

THE PRICE OF UNITED STATES NONCOMPLIANCE WITH UNITED NATIONS RHODESIAN SANCTIONS

I. INTRODUCTION

A bill¹ to halt importation of Rhodesian chrome and restore the United States to full compliance with the United Nations Security Council's sanctions² on Rhodesia³ was introduced to the House of Representatives of the 94th

¹ H.R. 1287, 94th Cong., 1st Sess. (1975). The bill was introduced in the House of Representatives on January 14, 1975, by Minnesota Congressman Donald Fraser, chairman of the Subcommittee on International Organizations and Movements. The bill is identical to S. 1868, 93d Cong., 1st Sess. (1973), which passed the Senate in December 1973, and to H.R. 8005, 93d Cong., 1st Sess. (1973), which was reported favorably by the House Committee on Foreign Affairs in June 1974. Technically, the bill will not repeal the Byrd amendment but will nullify its application to the U.N. Participation Act, § 5(a), 22 U.S.C. § 287c(a) (1945). The bill will amend the U.N. Participation Act by halting importation of Rhodesian chrome and will restore the United States to full compliance with the U.N. sanctions against Rhodesia. The chief amendment is the addition of the following sentence at the end of section 287c of the above act:

Section 10 of the Strategic and Critical Material Stock Piling Act (60 Stat. 596, 50 U.S.C. §§ 98-98h) shall not apply to prohibitions on regulations established under the authority of this section.

*Hearings on the Repeal of the Rhodesian Chrome Amendment Before the Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs, 93d Cong., 1st Sess. 1-2 (1973) [hereinafter cited as *Hearings on Rhodesian Chrome*].*

² On December 16, 1966, the Security Council acting under article 41 imposed mandatory economic sanctions on Rhodesia. The sanctions prescribed embargoes on the importation from Rhodesia of such key materials as asbestos, chrome, copper, sugar, and tobacco, and on the exportation to Rhodesia of oil or oil products. Note, *U.N. Application of Selective, Mandatory Sanctions Against Rhodesia: A Brief Legal and Political Analysis*, 7 VA. J. INT'L L. 147 (1967).

Imposition of economic sanctions took place in three phases following Rhodesia's unilateral declaration of independence (UDI) in November, 1965. The first phase consisted of unilateral action by Great Britain in stopping most trade between Britain and Rhodesia, blocking funds, and forbidding currency transfer. This phase lasted from UDI to the first talks between British Prime Minister Harold Wilson and Rhodesian Prime Minister Ian Smith on board the H.M.S. *Tiger* in December 1966. During this period most U.N. members cooperated with Great Britain's action by refusing recognition to the Smith regime and by barring exportation of arms, oil, and other supplies to Rhodesia. The second phase began with the Smith regime's rejection of the British *Tiger* proposals, which prompted Great Britain to agree to U.N. mandatory sanctions further restricting major imports into and exports from Rhodesia. The third phase dates from May 1968 when the Security Council responded to the illegal execution by the Smith regime of three Rhodesians. The response was Security Council Resolution 253, which broadened the scope of the mandatory sanctions and established the Sanctions Committee of the Security Council to administer the implementation of the resolution. *Hearings on the Future Directions of United States Policy Toward Southern Rhodesia Before a Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs, 93d Cong., 1st Sess. 191 (1973) [hereinafter cited as *1973 Hearings on United States Policy on Rhodesia*].* The resolutions passed by the Security Council on Rhodesia are the following: S.C. Res. 253, 23 U.N. SCOR, 1428th meeting 5 (1968); S.C. Res. 232, 21 U.N. SCOR, 1340th meeting 7 (1966); S.C. Res. 221, 21 U.N. SCOR, 1277th meeting 5 (1966); S.C. Res. 217, 20 U.N. SCOR, 1265th meeting 8 (1965); S.C. Res. 216, 20 U.N. SCOR, 1258th meeting 8 (1965).

