Britain and the end of Empire: a study of colonial governance in Cyprus, Kenya and Nyasaland against the backdrop of the internationalisation of empire and the evolution of a supranational human rights culture and jurisprudence, 1938-1965

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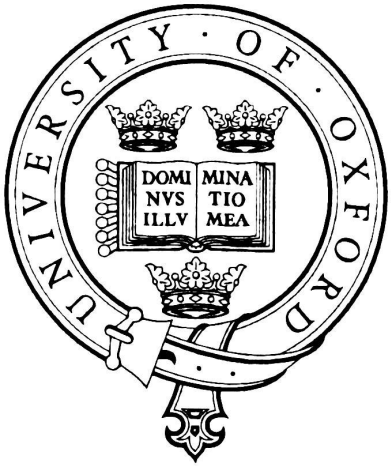

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ABSTRACT I

This thesis traces British colonial governance and the workings of the late colonial state from 1938 until the end of empire in the early 1960s in Cyprus, Kenya and Nyasaland. It proposes that colonial governance operated in place and time back and forth across a spectrum, typified by polarities of (i) 'soft' management and regulation of colonial populations in the 1940s, and (ii) 'hard' control exemplified by the use of harsh physical coercion in the 1950s, although both 'soft' and 'hard' approaches - and hybrid variants somewhere in between - were always, in truth, sides of the same coin.

British colonial governance is examined through the filter of three approximate, although not rigidly linear, 'phases': (1) a 'soft' phase of development and welfare from 1938-45, during which the rhetoric of governance was distinguished by the language of benevolence, in the attempt to re-legitimise empire, (2) the post-war period from 1945-1950, when Britain played a leading role in establishing supranational institutions promoting universal human rights and also, and however reluctantly, extended a modified human rights regime to its colonies, and (3) the swing to 'hard' governance during emergency periods in Cyprus (1955-59), Kenya (1952-60) and Nyasaland (1959-60), during which Britain strove to resolve the dichotomy between competing domestic and international demands of (a) maintenance of empire, often through the use of coercive physical measures, and (b) promotion of universal human rights on the world stage. This was all played out, at least in part, as an albeit muted ideological confrontation between opposing post-war visions of global order - the very survival of the old imperial system pitched against the implicitly decolonising thrust of the universal human rights movement as enshrined in the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950). This thesis argues that by 1959 and in part as a consequence of the cumulative political impact of allegations of human rights and other abuses during emergency periods, Britain could no longer reconcile these competing visions of colonial governance and world order, nor sustain its empire and colonial rule by force.

ABSTRACT II

This thesis traces British colonial governance and the workings of the late colonial state from 1938 until the end of empire in the early 1960s by examining three case studies - Cyprus, Kenya and Nyasaland.

Operating across a spectrum, colonial governance oscillated between 'soft' management and regulation of colonial peoples and 'hard' control, invariably characterised by the use of physical coercion, as witnessed in starkest form during emergency periods in the 1950s. Throughout the 1940s and 1950s, colonial governance incorporated both 'soft' and 'hard' characteristics, frequently simultaneously, although there was a tendency for the pendulum to swing one way rather than another depending on time and circumstance. Seeming contradiction, incoherence and inconsistency in approach underscore the truth that both soft and hard styles were sides of the same governance coin.

This thesis contributes to the existing historiography in five ways. First, whilst 'governance' and, in particular, 'global governance' have attracted interest from international relations scholars in the past two decades, the idea of 'colonial governance' has not yet been examined by British imperial historians. An examination of the process of decolonisation through the prism of 'governance' is yet to be undertaken. Furthermore, it offers a detailed examination of the change in colonial governance. Second, this thesis contributes to the historiography on the end of empire by adding to the modest yet growing literature on human rights and decolonisation, particularly through an examination of newly released archival material (the Hanslope Disclosure held at The National Archives in London). This thesis examines, in particular, the extent to which Britain resisted the adoption into law in its colonies of a 'human rights' jurisprudence or enforceable legal protections and remedies in the period after 1945. Third, this thesis examines the role of government lawyers. This aspect of decolonisation has received only passing attention in the historiography to date. Fourth, it

elucidates further the make-up of the late colonial state. Fifth, and finally, it offers an insight into the undercurrent of activism in Britain against human rights abuses.

This thesis examines three approximate 'phases' or 'stages' of colonial governance. The first is the phase of development and welfare from 1938-45, characterised by increasingly high levels of government spending on welfare and development programmes. The second is the immediate post-war phase from 1945-1950, during which time Britain played a leading role in establishing supranational institutions set up to advance universal human rights. The third phase covers the periods of emergency in Cyprus (1955-59), Kenya (1952-60) and Nyasaland (1959-60).

It was particularly during this final phase of the late colonial state that Britain sought to resolve the dichotomy of competing domestic demands of (a) maintenance of empire - often employing coercive physical measures - and (b) promotion of universal human rights on the international stage. This was played out, at least in part, as an albeit muted ideological competition between opposing post-war visions of global order - the very survival of the old imperial system pitched against the decolonising thrust of the universal human rights movement as enshrined in the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950).

These three phases were not fixed or rigid, since 'soft', 'hard' and hybrid approaches formed a seamless web of colonial governance both before and after 1938. Similarly, there was not any linear or teleological pattern in colonial governance even when directed from the metropole, as governance during the period under examination was often *ad hoc* and fashioned by internal and external exigencies.

Chapter One examines 'phase one' of colonial governance, characterised by increased investment from the metropole between 1938 and 1945 in development and welfare reform programmes in the colonies, largely as a means of re-legitimising empire. Using Malcolm Hailey's published works and his papers held at Rhodes House Library in Oxford, Chapter One offers an insight into the 'softer' side of colonial governance.

Chapter Two examines 'phase two' of colonial governance through the prism of post-war changes in global governance. It plots Britain's attempt to reconcile its new commitment to the post-war world order of universal human rights and supranational institutions and its determined maintenance of its imperial inheritance. Chapter Two focuses, in particular, on the debate in Britain on the extension of the Universal Declaration of Human Rights and the European Convention on Human Rights to British colonies. Through an examination of government papers held at The National Archives, this Chapter examines the overlap and tension between colonial and fledgling global models of governance in the immediate aftermath of the Second World War. Evidence from the papers of Alexander Cadogan, the first permanent UK delegate to the United Nations, is included in this analysis.

Chapters Three, Four and Five form the core of this thesis. They examine 'phase three' of colonial governance during periods of emergency, by way of case study, in Cyprus (1955-59), Kenya (1952-60) and Nyasaland (1959-60). Emergency periods exposed the inherent tensions in Britain's roles as colonial governor and promoter of universal human rights post-1945. Allegations of human rights abuses during periods of emergency had surfaced before 1959. These culminated - and the imperial tipping point reached - with the events of 3 March 1959 at the Hola Camp in Kenya and Nkata Bay in Nyasaland which resulted in numerous deaths. These events added to the existing critical mass of agitation and pressure to decolonise, fatally undermined the colonial project and heralded its end.

Chapter Three examines the emergency period in Cyprus and, in particular, the British response to the Greek Applications to the European Commission of Human Rights in 1956 and 1957 alleging human rights abuses under British rule in Cyprus. This Chapter argues that the Cyprus episode marked the beginning of the 'internationalisation' of the British Empire.

Chapter Four examines the end of empire in Kenya and Nyasaland and focuses on the repercussions of the events of 3 March 1959: in Kenya, eleven detention camp inmates were beaten to death by their warders; in Nyasaland, twenty protesters were shot dead by an attachment of the King's African Rifles. This Chapter shows that, following these episodes, Britain came under increasing domestic and international pressure, as members of parliament, pressure groups, members of the public and others mounted a sustained attack on the entire system of British colonial rule. Chapter Four argues that it was the cumulative effect of the ECHR Applications and history of allegations of abuse in Kenya before 1959 which led to the outcry over the events of 3 March.

Chapter Five examines the involvement of government lawyers in the colonial project, which has received little previous attention in the historiography on decolonisation. This Chapter argues that, although the dedicated 'legal' traffic was thin on the ground, certain key policy and legal issues did nevertheless reach government lawyers as well as Law Officers.

This thesis demonstrates that, during the process of decolonisation, Britain's approach to colonial governance was frequently characterised by ambiguity, inconsistency and incoherence of approach, exemplified by Britain's ultimately futile attempts to reconcile and maintain its positions as imperial power and lead player in the new world order. This was evidenced by the irreconcilables of physical coercion of the colonial populace, introduction of more democratic forms of government in the colonies and promotion of universal human rights on the international stage.

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INTRODUCTION and LITERATURE REVIEW

PART I

INTRODUCTION

A1 Overview

The end of the Second World War witnessed the reshaping of the old world order, as the Euro-centric world of empire and the imposition of colonial rule by force became unsustainable, untenable and politically unacceptable. Post-1945, the vestiges of the imperial project were gradually replaced by a new world order overseen, at least theoretically, by supranational institutions such as the United Nations (UN) and the Council of Europe, and national sovereignty became something it had not been before – a universal condition.[1] The notion of 'human rights' was central to the new scheme of things, and Britain played a key role in articulating the ideals upon which the post-Second World War order was to be based.[2]

At the same time, whilst appearing supportive on the international stage of human rights initiatives, including principles of self-determination and equal rights for all, Britain proved reluctant to relinquish its imperial system or manner of colonial governance. After 1945, the British Government remained committed to empire and even displayed a renewed confidence in the merits of exporting the British political system to colonial territories.[3] Indeed, victory in the Second World War had reinforced Britain's belief in British values.

Elsewhere, however, there was a marked ideological shift. During the process of decolonisation, Britain's historic value system was overtaken by new supranational, global norms. Britain and its colonial possessions began to co-exist in a conflicted universe. The Universal Declaration of Human Rights (UDHR) and the European Convention on Human

[1] F. Cooper, 'Afterword: Social Rights and Human Rights in the Time of Decolonization', *Humanity*
[2] A.W.B. Simpson, *Human Rights and the End of Empire* (Oxford, 2001) and E. Bates, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford, 2010).
[3] J. Darwin, *Unfinished Empire: The Global Expansion of Britain* (London, 2012), p.351.

Rights (ECHR) promoted and aimed at legal protection for universal human rights in the wake of the tragedies of the Second World War. During periods of emergency in a number of colonial territories and in its resolve to cling to empire, however, British security forces were responsible for widespread ill-treatment and the use of coercion and blunt physical force. Communal punishment, the imposition of fines and detention without trial were all employed in the attempt to control colonial populations, which involved Britain's derogating from its legal obligations under the ECHR. Britain's attitude to the development of a post-war universal human rights regime and its extension to the colonies was, at best and at worst, ambivalent. In this, Britain was not alone.

The late colonial state took on the same 'schizophrenic character' as post-war France, as described by Fred Cooper, as it flitted between softer and harder - incompatible and irreconcilable - methods and forms of governance.[4] As Conklin has argued 'whatever the officials claim, Western colonisation during this period was in large part an act of state-sanctioned violence', and liberal regimes used illiberal means to suppress resistance to colonial rule and in so doing disregarded their own democratic principles.[5] The late colonial state is thus an important, albeit often overlooked, theatre in which the tensions of the novel, evolving post-Second World War world order, with its avowed and embedded disregard for colonialism and its promotion of self-determination and universal human rights, were most starkly played out.[6]

This thesis examines how far Britain incorporated human rights aspirations and corresponding legal frameworks into colonial governance in the post-1945 period and the extent to which 'hard' colonial governance flew in the face of the underpinning ethics and

[4] F. Cooper, 'Reconstructing Empire in British and French Africa', *Past and Present* 6 (2011), p.201.
[5] A.J. Conklin, 'Colonialism and Human Rights, A Contradiction in Terms? The Case of France and West Africa, 1895-1914', *The American Historical Review* 103.2 (1998), p.419.
[6] See J. Darwin, 'What was the Late Colonial State?' *Intinerario* 23 (1999), pp.73-82 for a definition of the late colonial state.

jurisprudence of human rights initiatives such as the UDHR and ECHR. Through this lens, this thesis views Britain's attempts to resolve the perennial dilemma faced by all late colonial states in the early twentieth century: how an imperial regime could introduce more egalitarian forms of governance, advance universal human rights on the international stage and yet survive as imperial power.[7] Although Britain tried to resolve this dilemma by projecting an image of itself as both indomitable governor and enlightened guardian, this thesis demonstrates how the British Government attempted - and ultimately failed, by the mid-twentieth century - to sustain this dual role.

This role dichotomy was incrementally exposed as unsustainable, at least in part, by increasingly vocal and effective opposition from activists and anti-colonialists in Britain. Initial demands were for the end of colonial rule, but later opposition took the form of disclosure and condemnation of human rights abuses which had escalated as emergency periods intensified. The activist response came from MPs (mainly, but not always, from the Labour Party) raising questions in the House of Commons, from anti-colonial organisations like the Movement for Colonial Freedom publicising and discussing issues at annual conferences and from members of the general public writing to the Colonial Secretary, particularly following the Hola massacre in 1959. Government was particularly sensitive to public opinion in the late 1950s and, very gradually, by way of initial demands for modification of colonial governance in line with 'British values' and, later, calls for a complete end to colonial rule, the activist voice in Britain managed successfully to hold the Government to account over its human rights record in the colonies. Although the activist effort was by no means a unified or collective movement, the rising chorus of opposition came to represent (in the Government's eyes) the constant irritant of a burgeoning and in the end unstoppable human rights culture in Britain.

[7] F. Cooper, 'Reconstructing Empire', p.201.

A2 Colonial Governance, Human Rights and End of Empire

Whilst governance and, in particular, global governance have attracted much interest from international relations scholars in the past two decades, the idea of colonial governance has not yet been examined in detail by British imperial historians.[8] Indeed, an examination of the process of decolonisation through the prism of governance is yet to be undertaken.[9] It is through this prism that this thesis seeks to offer greater insight into the internal workings of the late colonial state, which to date has received only limited attention.[10] This thesis further contributes to the historiography on the end of empire by adding to the modest yet growing literature on human rights and decolonisation. As a subset of governance, this thesis examines how and to what scope and effect Britain applied human rights norms (products of the fledgling global governance system) in its colonies post-1945. This thesis also adds to the on-going project of re-writing Britain's often bloody and brutal end of empire, which began in 2005 with the publication of David Anderson's and Caroline Elkin's studies of the Mau Mau Emergency in Kenya.[11] The previous orthodoxy - that the end of British rule in Kenya (or elsewhere) witnessed only 'a few flagrantly bad cases' or 'a few bad deeds' of excessive brutality, as Majdalany argued in 1962, has evaporated.[12]

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[8] The most notable IR works are: A. Anghie, 'Universality and the Concept of Governance in International Law' in E.K. Quashigah & O.C. Okafor (eds), *Legitimate Governance in Africa: International and Domestic Legal Perspectives* (The Hague, 1999), pp.21-40; A. Ayers, 'Imperial Liberties: Democratisation and Governance in the 'New' Imperial Order', *Political Studies* 57 (2009), pp.1-27; T.J. Biersteker, 'Global Governance' in M. Dunn Cavelty and V. Mauer (eds), *The Routledge Handbook of Security Studies* (Abingdon, 2010), pp. 439-51; L.S. Finkelstein, 'What Is Global Governance?', *Global Governance* 1 (1995), pp.367-372; J.N. Rosenau & E-O Czempiel, *Governance without Government: Order and Change in World Politics* (Cambridge, 1992); T.G. Weiss, 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges', *Third World Quarterly* 21.5 (2000), pp.795-814.

[9] Some recent works mention 'governance' in the colonial context but do not take the analysis any further. See the introduction to C. Andersen & A. Cohen (eds), *The Government and Administration of Africa, 1830-1939* (London, 2013), pp.xi-xxxvii.

[10] Comaroff notes this deficiency in the historiography. See J. Comaroff, 'Reflections on the Colonial State, in South Africa and Elsewhere: Factions, Fragments, Fact and Fictions', *Social Identities: Journal for the Study of Race, Nation and Culture* 4.3 (1998), pp.321-361. Darwin's work is an exception. See J. Darwin, 'What was the Late Colonial State?'.

[11] D. Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (London, 2006) and C. Elkins, *Britain's Gulag: The Brutal End of Empire in Kenya* (London, 2005).

[12] F. Majdalany, *State of Emergency: the Full Story of Mau Mau* (London, 1962), pp.226-227.

A3 Kenya

Interest in Kenyan history now extends beyond the academic world. Recently, five Kenyans reached an extra-judicial settlement with the British Government for the suffering they endured during the emergency period, and the British Government paid £19.9 million to 5,228 claimants in the case of *Ndiku Mutua & Others v. Foreign and Commonwealth Office* in June 2013.[13] The demand for reparation arising out of injustices suffered during the emergency period in Kenya does not appear to be abating, with another High Court case set down for 2016.

Claims by other former colonists have not yet reached the stage of the Kenyan litigation, but in late 2012 it was reported that sixty Cypriots who resisted the British during the emergency period in Cyprus were considering legal action similar to that of Mau Mau claimants.[14] Along similar lines, a re-examination of the Batang Kali massacre in Malaya in 1948, in which twenty-four villagers were killed by British troops, has also recently been undertaken.[15] This latter case reached the UK Supreme Court in April 2015.[16]

A4 Cyprus and Nyasaland

This project broadens current re-examination of Britain's 'dirty war' in Kenya, by including Cyprus and Nyasaland (now Malawi) in its analysis of the end of the British Empire. In particular, the 'colonial nature' of the Cyprus emergency has often been ignored in the historiography because of its international dimension.[17] This thesis attempts to re-introduce

[13] FCO & Rt. Hon. William Hague, 'Statement to Parliament on settlement of Mau Mau claims', 6 June 2013, accessed 30 March 2015, available at https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims.
[14] BBC Radio 4, 'Cypriots seek recompense over British 'torture'', accessed 30 March 2015, available at http://www.bbc.co.uk/news/world-europe-20302280.
[15] M. Townsend, 'Revealed: how Britain tried to legitimize Batang Kali massacre', *The Observer* 6 May 2012, accessed 30 October 2012, available at http://www.guardian.co.uk/world/2012/may/06/britain-batang-kali-massacre-malaysia.
[16] '1948 Malayan killings case reaches UK Supreme Court', 22 April 2015, accessed 30 April 2015, available at http://www.bbc.co.uk/news/uk-32408433.
[17] D. Anderson, 'Policing and communal conflict: The Cyprus emergency, 1954-60', *Journal of Imperial and Commonwealth History* 21.3 (1993), p. 178.

Cyprus into the discussion on the end of empire. The histories of the emergency periods in both Cyprus and Nyasaland have been obscured by the focus on Kenya. This is, in part, due to their peripheral position within the former empire. As Lewis rightly notes, Kenya had 'commanded considerable attention in London' which makes it 'a particularly compelling and significant case-study' in the historiography.[18]

Other former territories ought now to be inserted into this story. Although human rights abuses during periods of emergency in Cyprus and Nyasaland were less widespread than in Kenya and resulted in far fewer injuries and deaths, ill-treatment was, nevertheless, meted out by security forces.

Significant events within these neglected territories, such as the 1956 and 1957 Greek Applications to the European Commission of Human Rights on behalf of Cyprus and Lord Devlin's 1959 report into disturbances in Nyasaland, were key in the acceleration of the end of empire because they eroded the belief in the legitimacy of force as a colonial governance tool. The inclusion of these two case studies now offers a more comprehensive examination of the cumulative effect of allegations of human rights abuse and the role these played in the process of decolonisation, and this thesis sheds further light on the events and debates surrounding human rights abuses during periods of emergency *across* the empire. An examination of the Malayan Emergency (1948-60) is beyond the scope of this thesis, as is the later Aden Emergency (1963-67), although there is opportunity for further research.

A5 Case Studies

Cyprus, Kenya and Nyasaland have been selected as case studies because of their very differences. Geography, relationship to the metropole, demographics and the scale and composition of the anti-colonial movements differed in each territory.

[18] J. Lewis, *Empire State-Building: War and Welfare in Kenya, 1925-1952* (Oxford, 2000), p.29.

In Cyprus, Britain had, as early as 1931, faced demands for the end of British rule and *Enosis* (union) with Greece.[19] The origins of *Enosis* dated back to 1878. Following his election as Archbishop of Cyprus in 1950, the *Enosis* movement was led by Archbishop Makarios III. Due to Makarios' activism Britain faced frequent lobbying at the UN and repeated exposure on the international stage. Opposition to British rule came also from EOKA, a 'military fragment' of the *Enosis* movement, commanded by General George Grivas,[20] but the hostility in Cyprus to British rule had a unique feature because it took the form not of a demand for independence, as was the case with other anti-colonial movements, but for the unification of the Greek-Cypriot population of Cyprus with another sovereign state, Greece.[21]

In Kenya, British rule was challenged by moderate nationalists, of whom Jomo Kenyatta was the most well-known, and who had formed the Kikuyu Central Association and the Kenya African Union. However, the colonial state faced its toughest opposition from the Mau Mau, militant nationalists who fought to protect the interests of the Kikuyu, Embu and Meru ethnic groups and who were confined to farming in the Native Reserves where soil quality was low.[22]

In Nyasaland, the British faced growing demands by the Nyasaland Congress for African rights and the end of the Central African Federation (of which Nyasaland had become a part in 1953, alongside Southern and Northern Rhodesia).[23] These demands increased when

[19] R. Holland, *Britain and the Revolt in Cyprus,* 1954-1959 (Oxford, 1998), p. 1.
[20] R. Holland, 'Dirty Wars: Algeria and Cyprus compared: 1954-1962' in C. Robert-Ageron & M. Michel, *L'ère des décolonisations: Actes du Colloque d'Aix-en-Provence* (Paris, 1995), p. 40.
[21] R. Holland, 'Never, never land: British Colonial Policy and the Roots of Violence in Cyprus, 1950-54', *Journal of Imperial and Commonwealth History* 21.3 (1993), p. 148.
[22] H. Bennett and D. French (eds), *The Kenya Papers of General Sir George Erskine, 1953-1955* (Stroud, 2013), p. 9.
[23] See C. Baker, *State of Emergency: Crisis in Central Africa, Nyasaland, 1959-60* (London, 1997) for a history of nationalist demands in Nyasaland.

Hastings Banda, the enigmatic leader of the Congress, returned in 1958 from exile in Scotland and Ghana to lead the campaign.[24]

These potted histories from Cyprus, Kenya and Nyasaland admittedly over-simplify the make-up of the anti-colonial movements and demands for change in these colonies, but they serve to demonstrate the divergent challenges faced by Britain in the 1950s across its Empire.

These three territories are also distinguishable one from the other by their racial differences, since perceptions of differing racial typologies between Mediterranean Cyprus and the African Kenya and Nyasaland led to the use of subtly different colonial governance techniques in each, particularly with regards to the use of communal punishment.

Furthermore, each territory's position in the pecking order of Britain's wider global interests provoked differing reactions in Whitehall. In Cyprus, there were numerous competing international interests; in Kenya and Nyasaland, the colonial state was, at least initially, immune from outside interference. These differentials were reflected in differing responses from within Whitehall and the broader metropole and often generated highly localised governance solutions and practices in each of the colonies. Conversely, policy makers also sought to learn from past mistakes in one colony in order to avoid repetition in another. For example, the risk of events in Kenya reaching the application stage at the ECHR as with Cyprus was to be avoided at all cost; in Nyasaland in early 1959, policy makers were desperate to avoid a repeat of the lengthy Kenyan emergency. This thesis seeks to elucidate these equivalencies, parallels and divergences.

[24] J. Darwin, *Unfinished Empire,* p. 369.

PART II

STRUCTURE, FOCUS and SOURCES

B1 Structure

This thesis examines three approximate 'phases' or 'stages' of colonial governance. Chapter One examines 'phase one', termed a period of 'soft' colonial governance, which saw the introduction and expansion of development and welfare programmes and during which governance was characterised by the language of benevolence and 'partnership'. Chapter Two provides an overview of the immediate post-war period from 1945-50, when Britain played a leading role in establishing supranational institutions to advance universal human rights, and documents 'phase two' when colonial governance struggled to adapt in line with emerging schemes of global governance. Chapters Three and Four examine emergency periods, Chapter Three the emergency in Cyprus (1955-59) and Chapter Four the emergencies in Kenya (1952-60) and Nyasaland (1959-60). This period covers 'phase three' of colonial governance and the shift to 'harder' governance. Chapter Three charts the beginning of the 'internationalisation' of empire and Britain's attempts to resist that. Chapter Four documents the vocal domestic response to events in Kenya and Nyasaland. These Chapters illustrate that during periods of emergency there was never a total or complete swing to 'hard' forms of governance; 'soft' governance was omnipresent because of, in the main, continuing development and welfare schemes. Chapter Five examines the role of government lawyers during the third phase of colonial governance.

B2 Focus on Metropole

This thesis' primary focus is the metropolitan 'arm' of the late colonial state. There is, of course, debate about just what the 'late colonial state' comprised and even whether there was just such a thing. As Darwin has argued, however, the late colonial state should not be regarded simply as a synonym for colonial government and its system of administration.

Rather, the late colonial state was 'an arena in which a medley of interests (and their attendant ideologies) competed'.[25] It combined both the imperial 'centre' in the metropole and 'on the spot' officialdom, and within and between these two 'arms' of the late colonial state there were often competing interests.

There are two reasons for the 'metropolitan' focus. First, it was in the metropole in the main that Colonial Office and Foreign Office officials were required to satisfy and reconcile the interests and requirements of traditional colonial governance on the one hand and, on the other, new standards and expectations of governance as set by the United Nations and the Council of Europe. It was in London that the tensions between colonial governance and what we might describe as an emerging model of global governance were felt most and most starkly. Second, as Darwin argues, 'the essence of the late colonial condition' was 'the loss of autonomy and the surrender of its fate to cold-blooded policy-makers at home, or hot-blooded politicians on its doorstep (or a combination of both)', suggesting that the balance of power had shifted to the CO in the metropole during this period;[26] as Howe argues, the 'vital decision makers' during the process of decolonisation were CO civil servants.[27] This thesis builds on these views to include an examination of the role of FO civil servants and the Law Officers.

During the period under examination, decision-making about law, civil order and policing shifted to the metropole, operational activities became increasingly directed by officials in London and responsibility for day-to-day management of colonies also shifted to Whitehall.[28] Despite an increased outward local demonstration of power and authority in the colonies, colonial governments became increasingly dependent upon the metropole to maintain their

[25] J. Darwin, 'What was the Late Colonial State?', p.75.
[26] Ibid, p.76.
[27] S. Howe, *Anticolonialism in British Politics: the Left and the End of Empire, 1918-1964* (Oxford, 1983), p.13.
[28] D. Killingray and D. Anderson, 'An Orderly Retreat? Policing the End of Empire' in D. Anderson and D. Killingray (eds), *Policing and Decolonisation*, p.2.

authority and to execute the tasks the metropole demanded of them.[29] CO Legal Adviser, Roberts-Wray, in a speech delivered to the CO in 1948, for example, explained how ultimate imperial authority lay in the metropole and that whilst, in strictly legal terms, the Secretary of State for the Colonies had little power, in practice he had considerable authority over the Governor.[30]

Mirroring the shift in power and responsibility back to the metropole in the mid-twentieth century, this thesis looks to reconstruct discussion and debate about human rights which took place post-1945 in various Whitehall departments, including the Colonial, Foreign and Law Offices. In addition, the focus is broadened to examine wider sensitivities surrounding human rights within both Houses of Parliament, amongst the public and activists and in the press. This thesis also examines the extent to which periods of emergency may have incubated an ideological transition from colonial ethos to one dominated by universal human rights. At the heart of this project lies the question of how far British officialdom either consciously adapted its thinking to or actively resisted the human rights imperatives, declarations and conventions to which Britain was a signatory.

B3 Sources

As a result of the metropolitan focus, the main body of sources consulted is government documents held at The National Archives. The main departmental files consulted are from the Colonial Office (CO), Foreign Office (FO) and Foreign and Commonwealth Office (FCO). The FCO files were transferred to the UK to a storage facility, Hanslope Park, upon independence and lay there untouched until their discovery in 2011.[31] It was extremely

[29] J. Darwin, 'What was the late colonial state?', p.81.
[30] Rhodes House Library (RHL), MSS.Brit.Emp.s.401, K. Roberts-Wray, 'Constitutional law in the everyday work of the CO', 11 November 1948.
[31] See D. Anderson, 'Mau Mau in the High Court and the 'Lost' British Empire Archives: Colonial Conspiracy or Bureaucratic Bungle?', *Journal of Imperial and Commonwealth History* 39.5 (2011), pp.699-716. Many academics, including Margery Perham, at the time of independence voiced concern

fortuitous that these documents became available as this project progressed. In addition to these files, documents from the Law Officers (LO), Lord Chancellor's Office (LCO) and Cabinet Office (CAB) were also consulted. Research has also been undertaken at the Rhodes House Library in Oxford. Files consulted have included the Devlin Commission papers, the records of the Fabian Colonial Bureau, the papers of the Anti-Slavery Society and the transcripts of the End of Empire television series produced by Granada Television and transcripts of interviews undertaken as part of the Oxford Colonial Records Project.

Papers of individuals have also been consulted. These include those of Malcolm Hailey, Kenneth Roberts-Wray, Sir John Whyatt and Sir Arthur Young. The papers of Labour MP Barbara Castle and Colonial Secretary Lennox-Boyd were consulted at the Bodleian Library in Oxford. At the Churchill Archives in Cambridge, the papers of Alexander Cadogan, Oliver Lyttelton and Enoch Powell were consulted. The papers of the Movement for Colonial Freedom, held at the School of Oriental and African Studies in London, were also examined. Finally, the papers of Archbishop Fisher and the British Council of Churches, held at Lambeth Palace and the Church of England Record Centre, in London were consulted. This thesis also draws on substantial evidence from parliamentary debates, available online through Hansard, and from newspapers, including *The Manchester Guardian, The Observer* and *The Times.*

about the assumed destruction of files relating to the Mau Mau emergency. See The National Archives (TNA), FCO141/6974.

PART III

LITERATURE REVIEW

C1 Introduction

John Darwin wrote recently that imperial history should attempt to 'strip away the nostalgia that still colours our image of empire' in order to see the imperial past for what it was - at times economically exploitative, culturally aggressive and physically brutal.[32] This thesis contributes to the project of 'stripping away' the myths of decolonisation by examining the British 'arm' of the late colonial state's employment of methods of 'hard' governance.

This thesis' contribution to the existing historiography is fivefold. First, whilst 'governance' and, in particular, 'global governance' have attracted much interest from international relations scholars in the past two decades, the idea of 'colonial governance' has not yet been explicitly examined by British imperial historians. Furthermore, this thesis provides an overview of the shift in governance between soft and hard polarities. Second, this thesis further contributes to the historiography on the end of empire by contributing to the modest yet growing literature on human rights and decolonisation. Third, this thesis also sheds light on the nature and extent of the involvement of government lawyers in colonial issues relating specifically to human rights. Fourth, this thesis elucidates further the make-up of the late colonial state. Fifth, and finally, this thesis offers an insight into the undercurrent of activism in Britain against human rights abuses.

This literature review broadly follows the same structure as the thesis. First, the general literature on decolonisation is examined; second, there is an examination of the literature on governance and colonial governance; third, an overview of literature on colonial development and welfare is offered; fourth, the literature on human rights and

[32] J. Darwin, *Unfinished Empire,* p.6.

decolonisation is considered; fifth, the literature on counter-insurgency and decolonisation is examined; sixth, the scholarship on anti-colonialism is discussed; seventh, the literature on government lawyers is examined.

C2 Literature on Decolonisation

Since the 1960s, a great volume of work has been published which examines the end of the British Empire and this has received added impetus since 2000.[33] John Darwin has addressed many of the 'big' questions regarding decolonisation, including what *was* decolonisation, and he has offered a framework for thinking about the process in his work published since the late 1980s.[34] Darwin's scholarship is regarded as the most authoritative and complete work on the end of empire.

Other scholarship has over-simplified the end of empire in Britain and, more broadly, Europe. There are also a number of comparative studies.[35] A number of studies describe a smooth transition to independence for colonial states. George Boyce, for example, has talked of 'the relative ease with which England got rid of its empire', which mirrors Frank Heinlein's

[33] For a detailed overview see S. Stockwell (ed), *The British Empire: Themes and Perspectives* (Oxford, 2008). For an early study of decolonization see W.P. Kirkman, *Unscrambling an Empire: a Critique of British Colonial Policy 1956-1966* (London, 1966).

[34] J. Darwin, 'British Decolonisation since 1945: A Pattern or a Puzzle?', *Journal of Imperial and Commonwealth History* 12.2 (1984); J. Darwin, 'The Fear of Falling: British Politics and Imperial Decline Since 1900', *Transactions of the Royal Historical Society* 36 (1986); J. Darwin, *Britain and Decolonization: The Retreat from Empire in the Post-War World* (Basingstoke, 1988); J. Darwin, *The End of the British Empire: the Historical Debate* (Oxford, 1991); J. Darwin, 'Decolonization and the End of Empire' in R. Winks (ed), *The Oxford History of the British Empire, Volume 5: Historiography* (Oxford, 1999), pp. 541-557. For other authoritative accounts of decolonisation see D. Goldsworthy, 'Keeping change within bounds: Aspects of colonial policy during the Churchill and Eden governments, 1951-57', *Journal of Imperial and Commonwealth History* 18.1 (1990), pp.81-108; D. Fieldhouse, 'Can Humpty-dumpty be put together again? Imperial history in the 1980s', *Journal of Imperial and Commonwealth History* 12.2 (1984), pp.9-23; and R.F. Holland, 'The Imperial Factor in British Strategies from Atlee to Macmillan, 1945-63', *Journal of Imperial and Commonwealth History* 12.2 (1984), pp. 65-186.

[35] F. Cooper, *Decolonization and African Society: The Labor Question in French and British Africa* (Cambridge, 1996); F. Cooper, 'Reconstructing Empire'; H. Grimal, *Decolonization: the British, French, Dutch and Belgian Empires* 1919-1963 (Boulder, 1978); J.D. Hargreaves, *Decolonisation in Africa* (Essex, 1988); R. Holland, *European Decolonization 1918-1981: An Introductory Survey* (Basingstoke, 1985); M. Shipway, *Decolonization and its Impact: A Comparative Approach to the End of the Colonial Empires* (Oxford, 2008); M. Thomas, *The French North African Crisis: Colonial Breakdown and Anglo-French Relations, 1945-1962* (Basingstoke, 2000); M. Thomas, *Fight or Flight: Britain, France and their Roads from Empire* (Oxford, 2014).

conclusion that the British did 'all told…rather well'.[36] These studies do not engage with the difficult and protracted decolonisation processes experienced by many former territories or the question of human rights abuses. Hargreaves' work, for example, offers just one line about the use of violence and says only that it 'began to attract political criticism in the UK'.[37] A more recent general work on the end of empire which does acknowledge the scale of abuse during decolonisation is Grob-Fitzgibbon's *Imperial Endgame* but the book is, unfortunately, largely comprised of a poor narrative account littered with sweeping and unsubstantiated assertions such as 'if there is one clear conclusion to be drawn from the end of Britain's empire, it is that liberal imperialism can only be sustained by illiberal dirty wars'.[38] Grob-Fitzgibbon's conclusion is misleading: it was, in fact, the 'illiberal dirty wars' that contributed to the undoing of empire.

Writing in 2005, David Anderson demonstrated that in 1950s Kenya, British justice was 'a blunt, brutal and unsophisticated instrument of oppression'.[39] Decolonisation was not, therefore, the smooth and pain-free process previously described or thought. It is only recently that this revision of the end of empire has attracted increasing scholarship and investigation. This is no doubt due, in part, to the thirty-year rule permitting the release of relevant documents at The National Archives and, more recently, the discovery and accessibility of the Hanslope Disclosure.[40]

David Anderson's and Caroline Elkins' research on the period of emergency in Kenya uncovered the true extent of the brutality of the process of British decolonisation.[41] This has

[36] G. Boyce, *Decolonisation and the British Empire, 1775-1997* (Basingstoke, 1999); F. Heinlein, *British Government Policy and Decolonization, 1945-63: Scrutinising the Official Mind* (London, 2002).
[37] J.D. Hargreaves, *Decolonisation in Africa,* p.131.
[38] B. Grob-Fitzgibbon *Imperial Endgame: Britain's Dirty Wars and the End of Empire* (New York, 2011), p.377.
[39] D. Anderson, *Histories of the Hanged,* p. 7.
[40] D. Anderson, 'British abuse and torture in Kenya's counter-insurgency, 1952-1960', *Small Wars and Insurgencies* 23.4-5 (2012), pp.700-719.
[41] D. Anderson, *Histories of the Hanged* and C. Elkins, *Britain's Gulag.*

recently been added to by Huw Bennett's and Daniel Branch's studies of the emergency period in Kenya.[42] Anderson's estimates of 20,000 Africans killed and 150,000 held in detention camps in Kenya in the 1950s have helped dismantle the dominant interpretation of this era in Kenya's history which claims, as Majdalany has, that coercive methods were limited to a 'few shameful acts by the police and the soldiers' and 'many fewer than rumour and slander made out'.[43] What Anderson's work demonstrates is that violence was both systematic and systemic in Kenya during this period. Detainees were held in detention camps for months (sometimes years) without trial, and numerous incidents of brutality and torture were recorded. Unpopulated forest and mountain regions were designated 'Prohibited Areas' where the army and police were sanctioned to use weapons even in the absence of provocation.[44] Other powers under emergency legislation included the restricted movement and 'repatriation' of people, introduction of special documentation and seizure of property.[45] Crimes such as the overseeing of oaths and the equipping of insurgents attracted the death penalty. Anderson has clearly established that those in the highest positions of authority in government in Nairobi and London were aware of and complicit in the introduction of abusive regimes in detention camps.[46] This thesis aims to contribute further to the re-writing of British imperial history by offering an insight into discussions in Whitehall about the use of violence and human rights abuses in the colonies.

Anderson's and Elkins' research has prompted further probing into the experience of decolonisation in Kenya, but other colonial territories have to a considerable degree been left out. With the exception of David French's *Fighting EOKA,* there has been no systematic

[42] H. Bennett, *Fighting the Mau Mau: The British Army and Counter-Insurgency in the Kenya Emergency* (Cambridge, 2013) and D. Branch, *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War, and Decolonization* (New York, 2009).
[43] D. Anderson, *Histories of the Hanged,* pp. 4-5; F. Majdalany, *State of Emergency,* p.226.
[44] A. Clayton, *Counter-Insurgency in Kenya: A Study of Operations Against Mau Mau* (Nairobi, 1976), p. 13.
[45] Ibid.
[46] D.M. Anderson, 'British abuse and torture', p.700-01.

treatment of colonial violence in Cyprus.[47] FO documents held at The National Archives, however, document numerous allegations of abuse, as do the recently released migrated archives. Robert Holland, a specialist in Cyprus' colonial period, acknowledges British violence in his studies but does not examine it in any great detail.[48] Furthermore, historical allegations of abuse in Cyprus have too often and easily been dismissed. Nick van der Bijl, for example, has recently argued that instances of ill-treatment were understandable 'slips' in behaviour by security forces faced with a hostile environment.[49]

Similarly, human rights abuses in Nyasaland during the emergency period have received little attention in the historiography on decolonisation, with the exception of a recent collection of essays edited by John McCracken and others.[50] McCracken's work examines statements by detainees and warders at Kanjedza in April and May 1959.[51] A first-hand account by Edward D. Mwasi, detained in Kanjedza detention camp, is also available.[52] Colin Baker's comprehensive book on the state of emergency in Nyasaland provides a detailed overview of the period, but as with so many of the other works on the end of empire, does not engage with human rights abuses to any great extent other than in his discussion of Lord Devlin's findings.[53] Indeed, writing in 2012, McCracken acknowledged just how much was yet to be uncovered about detention in Nyasaland during the emergency period.[54]

The contribution of this thesis is not, however, to add to the catalogue of abuse evidenced by Anderson and Elkins for Kenya or to offer such a catalogue for Cyprus and Nyasaland. This is

[47] D. French, *Fighting EOKA: The British Counter-Insurgency Campaign on Cyprus, 1955-59* (Oxford, 2015).
[48] R. Holland, *Britain and the Revolt in Cyprus*; R. Holland, 'Dirty Wars: Algeria and Cyprus compared'; R. Holland, 'Never, never land: British Colonial Policy'.
[49] N. Van Der Bijl, *The Cyprus Emergency: The Divided Island, 1955-1974* (Barnsley, 2014), p.146.
[50] K.M. Phiri, J. McCracken and W.O. Mulwalu (eds), *Malawi in Crisis: the 1959/60 Nyasaland State of Emergency and its Legacy* (Zomba, 2012).
[51] J. McCracken, 'In the Shadow of Mau Mau: Detainees and Detention Camps during Nyasaland's State of Emergency' in Ibid, p. 166-192.
[52] E.D. Mwasi, 'Reminiscences of My Detention, 1959-1960', *The Society of Malawi Journal* 59.2 (2006), pp. 40-49.
[53] C. Baker, *State of Emergency.*
[54] J. McCracken, 'In the Shadow of Mau Mau', p.187-88.

beyond its scope. Instead, this thesis attempts to situate British colonial violence in the context of the development of (a) colonial governance, and (b) the development of human rights and related law in the post-1945 period.

C3 Literature on Colonial Governance

The notion of colonial governance has seldom been interrogated. Although there is a considerable amount of contemporary literature which engages with governance, the material focuses largely on ideas of 'global' governance and 'good' governance. Furthermore, it is written almost exclusively by international relations theorists for an IR or political science audience. To date, there exists no historical literature in the field of imperial history which explicitly engages with the idea of 'governance' or, more specifically, 'colonial governance'.[55] In Chapter One, this thesis attempts to fill this gap and sets out a working definition of colonial governance based on a framework suggested by theoretical literature on global governance and the writings of Malcolm Hailey, Frederick Lugard and Margery Perham.[56]

Even the primary material is somewhat limited, however. Margery Perham, Oxford University academic and colonial policy expert, noted when compiling a reading list for Colonial Service Students in 1950, for example, the paucity of historical works which examined the development of colonial government.[57] This included general studies of empire as a whole and of specific regions.

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[55] Related to this is Comaroff's statement that despite increased interest in imperialism, the colonial state itself has been theorised or examined little. The same is true of 'colonial governance'. See J. Comaroff, 'Reflections on the Colonial State', p.322.

[56] The main texts are M. Hailey, *An African Survey* (London, 1953), F. Lugard, *The Dual Mandate in British Tropical Africa'* (London, 1922), F. Lugard, *Representative Forms of Government and 'Indirect Rule' in British Africa* (Edinburgh, 1928), M. Perham, *Africans and British Rule* (Oxford, 1941). See also Earl of Listowel, 'The Modern Conception of Government in British Africa', *Journal of African Administration,* pp. 99-105. The Earl was Minister of State for the Colonies. See also A. Cohen, *British Policy in Changing Africa* (London, 1959). Cohen was a civil servant and later Governor of Uganda (1952-57).

[57] M. Perham, *Colonial Government: Annotated reading list on British Colonial Government* (London, 1950), p.xi.

C4 Literature on Development and Welfare

Relatively little research has been published which focuses on the first phase of colonial governance and welfare and development programmes from 1938. Although there are a number of comprehensive overviews of post-1938 change in colonial policy, this literature is now out-dated, with little having been written for over thirty years.[58] The exceptions to this are Havinden's and Meredith's detailed study of colonialism and development in Britain's tropical colonies from 1850 until 1960[59] and Lewis' study of Kenya until 1952.[60] Most recently, colonial development has been examined by international relations scholars who have studied the parallels between modern day conceptions of 'good government' in third world countries and those of the colonial state in the 1940s. This re-examination of colonial development is limited, however, and merely serves as a backdrop to analysis of contemporary events.[61]

C5 Literature on Human Rights and Emergency Periods

Similarly, human rights have received little detailed attention, other than from A.W.B. Simpson in *Human Rights and the End of Empire.* In terms of the individual literature on Cyprus, Kenya and Nyasaland, there is considerable disparity in terms of quantity and quality. The period of decolonisation in Kenya has received far more attention than Cyprus or Nyasaland. Research by Anderson, Elkins and Branch has built up a very clear picture of the process that led to Kenya's independence in 1963.[62] For Cyprus, there are far fewer comprehensive studies. Robert Holland's work is by far the most comprehensive on the end

[58] S. Constantine, *The Making of British Colonial Development Policy, 1914-40* (London, 1984); I. Jennings, *The Approach to Self-Government* (Cambridge, 1956); J.M. Lee, *Colonial Development and Good Government;* D.J. Morgan, *The Official History of Colonial Development* (London, 1980); R.D. Pearce, *The Turning Point in Africa: British Colonial Policy,* 1938-1948 (London, 1982); E.R. Wicker, 'Colonial Development and Welfare, 1929-1957: The Evolution of a Policy', *Social and Economic Studies* 7.4 (1958), pp.170-92.

