendant was then arrested and charged with conspiracy and incitement. Held: That the defendant was not guilty of the charge, because the intended act of Unilateral Declaration of Independence was unlawful. The court could not allow evidence to be adduced to show that the state was preparing for a rebellion. Those who, after Unilateral Declaration of Independence, attempted to resist were convicted, and in certain cases, executed. *See* Dhlamini & Others v. Carter, N.O. & Another, N.O., 2 S. AFRICAN L. REP. 464 (1968).

[38] *Rhodesia: Cease-Fire Agreement, supra* note 35, at 5512.

[39] *See* Dhlamini & Others v. Carter, N.O. & Another, N.O., *supra* note 37. The Appellants were convicted and sentenced to death by the Appellant Division of the Rhodesian High Court, for resisting the rebellion. They then appealed for Mercy from the British Crown, the de jure government. The Crown belatedly sent the grant of Mercy through British Ministers but was turned down on the technical ground that it should have been sent through Rhodesian Ministers who were already in a state of rebellion.

[40] *Rhodesia: Cease-Fire Agreement, supra* note 35, at 5512.

political events that occurred in Algeria before the date of the proclamation of the cease-fire."[41]

Furthermore, the Algerian amnesty does not state specifically whether it applies to criminal proceedings only, or to both criminal and civil proceedings. It is arguably sound to state that in international law, the failure to specify whether amnesty refers to both criminal and civil liabilities releases the state granting amnesty from liability for the international torts of rebels.[42] The Evian Agreements also provide that Algeria is not liable for any public debts incurred by the former colonial regime.[43]

The amnesty under the Lancaster Agreements stipulates that "no criminal proceedings or proceedings in tort or for reparation shall be instituted in any court of law in any part of the U.K.,"[44] in respect of the various specified acts connected with the unilateral declaration of independence. This clause extinguishes state responsibility on the part of Britain. Zimbabwe still is liable, however, for public debts occasioned by the illegal acts of Rhodesian rebels. The Agreements provide in part that the "public debt of Zimbabwe, i.e., all debt charges for which the Government of Zimbabwe is liable, will be charged on the Consolidated Revenue Fund."[45] This provision is all-embracing and would appear to cover "war debts."

Evidence easily is adduced to bolster the argument that state responsibility for the illegal acts of rebels rests squarely on the United Kingdom government due to Britain's negligence in suppressing the rebellion in Zimbabwe. Quite apart from this, indemnifying rebels who had committed treason in the eyes of the law would give others in a similar position vis-a-vis the Crown enough incentive to commit similar acts of treason. It should be noted at this point that some aspects of the amnesty as provided under the Lancaster Agreements violate provisions of the Vienna Convention on State Responsibility,[46] and as such are void or voidable.

V. Citizenship

It has often happened that at the time of decolonization, an ex-colonial power will promulgate constitutional provisions that

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[41] Exchange of Letters, *supra* note 1, at 43.

[42] *See* J. MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS 2050, 2079 (1898).

[43] *See* M. HOOKER, *supra* note 19, at 203.

[44] *Rhodesia: Cease-Fire Agreement*, *supra* note 35, at 5511-12.

[45] Lancaster Agreements, *supra* note 2, at 397.

[46] Draft Articles provisionally adopted by the International Law Commission (29th Session, May 9 - July 28, 1977), 16 I.L.M. 1251 (1977).

govern citizenship in the former colony. Because Algeria and Zimbabwe occupied special positions in Anglo-French colonial policies as settlement colonies, there are elaborate provisions governing citizenship,[47] particularly the citizenship of former European immigrants who may wish to make the new states their homes.

Citizenship represents a man's political status by virtue of which he owes allegiance to one state or another. The law that governs this sensitive area includes a sovereign right to exclude from a state those people whose exercise of political rights is believed by the government to be detrimental to the peace and security of the state. One might even add to these various grounds (for deportation) the economic well-being of the State.[48]

The Evian and Lancaster Agreements contain entrenched constitutional provisions, the legal import of which is the preservation of *l'ordre public colonial* insofar as citizenship is concerned. The Evian Agreements unreservedly commit the Algerian State to the Universal Declaration of Human Rights and compel it to base its institutions on, *inter alia*, equality of political rights as between all citizens.[49] In particular the State is to supply the guarantees to which citizens of French civil status are entitled. A corresponding provision in the Lancaster Agreements has the same legal significance. Section B(1) does not only confer, automatically, Zimbabwean citizenship on all Rhodesian citizens upon Independence by birth, descent, or registration, according to former status. The section goes on to provide that:

> every person who, immediately before Independence, possessed such qualifications that the relevant authority would, upon application duly made, have registered him as a citizen of Rhodesia, will be entitled to make application in the prescribed manner at any time during the first five years after Independence and it will be incumbent upon the competent authority to grant that application and cause him to be registered as a citizen of Zimbabwe.[50]

According to the Evian Agreements, French citizens of ordinary civil status shall enjoy, *ipso facto*, Algerian civil rights and shall be regarded, accordingly, as French nationals exercising Algerian

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[47] Lancaster Agreements, *supra* note 2, Section B. It is interesting to note that "citizenship" comes second and only after "the State" in terms of arrangements in the Agreements.

[48] Recall the bizarre deportation of Ugandan Asians by the military government led by General Idi Amin in 1972. For an informed discussion on the issue, *see* Woolridge & Sharma, *The Expulsion of the Ugandan Asians and Some Legal Questions Arising Therefrom*, 8 COMP. INT'L L.J. S. AFRICA 3 (1974).

[49] Exchange of Letters, *supra* note 2, at 35.

[50] Lancaster Agreements, *supra* note 2, at 388.

civil rights. "They shall," like their Zimbabwean counterparts, "at the end of the above mentioned period of three years, acquire Algerian nationality by applying for registration or confirmation of their registration on the electoral rolls. Failing such application, they shall enjoy the benefit of an establishment convention."[51]

The Lancaster Agreements empower the Zimbabwe Parliament to enact laws for depriving a person of citizenship acquired otherwise than by birth or descent, provided the loss of citizenship will not render him stateless.[52] In view of the recent case involving a banning order by the Zimbabwe Government affecting General Peter Walls,[53] it is worthwhile to make a comparison with international law.

Article 8(1) of the United Nations Convention on the Reduction of Statelessness provides in part:

> A contracting state shall not deprive a person of its [sic] nationality if such deprivation would render him stateless.[54]

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[51] Exchange of Letters, *supra* note 1, at 37.

[52] Lancaster Agreements, *supra* note 2, at 389.

[53] General Peter Walls, former Army Chief of the Rhodesian regime, and later Army Chief of the new Zimbabwe National Army, said in a BBC TV interview, in South Africa that he had wanted the U.K. Government to cancel the Independence elections on grounds of intimidation. The Zimbabwe Government considered his utterances a display of disloyalty to the State. It then amended the Emergency Powers (Maintenance of Law and Order) Regulations of 1980 to bar General Walls from re-entering Zimbabwe. The Statutory instrument published in Government's Gazette of 26 September 1980, reads in part:

> It appears to the President that it is necessary in the interests of public safety or public order that any person, whether or not he is a citizen of Zimbabwe, should not remain in or enter Zimbabwe, he may, by order under his hand, declare such person to be an undesirable resident.

In reaction to the banning Order, the Rhodesian Front Party (which ironically enacted the law) condemned it. Chief Whip, Mr. John Landan said of the Government's decision:

> Section 22 of the Constitution and part of the Declaration of Rights, provide that no person shall be deprived of his freedom of movement, which includes the right to enter and leave Zimbabwe . . . . There is an accepted international convention that persons will not be prevented from entry to the country of their birth. A person seeking entry to the country of his birth should not be denied entry, but should be taken before the courts if any wrong has been committed by him. Arbitrary action by Government against its citizens is deplored. Emergency powers should only be resorted to where necessary and not a means of exacting punishment against a person whom it is not prepared to bring before the courts. To permit the contrary, is to endanger the rights of the individual and subvert the Declaration of Rights.

The Herald (Rhodesia), Sept. 27, 1980. The Rhodesian regime had taken many such similar measures soon after the Unilateral Declaration of Independence by Rhodesia, and before the independence of Zimbabwe. Even the Lancaster Agreements acknowledge those measures and make necessary provisions. Section B(8) of the Lancaster Agreements provides that "provision will be made on Independence for the resumption of citizenship by persons who have forfeited it or been deprived of it since 11 November 1965."

[54] For the text of the Convention, *see* 1961 Y.B. ON HUMAN RIGHTS 427, 430 (United Nations).