³ Rhodesia, a self-governing British colony currently in revolt against the British Government,

Congress on January 14, 1975. The bill was introduced as a result of the passage of the Byrd amendment, section 503 of the Military Procurement Act of 1971,⁴ which allowed the United States to import chrome, ferrochrome, and nickel from Rhodesia in violation of United Nations economic sanctions against the minority Ian Smith regime in Rhodesia. Since passage of the Byrd amendment, there has been widespread concern throughout the United States over the harmful effect it has had on our national interest and on our reputation as a law-abiding nation.⁵ The legislation will be significant if it is passed, because after 5 years of violating international laws, the United States will be in compliance with its treaty obligations under the United Nations Charter and with the compulsory obligatory resolutions (sanctions) of the United Nations Security Council. As a nation with a growing need for African resources, the United States can no longer afford to be insensitive to Rhodesian problems and thereby risk the goodwill of the African nations. The need to act quickly and regain the confidence of the African people became more imminent in December 1974, when it was reported that the Smith regime was prepared to offer blacks significant representation in a transitional parliament and, more importantly, majority control of the Rhodesian Government within 5 years.⁶

II. DEVELOPMENTS CONCERNING RHODESIA

Led by the Ian Smith regime in November 1965, Rhodesia made a unilateral declaration of independence (UDI) from Britain, which was unconstitutional.

is located in south-central Africa. It is bordered on the north by Zambia, on the east by Mozambique, on the south by the Republic of South Africa, and on the west by Botswana. The colony has an area of 150,333 square miles, about the size of Montana. In 1970 its 5,200,000 population was composed of approximately 4,930,000 Africans, 234,600 Europeans, and 24,500 members of other ethnic groups. These figures show a ratio of 21 Africans to one European. The colony calls itself Rhodesia; however, its official name is still Southern Rhodesia, since the British Parliament, the only legal authority which can change the name of a British territory, has not done so. African nationalists refer to the colony as Zimbabwe. *Hearings on the Sanctions as an Instrumentality of the U.N.—Rhodesia as a Case Study Before the Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs*, 92d Cong., 2d Sess. 82-83 (1972) [hereinafter cited as *1972 Hearings—Case Study on Rhodesia*].

⁴ Pub. L. No. 92-156, 85 Stat. 423 (1971). Stated simply, the Byrd amendment prevents the President from prohibiting the importation of a strategic material from a free-world country like Rhodesia if importation of such a material is permitted from a country dominated by Communists. Pub. L. No. 92-156, § 503, 85 Stat. 427 (1971). After being rejected by both houses of Congress, the amendment was added as a rider to the Military Procurement Act which, being vital to the President, was considered veto-proof. This latter fact was important since the amendment repealed President Johnson's Executive order (Exec. Order No. 11,322, 3 C.F.R. 184 (Supp. 1974), 22 U.S.C. § 287c (1970)) forbidding United States companies to trade with Rhodesia. *1972 Hearings—Case Study on Rhodesia*, *supra* note 3, at 65.

⁵ *Hearings on Rhodesian Chrome*, *supra* note 1, at 2-4.

⁶ After defying international pressures for nearly a decade, Prime Minister Ian Smith recently released imprisoned black nationalist leaders and announced that, if the leaders called a halt to guerrilla attacks, he would sit down with them at a constitutional conclave. *Rhodesia: A Black Christmas*, NEWSWEEK, Dec. 30, 1974, at 35.

This was done after Britain refused to grant independence until the apartheid practices of the white minority had been replaced by five principles for equalitarian reform.⁷ Following the UDI, the Smith regime enacted a law specifically designed to uproot and disperse African people from their ancestral homes, "to deny them of free movement, free speech, and free association; to subject them to arbitrary arrests, restrictions, and detention; to deny them every chance to become masters in the country of their own birth and force thousands into refugee camps and exile around the world."⁸

For the first time in the history of the United Nations, on December 16, 1966, the Security Council acting specifically under article 41 of its Charter⁹ imposed mandatory economic sanctions on Rhodesia.¹⁰ In response to the sanctions, President Johnson by Executive order of January 5, 1967, forbade United States companies to trade with Rhodesia.¹¹ Under section 287c of the United Nations Participation Act of 1945,¹² President Johnson was authorized by Congress to take Executive action in support of any mandatory decision of the Security Council. However, as a result of the passage of the Byrd amendment, United States companies were allowed to import chrome, ferrochrome, and nickel from Rhodesia in violation of the economic sanctions against the minority Smith regime of Rhodesia.¹³