[59] M. Havinden and D. Meredith, *Colonialism and Development: Britain and its Tropical Colonies, 1850-1960* (London, 1993).

[60] J. Lewis, *Empire State-Building.*

[61] See for example, V. Hewitt, 'A Cautionary Tale: Colonial and post-colonial conceptions of good government and democratisation in Africa', *Commonwealth and Comparative Politics* 44.1 (2006), pp.41-61.

[62] D. Anderson, *Histories of the Hanged;* D. Branch, *Defeating Mau Mau*; C. Elkins, *Britain's Gulag*.

of British rule in Cyprus.[63] Further research by Markides (co-authored by Holland) and Stefanidis has contributed to Holland's body of research, but Cyprus remains understudied in the literature on decolonisation.[64] None of this scholarship on Cyprus deals directly with the issue of human rights. On Nyasaland, the key text is Colin Baker's work, but this does not expressly deal with human rights abuses and it is only with the recent work of John McCracken that this deficiency in the historiography is being addressed. All of these studies – on all three territories - lack a human rights and legal dimension. Furthermore, there has been no comparative study between Cyprus, Kenya and Nyasaland to date.

A.W.B. Simpson's account of human rights and the end of the British Empire was the first and is currently one of the few works which addresses this matter in detail. Throughout an impressive 1176 pages, Simpson offers an exhaustive account of the development of the ECHR and its subsequent application in colonial territories. He pays particular attention to the intricacies of cases brought against Britain by Greece on behalf of Cyprus in 1956 and 1957. This work is undoubtedly a seminal and original account of the tribulations of the fledgling international human rights regime in the post-1945 era. With its solid legal textbook style, Simpson's work has certainly laid the groundwork for further research into human rights and the process of decolonisation. However, there are shortcomings in Simpson's text. Due to the sheer scale of his work, no principal actors emerge in his story of the development of the ECHR, and there is still a need to 'humanise' the story of the development of human rights.

[63] R. Holland, *Britain and the Revolt in Cyprus.*
[64] R. Holland and D. Markides, *The British and the Hellenes: Struggles for Mastery in the Eastern Mediterranean* 1850-1960 (Oxford, 2006); I.D. Stefanidis, *Isle of Discord: Nationalism, Imperialism and the Making of the Cyprus Problem* (London, 1999). See A. Yiangou, *Cyprus in World War Two* (London, 2012) for a recent study of the earlier period of Cyprus' history.

C5.1 Literature on CO & FO Lawyers

Related to this, Simpson neglects to examine the role and function of FO and CO lawyers comprehensively. Whilst he does mention advice given by lawyers, this is often done merely in passing. Indeed, there is no work which examines the role played by lawyers in debates on human rights during the period of decolonisation. A study by Carty and Smith has examined the role of FO Legal Adviser Gerald Fitzmaurice, but this ends in 1945, although it does provide a useful insight into the general role of lawyers in the FO.[65] An article-length study by Geoffrey Marston also gives an insight into the role of lawyers and legal advice with specific reference to the Suez Crisis in 1956.[66]

There is very little other information about FO or CO lawyers in general, and almost nothing about their roles during the period of decolonisation. The limited amount of scholarly interest in the administrative function, role and contribution of lawyers is confined to a few articles, obituaries and short entries in the Dictionary of National Biography.[67] Tracking the influence of individual FO lawyers is problematic because of the structure of the FO archive as there was no dedicated Legal Department.[68]

Simpson makes a number of assertions regarding the differing approaches of the FO and the CO which require further probing. Simpson's portrayal of the FO as the solitary pro-active promoter of human rights certainly has some truth in it, as does his characterisation of the CO as a reluctant participant in discussions on human rights. However, it is not as black and white - and the gulf between FO as promoter and CO as reluctant participant not as wide - as Simpson suggests. In fact, the FO was not the human rights 'crusader' often portrayed. FO

[65] A. Carty and R. Smith, *Sir Gerald Fitzmaurice and the World Crisis: A Legal Adviser in the FO, 1932-1945* (The Hague, 2000).
[66] G. Marston, 'Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government', *The International and Comparative Law Quarterly* 37.4 (1988), pp.773-817.
[67] G.G. Fitzmaurice & F.A. Vallat, 'Sir (William) Eric Beckett KCMG, QC (1896-1966): An Appreciation', *The International and Comparative Law Quarterly* 17.2 (1968), pp.267-326.
[68] Papers which reached the FO were not marked as 'legal' but were included in the political or geographical department with which the document was concerned.

documents at The National Archives show another side of the FO, and one not too different from the CO: just like the CO, the FO was more often re-active than pro-active on questions of human rights.

Although there is no denying the originality of Simpson's work with its focus on human rights and the end of empire, its overly legalistic language and its often drawn-out analyses render it a rather dense and difficult text to navigate. The estimate of a Professor of European Constitutional Law at the University of Utrecht, Leonard Besselink, that it took him two summers to read Simpson's book in full, is unlikely to be an exaggeration.[69]

C5.2 Away from Euro-Centric Approaches

A more accessible text is that of Roland Burke.[70] One of the few texts to link decolonisation and human rights, Burke's work examines the contributions of Asian, African and Arab diplomats to significant shifts in the UN human rights project.[71] Adopting a non-Eurocentric approach to the history of human rights, Burke's research contributes a very important dimension to the fledgling literature on the intersection between end of empire and human rights. Burke examines the influence the process of decolonisation had on the development of international human rights or, more specifically, how the language of rights changed as newly independent 'third world' countries were admitted to the United Nations. This thesis offers a complementary narrative – the effect of a 'language of human rights' on the process of decolonisation or, more specifically, how early notions of human rights may have acted as a catalyst for this process.

[69] L. Besselink, 'Review of AWB Simpson', *Common Market Law Review* 41 (2004), pp.261-183.
[70] R. Burke, *Decolonization and the Evolution of International Human Rights* (Pennsylvania, 2010).
[71] A short article has recently been published which also addresses similar themes. See 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), pp.329-360.

A more recent study by Fabian Klose has offered a significant contribution to the historiography by intertwining human rights and decolonisation in his comparative study.[72] His examination of the papers of the International Committee of the Red Cross, in Geneva is a particular contribution to the study of the end of empire by offering an insight into the role of global institutions during decolonisation.

Simpson, Burke and Klose, therefore, all offer useful and complementary perspectives on human rights and decolonisation in the British, French and other empires. Samuel Moyn's and Costas Douzinas' work links the two but only in passing,[73] as does a short article by Huw Bennett.[74]

C6 Literature on Counter-Insurgency

The question of human rights during decolonisation has also been examined in recently published literature on counter-insurgency. David French's recent work *The British Way in Counter-Insurgency, 1945-1967,* is an examination of all of the British counter-insurgency campaigns during decolonisation and is based on comprehensive archival research.[75] The relevance of French's study for this project is that, first, he provides useful information on the legal context of declarations of emergency. Second, French clearly demonstrates that during counter-insurgencies, the security forces did not always operate within the legal framework of states of emergency. However, French fails to set this in its wider context – the development of human rights law in Europe – simply because his main focus is events in

[72] F. Klose, *Human Rights and the Shadow of Colonial Violence: The Wars of Independence in Kenya and Algeria* (Philadelphia, 2013). See also F. Klose, 'The Colonial Testing Ground: The International Committee of the Red Cross and the Violent End of Empire', *Humanity* 2.1 (2011), pp.107-126 and F. Klose, ''Source of Embarrassment': Human Rights, State of Emergency and the Wars of Decolonization' in S.L. Hoffman (ed), *Human Rights in the Twentieth Century* (New York, 2011), pp.237-257.
[73] See C. Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon, 2007); C. Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford, 2000); and S. Moyn, *The Last Utopia: Human Rights in History* (Harvard, 2010).
[74] H. Bennett, 'The Other Side of the COIN: Minimum and Exemplary Force in British Army Counterinsurgency in Kenya' in *Small Wars and Decolonisation* 18.4 (2007), pp.638-644.
[75] D. French, *The British Way in Counter-Insurgency, 1945-1967* (Oxford, 2011). See also H. Bennett, *Fighting the Mau Mau.*

various colonial states rather than on the wider pan-European stage. This thesis complements the work of French by moving away from a military focus to the political and sets the question of legality in the wider European context.

C6.1 Literature on Anti-Colonialism

A further thread running throughout this thesis is the anti-colonial response within Britain to the use of violence in Cyprus, Kenya and Nyasaland during the 1950s. It has not yet been examined in any great detail how far concern for human rights fed into anti-colonial feeling expressed by politicians such as Barbara Castle, Fenner Brockway and (momentarily) Enoch Powell, amongst others. Whilst Stephen Howe's work is comprehensive, it refers little to the use of violence by the British, no doubt because he was writing before many official documents were opened.[76] Furthermore, Howe's work (written almost thirty years ago) remains the *only* substantial study of British anti-colonialism.

An examination of the 'unofficial' or 'opposition' view to colonialism is examined in this thesis. This aspect of the thesis will examine the extent to which the anti-colonial response within Britain to allegations of abuse invoked arguments for the protection – or used the vocabulary – of human rights. This helps evaluate the extent to which a human rights ethos had permeated British public consciousness by the mid to late 1960s.

C6.2 Literature on Law and Decolonisation

The question of law and empire has attracted some interest from historians such as Benton, Anghie and Chanock.[77] Although the role of lawyers in foreign affairs has been examined to a limited extent by legal scholars such as Windsor and former government lawyers like

[76] S. Howe, *Anticolonialism in British Politics*.
[77] A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005), p.3. See L. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge, 2010) and M. Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge, Mass., 1985).

Fitzmaurice, legal involvement in specifically *colonial* affairs is almost entirely absent from the historiography on decolonisation and legal theory generally.[78] *Commonwealth and Colonial Law,* written by CO Chief Legal Adviser, Kenneth Roberts-Wray, is one of the few exceptions. Written upon his retirement from government service and published in 1966, this work remains the 'textbook' on colonial law.[79] The only work to offer any examination of the internal dynamic of government legal service, however, is Marston's short article on legal advice tendered to the British Government during the Suez Canal crisis in 1956.[80] This thesis attempts to address the gap.

A number of theoretical legal texts have examined the evolution of international human rights law in the post-1945 period, but very few have positioned this development in the context of the break-up of the British Empire. In terms of the literature on the development of ideas on human rights and the evolution of human rights law, there is an array of material. These fall largely into two categories: (a) intellectual history on the development of *ideas* of human rights,[81] and (b) legal history on the development of the *law* of human rights.[82] In both categories of literature, empire is largely absent. In this field of research, a recent work

[78] See M. Windsor, 'Government Legal Advisers through the Ethics Looking Glass' in D. Feldman (ed), *Law in Politics, Politics in Law* (Oxford, 2013), pp.117-137 and G.G. Fitzmaurice, 'Legal Advisers and Foreign Affairs' *The American Journal of International Law* 59.1 (1965), pp.72-86.
[79] K. Roberts-Wray, *Commonwealth and Colonial Law* (London, 1966).
[80] G. Marston, 'Armed Intervention in the 1956 Suez Canal Crisis'.
[81] See for example K. Cmiel, 'The Recent History of Human Rights', *American Historical Review* (February 2004), pp.117-135; J. Donnelly, *Universal Human Rights In Theory and Practice*, 2nd ed (New York, 2003); C. Douzinas, *The End of Human Rights*; C. Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon, 2007); S.L. Hoffman (ed), *Human Rights in the Twentieth Century*; L. Hunt, *Inventing Human Rights: A History* (New York, 2007); A. Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organization* 54.2 (2000), pp. 217-252; J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, 1999); J. Morsink, *Inherent Rights: Philosophical Roots of the Universal Declaration* (Philadelphia, 2009); S. Moyn, *The Last Utopia.*
[82] E. Bates, *The Evolution of the European Convention*; D.J. Harris, M. O'Boyle, C. Warbrick & E. Bates (eds), *Law of the European Convention on Human Rights,* 2nd ed (Oxford, 2009); D. Hoffman & S. Rowe, *Human Rights in the UK: An Introduction to the Human Rights Act 1998,* 3rd ed (Harlow, 2010); A. Lester, 'Fundamental Rights: the United Kingdom Isolated?', *Public Law* (April 1984), pp.955-971; G. Marston, 'The United Kingdom's Part in the Preparation of the European Convention on Human Rights, 1950', *International and Comparative Law Quarterly* 42 (1993), pp.796-826; E. Wicks, 'The United Kingdom Government's perceptions of the European Convention on Human Rights at the time of entry', *Public Law* (Autumn 2000), pp.438-455; E. Wicks, ''Declaratory of existing rights' – the United Kingdom's role in drafting a European Bill of Rights, Mark II', *Public Law* (Autumn 2001), pp.527-541.

by Ed Bates on the evolution of the ECHR is the most useful because of its chronological scope - it extends Brian Simpson's analysis (which ends in the 1960s) up to the point at which the ECHR was incorporated into British law with the adoption of the Human Rights Act in 1998. Although a very comprehensive account of the ECHR's evolution, it is a legal rather than historical account of the Convention's development. Furthermore, apart from a brief section on Cyprus, there is little reference to the ECHR and its status in colonial territories.

This thesis, therefore, attempts to 'marry' two fields of research: (a) human rights law in the context of (b) the end of the British Empire. It attempts to build an institutional picture of the British FO and CO and to illustrate, first, the status accorded to international human rights law within these departments and, second, the role played by lawyers in resolving questions of human rights. It goes beyond simply telling an institutional history, however, by adding a 'human' element to the story of the FO and CO during decolonisation. By focusing on individual lawyers and the ways in which they explained, condoned, justified, condemned or resolved instances of abuse and issues of human rights, this thesis aims to provide a unique contribution to the historiography on the end of empire.

D CONCLUSION

This thesis offers an important contribution to the existing historiography on the end of empire and governance during the endgame of the late colonial state. First, it is the only current work to propose a framework for discussion of colonial governance and an overview of its major stages and phases, as examined in Chapter One. Second, apart from Brian Simpson's legal text on human rights and the end of empire and Klose's comparative study of Kenya and Algeria, there are no other academic works which examine in depth the intersection between human rights and decolonisation in the debate on the end of empire. This thesis combines a treatment of human rights and decolonisation and the interplay of policy and law in one study - until now, these topics have been dealt with relatively

separately. By understanding the ways in which FO and CO policy makers and lawyers addressed human rights abuses in Cyprus, Kenya and Nyasaland during periods of emergency in the 1950s, this thesis builds an institutional picture of these departments and examines how perceptions of human rights changed from 1945 to the early 1960s. Its concurrent examination of anti-colonial feeling in Britain helps examine the extent to which awareness of human rights had permeated British public and private consciousness by the mid- to late 1950s.

The contribution of this thesis, however, extends beyond the academic. It hopes to contribute further to the efforts of other historians, lawyers and those who have themselves suffered injustice in the colonies in their attempts to 'strip away the nostalgia that still colours our image of empire' by demonstrating that the story of the end of empire is far more complex and painful than has previously been assumed.[83]

[83] J. Darwin, *Unfinished Empire,* p.6.

CHAPTER ONE

PHASE ONE - COLONIAL GOVERNANCE 1938-1945

PART I

INTRODUCTION, THEORY and DEFINITIONS of COLONIAL GOVERNANCE

A1 Preamble

Chapter One offers, first, an introduction to definitions of colonial governance and, second, an examination of 'phase one' of colonial governance, which was characterised by development and welfare policies and programmes from 1938 until 1945.

'Governance' is a broad and indeterminate term, and so 'colonial governance' in this thesis is used to refer to the full range of governmental decision-making and other processes, interventions, policies, schemes, programmes, institutions, administrative and legal systems and related and ancillary social and cultural norms, forms and vocabulary that broadly characterised and illustrated the essence of the administration of British colonial territories at large. The terms 'governance' and 'government' are not synonymous, even if superficially equivalent.

The initial theoretical discussion of colonial governance in Part I examines international relations and other literature on global governance, in addition to contemporary writings by interlocutors-apologists-architects of colonial rule, mainly Malcolm Hailey, Frederick Lugard and Margery Perham in Part II. These three writers wrote only on sub-Saharan Africa, and this is reflected in this Chapter's primary concentration on British governance in Africa. Cyprus, which contributes to this thesis' story later, is not dealt with in Chapter One, because Cyprus was largely absent from inter-war and wartime discussion.[84] It was only with the end

[84] R. Storrs, *Orientations* (London, 1937), p.490.

of the Second World War, which brought stability to Europe but instability to Cyprus, that a re-thinking of colonial policy in Cyprus began.

Part III of this Chapter examines 'phase one' of colonial governance, which witnessed the transition of the colonial state from 'night watchman state', concerned primarily with law and order, to 'pro-active state', intent on economic and social modernisation.[85] This analysis begins in 1938 by looking at development and welfare initiatives because, as Lee argues, 'the study of colonial development holds up a mirror to British notions of government'.[86] This introductory section makes up the first part of this project's examination of how the late colonial state came to modify its control, regulation and management of colonial peoples over several decades and across a number of territories.

A2 Theoretical Perspectives

There is no literature on empire which offers a theoretical perspective on the term 'colonial governance', although the term is frequently employed in discussions about the colonial past. International relations theory on 'global governance' is, therefore, as close as one can get to a working definition of governance.

IR theorists, in particular, note the breadth of the term governance, and herein lies the value and importance of employing the term 'governance' rather than 'government' when discussing the process of decolonisation. The umbrella term 'governance' is a catchall one and countenances varied, divergent and often competing interests, ideologies and practice. Much time and energy has been spent by IR scholars in the attempt to define 'governance' in the context of global governance: the debate is ongoing but there is still little consensus on a working definition, despite the myriad of publications on global governance.

[85] J. Darwin, 'What was the Late Colonial State?', p.76.
[86] J.M. Lee, *Colonial Development and Good Government,* p.31.

A2.1 Darwin

Darwin alludes to this breadth and plurality of 'governance' in his discussion of the 'late colonial state', arguing that it is not simply a synonym for colonial government and its system of administration.[87] Rather, according to Darwin, the late colonial state was 'an arena in which a medley of interests (and their attendant ideologies) competed'. [88] Colonial governance, therefore and importantly for this thesis, covers the making of decisions and the issuing of directives from the 'centre' (London) as well as the 'periphery' (the colonies) and, certainly from 1945 onwards, takes into consideration supranational governance directives. Furthermore, as Darwin has argued, there was more to colonial governance than just control:

> 'empire was not just a story of domination and subjection (although both might be present) but something more complicated: the creation of novel or hybrid societies in which notions of governance, economic assumptions, religious values and morals, ideas about property, and conceptions of justice, conflicted and mingled, to be reinvented, refashioned, tried out or abandoned.'[89]

It is the very scope and breadth of the term, therefore, that is useful for those discussing the actions of a colonial state which had many 'arms', from the governors and district officers 'on the ground' in the colonies to the Secretary of State for the Colonies and CO administrators in Whitehall, London. Indeed, it is the very 'fuzziness' of the word, encompassing as it does more than just mere 'government', that is of value to the historian examining the multi-faceted late colonial state.[90]

A2.2 Rosenau

Rosenau, *the* pioneer of global governance studies, has argued that governance 'encompasses the activities of governments but it also includes the many other channels through which

[87] J. Darwin, 'What was the Late Colonial State?', p.75.
[88] Ibid, p.75.
[89] J. Darwin, *Unfinished Empire,* p.11.
[90] Finkelstein describes governance as being 'fuzzier' than government. L.S. Finkelstein, 'What Is Global Governance?', p.367.

'commands' flow in the form of goals framed, directives issued, and policies pursued'.[91] Rosenau's definition of governance is based on that of the Council of Rome, which used the term governance 'to denote the command mechanism of a social system and its actions that endeavour to provide security, prosperity, coherence, order and continuity to the system'.[92] Furthermore, and as Rosenau argues, governance is 'in a continuous process of evolution, a becoming that fluctuates between order and disorder'.[93] Nowhere was this more evident than in the late colonial state, especially during periods of emergency as the approach to governance hardened following the 'spasm' of softening in the 1940s.

A2.3 Biersteker

For the purposes of examining the colonial past, Thomas Biersteker, a leading American political scientist on governance, offers the most useful working definition of governance based on the Oxford English Dictionary's (OED) definition of the term.[94] The OED defines 'governance' as: (1) controlling, directing, or regulating influence; control, sway, mastery; (2) the state of being governed; (3) the office, function, or power of governing, authority or permission to govern; (4) manner in which something is governed or regulated; method of management; (5) conduct of life or business; mode of living, behaviour, demeanour.[95]

These definitions of governance (the OED, Rosenau, Biersteker and so on) only take us so far when thinking about colonial governance, however. In reality, colonial governance operated on three levels: the first at the level of the actual practice of governing – the 'controlling', 'regulating' and 'managing' of the OED's and Biersteker's definitions, although the matrix of governance is far more complex than its practice; the second at the level of the cultural and the ideological, which encompasses a set of values and an ethos concerned with ideas of

[91] J.N. Rosenau, 'Governance in the Twenty-first Century', *Global Governance* 1 (1995), p.14.
[92] Ibid, p.14.
[93] Ibid, p.18.
[94] T. J. Biersteker, 'Global Governance', p. 440.
[95] Oxford English Dictionary, accessed 19 November 2013, at www.oed.com.

'legitimacy' and 'appropriate' conduct or behaviour; the third at the level of the exercise of authority through institutions and procedures (administrative, judicial and legislative), and so including both 'formal' (government) and 'informal' (economic, cultural, traditional) forms of authority. This thesis discusses governance at all three levels.

PART II

COLONIAL GOVERNANCE PRE-1938

B1 British Notions of Governance: Lugard, Hailey and Perham

The definitions offered by IR theorists can only take us so far when thinking about colonial governance, so one must also look to contemporaneous notions of governance. For this, the ideas offered by Lugard and Hailey, both professional colonial administrators in Northern Nigeria and India, respectively, and Perham, a University of Oxford academic, are key to understanding the nature of - and changes in - colonial governance during this period.[96] As the 'leading interpreters' of colonial administration from the 1920s until the 1960s, Lugard's, Hailey's and Perham's frameworks are a useful starting point for the wider discussion about later colonial governance.[97] Perham, in particular, had the apparent virtue of being an independent expert on colonial rule. Their schemas involved, first, a measure of 'control' through the maintenance of law and order followed by, second, 'management' through the overseeing of 'native' affairs by the colonial state ('Indirect Rule', in Lugard's case) and, third, 'regulation' of governance through Hailey's development and welfare plans.

B2 Subjugation, 'British Moderation' and Control through Consent

'Control' was central to colonial governance, particularly in its early stages. As Margery Perham wrote in 1941, referring to nineteenth and early twentieth century colonial

[96] A. Kirk-Greene, 'Introduction' in M. Hailey, *Native Administration and Political Development in British Tropical Africa* (Lichtenstein, 1979), vii.
[97] Ibid, vii.

governance: 'subjection was the only way by which, on account of her backwardness, and the nature of Europe's nineteenth-century system, Africa could have been brought into the civilized world'.[98] Perham explained:

> 'the difference in civilization and race between rulers and ruled was so great as to invite oppression, and in certain parts and at certain times there was oppression and unnecessary bloodshed…[however]…no imperial domination of the weak by the strong has ever been so much checked and softened by humane ideals as that of Britain in Tropical Africa'.[99]

Perham argued, therefore, that control and oppression were central to early colonial governance. However, this domination – no matter how central to colonial governance – always came with a supposed helping of totemic British 'moderation' leavened by Britain's 'humane ideals'. This 'regulation' of – at times oppressive – British behaviour by a sense of 'humanity' is a theme that emerges again and later during emergency periods, as did the renewed argument for the necessity of subjection in order to restore law and order, as is made clear in the middle Chapters.

By the early decades of the twentieth century, however, subjection, force and oppression no longer characterised colonial governance to the same extent as previously, as Perham told colonial administrators at the 1938 Oxford Summer School on Colonial Administration. Perham explained how: 'our initial occupation was seldom completed without some use or show of our superior military weapons and methods'.[100] By 1938, things had changed although Perham did indicate that the use of force still remained the final resort of colonial governance: 'this superiority is still the ultimate sanction of our government'.[101] In the late 1930s, however, it had become 'the object of our administration to dilute this force with the greatest possible amount of co-operation based upon a recognition of mutual interests'.[102]

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[98] M. Perham, *Africans and British Rule,* p.59.
[99] Ibid, p.61.
[100] M. Perham, 'British Native Administration' in C. Andersen & A. Cohen (eds), *The Government and Administration of Africa,* p. 285.
[101] Ibid.
[102] Ibid.

Indeed, Porter has correctly argued that in reality the British exercised little real control 'on the ground' because it was run on a 'shoestring'.[103] A show of force was simply too costly; co-operation and collaboration was the only viable way to continue to maintain control. Significantly, in 1942 following the Fall of Singapore, Perham became increasingly critical of the colonial record.

B3 Law & Order in the 1920s: Variant on Control?

In the intervening period between Perham's analysis of initial unadorned subjugation and later co-operation and respect in the late 1930s, 'law and order' became the operating principle of colonial governance, as Lugard outlined in his work published in the 1930s. In his 1928 text *Representative Forms of Government,* Lugard described traditional and early colonial governance as 'the necessity of introducing a system of rule…with a view to establishing law and order, and creating, or recreating, the social organisation of the people'.[104] In a fuller exposition of colonial governance (or 'the task of civilisation', as he described it) in his earlier and most famous 1922 work, *The Dual Mandate,* Lugard described its aims as

> 'to put an end to slavery, to establish Courts of Law, to inculcate in the natives a sense of individual responsibility, of liberty, and of justice, and to teach their rulers how to apply these principles; above all, to see to it that the system of education should be such as to produce happiness and progress'.[105]

This was to be done, as Lugard set out in *The Dual Mandate,* through a system of 'Indirect Rule'. Colonial governance was to be conducted through 'native' law, customs, institutions and chiefs rather than directly through the direct rule of the British officer and importation of British institutions into Africa. Notwithstanding this, the maintenance of law and order

[103] B. Porter, 'How did they get away with it?', *London Review of Books* 27.5 (2005). See also B. Berman, 'Bureaucracy and Incumbent Violence: Colonial Administration and the Origins of the 'Mau Mau' Emergency in Kenya', *British Journal of Political Science* 6.2 (1976) on the power that lay in the hands of field officers in implementing colonial policy.
[104] F. Lugard, *Representative Forms of Government,* p.2.
[105] F. Lugard, *The Dual Mandate,* p.2.

was later used as justification for the employment of heavy-handed methods of control by the colonial state during periods of emergency.

B4 Indirect Rule: Beginnings and End

Indirect Rule, originally conceived and constructed by Lugard for implementation in Northern Nigeria, became 'the true gospel of colonial government' across West and Central Africa.[106] For much of the 1920s and 1930s, Lugard's book, *The Dual Mandate,* became *the* primary text followed by the Colonial Service in its approach to governance in Africa.[107] It was, as Kirk-Greene described it, the 'voice of a pro-consular *par excellence'*.[108] Lugard's principle of Indirect Rule gave the age-old (and now failing) British imperial principle of 'trusteeship' added clout in the 1920s. Re-invented and re-legitimised, the British Empire weathered what Robinson has described as an 'unprecedented crisis of conscience in the 1920s'.[109] Writing in *The Dual Mandate* in 1922, Lugard stated that:

> 'the task of the administrative officer is to clothe his principles in the garb of evolution, not of revolution; to make it apparent alike to the educated native, the conservative Moslem, and the primitive pagan, each in his own degree, that the policy of the Government is not antagonistic but progressive – sympathetic to his aspirations and the safeguard of his natural rights'.[110]

Such attempts at re-legitimation of imperialism and re-iterations of 'good government', as expressed by Lugard, continued throughout the 1930s and intensified in the 1940s. A.G. Fraser, former governor of the Gold Coast (1919-1927), in his Burge Memorial Lecture in 1936 reflected Lugard's sentiments by describing colonial governance as a benevolent force working for benefit of the colonised:

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[106] R. Robinson, 'The Moral Disarmament of African Empire, 1919-1947', *Journal of Imperial and Commonwealth History* 8.1 (1979), p.89. See J.W. Cell, 'Colonial Rule' in J.M. Brown & W.M. Roger Louis (eds), *Oxford History of the British Empire: The Twentieth Century* (Oxford, 1999), pp.232-254 for a concise overview of Indirect Rule.
[107] J.M. Lee, *Colonial Development and Good Government,* p.2.
[108] A. Kirk-Greene, 'Introduction', p.vii.
[109] R. Robinson, 'The Moral Disarmament of African Empire', p.99. See also F. Cooper, 'Reconstructing Empire' on the viability of empire post-World War One.
[110] F. Lugard, *The Dual Mandate,* p.194.

> 'it is the mark of an able Governor, as it was with a Tudor king, to keep in close touch with the thoughts and wishes of the people he governs; and to make them feel that, in spite of their limited political rights, he is working with them and for them, and not against them'.[111]

At this stage, the central tenet of colonial governance remained the maintenance of law and order, now couched in a language of benevolence. Hidden under the garb of 'guardian' and not 'rulers in might', British proconsuls legitimated their presence in colonial territories by stressing that their authority was exercised only for the good of those they governed.[112] The Minister of State for the Colonies (Earl of Listowel), in describing inter-war governance, recounted that: 'its essential business was to maintain peaceful and orderly conditions within its jurisdiction'.[113] In the latter part of the inter-war period, however, there came about a fundamental change. The Earl of Listowel explained that 'the foundations of social and economic progress had been laid' during this period and that the British Government was gradually becoming 'a positive and deliberate instrument of exceptional potency for the promotion of social and economic progress'.[114] In 1940, the re-legitimation of empire accelerated as the colonial state implemented pro-active policies under the Colonial Development and Welfare Act. This represented a significant change in colonial policy.[115]

Whilst Lugard's colonial governance philosophy held sway for much of the 1920s, by the late 1930s his blueprint for colonial governance had fallen out of fashion. Z.K. Matthews, a prominent black South African academic, noted in 1937 that 'there is perhaps no administrative policy in Africa which arouses so little enthusiasm among Africans, especially educated Africans, as that of Indirect Rule'.[116] John Cell's research has exposed Indirect Rule

[111] A.G. Fraser, 'Africa and Peace', The Burge Memorial Lecture 1936 (Oxford, 1936), p.13.
[112] R. Robinson, 'The Moral Disarmament of African Empire', p.86.
[113] Earl of Listowel, 'The Modern Conception of Government in British Africa', p.99.
[114] Ibid, p.99. Listowel claimed that the social and economic initiatives of the colonial state 'marked the emergence of the modern state' and 'precipitated the profound change undergone by our African policy in the past ten years', see p.101.
[115] E.R. Wicker, 'Colonial Development and Welfare, 1929-1957', p.180.
[116] Z.K. Matthews, 'An African View of Indirect Rule in Africa', *Journal of the Royal African Society* 36.145 (1937), p.433.

as 'inefficient and unprogressive', arguing that *The Dual Mandate* is 'found to be full of petty, long-standing feuds with the Colonial Office and colleagues, strong prejudice against educated Africans, and racialist views that read strangely even for the 1920s'.[117] 'Indirect Rule' lost all credibility when Lord Hailey argued in *An African Survey* that there was no real distinction between Indirect and Direct Rule.[118] Described as 'insufficiently precise', it was soon replaced by Malcolm Hailey's vision for empire, with the publication of *An African Survey* in 1938.[119]

As early as the 1930s, the British were aware that Empire stood on shaky ground. In an attempt to relegitimise empire in the inter-war period, therefore, the British commissioned Malcolm Hailey, former Governor of the Punjab (1924-28) and the United Provinces (1928-34) in India to write *An African Survey.* The antithesis of Lugard's imprecision, this detailed work amounted to almost two thousand pages and has been described as a 'magisterial encyclopaedia of colonial administration'.[120] An article in the *East African Standard* in 1940 claimed the text had 'become a sort of Colonial Office bible on African Policy'.[121] *An African Survey* was the concluding remark on the inter-war generation's discussions on colonial governance in Africa. It did not explicitly set out the colonial reform that is most associated with Hailey's name (that the justification for colonialism had to be the social and economic benefits it imparted to the colonised) but it is still regarded as a landmark piece of work.[122] It is for the colonial development and welfare schemes of the early 1940s that Hailey is most

[117] J.W. Cell, 'Colonial Rule', pp.242-241.
[118] M. Hailey, *An African Survey* (London, 1956), p.415.
[119] R.E. Robinson, 'Why 'Indirect Rule' has been replaced by 'Local Government' in the Nomenclature of British Native Administration', *Journal of African Administration* 2.3 (1950), p.14.
[120] A. Kirk-Greene, 'Introduction', p.vii.
[121] TNA, CO847/15/12, Extract from *East African Standard,* 'Lord Hailey on Tour', 30 January 1940.
[122] J.W. Cell, 'Lord Hailey and the Making of the African Survey', *African Affairs* 88.353 (1989), p.481 and J.W. Cell, *Hailey: A Study in British Imperialism, 1872-1969* (Cambridge, 1992), p.236.

famous, however.[123] As Cell argues, and as Hailey once reflected, the colonial development and welfare plans of 1940 'opened an entirely new era in colonial history'.[124]

PART III:

OVERVIEW of PHASE ONE of COLONIAL GOVERNANCE 1938-1945

C1 DEVELOPMENT and WELFARE 1938-1945

C1.1 Shift from Hard to Soft Governance

In 1947, Sir William Arthur Lewis, the Saint Lucian economist, wrote 'nowadays everyone agrees that colonial development comes high on Britain's agenda'.[125] Explaining this, Lewis noted that 'the humanitarians need it because their desire to improve conditions of health, education and other welfare services cannot be realised unless there is economic development to provide the money for such services', whereas 'the politicians want it to give reality to the concept of self-government; and the internationalists, seeing in colonies a source of friction and ill-will, suspect that peace might be a little more secure if colonial status could be liquidated'.[126] The shift from the blunt instrument of command and control to the gentler encouragement and persuasion of welfare and development was born out of the multiple and conflicting interests of diverse groups, according to Lewis.

C1.2 'A Blueprint for Colonial Governance': trying to square the circle?

The change of which Lewis speaks can be dated back to 1938. It was at this stage that Malcolm MacDonald, the Colonial Secretary (1938-40), started to think about (a) the need for change, and (b) establishing a blueprint for colonial governance. Colonial governance was entering a new phase in 1938.

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[123] These were outlined in M. Hailey *Native Administration and Political Development in British Tropical Africa,* Report 1940-42 (London, 1944).
[124] J.W. Cell, *Hailey,* p.242.
[125] RHL, MSS.Brit.Emp.s.350, W.A. Lewis, 'Colonial Development in British Territories' (1947), p.1.
[126] Ibid.

MacDonald's main interest at the time was in resolving the tension between the two systems of colonial governance then operating concurrently in British Africa - the older system of 'Indirect Rule' through chiefs and their councils, and the philosophy then still evolving which emphasised 'progress' through the development of parliamentary institutions.

This change was prompted, in part, by riots in the West Indies in 1937 and 1938. These brought about a realisation that a greater effort by the colonial state was required to improve social and economic standards of living.[127] These violent outbursts also attracted the attention of the Labour Party and trade unions who complained about British colonial governance.[128] Change was afoot. As Hailey wrote in 1939:

> 'we are no longer faced with the problems connected with the introduction of law and order, etc, but we have to deal with the far-reaching and complicated problems which are involved in the development of the social services and of social organisations'.[129]

C1.3 Hailey's influence

In the autumn of 1939, Hailey set off on a thousand-mile journey across Africa, and by the end of 1940 a more precise study than his earlier *An African Survey* entitled *Native Administration and Political Development in British Tropical Africa* was written.[130] Eventually published in 1979 with an introduction by Kirk-Greene, this report is described as 'an indispensable text for an understanding of British colonial policy.'[131] Some have even described it as setting out a blueprint for decolonisation.[132] In line with the Colonial Development and Welfare Act of 1940, the report emphasised the need for social and

[127] M. Havinden and D. Meredith, *Colonialism and Development,* p.197.
[128] J. Lewis, *Empire State-Building,* p.29.
[129] M. Hailey, 'Some Problems Dealt With in the African Survey', *International Affairs* 18.2 (1939), p.200.
[130] A. Kirk-Greene, 'Introduction', p.xiii.
[131] Ibid, p.ix.
[132] Ibid, p.xi.

economic development in the colonies. Hailey's opening remarks were that 'the improvement of the economic and social life of the colonial population is an essential part of the policy, to which we stand committed, of fitting them to achieve a self-governing status'.[133]

As Hailey later explained following the passing of the 1940 Colonial Development and Welfare Act, 'the Colonial Office, as Mr Amery has said, will no longer be viewed merely as an agency for securing 'peace, order and good government in the dependencies'. It was to be viewed:

> 'as a Ministry of Colonial Transport, a Ministry of Colonial Health, a Ministry of Colonial Education, or perhaps it might be more accurate to say as a General Staff for the whole Colonial Empire in respect of all those matters'.[134]

The conception of the state was changing, as Hailey argued, as states became 'agencies for social betterment'.[135] This had become imperative following the start of the Second World War. A concerted effort at development and welfare led by the colonial state would placate British and American opinion and offset any Nazi propaganda that Britain neglected its colonies.[136]

C2 COLONIAL DEVELOPMENT and WELFARE ACTS 1940 & 1945

It was with the passing of the Colonial Development and Welfare Act (CDW) of 1940, which provided for £5 million to be spent on colonies to aid their development (increased to £120 million per year in 1945), that such a sentiment gained its fullest expression. The Act made provision for social and material progress, including medical and educational services.[137]

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[133] M. Hailey, *Native Administration and Political Development*, *Report 1940-42,* p.5.
[134] Ibid, p.4.
[135] Ibid, p.4.
[136] M. Havinden and D. Meredith, *Colonial Development,* p.202.
[137] S. Constantine, *The Making of British Colonial Development Policy,* p.243.

Colonial Secretary Lennox-Boyd (1954-59) spoke later of the significance of the history of the CDW on 2 March 1959 when a further Bill on development and welfare was raised in Parliament, just one day before the tragedies of 3 March in Kenya and Nyasaland which caused the empire to spiral into chaos. He described how 'in those days we were pioneering something which has now become an accepted doctrine of our time, the need to help underdeveloped countries to raise their living standards'.[138]

The passing of the CDW Act signified a considerable shift in British colonial governance. Not only did the Act trigger the abandonment of British *laissez-faire* policies and the belief that colonies were to be self-sufficient, it also meant that Britain was now to take a positive, pro-active and interventionist role in the development and welfare of its colonial populations.[139] Such was the scale of this effort that Lee has claimed that

> 'the conscious effort which was made to improve the social and economic conditions of the colonial peoples between 1940 and 1955 can only be compared with the influence of the anti-slavery movement between 1800 and 1834'.[140]

What the CDW also did, with its provision for housing, labour and education, was to provide Britain with a renewed sense of legitimacy in continuing colonial rule.[141] Discussions regarding development and welfare were not simply limited to high-level political debate in the metropole, however. In Kenya, for example, similar discussions took place at the local level, as Lewis' work has demonstrated.[142]

C2.1 'Soft Governance' & Self Government

This represented a 'soft' form of colonial governance which focused on the management and regulation of positive social and economic change through development and welfare

[138] Hansard, HC Debate, 2 March 1959, accessed at http://hansard.millbanksystems.com/.
[139] D. A. Low & J.M. Lonsdale, 'Introduction: Towards the New Order 1945-1963' in D.A. Low & A. Smith (eds), *History of East Africa,* Vol. III (Oxford, 1976), p.13.
[140] J.M. Lee, *Colonial Development and Good Government,* p.32.
[141] S. Stockwell, 'Ends of Empire' in S. Stockwell (ed), *The British Empire,* p.274.
[142] See J. Lewis, *Empire State-Building,* Chapter Three.

programmes. It stood in contradistinction to the forms of governance characterised by force discussed earlier in the writings of Perham, which were, as Lennox-Boyd's speech in 1959 demonstrates, still in full swing during crisis moments of the British Empire when considerable force was employed in the attempt to suppress anti-colonial uprisings. The character of British colonial governance had changed by swapping the mantles of unapologetic 'governor' and protective 'guardian'.

Ultimately, however, the CDW Act set in motion the process of decolonisation. As Duncan Hall commented in 1946, the CDW Act 'was a long-term plan for strengthening the economic and social foundations of self-government'.[143] As Reginald Coupland (Beit Professor at Oxford) argued in 1947, 'it is surely obvious that we must press on with our work of economic and social development *pari passu* with political advance. An underfed and undereducated people cannot effectively govern themselves.'[144]

C2.2 Colonial Development Fund

The 1940 CDW Act originated in a CO Committee set up in 1938 to determine to what extent the Colonial Development Fund of 1929 could help finance education.[145] Between 1938 and 1940, the Fund stood at £8.8 million, although actual expenditure was just £6.5 million.[146] Although there was significantly increased government expenditure on development and welfare in the colonies (in 1930, expenditure amounted to £1,965,690 which was more than double that of the £947,503 spent in 1929), expenditure still remained very low and by 1939

[143] H. Duncan Hall, 'The British Commonwealth and Trusteeship', *International Affairs* 22.2 (1946), p.202.
[144] R. Coupland, *The Destiny of Africa: an address to the Annual Meeting of the Anti-Slavery and Aborigines Protection Society on 17 July 1947* (London, 1947).
[145] R.D Pearce, *The Turning Point in Africa,* p.20.
[146] Colonial Development and Welfare Acts, 1929-70: A Brief Review, Cmnd. 4677 (London, 1970).

had only increased to £3,031,812.[147] Expenditure on a single colony in a single year in subsequent years significantly outweighed this level.[148]

C2.3 Spending on Development and Welfare

Spending increased following the passing of the 1940 CDW Act immediately after the start of the Second World War. The £5 million annual grant was only half of what MacDonald had asked the Treasury to provide but, due to wartime constraints, this had to be settled on.[149] It was only due to MacDonald's determination that the 1940 CDW Act was even accepted by the Treasury, which opposed such expenditure during a time of war.[150] Nevertheless, the decision was taken to push through the legislation for two reasons: first, to ensure that British colonies were content during the war and, second, to ward off enemy criticism that Britain was ignoring its colonies.[151] The 1940 CDW Act and its subsequent amendment in 1945 did significantly increase spending on the colonies and marked, as was noted at the time, 'an important turning point in the development of colonial productive resources and the improvements of human well-being'.[152]

Social and economic development was codified in the 1940 CDW Act. Although spending in the first two years following its passing was small (up to June 1942 only £860,000 had been spent), this steadily increased. By 1945, it was clear that the £5 million a year made available was insufficient. Although exact figures are not available, a White Paper published in 1971 stated that 'by 1944 the Government was able to tell Parliament that actual expenditure under the Colonial Development and Welfare Act had the previous year had been four times

[147] See S. Constantine, *The Making of British Colonial Development Policy,* p. 275, for a breakdown of government expenditure on colonial development, 1918-39.
[148] See Colonial Development and Welfare Acts, 1929-70.
[149] S. Constantine, *The Making of British Colonial Development Policy,* p.246.
[150] Ibid, p.247. The Treasury was also against the inclusion of grants for welfare projects in the bill. It was argued that such grants were incompatible with self-government and that it was the equivalent of giving the colonies benefits. See J. Lewis, ''Tropical east ends' and the Second World War: some contradictions in CO welfare initiatives', *Journal of Imperial and Commonwealth History* 28.2 (2000), p.52.
[151] S. Constantine, *The Making of British Colonial Development Policy*, p.246.
[152] TNA, CO859/113/5, G.M. Nall, 12 November 1945.

that of the year before and that schemes approved the previous year totalled over £4 million'.[153] The 1945 CDW Act increased expenditure to £120 million (with a limit of £17.5 million in any one year) between 1946 and 1956.[154]

Whilst there was much rhetoric surrounding the passing of the 1940 and 1945 Acts, this rhetoric was matched by the reality of government spending, at least after 1945. The Government White Paper, *Colonial Development and Welfare Acts 1929-70*, provides evidence of (a) the range of schemes passed under the Act, and (b) the distribution of funds between schemes from 1946 until 1970, which is significantly more than funds distributed from 1918 until 1939. The largest amounts of money were allocated to infrastructure and communications, in particular roads (£80 million), education at all levels (£78 million), natural resources (£66 million) and medical and health services (£30 million). £23 million was spent on water supplies and sanitation.[155] Of course, schemes varied in scale and nature from region to region. In total, from 1929 to 1970, 45% of Colonial Development and Welfare Funds went to Africa, 22% to the Caribbean and 8% to the Mediterranean countries (mainly Malta).[156]

C3 CHANGING RHETORIC & LANGUAGE

As van Beusekom claims, 'late colonial development was closely tied to colonial government's efforts to control and discipline their subjects at a time when the very legitimacy of colonialism was in question'.[157] Although the means may have changed, the ends were the same as before. The 1940 and 1945 CDW Acts provided the basis upon which it could be argued that economic development would be beneficial to both the colonial state and colonised peoples, and the social and economic development of the colonised was now

[153] Colonial Development and Welfare Acts, 1929-70.
[154] Ibid.
[155] Ibid.
[156] Ibid.
[157] M. van Beusekom and D. Hodgson, 'Lessons Learned? Development Experiences in the Late Colonial Period', *The Journal of African History* 41.1 (2000), p.33.

explicitly articulated as a responsibility of the colonial state and was key to continued and successful governance. Ultimately, however and as Constantine argues, this new form of colonial governance was 'a defensive operation, to provide a new justification which would legitimise the perpetuation of colonial rule'.[158]

C3.1 Out goes 'Trusteeship' - in comes 'Partnership'

At the same time, the language of colonial governance changed. In 1942, the old paternalistic rhetoric of 'trusteeship' was revised and gradually replaced by the seemingly more democratic language of 'partnership'. 'Trusteeship' was held to be old-fashioned and out-dated, and caused widespread resentment amongst colonial peoples.[159] Hailey said in 1942 to the Annual Meeting of the Anti-Slavery and Aborigines Protection Society that he should 'prefer to see our relations restated, not as those of trustees and wards, but as those of senior and junior partners'.[160]

C3.2 Out goes 'Indirect Rule' - in comes 'Self Government'

So, ideas, praxis and at least the ideological over-garments if not under-garments of governance were changing. In 1943, Oliver Stanley (Colonial Secretary, 1942-45) stated that it was British policy to lead and chaperone colonial people along the path towards self-government. This reflected an earlier speech by Malcolm MacDonald who mentioned self-government for the first time in a speech in Oxford in 1938.[161] In 1947, at a conference of Britain's African governors, the model of elected representative local government was officially adopted, replacing Lugard's system of Indirect Rule through native chiefs.[162]

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[158] S. Constantine, *The Making of British Colonial Development Policy*, p.260.
[159] RHL, MSS.Afr.s.2503, Council on Foreign Affairs, 'The Colonial Problem and Regional Organisation' (1943). Academics still wrote about 'trusteeship' in the mid-1940s. See for example H. Duncan Hall, 'The British Commonwealth and Trusteeship', pp.199-213.
[160] M. Hailey, *A Colonial Charter: an Address to the Annual Meeting of the Anti-Slavery and Aborigines Protection Society, 28 May 1942* (London, 1942).
[161] J. Flint, 'Planned Decolonization and Its Failure in British Africa', *African Affairs* 82.328 (1983), p.398.
[162] See S. Stockwell, 'Ends of Empire', p.274.