Unlike the Lancaster Agreements, the Convention provides grounds upon which a contracting state may deprive a person of its nationality. Article 8(3)(9) of the Convention provides as grounds, in part:

> That, inconsistently with his duty of loyalty to the contracting state, the person (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State.[55]

General Walls had, through his statements, displayed disloyalty to the State, and had discredited the country both internally and externally. Analyzed under the Convention, the case would appear to fall squarely under this provision. However, subsection (4) has a proviso which reads in part:

> A contracting state shall not exercise a power of deprivation permitted by paragraph 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body. . . .[56]

It is not in dispute that General Walls was not granted the right to a fair hearing, contrary to this Convention. Although Zimbabwe was not a contracting state, Britain signed and ratified the Convention. The Convention thus applies to Zimbabwe by virtue of article 15(1) which provides:

> This Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any contracting state is responsible. . . .[57]

However, the Convention has received insufficient ratification for entry into force, and as a result does not cover General Walls' case.

In terms of the Lancaster Agreements, only the Zimbabwean Parliament is empowered to enact laws for such a provision. What is of cardinal importance in this case, however, is the fact that Walls was cast into exile by a prior law, promulgated by the former Rhodesian regime, i.e., not pursuant to Zimbabwean legislation. Thus the banning order was not in contravention of the Lancaster Agreements. Quite apart from this, most Zimbabwean citizens (of

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[55] Other grounds are:

> That the person has taken an oath or made a formal declaration of allegiance to another state, or has given definite evidence of his determination to repudiate allegiance to the Contracting State. *Id.* at 429.

Press reports to the effect that General Walls had accepted appointment in the South African Army do not constitute sufficient evidence for the purposes of this subsection.

[56] *Id.*

[57] *Id.*

European extraction) have dual citizenship and the banning order would not, *ipso facto*, render General Walls stateless.

The Evian Agreements do not contain nationality provisions similar to those in the Lancaster Agreements. There are, however, principles that Algerian legislation should follow when dealing with French citizens of ordinary civil status.[58] These include the guarantee of generally recognized rights and freedoms and, *ipso facto*, Algerian civil rights.

An interesting Lancaster provision permits citizens of Zimbabwe to maintain dual citizenship with another state.[59] The majority of these dual citizens are immigrant descendants of British settlers and thus legitimate citizens of Zimbabwe. However, dual nationality has created many problems and has long been abolished in many Commonwealth countries.[60]

The Evian Agreements also provide for dual nationality for French citizens of ordinary status. It is provided that "they shall, at the end of the above-mentioned period of three years, acquire Algerian nationality by applying for registration or confirmation of their registration on the electoral rolls."[61]

VI. Public Service

One of the main colonial institutions preserved by the Lancaster Agreements is the Public Service. The main role of the Public Service Commission is to regulate and minimize, where applicable, change in the Public Service. It is instructive to note that the Public Service Association, a forerunner institution formed in 1919, had as one of its guidelines the provision that "this Association has been called into being mainly by reason of the approaching change of government."[62]

In 1920, the civil servants believed that their rights as granted by the British South Africa Company Administration should be

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[58] Exchange of Letters, *supra* note 1, at 35.

[59] Lancaster Agreements, *supra* note 2, at 389.

[60] The issue of dual nationality contributed significantly to the expulsion of Asians from Uganda. Frank Woolridge and Vislum D. Sharma write:

> many Asians shared little confidence in the Ugandan Government, and they thus did not opt for Ugandan citizenship, if they did, ensured that certain members of their family did not, but opted for British, Indian or Pakistani citizenship or nationality.

Woolridge & Sharma, *supra* note 48, at 47.

[61] Exchange of Letters, *supra* note 1, at 37.

[62] Association Rules, November 1920, *quoted in* D. MURRAY, THE GOVERNMENTAL SYSTEM IN SOUTHERN RHODESIA 19 (1970).

continued under the new government, and that should Southern Rhodesia be incorporated into the Union of South Africa, the rights would be additional safeguards. On the eve of independence in 1980, colonial civil servants still wanted to realize the original aims of the Public Service Association formed at the time of colonization. Appointment in the Public Service is based on merit and experience in administration or professional qualifications. The chairman and at least one other member, out of a body of three to five members, will have held senior rank in the Public Service.[63] It is this legal device which gives colonial civil servants sway over appointment of *indigenes* into the Public Service with which they had had no connection during the colonial period.[64]