Recently, a bill to halt importation of Rhodesian chrome, identical to legislation pending in the House of Representatives, passed the Senate.¹⁴ However,

⁷ *United Nations Security Council Resolution—Economic Sanctions Against Southern Rhodesia*, 14 VA. J. INT'L L. 319, 321-22 (1974). A sixth principle was added by British Prime Minister Harold Wilson in 1966. The six principles were: (1) maintenance and guarantee of an intention of unimpeded progress toward majority rule; (2) guarantees against retrogressive amendments of the constitution; (3) immediate improvements in the political status of the African population; (4) progress toward ending racial discrimination; (5) acceptability to the Rhodesian people as a whole of any basic proposal for independence; and (6) insurance against oppression of the majority by the minority, or vice versa, regardless of race. See *Rhodesia, Proposal for a Settlement*, 6 INT'L LEGAL MAT'LS 134 (1967).

⁸ Statement of Eddison Zvobgo, Director of External Missions, African Council of Zimbabwe, 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 35.

⁹ U.N. CHARTER art. 41. The article states that:

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

¹⁰ S.C. Res. 232, 21 U.N. SCOR, 1346th meeting 7 (1966).

¹¹ Exec. Order No. 11,322, 3 C.F.R. 184 (Supp. 1974), 22 U.S.C. § 287c (1970).

¹² 22 U.S.C. § 287 (1970). Section 287c(a) empowers the President to join with other countries in applying enforcement measures short of the use of force when dealing with international disputes. Willful violation of a Presidential order issued under section 287c(a) may result in a fine of not more than \$10,000 or imprisonment for not more than 10 years, or both, under section 287c(b).

¹³ Pub. L. No. 92-156, 85 Stat. 423 (1971).

¹⁴ STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 93D CONG., 1ST SESS., REPORT ON RHODESIAN SANCTIONS 1 (1974).

the term of the 93d Congress came to an end before the bill could be brought before both houses of Congress.

III. LEGALITY OF SANCTIONS ON RHODESIA

The future direction of United States policy toward Rhodesia should be resolved by determining the extent of the validity and effectiveness of a compulsory obligatory resolution of the Security Council under chapter 7 of the U.N. Charter. The following analysis seems to indicate that the compulsory obligatory resolution was valid, legal, effective, and binding upon all members.

Article 1, paragraph 1, of the U.N. Charter contemplates the use of sanctions or "collective measures" by the members.¹⁵ Articles 39, 41, and 42 specifically authorize the use of sanctions. The triggering mechanism for imposing sanctions is "the existence of any threat to the peace, breach of the peace, or act of aggression" under article 39.¹⁶ An argument made against the validity of the sanctions is grounded on the belief that the white regime in Rhodesia cannot be characterized as constituting "a threat to the peace" within the meaning of the Charter and that there is no reasonable basis for the determination that Rhodesian acts constitute "threats to the peace."¹⁷ Opponents to this argument contend, however, that article 39 of the Charter gives the Security Council complete discretion to decide what constitutes an act of aggression and a threat to the peace, and that the imposition of sanctions upon Rhodesia is clearly within the authority of the Security Council.¹⁸

¹⁵ U.N. CHARTER art. 1, para. 1. The article states that:

The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace

¹⁶ U.N. CHARTER art. 39, para. 1. The article states that:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

See Note, *The Rhodesian Chrome Statute: The Congressional Response to United Nations Economic Sanctions Against Southern Rhodesia*, 58 VA. L. REV. 511, 517 (1972) [hereinafter cited as *Rhodesian Chrome Statute*].

¹⁷ *Rhodesian Chrome Statute*, *supra* note 16, at 513, 523.