During this time, the phrase 'good government' was also bandied about with increasing frequency. The French had pursued a similar, albeit significantly more ambitious, re-legitimation of empire with the French Union in 1946. Such reforms in the colonies went hand-in-hand with the post-war strengthening and enlargement of the welfare state at home in Europe.[163] Nevertheless, old ideas of colonial governance based on inequality and racial inferiority still persisted into the 1950s, despite this change. Oliver Lyttelton warned an audience at the Eton Political Society in February 1955, for example, to 'never forget that without partnership, first one territory and then another will revert to primaeval (sic) darkness'.[164]

C4 WHY THE CHANGE?

In the 1940s, there was a detectable shift in British political and public opinion regarding acceptable forms of colonial governance. No longer were the British able to govern solely by force; no longer were they only to prioritise their own economic interests. As Wolton has argued, no longer did colonial officials see their work as 'special right to rule' but now, rather, as a 'moral duty'.[165] In 1941, for example, Perham wrote that 'European control is less severe than it used to be', and she attributed this change to 'those standards of behaviour which are accepted by Europeans and which put an end to slavery'.[166]

How can we account for this 'new outlook' on Britain's relationship with its colonies in the 1940s?[167] In locating the origins of this revised outlook, one must consider: first, the wartime

[163] J. Darwin, *Unfinished Empire,* p.342.
[164] Churchill Archives (CA), CHAN II 4/17/13, Lord Chandos speech to Eton Political Society, 11 February 1955.
[165]S. Wolton, *Lord Hailey, the CO and the Politics of Race and Empire in the Second World War: the Loss of White Prestige* (Basingstoke, 2000), p.30. Of course, it is difficult to estimate how far colonial officials submitted to this view.
[166] M. Perham, *Africans and British Rule*, p.82.
[167] See R. Hyam, 'Africa and the Labour government, 1945-1951', *Journal of Imperial and Commonwealth History* 16.3 (1988), pp.148-172 for a concise overview.

sacrifices of the colonised on behalf of the British war effort;[168] second, the demands of post-war economic recovery;[169] third, the changing conceptions of the state and subsequent establishment of the welfare state in Britain;[170] fourth, changing opinion within Britain; and, fifth, international pressures and, in particular, USA anti-colonialism. The first three factors have been well-established in the historiography and are thus not discussed here. A brief overview of the fourth and fifth factors, which have attracted less attention in the historiography, are however outlined below.

The development and welfare schemes of the 1940s were key propaganda tools in the relegitimation of empire. Bernard Henry Bourdillon, Governor of Nigeria (1935-43), summed up the reasons for increased spending on welfare and development when he wrote to Lord Moyne, Secretary of State for the Colonies (1941-42), in October 1941 that such spending:

> 'will have a first-class propaganda effect: (a) as convincing proof of our certainty of victory; [and] (b) proof also of our determination to make the world a better place for the under-dog after the war than it was before, and to begin doing this as quickly as possible'.[171]

Hailey also made reference to the propaganda effect of welfare and development. In an address to the Anti-Slavery and Aborigines Protection Society in 1942, he spoke of the need to 'justify our position as a Colonial Power to the outside world, and to mitigate some of the suspicion which now attaches to it'.[172] Hailey saw himself as a 'missionary' who had to persuade domestic and international opinion (especially US) that the British Empire was a 'good thing' and he also had to prompt the men on-the-spot to adopt a new language and style.

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[168] TNA, CO859/ 113/5, Statement of Policy on Colonial Development and Welfare (Cmd. 6175), February 1940. See also Lee and Petter, *The Colonial Office, War, and Development Policy: Organisation and the Planning of a Metropolitan Initiative,* 1939-1945 (London, 1982), p.16.
[169] See Darwin in 'What was the Late Colonial State?' who talks about the 'common difficulty of the colonial powers in fashioning colonial regimes to meet their post-war needs', p.75. See also J. Darwin, *Unfinished Empire,* pp.352-53.
[170] S. Wolton, *Lord Hailey,* p.24.
[171] TNA, CO859/81/15, Bourdillon to Lord Moyne, 24 October 1941.
[172] M. Hailey, *A Colonial Charter*.

C4.1 Shifts in Public Opinion

Hailey attributed the change in the form and style of colonial governance, in part, to changing public perceptions about the acceptability of colonial rule, amongst other things. In 1942, whilst acknowledging there were still those who lamented the loss of the 'Free Trade' of nineteenth century imperial rule, Hailey described a change in opinion regarding empire (he dated this to the 1930s) characterised by a 'strong revulsion from that type of Imperialistic feeling' which typified the end of the nineteenth century.[173] This revulsion took the form of a 'sense of embarrassment, if not of actual distaste', according to Hailey.[174] By the 1940s, however, Hailey noted,

> 'opinion in Great Britain has accepted the fact that our responsibilities to people of the dependencies involve a far more effective intervention on our part to promote their development than the traditions of a previous generation had contemplated'.[175]

Interestingly, Hailey suggested that the recognition of the needs of dependencies in terms of social welfare and development actually increased interest in empire at home. The reason for this, according to Hailey, was that 'in approaching issues of welfare or of the improvement of the standard of living, the public is able to feel itself on a ground with which it is more familiar'.[176]

Hailey spoke again about this change in colonial policy in a speech delivered in Johannesburg in 1946, in which he framed the change as a 'new outlook on our relations with these [colonised] peoples'.[177] This new outlook went hand in hand with an altered world order in the post-1945 period. For example, Hailey made reference to the time when imperialism was 'the natural order of things' when 'few questioned the reasonableness of extending jurisdiction' over foreign lands. He spoke of a belief amongst people in 1946 that there was

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[173] M. Hailey, 'Future of the Colonies', *The Round Table: The Commonwealth Journal of International Affairs* 22 (1942), p.8.
[174] Ibid, p.8.
[175] Ibid, p.12.
[176] M. Hailey, *Native Administration and Political Development*, *Report 1940-42,* p.4.
[177] M. Hailey, *World Thought on the Colonial Question (*Johannesburg, 1946), p.4.

'something unnatural' about imperialism.[178] People in Britain were by 1946, according to Hailey, 'firmly convinced' of the necessity for raising living standards.[179]

C4.2 Growth of Global and International Institutions

The shift in mood went beyond the domestic. Wartime USA anti-colonialism was of great concern to the British. It was the incompatibility of colonial governance and the post-1945 world order that prompted a rethink of colonial policy. With the establishment of the United Nations (1945) and the introduction of the Universal Declaration of Human Rights (1948), domestic and international opinion was gradually turning against colonialism. The United Nations (an instrument of global governance) saw colonial governance as largely incompatible with post-1945 norms and the idea of universal human rights. Arthur Creech-Jones claimed in 1945, for example, 'I write with the Charter of the San Francisco Conference just known… It indicates the change of view which the modern world requires in the administration of dependent peoples… The phase of 'colonialism' must die'.[180] Hailey, in his 1946 speech in Johannesburg, similarly noted that 'we [Britain] cannot escape the consequences of our having been parties to the San Francisco Charter'.[181] This is where Chapter Two begins.

D CONCLUSION

Prior to 1938 and despite the medley of local form and expression, colonial governance was underwritten by formal and informal systems of domination and subjection, command and control, with physical coercion of the colonised the constant undertow, even if held in reserve and means of last resort and regardless of the elastic capacity of empire to re-invent itself and regardless, too, of any shifting or prevailing political narrative such as Indirect

[178] Ibid, p.5.
[179] Ibid, p.8.
[180] British Association for Labour Legislation, *Revolution in the Colonies*, with foreword by A. Creech Jones MP (London, 1945).
[181] M. Hailey, *World Thought,* p.8.

Rule. By 1938, the doctrine of Indirect Rule - in truth, Direct Rule by another name - had had its day and was replaced by the language of 'partnership' and 'welfare and development' schemes.

Informed by the experience of the early stages of the Second World War and given statutory expression in the enactment of the 1940 and 1945 Colonial Development and Welfare Acts, the period 1938-45 witnessed the introduction and expansion of – and significantly enhanced spending on – welfare and development programmes. These were seen as ends in themselves, as useful propaganda tools in the face of the growing demand for the modification of the colonial project and as transitional vehicles towards self-government. Nevertheless, from the early 1930s Britain had been aware that the very notion of empire rested on shaky ground and, stated aims apart, the political and policy thrust behind welfare and development initiatives was to re-legitimise – and so hang on to – empire. A case of same game, different rules.

Before 1945, neither principles of colonial governance nor colonial policies were couched in the language of human rights because there was then no such political or legal lexicon. Equally, there was no discernible or appreciable domestic or international critique or canon of the imperial project as inherently offensive or illicit although, as Hailey had indicated, there was widespread recognition that colonial rule required modification.

Post-1945, however, following the creation and adoption of human rights institutions and protocols, the language of human rights spread, even if slowly. The colonial project then became increasingly harder to defend. Interference in empire from other sovereign states and supranational agencies claiming competing and global jurisdiction became commonplace, despite strong resistance from Britain. Chapter Two plots this changing landscape in post-1945 Europe and across the Empire.

CHAPTER TWO

THE ERA of HUMAN RIGHTS POST-1945

PART I

INTRODUCTION

A1 Preamble

Writing in 1949, Arthur Galsworthy, the Head of the International Relations Department, lamented to his colleagues: 'I am sorry to say that we are now saddled with yet another international document on Human Rights'.[182] Galsworthy's lament was to become a not unfamiliar refrain.

The document in question was the draft of the European Convention on Human Rights which had been proposed by the Consultative Assembly of the Council of Europe following its establishment in May 1949. Drafted mainly by British MP and lawyer, David Maxwell-Fyfe, and French politician, philosopher and lawyer, Pierre Henri-Teitgen, the Convention was signed in Rome on 4 November 1950. Britain was the first country to ratify the Convention on 8 March 1951. It came into force on 3 September 1953. In October 1953, it was extended to forty-two overseas territories for which Britain was responsible.[183] Although the ECHR was the first legally binding human rights convention to which Britain was a party, it followed in the wake of other initiatives – the United Nations Charter (1945) and the Universal Declaration of Human Rights (1948) – which sought to promote and protect human rights internationally. These were a cause of considerable consternation amongst British colonial officials in London and in certain colonies, as this Chapter demonstrates, hence Galsworthy's rueful comment about Britain being 'saddled' by 'yet another' human rights document.

[182] TNA, CO537/4622, A.N. Galsworthy, 17 October 1949.
[183] E. Bates, *The Evolution of the European Convention*, p.111.

Chapter Two examines 'phase two' of colonial governance, post-war changes in international governance (in particular, the introduction of human rights legislation) and the early impact this change had on empire. As colonial rule came under the watchful gaze of the United Nations and later the Council of Europe, there was considerable external pressure on Britain to modify its governance of its colonies.

Chapter Two is in three parts. Part I is an introductory section on post-1945 human rights instruments and the emergence of global governance. Part II examines, first, the role played by Britain in authorship of the Universal Declaration of Human Rights and, second, the reception of the UDHR in Britain. Part III examines, first, the role played by Britain in developing the European Convention on Human Rights and, second, its reception in Britain in the early 1950s.

This Chapter argues that although the British establishment played a key role in establishing human rights vehicles such as the UDHR and particularly the ECHR, its involvement was diluted, not to say plagued, by a high level of confusion and scepticism over (a) the necessity for human rights measures in the first place (it was a common belief that such instruments were otiose, given the inherent superiority of the notion of 'British justice') (b) the effectiveness of such measures following their ratification and introduction, and (c) the appropriateness of extending such protective measures to colonial populations. Furthermore, whilst the creation of the welfare state and Britain's subscription to the UDHR and ECHR suggest that the British Government's view of its subjects - at home and abroad - was changing (in addition to the changing conception of the state) and that this change was underpinned by developing ideas of equality (and the entitlements which this entailed), not

all benefits under the welfare state and not all human rights were extended to colonial territories or to the same extent.[184]

A2 Lip Service or Genuine Commitment?

Writing about the global human rights regime of the twenty-first century, Hafner-Burton and Tsutsui argue, for example, that the impact of human rights treaties is a 'paradox of empty promises' because governments frequently ratify such treaties merely as 'a matter of window dressing' and dissociate policy from practice which can, at times, result in negative human rights practices.[185]

This and the following Chapters test this hypothesis by taking a longer term historical approach – as opposed to Hafner-Burton's and Tsutsui's theoretical political science study of 1976-1999 – to examine the emergence and subsequent ratification of the earliest human rights frameworks and conventions of the UDHR and ECHR. This Chapter will examine whether human rights treaties at their very 'birth' in the post-Second World War period were more veneer than earnest commitment to human rights.

A3 Emergence of Supranational & Global Institutions

The United Nations and the Council of Europe and their promotion of human rights were early signs of the emergence of a fledgling model of what we might now describe as 'global governance' in the post-Second World War period.[186]

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[184] Human rights and welfare can be seen to be part of the same seamless web or continuum. Both are concerned with the promotion of the basic physical and material needs and well being of people – social and welfare rights are, after all, a component of human rights. See D. Watson, 'Welfare Rights and Human Rights', *Journal of Social Policy* 6.1 (1977); H. Dean, *The Ethics of Welfare: Human Rights, Dependency and Responsibility* (Bristol, 2004); and C.A. Reich, 'Individual Rights and Social Welfare: The Emerging Legal Issues', *Yale Law Journal* 74.7 (1965), p.1245 on the idea of welfare as a 'gratuity'.
[185] E. Hafner-Burton and K. Tsutsui, 'Human Rights in a Globalizing World: the Paradox of Empty Promises', *American Journal of Sociology* 110.5 (2005), p.1373.
[186] For a history of the UN see P. Alston, *The United Nations and Human Rights* (New York, 1992); P. G. Lauren, *The Evolution of International Human Rights,* 2nd ed (Philadelphia, 2003); and E. Luard, *The History of The United Nations Volume 2: The Age of Decolonization, 1955-1965* (London, 1989).

Glendon has argued that the emergence of these institutions and their adoption of a human rights framework indicated that the 'moral terrain of international relations' had been altered forever.[187] For colonial powers, this change was unwelcome. Colonial rule was no longer purely a domestic concern, fell now also under the gaze of supranational institutions such as the United Nations and came within the jurisdiction of the ECHR (with the exception of France, which delayed ratification of the ECHR until 1974).[188] Furedi has gone as far as claiming that Britain experienced a 'moral crisis' in the post-Second World War period which was linked to the external (diplomatic and other) pressures it faced with regards to its colonial possessions.[189]

Attempts at global governance and external involvement in colonial affairs can, of course, be dated to before the establishment of the United Nations in 1945. As early as 1919, with the establishment of the League of Nations and the Mandates System, British colonial interests had come under scrutiny and governance modified, albeit with often limited results.[190]

A4 Emergence of Global Governance

The Second World War prompted a re-evaluation of concepts of governance and the state's obligations to its citizens. The United Nations, established to promote international peace, to facilitate international economic, social and humanitarian cooperation and, ultimately, to avoid a third world war, lay at the heart of the new post-1945 international order.[191] In a speech to an audience at Columbia University in New York, for example, UK Representative to the UN, Alexander Cadogan, spoke of one of the responsibilities of government of which

[187] M.A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, 2001), p.xv.
[188] See M.R. Madsen, 'From Cold War Instrument to Supreme European Court: The European Court of Human Rights at the Crossroads of International and National Law and Politics', *Law and Social Inquiry* 32.1 (2007), pp. 137-159 on why France delayed ratification of the ECHR.
[189] See F. Furedi, 'Creating a Breathing Space: The Political Management of Colonial Emergencies', *Journal of Imperial and Commonwealth History* 21.3 (1993), p.91.
[190] Anghie views the Mandates System as a more radical shift in colonial governance because of its promotion of self-government. See A. Anghie, *Imperialism,* p.116.
[191] See J. Morsink, *The Universal Declaration of Human Rights,* p.2.

governments were becoming 'increasingly conscious', which was 'the responsibility for ensuring the maintenance of peace and good order in the world'.[192] The idea of an international organisation to preserve world peace was, Cadogan stressed, a 'comparatively modern one'.[193]

Although it is widely acknowledged that concern for collective security lay at the heart of this new system of global governance, human rights did feature (albeit not prominently) in the United Nations' agenda from the 1945 San Francisco Conference.[194] In part driven by a desire to avoid a repeat of the horrors of the atrocities of Nazi rule, states were urged to enshrine ideas about the parameters of legitimate state conduct within an overarching framework of universal human rights.[195]

A5 Pressures on the Metropole

Chapter One described the decisive shift in decision-making away from the colonies and back to the metropole, Chapter Two extends Chapter One's treatment of the metropole's focus on development and welfare in the colonies by examining the influence of international pressure which contributed to change in colonial governance during the 1940s and 1950s. The metropole remained the constant locus of decision-making in matters relating to the colonies throughout this period, but the metropole now also had increasingly to contend with probing from without in its management of colonial affairs.

A6.1 Human Rights pre-1945, the League of Nations and the United Nations

Whilst 1945 is regarded as a watershed moment in the history of the 'universalisation' of human rights and the onset of global governance, there had been precedent. There had been

[192] CA, ACAD 6/2, Cadogan, 'World Responsibilities', 9 August (no year).
[193] Ibid.
[194] M.A. Glendon, 'The Forgotten Crucible: the Latin American Influence on the Universal Human Rights Idea', *Harvard Human Rights Journal* 16 (2003), p.28.
[195] C. Reus-Smit, 'Human Rights and the Social Construction of Sovereignty', *Review of International Studies* 27 (2001), p.530.

initiatives to protect human rights – even if not articulated as such – in the two preceding decades, and some progress had already been made in advancing the rights of women, minorities and workers.[196] Protection for the latter two groups came under the auspices of the League of Nations.[197]

Established in 1919 following the First World War with the goal of maintaining world peace and collective security, the League marked the faltering beginnings of the internationalisation of empire. Although the League is best known for its attempted contribution to – and ultimate failure in – peace-keeping in the post-First World War period, its other key role was in demarcating and to an extent directing the changing boundaries between state sovereignty and international jurisdiction.[198] The League was truly a 'harbinger of global governance'[199] and represented an early challenge to systems of European colonial governance. Its importance, however, should not be overstated. Whilst the League may have 'midwifed'[200] regimes that are still in existence today, the League was still complicit in the world of empires, as Mazower has argued.[201] Fresh hope for a new world organisation was, therefore, pinned on the United Nations, following the demise of the tainted League in 1946. The UN, it was hoped and as Morsink argues, would have 'some teeth in it'.[202]

The UN represented an expanded, ambitious vision of global governance which expressly promoted human rights.[203] Indeed, it was only in the post-Second World War period that the protection of human rights came to be connected more closely and explicitly to the idea of

[196] Ibid, p.531.
[197] See D. Maul, *Human Rights, Development and Decolonization: The International Labour Organisation, 1940-70* (Basingstoke, 2012) and M. Mazower, 'Minorities and the League of Nations in Interwar Europe', *Daedalus* 126.2 (1997), pp.47-63.
[198] S. Pedersen, 'Back to the League of Nations', *The American Historical Review* 112.4 (2007), p.1092.
[199] Ibid, p.1092.
[200] Ibid, p.1116.
[201] M. Mazower, *Governing the World: The History of An Idea* (London, 2012), p.166.
[202] J. Morsink, *The Universal Declaration of Human Rights*, p.12.
[203] C. Douzinas, *Human Rights and Empire*, p.15.

legitimate statehood.[204] No longer were human rights taken to be the purely domestic concern of states, at least in theory. This was made clear at the opening of the International Military Tribunal in the Palace of Justice in Nuremberg in October 1945, which marked the beginning of the Nuremberg trials. The establishment of an international tribunal alongside institutions such as the United Nations (and earlier institutions such as the International Labour Organisation) made it notionally lawful for states to intervene legitimately in one another's affairs (within certain bounds) if there existed a deemed threat to international peace and security. The advent of this new structure of global governance, combined with the emergence of normative, universal concepts of human rights in the post-1945 period which transcended state boundaries, did not sit at all easily with traditional principles of state sovereignty or empire,[205] since the policing and protection of human rights involves placing limits upon the state's unqualified power over its citizens and subjects.[206] This was the beginning of the post-1945 shift which viewed empire as illegitimate and sign of disorder.

A6.2 Human Rights Post-1945 and the United Nations

Early steps to promote and protect human rights under the umbrella of the United Nations in the immediate post-1945 period generated little enthusiasm in Britain. As Viscount Templewood (Samuel Hoare, former Secretary of State for Foreign Affairs) admitted in 1945 in commenting upon the response to his proposals for 'the need of an international supervision of what are generally known as human rights', he was unable to claim that 'amidst so many other pressing questions of international politics my proposals evoked more than mild and hesitating sympathy'.[207]

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[204] C. Reus-Smit, 'Human Rights', p.531.
[205] S.L. Hoffman, 'Introduction: Genealogies of Human Rights' in S.L. Hoffman (ed), *Human Rights in the Twentieth Century*, p.14.
[206] See C. Reus-Smit who argues that sovereignty and human rights ought to be views as elements of a single, inherently contradictory modern discourse about legitimate statehood. C. Reus-Smit, 'Human Rights'.
[207] Viscount Templewood, 'The Rights of Man', *The Manchester Guardian,* 1 December 1945, p.4.

No greater enthusiasm had emerged by 1948, as an article in the *Manchester Guardian* demonstrated, in which it was argued that 'it is easy enough to view the United Nations Universal Declaration of Human Rights with a certain cynicism' because 'the hard-headed delegates' to the General Assembly did not attach enough importance to it, and nor even did more than a handful of Governments give it the attention the writer felt it required.[208]

Furthermore, the image of the UN as a bastion of human rights was undermined by the influential role played by Jan Smuts, 'the architect of white settler nationalism'.[209] Smuts had a part to play in the drawing up of the UN's preamble in which he stated that 'the high contracting parties' were determined 'to re-establish the faith of men and women in fundamental human rights'.[210] Smuts' contribution was written only a few years before the implementation of apartheid in South Africa which fundamentally disregarded the human rights of black South Africans.

Similarly, the language used by John Humphrey, director of the Human Rights Division of the UN, in 1950 when he exclaimed that 'the backward nations are in revolt!' further undermines the image of the UN in its early days as a progressive institution.[211]

Generally speaking, in post-war Britain human rights were regarded as 'an unfortunate American obsession' which had to be held in check in order that they did not have too profound an impact on the minds of non-Europeans who could potentially use human rights as a weapon against imperial powers.[212] Even the USA, which had been the main driving force behind the extension of the UN's jurisdiction to include human rights matters, placed great

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[208] 'Human Rights', *The Manchester Guardian,* 14 December 1948, p.4.
[209] M. Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, 2009), p.9.
[210] J. Smuts, Preamble to UN Charter, quoted in 'Aims of the New League: Gen. Smut's Definition', *The Manchester Guardian,* 4 May 1945, p.8.
[211] J. Humphrey quoted by R. Burke, *Decolonization,* p.2.
[212] M. Mazower, 'The Strange Triumph of Human Rights, 1933-1950', *The Historical Journal* 47.2 (2004), p.391.

emphasis on the fact that the organisation was not to have extensive powers.[213] This manifested itself most clearly through the UN's human rights arm, the Commission on Human Rights, which was virtually inactive for its first twenty years and which led jurist Lauterpacht to describe such inactivity as an 'extraordinary…degree of abdication' on the part of the UN.[214]

The nub of the problem with the UN was articulated by Zeitlin, Economic Adviser to the UK Institute of Export, who claimed that with regards to the then corpus of human rights literature 'there is a strange disproportion between the lack of constructive work and the abundance of sublime, but unrealistic words'.[215] The cause of this, according to Zeitlin, was that 'only a 'human-rights-conscious' mankind would be ready to implement a covenant, binding all members of the United Nations'.[216] Whilst a 'human-rights-conscious' mankind may not have been in existence in the early 1950s, as Zeitlin argued, consciences were gradually awakened during the emergency periods of the mid- to late 1950s, as the middle Chapters of this thesis demonstrates.

PART II

THE UNIVERSAL DECLARATION of HUMAN RIGHTS

With the UN's emphasis on human rights (initially political and civil rights and, later, social and economic rights), ideas of state responsibility were re-defined and new expectations set and articulated. These new ideas were given their first clear and coherent expression in the Universal Declaration of Human Rights, adopted in 1948. This was the first attempt to establish 'the contours of the contemporary consensus on internationally recognised human

[213] A. Cassese, 'The General Assembly: Historical Perspective 1945-1989' in P. Alston (ed), *The United Nations*, p.25.
[214] H. Lauterpacht quoted in P. Alston, 'The Commission on Human Rights' in P. Alston (ed), *The United Nations,* p.140.
[215] L. Zeitlin to the Editor, 'Declaration of Human Rights', *The Times,* July 26 1952, p.5.
[216] Ibid, p.5.

rights',[217] and has been described as the 'polestar' of the post-1945 human rights project.[218] Bates regards the UDHR - even today - as a 'momentous achievement'.[219] Although some advances had been made in recognising the rights of certain groups in the post-First World War period, the UDHR marked the beginning of the promotion, at least in theory, of *universal* human rights.[220] Although not a legally binding document, the UDHR was a clear departure from the prior view that the treatment of citizens or subjects was a matter solely of domestic jurisdiction: that the UDHR stressed *human* rather than *citizen* rights is normative of the inclusion of all human beings across all nations and cultures into an 'abstract universal community'.[221]

B1 A European Phenomenon?

Until recently, the bulk of literature on the history of the UDHR has focused almost exclusively on the contribution of Western states during its planning and drafting stages. Traditional accounts have focused on the role of individuals such as Canadian John Humphrey and Frenchman René Cassin. Furthermore, the association of the document with the United States because of Eleanor Roosevelt's key role as leader of the project did little to dispel the myth that the UDHR was the exclusive 'brainchild' of European and North American powers.[222]

However, a considerable number of non-European states played a key role in the drafting of the UDHR. Contrary to popular thinking today, which views Latin American countries as the *object* of concerns over human rights, they were major *contributors* to the post-1945

[217] J. Donnelly, *Universal Human Rights,* p.22.
[218] M.A. Glendon, 'The Forgotten Crucible', p.27.
[219] E. Bates, *The Evolution of the European Convention,* p.38.
[220] See L. Hunt *Inventing Human Rights* for an account of the development of human rights. See S. Moyn, *The Last Utopia,* for a more controversial account.
[221] M. Lazreg, 'Human rights, State and Ideology: An Historical Perspective' in A. Pollis and P. Schwab (eds), *Human Rights: Cultural and Ideological Perspectives* (London, 1976), p.34.
[222] S. Waltz, 'Universalizing Human Rights: the Role of Small States in the Construction of the Universal Declaration of Human Rights', *Human Rights Quarterly* 23.1 (2001), p.46.

project.[223] Chile, Panama and Uruguay played such a key role that they have been described as the 'forgotten crucible' of the idea of universal human rights.[224]

The Governor of Kenya, Phillip Mitchell, was particularly critical of Britain's involvement in writing the UDHR. He argued that Britain was fraternising with dictators in its promotion of human rights:

> 'I have never been able to discover what object His Majesty's Government considered they were achieving by being a party to undertakings of this kind, in association with Central and South American dictatorships and many other governments who do not allow their subjects any of these rights and freedoms'.[225]

The drafting of the Universal Declaration was influenced by two UN bodies, the Commission on Human Rights and the Drafting Commission. The Commission on Human Rights was made up of eighteen states and led by Eleanor Roosevelt. The main project of the Commission was to produce an International Bill of Rights. The Bill had three components: first, a Declaration (the UDHR); second, a Convention of legal obligations (the 1966 Covenants); and, third, an enforcement mechanism.[226] It was the Drafting Committee (made up of eight states), however, that had considerably more influence on the final form of the UDHR than the Commission.

B2 Britain's Contribution to UDHR

Britain was represented by Charles Dukes (Lord Dukeston) at the first and second sessions of the Commission of Human Rights and by Geoffrey Wilson in the third session and also on the Drafting Committee. Dukeston was elderly and in failing health, which was regarded as an embarrassment to the British FO. Within the FO, Dukeston's appointment was seen as

[223] P.G. Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights', *Human Rights Quarterly* 25.2 (2003), p.283.
[224] M.A. Glendon, 'The Forgotten Crucible', p.27.
[225] TNA, CO537/4581, P. Mitchell to A. Creech-Jones, 29 July 1949.
[226] E. Bates, *The Evolution of the European Convention,* p.38.

emblematic of the low regard in which the British Government held human rights.[227] Similarly, A.W.B. Simpson's anecdotal account of Assistant Legal Adviser to the FO, Vincent Evans' attendance at talks about the UDHR in 1947 having never before heard of 'human rights', further adds to the lacklustre impression of the British contribution to the drafting stages.[228]

B2.1 British Ambivalence to UDHR

Wilson of the Cabinet Office, who attended the third session of the Drafting Committee, in contrast to Dukeston and Evans, did, however, have extensive knowledge of human rights, having been involved in the inter-departmental workshop on human rights. Nevertheless, the general impression given by UK representatives was one of indifference, which at times verged on negativity. This was also true of Britain's role in the Commission on Human Rights which was responsible for drafting a Covenant. Documents reveal, for example, that the UK Delegation at a meeting of the UN Human Rights Commission in 1947 had been criticised for having a 'negative attitude' at an earlier meeting.[229] It was suggested by the Dominions Office that the Delegation should 'take a positive line' at the next meeting at which time they should 'put in our own idea of what an International Bill of Rights should contain'.[230] This was possibly an attempt at regaining control of a process which, if not dealt with carefully, could have landed Britain in a difficult situation regarding its colonies. Significantly, it was felt by the British delegation during the process of the drafting of the Covenant that Eleanor Roosevelt was abusing her position as Chairman to push through American ideas which

[227] A. Samnoy, 'The Origins of the Universal Declaration of Human Rights' in G. Alfredson and A. Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (The Hague, 1999), p.8.
[228] A.W.B. Simpson, *Human Rights,* p.38. This is based on Simpson's personal knowledge. See also Sir Vincent Evans (Obituary), *The Times,* 5 June 2007, for his involvement.
[229] TNA, DO35/3771, Letter to J. Stephenson, 20 May 1947.
[230] Ibid.

resulted in the UK Delegation having to be 'constantly on guard' to prevent inclusion of certain American led clauses.[231]

Outside Whitehall, the UDHR at the time of its inception was also viewed with scepticism and was seen as a somewhat ambitious document. *The Manchester Guardian* argued, for example, that the UDHR was 'to say the least, a bold step for the world to take when there is no Government in existence which can guarantee, even to its more favourite citizens, all the rights laid down'.[232] It was certainly a bold step for an imperial power like Britain to take.

Following the drafting stages and subsequent publication of the UDHR, the profile and perceived importance of human rights within the British establishment (and certainly within colonial circles in Britain) still remained low. Colonial Secretary (1946-50), Arthur Creech Jones, confirmed this in a letter to colonial governors in 1949 by describing the UDHR as 'nothing more than a statement of ultimate ideals'.[233] Indeed, Creech Jones wrote that the UDHR should not be regarded as 'a statement of measures which are all capable of immediate implementation in all territories, or as a legally binding Covenant'.[234] Even still following the advent of a legally binding Covenant (the ECHR), however, senior government officials regarded human rights as of little importance. In the case of the FO, for example, human rights issues were usually the responsibility of junior officials.[235] This poses a methodological difficulty for this project, because some of the officials whose names appear in exchanges referred to in the case studies in the middle Chapters of this thesis were so junior that it is difficult to determine from the CO and FO Lists their departmental positions.

[231] TNA, DO35/3773, G. Wilson to R. Heppel, 7 May 1948.
[232] 'Human Rights', *The Manchester Guardian,* December 14 1948, p.4.
[233] TNA, DO35/3776, A. Creech Jones to Colonial Governors (Secret), 28 March 1949.
[234] TNA, DO35/3776, A. Creech Jones to Colonial Governors (Non-Secret), 28 March 1949.
[235] See A.W.B. Simpson, *Human Rights*, p.4.

B2.2 Britain's Public Posture

Nevertheless, Britain was still supportive of the UDHR in public and celebrated its 'birth'. On the day of the adoption of the UDHR on 10 December 1948, in a speech delivered to the Third Session of the General Assembly of the UN, Ernest Davies, Labour MP for Enfield and United Kingdom Representative, described the UK Delegation's sense of 'pride and privilege' in participating in the creation of the UDHR. Davies argued that the UDHR heralded the beginning of a new epoch, stating that he felt that 'we are to-day passing a milestone of human progress'.[236] Whilst similar declarations of rights already existed (he listed among these Magna Carta and the Declaration of the Rights of Man), according to Davies the UDHR was the first of its kind because 'never before have there been so many nations joined together to agree upon what they consider to be the basic and fundamental rights and freedoms of the individual'.[237] Indeed, Davies emphasised that the UDHR was 'not merely a statement of Western thought' but rather the universal product of 'an expression of world opinion as to what, in our day and age, the rights of men should be'.[238] It was a truly universal document.

B2.3 International Opposition to British Colonialism

Creating such a 'global' and seemingly consensual product did not, however, come without its difficulties, particularly for an imperial power like Britain. Britain's experience of drafting the UDHR was not as smooth as Davies had suggested. In fact, later in his speech, Davies made reference to the difficulties encountered by the UK Delegation and he defended the British position forcefully. Davies spoke of tension between the UK and Polish Delegations as the UK was forced to weather Polish (amongst others') criticism of its colonial policy. During the drafting stages, the Polish delegation had suggested that Britain was attempting to delete Article 3 ('everyone has the right to life, liberty and security of person') in order not to have

[236] TNA, DO35/3776, Speech by E. Davies, 10 December 1948.
[237] Ibid.
[238] Ibid.

to apply it to people living in the colonies. The Polish allegations clearly touched a nerve. Davies argued that 'I need hardly stress the utter untruth of that [the Polish] statement' and he reiterated the 'universal' nature of the UDHR claiming that Britain had consulted all colonial territories during the preparation of the document.[239]

It was not only from the Polish Delegation that Britain came under fire during the discussions leading up to the adoption of the UDHR. Inevitably, Britain also encountered criticism from the Soviets, who alleged that Britain held 'the branch of domination in her hands'.[240] In a speech to Committee III, UK Delegate and Parliamentary Under-Secretary of State for Foreign Affairs, C.P. Mayhew, spoke of the hostile speech delivered by a member of the Soviet Delegation in which the speaker argued that Britain and other members of the Human Rights Commission had been attempting to hinder rather than promote human rights. The Soviets made reference to the hypocrisy of the British and argued that the British Government was attempting to maintain 'undemocratic principles and practices' in colonial territories.[241] Mayhew made a robust response, arguing that not only was the Soviet belief that they were the champions of human rights a 'fantastic distortion' but also arguing that Communism was 'one of the most ruthless forms of dictatorship, economic and political, that the world has ever seen'.[242] Whilst a considerable level of Soviet antagonism was unleashed on the British delegation with regards to its colonial policy, the Soviets also attacked the Declaration during the proceedings. An article in *The Times* detailed, for example, a 'long and bitter attack' launched by the Soviets against the UDHR. The cause for such a position, the article surmised, was because the UDHR 'touches them closely'.[243]

[239] Ibid.
[240] TNA, DO35/3776, C.P. Mayhew (speech), 4 October 1948.
[241] Ibid.
[242] Ibid.
[243] 'Declaration of Human Rights', *The Times,* 11 December 1948.

Elsewhere, in defence of British colonialism in the face of increasing Soviet criticism, Alexander Cadogan lamented in a speech to Amherst College in the USA in April 1950 that:

> 'it is regrettable perhaps that the activities of the United Nations in the field of non-self-governing territories could not be directed towards certain parts of the world where they are really needed. There are, I imagine, certain zones of Soviet controlled Asia where non-self-governing peoples can be found who are suppressed in a manner beyond the comprehension even of the crudest nineteenth century imperialist'.[244]

Whilst the Soviet attack on British colonial policy was part of a broader attack on human rights generally during the drafting process, the specific threat of a Soviet or other attack on the colonies was one that greatly concerned the Colonial Secretary. In a secret despatch to colonial governors, Creech Jones recognised 'the potentialities of the Declaration as a source of embarrassment to Colonial Governments'.[245] The reasons for this was, according to Creech Jones, first, because of its very nature and, second, because of its potential for use as fodder for Communist anti-colonial propaganda.[246]

The real danger in the UDHR for the British, however, and as Creech Jones acknowledged, was that in a number of territories it was 'extremely difficult' to square some Articles in the Declaration even when regarded as a 'statement of ultimate ideals' (as opposed to a binding covenant) with colonial policy, which was expected to remain a key part of colonial governance 'well into the future'.[247] Regardless of the potential irreconcilability, Creech Jones explained that, on balance, it was decided that it would have been 'most unwise' for the UK Delegation to attempt to get any exemptions in the UDHR on behalf of colonies for which the Declaration posed particular difficulties. This decision was taken in order not to 'turn the spotlight of international criticism upon the territory to a disproportionate and quite

[244] CA, ACAD 6/2, Amherst College Speech, 20 April 1950.
[245] TNA, DO35/3776, Creech Jones, 28 March 1949.
[246] Ibid.
[247] Ibid.

unnecessary extent' which could have led to embarrassment for the territories.[248] This was a storm that Creech Jones' successor, Lennox-Boyd, would later have to weather during the emergency periods.

Such was the extent of Communist criticism during the drafting stages of the Declaration that the British Government considered whether to continue at all with its involvement in the drafting of the Covenant.[249] An official in the Commonwealth Relations Office (CRO) wrote to the Foreign Office in April 1948, for example, that whilst Britain had 'embarked on the covenant in all good faith that other members of the UN were animated by equal good will towards their fellow-men in this matter of human rights', more recently the 'international atmosphere has deteriorated'.[250] The CRO alleged that the Communist states were 'out to use any and every weapon against us' and which included, the Department predicted, the Covenant itself. Thus, the CRO questioned if there would be a requirement for Ministers to reconsider whether they were willing 'to take the risks inherent in going on with the Covenant in this atmosphere?' [251] Britain did, however, maintain its involvement and prominence for political reasons.

B3 Article 2 (7): the Silver Bullet?

For Britain, there was, perhaps, a way around things. Article 2 (7) of the Declaration, it was hoped, could be invoked in the attempt at damage limitation under the UDHR. The CO, in particular, hoped to rely on Article 2 (7) of the Declaration with the intended result that this would ward off unwanted attention or involvement from the United Nations on colonial matters.[252] This was because Article 2 (7) stated that 'nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially

[248] Ibid.
[249] The Covenant was the Declaration's legally binding component.
[250] TNA, DO35/ 3772, R.C. Ormerod to E.B. Boothby, 7 April 1948.
[251] Ibid. Although the Covenant did not come into force until 1966, a draft version was ready in 1954. It is the early stages of this drafting process to which Ormerod refers.
[252] A.W.B. Simpson, *Human Rights*, p.308.

within the domestic jurisdiction of any state'.[253] There had, since the establishment of the United Nations, been various attempts to bring up questions of human rights at the General Assembly. Such questions were regarded technically as matters of domestic jurisdiction and thus outside the remit of the United Nations under Article 2 (7).[254] The danger for the CO, however, was that the FO was willing, and really quite eager, to air Soviet human rights abuses at the General Assembly. In a CO minute of July 1952 it was noted that:

> 'the FO are disposed to consider…that the UK has already implicitly recognised, by its actions in the UN vis à vis Russia, that human rights have an international character and that violations of human rights can probably be discussed in international assemblies…The FO in the early stages, were so anxious to dish the Russians that they did not think ahead to all the implications for ourselves, especially in relation to the Colonies'.[255]

B3.1 FO & CO: A Difference of Opinion?