The Evian Agreements, on the other hand, do not specifically create institutions such as the Public Service Commission, the Judicial Service Commission or the Police Service Commission. They simply provide that Algerians of French civil status will be assured fair participation in the various branches of the Civil Service.[65]

VII. Acquired Property Rights

One of the thorniest issues during the gestation of the Lancaster and Evian Agreements was acquired property rights. The total protection of acquired property rights requires preservation of *l'ordre public colonial*, especially as regards immovable property. In both Algeria and Zimbabwe, the acquisition of land at the time of colonization was, though illegitimate, absolutely necessary for the settlement of immigrants. This left the indigenes with little or no land.[66]

The Evian Agreements fully protect acquired property rights. Article 12 provides:

> Algeria will ensure without any discrimination the free and peaceful enjoyment of patrimonial rights acquired on its territory

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[63] Lancaster Agreements, *supra* note 2, at 393.

[64] The overworked and battered colonial argument, that the retention of colonial civil servants was in the interests of efficiency in administration was dangled like a carrot before the Patriotic Front delegation at Lancaster. There is no tangible evidence, apart from racial prejudice, which shows that the entry of qualified indigenes through the front door would precipitate the exit of efficiency through the back door.

[65] *See* Exchange of Letters, *supra* note 1, at 37.

[66] *See* In re Southern Rhodesia 1919 A.C. 211, in which it was held that the indigenes had no rights in land. In the view of the colonial settlers, the indigenes' rights in land were no more permanent than those enjoyed by local giraffes.

> before self-determination. No one will be deprived of these rights without fair compensation previously determined.[67]

This means it is the landlord who must fix the price lest the sale become legally impossible, even if the government urgently requires the land for resettlement of war-displaced persons or economic development.

Finally, "Algeria shall guarantee the interests of France and the rights acquired by individuals and legal entities under the conditions established by the present Declarations. In exchange, France will grant Algeria technical and cultural assistance and will contribute preferential financial aid for its economic and social development."[68]

The Lancaster Agreements equally protect vested property rights, but permit certain derogations. The Zimbabwean Government may acquire under-utilized land for agricultural purposes, provided there is prompt payment of adequate compensation. Compensation paid in respect of loss of land to Zimbabwean landowners no longer residing within that country, within a reasonable time, will be remittable to any country outside Zimbabwe, free from any deduction, tax, or charge in respect of its remission.[69]

VIII. The Judicature[70]

The provisions that govern the judicature in Zimbabwe are stringent, and guarantee the tenure of office of judges appointed by the illegal Rhodesian regime. Appointment to the judicature is governed by the Judicial Service Commission in a fashion similar to the Public Service Commission.

The Evian Agreements, on the other hand, envisage a Court of Guarantees consisting of four judges, two of whom shall be of ordinary civil status. The Court of Guarantees is a court of competent jurisdiction in so far as the Evian Agreements are concerned. The decisions of this court are final.[71]

The Court of Guarantees has jurisdiction over disputes arising under the Evian Agreements between the Algerian Government and French citizens exercising Algerian civil rights. Disputes between France and Algeria over the same Agreements may be re-

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[67] Exchange of Letters, *supra* note 1, at 63.
[68] Exchange of Letters, *supra* note 1, at 37.
[69] Lancaster Agreements, *supra* note 2, at 390.
[70] Lancaster Agreements, *supra* note 2, at 396.
[71] Exchange of Letters, *supra* note 1, at 51-53.

solved by the International Court of Justice. France also may plead the claims of its citizens before that Court.

IX. Conclusion

International law has cast off the old mold. State practice shows that it is no longer possible in international law for ex-colonial powers to sign Treaties of Cooperation with newly independent States under the guise of Devolution Agreements or Minority Safeguards. Such agreements create new forms of colonial dependence, are invariably unequal, and violate one of the basic principles of international law, the right to self-determination.

The Lancaster Agreements, signed seventeen years after the Evian Agreements came into force, seem to have avoided (or perhaps kept out of view) the more obvious hardships of the earlier Declaration such as military bases, economic and technical cooperation, etc.

It is reassuring to note that, in so far as Namibia is concerned, the General Assembly of the United Nations has resolved that South Africa will not be considered a predecessor State and the Vienna Convention on Succession of States in Respect of Treaties shall be interpreted in conformity with United Nations resolutions on the territory. The "clean slate" doctrine in international law should be given practical effect. The newly independent State, like a newborn baby, should be delivered without clothes.

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