¹⁸ The problem of defining "threat to the peace" was discussed at the Dumbarton Oaks Conference by the Soviet Union, the United Kingdom, and the United States. These countries decided that the Security Council should have the widest possible latitude and flexibility in determining when a threat existed. It was argued that devising a definition for the phrase "threat to the peace" could limit the Security Council's authority to act. When a particular international situation fell within the definition, sanctions might be imposed automatically under circumstances where nonimposition would be more appropriate. Conversely, when a situation fell outside the definition, the Security Council might be prohibited from imposing sanctions under circumstances where their

Although the Security Council did not give the reasons behind its finding that the situation in Rhodesia constitutes a threat to the peace, two possible rationales exist. "First, Rhodesia is a colony in rebellion, and there is the possibility of Britain putting down the rebellion by force. If that occurs, South Africa might become involved in a war. If Britain willingly accedes to the rebellion this would sharpen tension among Africans, who are understandably aroused at racial repression."¹⁹ Thus, the Council acted to prevent two real threats to the peace: British force and African force.²⁰ The only check on the Security Council in making its determination is a permanent member veto or the negative vote of seven of the ten nonpermanent members.²¹ Since neither of these occurred, the only question remaining is whether the United States voted in good faith for the resolution. The United States delegation to the U.N. had the right to veto the Rhodesian resolution, but it chose to vote for it.²²

Article 41 empowers the Security Council to impose nonmilitary sanctions once it has established that something or someone constitutes a threat to the peace or an act of aggression under article 39.²³ Article 42 allows for military sanctions if nonmilitary sanctions have been or would be inadequate.²⁴ Therefore, the Charter specifically gives validity and enforcement to Security Council sanctions,²⁵ and there is nothing illegal about the sanctions since they were done in accordance with and in obedience to the international laws set forth in the Charter. It has been argued that the Rhodesian sanctions have failed in their purpose and that it would be foolish for the United States to continue its cooperation, at least with respect to chrome, a vital commodity.²⁶ These assertions rest on two grounds: (1) the alleged failure of both member and nonmember nations to enforce sanctions, and (2) the claim that the sanctions

imposition would be effective. In view of these possibilities it was decided that the Security Council would have complete discretion in determining what constituted a threat to the peace, a breach of the peace, or an act of aggression. Note, *U.N. Application of Selective, Mandatory Sanctions Against Rhodesia: A Brief Legal and Political Analysis*, 7 VA. J. INT'L L. 147, 155 (1967) [hereinafter cited as *United Nations Sanctions Against Rhodesia*].

¹⁹ *Id.* at 155.

²⁰ *Id.* at 155-56. Note that as far back as August 1963, Ghana, Guinea, Morocco, and the United Arab Republic asserted that the Rhodesian situation endangered international peace and security and urged the Security Council to consider the matter immediately. See *Rhodesian Chrome Statute*, *supra* note 16, at 525.

²¹ *United Nations Sanctions Against Rhodesia*, *supra* note 18, at 154.

²² 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 63.

²³ U.N. CHARTER art. 41. For the text see note 9 *supra*.

²⁴ *Id.* art. 42. The article states that:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

²⁵ *Id.* arts. 39, 41, 42.

²⁶ *Rhodesian Chrome Statute*, *supra* note 16, at 530.

did not have a significant impact on the Rhodesian economy.²⁷ A significant number of countries have failed to enforce the sanctions. Even when evidence of failure to comply has been provided, the governments do little or nothing unless the evidence is of such an overwhelmingly clear nature that they cannot ignore it.²⁸ It is important to note here that none of the blatant breaches of the sanctions by other countries, many whose total trade with Rhodesia is larger than that of the United States, will be censured by international opinion in the same way as the United States will be censured, because no other country has violated the sanction by an act of its legislature.²⁹ "The United States has chosen by an act of its senate to upset a part of the sanction process. Having gone on record as doing this, it must expect international censure. Moreover, no contention that others are doing the same thing secretly can excuse the American decision."³⁰