Much time, therefore, was spent by FO lawyers in consultation with CO officials discussing the international dimension of human rights and Britain's stance on their being discussed at the United Nations. The question of whether human rights were or were not a matter for international enquiry was, according to D.T. Holland (a FO Assistant Legal Adviser), not an easy one to answer.[256] The CO believed that the FO was complicit in the internationalisation of human rights, however, which was a matter of great concern to them. W.A. Morris, Assistant Secretary in the CO, wrote to A.A. Dudley, Head of the UN (Economic and Social) Department, in September 1952, for example, to inform him that the CO, was 'still somewhat at variance' with the FO on the question of the extent to which human rights were properly a matter of international concern before any Covenants on human rights were ratified (the ECHR had been ratified, but not yet in force, at this stage).[257] Morris argued: 'we not only find it difficult to agree that H.M.G. have implicitly recognised that Human Rights as such have an

[253] Universal Declaration of Human Rights, accessed 16 April 2015, available at http://www.un.org/en/documents/udhr/index.shtml.
[254] A.W.B. Simpson, *Human Rights,* p.308.
[255] TNA, CO936/108, CO Minute, 16 July 1952, quoted in Ibid, p.309.
[256] TNA, FO371/95880, Domestic jurisdiction of human rights (note), 1951.
[257] TNA, FO371/101439, W.A. Morris to A.A. Dudley, 19 September 1952. Morris was Head of International Relations Department 'B'.

international character but we think it would be disastrous to act as if we had done so'.[258] Britain was, according to Morris, best advised to 'maintain a logical and consistent' attitude to protecting themselves and this meant in practice not engaging in any discussions at the United Nations about other countries' human rights record.[259]

Only after Britain had signed up to legally binding human rights covenants (for example, the ECHR and the UN Covenant) would human rights be regarded as not being within the exclusive domestic jurisdiction of the individual state. This was a view shared by FO lawyer, Fitzmaurice and CO lawyer, Gordon-Smith.[260] Such a position was justified by the CO on the grounds that the CO was not hindering the advancement of human rights but that, rather, external involvement in colonial matters through the vehicle of international declarations and organisations was dangerous to the continually changing and 'delicate' metropole-colony relationship. W.I.J Wallace, then Head of the International Relations Department in the CO, wrote in 1951 to Dudley, for example, that:

> 'we have always been, or tried to be, the brake on the United Kingdom chariot, not because we have colonial horrors to hide, but because we have always recognised the opportunities offered by international conventions on human rights to dangerous outside interference in the delicate and changing relations between His Majesty's Government and peoples'.[261]

B3.2 FO: Legal Advisers

Whilst Wallace relied on this argument to justify the CO position, FO lawyer Fitzmaurice relied on the perceived flimsiness of the UDHR to justify why colonial matters should escape being brought up at the UN. Fitzmaurice advised that a distinction should be made between general and specific questions of human rights. Specific questions of human rights – what Fitzmaurice described as a 'specific concrete case' – should be regarded as being essentially within the domestic jurisdiction of the state concerned. Indeed, he argued, there was 'a good

[258] Ibid.
[259] TNA, FO371/101439, Gordon-Smith, 'Human Rights and Domestic Jurisdiction', September 1952.
[260] TNA, FO371/101439, G. Fitzmaurice (minutes on paper), 25 September 1952.
[261] TNA, FO371/95880, W.I.J. Wallace to Dudley, 19 December 1951.

deal of warrant in the San Francisco records' for the distinction between specific and general questions.[262] Ultimately, Fitzmaurice argued, specific questions of human rights could not be addressed by the United Nations because 'while the Charter may impose on members a rather vague general obligation to co-operate in the promotion of human rights, it does not impose any concrete or specific obligations upon them'.[263] In fact, Fitzmaurice went on to argue, the declaration did not even define apart from in the 'widest and most general terms' what the human rights it detailed actually were. It could be argued, therefore, Fitzmaurice explained, that unless a country's behaviour 'involves a very clear violation of human rights' it was not discussable under the UN Charter.[264]

Whilst Fitzmaurice of the FO offered purely legal advice, policymakers in the FO were still keen that questions of human rights could be raised at the UN but excluding, of course, anything relating to British territories. The debate between the CO and the FO continued for some time and there were clearly points of tension. In 1953, for example, FO lawyer J.A.C. Gutteridge complained that the CO was entirely focused on the question of domestic jurisdiction in relation to matters of human rights violations before the United Nations. The FO, Gutteridge argued, 'must necessarily have a wider perspective', which meant that the FO could not guarantee that they would not engage in discussions on human rights at the UN.[265] This was a view supported by Fitzmaurice, who suggested that the CO's position was unsustainable, despite arguing just months earlier that until human rights declarations were legally binding, human rights were purely a matter of domestic concern. By February 1953, the CO could not, Fitzmaurice suggested, have it both ways:

> 'while we can reserve a certain room for manoeuvre, we cannot in the last resort have it both ways, and must decide whether it is of more importance to us to prevent the discussion of a country's internal affairs in cases where this

[262] TNA, FO371/101439, G. Fitzmaurice (minutes on paper), 25 September 1952.
[263] Ibid.
[264] Ibid.
[265] TNA, FO371/101439, J.A.C. Gutteridge (minute), 15 January 1953.

would be embarrassing to us, or whether it is more important to be free to criticise other countries, such as the Soviet Union'.[266]

B3.3 Resistance to Dissemination of UDHR in the Colonies

Article 2 (7) offered the British state a possible means by which it hoped it could limit international discussion of human rights in relation to its colonies. The British were terrified of the anti-colonial mood they believed had permeated the UN.[267] The CO also sought to limit discussion of human rights and specifically, in the early days, discussion of the UDHR in the colonies themselves.

Whilst territories were asked to publish the UDHR in Official Gazettes (Cyprus and Nyasaland did; Kenya published the UDHR and copies of it were sold by the Government to the general public), this was effectively the extent of the UDHR's circulation within colonies.[268] In discussion between the CO and the FO, for example, it was recommended by the CO that the UDHR should not be publicised or discussed in schools in British colonies. A CO official wrote to the FO that due to the current level of 'political education' in colonial territories, 'little if anything would be gained by further exposition of the whole Declaration in schools'.[269] The reasons given for this were that (a) it was not easily understandable and thus it was likely that pupils might regard it 'merely as a form of lay catechism', and (b) it could be used by 'politically-inclined school-teachers' to 'confuse' the minds of their pupils on political matters.[270] Interestingly, in this letter the CO asked that the FO respect the wishes of those colonial governments that had decided not to publicise the UDHR because, as the CO official argued, 'it is a fact that official publication of the Declaration gives it, in the public mind, the status of official policy. It is also the case that the average African will tend to interpret the

[266] TNA, FO371/101439, G. Fitzmaurice (minute), 2 February 1953.
[267] D. Gorman, 'Britain, India, and the United Nations: colonialism and the development of international governance, 1945-1960', *Journal of Global History* 9 (2014), pp.471-490.
[268] See TNA, CO537/4580 for a list of territories willing to publish the UDHR in their Official Gazettes and those not willing.
[269] TNA, CO537/4580, N.B.J. Huijsman to J.P. Duffy, 12 October 1949.
[270] Ibid.

Declaration as the law, and will entirely fail to appreciate the difference between the Declaration as a statement of ideals and as a legislative programme.'[271] This debate re-surfaced between the CO and Robert Armitage, Governor of Nyasaland, as late as 1957, as examined in Chapter Four.

This policy of restricted publication was to be applied to Cyprus, too. The Director of Education in Cyprus recommended, for example, that no pressure should be placed on teachers to discuss the UDHR because of the dangers posed when 'mischief-making politically minded teachers' were given the opportunity to discuss it.[272] More generally, however, it was reported by District Commissioners that there were no signs of local interest in the document, which led the Acting Governor to write to the Colonial Secretary that 'I can only confirm that…the public in Cyprus is apathetic to the Declaration'.[273] Chapter Three suggests that this was not, in fact, the case.

The strongest resistance to publishing the UDHR came from the Governor of Sierra Leone, Sir George Beresford-Stooke, who wrote candidly:

> 'we can hardly expect to win the confidence of Africans by making statements of 'ultimate ideals' while in practice we take steps in precisely the opposite direction… We feel that it would be most unwise to lay ourselves open to a charge of hypocrisy which we should find it almost impossible convincingly to refute'.[274]

B4: UDHR: a Damp Squib?

The impact of the UDHR in practice has been widely debated. Simpson has described it as 'little more than an exhalation of pious hot air'.[275] The Declaration was not legally binding, nor did it include any enforcement mechanisms. It did, however, prompt a number of individuals and NGOs to write to the UN to complain that Britain was not upholding its

[271] Ibid.
[272] TNA, CO537/4580, Acting Governor to Colonial Secretary, 11 June 1949.
[273] Ibid.
[274] TNA, CO537/4580, G. Beresford-Stooke to A.B. Cohen, 12 May 1949.
[275] A.W.B. Simpson, *Human Rights,* p.11.

obligations under the UDHR in the early 1950s, as the evidence in Chapters Three and Four demonstrates. However, the UDHR had promised more than it had delivered, at least in its early days.

PART III

THE EUROPEAN CONVENTION on HUMAN RIGHTS

C1 Preamble

A new, more ambitious and, certainly for an imperial power, potentially more threatening initiative emerged with the establishment of the Council of Europe on 5 May 1949. The European Convention on Human Rights, a product of this newly formed European organisation, was equally, if not more, ambitious than the UDHR. It came into force on 3 September 1953. As Bates has argued, by the late 1940s the UN was 'floundering' in its attempts to sculpt an International Bill of Rights and, thus, attention turned to a European project which it was hoped could ensure a more effective human rights protection mechanism.[276] The UN's attempts at protecting human rights have been described as 'well-meaning but toothless'.[277]

In the context of early Cold War tensions, it was believed that the only way to ensure that totalitarian regimes could not grow to the size of the Nazi regime was through the development of a robust, legally binding convention. According to one of its chief architects, David Maxwell-Fyfe, the ECHR was to be a 'light' that would be 'a beacon to those at the moment in totalitarian darkness and will give them a hope of return to freedom'.'[278] The purpose of the Convention was two-fold: first, to establish a system of collective security against totalitarianism and repression and, second, to provide a moral basis for the Council of

[276] E. Bates, *The Evolution of the European Convention,* p.6.
[277] M.R. Madsen, ''Legal Diplomacy' – Law, Politics and the Genesis of Postwar European Human Rights', in S.L. Hoffman (ed), *Human Rights*, p.65.
[278] Quoted by E. Bates, *The Evolution of the European Convention,* p.5.

Europe.[279] Adherence to the ECHR was regarded as the minimum standard required to join the old circle of democratic European nations, which included Britain and France. For West Germany, for example, adherence to the ECHR would prove the sincerity of the country's return to democratic codes of behaviour.[280]

The introduction of the ECHR was by no means inevitable, despite the apparent desire to protect human rights in the wake of Nazi atrocities.[281] Indeed, individuals in Britain resisted attempts to establish a human rights convention because of a fear that such a treaty would threaten state sovereignty.[282] For the British, the French and the Dutch, the establishment of the ECHR might lead to increased intrusion into colonial matters, which was to be fiercely resisted. The successful establishment of the Convention was due largely to the perseverance of certain individuals.

C1.1 Britain's Contribution to ECHR

Viewed as an aspect of foreign relations and of no real domestic concern, the British FO was the only department to play any significant role in, first, the establishment of the Council of Europe and, second, the drafting of the Convention. Despite Foreign Secretary Ernest Bevin's enthusiasm for the protection of human rights, senior officials in the FO did not regard human rights as a top priority.[283] FO lawyer Eric Beckett, was an exception. Influenced by the views of jurist Hersch Lauterpacht, he was particularly active in the establishment of the Council of Europe, which laid the groundwork for the drafting of the ECHR. In February 1948,

[279] D. Maxwell-Fyfe, *Political Adventure: The Memoirs of the Earl of Kilmuir* (Edinburgh, 1964), p.180.
[280] E. Bates, *The Evolution of the European Convention,* p.5.
[281] See also Duranti's work which cautions against establishing a causal link between the Holocaust and the UDHR. M. Duranti, 'The Holocaust, the legacy of 1789 and the birth of international human rights law: revisiting the foundation myth', *Journal of Genocide Research* 14.2 (2012), pp.159-186.
[282] E. Bates, *The Evolution of the European Convention*, p.6.
[283] A.W.B. Simpson, *Human Rights,* p.4.

Beckett claimed 'that I think human rights and freedoms are one of the few ideals for which the people of this country would fight, and which are worth fighting for'.[284]

Outside the FO, the most prominent Briton to play a key role in the establishment of the ECHR was Sir David Maxwell Fyfe, a barrister and prosecutor at Nuremberg and, later, Home Secretary (1951-54) and Lord Chancellor (1954-62). Most famous at the time for his role in cross-examining Göring, as one of the chief prosecutors at the Nuremberg Trials he was an obvious choice for Churchill who asked him to join the United Europe Movement. Indeed, it has been argued that his exposure to evidence detailing Nazi atrocities during the Nuremberg Trials 'sowed the seeds of his commitment to human rights'.[285] With the help of Professor Arthur Goodhart of Oxford and Professor Hersch Lauterpacht of Cambridge (later a Judge of the International Court), Maxwell-Fyfe, Pierre-Henri Teitgen, and Fernand Dehousse (a Belgian jurist) prepared a draft convention under the juridical section of the Council.[286] J. Harcourt Barrington, a barrister who had worked on Maxwell-Fyfe's prosecution team at Nuremberg also helped with the drafting process. However, Maxwell-Fyfe's self-proclaimed reputation as one of the 'founding fathers' may be somewhat overstated. Although he was involved in writing the first draft, the final version of the Convention was the result of collaboration between multiple authors and committees. His contribution might be better described as more that of a 'diligent midwife' than one of its main architects.[287]

Britain's involvement with the creation of the Convention was complicated and in many ways paradoxical. On the one hand, many establishment figures were extremely sceptical about the Convention, and from those outside government it evoked little interest. On the other hand, Britain was influential in the drafting process, with British legal experts taking leading roles.

[284] G.G. Fitzmaurice and F.A. Vallat, 'Sir (William) Beckett', p.295.
[285] M. Torrance, 'Maxwell Fyfe and the Origins of the ECHR', *Journal of the Law Society for Scotland,* (September 2011).
[286] D. Maxwell-Fyfe, *Political Adventure,* p.176.
[287] M. Torrance, 'Maxwell Fyfe'.

How, then, should we interpret Britain's role in establishing the ECHR and, to a lesser extent, the UDHR? One possibility is that we interpret Britain's leading role as an attempt to control what went into the Convention and what was left out. By playing a prominent role in its creation, Britain could attempt to limit what it perceived to be the negative impact of the Convention.[288] The same is perhaps also true of its involvement with the UDHR.

C1.2 Mixed Response

The passing of the ECHR marked a further evolution of a process initiated by the introduction of the UDHR. It was, as Hoffman and Rowe have argued, an 'extremely radical innovation'.[289] Not only did it set out acceptable human rights practice on the part of the state, as had the UDHR, but these were now enshrined in a legally binding convention.

In Britain, there was a mixed response to the proposals for a Convention. The Chairman of the Assembly's Legal Committee, Sir Oscar Dowson (former Senior Legal Adviser to the Home Office) supported the ECHR and played a prominent role as key drafter of the text which was finally accepted by the Committee of Experts.[290] In the Consultative Assembly at Strasbourg, Maxwell-Fyfe and Dowson enjoyed a level of support. Churchill, Macmillan and John Foster were supportive of the Convention, as was Lord Layton for the Liberals, but Labour's Ungoed-Thomas was more ambivalent.[291] The Convention also received considerable support from Ernest Bevin and his Minister of State, Kenneth Younger; such was Bevin's involvement that he has been described as a 'prime mover' in the development of human rights in Europe.[292]

[288] Ibid.
[289] D. Hoffman and J. Rowe, *Human Rights in the UK*, p.31.
[290] A. Lester, 'Fundamental Rights', p.957.
[291] Ibid, p. 957.
[292] D. Hoffman and J. Rowe, *Human Rights in the UK,* p.30.

Lord Chancellor Jowitt, James Griffiths (Colonial Secretary) and Sir Stafford Cripps (the Chancellor of the Exchequer) did not share Bevin's views and they opposed the Convention with considerable vehemence.[293] Tensions were such that Lester has described the process of creating the ECHR as a 'painful' one.[294] In short, the decision to ratify the ECHR came down primarily to political considerations. Britain felt that it not only needed to accept the Convention but also to play a key role in the establishment of the Convention because of the importance of maintaining good relations with other European countries.[295] As Jowitt claimed, 'it is, I suppose, inevitable that for political reasons we must – in some form or other – accept this draft Convention'.[296]

In the Lord Chancellor's draft paper to Cabinet regarding the draft ECHR, which was sent to Griffiths for consideration on 21 September 1950, the Lord Chancellor described the Convention as being 'so vague and woolly that it may mean almost anything'.[297] Indeed, Jowitt was said to regard the Convention, 'with abhorrence, partly because of its inevitable vagueness and loose drafting, partly because of the embarrassment some of its provisions will cause the UK'.[298] Whilst noting somewhat wryly that, in comparison to the ECHR, the Code Napoleon or the Ten Commandments 'are comparatively insignificant', Jowitt claimed that because of the way the Articles of the Convention had been written (beginning with 'a wide and sweeping statement of general principles and then put in a series of exceptions') one is left 'quite uncertain whether anything remains of the general principle'.[299] Unleashing the ECHR was, according to the Lord Chancellor, 'to court disaster'.[300]

[293] A. Lester, 'Fundamental Rights', p.957.
[294] Ibid, p.957.
[295] D. Hoffman and J. Rowe, *Human Rights in the UK,* p.25.
[296] E. Wicks, 'The United Kingdom Government's perceptions of the European Convention', p.5.
[297] TNA, CO537/5778, Lord Chancellor (draft paper), 21 September 1950.
[298] TNA, CO537/5778, J. Wallace to Mr. Martin, 25 September 1950.
[299] TNA, CO537/5778, Lord Chancellor (draft paper), 21 September 1950.
[300] Ibid.

C1.3 Unnecessary Irritant?

The Lord Chancellor's Department thought the Convention otiose. It was said, for example, that

> 'it seems extremely doubtful whether any Convention of this nature is necessary or desirable in the case of the countries who are members of the Council of Europe, all of whom may be assumed to observe the general principles of western democratic civilization and to share a common general outlook on such matters'.[301]

Reference was also made to the 'possibility of mischief-making' by 'those persons who are ill-diposed (sic) to the whole of the way of life for which the individual members of the Council of Europe stand'.[302] The Lord Chancellor's view also found support from the Attorney General, Hartley Shawcross, who noted that: 'I think we are entitled to say that the law of this country has always been in advance of the laws of most other countries in regard to human rights'.[303] The Home Office also shared the Lord Chancellor's views and stated that the feeling within the Department was that it was preferable to avoid the creation of a Convention, either in the UN or the Council of Europe, in addition to the UDHR.[304]

C2 REALPOLITIK INTRUDES

Although the Lord Chancellor admitted that he wished that it was possible to refuse the Convention, he did acknowledge that politically it would be impossible for Britain not to accept it. Acceptance, however, was only to be indicated if certain conditions were met, Jowitt recommended. One of these conditions was that the ECHR was not to be extended to the colonies. The other two conditions were that Britain did not accept individual petitions or the establishment of a European Court. The reaction in the CO to Jowitt's proposal not to extend the ECHR to the colonies was mixed.

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[301] TNA, LCO2/6274, Note by Dobson, 18 July 1950.
[302] Ibid.
[303] TNA, CO537/5777, Extract from 'Official Report', 20 November 1950.
[304] TNA, CO537/5778, F. Newsam to A. Napier, 4 October 1950.

C2.1 The $64,000 Question: Should the ECHR be extended to the Colonies?

Head of the International Relations Department, Wallace, acknowledged that his initial reaction was to support Jowitt's recommendations because of what he described as the 'unnecessary work' that the application of 'this woolly-worded Convention' would inevitably force on colonial governments and the CO. Further reflection, however, brought Wallace to the 'regretful conclusion' that for the Government to accept the ECHR but not extend it to the colonies would be 'no more politically possible' than for the Government to refuse to accept it for the UK.[305] This view was also held by Wallace's predecessor, A.N. Galsworthy.[306] Such an approach, Wallace predicted, would lead to great consternation internationally, in Britain and in the colonies. Any argument that held that the ECHR was a *European* Convention and thereby not applicable beyond European borders would, according to Wallace, 'cut no ice at all' because the Convention's focus was on universal human rights and fundamental freedoms.[307] He predicted that it would open Britain up to the criticism at home and abroad that it was willing to extend rights and benefits to those in the metropole but not those in the colonies.[308] Wallace's position suggests that the apparent gulf between the CO and FO approaches to human rights matters was not as wide as has been suggested in the historiography. Wallace's position aligned with that of the FO (although he reached his conclusion somewhat reluctantly). Indeed, a FO minute of 1953 noted that the FO and the CO agreed with each other 99% of the time with regards to questions of human rights, which appears to confirm that the difference in opinion has, in fact, been overstated in the historiography.[309]

The Attorney General, Hartley Shawcross, also shared the views of Wallace and was not in favour of the exclusion of colonial territories from the ECHR. Writing to Dobson of the Lord

[305] TNA, CO537/5778, Wallace to Mr. Martin, 25 September 1950
[306] TNA, CO537/4622, A.N. Galsworthy (minute), 17 October 1949.
[307] TNA, CO537/5778, Wallace to Mr. Martin, 25 September 1950.
[308] Ibid.
[309] TNA, FO371/101439, Edmund Howard (minute), 9 January 1953.

Chancellor's Office in October 1950, Shawcross stated that he did not think that it would be 'politically wise' to exclude British colonies from the ECHR. Reflecting Wallace's concern about the international criticism that might ensue were colonies to be excluded from the ECHR, Shawcross made reference to Britain being the 'subject of great (although unmerited) attack in regard to our Colonial system' which would most likely increase if the colonies were excluded.[310] Shawcross later corresponded with Lennox-Boyd in 1959 about conditions in detention camps in Nyasaland, as explored in Chapter Four, in his capacity as one of the founding members and first Chairman of *Justice*.

It was certainly not the case, as Sellars has incorrectly generalised, that 'the risks of extending the Convention seemed, from the government's point of view, to be minimal'.[311] Whilst Wallace spoke of reasons of political expediency for the extension of the ECHR, the Colonial Secretary viewed its extension as potentially dangerous for the colonial state. Griffiths wrote in September 1950, for example, that

> 'this Convention, if applied to the Colonies, cannot be other than an embarrassment to Colonial Governments and if it were possible for the United Kingdom to decline to accept it, so that the question of its application to the Colonies would not arise, the CO would be very glad'.[312]

Griffiths did acknowledge, however, like Wallace, that (a) it would be impossible for the UK not to accept the ECHR, and therefore (b) once accepted it 'would be politically most difficult' not to extend it to the colonies.[313] The question of double standards was again raised and it was acknowledged that a refusal to extend the ECHR would 'arouse political criticism' that the UK was not willing to extend to those in the colonies the same fundamental human rights they extended to those in the metropole.[314] Griffiths was said to feel 'with much regret' that

[310] TNA, CO537/5778, Attorney General to D.W. Dobson, 4 October 1950.
[311] K. Sellars, 'Human Rights and the Colonies: Deceit, Deception and Discovery', *The Round Table: the Commonwealth Journal of International Affairs* 93 (2004), p.709.
[312] TNA, CO537/5778, D. Kirkness to D.W. Dobson, 29 September 1950.
[313] Ibid.
[314] Ibid.

non-acceptance of the extension of the ECHR, as proposed by the Lord Chancellor, was not acceptable.[315]

In March 1951, Griffiths stated in a despatch to all British colonies that he was 'most anxious that the Convention should be extended, wherever possible, to colonial territories, since failure to extend it, in view of its subject matter, would attract criticism both at home and abroad'.[316] Not only would failure to extend the ECHR to colonial territories attract criticism, Griffiths suggested that the government's decision to accept the ECHR in the first place had, in part, been due to 'the importance attached to it by public opinion both in and outside this country'.[317] Both of Griffiths' statements provide an interesting contemporary insight into public opinion on (a) human rights generally, and (b) human rights in the colonies and specifically during the 1950s.

Current historiography on the history of human rights suggests that human rights did not enter the public consciousness until much later (for example, Sam Moyn suggests such ideas were not established in the public 'psyche' until the 1970s).[318] Similarly, historiography on the end of empire suggests that people in Britain showed little interest in colonies. Van Der Bijl has incorrectly claimed with regards to Cyprus that 'apart from the liberal chattering classes, there was little public interest in the allegations [of human rights abuse] in Great Britain'.[319] Based on these two propositions, therefore, it would seem that there was little interest in human rights in the colonies in the 1950s. Yet both Wallace's and Griffiths' memos, and the fact that the matter was discussed in the British press, suggest otherwise. The significance of this early stirring of public consciousness with regards to human rights and colonial territories will become evident in later chapters, which explore the anti-colonial

[315] Ibid.
[316] TNA, CO537/7157, Colonial Secretary, 30 March 1951.
[317] Ibid.
[318] See S. Moyn, *The Last Utopia.*
[319] N. Van Der Bijl, *The Cyprus Emergency*, p.146.

response in Britain to human rights abuses during periods of emergency. Thus, the CO attitude towards the ECHR was much more nuanced and sensitive to public opinion than previous histories have suggested.

C2.2 ECHR: Response from the Colonies

The CO wrote to governors in 1951 asking them to grant permission for the extension of the Convention to the colonies.[320] By February 1952, the majority of territories had accepted the Convention, with the exception of Jamaica, Malta, the New Hebrides and Sarawak which had not yet replied to the despatch and the Federation of Malaya, Hong Kong, the Gold Coast and Bermuda, whose position regarding the ECHR was currently under consideration.[321] Kenya and Nyasaland both accepted the ECHR, as did Cyprus. The ECHR was also extended to Northern Rhodesia but not, significantly, to Southern Rhodesia because of the situation regarding trade unions and forced labour there.[322]

Hong Kong and Malaya, whose positions were still under consideration, presented particular difficulties, because both territories were experiencing periods of public emergency (although an emergency was not officially declared in Hong Kong). Hong Kong and Malaya's hesitation over whether to extend the ECHR during emergency periods (officially declared or otherwise) and the CO's response, indicate early CO concern about derogation from human rights conventions during periods of emergency and the possibility of claims of hypocrisy on the part of colonies and of the British Government by derogating from the Convention. Whilst the Governor of Hong Kong wrote that he hoped 'broadly speaking' the ECHR would be extended 'eventually', he felt they were currently faced with 'a public emergency threatening the life of the nation' due to the influx of 'aliens' from Communist areas.[323] In order to deal with such an influx of people 'in dangerously congested conditions', the Governor wrote that

[320] See TNA, CO936/156, replies to confidential despatch, 30 March 1951.
[321] TNA, CO936/156, E.C. Burr to Dr. Mercer, 13 February 1952.
[322] TNA, DO35/10791, MG Smith to Coe and Cleary, 8 February 1955.
[323] TNA, CO936/156, Governor of Hong Kong to Colonial Secretary, 12 January 1952.

it was necessary to use 'rapid and sometimes arbitrary action such as could not, rightly, be tolerated in more normal conditions'.[324] Thus, the ECHR could only be extended if and when all of the legislation had been examined in order to establish which emergency measures would have to be reported to the Council of Europe under the derogation clause – Article 15 – of the ECHR. Whilst Burr of the CO noted that derogations were permitted under the ECHR during periods of emergency, he made reference to a wider problem applicable not just to Hong Kong but more generally to the position under ECHR during colonial emergencies. Burr stated that 'it is hardly just to put one's name to a Convention (and get the credit) and then (more quietly) to send in a list of derogations which virtually nullify the whole thing'.[325] As it was, the ECHR was never extended to Hong Kong.[326]

Burr held a similar view regarding the extension of the ECHR to Malaya during its period of emergency, stating that extending the ECHR then making 'major derogations' from it 'seems to be little less than mockery'.[327] Burr's preference, therefore, was for the ECHR not to be extended during the Malayan Emergency. Burr argued that 'their [the Malayan colonial authorities] "signing" and then derogating will be at least as odious to their critics as not "signing" at present – and possibly more creditable to their friends'.[328] In October 1953, however, when the ECHR was extended to British colonies under Article 63 the Federation of Malaya was, in fact, included in this extension (as was Aden). Burr's stance on derogation from the ECHR was maintained throughout the emergency periods: he reappears in Chapter Four with regards to questions relating to Kenya and Nyasaland. Although Burr was not a senior civil servant, he was prominent in discussions relating to human rights in the colonies throughout the 1950s.

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[324] Ibid.
[325] TNA, CO936/156, E.C. Burr to Dr. Mercer, 13 February 1952.
[326] D. Kochenov, *EU Law of the Overseas: Outermost regions, associated overseas countries and territories, territories sui generis* (Alphen ann den Rijn, 2011), p.329.
[327] TNA, CO936/156, Burr to Mercer, 13 February 1952.
[328] Ibid.

C2.3 Heart of the Matter: Rights of Individual Petitioners

Whilst the CO acknowledged that 'the provisions of the Convention are generally acceptable to us in the Colonial Office' and urged colonial governments to accept, the right of individuals to petition the ECHR was, however, an entirely different matter and a sticking point for the Department.[329] The right of individual petition, it was believed, could cause the British and colonial governments political embarrassment. Had the right of individual petition been a key part of the Convention, it is likely that the ECHR would not have been extended to colonies, it was argued. Excluding the right of individual petition, however, would restrict complaints because complaints could then only be made by states. It was noted presciently by Wallace that it was thought

> 'unlikely (I won't put it higher than that) that any of the Members of the Council of Europe as at present constituted would make a complaint against us for violation of this Convention in a Colony (Greece and Cyprus are the danger area, I suppose)'.[330]

In 1950, therefore, Wallace had already sought to pre-empt the 1956 Greece case on behalf of Cyprus against Britain under the Convention, and before the ECHR had even come into force.

The CO's justification for refusal of the right of individual petition was based on the long-established idea of 'civilisational progress' which underpinned the colonial governance repertoire. Here we see a clear example of the clash or incompatibility between colonial and global governance. Griffiths, for example, argued that Africans were 'politically immature' and the basis of successful governance of them was based on 'one single undivided authority'. Thus, the right of individual petition, Griffiths argued, would cause confusion because it would 'suggest to Colonial peoples either that the ultimate authority in the affairs of their territory is not the Crown or that there is more than one ultimate authority'.[331] This was supported by the Lord Chancellor's Office, which stated that 'the essence of good

[329] TNA, LCO2/6274, Wallace to Dobson, 14 July 1950.
[330] TNA, CO537/5778, Wallace (note), 25 September 1950.
[331] Quoted by A. Lester, 'Fundamental Rights', pp.957-58.

government, particularly among primitive peoples, is that there should be a single undivided authority'.[332] It was claimed that 'the confusion thus caused in the minds of primitive peoples would make administration more difficult and the work of agitation more easy'.[333] Individual petitions, it was maintained, were a 'great opportunity for abuse and could become more a weapon of political warfare than a method of ventilating the genuine grievances of individuals'.[334] Dobson of the LCO went as far as arguing that, on the question of individual petition, 'it seems obvious that this will open the door to a flood of petitions, many of them frivolous and ill-founded'.[335]

As it was, the British Government did not ratify the optional clause allowing for individual petition until 1966. This ensured that there was no wave of individual petitions by colonial subjects which could cause embarrassment to the CO, in particular, and the British imperial project more generally. By 1966, however, the British Empire had almost entirely disintegrated and it was no coincidence that the government then felt able to accept the individual petition clause in the belief that it would not have any significant effect on UK domestic law.[336]

Britain's decision not to accept the optional individual petition clause did not leave it completely immune to proceedings under the Convention, as Wallace had predicted. The full force of this was felt later, when Greece submitted petitions to the Committee against Britain on behalf of Cyprus in 1956 and 1957 complaining of human rights abuse. Britain had thought that the ECHR would serve as a bulwark against totalitarianism and a means of bolstering democracy, rather than a tool which could be used against it and its own alleged

[332] TNA, LCO2/6274, 'Objections to Admission of Right of Individual or Group Petition', undated.
[333] Ibid.
[334] Ibid.
[335] TNA, LCO2/6274, Dobson (note), 18 July 1950. Dobson became Assistant Permanent Secretary to the Lord Chancellor in 1954.
[336] E. Bates, *The Evolution of the European Convention*, p.12.

human rights abuses.[337] As Simpson claimed, adoption of the Convention 'was seen as a feather in the cap of the Foreign Office, rather than as a weapon which might be directed against the United Kingdom'.[338] It is ironic that whilst Britain had played the most prominent role in bringing the ECHR into existence, the first inter-state case brought to the Commission was against Britain.

C2.4 Human Rights Day

In the early 1950s, attitudes to the protection of human rights were decidedly perfunctory. Exchanges about human rights between the CO and FO in the early 1950s frequently revolved around - and were restricted to - discussion of the celebration of Human Rights Day (which took place annually from 1950 to honour the United Nation's adoption of the UDHR). In the early 1950s, there was considerable symbolic chatter about the Day but little real action.

A Foreign Office official wrote to the Colonial Office in 1954, for example, that with regards to Britain's promotion of Human Rights Day in 1953, Britain's attempts were 'somewhat meagre'.[339] Earlier celebrations were equally half-hearted and described as 'extremely lukewarm' and 'just plain lazy'.[340] Alongside this general reluctance to promote Human Rights Day, it was nevertheless acknowledged that Britain ought to be doing more. The FO official stated, for example, 'it occurs to me that we may well not be doing ourselves justice'.[341] Similarly, another FO official wrote that 'I can work up no enthusiasm for this and will personally be a very lukewarm celebrant of Human Rights Day'. Yet, he did acknowledge that such a stance might not be acceptable to world opinion, stating that 'continued neglect

[337] E. Wicks, 'The United Kingdom Government's perceptions of the European Convention', p.9.
[338] A.W.B. Simpson, *Human Rights,* p.4.
[339] TNA, FO371/107141, J. Somers-Cocks to E.M. West, 12 January 1954.
[340] TNA, FO371/107141, Somers-Cocks (note), 23 June 1953.
[341] TNA, FO371/107141, Somers-Cocks to West, 12 January 1954.

might suggest that the UK does not take human rights seriously'.[342] Likewise, another FO official wrote that while 'the consensus of opinion was that, although the [1953] celebration was virtually useless, HMG could not totally ignore it'.[343] He warned that in 1954 'anything so lukewarm is obviously unsatisfactory'.

In 1954, the UN Information Centre in London wrote to a FO official to inform him that although Human Rights Day had only been marked in schools and on the radio in the UK previously, he believed that there was 'wide public interest in and concern for the principles of the Universal Declaration even though the anniversary may pass unnoticed'.[344]

Whilst the UDHR may have sparked 'wide public interest', the ECHR received little attention from the British mainstream press or from international law journals.[345] Indeed, in these journals there was little mention of even the fact that the Convention had come into force. Similarly the Council of Europe's literature featured articles on the ECHR only infrequently.[346]

D CONCLUSION

As Darwin has argued, by the early 1950s there were 'worrying signs that even a rebranded British Empire had only limited prospects'.[347] Reform programmes and effort at 'good governance' in the colonies and on the international stage in the 1940s and early 1950s did not go far enough to ensure the safety, security or longevity of the late colonial state. It was, as Lewis has claimed with regards to Kenya, 'too little and too late'.[348] Periods of emergency

[342] TNA, FO371/107141, C. Cope (note), undated 1953.
[343] TNA, FO371/112495, M.P. Buxton (note), 18 October 1954.
[344] TNA, FO371/112495, Henson to Buxton, 25 October 1954.
[345] D. Hoffman and J. Rowe, *Human Rights in the UK,* p.31. This assertion is also based on the author's research of contemporary legal journals and the press in which there is very little commentary on the ECHR.
[346] E. Bates, *The Evolution of the European Convention*, p.4.
[347] J. Darwin, *Unfinished Empire,* p.359.
[348] J. Lewis, *Empire State-Building,* p.359.

in Cyprus, Kenya and Nyasaland witnessed the colonial state mete out extreme levels of violence as it attempted to maintain its authority in the face of increasing nationalist and anti-colonialist demands.

Reform was soon overshadowed by repression, which ran contrary not only to human rights norms central to the post-war vision of global governance but also Britain's own wartime, post-war and 'revamped' colonial governance ethos of reform, benevolence and 'good governance'. This found expression in inconsistent colonial governance policies and practice. Furedi, for example, has described how reform and force both became 'part of the decolonization package'.[349] Reform and repression were ever two side of the same coin. This reflects, in part, Owen's assessment of colonial governance elsewhere in empire in that 'the mode of governmentality in India was intermittently liberal, but reverted easily to 'police' mode'.[350] By 1959, however, and in large part due to the deployment of egregious levels of force during emergency periods, the colonial 'package' was a busted flush. As reform finally gave way to repression, Britain's fealty to the human rights enterprise it had co-sponsored, as discussed in this Chapter, became increasingly tested.

1945 a Watershed?

Characterisation of 1945 as a 'watershed' moment in the history of the British Empire is, therefore, far from apt. Neither the UDHR nor the ECHR triggered either terminal re-evaluation of the concept of empire or radical reform of its manifestation on the ground in the guise of colonial governance and, by and large, Britain paid only lip service to the new human rights orthodoxy. After 1945, UDHR and ECHR notwithstanding, the progress of the human rights caravan was conducted at a snail's pace, although their very existence rendered justification of Empire more problematic, particularly as violence in the colonies escalated

[349] F. Furedi, 'Creating a Breathing Space', p.93. See also B. Berman, 'Bureaucracy and Incumbent Violence', p.174 for a similar argument.
[350] N. Owen, 'The Soft Heart of the British Empire: Indian Radicals in Edwardian London', *Past and Present* 220 (2013), p. 145.

throughout the 1950s. At the time of its entering into the ECHR, Britain had little or no appreciation of what it was getting itself into, which became increasingly apparent during the subsequent emergency periods in the colonies. 'Human rights' was a bidden but nevertheless unwelcome creature of international statute which co-habited uncomfortably with Britain's Empire and colonial governance, 'soft', 'hard' or hybrid.

Britain's *de facto* disinterest in the global human rights project and sponsoring supranational agencies at the end of the 1940s augured badly for respect for human rights when violence escalated during periods of the emergency in the 1950s. As relations between ruler and ruled in British territories became increasingly tested throughout the 1950s, so was Britain's commitment to the human rights measures it had helped shape and promised to promote similarly tested. It was a test Britain failed. Still, even as Britain's failure to observe the spirit of its international treaty undertakings was gradually exposed during periods of emergencies, the human-rights-consciousness of those on the periphery and those outside Westminster's corridors of power was woken and change demanded. As the following Chapters demonstrate, the agent of change was the cumulative experience of events in Cyprus, Kenya and Nyasaland.

PRELUDE TO PHASE THREE - EMERGENCY PERIODS

A1 The Pendulum Swings?

As Chapters Three and Four will demonstrate, reform gave way to repression in the extreme form of emergency rule and hastened the demise of empire. Chapters Three and Four examine those periods of emergency leading up to the decision in 1959 to accelerate decolonisation, and draw on evidence from the colonial 'emergencies' in Cyprus, Kenya and Nyasaland: these span the third phase of colonial governance under scrutiny. This final phase witnessed the marked regression to 'hard governance' during periods of emergency and denoted the shift of the late colonial state from, as described by Darwin, the 'pro-active developmental state' to the 'security state'.[351] Chapters Three and Four focus on the response within Whitehall and amongst members of parliament, the press and the general public to Britain's hardening colonial governance stance in the 1950s.

The study of emergency periods offers key insight into the process by which colonial governance underwent this process of 'hardening' following a 'spasm' of 'softening' in the 1940s although, as Furedi has argued, emergency periods ought not to be viewed as exceptional episodes simply because of their 'dramatic character'.[352] As Furedi also rightly notes: 'imperial action through emergencies was not qualitatively different from other measures designed to retain order and stability'.[353] This is reflected in Darwin's argument, with specific reference to the Nyasaland emergency, that it was essentially 'the continuation of colonial politics by other means'.[354] Similarly, Percox argues, with regards to the arming of

[351] See J. Darwin, 'What was the Late Colonial State?'.
[352] F. Furedi, 'Creating a Breathing Space ', p.90.
[353] Ibid, p.90.
[354] J. Darwin, 'The Central African Emergency, 1959', *Journal of Imperial and Commonwealth History* 21.3 (1993), p.217.

the colonial state during the Kenya Emergency, that this was a form of 'adaptive continuity' rather than a direct response to Mau Mau.[355]

The primary evidence bears out Furedi's assertion that reform and force were two sides of the same coin. Whilst the colonialist rhetoric of development and welfare receded during periods of emergency to be replaced by the rhetoric of suppression of the anti-colonial 'savage' and 'terrorist' groups, spending on various and numerous welfare and development schemes did not reduce correspondingly. Development spending increased overall during the periods of emergency.[356] Nowhere was this more apparent than in Kenya with the implementation of the Swynnerton Plan in 1954, described as 'a grand undertaking' and financed principally by a Colonial Development and Welfare grant of £7.95 million, which coincided (not unintentionally, as Osborne argues) with the height of the British military campaign against the Mau Mau.[357] Moreover, in Kenya, colonial governance approaches varied according to ethnicity. Extremely harsh control measures were applied to the Kikuyu, one ethnic group, in the suppression of the Mau Mau, whilst other 'loyal' ethnic groups, particularly the Kamba, were treated altogether differently and were the beneficiaries of generous development and welfare schemes.[358]

A2 Emergency Periods: Smoke & Mirrors

The orthodox view is that a 'state of emergency' is declared when special provisions – emergency powers – are deemed necessary to deal with crises for which normal

[355] D.A. Percox, 'Mau Mau and the Arming of the State' in E.S.A. Odhiambo and J. Lonsdale (eds), *Mau Mau and Nationhood* (Woodbridge, 2003), p.122.
[356] Colonial Development and Welfare Act. Return of schemes made and of loans approved under the Development and Welfare Act in the period from 1 April 1959 to 31 March 1960, Cmnd. 244 (London, 1960).
[357] M. Osborne, 'Controlling Development: 'Martial Race' and Empire in Kenya, 1945-59', *Journal of Imperial and Commonwealth History* (2013), p.1-22.
[358] Ibid.

management, legal and security measures are considered insufficient or inadequate.[359] During periods of emergency, executive authority and power are invariably transferred to the military or police and the rule of law suspended.[360] It is by definition a particular and extreme form of governance. Derogation from fundamental human rights is common under states of emergency. As Lazar argues, 'emergency powers target definitive features – fundamental rights and the separation of powers – of the liberal democracies they are intended to protect'.[361] Whilst emergency powers in the popular mind are most often associated with totalitarian regimes, liberal democracies have in the past employed (and often still employ) emergency powers during times of crisis.[362] Notwithstanding the widespread usage - past and present - of emergency powers, theoretical, historical and legal debate over what constitutes a 'state of emergency' persists.[363]

Emergency powers and the imposition of emergency periods were key governance tools of the late colonial state. Colonial authorities used emergencies, as Shipway argues, as 'a robust means of political control'.[364] Whilst any clamour for the declaration of emergency powers may have come from colonial government at the 'periphery', in Whitehall, and following earlier crises in Malaya and the Gold Coast in 1948, it was generally thought that disturbances were to be controlled and perhaps even forestalled,[365] and amongst historians of the end of empire, there is a general consensus that emergency periods in British territories were, in fact, colonial wars simply dressed up for propaganda purposes as something lesser:[366] 'emergencies' offered the late colonial state an instrument of colonial governance bringing both practical and propaganda benefits. Emergencies were a form of

[359] N. C. Lazar, 'Must Exceptionalism Prove the Rule? An Angle on Emergency Government in the History of Political Thought', *Politics Society* 34.245 (2006), p.245.
[360] S. Morton, *States of Emergency: Colonialism, Literature and Law* (Liverpool, 2013).
[361] N. C. Lazar, 'Must Exceptionalism Prove the Rule?', p.245.
[362] S. Morton, *States of Emergency.*
[363] W. E. Scheuerman, 'Survey Article: Emergency Powers and the Rule of Law After 9/11', *The Journal of Political Philosophy* 14.1 (2006), p.61.
[364] M. Shipway, *Decolonization and its Impact: A Comparative Approach to the End of the Colonial Empires* (Oxford, 2008), p.144.
[365] Ibid, p.144.
[366] F. Furedi, *Colonial Wars and the Politics of Third World Nationalism* (London, 1994), p.1.

total rule – as Furedi has argued, they 'had the advantage of allowing Britain to adopt wide-ranging coercive powers while maintaining the pretence of normal civil rule'.[367] The declaration of an emergency period offered a palatable alternative to martial law, which had since Oliver Cromwell's time been viewed with caution by British army officers (and increasingly so following the experience of Dyer in 1919).[368]

A3 Emergency Powers: The Cloak of Legality

The legal mechanism for the imposition of emergency periods in Cyprus, Kenya and Nyasaland was the Emergency Powers (Colonial Defence) Order-in-Council. This gave the governor of each colony permissive and wide-ranging powers to ensure public safety and defence of the territory by means considered 'necessary or expedient',[369] which authorised the governor to 'provide for amending the law, for suspending the operation of any law and for applying any law with or without modification'.[370] In essence, the 1939 Emergency Powers Order-in-Council and subordinate local legislation gave the colonial state the means by which the appearance of outward 'legality' could be maintained concurrently with the deployment of varying degrees of coercion and violence.[371]

The Order-in-Council had first been proposed when war was looming and such powers thought necessary and, because it was war time, generally more acceptable.[372] At the drafting stage, British politicians and civil servants were nevertheless sensitive to the dangers of introducing such wide-ranging - and admittedly arbitrary - powers. Even after the Order-in-Council became law, for example, Churchill became increasingly concerned about the use of detention without trial under emergency provisions, arguing in 1943 that:

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[367] Ibid, p.1.
[368] H. Bennett, *Fighting the Mau Mau, p.*1; D. French, *The British Way,* p.75.
[369] D. French, *The British Way,* p.77.
[370] Churchill quoted in Ibid*,* p.77.
[371] Ibid*,* p.94
[372] Ibid, p.77.

> 'the power of the executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him the judgment of his peers, is in the highest degree odious, and the foundation of all totalitarian government whether Nazi or Communist'.[373]

Fewer than ten years later, however, detention without trial became a cornerstone of colonial governance during emergency periods.

The British Government had always used the law as a means of controlling colonial populations, as Lauren Benton's work has demonstrated. Emergency powers, however, allowed it to do so in increasingly draconian ways. As originally conceived, the Order-in-Council was not to be invoked in colonies. However, the CO soon realised that it could be extended to the colonies and that, if situations of civil unrest were to arise, the legislation offered colonial governments considerable additional powers. This provides the focus of the Chapters following this.

[373] Winston Churchill quoted in A.W.B. Simpson, *Human Rights,* p.56. See also A.W.B. Simpson, 'Round up the usual suspects: the legacy of British colonialism and the European Convention on Human Rights', *Loyola Law Review* 41 (1996), pp. 629-711.

CHAPTER THREE

EMERGENCY PERIOD in CYPRUS and the INTERNATIONALISATION of EMPIRE

PART I

INTRODUCTION

A1 Preamble

> 'The real mistake in all this appears to have been made in 1953 when Her Majesty's Government agreed to extend the Convention on Human Rights to the Colonies'.[374]

Harold Macmillan's Private Secretary for Foreign Affairs, Philip de Zulueta, wrote to the Prime Minister in October 1957 to inform him that a Sub-Commission of lawyers from the European Commission of Human Rights proposed to undertake an on-the-spot investigation into the situation in Cyprus.[375] In concluding his letter, de Zulueta indicated that there were many objections to allowing such an investigation but that he nevertheless deemed it politically unwise to upset international opinion by resisting the visit. What was most unwise, however, de Zulueta lamented, was that the Convention had ever been extended to the colonies.

By late 1957, the full consequence of Britain's decision not only to sign up to the European Convention but also extend it in 1953 to the colonies was felt. The proposed visit of the Sub-Commission in October 1957 followed upon the submission of Application 176/56 by Greece on behalf of Cyprus on 7 May 1956 to the European Commission of Human Rights. Application 176/56 alleged ECHR violations by the British Government and by the

[374] TNA, PREM11/2258, P. de Zulueta to H. Macmillan, 29 October 1957.
[375] De Zulueta informed Macmillan that the Sub-Commission would specifically examine the following points: (a) whether there was a state of emergency in Cyprus and (b) whether the government's curfews were justified.

administration of Cyprus for which the British Government was nevertheless held responsible.[376] Application 176/56 was the first of its kind.

At the same time that the British Government was compiling its defence to Application 176/56, a subsequent and more damning Application 299/57 was lodged by Greece on 17 July 1957. Application 299/57 listed forty-nine cases of 'alleged ill-treatment of individuals by persons belonging to the police, security or military forces in Cyprus'.[377]

Faced with the prospect of a visit by the Sub-Commission to Cyprus in October 1957, what Whitehall and the colonial administration in Cyprus feared most was that the investigation relating to the first Application would stray into matters concerning the second, thereby uncovering evidence of serious abuse.[378]

This meant that, and again by late 1957, the British Government's previous misgivings about the ECHR and its extension to the colonies had crystallised and manifested themselves in a potentially very damaging form. Not only had charges of ill-treatment and torture been levelled against Britain, but they were to be aired in the first two inter-state cases ever heard before the ECHR. Britain, the first country to ratify the ECHR, was now the first country to have a complaint lodged against it. Empire was now 'internationalised', and activities in the colonies were no longer immune from the prying eyes and scrutiny of the supranational organisations Britain had so feared.

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[376] Council of Europe, *Application No. 176/56 by the Government of the Kingdom of Greece lodged against the Government of the United Kingdom of Great Britain and Northern Ireland: Report of the European Commission of Human Rights*, (Strasbourg, 1958), p.5.
[377] Council of Europe, *Second Application by the Government of the Kingdom of Greece lodged against the Government of the United Kingdom of Great Britain and Northern Ireland, No. 299/57: Report of the European Commission of Human Rights* (Strasbourg, 1959), p.1.
[378] A.W.B. Simpson, *Human Rights*, p.1022.

Allegations of historic abuse in Cyprus are difficult to substantiate from the historical evidence. As Holland has claimed, 'evaluating the extent of brutality under the aegis of the Security Forces in Cyprus is highly problematical.'[379] Nevertheless, the very fact that such allegations had been raised and caused Britain such anxiety tells us something: since these cases were now to be discussed at the highest level in Europe, what had previously been confined to the colonial setting was no longer containable and was now exposed in the glare of the international spotlight from Strasbourg. Cyprus, moreover, posed particular difficulties for the British Government due to a heightened international interest in the territory compared to Britain's other colonial possessions and also because of the complex and contested relationships with and between Greece and Turkey.[380]

A2 Chapter Outline

Chapter Three examines the period of emergency in Cyprus and, in particular, the proceedings before the ECHR from 1956 until 1959. It argues that these proceedings marked the beginning of the 'internationalisation of empire' and the gradual (albeit patchy, in some departments) realisation within Whitehall that 'hard' colonial governance was incompatible with the scheme of universal human rights obligations Britain had so publicly advocated post-1945.[381] The Cyprus emergency and, in particular, Applications 176/56 and 299/57 are key to the broader decolonisation narrative and offer a clear example of the unwanted and unwelcome (to Britain) intersection of colonial and global governance during the mid- to late 1950s.

[379] R. Holland, 'Dirty Wars: Algeria and Cyprus compared', p.41.
[380] TNA, FCO141/3561, Telegram, 11 July 1955.
[381] Daniel Gorman has explored this internationalisation of empire and the intersection of imperialism and internationalism with regards to Anglo-Indian relations at the United Nations in the 1940s and 1950s. See D. Gorman, 'Britain, India, and the United Nations', pp.471-490.

Through an examination of the first of three case studies, Cyprus, this Chapter seeks to examine the response both from within Whitehall and from without to the 'hardening' of colonial governance techniques during periods of emergency in the 1950s.

First, it examines the growing international criticism of empire in the early to mid-1950s, a criticism often voiced at the UN and which marked the beginning of the 'internationalisation' of empire. It also plots domestic criticism aired in the House of Commons. This section includes a discussion of Britain's defence at the UN that self-determination was not to be regarded as a human right. Second, it examines the first - for Whitehall - 'crisis' moment in the three emergency periods, namely Application 176/56. The response in Whitehall to these crisis moments followed an invariable pattern of denial, followed by dismissal, followed by admission, followed by inaction then action.

PART II

THE INTERNATIONALISATION of EMPIRE I

B1 Allegations at the UN in the Early 1950s

The legal action triggered by Greece at the ECHR in 1956 and 1957 did not mark the start of the internationalisation of empire. Complaints regarding British governance in Cyprus were raised at the United Nations as early as 1950.

In the historiography, human rights abuses and empire are most often associated with the breakdown of control during emergency periods. Correspondence between the United Nations in New York and the FO in London indicates, however, that the human rights record of Britain in various territories had come under fire even prior to declarations of emergency and as early as 1950. The main line of defence taken by the British throughout this period was denial. Alexander Cadogan, Permanent UK Representative to the UN, encapsulated the

general British response to allegations of human rights abuses in a speech at Columbia University, when he claimed that 'our colonial territories are open to visit and inspection. Everyone can go there: we have nothing to hide'.[382]

British colonial governance was coming under increasing pressure in Cyprus as early as 1950. What is notable about the correspondence with the UN - and the voicing of allegations of human rights abuses during this period - is, first, its 'earliness' and, second, that criticism was directed at the British Government and not the colonial administration. In the early 1950s, a number of letters sent to the UN made the argument that colonialism was in itself a fundamental denial of human rights. It was only later, during emergency periods, that specific allegations of abuse were raised. A number of letters drew parallels between British colonial rule and fascist regimes and, in particular, the Nazis. It is, however, difficult to establish authorship of these letters because all communications regarding human rights were classified as confidential and authors' identities were not to be 'divulged' by the Secretary General.[383] This also applied to the anonymous letters sent to the UN regarding Kenya, as discussed in Chapter Four.

A letter addressed to the UN Secretary General from 'an individual representing a group' in Cyprus in March 1950, for example, said that they 'wish to express…the great indignation of the people of our community and of whole Cyprus as well against the illiberal, dictatorial and fascist way by which Great Britain governs our place'.[384]

Complaints continued to reach the FO throughout the 1950s. Later correspondence from Cyprus also referred to alleged human rights infringements by the British Government in Cyprus. A telegram sent to the Commission on Human Rights in Cyprus in February 1951

[382] CA, ACAD 6/2, A. Cadogan, 'World Responsibilities'.
[383] TNA, FO371/107138, H.F.B (author) Handwritten Note, 29 April 1953. Communication remained confidential under ECOSOC Resolution 75 (v).
[384] TNA, FO371/88785, An individual to the UN Secretary General, 25 March 1950.

noted, for example, that: 'we strongly protest and accuse [the] British Government for violating [the] United Nations Charter… [and] demand UNO intervention [to] restore liberties and satisfaction of Cyprus peoples national demand for union with Greece'.[385] This letter echoes other letters received by the Secretary General regarding Britain's failure to offer Cyprus self-determination or *Enosis.* A number of these letters invoked the language of human rights.[386] A letter from the Cyprus Affairs Committee, for example, stated that

> 'the Cypriot people, like all people with highly developed national culture and deep national consciousness want to be part and parcel of their own nation and look forward to the United Nations Organisation to assist them in the achievement of their national freedom and the enjoyment of the fundamental human rights'.[387]

Communications of this kind concerning Cyprus and alleged human rights abuse were received frequently but rarely evoked any response from the Commission or the British Government. Regarding the telegram of February 1951 quoted above, for example, it was deemed unlikely by the UK Delegation to the UN in New York that the 'Commission on Human Rights would have to take action, or even discuss communications of this sort'.[388] Similarly, in a letter of March 1953, a CO official wrote to the FO that 'generally speaking, the communications from Cyprus follow a well-worn pattern and require no new comment'.[389] The CO official was referring specifically to a telegram sent from a group of individuals in Cyprus to the UN in December 1952 in which it referred to 'flagrant violation [of] human rights bill'.[390] The telegram's authors protested against the decision taken by Limassol Commissioners in Cyprus to ban outdoor meetings and processions on Human Rights Day.[391]

[385] TNA, FO371/95879, Telegram to the Commission on Human Rights in Cyprus, 23 February 1951.
[386] See TNA, FO371/107139 for more examples.
[387] TNA, FO371/107139, Cyprus Affairs Committee in Surrey to the United Nations, 18 August 1953.
[388] TNA, FO371/95879, R.T.D. Ledward to A.A. Dudley, 30 March 1951.
[389] TNA, FO371/107138, E.M. West to H.P.L. Attlee, 26 March 1953.
[390] TNA, FO371/107138, Telegram from individuals in Cyprus to the United Nations, 10 December 1952.
[391] TNA, FO371/107138, West to Attlee, 26 March 1953.

Generally, the British policy was to offer no response to such communications. Regarding communication from a non-governmental organisation to the UN complaining against British Government policy in Cyprus, for example, it was stated by an official in the Government's UN Economic and Social Department that 'once again, I suppose there is nothing we can do, or would wish to do about this kind of communication'.[392] The letter in question accused 'the British Government of gross violations of the Universal Declaration of Human Rights and hold it responsible for all consequences that may result from this dictatorial, fascist policy'.[393]

Complaints did not originate solely from within Cyprus. The Colonial Office official's comment that the correspondence from those complaining about the Government's conduct in Cyprus followed 'a well-worn pattern and require no new comment'[394] was reflected in the Government's UN Economic and Social Department's response to allegations of a breach of human rights by an individual named George Anston from Wortis in Arkansas, USA.[395] In a handwritten note, Anston's allegations were described as 'only one of a long series' and it was advised that 'no action is customary beyond copying to CO'.[396] It was later remarked that 'this is the usual drivel of which no notice need be taken'.[397] The Government also encountered resistance on the question of emergency periods already underway elsewhere in empire, and specifically from the Gold Coast, it being said that emergency powers gave the Governor 'complete dictatorial powers'.[398]

Not only are these letters noteworthy for their content and language but also their provenance in time and place, and they provide clear evidence of a growing and consistently expressed feeling within and from outside Cyprus as early as 1950 that continued colonial

[392] TNA, FO371/88785, S.W. Black (note), 12 December 1950.
[393] TNA, FO371/88785, NGO in Cyprus to UN Secretary General, 23 September 1950.
[394] TNA, FO371/107138, West to Attlee, 26 March 1953.
[395] TNA, FO371/107138, G. Anston to UN General Assembly, 23 March 1953.
[396]TNA, FO371/107138, Signed H.F.B, 29 April 1953.
[397] TNA, FO371/107138, Handwritten note, 4 May 1953.
[398] TNA, FO371/88785, World Federation of Democratic Youth to the UN Secretary-General, 6 April 1950.

rule was contrary to the human rights of the island's inhabitants. Nevertheless, the FO and CO could easily - and did - ignore allegations of human rights abuse passed on to them from the UN Secretary General in the early 1950s.

Attempts by Archbishop Makarios in 1953 to get the 'Cyprus question' raised at the UN General Assembly and to get the Assembly to recommend that Britain ought to recognise the self-determination of Cyprus, in line with the General Assembly's Resolution of 16 December 1952, were not, however, so easy to dismiss.[399] Nothing came of this particular request in 1952, but on 16 August 1954 the Greek Prime Minister, Field Marshal Papagos raised the matter again.[400]

The Government was determined to resist the issue being raised at the United Nations, although it was ultimately unsuccessful in this. Inscription of the 1954 item on the General Assembly agenda was opposed by Britain on the grounds, as described by Minister of State for Colonial Affairs, Henry Hopkinson, that it might have a domino effect across the empire. Hopkinson later explained to the House of Commons the reason for refusal:

> 'if a precedent was set for the consideration by the United Nations of attempts by one member to obtain the cession of territory which is recognised as being under the sovereignty of another, scarcely any territorial settlement would be inviolate, and a premium would be set upon agitation in support of claims for the revision of territorial treaties'.[401]

Moreover, it was argued, the matter was excluded from discussion under Article 2 (7) of the UN Charter.

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[399] A.W.B. Simpson, *Human Rights*, p.924.
[400] Ibid, p.924. The Greek Government attempted to get the help of the UN General Assembly five times between 1954 and 1958. See S.G. Xydis, 'The UN General Assembly as an instrument of Greek policy: Cyprus, 1954-58', *The Journal of Conflict Resolution* 12.2 (1968), pp.141-158. For a copy of the application to the UN see S.G. Xydis, *Cyprus: Conflict and Conciliation, 1954-58* (Ohio, 1967), Appendix A, pp.567-71.
[401] Hansard, HC debate, 5 May 1955.

Nevertheless, on 24 September 1954 the General Assembly did include the Cyprus question on the agenda despite the attempts of British representatives in the General Committee to argue that the Assembly could not discuss the matter under Article 2 (7).[402]

This stance was not without its difficulties, as a CO official wrote to Pierson Dixon, the Permanent Representative of the UK to the UN, stating that 'a rigid attitude on Cyprus in the United Nations would be likely to add to HMG's difficulties in handling the question at home'.[403] From August 1954 there was, therefore, much to-ing and fro-ing over the question of whether Cyprus should be raised at the UN. Simpson gives a detailed overview of this process.[404] On 17 December, the General Assembly adopted a resolution that: 'for the time being it does not appear appropriate to adopt a resolution on the question of Cyprus'.[405] Britain was, 'for the time being', safe. Greece tried again in 1955, but again without success.

B2 'Self Determination' and 'Human Rights'

In preparing for the 1954 General Assembly and Greece's inscription on the agenda, much time was spent preparing the British Government's defence that self-determination could not be considered a 'human right' in the same sense as other human rights. In a draft brief prepared by the CO for the UK Delegation to the UN in 1954, it was argued that rather than being a human right, self-determination was 'a political principle and must be implemented in the context of society as it exists in the world… the realisation of self-determination is thus necessarily an evolutionary process'.[406] Government lawyers were later drawn into the debate about self-determination as a human right. FO lawyer Vallat, for example, prepared a note in October 1955 detailing the legal aspects of self-determination following discussion of the concept of self-determination at the Tenth Session of the UN General Assembly and

[402] S.G. Xydis, 'The UN General Assembly', p.142.
[403] TNA, FO371/112851, CO to UK Delegation, 9 August 1954.
[404] A.W.B. Simpson, *Human Rights*, pp.926-27.
[405] Ibid, p.927.
[406] TNA, FO371/112494, Report of ECOSOC XVIII, (September 1954).

demands from some delegations that the Assembly ought to guarantee the 'enjoyment' of self-determination in Cyprus (along with Morocco and Algeria).

The UK Delegation to the UN described the idea that self-determination was a 'right' as a 'dangerous doctrine'.[407] Vallat insisted that 'it is of fundamental importance to the United Kingdom to maintain that the concept of self-determination implies a guiding principle and not a legal right'.[408] Vallat outlined two reasons for this stance: first, that if a legal right to self-determination existed, then it would have to be exercised universally which would, of course, result in the rapid unravelling of the British Empire; and, second, it would provide 'anti-colonial powers' with a sufficient legal basis to demand that the General Assembly involve itself with colonial policy and thus Britain would no longer be protected by the domestic jurisdiction clause, Article 2 (7). Britain was supported in its not defining self-determination as a right by the Canadian Government.[409]

B3 Early Opposition in the House of Commons

Whilst not explicitly equating self-determination with human rights, calls to end British involvement in Cyprus came from within the House of Commons in 1955. Labour MP for Holborn and St. Pancras South, Lena Jeger, was persuaded by the arguments of the substantial Greek Cypriot community in her constituency for self-determination for Cyprus and the exclusion of Turkish interests and she raised the matter of Cyprus in the Commons in May 1955.[410] Jeger argued that:

> 'the colonial era, whether we like it or not is over. In Cyprus, as in many other places, we have to come to terms with the twentieth century. No solution either here or anywhere else that is based on a denial of human rights will help'.[411]

[407] TNA, DO35/10604, UK Delegation to the UN, 28 September 1955.
[408] TNA, DO35/10604, F. Vallat, 'Self-determination: note on legal aspects', 3 October 1955.
[409] TNA, DO35/10604, Statement by the Canadian Government, undated.
[410] L. Goldman, 'Jeger, Lena May, Baroness Jeger (1915–2007)', *Oxford Dictionary of National Biography* (2011), accessed 19 June 2015, at http://ezproxy-prd.bodleian.ox.ac.uk:2167/view/article/98661. Jeger was a close friend of Barbara Castle who also campaigned for Cyprus in the 1950s.
[411] Hansard, HC debate, 5 May 1955.

Jeger received no direct response to these comments. Henry Hopkinson, Minister of State for Colonial Affairs, simply argued that

> 'public opinion in this country has tended to concentrate on political events in Cyprus to the exclusion of some of those economic and social matters in which great progress has been made and is being made, and which are of the greatest importance to the future of the people of Cyprus'.[412]

This rather self-serving statement proposed the 'softer' woof still woven into the rougher warp of the fabric of colonial governance during the emergency periods of the 1950s, albeit less conspicuously than in the 1940s, as Chapter One explored.

Hopkinson's explanation was not accepted, however, by Labour MP for St. Pancras North, Kenneth Robinson. He attacked Britain's record in Cyprus. Robinson claimed that 'it cannot be said that our record in Cyprus as the colonial Power has been an especially happy one. I do not think that Cyprus forms the most successful chapter in the history of our Colonial Empire'.[413] Whilst acknowledging that there had been some economic development in Cyprus initiated by the colonial state, Robinson made reference to the fact that 'at the same time, there has been a good deal of curtailment of civil liberty throughout the period'.[414] Regarding the demand for *Enosis*, Robinson claimed that it had been ever-present and that the response of the British Government to it was 'the attitude of the ostrich'.[415]

Tom Driberg, Labour MP for Maldon, also shared Robinson's cynicism about the Minister of State's praise for economic and social development in Cyprus. Driberg accused the Minister of State of having 'deviated into those terrible, smug platitudes about how much we had done for the Cypriot people and how good it was for them that we should stay there, to give them

[412] Ibid.
[413] Ibid.
[414] Ibid.
[415] Ibid.

social and economic uplift'.[416] Driberg argued that: 'there is nothing very much to boast about in the record that the Minister cited. That was normal – perhaps minimal – colonial development.'[417] Deploying sarcasm, Driberg observed that

> 'at least the right hon. Gentleman spared us malaria. The one thing that is always said for the British administration in Cyprus is that we have rid the island of malaria, as if that were a tremendous and unique achievement'.[418]

Much of the world, including the US and the Soviet Union, had eradicated malaria in recent years, according to Driberg, thanks to the invention of D.D.T. and other drugs. This, Driberg maintained, 'is part of normal progress, and is nothing particularly to boast about'.[419]

Much more damaging to the government was Richard Crossman's allegation that 'Cyprus is a police State (sic) today'.[420] Crossman made his allegation (months prior to the declaration of emergency) because, as he argued, 'the population of Cyprus is denied any form of representation, and is ruled by foreigners and taxed by foreigners and exploited by foreigners'.[421] This was firmly rejected by Lennox-Boyd, in much the same way that he later came to reject Lord Devlin's conclusion about British rule in Nyasaland, stating that 'the suggestion that the British authorities have imposed a police State is quite ridiculous'.[422] Significantly, even earlier, in 1948, a group of Colonial Office officials admitted that emergency regulations were 'tantamount to 'police state controls''.[423]

Jeger reflected the sentiment of Crossman in a later Parliamentary debate, in July 1957, in which she compared the Cyprus colonial administration to a totalitarian state, arguing that

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[416] Ibid.
[417] Ibid.
[418] Ibid.
[419] Ibid.
[420] Ibid.
[421] Ibid. Crossman visited Cyprus later in 1955. In a letter to Harding (29 December 1955), Lennox-Boyd acknowledged that Crossman's visit to Cyprus would be 'particularly unwelcome'. See TNA, CO967/288.
[422] Hansard, HC Debate, 5 May 1955.
[423] D. French, *The British Way*, p.81.

'the fact is that in the twentieth century we cannot, without an element of totalitarianism, hold down a country against the will of the people who live in it. We in this country do not like being associated with a totalitarian regime'.[424] Jeger dismantled the association of development schemes and 'good governance' by arguing that

> 'these people have seen money spent like water on the emergency. They have seen £7,500,000 spent at a time when money is desperately needed in Cyprus t (sic) when their vineyards are parched for want of irrigation and the hills flattened by erosion; when there is a complete lack of higher education'.[425]

B4 Amplification of Allegations of Abuse raised at the UN – 1956

In the intervening period between the airing of Jeger's and Crossman's criticisms in the House of Commons of British colonial governance, the emergency period was imposed in November 1955. British rule in Cyprus then came under increasing pressure in the more public, international forum of the United Nations and far more so than had been the case in 1954. In 1956, at the 11th Session of the General Assembly, Greece amplified its earlier claims at the UN by re-submitting a request on 13 March for inclusion of Cyprus on the agenda, asserting that Cyprus was 'now subject to oppressive colonial rule'.[426]

A further letter submitted by Greece to the UN on 26 April alleged specific examples of ill-treatment. These allegations were forcefully rebutted by the British Government.[427] Christian X. Palamas, Permanent Representative of Greece to the UN, wrote to the Secretary General of the UN, detailing sixteen documents which provided, he claimed, a factual account of atrocities committed by the British against Cypriots. He described British behaviour in Cyprus as 'a problem of international concern as far as the revival of inhuman police practices and methods constitutes a real threat to all freedom loving peoples and a flagrant violation of the Charter'.[428] The allegations ranged from general beatings to torture.[429]

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[424] Hansard, HC Debate, 15 July 1957.
[425] Ibid.
[426] A.W.B. Simpson, *Human Rights*, p.928.
[427] See TNA, FO371/123891, J.A. Sankey to H.T. Luard, 23 May 1956.
[428] TNA, FO371/123887, Christian X. Palamas to UN Secretary General, 26 April 1956.

The allegations were resisted vehemently by Governor Harding's Chief of Staff, Brigadier George Baker, who described the Greek letter as 'a disgraceful document alleging that repressive and inhumane measures have been adopted by the Security Forces'.[430] Baker claimed that 'the facts of each incident…are either completely untrue or, if true, have been distorted in order to serve the purpose of the writer in making baseless and mischievous propaganda against the Cyprus Government'.[431] The FO responded to these allegations merely by asking the CO for 'ammunition' to refute the claims. The FO asked the CO not for 'a long or detailed refutation', but rather 'some convincing evidence that this is a tissue of fabrications and misrepresentations'.[432]

In June 1956, following Baker's rebuttal of the allegations, supplementary information was sent to the Secretary-General by Greece. More critical in many ways than the material submitted in April, this memorandum described Cyprus not only as a 'huge concentration camp', but also included a damning critique of one of the central tenets of British colonial governance, law and order. The memorandum argued that

> 'law and order in Cyprus now mean nothing else but British domination and colonial rule arbitrarily imposed and maintained upon a reluctant and subjected population. Actually, material force – that is to say, violence – is the main source of British law and order, as well as the main foundation of British Government and administration in Cyprus'.[433]

Listing control measures employed by the Axis Powers during the Second World War which included 'deplorable practices of physical punishment and torture', censorship and collective fines, the memo argued that 'all the measures listed above are being applied in Cyprus today by British colonial rule trying to breathe life into obsolete and unworkable imperialistic

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[429] TNA, FO371/123887, Supporting documents, 26 April 1956.
[430] FO371/123891, Brigadier, Chief of Staff, 18 May 1956.
[431] Ibid.
[432] FO371/123887, Handwritten note, 11 May 1956.
[433] Permanent Representative (Greece) to Secretary-General, 12 June 1956 in S.G. Xydis, *Cyprus: Conflict and Conciliation,* Appendix C, pp.573-78.

devices'.[434] In addition to the above quoted memo, Evangelos Averoff, the Greek Foreign Secretary, also gave the UN secretariat a file which detailed 237 accusations of torture perpetrated by the security forces in Cyprus.[435] On 26 February 1957, the UN adopted Resolution 1013 (XI) which stated that it hoped for a peaceful, democratic and just solution to the problems in Cyprus in line with the Charter. The matter was left there, at least for the time being.

The language and reference to concentration camps in the June memorandum, mirrored the content of a statement made by Archbishop Makarios in February 1956. In his first public statement regarding general ill-treatment, Makarios wrote that he had to 'denounce to the civilised world unprecedented acts of ruthlessness degrading to the human race' and described the torture of prisoners as 'in a manner which befits the Middle Ages or Nazi Concentration Camps'.[436] Nazi and totalitarian comparisons to British colonial governance across the empire, and particularly in Cyprus and Kenya, became a recurring theme.

Similar claims also appeared in anti-British leaflets distributed throughout Cyprus and in Athens. A pamphlet distributed in Athens Airport in late 1956 entitled, 'Cyprus: That Hellenic Island', for example, described how British 'civilizing' measures were reminiscent of 'Nazi cruelties'. The pamphlet also described the 'enforcement of extremely harsh suppressive measures, comparable in cruelty with the Inquisition'.[437]

For the 12th Session of the General Assembly in 1957, Christian X Palamas again wrote to the Secretary-General requesting the inclusion of an item on the agenda. In his letter, Palamas repeated the request for equal rights and self-determination for the people of Cyprus. This

[434] Ibid.
[435] A.W.B. Simpson, *Human Rights*, p.929.
[436] TNA, FO371/136400, Archbishop Makarios quoted in 'Allegations of Torture and Ill-Treatment in Cyprus' (1958).
[437] TNA, FCO141/3487, 'Cyprus: That Hellenic Island' (1956).

item also requested discussion of 'violations of human rights and atrocities by the British Colonial Administration against the Cyprians'.[438] The explanatory memorandum attached to Palamas' letter made reference to five hundred signed testimonies which purportedly corroborated allegations that the colonial authorities in Cyprus 'in the course of their repressive drive have indulged in inhuman practices, brutalities and atrocities in the handling of prisoners or persons arrested for interrogation'.[439] The memorandum suggested that such behaviour was endemic and systematic in the security forces and perhaps even received 'express approval' by some of those in positions of responsibility in Cyprus.[440] It argued that this behaviour was no longer a tolerable form of colonial governance and argued that it did 'not belong to the era of the United Nations'.[441]

In response, the CO advised that, first, Britain should reiterate the principle of Article 2(7) of the UN Charter, as with previous inscriptions. Second, it was recommended that regarding the allegations of abuse it was 'important on grounds of precedent, if on no other, to take a robust and not too defensive line about 'atrocities''.[442] Whilst Britain had been able to adopt 'fairly flexible tactics' over various aspects of Cyprus policy, Assistant Secretary, J.E. Marnham (CO), wrote to J.D. Murray (UN Department), that this was not to be the case regarding allegations of abuse, for 'atrocity stories are easy to trump up anywhere' and if Britain were to allow inscription of such an item at the UN, it might set a precedent for the raising of similar matters regarding other colonial territories at the UN. Marnham pondered:

> 'I wonder how we should be placed if someone in the future were to table items alleging atrocities by, say, the Kenya police against Kenyans, to say nothing of the brutal repressions of 'Southern Yemenis' by the RAF in Aden'.[443]

[438] Christian X Palamas to the Secretary General, 12 July 1957 in S.G. Xydis, *Cyprus: Conflict and Conciliation*, Appendix E, pp.581-84.
[439] Explanatory memorandum in Ibid.
[440] Ibid.
[441] Ibid.
[442] TNA, CO926/603, J.E. Marnham to J.D. Murray, 6 August 1957.
[443] Ibid.

For now, however, the main focus was in avoiding the inclusion of an item detailing human rights abuses. In early September 1957, John Profumo, Parliamentary Under-Secretary of State for the Colonies, wrote to Governor Harding to reassure him that 'our tactics are directed towards substitution of a new item without specific reference to the 'atrocities' and that in any case any Greek allegations will be vigorously rebutted'.[444] Lennox-Boyd wrote to Harding indicating that the British Government was attempting to keep the debate on Cyprus 'as temperate as possible'.[445] In the end, it came as a relief to Britain that no resolution was tabled regarding the Cyprus question after the Twelfth Assembly.[446]

PART III

THE INTERNATIONALISATION of EMPIRE II

C1 European Commission of Human Rights

Whilst complaints about continued British involvement in Cyprus raised at the UN since 1954 and, in particular, the threat of international exposure of allegations of abuse at the General Assembly in New York in 1957, were troubling to the British Government, it was already contending with potentially much more damaging international intervention and possible action by the European Commission in Strasbourg following the lodging of Greek Application 176/56 against Britain on behalf of Cyprus.

Lawyer and human rights activist, Peter Benenson, in his controversial critique of British and French decolonisation, *Gangrene,* described how the 'rumour of torture' grew in the mid-1950s in Cyprus 'until it swept like a cloud across to mainland Greece, and from there in formal complaints to the Council of Europe at Strasbourg and to the United Nations'.[447] By June 1957, even the right wing *Daily Mirror* had become critical of British rule in Cyprus. It

[444] TNA, CO926/603, J. Profumo to J. Harding, 13 September 1957.
[445] TNA, CO926/603, Lennox-Boyd to Harding, 13 September 1957.
[446] S.G. Xydis, *Cyprus: Conflict and Conciliation,* p.x.
[447] P. Benenson, 'Introduction' in J. Calder (ed), *Gangrene* (London, 1959), pp.33-34.

was alleged that 'the policy of the British Government in Cyprus is now inhuman. There is no other word for it…a stupid plan of repression that has not succeeded and cannot conceivably succeed in the second half of the 20th century'.[448]

Describing how 'the case of the Cypriots differs from that of other peoples of the world still fighting for their freedom in that the Cypriots are Europeans nourished on Western civilization and have a level of culture at least as high as that of other peoples in Mediterranean Europe', the Greek Government began its petition to the European Commission of Human Rights against the British Government alleging violations by the Government of Cyprus for the 'Protection of Human Rights and Fundamental Freedoms'.[449] In Section B of the Application, the Greek Government argued that 'the exceptional measures adopted by the British administration authorities in Cyprus have meant the denial of nearly all human rights and fundamental freedoms in the island'. It alleged the violation, by certain 'legislative and administrative measures' and by 'the action taken by administrative bodies' of Articles 3, 5, 6, 8, 9, 10 and 11 of the ECHR. These Articles were violated because of numerous acts of torture, whipping, arbitrary arrest, detention and deportation, breaking into houses and censorship of correspondence, amongst other allegations.[450] Specific cases were listed in the Application and included twenty-four alleged cases of whipping, a beating by soldiers using rifle butts and Chinese water torture. These cases were later taken out of the Application, but Greece was permitted to raise these allegations in future applications. Application 176/56 ended up solely concerned with the application of emergency measures and the existence of the emergency. The Greek submission to the ECHR argued that there was not a sufficient threat to the safety of the nation that emergency powers had to be introduced by the British. It also stated that 'in no way could it be permitted to resort to collective punishments, torture and inhuman or degrading punishments or treatment, which can only

[448] *Daily Mirror,* 17 June 1957 quoted in K. Tofallis, *The Cyprus Problem* (London, 1965), p.6.
[449] TNA, FO371/123892, Petition from the Greek Government, 1956.
[450] Ibid.

be regarded as inconsistent with international law, quite apart from any prohibition under the Convention'.[451]

It was not until the second Application (299/57) to the ECHR that Greece acted upon these allegations formally. In the intervening time, the colonial government issued a staunch rebuttal of the claims, albeit admitting that there had been some violent treatment, in a White Paper entitled *Allegations of Brutality.* During this period, lawyers in Cyprus formed themselves into human rights groups. Following Archbishop Makarios' release from exile, the campaign against British ill-treatment was stepped up by EOKA and the Greek government, which pursued its campaign through the United Nations, the ECHR and also in the press. In July 1957, the second Application was lodged with the Commission, alleging forty-nine cases of torture (although, ultimately, only twenty-nine of these cases were declared admissible by the Commission).[452]

C1.2 Execution of Terrorists & British Soldiers

Shortly after the issuing of Application 176/56, two terrorists were executed on 10 May. This sparked international outcry. Michael Karaolis and Andreas Demetriou were sentenced to death (the death penalty had been permitted prior to the emergency period, but after the emergency its use was widely extended).[453] Simpson incorrectly cites the deaths of these individuals as the spark for the Greek Application to the ECHR but further research suggests that the ECHR case was lodged by the Greek Government on 7 May, three days before

[451] Ibid.
[452] Council of Europe, *Second Application*, p.3.
[453] A.W.B. Simpson, *Human Rights*, p.1022. Even the Archbishop of Canterbury was in discussion with Lennox-Boyd regarding the execution of Karaolis. Fisher forwarded a letter from the Archbishop of Athens which appealed for clemency for Karaolis to the Colonial Secretary. Lennox-Boyd, however, responded that capital cases in colonies were matters for governors and therefore he regarded the Karaolis case as 'wholly for Sir John Harding's decision'. See Lambeth Palace Library (LPL), Fisher 170, Letter from Lennox-Boyd to Archbishop Fisher, 27 April 1956. The British Council of Churches (BCC) also expressed concern regarding the death penalty in Cyprus. See Church of England Record Centre (hereafter CERC), BCC/DIA/7/2/4/10/7, Letter from BCC General Secretary to Lennox-Boyd, 5 December 1956. The letter described the death penalty as running 'counter to ideas of British justice even in an emergency situation'.

Karaolis and Demetriou were executed.[454] Regardless of whether they sparked the ECHR submission or not, the executions of these two young men caused considerable consternation worldwide. The British Embassy in Berne, Switzerland, reported to the FO that press comment in Switzerland regarding the incident was 'on the whole…unfavourable to us'.[455] Similarly, the British Embassy in Rome recorded receiving thirteen telegrams in response to the executions, twelve of which protested against the decision to execute the men.[456]

One of the consequences of the executions of Karaolis and Demetriou was the retaliatory execution by hanging by EOKA on 10 May of two British Corporals, Gordon Hill, imprisoned in a camp at Ayious Amvrosios, and Ronnie Shilton of Karaolos Camp, who had been EOKA prisoners since November 1955 and April 1956.

Regarding the executions, in a pamphlet addressed to British soldiers, EOKA wrote:

> 'we do not hate British soldiers but we are determined to be free; we are compelled to use for conquest of our freedom [the] same means that are used by occupation forces for its suppression…We shall answer hanging with hanging, torture with torture'.[457]

The leaflet also urged British soldiers to:

> 'think it over write to your M.P. about it, write to your relatives and friends in United Kingdom until weight of public opinion in your country forces Conservative Party to adopt [a] more sensible policy that is already being supported by both Labour and Liberals; Cyprus must have self-determination'.[458]

C2 International Press Coverage

International press coverage and, in particular, US opinion was not favourable to British policy. The British Government was informed of US press coverage by Sir Roger Makins, the UK Ambassador to the USA. The US Press commented in the wake of the executions of

[454] A.W.B. Simpson, *Human Rights*, p.919.
[455] TNA, FO371/123892, British Embassy (Berne) to Southern Department, 25 May 1956.
[456] TNA, FO371/123892, British Embassy (Rome) to Southern Department, 26 May 1956.
[457] TNA, FO371/123889, EOKA Leaflet published following executions, 10 May 1956.
[458] Ibid.

Karaolis and Demetriou that 'with full sympathy for the plight of our chief ally, it must be admitted that Britain's 'stern policy' is not paying off' (Cincinnati Times-Star) and that 'forgetting the lessons they should have learned in Ireland, the British seem determined to bull their way through in Cyprus no matter who gets hurt' (Willis, NBC).[459] Colonial governance came under particular fire in the wake of the executions. One US newspaper stated: 'execution neither serves the ends of justice, nor contributes anything to a settlement…the British have only made martyrs of the two resistance fighters, (and) added fuel to the fires of unrest in the Eastern Mediterranean'.[460] Washington warned that Cyprus is 'widely represented' in the US Press as a 'danger-locked island…boiling toward violent crisis' and as 'pregnant with violence as a fused bomb' (Cronkite, CBS).[461]

British colonial policy was coming under fire generally during this period (over Singapore and Aden also and, of course, the Suez Crisis was yet to come), and not just at the European Commission of Human Rights. American press coverage, for example, was not favourable to current British colonial policy or colonial governance.[462] The Detroit Free Press, for example, stated that 'force will continue to beget force…the real catastrophe is that so much stubbornness and resolve is being wasted in so many parts of the world on side issues which settle nothing'.[463] This posed 'one of the most painful dilemmas confronting American foreign policy' (Philadelphia Bulletin) because Britain was an important US ally that 'we cannot afford to see weakened' yet 'are compelled' to support colonised peoples.[464] This was a view voiced in various papers.

[459] TNA, FO371/123890, Sir R. Makins (Washington) to FO, 15 May 1956.
[460] Ibid. Similar opinion was voiced in the German Press. See TNA, FO371/123889, British Embassy (Bonn) to FO, 11 May 1956.
[461] TNA, FO371/123890, Makins to FO, 15 May 1956.
[462] This is interesting given that US anti-colonialism reduced post-1948 when empires were considered by the US a favourable alternative to the global spread of Communism. See J. Darwin, *Unfinished Empire,* p.356.
[463] TNA, FO371/123892, Makins to FO, 25 May 1956.
[464] Ibid.

Significantly, in a number of US newspapers it was predicted that British public opinion would play a central role in pressuring the British Government to reconsider its colonial policy. The Christian Science Monitor, for example, stated that there was 'a considerable body of public opinion in the United Kingdom which demands…an accounting on colonial policy'.[465] Another (unnamed) paper stated that: 'the pressure from its own people will spur Her Majesty's Government to push onward with imagination and political liberalism'.[466]

Other newspapers alluded to the fact that 'hard' colonial governance techniques were no longer appropriate: 'the 'whiff of grape shot' policy which governed the Victorian era is no longer valid' (Miami Daily News).[467] An editorial in the West German newspaper, *Die Welt,* also made reference to the hardening in British colonial governance by describing how it was now assumed that Britain would not deviate from its 'iron fist policy'.[468] Britain's Ambassador to West Germany, Sir F. Hoyer Millar, wrote to the FO summarising the editorial which argued that Whitehall 'obstinately refuses to listen to warnings which have been sounded throughout the world, and especially in Britain itself, against the continuation of such a policy'.[469] Hoyer Millar described the growing feeling that 'the Eden Government has maneuvered itself into a cul-de-sac' and noted that 'certainly terror on Cyprus must be brought to an end but history teaches that this is more likely to be achieved by new negotiations than by bannings (sic) and death sentences'.[470] In contrast to German and US press reports, the UK Embassy in Paris noted that the French press 'have been quite factual and there has been very little tendency to give one side of the case rather than the other side'.[471]

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[465] TNA, FO371/123892, Makins to FO, 25 May 1956.
[466] Ibid.
[467] TNA, FO371/123890, Makins to FO, 15 May 1956. The 'whiff of grapeshot' quotation originates in reference to Napoleon's successful dispersal of a royalist mob in Paris on 5 October 1795. Grapeshot is a type of shot which is very effective at destroying massed infantry at short range.
[468] TNA, FO371/123889, British Embassy (Bonn) to FO, 11 May 1956.
[469] Ibid.
[470] Ibid.
[471] TNA, FO371/123889, British Embassy (Paris) to FO, 12 May 1956.

The Secretary of State for Commonwealth Relations described similar sentiment in Canada following a visit in the summer of 1956 to Canada to meet with Canadian Ministers. Lord Home wrote that 'government, press and public are unsympathetic to our policy'.[472] He described a feeling of 'general anxiety and a strong tendency to blame us for being unnecessarily stubborn and inflexible' with regards to Cyprus colonial policy.[473]

The Permanent Representative at the UN, Pierson Dixon, wrote to the FO warning that there was a general feeling of the need to 'pay particular attention to the American audience, since the United States attitude will, even more than last year, have a determining effect not only on the Greek Government's behaviour, but on our prospects at the UN'.[474] One of the key ways in which Dixon proposed to placate American feelings about the Cyprus situation was to stress that it was not intrinsically a colonial issue.[475]

This proposed approach was a marked change from 1954, when it was argued that Cyprus should be treated as a 'test case for the domestic jurisdiction issue'.[476] A slightly modified argument was to be used to appease the United Nations audience: 'Cyprus is a special case, because it has both an internal and an international aspect'.[477] This argument verged on the delusional, with Dixon stating that it should be announced at the UN that: 'we do not have similar difficulties in our other colonies, where rapid strides into full self-government are being taken everywhere'.[478] Dixon ended his letter to the FO describing how 'so far the

[472] TNA, FO371/123894, Extract, Conversations between Lord Home and Canadian Ministers, May/June 1956.
[473] Ibid.
[474] TNA, FO371/123894, P. Dixon to J.C. Ward, 4 June 1956.
[475] Ibid. Lennox-Boyd regarded Cyprus as a political international issue rather than a colonial one and he felt Cyprus distracted him from more pressing duties in African territories. See BOD, MSS.Eng.C.3433, OCPR, Lord Boyd interviewed by Sir George Sinclair and Others - Cyprus (1975).
[476] TNA, FO371/112851, Telegram addressed to 'New York', undated 1954.
[477]TNA, FO371/123894, Dixon to Ward, 4 June 1956.
[478] Ibid.

Greeks have, by their extreme methods, managed to frustrate our liberal and enlightened efforts to promote rapid constitutional development for the Cypriots'.[479]

The response from the Southern Department to Makin's information regarding US press comment was defensive. The Department argued that with regards to Cyprus it was clear that in the US press 'the basic facts are still either little known or ignored'.[480] Citing the rejection of self-government for Cyprus by the Ethnarchy, the telegram stated that 'thus the situation in Cyprus is the inverse of that with which HMG have been faced elsewhere in the Colonial Empire'.[481] The telegram argued that 'HMG have given ample proof that they know how to be flexible and liberal in coming to terms with the desire for self-government in a colonial territory'.[482] Application 176/56 to the European Commission undermined this self-professed 'flexible and liberal' attitude of the British Government in Cyprus, however. At this stage, Application 176/56 posed the greatest challenge to British colonial governance in Cyprus.

C3 APPLICATION 176/56

C3.1 Reaction in Whitehall

The eventual and favourable outcome for Britain of the first inter-state case under the ECHR has tended to obscure the shock waves it caused within Whitehall when the case was first lodged at Strasbourg in May 1956. As Bates and Simpson have both argued, it came as a surprise to the British Government.[483] Simpson, for example, has described the 'consternation' the Application sparked upon its arrival in the FO on 8 May 1956, based on

[479] Ibid.
[480] TNA, FO371/123892, Southern Department to British Embassy (Washington), 29 May 1956.
[481] Ibid.
[482] Ibid.
[483] E. Bates, *The Evolution of the European Convention,* p.179.

personal discussions with Francis Vallat, one of the main FO lawyers who dealt with the matter.[484]

The initial reaction within Whitehall to the Application was to treat it purely as a legal matter, and so the matter was simply passed to FO lawyers. A legalistic discussion about the admissibility of the entire Application ensued. These discussions are explored in greater detail in Chapter Five.