As to the allegations that the sanctions have not had any significant impact on Rhodesia, it is true the sanctions have not brought down the Smith regime. Nevertheless, they have made a serious impact on Rhodesia and have served as a reminder to the regime and to the world of the international objections to Rhodesia's unilateral declaration of independence. If it is assumed that the only purpose of the sanctions was (in lieu of force) to bring down the illegal regime, then clearly they have failed. However, short of that total objective, sanctions have achieved a number of aims:

- a. They have denied outright victory to the Smith regime.
- b. They have kept Rhodesia in a state of complete diplomatic isolation.
- c. They have forced the regime to continue struggling for economic survival at ever increasing costs.
- d. They have encouraged and strengthened internal opposition to the regime by demonstrating continuing world interest in their cause.
- e. They have maintained international concern over the Rhodesian issue.
- f. They have sustained the world view of the unacceptability of the Smith regime.³¹

IV. NONCOMPLIANCE WITH SANCTIONS

With one sweep the Byrd amendment pulled the rug out from under both the United Nations and Britain and chilled relations with Black African States

²⁷ *Id.*

²⁸ 1973 *Hearings on United States Policy on Rhodesia*, *supra* note 2, at 194.

²⁹ *Id.*

³⁰ *Id.* In 1968 U.N. Secretary-General U Thant named West Germany, the United States, Switzerland, Portugal, the Netherlands, Belgium, Luxembourg, France, and Japan as the main importers of Rhodesian products. 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 154-55.

³¹ 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 170-71.

who identify closely with the Rhodesian problems.³² Again there is no controversy about the international law which the United States recognizes. It is absolutely clear that the United States is bound not to import Rhodesian chrome and that when it does, it violates its obligation under the U.N. Charter.³³

The imposition of the Byrd amendment is part of a series of American actions that display a pronounced indifference to treaty obligations and a tendency to ignore international laws.³⁴ By passing the Byrd amendment, the United States joined South Africa and Portugal as the only nations *publicly* and *voluntarily* breaking the sanctions imposed by the Security Council.³⁵

Performance of treaty obligations is important if the "credibility" of the United States is important. If the United States persists in violating or threatening to violate undisputed treaty obligations, other states will be less inclined to rely on its fresh commitments. If not the essence of security, then the whole structure of international trade and credit and the whole being and potential of international organization, are bound up with the vitality of treaty obligations.³⁶

While the future effectiveness of the United Nations and the credibility of the United States as a law-abiding nation are important, Congress appears to consider that our national security and national interest are even more important. In fact, national security and national interest were the main issues which led to approval of the Byrd amendment,³⁷ and these issues will undoubtedly play a big role in determining whether the pending Rhodesian bill is passed.

In fact, many of the national security and national interest arguments asserted by the proponents of the Byrd amendment are likely to be reasserted by the opponents of the pending bill, and these arguments should be analyzed. One argument raised by Senator Byrd and his followers was that the embargo was jeopardizing the defense of the nation. Byrd alleged that since the embargo on Rhodesia deprived the United States of the world's chief source of chrome, the United States was becoming dependent upon the Soviet Union for the bulk of its imports.³⁸ This argument persuaded many Congressmen to vote for the

³² *Id.* at 44; *Rhodesian Chrome Statute*, *supra* note 16, at 546.

³³ 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 63.

³⁴ Among those actions were the following: (1) congressional threats to withhold funds from the United Nations if its membership did not vote in accordance with the American position on certain issues concerning Taiwan; (2) subsequent congressional threats to oppose payments on the scale of U.N. assessments upon the United States if the General Assembly were to expel the Taiwan-based Republic of China in order to seat the People's Republic of China; and (3) AFL-CIO President George Meany's appearance before a subcommittee of the House Appropriations Committee to urge that the United States threaten to withhold its assessed contribution to the International Labor Organization. *Id.* at 61-63.

³⁵ *Id.* at 44.

³⁶ *Id.* at 63.

³⁷ *Rhodesian Chrome Statute*, *supra* note 16, at 543-45.

³⁸ 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 90.

Byrd amendment.³⁹ Another of the leading arguments against compliance with the embargo on Rhodesia was that the sanctions deprived the United States of metallurgic-grade chrome ore which would be essential during a national emergency,⁴⁰ but the truth is that the United States stockpile of chrome has a substantial excess and defense requirements for chrome are only 2.3 percent of the national stockpile. There is enough chrome to take care of defense needs for over 40 years.⁴¹ Another allegation was that the sanctions made the United States dependent on lower quality chrome from the USSR which was sold at exorbitant prices.⁴² Actually the Soviet Union has the highest grade chrome in the world and figures show that in 1973 the United States paid only \$56.92 per ton for Soviet chrome while paying \$68.14 per ton for other foreign chrome ore.⁴³ A fourth allegation was that sanctions have damaged the United States ferrochrome industry.⁴⁴ However, the facts indicate that the removal of sanctions has allowed Rhodesia to export increasing amounts of cheap ferrochrome to the United States in direct competition with our domestic industry.⁴⁵ A fifth allegation was that sanctions would deprive the United States of needed sources of ferrochrome and chrome. While Rhodesia currently is our leading foreign supplier of ferrochrome, there are alternative sources.⁴⁶ Both Brazil and Finland provide sources of ferrochrome at prices lower than those of Rhodesia.⁴⁷ Metallurgic-grade chrome is available from Turkey, the Phillipines, the USSR, South Africa, and Pakistan.⁴⁸

V. REASONS TO REPEAL THE BYRD AMENDMENT

Under article 25 of the U.N. Charter,⁴⁹ the United States is obligated to comply with the Security Council's compulsory resolution on Rhodesia. To bring the United States back into compliance with international law, the Byrd amendment must be repealed. The bill presently before the House of Representatives would not repeal the Byrd amendment, but would permit the President to override it.⁵⁰ As clearly indicated above, the national security and interest will not be jeopardized by compliance with the importation sanctions against Rhodesia. In fact, national security would be strengthened by supporting the sanctions. This point is reinforced by the announcement that the Ford

³⁹ 1973 *Hearings on United States Policy on Rhodesia*, *supra* note 2, at 142.

⁴⁰ 1972 *Hearings—Case Study on Rhodesia*, *supra* note 3, at 90.

⁴¹ *Hearings on Rhodesian Chrome*, *supra* note 1, at 10.

⁴² *Id.* at 7.

⁴³ *Id.* at 9.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 8.

⁴⁹ Article 25 of the U.N. Charter provides that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

⁵⁰ *Hearings on Rhodesian Chrome*, *supra* note 1, at 1.

administration favored repeal of the Byrd amendment.⁵¹ A White House spokesman said that a full appraisal had been made and that the White House stood behind previous congressional testimony of Secretary of State Kissinger. Last year Kissinger told a congressional committee that the amendment was not essential to our national security, brought no real economic advantage, and was detrimental to the conduct of foreign relations.⁵²

VI. LOSS OF AFRICAN GOODWILL

As a nation which has a growing need for African resources, the United States cannot afford to remain insensitive to independent Africa's concern over support by the United States for minority rule in southern Africa. David Newson, former Assistant Secretary of State for African Affairs, stated that, in his 4 years as Assistant Secretary, "[t]he exemption of Rhodesian sanctions has been the most serious blow to the credibility of our African policy."⁵³ According to Eddison Zvobgo, Director of External Missions, African Council of Zimbabwe (Rhodesia), the Smith regime rejoiced when the United States decided to resume the importation of Rhodesian chrome in 1971.⁵⁴ "[However,] the man or woman in the streets of Zimbabwe now views the United States as belonging to the same group as Portugal and South Africa in that it has expressed its intent to support the regime economically."⁵⁵

Losing the goodwill of African States risks approximately \$3 billion in static investments and \$2 billion in trade investments which the United States has in the African States north of Rhodesia.⁵⁶ The United States needs their strategic goods, such as petroleum, uranium, manganese, tin, rubber, tungsten, and diamonds, as well as their foodstuffs, such as coffee and cocoa.⁵⁷ "Or consider just Rhodesia. The current value of Rhodesia's imports is some \$400 million. There is also great potential for investment."⁵⁸ Thus, it is not good economic sense to invest in a regime—which may crumble or fall—at the expense of 5.5 million black Africans who will certainly rule Zimbabwe in the future.⁵⁹

Secretary of State Kissinger made several statements supporting the efforts in Congress to repeal the Byrd amendment.⁶⁰ In his October letter to Donald Fraser, chairman of the Subcommittee on International Organizations and Movements, he discussed the economic aspects of violating the Security Council's sanctions and stated specifically that "the Byrd Provision has impaired our ability to obtain the understanding and support of many countries

⁵¹ N.Y. Times, Aug. 21, 1974, at 8, col. 3.