Following the lengthy internal legal debate over admissibility, as outlined in Chapter Five, it was decided that the Application should, in fact, be fought on the merits. FO lawyer, Francis Vallat, decided that he would not argue that the Application was inadmissible. His decision was supported by the CO. J.E. Marnham, Head of the International Relations Department, for example, wrote on 22 May 1956 regarding the decision that:

> 'I am pretty sure that it is the right decision. The alternative would presumably be to say, in effect, that we denied the competence of the Human Rights Commission to entertain any such application…We are here dealing with something which, whatever flaws may be found in it later, falls too clearly within the ambit of the Convention, which we have signed, to be brushed aside'.[485]

In June 1956, Application 176/56 was declared admissible by the European Commission, and the case proceeded. The Greek case was, however, simplified at this stage. The references to alleged torture cases were removed. This rendered slim the likelihood of an on-the-spot enquiry in Cyprus, much to the relief of the British Government.[486] The following months were dominated by lengthy and time-consuming procedures which involved the appointment of a Sub-Commission in July and the submission of the Greek memorial in

[484] A.W.B. Simpson, *Human Rights,* p.932.
[485] TNA, CO936/294, Minute by J.E. Marnham, 22 May 1956, quoted by A.W.B. Simpson, *Human Rights,* p. 934.
[486] A.W.B. Simpson, *Human Rights,* p.932.

August outlining the ECHR Articles they alleged had been violated during the period of emergency.[487]

Whilst discussions in Whitehall and at the European Commission centred around matters concerned primarily with (a) the existence of an emergency, and (b) emergency measures, discussion about the provisions of the ECHR and its application in Cyprus also arose with regard to other matters. In October 1956, for example, the Secretary of State for the Colonies was concerned with somewhat more prosaic matters relating to the Convention, in particular the clothing of detainees held in camps in Cyprus. In response to the Governor's proposals that detainees wear 'distinctive clothing', Lennox-Boyd emphasised the importance of the clothing being 'as unobjectionable as possible' noting that 'this is essential because of the possibility of allegations that distinctive clothing is 'degrading treatment' within the meaning of and prohibited by Article 3 of Human Rights Convention'.[488] He also advised to wait until 'our case is taken at the European Commission of Human Rights probably about the end of November'. Correct clothing was regarded as a welfare matter for detainees and this discussion extended to the welfare of detainees' families to whom financial assistance (£10 per month for a wife, £4 per month for the first child and £3 per month for every other child in addition to payment for overseas education, debt and life insurance premium) was granted by the Government.[489] This is a clear juxtaposition between the hard and soft forms of governance. On the one hand, hard governance was employed by detaining those suspected of having links to EOKA whilst, on the other, their families were offered assistance much in line with the underpinning ethics of the welfare state in Britain.

[487] Ibid, p.942.
[488] TNA, FCO141/4322, Lennox-Boyd to Harding, 3 October 1956.
[489] FCO141/4322, Harding to Lennox-Boyd, 5 September 1956.

C3.2 Reaction in House of Commons

Application 176/56 prompted considerable debate within the House of Commons, particularly in September 1956. During a parliamentary debate, for example, Labour MP Lena Jeger called for Parliament to 'apply its collective mind to the breaking of this disastrous and tragic deadlock in Cyprus'.[490] Jeger drew attention to the embarrassment and 'indignity' that the Application was likely to cause Britain and emphasised, in particular, her belief that detention without trial was an unacceptable form of colonial governance. Regarding the five hundred people currently imprisoned in Cyprus, Jeger questioned:

> 'How much longer are these people to stay in detention? It is not good enough to say 'Until the end of the emergency'; because what does that mean? How can this House be sure that among those 500 there is not one man innocent of any complicity of terrorism? I know that there are many of them who think or maintain that they are innocent, and they surely deserve some kind of trial, some kind of charge being brought in order that situation may be cleared up'.[491]

During the same debate, Aneurin Bevan (Shadow Foreign Secretary), made broader observations about the nature of colonial rule and articulated the crux of the difficulties facing European colonial powers in the mid-twentieth century – that rule could no longer be maintained by force:

> 'We are not now in the position of being able to compel people to do our will by the application of simple physical force…the participation of ordinary men and women in the complicated tasks of modern civilization makes cooperation absolutely essential and relegates the old conception of force, of terror, and of rule to the limbo'.[492]

R.T. Paget (Labour MP for Northampton), however, cast doubt over Britain's desire to govern Cyprus at all and noted the current futility of the British struggle in Cyprus arguing that 'we have lost the will to rule, and there is no object in going on trying it…What is the point, then, in going on when we know very well that we have not the will to rule?'[493]

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[490] Hansard, HC Debate, 14 September 1956.
[491] Ibid.
[492] Ibid.
[493] Ibid.

The British Government later came under pressure from the British Council of Churches during a meeting between a representative from the organisation and CO officials in February 1957.[494] The BCC representative asked whether the brutality allegedly perpetrated by British security forces in Cyprus weakened 'the moral distinction between the Cypriot terrorists and the British forces?'[495] This question was immediately dismissed by the CO representatives, who included Sir John Martin, Permanent Under-Secretary of State.

C3.3 Reaction of Colonial Government in Cyprus

Following the lodging of Application 176/56 and before submission of Application 299/57 in July 1957, a Government White Paper was published by the colonial government in Nicosia on 11 June 1957 featuring a foreword by Governor Harding. In his introduction, Harding offered a forceful defence of the security forces in Cyprus and stated that no-one could be in 'any doubt that the Security Forces here have been subjected to a carefully organised campaign of denigration, designed to foster hatred against them among the Greek Cypriot community and to sow doubt and misgiving outside the Island'.[496] Harding argued that he would not tolerate misconduct by the Security Forces, complaints would be thoroughly investigated and perpetrators would be punished.[497] Harding's language mirrored that of General George Erskine's instructions to security forces under his command in Kenya in 1952.[498] The government also resisted calls for a public enquiry and argued in the main body of the White Paper that a public enquiry 'would do more harm than good' not because the 'Government has anything to hide' but because an enquiry, it claimed, would satisfy EOKA supporters by drawing attention to 'these malicious allegations'.[499]

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[494] CERC, BCC/DIA/7/2/4/10/7, Notes of discussion at the CO, 27 February 1957.
[495] Ibid.
[496] J. Harding, 'Foreword', *Allegations of Brutality in Cyprus* (Nicosia, 1957).
[497] Ibid.
[498] See H. Bennett and D. French (eds), *The Kenya Papers.*
[499] Government of Cyprus, *Allegations of Brutality in Cyprus* (Nicosia, 1957), p.14.

In the White Paper, the Cyprus Government flatly denied all allegations. The White Paper stated, for example, that of the numerous allegations 'many are too vague and ill-founded to make any reply other than a plain denial possible'.[500] It argued that many of the complaints were 'founded on no traceable basis of fact'.[501] Where there was deemed to be sufficient evidence, an official investigation was undertaken. In defence of the reputation of the Security Forces, the Government put forward the argument that British Security Forces had an innate respect for humanity. It was unthinkable, therefore, the White Paper argued, that such 'civilised' individuals could change their behaviour so drastically when confronted by anti-colonial activists in the colonies. It was stated, for example, that:

> 'a very large number of the Police officers who are accused of such monstrous conduct are in fact members of the United Kingdom Police Forces whose traditions of restraint and humanity have long been the admiration of the civilised world; and it must appear unlikely that such men, with their years of training and experience, should on arrival in Cyprus apparently turn into typical members of Hitler's Gestapo, and on their return home as quickly resume their well-known and respected role'.[502]

Moreover, the White Paper reassured its reader that British justice was upheld in Cyprus by British and Cypriot Judges 'brought up in its traditions'. The Paper concluded that:

> 'Her Majesty's Armed Forces and the Police in Cyprus will rely on the worldwide knowledge of their traditions of humanity and decency to convince the public of the free world of the falsity of allegations, which emanate from men who have no scruples in aiding and abetting murder, brutality and intimidation even if they lack the courage to take an active part in it themselves.'[503]

What is significant about the White Paper is the extent to which the Cyprus Government attempted to rely on international opinion in corroborating its claims of the innate humanity and sensitivity of British Security Forces. It was at this very stage, however, that the international audience was being informed of the realities of British rule in its colonies and responded critically, as discussion of the international press demonstrates. Nevertheless,

[500] Ibid, p.7.
[501] Ibid, p.7.
[502] Ibid, p.13.
[503] Ibid, p.14.

contrary to current historiography which argues that colonial governments were often detached from concerns about the international repercussions of events within the colonies, the White Paper suggests that not only was the Cyprus Government sensitive to international opinion, but that it actively reached out to 'worldwide knowledge' in an attempt to refute allegations of human rights abuses.

C3.4 Calls for Investigation

In late 1957, it was decided in Strasbourg that an enquiry team would be sent to Cyprus in order for the Sub-Commission to investigate the existence and extent of the public emergency and to gather information on the use of curfew as a governance tool in order to make a decision on Application 176/56.[504] This prompted what Simpson has described as an 'explosion' from Harding in response to these proposals and concern that the enquiry would (a) spark off more violence by EOKA, and (b) that a further visit might be suggested in order to investigate allegations made under Application 299/57.[505] Within Whitehall, this proposal prompted alarm. It was noted, for example, how upon learning of the Sub-Commission's decision to send a team to Cyprus, the Foreign Secretary 'expressed dismay and incredulity that the Convention could have got us into this fix and even more incredulity that it applies to so many colonies'.[506]

Lennox-Boyd and Harding had previously refused to allow an investigation, and this decision had come under fire during parliamentary debates in the House of Commons in early July 1957 (just days before the lodging of Application 299/57 by Greece). Lena Jeger argued that if Britain was to reject the Council of Europe's request to permit an investigation, 'I cannot see what the Government are hoping for in this really tragic situation'.[507] This fed into Jeger's wider concern that 'nothing is more serious' in this 'sorry story' than Britain's poor

[504] TNA, FO371/136395, Acting Governor to Lennox-Boyd, 13 January 1958.
[505] A.W.B. Simpson, *Human Rights,* p.980.
[506] TNA, CO936/495, A.S. Aldridge to Melville, 4 October 1957.
[507] Hansard, HC debate, 15 July 1957.

relationships with its fellow member countries of the Council of Europe and the UN. She described how it was a 'shameful thing' for Britain, which stood for the 'most precious values of civilisation', to be prosecuted by the Council of Europe because of its conduct in Cyprus.[508] Worse, however, was to come with Application 299/57. Lennox-Boyd deflected Jeger's concerns by arguing that the very fact that the ECHR was extended to Cyprus was a 'signal witness' to Britain's 'liberal views' because it was under no obligation to do so. The decision was taken, Lennox-Boyd argued, because Britain was 'proud and confident of our administration in Cyprus and elsewhere'.[509] The shame lay, Lennox-Boyd maintained, with those who lodged 'false reports' at Strasbourg.[510]

Lennox-Boyd came under attack not only from Jeger during this debate, but also from James Callaghan, Labour MP for Cardiff South and Penarth and Shadow Colonial Secretary, whose speech mirrored Crossman's attack quoted earlier in which he described Cyprus as a 'police state'. Callaghan described Cyprus as a 'military dictatorship' which had been repressed for the previous three years. Describing the Government's 'folly and madness' with regards to their handling of the situation in Cyprus, Callaghan drew attention to repressive governance methods and, in particular, detention without trial.[511] Callaghan drew particular attention to allegations of abuse committed during interrogation within Britain of detainees held at Wormwood Scrubs prison near London which had been investigated by MPs Fenner Brockway and Jennie Lee.[512] Given the multitude of allegations of abuse emerging from Cyprus and Britain, Callaghan argued, it was 'simply nonsense' for the British Government to accept Harding's assurances that the allegations were false. As Callaghan claimed, 'these stories can reverberate around the world'.[513] Callaghan demanded an investigation into the

[508] Ibid.
[509] Ibid.
[510] Ibid. The 'false reports' to which Lennox-Boyd referred were in the Athens Press.
[511] Ibid.
[512] Ibid.
[513] Ibid.

allegations and into the conduct of the Cyprus Police Force.[514] In response, Under-Secretary of State for the Colonies, John Profumo, argued simply that all 'concrete charges' had been investigated by Harding and that other allegations of abuse ought to be dismissed.[515]

After much deliberation, it was decided that a team would investigate Application 176/56 in Cyprus (they began their investigations in January 1958). In the negotiations between London, Cyprus and Strasbourg prior to the investigations, Governor Harding was particularly unsupportive of the Sub-Commission's proposed activities in Cyprus. In a telegram to the CO, Harding wrote that whilst he and his advisers had given 'most anxious consideration' to the impact that events at Strasbourg in the European Commission could have in the United Nations, he was nevertheless attempting to constrain the Sub-Commission's activities. Describing its activities as causing 'damage to our interests here', he described the Sub-Commission as being of 'great concern' to him and recommended 'radical measures' in an attempt to stop the Sub-Commission's work, which he described as 'mischief'.[516] He also wrote about the need to take a 'robust line' at Strasbourg in 'defence of our interests against the unscrupulous Greek attack'.[517] Writing to Lord Perth (Minister for Colonies), Harding stated that he 'very much hope[d] that firm decision can be taken quickly' on the question of Strasbourg. He argued that he felt:

> 'very strongly that my successor should not be embarrassed by having to put up with such an unwarrantable interference in the internal administration of the island as a review by an outside and hopelessly biased body of my conduct of the international security campaign would represent'.[518]

Harding concluded that 'I trust, therefore, that HMG will be adamant in refusing to countenance such an invasion of our authority'.[519]

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[514] Ibid.
[515] Ibid.
[516] TNA, FCO141/4429, Harding to CO, 3 October 1957.
[517] Ibid.
[518] TNA, PREM11/2258, Harding to Perth, 26 October 1957.
[519] Ibid.

Harding's 'trust' was, however, misplaced. The investigation was allowed to proceed. The debate over the Sub-Commission intensified in late January 1958, when it was revealed that the investigation team had 'exceeded its terms of reference' and heard complaints of ill-treatment (it had been clearly stated at the outset that its remit was to investigate only the existence of the emergency). Harding's successor, Governor Foot, who had taken up his position in December 1957, was forced to deal with what Harding had feared. In a telegram to Lennox-Boyd, Foot wrote of his concern that the Sub-Commission had overstepped its remit: 'we had been subjected to a scurrilous campaign of lies on atrocities and we were naturally anxious that these matters should be considered at the appropriate time and place' and not, by implication, by the Sub-Commission whilst it investigated Application 176/56.[520] News of this was not warmly received in the CO either. A.N. Galsworthy, noted on 31 January, for example, that 'this seems scandalous to me'.[521] The FO was more relaxed about the matter, however.[522]

C4 The Loizidou-Leach Case

In October 1957, however, Harding was preoccupied by pressing matters other than the proposed investigation. In particular, much of his time was taken up with resolving a case about the alleged abuse of a twenty-two year old Greek Cypriot women, Vasso Loizidou, by a member of the Police Special Branch, Sergeant Jeffrey Leach. Harding was most concerned about the repercussions of the colonial government's decision whether or not to prosecute Leach in Strasbourg. The debate in the Loizidou-Leach case centred around the retention of the Public Officers Protection Regulations. This offered Leach immunity from prosecution and was supported by the Cyprus Government. The British Government, however, felt uneasy

[520] TNA, FO371/136395, Foot to Lennox-Boyd, 21 January 1958.
[521] TNA, FO371/136395, Galsworthy, 31 January 1958.
[522] TNA, FO371/136395, Note by JMA, 31 January 1958.

about its retention.[523] Charged for helping EOKA by communicating a message from one EOKA member to another, whilst on trial Vasso Loizidou described the treatment she alleged to have experienced at the hands of Leach. She claimed to have been interrogated three times by Leach and on each occasion was beaten up by him. Her allegations included being hit on the head with a leather strap, having her clothes torn from her body when she refused to undress and then being beaten again with the leather strap. She described how Leach 'hit me on the head with a leather strap, held my nose and mouth, placed pencils between my fingers and pressed them together, all the time asking the same questions'.[524]

C4.1 Calls for Immunity for Leach

Harding and his Deputy both wrote to Lennox-Boyd explaining why the Cyprus Government believed that Sergeant Leach was entitled to have the protection of the Public Officers Protection Regulations afforded to him.[525] These Regulations had provoked much debate in Britain towards the end of 1956.

In a speech in the Commons in December 1956, Robinson was very critical of the Regulations arguing that the Attorney General had the power to protect any officers from prosecution by denying 'the ordinary citizen' access to court action against the security forces.[526] During this debate, Robinson criticised colonial governance generally and described how

> 'the island of Cyprus has endured more than 12 months, not only of bloodshed and sudden and violent death, but of repressive government and Draconian legislation – government and legislation of a kind which, happily, is rare in what we call the democratic world'.[527]

Robinson described how people had hoped that by November 1956, the first anniversary of the declaration of emergency in Cyprus, emergency regulations would be relaxed but that

[523] See TNA, FCO141/3161. The Regulations were proposed by the Governor and these were approved by Lennox-Boyd but, significantly, neither the Law Officers nor the CO lawyers played any part in the drafting of the regulations. See HC Debate, 21 December 1956.
[524] TNA, FCO141/4429, 'A Briton Beat Me Up, Alleges Cypriot Girl', *News of the World,* 12 May 1957.
[525] See FCO141/4586 for details of the Regulations.
[526] Hansard, HC Debate, 21 December 1956.
[527] Ibid.

this had not happened. Instead, Robinson explained, Harding extended the provision of emergency regulations which resulted in 'more intensive repression than ever'.[528] These regulations included an extension of the death penalty, increased press censorship and, significantly for the Leach case, a change in the Public Officers' Protection Regulations. Robinson contended that emergency regulations were an 'almost total denial of civil liberties' in Cyprus.[529]

Later in the debate, Elywn Jones (Labour MP for West Ham South and, later, Attorney General and Lord Chancellor) criticised the government more severely when he argued that the new emergency regulations 'are a defiance of some fundamental principles of our law'.[530] More damning, however, was Jones' assertion regarding the Public Officers' Protection Regulations that it was an 'incredible provision' and that he doubted 'whether even the Nazi governors in occupied territories took to themselves powers quite as Draconian as that'.[531]

Harding's Deputy had written to Lennox-Boyd earlier that year, in July 1957, and acknowledged 'the difficulty of defending these Regulations in the United Kingdom' but went on to argue that 'the necessity to afford satisfactory protection to the Security Forces…appears to me to be over-riding, and I strongly recommend that these Regulations shall not be revoked at present'.[532]The Cyprus Government had repeatedly defended their support for the Public Officers Protection Regulations by arguing, for example, as the Chief Constable of Cyprus did, that 'our methods are proper and accepted' and that 'it is unfair to draw a comparison between the UK and Cyprus. Different conditions necessitate different remedies'.[533]

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[528] Ibid.
[529] Ibid.
[530] Ibid.
[531] Ibid.
[532] TNA, FCO141/4429, Governor's Deputy to Lennox-Boyd, 12 July 1957.
[533] TNA, FCO141/4429, Chief Constable, 15 March 1957.

Opinion within the British Government as to the appropriateness of the Regulations was divided. In a letter from the Home Office, for example, it was explained that 'the Home Office interest in these Regulations arises because there is a considerable body of English officers serving in Cyprus and we think that it is wrong in principle for police officers to be given any special immunity from prosecution'.[534] The Home Secretary had previously written to Lennox-Boyd explaining that he did 'fully understand and sympathise with the reasons which led you to authorise the enactment of this Regulation'.[535] However, the Home Secretary explained, 'the Regulation does constitute a radical interference with what we regard as the proper relationship between the police and the public' and, therefore, he asked that the Home Office was consulted on all matters relating to it.[536]

The CO, on the other hand, was said to 'consider this Regulation to be necessary not merely on the narrow security ground…but also on the ground that it is necessary to prevent vexatious prosecutions brought only for the purpose of bringing the forces of law and order into disrepute'.[537] Former Attorney General, Hartley Shawcross, however, shared the misgivings of the Home Office and wrote to Lennox-Boyd following receipt of a letter from the International Commission of Jurists (described by Shawcross as 'a highly reputable body') which was concerned about the Regulation. Shawcross explained that 'I do feel very uneasy about this regulation'.[538] He argued that regardless of the difficult circumstances in Cyprus 'a regulation that no proceedings can be taken against the Government or members of the Armed Forces or Police without the consent of a member of Government is, it seems to me, one which does go to the very basis of the rule of law'.[539] Regardless of the concerns of the Home Office and the former Attorney General, however, Lennox-Boyd later wrote to

[534] TNA, FCO141/4429, Home Office to Sir John Macpherson, 26 February 1957. Macpherson was the Permanent Under-Secretary of State for the CO.
[535] TNA, FCO141/4429, Home Secretary to Lennox-Boyd, 11 December 1956.
[536] Ibid.
[537] TNA, FCO141/4429, Letter from Home Office, 26 February 1957.
[538]TNA, FCO141/4429, Shawcross to Lennox-Boyd, 14 December 1956.
[539] Ibid.

Harding to inform him that he supported his and the Attorney General's decision to refuse consent for the prosecution of Leach.[540]

Not only did the Loizidou-Leach case prompt much correspondence between Harding in Nicosia and the CO in London, but it also provoked correspondence from the general public. David Linton, from London, for example, wrote to Harding's wife. Referring to the case of Loizidou, Linton argued that 'whatever the girl may have done…in no way affects the principle of humanity that prisoners should not be tortured'.[541] Linton also made reference to Harding's 'dictatorial law-making' referring to the protection regulations. Whilst Harding may not have had direct responsibility for what was alleged to have happened to Loizidou, Linton argued, 'he cannot escape the indirect responsibility arising from the law he made deliberately protecting such brutes from prosecution'.[542] Linton's letter to Lady Harding also expressed general disapproval of Britain's policy of attempting to retain Cyprus by force. He claimed that 'the British strategical (sic) need for Cyprus is as much justification for trying to retain it by force as there would be if the Greek minority in Soho tried to annexe England to Greece on the plea of 'strategic necessity'.[543] He drew comparisons to the annexation attempts of the Nazis: 'Warsaw was strategically necessary to Hitler and (sic) Hungary is to the Red Empire, but have we not cheered those inhabitants of those places who used guns to try for their freedom?' Linton's main concern, however, was the behaviour of British security forces in Cyprus and the likelihood of their influence spreading throughout imperial possessions which also required military involvement as 'they drift from Palestine, to Kenya, to Cyprus'.[544] No response to Linton is disclosed in the government files, although a handwritten note on Linton's letter suggests that it was intended that a response would be written to him.

[540] TNA, FCO141/4586, Lennox-Boyd to Harding, 17 October 1957. See also telegram from Harding to Lennox-Boyd detailing the Attorney General's decision to refuse prosecution of Leach, 3 October 1957.
[541]TNA, FCO141/4429, D. Linton to M. Harding, 12 May 1957.
[542] Ibid.
[543] Ibid.
[544] Ibid.

Linton's concerns were reflected in an anonymous letter sent to Harding which defended the character of Vasso Loizidou. Mirroring the language of the 'civilising mission' commonly employed by the colonial state, the letter described 'the marked difference between Miss Loiza's (sic) character and that of your people who have been recruited from the lower status of the society who are rather beasts than civilised men'.[545] No response to this letter is detailed in the government files.

In addition to probing about the Loizidou-Leach case and the so-called 'mischief' of the Sub-Commission, Harding was also dealing with further external interest probing human rights abuses in Cyprus with visits from the International Committee of the Red Cross, various members of parliament and lawyer and activist, Peter Benenson.

C5 International Committee of the Red Cross

The International Committee of the Red Cross investigated conditions in detention camps on a number of occasions between 1955 and 1958. The ICRC had also been allocating funds to detention camps in Cyprus since 1956 to be spent on 'amenities' for detainees.[546] The ICRC visits were undertaken by ICRC Delegate, David de Traz. A lawyer and an expert on prison camps, De Traz was reported to be the first 'foreigner' to be allowed access to these specific detention camps. The granting of access to the prison camps by the British authorities was, according to de Traz, 'a big thing for the Red Cross' and a 'definite step forward in international co-operation; a precedent for which we are really grateful'.[547]

[545] TNA, FCO141/4429, Anonymous letter to Harding, 22 May 1957.
[546] See TNA, FCO141/4673, Comments on the Report made by Mr David de Traz, Annexure 1 to Serial C, International Red Cross Funds (1957).
[547] TNA, FCO141/3777, 'First to See Camps', *Times of Cyprus,* 20 December 1955.

C5.1 First Visit by de Traz 1955

De Traz's first visit took place in December 1955 and passed relatively unnoticed. His final report was favourable to the administration in Cyprus. It was concluded, following the visit, that the treatment of detainees in Cyprus was 'generally speaking, satisfactory and in conformity with fundamental humane principles'.[548] De Traz was also reported in the *Times of Cyprus* to have remarked following his visit that 'I can state categorically that the conditions in the Detention Camps at Kokkinotrimithia and Dhekelia are humane and satisfactory'.[549] It was also reported that 'in neither camp was any complaint made of bullying, ill-treatment or rudeness – 'absolutely none'.'[550] So favourable was de Traz's 1955 Report that Lennox-Boyd was said to have 'found it convenient, in dealing with questions about visits to the camps by independent people to look into allegations of ill-treatment' to refer them to the Report.[551]

Whilst the ICRC's visits were permitted, the response to proposals for a similar visit to detention camps in Cyprus by the Overseas Director of the British Red Cross Society, Miss J. Whittington, was less positive. These proposals were strongly opposed by the Director of Medical Services in Cyprus, Dr. P.W. Dill-Russell.[552] This decision was based on the fact that David de Traz's statement following his 1955 visit that the camps were 'alright', was said to have 'greatly annoyed the detainees, their dependents and so on'.[553] Miss Whittington, therefore, had two options: either she would have to agree with de Traz (which it was predicted would 'inevitably do harm to the cause of the British Red Cross here in Cyprus') or she could disagree with him, which would result in the two organisations being 'out of

[548] TNA, FCO141/3777, R. Gallopin (Executive Director, ICRC) to the Countess of Limerick (Vice-Chairman, Executive Committee, British Red Cross Society), 29 December 1955. See LO2/505 for a copy of de Traz's report.
[549] TNA, FCO141/3777, 'First to See Camps'.
[550] Ibid.
[551] TNA, CO926/976, WA Morris to E. Melville (Assistant Under-Secretary, Far Eastern; Mediterranean), 6 May 1957.
[552] TNA, FCO141/3777, Note on 'Miss J. Whittington, OBE, JP' (no author), 13 January 1956.
[553] Ibid.

step'.[554] It was argued that it was outside the remit of the British Red Cross to investigate detention camps during peacetime and Dr Dill-Russell reportedly 'infinitely' preferred it 'not to mix in such a contentious subject'.[555] Miss Whittington subsequently abandoned the idea of visiting detention camps but did visit the central prison.

C5.2 Second Visit by de Traz 1957

Whilst the authorities in Cyprus successfully dodged external probes into detention camps by the British Red Cross in early 1956, it was not able to resist further visits from the International Committee of the Red Cross in March and August 1957 which were led, as the 1955 investigation had been, by de Traz. During this second visit, de Traz visited Nicosia Central Prison and interviewed prisoners, who had been held at Omorphita previously. Of the sixty detainees interviewed by de Traz, widespread ill-treatment was alleged which ranged from suffering waterboarding to being beaten and burned.[556] All allegations were strongly denied by the Cyprus Government in response to de Traz's report.[557]

De Traz's report of his 1957 visit to Cyprus reached the CO in London in May 1957. Whilst de Traz's 1955 Report had proved useful ammunition for Lennox-Boyd in rebutting questions regarding ill-treatment in detention camps, the 1957 Report did not offer the same mileage or comfort for colonial administrators in Whitehall. As Head of the Mediterranean Department, W.A. Morris, wrote to Assistant Under-Secretary to the Colonies, Melville, 'we cannot as readily fall back on them' as the reports are 'at one or two points rather disquieting'.[558] This was due, in part, to the two main criticisms of de Traz which were, first, that he was struck by the 'youthful appearance' of some individuals who were held under

[554] Ibid.
[555] Ibid.
[556] C. Stanley, 'The British Army, violence, interrogation and shortcomings in intelligence gathering during the Cyprus Emergency', 1955-59' in C. Andrew and S. Tobia (eds), *Interrogation in War and Conflict: A comparative and interdisciplinary analysis* (Abingdon, 2014), p.165. See also I. Cobain, *Cruel Britannia: A Secret History of Torture* (London, 2012), pp.92-93.
[557] TNA, FCO141/4673, see various documents in this file detailing the Government's denial.
[558] TNA, CO926/976, Morris to Melville, 6 May 1957.

death sentence.[559] He referred to this point during discussion with the Deputy Governor on 'humanitarian grounds'. It was reported of de Traz that:

> 'it is his general opinion that the detainees in Nicosia Central Prison and Pyla and Kokkino Trimithia Camps, receive humane treatment but that certain improvements are desirable as regards living conditions in the camps'.[560]

Second, de Traz's other main criticism was that although the detainees claimed they had suffered no 'harsh treatment' since arrival at the detention camp, they did encounter harsh treatment whilst being questioned by police. In his report, de Traz had claimed to have seen 'actual traces of such treatment' in many cases.[561] Indeed, de Traz was reported to have:

> 'made an urgent request to the local authorities 'for the detainees to be treated with humanity in all circumstances', and the Red Cross wish to draw the serious attention of the British Government to this matter'.[562]

Apart from the criticisms listed by the Morris, the remainder of de Traz's report was described as containing 'relatively minor ones of certain defects in hygiene and amenities at the two Detention Camps'. Morris did not reject outright de Traz's claim that he had witnessed the aftermath of harsh treatment claiming rather that, 'unless Mr de Traz has been gullible in swallowing the complaints made for political purposes, it seems clear that he saw, or was convinced that he saw, actual traces of physical ill-treatment at the hands of the police'.[563]

In a note to CO lawyer, Henry Steel, Morris' colleague Aldridge was more suspicious about the reliability of the allegations of ill-treatment heard by de Traz during his investigations. Aldridge recommended to Steel that he and FO lawyers Vallat and Darwin 'should at least be aware of this file' regarding de Traz's visit. The file detailed numerous complaints written by detainees which were addressed to de Traz. Summarising the contents of the file, Aldridge

[559] TNA, FCO141/4673, ICRC Report, undated.
[560] Ibid.
[561] TNA, CO926/976, ICRC Report paraphrased in note by Morris to E. Melville, 6 May 1957.
[562] Ibid.
[563] Ibid.

explained that de Traz had made two visits to Cyprus detention camps; on the first occasion, de Traz was satisfied with the conditions, but on the second 'the detainees gave him the old, old story about ill-treatment before they reached the camps'.[564] This reflected the position held by the colonial administration in Cyprus. In a note to the Deputy Governor, the colonial administration stated that:

> 'it will be seen from our comments on the reports that we are unable to carry out many of the suggestions made. This is mainly because the detainees have produced many old and hoary complaints which have been dealt with long ago – most of them being turned down on security grounds'.[565]

Comments on the report also described how the Cyprus government believed it to be 'the calculated policy of EOKA to multiply allegations of ill-treatment to a fantastic extent in an effort to embarrass the Government in the eyes of world opinion and in Cyprus itself'.[566] It is not surprising, therefore, that the colonial government was not supportive of the suggestion made by de Traz that he visit Cyprus more often. At the end of his Report detailing his visit of March 1957, de Traz wrote of his wish to return to Cyprus a few weeks later to undertake further inquiries.[567] Indeed, de Traz told the colonial government that detainees were disappointed that he had not visited the camps more frequently. Detainees were reported to view him as 'a guardian angel who had let them down'.[568] De Traz subsequently asked whether he could make more frequent visits to the camps and whether the detainees could correspond with him in his Beirut Office. One government official wrote to the Deputy Governor that 'my instinct is hostile to Mr. de Traz's idea' and explained that

> 'I think it could easily prove an embarrassment for this Government if the detainees, and their advocates and politicians, grew to feel that they might get their own way over contentious matters by referring them to the Red Cross. I also feel that it could be an embarrassment to the Red Cross itself.'[569]

It was proposed, therefore, that whilst the emergency continued, the ICRC would be given 'facilities from time to time' to inspect the camps but 'that their detailed administration and

[564] TNA, CO926/976, Aldridge to Steel, 14 August 1957.
[565] TNA, FCO141/3777, Note to Deputy Governor, 14 July 1957.
[566] Ibid.
[567] TNA, FCO141/4673, ICRC Report, 'Nicosia Central Prison'.
[568] TNA, FCO141/3777, Note to Deputy Governor, 25 March 1957.
[569] Ibid.

the welfare of the detainees and their dependents should remain exclusively the concern of this Government'.[570] De Traz did investigate detention camps in Cyprus again in December 1958.[571] In spite of this, de Traz's statement of 1955 that his visits were 'a definite step forward in international co-operation' and a 'precedent', was, however, rather limited in practice, as the colonial government sought to limit international interference in Cyprus, as it also did with the Sub-Commission's investigations into ECHR Application 176/56.

The following year, the question of visits to the camps by the press was raised. The administration was as unsupportive of this proposal as with ICRC visits. In a note, Foot acknowledged that 'it will be difficult to resist pressure to visit the Camps much longer' but stated that 'I think that the best thing will be to refuse all permission for as long as we can'.[572] M.R. Connor of the *Daily Mirror* had recently requested permission to visit. A telegram from Foot to the CO made clear Foot's reluctance:

> 'You will understand from my reports over the past week or so that we did not expect to be able to make nearly so many EOKA arrests as in fact we have done. As a result of the large number of arrests conditions in the established camps are crowded and we have had to make the best rough and ready arrangements we could to hold the remainder of those arrested in other hastily improvised centres'.[573]

Indeed, in August 1958, it was recorded that detention camps in Cyprus were holding the largest number of detainees ever.[574] In July 1958, it was even proposed to send some detainees from Cyprus to Kenya. Governor Foot responded to this proposal, however, that 'we are now busily engaged in putting people into detention rather than letting them out!'[575] In the face of these difficulties, proposals for the release of detainees from around December

[570] Ibid.
[571] See TNA, CO926/976 for the report of de Traz's 1958 visit.
[572] FCO141/4339, H. Foot, 'Press Visits to Detention Camps', 12 August 1958.
[573] FCO141/4339, Foot to CO, 'Detention Camps', 29 July 1958.
[574] TNA, FCO141/4556, SAS IS to DAS IS, 20 August 1958.
[575] TNA, FCO141/4336, Foot, July 1958. See also TNA, FCO141/4422 on the movement of the most dangerous detainees from Cyprus to Kenya.

1958 were drawn up because the continued detention of prisoners was deemed a drain on manpower and money.

C6 Activist Response to Allegations of Abuse in Cyprus

C6.1 Barbara Castle

Barbara Castle MP played a significant role in exposing allegations of ill-treatment in Cyprus to people in Britain following her visit there in September 1958. Her allegations caused quite a stir at home. The *Evening Telegraph* reported, for example, that she had 'put the cat among the pigeons' with her allegations that British troops were allowed to use 'unnecessarily tough measures in ferreting out Cyprus terrorists'.[576] Hugh Foot confirmed that this was the case and conceded in *The Manchester Guardian* that 'roughness can and does take place in the heat of the murderer's pursuit' but, he maintained, 'bullying or brutality' by the security forces was not tolerated.[577] It was the British Government, however, that bore the brunt of Castle's criticisms when she described their investigations into allegations of ill-treatment as 'incomplete and inadequate'.[578] This reflected Callaghan's argument in July 1957 that the British Government's faith in the Cyprus colonial authorities' ability fully to undertake comprehensive investigations was misplaced and unacceptable.[579]

Castle's allegations triggered a mixed response from within her own party. Stephen Howe has described how, for example, whilst the Labour Party generally agreed that the security forces were guilty of abuse in Kenya, in contrast, Gaitskell, leader of the Labour Party, 'utterly repudiated' similar allegations over Cyprus.[580] Alongside Gaitskell, James Matthews, a

[576] Bodleian Library (BOD), MS Castle 253, 'Challenge by the Critic', *Evening Telegraph,* 23 September 1958.
[577] 'Strong reply to Cypriots: Governor says troops 'angry'', *The Manchester Guardian,* 22 September 1958, p.1.
[578] 'Mrs Castle's Charge', *The Manchester Guardian,* 22 September 1958, p.1.
[579] Hansard, HC debate, 15 July 1957.
[580] S. Howe, *Anticolonialism in British Politics,* pp,279-80.

member of the Labour Party National Executive, disassociated himself from Castle's allegations of rough treatment. Matthews stated that 'it is deplorable that a member of the national executive should make such an unjustifiable criticism when our troops have been frequently commended by the local Cypriot authorities for their tolerance and understanding'.[581] Castle, in defence of her allegations, however, stated that once Matthews understood the full extent of the allegations, he would retract his criticisms. She claimed that amongst the government administration in Cyprus she had witnessed 'a doctrine of hot pursuit under which it is felt to be justifiable if soldiers lose their temper following the shooting of one of their comrades'.[582]

Castle's papers held at the Bodleian Library suggest a high level of support from members of the public. Her archive contains at least twenty letters congratulating Castle on her exposure of the situation in Cyprus in late 1958. A striking number of the letters, similar to those sent to the UN in the early 1950s, compare British behaviour in Cyprus to that of the Nazis. A letter from David Reid, for example, congratulated Castle on her 'courageous stance regarding the atrocities committed by British troops in Cyprus'.[583] Thomas Cox wrote that it appeared that Castle was 'the only one in the British Government today that has the courage and honesty to speak out against the stupidity and callousness of the British position in Cyprus'.[584] The letter argued that 'it seems incredible that the government of England can go on making the same mistake not only year after year, but century after century. The situation in Cyprus is basically the same as the situation in Ireland was, and to some extent still is.'[585] A letter from Dr Phillips wrote of Castle's ability to impact the thinking of the electorate with her investigations into abuse in Cyprus:

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[581] 'Labour rift over troops issue', *The Manchester Guardian,* 23 September 1958, p.1. See also 'Mrs Caste in Cyprus rumpus', *Mirror,* 23 September 1958 and 'Cyprus storm may cost her Socialist chairmanship: Barbara Castle Row', *Daily Mail,* 23 September 1958.
[582] Ibid.
[583] BOD, MS Castle 251-2, B. Castle from David R. Reid, 2 November 1958.
[584] BOD, MS Castle 251-2, Thomas J. Cox, undated.
[585] Ibid.

> 'your stand against Brutality and Torture in Cyprus is one that could capture the imagination of the electorate. British men and women are not blind jingoistic types, who believe that political murder should be countered by mass beatings. Some of us are very disturbed at the lack of leadership from the Labour Party – against the growing tendency for Army and Police to encourage and whitewash acts of inhumanity, not to mention outright perjury and torture (not only in Cyprus).'[586]

Lillian Davis wrote that she was 'appalled at the recent events in Cyprus' and wondered 'if we are any better than the Nazis'.[587] This was echoed in another letter which claimed that the 'brutal action' taken by soldiers in Cyprus 'puts us on a level with Hitler and his concentration camps'.[588] Similarly, another letter stated that 'the reprisals have gone on for some years now and are the same in character as those used by the Russians in Hungary or the SS men of Germany.'[589]

C6.2 Movement for Colonial Freedom

Anti-colonial feeling amongst the public and members of parliament was also voiced by the Movement for Colonial Freedom (MCF). The MCF was established in 1954 by Labour MP Fenner Brockway with the aim of giving the British Left an active and vocal anti-colonial voice.[590] In 1955 at the MCF's first Annual Conference, it laid out as its first principle:

> 'the right of all peoples to full independence (including self-determination and freedom from external political, economic and military domination) and to the enjoyment of all the rights embodied in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948'.[591]

At the Annual Conference, the MCF demanded the setting of dates for independence and rejected 'the view that it is for the imperial powers to decide when a colonial country is fit for

[586] BOD, MS Castle 251-2, Dr HS Philips, undated.
[587] BOD, MS Castle 251-2, Mrs Lillian Davis, 5 October 1958.
[588] BOD, MS Castle 251-2, B. Wilson, 6 October 1958.
[589] BOD, MS Castle 251-2, S. Lancaster, 14 October 1958.
[590] For a history of the MCF see S. Howe, *Anticolonialism in British Politics,* p.231.
[591] SOAS, MCF Box 84, *A Policy for Colonial Freedom: Policy Statement Report of Activities and Objects and Constitution,* 30 October 1955.

independence'.[592] The MCF believed that 'it is for the colonial peoples themselves to decide these matters'.[593] The MCF also described the present policy of the British Government as a 'fear-ridden attempted to defend a colonial system which is basically immoral and politically outdated'.[594]

C6.2.1 Trade Unions

Regarding the situation in Cyprus, MCF material relating to its own role in anti-colonial activism is limited, as is the case with Kenya and Nyasaland, with the exception of its petition against brutality in 1957. MCF involvement in Cyprus was largely confined to general demands for the end of colonial rule in the territory. The MCF received a handful of letters from various British Trade Unions, however, which expressed their solidarity with workers in Cyprus. The National Union of Tailors and Garment Workers wrote to the MCF in February 1959, for example, to inform the organisation that they had passed a resolution at a recent meeting which called upon the British Government to 'stop the repression and military actions in Cyprus and to bring about a peaceful solution'.[595] The Plumbing Trades' Union went further and demanded the 'withdrawal of British troops from Cyprus, the withdrawal of the demands for military bases on the island, and for the negotiation of a genuine independence for the Cypriots'.[596] Their letter to 'Cypriot fellow Worker and Trade Unionists' stated that 'you can rest assured that all progressive people in Britain fully supports you in your just struggle for freedom and independence'.[597] Other unions, such as the Amalgamated Engineering Union wrote to the MCF to inform it that the Gladstone Park Branch of the Union

[592] Ibid.
[593] Ibid.
[594] Ibid.
[595] SOAS, MCF, Box 41, National Union of Tailors and Garment Workers to MCF, 6 February 1959.
[596] SOAS, MCF Box 41, Plumbing Trades' Union to MCF, 22 June 1960.
[597] SOAS, MCF Box 41, Plumbing Trades' Union to Cypriot Trade Unions, 22 June 1960.

supported the demands of Cypriot Trade Unions demanding action to tackle increasing unemployment in the territory.[598]

In June and July 1957, the London Area Council of the MCF circulated petitions for signature against brutality in Cyprus. The impetus for the petition arose from Lee and Brockway's visit to Wormwood Scrubs in June 1957, where they were informed of allegations of abuse from Cypriot inmates. Although the petition is not included in the MCF papers, correspondence suggests that the organisation was successful in collecting numerous signatures, in particular from branches of the Labour Party. Ian Page, Secretary of the London Area Council noted on 30 July, for example, that signatures were 'pouring in' and that they 'therefore had to extend the period during which signatures can be obtained'.[599] Thousands of signatures were collected from individual members and various organisations such as trade union branches and Women's Co-Op Guild Branches. Furthermore, an MCF press release of September 1957 noted that the petition had been presented to the Colonial Secretary requesting a Commission of enquiry into 'alleged brutalities suffered by Nationalists in detention camps and prisons in Cyprus'.[600] MCF involvement continued into the early 1960s, when the organisation's campaigning focused on standards of living in Cyprus and the growing unemployment problems.[601]

C6.3 Christmas Broadcast 1958

Whilst, internally, the colonial administration was facing its greatest difficulties in the summer of 1958 in attempting to manage detainees as their numbers reached a peak and to weather the exposure of ill-treatment in Britain by Barbara Castle, publicly, it attempted to continue to project an image of good governance. This came in the form of a Christmas

[598] SOAS, MCF Box 41, Amalgamated Engineering Union to MCF, 17 June 1960. See also the letter from the National Union of Tailors and Garment Workers, 28 June 1960.
[599] SOAS, MCF Box 13, I. Page to Mrs Laski, 30 July 1957.
[600] SOAS, MCF Box 13, MCF Press Release, 6 September 1957.
[601] SOAS, MCF, Box 41, MCF London & Home Counties Area Council to Trade Union District Committees, 12 June 1960.

television broadcast entitled 'Christmas in Cyprus', which the television production company, Associated Rediffusion, planned to air shortly after the Queen's broadcast on Christmas Day.[602] Writing to Reddaway of the Administrative Secretary's Office in Cyprus, Morris of the CO explained that the purpose of the broadcast was to:

> 'give the story of the British Army in Cyprus' which would show 'the British soldier at play and on duty, with particular reference to Christmas time, e.g. the preparation for Christmas parties, for Cypriot children etc, natural unrehearsed shots of soldiers assisting Cypriot civilians etc. particularly women and children in the streets of Cyprus, the normal behaviour of troops to Cypriot villagers, religious worship and unit Christmas entertainment'.[603]

The Secretary of State welcomed the proposal of Associated Rediffusion, subject to the agreement of the colonial administration in Cyprus. The programme aired on Christmas Day 1958 at 5pm and a copy of it is now held at the Imperial War Museum in London. So, just a few months after detention camps in Cyprus had interred the highest ever number of detainees, national television was broadcasting images of cordial interaction between British soldiers and Cypriots and good governance generally.