⁵² *Id.*

⁵³ *Hearings on Rhodesian Chrome, supra* note 1, at 3.

⁵⁴ *1973 Hearings on United States Policy on Rhodesia, supra* note 2, at 47.

⁵⁵ *Id.* at 48.

⁵⁶ *See Hearings on Rhodesian Chrome, supra* note 1, at 6.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *1973 Hearings on United States Policy on Rhodesia, supra* note 2, at 48.

⁶⁰ *Hearings on Rhodesian Chrome, supra* note 1, at 3-4.

including such important nations as Nigeria, a significant source of petroleum and a country where we have investments of nearly \$1 billion."⁶¹ The Rhodesians will not forget the actions of the United States which gave political and economic support to the white minority regime when they were struggling to gain majority rule. When the Byrd amendment was adopted in 1971, Abel Muzorewa of the African National Council said: "The action of [the United States] Government to breach sanctions and to begin to import chrome was a severe blow to our struggle for freedom."⁶² When change comes in Rhodesia, the United States will have to negotiate for access to chrome and nickel with a new majority government. Clearly it is in the long-term interest of the United States to abide by the sanctions, so that it will have access to the important raw materials of Rhodesia when a majority government does come into power in Rhodesia.⁶³

A change to a majority government might come to Rhodesia sooner than Congress expects. All indications point toward a relaxation of tensions in both Rhodesia and South Africa. In a nationwide broadcast in early December 1974, Prime Minister Ian Smith declared his intentions to hold a conference on greater political rights for Rhodesia's 5.5 million blacks, a step that will almost inevitably lead to black rule.⁶⁴ According to sources in Rhodesia, the conference would consider a proposal to grant blacks equal representation in Parliament and three posts in the Cabinet. It would also attempt to work out a formula that might achieve black rule by 1979.⁶⁵ However, the relaxation of racial tensions may be jeopardized by the recent arrest of the top black nationalist leader, Reverend Nadingi Sithole. The talks on constitutional reform which began in January 1975 have ceased, and the black nationalists (supported by the Presidents of Zambia, Tanzania, and Botswana) have stated that the talks will not begin again until Sithole is released from jail.⁶⁶

⁶¹ *Id.* at 4.

⁶² *Id.* at 47.

⁶³ *Id.*

⁶⁴ *Détente in Southern Africa*, NEWSWEEK, Dec. 23, 1974, at 36. Smith announced that black rebels had agreed to halt their 2-year-old guerrilla campaign, and in return Smith agreed to convene the constitutional conference.

⁶⁵ *Id.* Smith's announcement was at least partly due to pressure from South African Prime Minister John Vorster, the first leader to recognize the winds of change in Africa. After the April 1974 military coup in Portugal, Vorster made a secret fence-mending trip to the Ivory Coast in September 1974 for a talk with two of Black Africa's moderate rulers, President Felix Houphouët-Boigny of the Ivory Coast and President Leopold Senghor of Senegal. On Vorster's return, he began to pressure Rhodesia to reach an accord with its black majority.

⁶⁶ Prime Minister Vorster had encouraged Smith to release Sithole and other black nationalists from jail and to set up the talks on constitutional reform. Fearing the possibility that guerrilla warfare in Rhodesia would spread into Mozambique, Angola, and then South Africa, Vorster wanted the reform meetings held in order to appease Rhodesia's black freedom fighters. The release of Sithole, who had served 10 years as a political prisoner, was followed by a general cease-fire while the talks were being arranged. However, when Smith recently ordered the rearrest of Sithole on charges that he was plotting to murder his black political rivals, the talks which had

The inevitability of independence in Portugal's African "territories," such as Mozambique, makes the policy behind the Byrd amendment even more short-sighted. The end of white rule in Mozambique will further isolate Prime Minister Smith's white minority regime.⁶⁷ "With Portugal pulling out of Africa, the bells will toll very loudly for the remaining white minority governments in South Africa and Rhodesia. Once Mozambique is independent, the pressure will intensify overnight on Prime Minister Smith's Rhodesian regime next door."⁶⁸ Rhodesia and South Africa will find themselves alone among hostile black neighbors.

By enacting the Byrd amendment, the United States not only took sides in a military conflict, but also condoned a racial one.⁶⁹ Congress must act quickly to restore the United States to full compliance with its international obligations and to regain the confidence of the African people. All indications point to passage of the bill to halt imports from Rhodesia. The new House is likely to take a more liberal stance,⁷⁰ and there also appear to be no obstacles in the Senate.⁷¹

VII. CONCLUSION

With the coming of a new day of independence for Africans and the present relaxation of tensions in Rhodesia and South Africa, the United States needs to maintain a uniform foreign policy in Africa. The United States must either comply with the compulsory obligatory resolution of the Security Council

begun in January ceased. *South African Peace Plan Stalled by Rhodesia*, JET, April 3, 1975, at 30.

⁶⁷ N.Y. Times, Sept. 15, 1974, at 5, col. 2.

⁶⁸ N.Y. Times, Aug. 28, 1974, at 30, col. 2.

⁶⁹ *Hearings on Rhodesian Chrome*, *supra* note 1, at 44. Director Zvobgo stated that "[t]he people of Zimbabwe will never forget that every dollar earned by the [Smith] regime as foreign currency through chrome purchased has contributed to some loss of life and suffering by the African people at the hands of the Ian Smith racist regime."

⁷⁰ N.Y. Times, Nov. 10, 1974, at 1, cols. 1-4; *id.* at 30, cols. 3-4. The 93d Congress consisted of:

	Democrats	Republicans
House	248	187
Senate	58	42

The 94th Congress consists of:

	Democrats	Republicans
House	290	144
Senate	61	38

⁷¹ Staff members from the House Committee on Foreign Affairs indicated to the author that the bill will not be introduced to the Senate until passage in the House to avoid stirring up Senate proponents of the Byrd amendment. Since the Senate passed a bill in December 1973 (S. 1868, 93d Cong., 1st Sess.), which was identical to the one presently before the House, the Senate will probably pass this new bill without major difficulty.

under chapter 7 of the U.N. Charter or continue support of the Smith minority regime. The time for tongue-in-cheek foreign policy with regard to the Rhodesian sanctions is over. The United States must weigh the advantages on both sides and make its decision.

Compliance with the sanctions and repeal of the Byrd amendment would restore the United States to the status of an international law-abiding state, help reinforce the whole structure of international trade, and give meaning to the promulgations of the United Nations which are designed to prevent acts of aggression and breaches of the peace. The effectiveness of the United Nations is important to all nations. The United States cannot afford to turn its back on decisions of the Security Council and on its treaty obligations. Performance of treaty obligations is important to the credibility of our nation.

Compliance with the sanctions would also prevent the possible alienation of the African people. Due to the relaxation of racial tensions in Rhodesia and due to Smith's proposed conference to discuss legal representation and possible majority rule by 1979, it is possible that in a short duration of years, the sanctions will be removed. Thus, whether the United States complied or not would be a moot issue. However, for the benefit of history, for the protection of our billions of dollars of investment and trade with Africa, and for our credibility in international relations, it seems imperative that the United States go on record as having complied with the Rhodesian sanctions. The United States is likely to find itself ostracized by Africa if it continues its foreign policy of support for a minority white regime.

Finally, the bill to halt imports from Rhodesia will probably be passed by the 94th Congress. With a new administration and a new Congress, it is quite possible that our image as a law-abiding nation will be revitalized.

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