C7 APPLICATION 299/57

All of this was perhaps an attempt to counteract the bad publicity Britain had received consistently following the submission of Application 299/57 to the European Commission. The lengthy process and proceedings of Application 299/57 rumbled on throughout 1958, during which time, between spring and summer of that year, conditions in Cyprus deteriorated significantly and to such an extent that the British Government stated in August 1958 that all work on remaining cases heard under Application 299/57 had to be halted due to security concerns.[604]

[602] Associated Rediffusion was the British ITV contractor for London and surrounding areas, 1954-68.
[603] FCO141/3506, Morris to Reddaway, 26 November 1958.
[604] A.W.B. Simpson, *Human Rights,* p.1042.

Application 299/57 was lodged in July 1957, and detailed forty-nine specific allegations of abuse, reportedly perpetrated by the police, security and military forces in Cyprus.[605] A similar debate to that over Application 176/56 ensued regarding the admissibility of Application 299/57. The British Government argued that it was inadmissible for three reasons; two of these were rejected by the Commission.[606] The third argument, that domestic remedies to hear allegations of abuse had not yet been exhausted (this was required by Article 26 of the Convention), was not immediately rejected by the Commission.[607] A number of hearings took place and on 12 October 1957 the Commission ruled that twenty cases of alleged ill-treatment were inadmissible under the Application and twenty-nine were admissible.[608] What followed was a debate as to whether the British Government should continue to co-operate with the Commission. This debate is key to understanding how Britain viewed the European Commission and the procedures through which it sought to ensure the protection of fundamental human rights.

C7.1 Reaction in Whitehall

Burr of the CO indicated that the question of whether the Government would continue to cooperate with Application 299/57 was of the utmost importance because it would soon have to decide whether to permit an on-the-spot investigation by the Sub-Commission into the allegations of human rights abuse.[609] Resentment towards the European Commission was running high. Higham, for instance, wrote of the 'unpalatable fact' that Britain had accepted the jurisdiction of the ECHR.[610] Similarly, Burr highlighted that one of the disadvantages of allowing an investigation was that it might hinder the security forces in effectively carrying out their duties if 'they have to be continually looking over their shoulders to an international

[605] European Commission of Human Rights, *Second Application, Report of the Commission* (Strasbourg, 1959), p.1.
[606] A.W.B. Simpson, *Human Rights,* p.1031.
[607] ECHR, Application No. 299/57, Report of the Commission, p.3.
[608] A.W.B. Simpson, *Human Rights,* p.1033.
[609] TNA, CO936/495, Note by Burr (Principal Officer, International Relations Department, CO), 28 October 1957.
[610] TNA, CO936/497, Note by Higham (Assistant Secretary), 8 April 1958.

body' to which they were accountable.[611] Furthermore, Burr warned that if 'cases of ill-treatment are established it will be particular and identifiable individuals who will be made to suffer'.[612]On balance, however, it was decided that cooperation was the only politically viable option. Both Burr and Higham noted that if Britain refused to cooperate, it would generate suspicions that Britain was concealing abuse. Burr explained that Britain was up against that argument that 'if you have nothing to hide you have nothing to lose by allowing an investigation in, and if you will not let it in there is a presumption that you have something to hide – which you should not be hiding'.[613]

After co-operation had been decided upon, the Whitehall response to Application 299/57 was largely to deny the allegations. The stakes were higher, with the second Application in effect having to deny allegations of ill-treatment, something which had been absent from Application 176/56 (albeit not initially). This denial was most forcefully articulated within Parliament, where the allegations were met with disbelief from one particular member, John Harding, former Governor of Cyprus (1955-57) and now Lord Harding of Petherton.[614]

FO files list the allegations of ill-treatment in Application 299/57 in great detail. In the case of Maria Anastassiou Lambrou, interrogated in October 1956 because of her close association with EOKA, Lambrou claimed that she had a miscarriage due to ill-treatment whilst she was detained in a cell.[615] She alleged that whilst in custody, 'a tall man with dark complexion and black moustache', assaulted her 'with his hands in my face and on my neck'.[616] Upon telling him she was pregnant, he is alleged to have said 'he would not mind anything about it [the baby] and went on saying that he would turn me into pieces and that he would make me have

[611]TNA, CO936/495, Burr, 28 October 1957.
[612] Ibid.
[613] Ibid.
[614] Hansard, HL Debate, 8 July 1958.
[615] TNA, FO371/136397, Commentary on Case No. 3, February 1958.
[616] TNA, FO371/136397, Statement by Maria Anastassiou Lambrou, undated.

an abortion'.[617] Lambrou alleged that she miscarried stating that 'the baby fell in the W.C. I did not see it but I felt it'.[618] The Government also faced allegations that Charalambos Georgiou Amerikanos was beaten with sticks in the school building of Aghia Varvara and at the Special Branch of Nicosia, having been thrown to the ground on 23 and 24 October 1956.[619] In another case, Georghios Haralambides alleged that on 6 March 1957, he was forced to sit in an 'exhausting position' for hours with his arm attached to his left leg by handcuffs.[620]

The initial government reaction was one of denial. Lambrou's case, for example, was described as 'typical of the numerous allegations which have been levelled at the Police and Security Forces in Cyprus…and illustrates in particular the was (sic) in which accusations have been framed and pursued'.[621] Lambrou's case was highlighted as a 'good example' of 'methods used to attempt to convince the world of the brutality of the British authorities, and to weaken the resolution of the Security Forces in carrying out their duties' because of the 'many inconsistencies' that emerged.[622] In response to Georgiou Amerikanos' allegations, it was simply stated that his evidence could not be relied upon.[623] This was reflected in the response to Case Number 14. This particular complainant had alleged ill-treatment previously whilst a prisoner in Wormwood Scrubs and had communicated this to MPs Jennie Lee and Fenner Brockway. The ill-treatment was said to have occurred in December 1955. In response to this case, it was argued that 'the Greek Government's case remains unsupported. The evidence we have justifies a denial of all of the allegations'. It was concluded that

[617] Ibid.
[618] Ibid.
[619] TNA, FO371/136397, Commentary on Case No. 6, undated.
[620] TNA, FO371/136397, Commentary on Case No. 26, undated.
[621] TNA, FO371/136397, Commentary on Case No. 3, February 1958.
[622] Ibid.
[623] TNA, FO371/136397, Charlampos Gergiou Amerikanos, undated.

regarding this particular case that 'it is hard to resist the conclusion that the Greek Government's case is an international distortion of fact'.[624]

Lee and Brockway had written to the Colonial Secretary in July 1957 with regards to allegations of abuse at Wormwood Scrubs Prison. Following a visit to the prison on 17 June, the Labour MPs wrote to Lennox-Boyd to inform him of the injuries they witnessed.[625]Out of the fifteen prisoners held at Wormwood Scrubs, five did not complain of any ill-treatment, and five did complain of ill-treatment in Cyprus although their injuries had faded due to the passage of time. Lee and Brockway witnessed physical injuries on the remaining five inmates. One prisoner, Georgios Haralambos Skotinos, arrested 17 December 1955, had a broken nose and swelling below his ribs. These injuries, he claimed, were due to blows from the barrel of a Sten gun after his arrest at Boghazi Camp and Famagusta Police Station in December 1955. Another prisoner, Nicolas Loizou, arrested 4 October 1956, had scars around his wrists and on his left thigh which he alleged resulted from being tied up for three days by thin cords on his wrists and being beaten repeatedly on his thigh. He claimed that this ill-treatment took place at Ayios Amvrosios Camp and Omorphita Interrogating Centre in October 1956. Lee and Brockway acknowledged that there was some doubt surrounding the reliability of the allegations and that there was no conclusive proof that the injuries were caused by ill-treatment. The MPs did, however, argue that it could not be ignored that five of the prisoners were able to provide the dates and places of alleged ill-treatment and some were even able to name the alleged perpetrators. Based on this, Lee and Brockway wrote, therefore, that

> 'we submit that these facts justify our claim that a prima facie case exists for an independent enquiry by a commission whose personnel would command respect. An investigation is necessary to examine not only the charges made by the prisoners at Wormwood Scrubs but similar charges made from a number of sources which cannot be ignored. The honour of British Justice requires that this issue should be cleared'.[626]

[624] TNA, FO371/136396, H. Gosling, 'Advice on Evidence', 31 January 1958.
[625] SOAS, MCF Box 13, Lee and Brockway to Lennox-Boyd, 2 July 1957.
[626] Ibid.

This demand was also taken up by some branches of the MCF, as discussed above.

No investigation was undertaken and the British Government continued to deny allegations of abuse. The British strategy of denial was expressly referred to in a note from the FO to the Chancery (British Embassy, Athens) sent in February 1958, in which it was stated that regarding Application 299/57, 'it is our intention to discredit the Greek case by showing that these allegations are all part of a cynical and highly organised 'smear' campaign directed against the Security Forces in Cyprus'.[627] In order to do this, the FO requested examples of press extracts 'showing some of the reckless and irresponsible charges which have been made' and claimed 'the more extravagant they are the better'.[628]

Further denial and refutation of allegations formed the bulk of a CO document written in 1958 for submission to the ECHR. The CO submission totalled forty-one pages and detailed in great depth allegations of abuse which featured in the press, on radio broadcasts and in EOKA leaflets. In a somewhat surprising admission, the submission acknowledged that the colonial state was 'undeniably autocratic', although it vehemently rebuffed the Greek allegations and described the development of a 'deliberate calumny against the forces of law and order in Cyprus'.[629] The document claimed that 'allegations of torture and ill-treatment have played a prominent role in this campaign of vilification' which began in 1954.[630] The allegations of torture were, the document maintained, 'maliciously compiled' and 'illusory and fabricated'. Not only did the Greek Government manufacture the allegations, it was claimed, but in making such allegations it had 'deliberately abused the good offices of the Council of Europe'. [631] It was concluded that many of the allegations were 'misrepresentations, deliberate creations, in fact, in a campaign to poison the feelings of all

[627] TNA, FO371/136395, FO to Chancery (British Embassy, Athens), 14 February 1958.
[628] Ibid.
[629] TNA, FO371/136400, CO Submission, 'Allegations of Torture and Ill-treatment in Cyprus', 1958.
[630] Ibid.
[631] Ibid.

decent persons, to enlist world opinion in the struggle for the Union of Cyprus with Greece'.[632]

Suspicion that the twenty-nine allegations listed in Application 299/57 were simply part of a campaign to damage the name of the British Security Forces in Cyprus was heightened in Whitehall when it became clear that the Greek Government had not provided sufficient evidence to support its claims. In a telegram to Lennox-Boyd in February 1958, Foot referred to the 'flimsy nature' of the Greek submissions.[633] The response in Whitehall to the Greek behaviour was one of incredulity. By March 1958, an official noted that 'no proper evidence' had been submitted to support twenty-one out of the twenty-nine cases alleged by the Greek Government.[634] The official described how it was 'incredible, in view of their sweeping claims at the United Nations and elsewhere to possess almost unlimited documentation of tortures that the Greeks cannot now produce the evidence'.[635] Consequently, Vallat asked the Sub-Commission to return the remaining claims to the full Commission in order to be dismissed, arguing that there was no case to answer. Vallat recounted (based on 'inside information') that even members of the Sub-Commission were 'sickened at the Greeks' behaviour and anxious for us to take a strong line which they could then support'.[636] This gives an interesting insight into the inner workings of the Sub-Commission and the extent to which the government could influence its proceeding.

C7.2 British Investigation – Gosling

Evidence for the British response to the allegations was gathered primarily by Hilary Gosling, who embarked upon an investigation into the allegations in early 1958. Gosling, previously a Crown Prosecuting Counsel in Cyprus, was appointed as a temporary Senior Legal Assistant

[632] Ibid.
[633] TNA, FO371/136395, Foot to Lennox-Boyd, 5 February 1958.
[634] TNA, FO371/136399, ADS Goodall, 'Note on Cyprus – Human Rights', 4 March 1958.
[635] Ibid.
[636] Ibid. Vallat quoted by Goodall.

in the CO with responsibility for locating and compiling material for the preparation of the British Government's case in response to Application 299/57.[637] Gosling was required to interview witnesses – mainly those from the Security Forces – following prior agreement with the Government in order to satisfy the requirements of the Sub-Commission.[638] In order to obtain this information, the Commander-in-Chief, Roger H. Bower, was instructed by the War Office to 'provide every assistance' to Gosling.[639]

Gosling's remit caused inevitable tension between Whitehall and the colonial administration. This episode clearly exposes the conflict between the competing models of colonial and global governance during the period of decolonisation. It also clearly elucidates the increasingly difficult position that colonial governors found themselves in and, in particular, their fears of being 'hung out to dry' by the government in the metropole. Writing to Lennox-Boyd, the Acting Governor of Cyprus wrote that the instructions given to Gosling from Whitehall 'which have not even been communicated to let alone discussed with this Government' were 'entirely unacceptable to this Government' because they implied a 'lack of confidence in the normal police methods of enquiry'.[640] The instructions given to Gosling (drafted by Vallat) were to take statements under caution and to explain that legal proceedings against individuals could follow from the statements.[641] The Acting Governor's concerns were ignored by Whitehall and in a letter from lawyer Henry Steel, Gosling's remit was simply reiterated.[642]

The primary concern and suspicion of the colonial administration in Cyprus regarding Gosling's presence in Cyprus was that he was collecting information for the prosecution.

[637] TNA, FO371/136395, 'Preparation of HMG's Case', 10 January 1958.
[638] TNA, FO371/136395, Director of Personal Services, War Office, to Lieutenant-General Sir Roger H. Bower, 4 January 1958.
[639] Ibid.
[640] FO371/136395, Acting Governor to Lennox-Boyd, 17 January 1958.
[641] Ibid.
[642] FO371/136395, H. Steel to Gosling, 22 January 1958.

Correspondence between London and Cyprus demonstrates the gulf between Whitehall's concerns about its position at Strasbourg and the Cyprus government's perceived lack of respect or tolerance for international involvement in colonial matters.

Whitehall simply claimed that Gosling's instructions had been misunderstood by the colonial administration. Writing to Foot, Lennox-Boyd stated that 'Gosling's mission is not (repeat not) to prepare cases for possible prosecutions but to collect and assemble evidence relating to the Greek allegations'.[643] Lennox-Boyd did acknowledge, however, that Gosling's enquiries might reveal evidence 'which tended to show that there was substance in some of the Greek allegations'.[644] This would, Lennox-Boyd wrote, render the British strategy of 'simple denial' of the allegations at Strasbourg problematic.[645]

Even the Attorney General in Cyprus, James Henry, became involved in the question of Gosling's investigations. He wrote to CO lawyer McPetrie to explain his scepticism regarding their effectiveness.[646] Henry wrote of how the heads of the Security Forces 'would resent strongly' any approaches made to their staff which suggested that the authorities may charge them or during which members might incriminate themselves. This would, Henry, contended 'probably frustrate Gosling's mission' and cause 'damage' to Britain at Strasbourg.[647] Furthermore, Henry argued, he was certain that he would get no information from individual soldiers or policemen who he predicted 'would close up like a clam'.[648] The results for the British Government, therefore, Henry argued would be 'disappointing in the extreme'.[649] Henry also stressed that the Cyprus Government had already undertaken investigations and

[643] FO371/136395, Lennox-Boyd to Foot, 22 January 1958.
[644] Ibid.
[645] Ibid.
[646] TNA, FO371/136395, J. Henry to McPetrie, 31 January 1958.
[647] Ibid.
[648] Ibid.
[649] Ibid.

that there were no grounds for prosecution.[650] Gosling was allowed to undertake his investigations, however, and Whitehall simply overruled the colonial government and its concerns regarding his visit.

C7.2.1 Colonial Administration Resistance to Gosling

This current Chapter's broader examination of Application 299/57 more generally sheds some interesting light on the difficulties in the metropolitan-colonial-international triangle of governance, mediation and negotiation. Gosling's investigations and the reaction to them neatly encapsulate these tensions. Whilst Whitehall was pro-active in initiating an investigation into the claims (albeit in order to compile a defence of itself at Strasbourg, rather than investigate the claims in their own right), it came up against resistance from the colonial administration in Cyprus. This was for a number of reasons, but primarily because the colonial administration feared that by initiating an external investigation, the British Government was suggesting it had little confidence in the colonial administration's own investigations. Perhaps also the reluctance to permit external investigations was born out of a fear that unfavourable details about colonial governance in Cyprus might be uncovered. What this demonstrates about the British Government, however, is a shift from July 1957 when Callaghan accused it of accepting the Governor of Cyprus' reassurances that investigations had been undertaken into allegations of abuse. Britain was now, however, recognising its obligations under the ECHR (albeit reluctantly) and not simply taking the colonial administration's assurances of proper investigation at face value.

In many ways, the colonial administration was right to be fearful of Gosling's investigations. Whitehall chose an individual who was more moderate and open-minded about allegations of abuse than Whitehall itself. As his correspondence suggests, Gosling was less likely to issue a flat denial in response to allegations than Whitehall. What is interesting in this episode is,

[650] Ibid.

however, the suspicion of the colonial administration that Whitehall had initiated Gosling's visit in order to provide evidence to the prosecution at Strasbourg. This is an interesting shift in the post-World War Two imperial governance structure. Whilst previously one might have expected closer interaction and cooperation between the colonial and metropolitan governments, by the late 1950s the colonial administration was increasingly suspicious of the metropole and its links to the wider international community and structures of global governance arranged around the Council of Europe and the United Nations. Whilst Governor Harding during Application 176/56 proceedings had given the Strasbourg dimension considerable thought and attention (although he did still resent it), by the time of Application 299/57, Governor Foot had become increasingly suspicious of its interest in Cyprus. In a telegram to Higham sent in February 1959 concerning future policy with regards to Application 299/57, for example, Foot went as far as suggesting that the proceedings at Strasbourg were actively inhibiting the achievement of a peaceful political settlement in Cyprus.[651]

By January 1959, however, the Greek case against Britain was receding as the Sub-Commission decided not to continue to investigate fourteen out of the remaining twenty-nine cases. Two cases were referred back to the Commission. As regards the remaining thirteen, the Sub-Commission consulted the British and Greek Governments about an on-the-spot investigation or the hearing of witnesses in Strasbourg or elsewhere.[652] This decision prompted some back patting in Whitehall. Higham wrote to Sir John Martin, Deputy Under-Secretary in the Colonial Office, that 'we really have done remarkably well so far'.[653] Furthermore, Higham wrote, the 'findings would almost certainly not be that there was any serious torture but that there was a certain amount of rough treatment'.[654]

[651] TNA, CO936/532, Foot to J.D. Higham, 10 February 1959.
[652] TNA, CO936/532, see 'note on Application No. 299/57/57' which states that HMG could not assume that all 14 cases would not be considered.
[653]TNA, CO936/532, Higham to J. Martin, 6 February 1959.
[654] Ibid.

C7.2.2 Parallel Investigation by ECHR

Whilst the British Government was able to 'find some satisfaction that the total has been so whittled down' it was, as Burr of the CO noted, 'now brought squarely up to the point whether we are going to permit an investigation on the spot, i.e. in Cyprus, or make witnesses available'.[655] This was an investigation to be undertaken by the Sub-Commission, separate from Gosling's. This question was not new to Whitehall, as the discussion of Application 176/56 demonstrated. The CO was unsure of permitting on-the-spot investigations for two reasons: first, because of its potentially negative impact on the morale of the Security Forces and, second, due to the internal security situation.

The FO and the Solicitor General, however, held a different position. As Burr noted: 'the FO have perhaps leant a little more towards admitting the investigation, and the Solicitor General, who has been intimately concerned, has perhaps leant a little more than the FO'.[656] The FO was unsure about the most appropriate action fearing that if Britain refused to produce witnesses the Sub-Commission would be 'offended' and Britain's obligations under the ECHR would be broken 'unnecessarily'.[657] The Solicitor General, however, argued that 'ultimately, the only proper way to ascertain the truth in these cases is to examine witnesses'.[658]

Whilst Burr acknowledged that there would be concern for an on-the-spot investigation, he contended that it would 'be desirable if possible for as many cases as possible to be finally disposed of'.[659] He suggested that rather than permitting an on-the-spot investigation, witnesses could be called to testify at Strasbourg or elsewhere. This, Burr suggested, might placate public opinion in Britain: 'the production of witnesses at Strasbourg would be a step

[655] TNA, CO936/532, Note by E.C. Burr, 22 January 1959.
[656] Ibid.
[657] TNA, CO936/532, FO Confidential Note on Application 299/57, 30 January 1959.
[658] TNA, CO936/532, 'Cyprus: Human Rights', 22 October 1958.
[659] TNA, CO936/532, Note by Burr, 22 January 1959.

which would satisfy public opinion here so far as it is pressing for an investigation, and would tend towards closing the file'.[660] Whilst the proceedings at Strasbourg before the Sub-Commission were confidential, the charges made by the Greek Government were the subject of much press scrutiny in Britain. Burr noted that 'the danger is that in some cases it may be proved that there was fire behind the smoke'.[661] Burr was keen to stress that he did not

> 'depart at all from the view which I have held all through that the right course for us to pursue is to admit the fullest investigation into these cases. In present circumstances, I wonder whether we should achieve the most good and do the least harm by agreeing to produce witnesses in Strasbourg'.[662]

In response to suggestions that an on-the-spot investigation by the Sub-Commission should take place in Cyprus, Foot suggested

> 'should we not say that at this time the whole purpose of everyone concerned with Cyprus should be to seek to re-establish confidence and goodwill without which the present international initiative cannot succeed and not to keep alive past bitterness and recrimination, as the further pursuit of these charges would undoubtedly do'.[663]

Foot recommended that the British Government suggest that 'it might be helpful if the proceedings were suspended by mutual consent'.[664]

C7.3 Application 299/57 Halted

Moves were, indeed, made in February 1959, as Foot and others had hoped, to persuade the Greek Government to drop the case.[665] It was negotiations in Zurich, 6-11 February 1959, between the Greek and Turkish governments, however, that changed the course of the proceedings against Britain at Strasbourg, as Simpson has argued.[666] These talks resulted in a settlement of some sorts between the two governments. Britain was not involved in these negotiations, although it was heavily involved in negotiations during a conference at

[660] Ibid.
[661] Ibid.
[662] Ibid.
[663] TNA, CO936/532, Foot to Higham, 10 February 1959.
[664] Ibid.
[665] TNA, CO936/532, Note to Higham, 18 February 1959.
[666] A.W.B. Simpson, *Human Rights,* p.1048.

Lancaster House in London, 17-19 February 1959, which resulted in agreement of a settlement.[667] It was also agreed that proceedings under the ECHR would be terminated.[668]

Professor Waldock, an international lawyer and a member of the Sub-Commission, wrote to the Commission, on behalf of both governments to request the termination of proceedings, arguing that in order to reach

> 'a final solution of the political problems relating to the constitutional status of Cyprus…it is essential that the recent unhappy chapter in the history of the Island should be brought to a close speedily and completely and the tensions and incidents of the recent past as quickly as possible forgotten'.[669]

In order to achieve this 'final solution', imprisonment and detention of all persons connected to the emergency had ended and the colonial administration proclaimed an amnesty.[670] Interestingly, the decision to terminate had to be presented as the decision of the British Government and the Greek Government and not that of the Commission because, as Vallat explained, 'it was believed that members of the Commission were afraid lest it should appear that they were not fulfilling their duty to protect human rights under the Convention.'[671]

The FO was keen that the Commission's Report on Application 299/57 was not published and hoped that Waldock would ensure this. In correspondence with Waldock, Vallat was assured that he would 'do his best' to ensure that the Report released only limited information on the decision reached by the Commission and that 'as little as possible' was written in the Report which might 'prove offensive' to the British Government.[672] Waldock was said to be particularly sensitive to Britain's desire to avoid

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[667] See N. Crawshaw, *The Cyprus Revolt: An Account of the Struggle for Union with Greece* (London, 1978), Chapters 10 and 11.
[668] TNA, CO936/532, F. Vallat, Confidential Note, 9 April 1959.
[669] TNA, CO936/532, See Waldock's Draft Letters.
[670] TNA, CO936/532, See note by H.G. Darwin, 18 February 1959, which details the Attorney General's concerns over the proposed amnesty.
[671] TNA, CO936/532, Vallat, 9 April 1959.
[672] Ibid.

> 'the implication that after considering written evidence the Sub-Commission came to the conclusion that there was a sufficient prima facie case to justify the hearing of witnesses in a number of cases, because this might give the impression that there were substantial charges which HMG were unable or unwilling to answer'.[673]

Questions were subsequently asked in the House of Commons regarding publication of the Report by Jeger, Langford-Holt (Conservative MP for Shrewsbury) and Dobbs (Labour MP for Erith and Crayford) in June 1959. They were all told that no Report currently existed.[674] It was later said in the House in July 1959 by Profumo that 'Article 31 lays down that individual states shall not be at liberty to publish the reports of the European Commission of Human Rights'.[675] The final Report did, as Vallat had hoped, include only limited information about the case. Solicitor-General, Hylton-Foster, wrote to Vallat upon the termination of the proceedings in a celebratory manner. Hylton-Foster wrote how he 'rejoice[d] at the outcome and offer[ed] my congratulations to you whose attainment this is'.[676]

D CONCLUSION

The successful – for the British – outcome of the Zurich and London negotiations in February 1959 allowed the British Government to argue that the continuation of proceedings under the ECHR was not conducive to the peaceful resolution of political issues in Cyprus, although the result had in truth been a mixture of luck and quick thinking on the part of the British Government. Despite the Commission's reluctance to drop proceedings after allegations of human rights abuses had been aired, it eventually conceded and agreed to halt proceedings because of joint pressure from Britain and Greece. Although the British Government had not managed entirely to keep the lid on allegations of abuse in Cyprus during the emergency period, as the result of withdrawal of Application 299/57 it had managed fairly comprehensive damage limitation. This allowed the Government to revert to the rhetoric of

[673] Ibid.
[674] Hansard, HC debate, 10 June 1959 (questions by Jeger) and 17 June 1959 (questions by Langford-Holt and Dodds).
[675] Hansard, HC debate, 13 July 1959.
[676] TNA, LO2/503, H. Hylton-Foster to F.A. Vallat, 10 July 1959.

'good governance' during decolonisation, since irksome legal proceedings had been dropped and superseded by 'friendly settlement'. Thus, the narrative of peaceful decolonisation could be maintained, along the lines of model former colonies such as the Gold Coast.

At no time during the proceedings instigated by Greece or even later did concern for human rights tailor, influence or modify the manner of British governance in the colonies. On the contrary, practice in the colonies – imbued ever with overt and covert racism – flew in the face of the very human rights directives to which Britain had been a key signatory. As it was, Britain ducked and dived in the matter of compliance, and had to be dragged, if not quite kicking and screaming, into the era of human rights - just weeks after the conclusion of the Zurich and London negotiations, the events of 3 March 1959 in Kenya and Nyasaland up-ended the narrative of peaceful decolonisation and brought further, extensive and enduring embarrassment to the British Government and its human rights record in the colonies. This is the focus of Chapter Four.

CHAPTER FOUR

THE BREAKING POINT: 3 MARCH 1959 in KENYA and NYASALAND

PART I

INTRODUCTION

A1 Preamble

> 'The problem of Nyasaland is, I am afraid, an aspect of a world problem. It is the problem of the second half of the twentieth century. It is how peoples of different colours and races and traditions can live together in harmony and friendship. It confronts us in every continent and in almost every country. It confronts us even in London and in Nottingham. For years white nations have dominated by reason of their superior education and power. But there is evidence everywhere that the other peoples are growing up. They are no longer prepared to accept domination or an inferior status, either politically or socially… We must learn to accept this dramatic change – and it is a dramatic change – just as we have one day to accept the fact that our children have grown up and can no longer be treated as children. If we accept this graciously and willingly, and not grudgingly and reluctantly, there is hope for the future'.[677]

Lord Silkin, solicitor and Labour politician, addressed the House of Lords during a debate on unrest in Nyasaland and articulated the reality facing the late colonial state in the spring of 1959. By March 1959, change was afoot at home and in the colonies, the end of empire was approaching and Britain should, Silkin argued, be accepting of that reality.

Silkin's assessment of the realities that faced the late colonial state came in the wake of the outcry which followed events in March 1959, during which eleven detainees in the Hola detention camp in Kenya and twenty Africans in Nkata Bay in Nyasaland were unlawfully killed. The conduct of the colonial authorities in these African territories had been met with criticism in the metropole previously but never before on the scale following 3 March. That day marked both the start of the internationalisation of Britain's African colonial possessions

[677] Hansard, HL Debate, 24 March 1959.

and the beginning of their end. The self-congratulatory feeling within Whitehall in early 1959 that Britain had emerged rather well from its encounter with the ECHR over Cyprus was short-lived. Just as Britain found itself no longer having to defend itself against allegations of ill-treatment in Cyprus at Strasbourg, it now faced the challenge of trying to mop up the political and moral fall-out which followed the events at Hola and Nkata Bay.

A2 Beginning of the End

A2.1 Hola, Kenya

On 3 March in Kenya, eleven detainees were brutally killed by their warders at the Hola detention camp. An initial cover-up of the incident attributed the deaths of the detainees to water poisoning in an attempt to conceal the abuse suffered at the hands of the warders. Subsequent investigations revealed that the detainees had been beaten to death.

A2.2 Nkata Bay, Nyasaland

On the same day, in Nyasaland, twenty Africans were shot dead by a detachment of the King's African Rifles in Nkata Bay following the declaration of emergency at midnight on 2-3 March.

These events, and in particular Hola, prompted an unprecedented outcry. Members of the general public wrote to the Colonial Secretary, Lennox-Boyd, expressing outrage. One letter claimed with regards to Hola, for example, that 'one might expect eleven prisoners to be battered to death in a Nazi concentration camp but not in a prison in a British colony'.[678] The incidents also attracted attention from the press. In May 1959, for example, *The Economist* questioned whether 'should not the opportunity be seized at once, without long protraction of the cold war in the colony, to prepare for the inevitable?' because 'nobody should

[678] TNA, CO822/1260, J.M.H. McMurray to Lennox-Boyd, undated.

underestimate the international damage done by terrible incidents such as that at the Hola prison camp'.[679]

Lennox-Boyd's successor, Iain Macleod, later remembered 3 March as 'the decisive moment' when it became evident that Britain 'could no longer continue with the old methods of government in Africa'.[680] Not only could Britain no longer continue with the old methods of government in Africa, but its governance elsewhere in the Empire was being increasingly challenged. Colonial policy was not rewritten in the wake of 3 March; it was gradually abandoned. Following Cabinet discussion, Macleod described how people were 'shocked and horrified by what had happened'.[681] The incidents at Hola and Nkata Bay prompted a shift in perceptions of what constituted appropriate colonial governance. Force was no longer permissible in controlling colonial populations.[682] Following 3 March, as Macleod had noted, the only option was 'inexorably a move towards African independence'.[683]

It was indeed, as Hyam and Louis have claimed, this 'single fateful date' that marked the 'moral' end of the British Empire in Africa.[684] In June 1959, Macmillan noted in his diary that 'we are in a real jam'.[685] From October 1959, immediately following the Conservative election success and the appointment of Iain Macleod, the empire disintegrated wholly and surprisingly quickly.[686]

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[679] 'Facing Mount Kenya', *The Economist,* 9 May 1959, p.502
[680] RHL, MSS.Afr.s.2179, Transcript of interview with Iain Macleod and W.P. Kirkman, 29 December 1967.
[681] Ibid.
[682] See RHL, MSS.Brit.Emp.s.537, Sir Hilton Poynton interview by Sir Walter Coutts, 20-21 October 1968.
[683] RHL, MSS.Afr.s.2179, I. Macleod interview, 29 December 1967.
[684] R. Hyam and Wm. Roger Louis (eds), *British Documents on the End of Empire, Series A, Volume 4: The Conservative Government and the End of Empire, 1957-64* (London, 2000), p.xlv.
[685] A. Horne, *Macmillan: the official Biography, 1957-86* (London, 1989), p.174.
[686] R. Hyam and Wm. Roger Louis (eds), *British Documents on the End of Empire,* p.xxvii.

A3 Breaking Point Reached

This Chapter demonstrates that whilst the British Empire had faced serious challenges with the Greek Applications at Strasbourg, it was the events of 1959 in Kenya and Nyasaland that proved to be the breaking point for empire. Whilst historians such as Hyam and Louis and Darwin in his article on the Central African Emergency have indicated that March 1959 was a 'major turning point in the post-war history of British Colonial Africa', this Chapter intends to amplify these assertions and demonstrate just why this was the case.[687] It expands on Hyam's and Louis' assertion that 3 March marked the 'moral' end of empire, a quotation which is often repeated in the historiography but on which little in-depth research or discussion has focused. It demonstrates that, contrary to the assertions of historians such as Samuel Moyn, concern for human rights did emerge prior to the 1970s. Human rights were the subject of heated debate in parliament in mid-1959 and sparked considerable public debate, too. This Chapter argues that it was the cumulative effect of previous allegations of ill-treatment during the earlier phases of the Kenya Emergency, in addition to the allegations levelled by the Greek Government at Strasbourg, that prompted such an outcry in response to the events in Kenya and Nyasaland on 3 March and led to the demise of empire.

Although the deaths on 3 March were comparatively few in number compared with the number of deaths recorded during the emergencies as a whole they were the final straw, so to speak, in maintaining the moral credibility of the British colonial project. Coming in the wake of numerous allegations of abuse in various British colonies, the backlash in Britain including, even, from within the Conservative Party, was simply too great for Macmillan to weather. A domino effect ensued, and Cyprus, Kenya and Nyasaland embarked upon independence from 1959 onwards. A repeat of Mau Mau and a protracted and painful emergency period was to be avoided at all costs in Nyasaland. In Kenya, a repeat of the

[687] J. Darwin, 'The central African emergency', p.218. Colin Baker has also rightly argued that the 1959-60 crisis 'represented a remarkable turning point in the history of Nyasaland and Central Africa as a whole'. See C. Baker, *State of Emergency*, p.vii.

escalation of allegations of abuse in Cyprus to the international level at the European Commission of Human Rights was also to be avoided. No cases under the ECHR, like Applications 176/56 and 299/57, were brought following 3 March, although there was some suggestion that Kenya and Nyasaland might petition Strasbourg via Iceland or Norway.

A4 Lead Up to 3 March

This Chapter is in two parts: the first focuses on Kenya, and the second on Nyasaland. Kenya dominates this Chapter, due simply to the colony's unique position within empire and the abundance of archival material available.

Section one of this Chapter examines events leading up to 3 March 1959. First, it examines allegations of human rights abuse in Kenya pre-1959. The research of David Anderson and Caroline Elkins offers comprehensive evidence which catalogues this abuse. This section, however, offers examples of the types of allegations levelled against the administration during the Kenya Emergency and examines, in particular, the response in London to such allegations in order to underscore the cumulative effect of such allegations by 1959. It focuses, in particular, on the response to allegations made by former British officer, Phillip Meldon. Second, events at Hola are examined, in addition to the domestic response in Britain from the CO, MPs, the press and the general public.

Section two of this Chapter focuses on Nyasaland and begins by examining briefly the events which lead up to the declaration of emergency on the night of 2-3 March, in addition to the death of twenty Africans on 3 March. It then examines the response in Britain to news of the deaths and the outcry generated by the publication of the Devlin Report in July of that year. Evidence from the Devlin Papers held at Rhodes House Library in Oxford is considered.

Finally, this Chapter concludes by assessing the impact of both events on 3 March on 'this fateful date' and the subsequent fate of the empire.

A5 Events of 3 March 1959

A5.1 Hola

A Press Office hand out released on 4 March 1959 in the *Kenya News* by the Department of Information in Nairobi stated that the death of ten detainees (ten died on 3 March and a further detainee died on 6 March), 'occurred after they had drunk water from a water cart which was used by all members of the working party and by their guards'.[688] This was the colonial administration's initial attempt to cover-up the brutal deaths of eleven detainees. A subsequent press release on 12 March, however, stated that 'the medical reports indicate that there were injuries on the bodies which may have been due to violence'.[689]

On 6 May 1959, in the Senior Resident Magistrate's Court in Mombasa, W.H. Goudie, the Coroner, rejected the explanation that the eleven detainees died from drinking contaminated water. Given that none of the thirty-four detainees in the adjoining working party or the warders, all of whom had been drinking out of the same water cart, suffered any ill-effects 'whatsoever', Goudie held that it was 'most improbable that that contaminated water might have had anything to do with these deaths'.[690] Rather, Goudie stated, referring to the post mortem reports, 'in each case death was found to have been caused by shock and haemorrhage '*due to multiple bruising caused by violence''.* He also listed 'contributory factors' such as shock and haemorrhage, which included fractured jaws, skulls, knee-caps, forearms and laceration of mid-brain.[691] Goudie stated that

[688] Documents relating to the deaths of eleven Mau Mau detainees at Hola Camp in Kenya, Cmnd. 778 (London, 1959), p.18.
[689] Ibid, p.18.
[690] Ibid, p.2.
[691] Ibid, p.4.

> 'the evidence is conclusive that the violence inflicted on all the deceased was inflicted in the course of a major operation…to compel detainees who had refused to work on any work not directly connected with their own well-being, such as domestic duties and collecting firewood, to do manual labour on the ALDEV Tana River Irrigation Scheme, namely, to dig an irrigation trench'.[692]

The detainees, Goudie concluded, had been beaten to death by their warders when attempting to force them to work.

A5.2 Nkata Bay

In relation to Nyasaland, the Devlin Report published in July 1959 produced an equally if not more damning evaluation of colonial governance and described the territory as a 'police state', albeit only temporarily. On 3 March, as part of 'Operation Sunrise', troops from the King's African Rifles opened fire on a group of people who had assembled on the dockside of Nkata Bay which resulted in the deaths of twenty Africans.[693]

In response to these events and the escalation of the situation in Nyasaland, *The Observer* reported in July 1959 that 'the Government seems to be running out of luck'.[694] Ministers, the article argued, 'are not being beset by just one little local difficulty; they are being plagued by a swarm of them. There is Hola. There is the Devlin Report. There is the behaviour of the police'.[695] The article asked 'what effect these issues, taken as a whole, are going to have upon the electorate?' and surmised that 'the middle of the roaders may desert in their thousands… Hola, Devlin, the police, could, if the Government is not careful, prove to be the turning-point'.[696]

[692] Ibid, p.4.
[693] J. Darwin, 'The central African emergency', p.224.
[694] 'A Swarm of Local Difficulties', *The Observer,* 26 July 1959, p.13.
[695] Ibid.
[696] Ibid.

PART II: KENYA

B1 The Kenya Emergency: pre-1959, allegations of abuse and official response

> 'it is necessary to accept the premise that the British Government is prepared to do its utmost to keep Kenya and East African (sic) within the Western sphere of influence…a horror of violence has given the Government an opportunity for firm action in this Colony that it has not yet had and is not likely to get again.'[697]

These words, written by an Executive Officer for the Rift Valley Provincial Emergency Committee in January 1954, expressed both (a) the Kenya Government's determination to hold on to Kenya, despite an escalating security situation, and (b) the state's tolerance for, perhaps even willingness to countenance and accept, the employment of 'firm action' in maintaining Kenya as a British territory. The term 'firm action' was, in fact, a euphemism for a system of force and, at times, extreme violence enacted by the colonial authorities and tolerated by the British Government.

B1.1 Evidence of Widespread and Endemic Abuse

It is well established in the historiography on the end of empire in Kenya that force and coercion were routinely employed by the colonial state and sanctioned by the British Government in London. The papers of Arthur Young, Commissioner of Police in Kenya, and Eric Griffiths-Jones, Attorney General in Kenya, held at Rhodes House Library, clearly document the use of force early on in the emergency period, as do General Sir George Erskine's recently published collected papers.[698] Furthermore, evidence drawn from the recently released Hanslope Disclosure indicates that there was concern in Britain about the excessive use of force in Kenya as early as March 1953, just five months after the declaration of emergency in October of the previous year.

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[697] TNA, FCO141/7223, Executive Officer, 28 January 1954.
[698] H. Bennett and D. French, *The Kenya Papers.*

In late March 1953, for example, Colonial Secretary, Oliver Lyttelton, wrote to Governor Baring to inform him of a motion tabled for discussion in the House of Commons. The motion concerned the treatment of Kikuyu prisoners in Kenya and narrated that the House was 'disturbed' by reports that security forces shoot prisoners or other Africans who failed to stop when asked to.[699] The CO also expressed concern regarding this policy and the high number of shootings in which it resulted.[700]

The colonial administration did at this stage attempt to take a hard-line approach to the use of excessive force, albeit not particularly successfully. In a directive to the Commissioner of Police, Provincial Commissioners and District Commissioners, Governor Baring stated that he was:

> 'bound to ask all ranks that there should be no behaviour of the nature alleged [the beating and maltreatment of Kikuyu]. If in future there are good grounds to believe that inhuman methods have been used severe disciplinary action will be taken against those responsible.'[701]

The Governor's directive was publicised and reported in the British press. In *The Times* on 18 April 1953, for example, the Kenya Government's response to allegations of the use of 'brutal methods' by security forces in their interactions with the general public, and particularly Kikuyu suspects, was publicised in an article entitled 'Kenya Security Methods: Allegations of Brutality'.[702] In a follow-up editorial, reference was made to the allegations of brutality. It was argued that such incidents were 'too frequent throughout the emergency to be discounted' and claimed that the acts were 'repulsive'. [703]

[699] TNA, FCO141/5659, O. Lyttelton to E. Baring, 21 March 1953.
[700] TNA, FCO141/5659, P. Rogers to H.S. Potter, 12 February 1953.
[701] TNA, FCO141/5659, Baring to Commissioner of Police and others, 11 February 1953.
[702] 'Kenya Security Methods: Allegations of Brutality: Government's Reply', *The Times,* 18 April 1953. See also 'Security Forces in Kenya: General Calls for Strict Discipline', *The Times,* 4 July 1953.
[703] 'Progress in Kenya', *The Times,* 28 April 1953, p.7.

B1.2 Label 'Police State' applied to Kenya

By late 1954, reports from within the Kenyan administration began to voice concern over the administration of justice in Kenya. Warnings came in November 1954 from Arthur Young, Commissioner of Police in Kenya, that unless law enforcement was regulated 'the term 'Police State' could be rightfully applied' to Kenya.[704] Young also stated in a letter to the Colonial Secretary that 'tyranny exists which is largely due to the lack of impartial law enforcement as well as to enforcement which is not lawful'.[705] Lennox-Boyd later spoke of Young's time as Commissioner and suggested that Young's 'difficulties' lay in the fact that 'he envisaged the sort of English bobby and the universal respect which he might demand, which was wholly out of tune with reality and of course he made it more and more difficult for the district administration'.[706] Colonial policing had, in fact, undergone reform between 1950 and the beginning of the emergency in 1952 in an attempt to bring colonial policing in Kenya in line with the standards of policing in Britain.[707] Young lasted less than one year in Kenya and resigned on 22 December 1954, three months prior to the pre-set date of the termination of his contract in March 1955.

B1.3 Catalogue of Allegations

Further concerns were raised by Assistant Commissioner of the Nyeri Area, Hadingham, who reported that many believed that the Kikuyu Guard 'possess the power of 'life and death'' and that 'abuses of this power are a daily occurrence'.[708] At the same time, reports from another Assistant Commissioner, Macpherson, reiterated the level of abuse when he claimed it was evident that 'the Home Guard have become a law unto themselves and are dispensing

[704] RHL, Mss.Brit.Emp.s.486, A. Young to Lennox-Boyd, 8 November 1954.
[705] Ibid.
[706] BOD, MSS.Eng.C.3395, Alison Smith interviewing Lord Boyd on East Africa, 13 December 1974.
[707] D. Throup, 'Crime, politics and the police in colonial Kenya, 1939-63', D. Anderson and D. Killingray (eds), *Policing and Decolonisation,* p.129. See also G. Sinclair and C. Williams, ''Home and Away': The Cross-Fertilisation between 'Colonial' and 'British' Policing, 1921-85', *The Journal of Imperial and Commonwealth History* 35.2 (2007).
[708] RHL, Mss.Afr.s.1694, Report by K.P. Hadingham, 14 December 1954.

Summary Justice under the very noses of Police Stations'.[709] Attorney General Whyatt also intervened in January 1955 and called for an enquiry into the establishment of screening camps and the treatment of prisoners in the camps, but abuses still went unchecked.[710] In 1955, Whyatt described in a letter to Young how there was 'so little principle, so little honesty' in Kenya during the Emergency period.[711]

Allegations of ill-treatment continued to emerge from Kenyan detention camps and police stations, a considerable number of which reached Britain. The Anti-Slavery Society papers held at Rhodes House Library, for example, include a statement by Captain Ernest Law, a former Chief Officer of the Kenya Prison Department, alleging the ill-treatment of African prisoners and detainees at the Kamiti Prison which he claimed to have witnessed during his own detention in the prison in 1958.[712] Labour MP John Stonehouse interviewed Law on a number of occasions and called for an enquiry into the allegations he had made. Lennox-Boyd refused this request in December 1958.[713] Stonehouse continued to press Lennox-Boyd for an investigation in 1959 and the case even reached the Commons.[714] Stonehouse described how Law's accounts of his time in Kenya were 'so horrifying I found them difficult to believe'.[715]

Allegations were also made by Eileen Fletcher, a former Rehabilitation Officer in the Department of Community Development and Rehabilitation of the Kenya Government.

[709] RHL, Mss.Afr.S.1694, Report by D. Macpherson, 23 December 1954.
[710] RHL, Mss.Afr.s.1694, Whyatt on Screening Camps, 3 January 1955.
[711] RHL, MSS.Brit.Emp.s.486, Whyatt to Young, February 1955. See also TNA, FCO141/7211 for Young-Whyatt correspondence.
[712] Law served in the Prison Department as a Chief Officer and was then imprisoned in Kamiti Prison after losing his job and being unemployed for a year. See RHL, MSS.Brit.Emp.s.22/G546, 'Press release for Sunday 1 February'.
[713] J. Calder (ed), *Gangrene,* p.93.
[714] RHL, MSS.Brit.Emp.s.22/G546, Lennox-Boyd to Stonehouse, 24 December 1958. See also Hansard, HC Debate, 5 and 12 February 1959.
[715] J. Calder (ed), *Gangrene,* p.94. See also RHL, MSS.Brit.Emp.s.22/G546, Statement by Captain Law, undated, for details of Law's allegations.

Fletcher's allegations have been well documented in the secondary literature.[716] In May 1956, Fletcher published *Truth About Kenya,* an eyewitness account of her time in the colony.[717] The Anti-Slavery Society and the Fabian Society, both based in Britain, took particular interest in Fletcher's allegations.[718]

Allegations of human rights abuses were not confined to Britain. Although African colonial matters were traditionally viewed by the British Government as being immune from international probing in the early 1950s, unlike Cyprus, communications to the United Nations in 1953 suggest that Kenya did, in fact, attract international attention. The UN received letters from individuals and organisations based in Britain, the USA, Canada and even Australia. This correspondence reached the UN in New York and from there was passed to the FO in London by the UK Delegation. As with the correspondence regarding Cyprus in the previous Chapter, there was little or no response from the FO. Similarly, all letters were anonymous.

Correspondence varied in its range and substance. A common thread, however, was the comparison of British conduct in Kenya to that of the Nazis. A telegram addressed to the United Nations from an individual in Canada received in March 1953, for example, made this comparison. The author wrote to

> 'call your [the UN] attention to the rounding up of the so called Mau Mau terrorists in Kenya Africa driven to dispair (sic) over the prospect of being crowded to the wall by a foreign invader who has no right to force her surplus population into the houses and homes of other people'. [719]

Defending Mau Mau action during the Emergency, the author stated: 'those natives are doing what the invader did when Germany was at their door steps in the last war. They resist'.[720]

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[716] See D. Anderson, *Histories of the Hanged,* p.323 and C. Elkins, *Britain's Gulag,* p.287.
[717] E. Fletcher, *The Truth About Kenya: An Eyewitness Account* (London, 1956).
[718] See RHL, MSS.Brit.Emp.s.22/G540 (Anti-Slavery Society) and MSS.Brit.Emp.s.365, Box 119 (Fabian Society).
[719] TNA, FO371/107138, Individual in Canada to UN, 31 March 1953.
[720] Ibid.

The comparison to the Nazis is a recurring theme and is explored in greater detail later in this Chapter.

A letter addressed to Winston Churchill from Australia in October 1953 wrote of 'the cruelty of your Government and Armed Forces towards the Kikuyu people in Kenya, and especially towards women and children, under the pretext of maintaining law and order'.[721] The letter claimed that 'our information is that your Government is treating these people in Kenya with shocking brutality'.[722] A letter from an anonymous Australian NGO expressed 'horror and indignation at the reports of the massacre and inhuman torture of the people of Kenya, including even children'.[723]

A letter from another anonymous Australian NGO demanded that Britain 'recognise and respect the elementary, democratic rights of the people of Kenya' as articulated in the UN Charter and the UDHR.[724] Most damning for Britain, the letter described how 'to freedom loving people such acts of brutality are reminders that fascism still shakes the world'.[725]

Dissent about British Government methods of control in Kenya and comparisons to Nazi rule emerged also from within Britain. An anonymous NGO based in Britain, for example, demanded that Britain 'cease [the] ruthless murder bombing and destruction [of] Africans'.[726] They urged Britain to stop, as they described it, the crimes that were tantamount to 'genocide'.[727]

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[721] TNA, FO371/107139, Letter from Australia to Winston Churchill, 8 October 1953. This letter is addressed 188 George Street, Sydney, which in 1953 was home to the Ironworkers' Building. The 16 signatories include at least one lawyer. See T. Irving & R. Cahill, *Radical Sydney: Places, Portraits and Unruly Episodes* (Sydney, 2010), p.283.
[722] Ibid.
[723] TNA, FO371/107139, Australian NGO, 14 October 1953.
[724] TNA, FO371/107139, Australian NGO, 19 October 1953.
[725] Ibid.
[726] FO371/107139, British NGO, 23 November 1953.
[727] Ibid.

Little information about the authors of these letters is available, as with those discussed in the previous Chapter regarding Cyprus. In the early 1950s, therefore, such allegations could be and were met with a wall of silence. As the emergency periods intensified and allegations increased, dismissal of such communications was, however, no longer a strategy that the British Government could adopt.

Although it was known as early as 1953 (Elkins dates this to early 1957) that there was scope for abuse under emergency powers, it was not, as this Chapter argues, until the late 1950s that Whitehall fully acknowledged the severity of the allegations and took note of the outcry from within Parliament and amongst the general public.[728] This increased concern in the later 1950s was, in part, symptomatic of the policy-making shift from periphery to metropole as the process of decolonisation accelerated across the British Empire, a shift which also affected security policy.[729]

B2 CO Response

The CO did respond to some specific allegations of abuse, however, before 1959, such as those made by Phillip Meldon, a former British officer, who had worked in detention camps in Kenya. Meldon first published his allegations in *Peace News* and *Reynolds News* in January 1957. He then wrote a personal letter to Lennox-Boyd.[730] Meldon's list of accusations was long – from the handcuffing of detainee Rogers Komo for twelve hours whilst deprived of food and water at Marigat to a new Security Officer at Tebere kicking a detainee head first into a container of scalding maize meal.[731] These allegations were, however, immediately written off by the Head of the East Africa Department, Will Mathieson, as 'fictitious and irresponsible'.[732] The Department also questioned the delay between Meldon's service in

[728] C. Elkins*, Britain's Gulag,* p.304.
[729] D. Killingray and D. Anderson, 'An Orderly Retreat? Policing the End of Empire', p.2.
[730] C. Elkins, *Britain's Gulag,* p.293.
[731] TNA, CO822/1237, P. Meldon to Lennox-Boyd, received 4 February 1959.
[732] TNA, CO822/1237, W.A.C. Mathieson, undated.

Kenya (1954-56) and the making of the allegations (1957). Ian Buist in the East African Department of the CO queried whether 'his conscience has been asleep for 18 months?'[733] The CO was, nevertheless, concerned that Meldon's revelations could provoke a negative response in Britain if published by the press. Although they did not expect a 'great public outcry', the CO was certainly concerned about the effect of such allegations in the United States, as was the Colonial Attache's Office in Washington D.C.[734] C.P.S. Allen of the Colonial Attache's Office wrote to Mathieson that 'if and when this affair hits the headlines in the press, there may be repercussions in this country which we should like to be in a position to refute if possible'.[735] By March 1957, however, it was reported by the Colonial Attache's Office in Washington that Meldon's allegations had attracted no publicity, 'not even by the American Committee on Africa'.[736] In Britain, there was also little response to Meldon's accusations. As Mathieson noted, 'only one member of the public and one M.P., Mr Brockway, thought it necessary to raise the matter with the Secretary of State'.[737]

The CO did not reject any of Meldon's claims outright. An enquiry by the Kenyan Government found that Meldon's 'allegations were for the most part unfounded' and that 'where there *was* any substance in them, they were dealt with as they should be, by Government Officers on the spot'.[738] There is no evidence in this file to suggest that the CO either questioned or disputed the Kenya government's reassurances that such abuses were not condoned in Kenya, nor is it clear how far those in London pushed the colonial administration to provide concrete evidence of the alleged falsity of Meldon's claims. There was certainly no independent judicial enquiry undertaken into the allegations.[739] In a CO note, the Kenya Government's 'readiness and desire' to investigate all allegations was praised, which suggests

[733] TNA, CO822/1237, Buist to Mathieson, January 1957.
[734] Mathieson predicted little reaction to the allegations but still corresponded with the USA. See TNA, CO822/1237, Mathieson to British Embassy (Washington), 12 March 1957.
[735] TNA, CO822/1237, C.P.S. Allen to Mathieson, 11 January 1957.
[736] TNA, CO822/1237, D. Williams, British Embassy (Washington) to Mathieson, CO, 20 March 1957.
[737] TNA, CO822/1237, Mathieson to British Embassy (Washington), 12 March 1957.
[738] TNA, CO822/1237, Allegations by Mr. Philip Meldon, undated.
[739] C. Elkins, *Britain's Gulag,* p.295.

Whitehall was satisfied with the handling of the situation in Kenya.[740] This acceptance of the Kenya Government's reassurances is characteristic of London's approach to the majority of allegations of injustice which emanated from Kenya during the emergency period.

Barbara Castle, for example, later recounted that, despite the fact she had showed Lennox-Boyd first-hand evidence of human rights abuses in Africa and Cyprus, 'he didn't want to know about the abuses of human rights that were taking place' because, according to Castle, he had complete confidence in the Governor of Kenya and the Commissioner of Prisons.[741]

The conclusion that Meldon's claims were only 'for the most part' without proof is revealing. It indicates that the governments in Kenya and London were aware that derogations of human rights were taking place in detention camps but superficial investigations were deemed adequate to allay concerns. Moreover, the British Government was willing to take the Kenya administration at its word. This entailed, more often than not, outright dismissal of the claims and invariably the character assassination of the complainant. Meldon's allegations, for example, were dismissed as spurious, and he was written off as a 'thoroughly unreliable character' because of his reputation as a 'heavy drinker'.[742] This was in spite of the good reports that Meldon received from his superiors during his time in Kenya.[743]

The CO's response to Meldon's claims and other claims was somewhat cavalier. Not only did it unequivocally accept the Kenya Government's conclusion that Meldon's claims were spurious, but it was cavalier in its response. Buist, for example, noted that 'it is, of course, an advantage of the extreme multiplicity of the allegations that we can deal with them in an

[740] TNA, CO822/1237, Allegations by Mr. Philip Meldon, undated.
[741] RHL, Mss.Brit.Emp.s.527/8 (1), End of Empire Transcripts, Kenya Vol. 1.
[742] TNA, CO822/1237, Officer Administering the Government of Kenya to Colonial Secretary, January 1958.
[743] C. Elkins, *Britain's Gulag,* p.293.

omnibus edition which will avoid Mr Brockway concentrating too much on detail.'[744] Brockway was the only MP to have noted concern over Meldon's accusations, according to Mathieson, as discussed above.[745]

By late January 1959, the CO was well aware of the extent of abuse in Kenya detention centres and realised that the administration was unlikely to be found in the clear. Buist recounted in response to allegations by ex-prison warder, Shuter, for example, that it was unlikely that the prisons administration would be cleared of all accusations because 'my impression of some of the police and prisons people I met when in Kenya was that a good many instinctively belonged to the 'treat-'em-rough' school'.[746]

A letter from a member of the public to Hubert Ashton MP also alerted the CO to injustice in camps in 1959. Mr Young recounted how his daughter, on a recent visit to East Africa, 'was appalled to learn that among the prisoners on Manda are fifty men of an intellectual type who are held under Emergency Regulations and have never been brought to trial' and found it 'outrageous' that 'in a country for which our Government holds the ultimate responsibility, that men, probably innocent, can be imprisoned without trial for over six years'.[747] Young was referring to the detention camp on Manda Island.

Young's disappointment with colonial policy would not have come as any surprise to the CO. Mathieson had warned Assistant Under-Secretary Gorell-Barnes in 1957 that 'we are likely to come under increasing pressure regarding the continued detention of the 'Manda Island' type of detainee'.[748] In a CO note it was claimed rather flippantly that detention without trial was 'admittedly, an unusual measure' but maintained that 'no-one can deny that it has been

[744] TNA, CO822/1237, Buist, 1 March 1957. Buist was seconded to the Kenya Government, 1954-56.
[745] TNA, CO822/1237, Mathieson to British Embassy (Washington), 12 March 1957.
[746] TNA, CO822/1271, Buist, 30 January 1959.
[747] TNA, CO822/1333, A.E. Young to H. Ashton, 22 January 1959.
[748] TNA, CO822/1234, Mathieson to Gorell Barnes, 14 March 1957.

necessary in Kenya to bring back the country to something approaching normality'.[749] The note further justified the measure by claiming it was necessary to postpone the sentences of the majority of Mau Mau 'because that is the only way they can go for rehabilitation', a process purported to yield 'amazing results'.[750] The argument that the purpose of detention camps was for the rehabilitation rather than the punishment of a delusional and savage Mau Mau population was a compelling one. The well-worn argument that detention was necessary for the maintenance of law and order sought to legitimise the imprisonment of thousands of suspected Mau Mau sympathisers.[751]

B3 Disquiet and Concern Widespread

B3.1 International Committee of the Red Cross

Colonial governance in Kenya was not immune from external probing during the emergency period. The International Committee of the Red Cross proposed to visit Kenya in 1957. This received a reasonably warm welcome from the CO, just as with early ICRC visits to Cyprus because, as Mathieson wrote to MacPherson (Permanent Under-Secretary for the Colonies), the visit would 'no doubt have some value' in countering the current demands for a judicial commission of enquiry into the conditions of Kenyan detention camps and prisons.[752] The ICRC's report was, on the whole, favourable to the Kenyan government. In a letter sent to the *East Africa Standard* by two delegates of the ICRC who had visited a total of fifty two institutions where Mau Mau detainees were held, Dr Henri Ph. Junod and Dr Louis Galland described how they expressed 'their appreciation for the courtesy extended to us by all concerned'.[753] The delegates concluded by stating that 'we think it is our duty to state at this stage our considered opinion that all has been, and is being, done to respect the international

[749] TNA, CO822/1333, Release of detainees and persons under restriction, undated.
[750] Ibid.
[751] TNA, CO822/1334, Lennox-Boyd to Macmillan, June 1959.
[752] TNA, CO822/1258, Mathieson to J. MacPherson, 21 January 1957.
[753] RHL, Fabian Society, Box 119, Letter to *East African Standard* from ICRC delegates, 11 April 1957.

principles accepted in the custody of detainees and convicts, within the rules embodied in the Emergency Regulations'.[754] The report was not, however, entirely favourable to the government and the CO, in particular, was keen to minimise the impact of some of the report's negative comments. Buist wrote, for example, that 'if this report is ever to be made public we should…dilute the comment on corporal punishment'.[755] The findings of a second mission in July 1959 were, however, far more negative than that of 1957 and it reported 'complaints of bad and even cruel treatment'.[756]

B3.2 Questions in Parliament

During this period, MPs were becoming increasingly aware of allegations of human rights abuses, and it became more and more common for detainees in Kenya to write to MPs at Westminster.[757] In June 1958, for example, Barbara Castle questioned Lennox-Boyd whether he was aware that 'almost weekly, hon. Members of this House are now receiving letters, not merely from these out-and-out Mau Mau convicts but from detention camps throughout Kenya?'[758] The Colonial Secretary responded that the letters were 'all part of a campaign to try to smear the security forces and the Administration in Kenya'. [759]

Questions about conditions at Lokitaung, for example, had been raised in the House of Commons throughout June and July of 1958, in particular by Barbara Castle and John Stonehouse. This followed the publication of allegations by five prisoners in a letter smuggled out of the prison. Their allegations related to the inadequacy of water supplies, censorship of mail and visits from relatives. One allegation stated that prisoners were 'compelled to draw their water from a well condemned by doctors and in which dogs' carcasses and filth had

[754] Ibid.
[755] TNA, CO822/1258, Buist, 29 August 1957.
[756] TNA, CO822/1261, ICRC Report from 2nd Mission, 1959.
[757] RHL, MSS.Brit.Emp.s.22/G546. See letters to Stonehouse.
[758] Hansard, HC Debate, 17 June 1958.
[759] Ibid.

been thrown for years'.[760] In June 1958, Lennox-Boyd read out to the House a preliminary report undertaken in Kenya regarding the conditions in Lokitaung. The report concluded that 'as a result of the investigation which has been completed, the Government is satisfied that the allegations are unfounded'.[761] Six days later, Lennox-Boyd was asked by MP Fenner Brockway whether an independent investigation would be undertaken into conditions at Lokitaung, to which the Colonial Secretary responded that he would not instruct such an investigation.

A further letter written by the detainees at Lokitaung Prison in September 1958 to John Stonehouse MP argued that the Secretary of State for the Colonies had wilfully and deliberately misrepresented the situation in Lokitaung Prison to the House of Commons.[762]

The prisoners at Lokitaung touched on one particularly sensitive issue for the CO and one which occupied much of its time from 1957 to 1959: the continuation of emergency powers. The prisoners wrote how they felt that

> 'the deliberate dragging on of the State of Emergency in this country is hampering our progress and is not contributing favourably to democracy so much professed by Britain. It is obvious that the Government is retaining the Emergency laws not for security reasons but for political reasons. There is no greater crime for a Government than to use Emergency laws to suppress peoples legitimate nationalistic aspirations. This is exactly what is taking place in Kenya with connivance of H.M. Government in the United Kingdom'.[763]

B4 Emergency Regulations and ECHR

This 'connivance' of the British Government was characterised by a great deal of discussion in the CO from 1957 until 1959. This discussion, which also included Colonial and FO lawyers and the Governor of Kenya, centred round whether emergency powers could be permitted during periods when an emergency did not strictly exist. This is explored in greater detail in

[760] Ibid.
[761] Hansard, HC Debate, 11 June 1958.
[762] RHL, MSS.Brit.Emp.s.22/G546, Prisoners at Lokitaung Prison to Stonehouse, 3 September 1958.
[763]Ibid.

Chapter Five. From 1957, various ways in which detention without trial could be sustained other than in an emergency setting in a so-called 'twilight period' (a situation where it was possible that a full scale emergency might develop) were debated as it became increasingly clear that the public security risk was diminishing.

By 1958, the CO was not able to conceal the inconsistency between, on the one hand, Britain's international commitments to human rights and, one the other, its dismissal of these obligations in the colonies. Indeed, the CO in London openly admitted this contradiction. Colonial Office official E.C. Burr wrote in 1958, for example, that with regards to Britain's 'general polices' of human rights in the colonies, 'I think it is not unfair to say that in a number of cases these policies are anything but liberal'.[764] Burr highlighted Britain's double standards, stating:

> 'for reasons which are satisfactory to us we detain people, control the holding of meetings, hinder freedom of movement and do a number of other things which we roundly condemn when any other State does them'.[765]

Burr's wider concern in this discussion focused on Britain's obligations under the European Convention on Human Rights, which was somewhat surprising coming as it did from the CO, when it had for so long been viewed as a matter for the FO and of little relevance to Britain's colonial possessions. The reconsideration of UK policy with regards to the ECHR and the colonies had, however, been initiated by the FO 'in light of our experiences over Cyprus'.[766] By 1958, however, Burr wrote that there was 'no doubt of its importance' and he suggested that it was something that had been considered 'if not expressly' for some time, in part due to the proceedings under the Convention regarding Cyprus and also in part due to the question of twilight emergency periods.[767] Burr wrote, for example, that 'admittedly, we are embarrassed by the case which the Greeks have brought but nothing we may do now is going

[764] TNA, CO936/531, E.C. Burr, 11 July 1958.
[765] Ibid.
[766] TNA, CO936/531, S.J.G. Cambridge to Burr, 1 July 1958.
[767] TNA, CO936/531, Burr, 11 July 1958.

to alter the fact that they brought it'.[768] In mid-1958, however, the CO was considering its 'future relationship' with the ECHR and in so doing it was taking stock of the Convention's history and Britain's role in its creation.

Whilst prior to 1958, these illiberal practices were explained away as unfortunate necessities in order to restore public order, by 1958 such an explanation was no longer entirely satisfactory, as Burr explained:

> 'we are always able to justify these things to ourselves in terms of preservation of public order and orderly political development and a variety of other expressions, but the question is, I think, posed whether we are right in doing all these things and whether we would really lose much if we allowed the Human Rights Convention to have its full effect.'[769]

Burr's querying of whether Britain was 'right in doing all these things' was a distinct shift away from the previously unquestioned acceptance of hard governance policies in the colonies. By 1958, however and most probably due to the experience under the ECHR with Cyprus, this tacit acceptance of such policies was no longer considered necessarily the most appropriate form of governance. But the focus had shifted between continents, however. By mid-1959, it was reported that CO lawyer, Steel, thought that 'it is (at present) the African territories where this Convention really bites'.[770] Similarly, Burr described that 'there is no doubt the Convention is biting on us pretty hard'.[771]

Proposals were put forward either to renounce the ECHR completely, to withdraw the ECHR from certain colonies or to make procedural changes. These ideas were promptly dismissed. It was considered 'politically out of the question' because 'we took a lead in creating the Convention and in getting the colonies to adhere; we should be in an exceedingly invidious

[768] Ibid.
[769] Ibid.
[770] TNA, CO936/531, Note, 23 July 1959.
[771] TNA, CO936/531, Burr, 26 June 1959.

position if we now took a lead in withdrawing from it'.[772] The CO also anticipated that opinion in parliament would be 'directly enraged' due to its connection with the Council of Europe Assembly.

During this period, the CO defended a style of colonial governance that was inconsistent with Britain's international obligations as a necessary step for the eventual triumph of peace and universal human rights in British colonies. CO and FO files reveal lengthy discussions within and between these departments about how Britain might resolve this tension and contradiction between its dual role. Certain human rights had to be withheld in order to maintain law and order and only once that had been established could human rights be enjoyed by all, so the explanation went. Indeed, the roles of governor and guardian were often conflated - the obligations Britain was to fulfil as guardian could only come about by enforcing its initial role as governor. This is most evident in those discussions which focused on how the use of hard methods of governance employed to suppress anti-colonial agents, such as detention without trial, could be squared with Britain's legal obligation to uphold human rights in their colonies under the European Convention on Human Rights, extended to British colonies in 1953 under Article 63. Racial distinctions featured prominently in these debates.

B4.1 'Hard Governance': 'Governor' v 'Guardian'

This conflation of the roles of governor and guardian can be seen clearly in the response to Burr's memo discussed above from a S.F. Whitcombe, an official in the Intelligence and Security Department of the CO. Apologising for having 'held this up for so long-owing (sic) to pressure of more immediate work' (which, in itself, gives an indication of the relatively low level of importance attached to questions of human rights), Whitcombe argued with regards to Britain's human rights policy that:

[772] TNA, CO936/531, Burr, 11 July 1958.

> 'In the case of a backward community those obligations and responsibilities [upheld by the ECHR] may not always be compatible and it has been shown that it is sometimes necessary to deviate from strict observance of the principles of the Convention for a time in the interests of the maintenance of law and order, without which any chance of ultimately fulfilling those principles would soon disappear'.[773]

Britain was as governor, on the one hand, establishing law and order and simultaneously as guardian, on the other, promoting human rights even if these were to be withheld initially. Indeed, Whitcombe argued that the attainment of human rights by colonial peoples would take time and was predicated upon their political and social advancement which, again, fitted the British belief in its role as guardian. Whitcombe stated:

> 'If, however, the document [the ECHR] is held to represent the code appropriate to a mature democratic society, it would seem to follow that the same standards may be attainable by a backward community only in the course of time as its social and political development proceeds'.[774]

Whitcombe explained that 'deviations, then, seem inevitable if the principles of the Convention are eventually to be 'secured to everyone' and our obligations to be fulfilled'.[775] What such attitudes to the circumvention of the ECHR during periods of emergency point to is a general underlying attitude that fundamental human rights were not actually universal, but were only extended to those deemed 'advanced' enough.

Whitcombe's argument reflected in part the assertions advanced in 1955 by Oliver Lyttelton regarding the (ill-advised, according to him) extension of what he described as the 'modern franchise' to those living in British territories:

> 'you would find that the European population was swamped, and swamped let it be said quite frankly, by an overwhelming majority of semi-literate people who – though they are advancing – cannot yet claim to be able to exercise a modern franchise with full understanding of responsibility'.[776]

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[773] TNA, CO936/531, S.F. Whitcombe, 16 September 1958
[774] Ibid.
[775] Ibid.
[776] CA, CHAN II 4/17/13, Presidential address by Lord Chandos to the Birmingham and Midland Institute, 4 October 1954.

B5 Emergency Regulations and UDHR

Albeit of less pressing concern because of its non-binding legal status, the Universal Declaration of Human Rights also attracted attention in the colonies and the CO, specifically regarding the question of its circulation. Whitcombe's assertions reflect those of the Governor of Nyasaland, Robert Armitage, and his earlier comments in 1957 regarding the refusal of the Nyasaland Legislative Council on 7 February 1957 that UDHR be made available for use in African schools (this had been requested by an African member of the Legislative Council). Armitage's argument against the circulation of the UDHR was that Africans would not be able to understand the document.

By 1957, the question of human rights generally and human rights legislation and literature specifically was gaining increasing attention in the colonies, and it was a matter over which the authorities in London strove to achieve cooperation from colonial authorities. The specific question with regards to Nyasaland and the UDHR came up in the House of Commons on 27 June by Labour MP for Southall, George Pargiter.[777]

The demand for equal rights within the colonies had already been anticipated for some time, however. A 1956 Colonial Office draft on British policy in Kenya entitled, 'Kenya Appreciation', described how 'the impact of an advanced civilization and education taught the Africans the creed of nationalism'.[778] It continued that 'with the spread of education and literacy, it was natural for the African to begin to demand equal political rights with the Europeans'.[779]

[777] See Hansard, HC Debate, 27 June 1957.
[778] TNA, CO822/940, Draft entitled 'Kenya Appreciation', September 1956.
[779] Ibid.

B5.1 CO Response

Assistant Under-Secretary of State for the CO, Gorell Barnes wrote to Armitage stating that the CO would be 'grateful if you would consider whether it might not be possible for you, without doing harm locally, to change your tune to one which would be a little less provocative to the 'friends' of the Declaration'.[780] Gorell Barnes did not support the Legislative Council's argument that the UDHR was not comprehensible to 'Africans' advising that 'it seems to us difficult to assert that it is not readily understandable when it is deliberately drafted substantially in words of one syllable'.[781] Writing on behalf of the CO, Gorell Barnes acknowledged that the Department recognised that 'the words of the Declaration could, for all their simplicity (or even because of it) be 'twisted by knaves'' but warned that 'we wonder whether it is not more likely to be used successfully for subversive purposes if we give the impression of trying to suppress it'.[782] Gorell-Barnes warned, however, that if the matter of circulation remained unresolved 'I am afraid that it may be used against us both in the United Nations and for our general embarrassment here'.[783]

Writing to Gorell-Barnes in August 1957, Armitage described how

> 'we obviously have got to concert a tune with you which is not going to consist of a series of discords and should be one which can be played on any instrument, in any conditions with the words readily adaptable to any language'.[784]

In support of his decision not to circulate the UDHR, however, Armitage argued that:

> 'while the document is drawn in fairly simple language, I am afraid that trying to put myself in the position of an African nationalist politician or even an African schoolchild I should find it difficult to distinguish between what is an aim and what is the legal position'.[785]

[780] TNA, CO1015/1819, Gorell Barnes to Armitage, 1 July 1957.
[781] Ibid.
[782] Ibid.
[783] Ibid.
[784] TNA, CO1015/1819, Armitage to Gorell Barnes, 9 August 1957.
[785] Ibid.

Whilst this gives an interesting insight into Armitage's perception of the extension (or not) of apparently universal human rights to the African population in Nyasaland, his argument was underpinned by bigger political concerns. Underlying this argument was Armitage's main concern that the UDHR could be used as ammunition against the colonial state since, as Armitage noted, 'we are of course doing the exact opposite of that which is set down in a number of the Articles, and no doubt will continue to do so for the next generation at least, if not for ever.'[786]

Gorell Barnes responded to Armitage's letter by sympathising with the Governor and stating that 'we understand your difficulties and agree with much of what you say'. Indeed, the first draft of the letter explicitly stated that 'we sympathise with a good deal of what you say'.[787] Gorell Barnes suggested that 'the best course probably is to be circumlocutory rather than explicit in reply to questions on these matters and so avoid actively provoking the 'friends' of the Declaration without giving anything away'.[788]

In a Colonial Office draft for inclusion in Britain's triennial report on human rights for the United Nations, however, and contrary to Armitage's comment quoted above, Burr of the CO stated that: 'in the territories for whose international relations HMG in the UK is responsible…a substantial body of the rights set out in the Declaration is enjoyed on the same basis as it is in the United Kingdom itself'.[789] The document also argued that 'persons are not subjected to torture in these territories, nor to cruel, inhuman or degrading treatment or punishment'.[790] There is, however, evidence to suggest that by September 1957 the CO knew that this statement was not true.

[786] Ibid.
[787] TNA, CO1015/1819, Gorell Barnes to Armitage (draft), undated.
[788] TNA, CO1015/1819, Gorell Barnes to Armitage, 10 September 1957.
[789] TNA, LAB13/1259, CO note for UK triennial report on human rights for the United Nations, 11 September 1957.
[790] Ibid.

B5.2 Questions in Parliament

The question of the circulation of the UDHR in Nyasaland reached the House of Commons later in 1957, with Sir Leslie Plummer (Labour MP for Deptford) asking on 26 November what proposals had been made by the Government of Nyasaland to provide a version of the UDHR for use in schools.[791] John Profumo (Under Secretary of State for the Colonies) responded that the Governor's position remained unaltered since the matter had first arisen following Pargiter's question in the Commons on 27 June of that year.[792]

B5.3 Contradictory Stances

Following this flurry, the matter appears to have fizzled out. Whilst the debate was relatively short-lived, it is nonetheless illustrative of the human rights policies of both the administration in Whitehall and the colonial authorities in Nyasaland and the tension between the two. What this episode demonstrates is that, fundamentally, Whitehall sympathised with the colonial administration, as both Gorell Barnes and Burr's letters and notes reveal. Publicly, however, Whitehall was sensitive both to opinion in Britain and at the United Nations amongst the 'friends' of the Declaration, as it dodged parliamentary questions in early 1957 and anticipated embarrassment at the UN.[793] The colonial administration, on the other hand, argued that underdevelopment and under-education rendered the circulation of the UDHR unsuitable for an African audience which, it was alleged, might put the document to subversive use. The former argument was reiterated by Whitcombe in 1958 with regards to the ECHR, as discussed above.

The withholding of certain human rights during periods of emergency (and even the withholding of human rights literature during normal periods) in order to employ hard

[791] TNA, CO1015/1819, Colonial Secretary to Armitage, 20 November 1957.
[792] Hansard, HC Debate, 26 November 1957.
[793] This evidence suggests that Elkins is incorrect to argue that the British Government assumed that the public in Britain supported its colonial policy because the public remained silent on the matter. C. Elkins, *Britain's Gulag, p.*309.

methods of governance was, therefore, justified by the argument that it was part of Britain's larger and longer-term role as guardian in the colonies. During periods of emergency, therefore, what we see is an odd and, at times, highly contradictory stance adopted by the late colonial state. On the one hand, coercive measures such as communal punishment and detention without trial were widespread whilst, on the other, human rights initiatives were publicly supported and portrayed as a long-term plan for the colonies.

By 1959, however, the CO's approach to human rights abuses in Kenya had changed, albeit not dramatically. This was symptomatic of a general shift in opinion within the CO in the late 1950s, most notably in the decision to implement bills of rights in a number of dependencies.[794] The incident at Hola was a significant turning point in thinking on colonial governance and the process of decolonisation.[795]

B6 HOLA CAMP

> 'The present Emergency has come as a shock to Officials in this country. It represents a collapse which they were unwilling to face for some time, of all they had worked to build up for many years. Even now it seems that the full gravity of the situation escapes many of them and they give the appearance of trying to bandage a poisoned finger while the poison is gradually spreading up the arm, soon to infect the whole body.'[796]

By March 1959, the 'poison' of which an Executive Officer of the Rift Valley Provincial Emergency Committee wrote in 1954, had as predicted, spread throughout the 'whole body' of Kenya and seeped into the empire beyond. The full gravity of the situation was now understood by officials both in Kenya and in Britain, almost seven years after the beginning of the emergency period. A secret note by the Governor of Kenya written shortly after the events of March 1959 noted, for example, that 'the situation at Hola is a complex and a

[794] C. Parkinson, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories* (Oxford, 2007).
[795] J. Darwin, *The End of the British Empire,* p.19.
[796] TNA, FCO141/7223, Rift Valley Provincial Emergency Committee Note, 28 January 1954.

peculiar one.'[797] Colonial governance was no longer sustainable either in Kenya or across much of what remained of the empire. Whilst in 1954 the Executive Officer had noted that 'world opinion has never been so sympathetic to our cause as at this moment', following the events of March 1959 world, and in particular British, opinion had shifted irrevocably in opposition to the imperial mission.[798]

Lennox-Boyd later described how following the events at Hola, he and the CO were 'absolutely inundated' with abusive letters.[799] He claimed, crucially, that he never received 'a single letter from an African deploring what had happened'.[800] This Chapter includes an examination of the abusive letters to which Lennox-Boyd referred, including letters from Africans sent to individual MPs such as Barbara Castle. There was personal and reputational cost for Lennox-Boyd following the Hola massacre. In his *End of Empire* interview, for example, he described how he got on a train to travel to Scotland following the events at Hola and heard 'people say that there was a murderer on the train, lock your carriage door here, and all that sort of stuff'.[801] Lennox-Boyd was, however, exonerated from any involvement in the decision-making process by the CO which stated that 'it is true to say that you as Secretary of State had never authorised the use of compelling force and had no knowledge that it was in fact being used in these circumstances'.[802]

Events at Hola certainly caused a great stir in Britain and, in particular, in the British Press. The *Manchester Guardian,* for example, carried an article entitled '"General beating-up" before eleven Mau Mau detainees dead'.[803] *The Times* and *The Economist* featured similar

[797] TNA, FCO141/5658, Governor, 13 March 1959. He also noted that the methods used to control detainees at Hola were 'at fault'.
[798] TNA, FCO141/7223, Rift Valley Provincial Emergency Committee Note, 28 January 1954.
[799] BOD, MSS.Eng.C.3395, Lord Boyd interview, 13 December 1974.
[800] Ibid.
[801] Ibid.
[802] TNA, CO822/1263, Buist to Lennox-Boyd, 9 July 1959.
[803] '"General beating-up" before eleven Mau Mau detainees died', *The Manchester Guardian,* 20 March 1959, p.13.

articles.[804] *The Times* on 11 June 1959, wrote of 'this grisly chapter in the Kenya story'.[805] In Kenya, an article published in the *East Africa Standard* by Basil Deaken on 5 June 1959 described how the deaths at Hola had 'excited international concern'.[806] A heated debate in the House of Commons ensued on 27 July 1959 during which Labour MP Barbara Castle and staunch Conservative Enoch Powell unleashed damaging attacks on the Government's colonial policy.

B7 Cowan Plan

The MP for Rugby, Mr J. Johnson, claimed in the House of Commons that the Hola incident was 'the biggest blot upon our good name in the Colony for many a year'.[807] Debate on Hola centred round the fact that official orders, known as the Cowan Plan, permitted the use of coercive methods in order to persuade detainees to work at the Hola Camp.[808] The Cowan Plan was approved in February 1959 by District Officer, Hopf, and was enacted shortly after.[809] It was drawn up by John Cowan, Senior Superintendent of Prisons. The wording of Paragraph 5 (j) of the Plan made it problematic for the government later to justify the events at Hola since it was stated that 'it is assumed that the party [of detainees] would obey this order (the order to proceed to the work site) but should they refuse they would be manhandled to the site of work and forced to carry out the task'.[810] This proved problematic for two reasons. First, whilst Regulation 22 of the Emergency (Detained Persons) Regulations (1954) allowed for detainees to be 'usefully employed in work' in detention camps, it stated nowhere that detainees were to be forced physically to work.[811] Second, Cowan's choice of

[804] See 'Labour Protest on Hola Clash', *The Times,* 4 June 1959, p.7. See also 'Hola Verdict', *The Economist,* 1 August 1959, pp.271-2.
[805] 'Questions', *The Times,* 11 June 1959, p.11.
[806] TNA, CO822/1261, B. Deaken, 'Hola has shown to be neither a 'horror' nor holiday camp', *The East Africa Standard,* 5 June 1959.
[807] HC Debate, 14 May 1959, cc. 1433.
[808] See TNA, CO822/1261. This is emphasised in a note from Gorell Barnes to the Colonial Secretary, 15 June 1959.
[809] TNA, CO822/1261, Manningham Buller to Lennox-Boyd, 15 June 1959.
[810] Cowan Plan quoted in Documents relating to the deaths of eleven Mau Mau detainees at Hola Camp in Kenya, p.7.
[811] Ibid, p.6.

words that detainees should be 'manhandled…and forced to carry out the task' was problematic because this could easily be interpreted, as Goudie stated, as 'a carte blanche to use whatever force might prove necessary'.[812]

B7.1 CO Response

Despite these directives, the official stance in London on Cowan's orders was that they did not 'show that at Hola they planned the use of illegal force'.[813] Yet, recounting the view of District Officer, Hopf, who approved the Cowan Plan, Attorney General Manningham-Buller admitted that 'he [Hopf] has said that he understood the plan involved the use of force to get the men to the site of work carrying them or manhandling them if they disobeyed' but 'that there was no mention of beating the detainees if they refused to work until they did'.[814] This is contradicted by evidence recorded in the Coroner's Report which stated that Sullivan gave orders to his senior warders on 2 March instructing that

> 'tomorrow we shall send the prisoners to work. We shall send by force. If they refuse or bring any trouble at all, you (plural) will try to strike knees and will strike just a little. If you see they have stones or something bad in hands, you (plural) can use force completely'.[815]

These instructions (issued the day before the incident) suggest a degree of foresight of rough treatment. In a further attempt at denial, Manningham-Buller ignored the fact that Regulation 22 of the Emergency Regulations stipulated that *no* physical force was permitted in forcing detainees to work. 'Manhandling', whether by carrying detainees or beating them with batons, was thus contrary to the Emergency Regulations.[816]

By 1960 the Attorney General's position had changed, however, and the CO was given a stern warning by the Law Officers' Department. George Dudman, the Legal Secretary to the UK

[812] Ibid, p.7.
[813] TNA, CO822/1261, Manningham-Buller to Lennox-Boyd, 15 June 1959.
[814] Ibid.
[815] Documents relating to the deaths of eleven Mau Mau detainees at Hola Camp in Kenya, pp.26-27.
[816] Ibid, p.15.

Attorney General, wrote to A.R. Rushford, Senior Legal Assistant in the CO, to state that whilst he fully appreciated that 'the Government of Kenya is unwilling to adopt a formula that would appear to concede the illegality of what was done at Hola', ministers in Britain could 'scarcely be asked to approve a formula which does not make it perfectly plain that what happened at Hola must not happen again.'[817]

Buist of the East Africa Department described Hola as an 'awkward affair'.[818] Buist admitted elsewhere that 'we felt that the legality of compelling force in the sense that Cowan and his superiors envisaged its use in order to force detainees to carry out the task was questionable'.[819] He recommended that an official enquiry into the matter would have the advantage of 'providing a further justification for the continued restraint for a long period of these detainees even if the emergency has come to an end'.[820] This was a particularly pressing issue for the CO. This view was not shared by his colleague, however, who wrote to Buist to argue that whilst he recognised that 'the Hola case is deplorable' he maintained that 'unless there is an explicit finding by the Coroner that the Prisons system is bad in practise, I do not think it warrants a full independent enquiry'.[821] Defending the Kenya Government, Hull wrote that it had 'acted properly and promptly in the matter, and nothing was intentionally covered up'.[822] He also explained to Buist the CO's position on prisons in Kenya:

> 'we have hitherto taken the line that the Prisons system in Kenya is based on that in force in this country, and is working properly in practise; and that the administration are quite capable of uncovering abuses and punishing irregularities without any outside help'.[823]

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[817] TNA, CO822/1275, G. Dudman to A.R. Rushford, 1 February 1960.
[818] TNA, CO822/1269, Buist to Moreton, 29 April 1959.
[819] TNA, CO822/1263, Buist to Colonial Secretary, 9 July 1959.
[820] TNA, CO822/1269, Buist to Moreton, 29 April 1959. Buist perhaps ought to be regarded as an exception within the CO. Not only did he work hard to abolish race-based appointments in the Kenya police force, he was also led the creation of the policy to remove white land privileges in Kenya. See Ian Buist's obituary in *The Times,* 22 November 2012, accessed 25 March 2015, available at http://www.thetimes.co.uk/tto/opinion/obituaries/article3607554.ece.
[821] TNA, CO822/1269, D.T. Hull to Buist, 24 April 1959.
[822] Ibid.
[823] Ibid.

Whilst Buist's colleague was not in favour of an independent enquiry (separate to Goudie's that is), he was concerned about the impact of Goudie's investigations on public opinion. He wrote to Buist, for example, explaining that in advance of the publication of the inquest's findings, Lennox-Boyd wanted to discuss with the CO, the Legal Advisers and the Attorney General what action was to be taken 'as a result of the Hola deaths, so as to be equipped to deal with pressure for a judicial enquiry into conditions in camps and prisons generally, which is bound to build up again once the findings are published'.[824] He advised, however, that the CO should remain silent until the inquest sat (it had been adjourned until 6 May) and the findings made public stating that 'until then we do not <u>have</u> to say anything, and so far have scrupulously avoided saying anything, about any further action contemplated, while the case is <u>sub judice</u>'.[825]

The colonial administration in London was particularly sensitive to the threat of political upheaval in Britain following the Hola incident. Lennox-Boyd wrote to Baring stating that, for example:

> 'public opinion is extremely sensitive on [the] Hola problem, and Kenya Government are (sic) widely regarded rightly or wrongly as under a moral obligation for the deaths. We could I fear maintain a rigid stand on the legal rights and wrongs at best only at the cost of a great deal of bitter and unnecessary political trouble here. I am sure you will agree we should try to let this unhappy incident drop out of sight as soon as possible. If a 'niggardly' attitude is taken this will be impossible.'[826]

With the threat of political upheaval looming, Lennox-Boyd later wrote to Baring on 2 July 1959 to warn that lessons must be learned from Hola so as to avoid a repeat of the disaster:

> 'it is, as we agreed, extremely important that we should make a close examination of the lessons which are to be learned from this disaster, so that we may make certain that in future we are in a position not merely to prevent any repetition of such an occurrence, but also to handle, with the greatest efficiency and humanity, the exceedingly difficult problem which is posed by the moral need to do everything that can possibly be done to restore to

[824] Ibid.
[825] Ibid.
[826] TNA, FCO141/5657, Colonial Secretary to the Governor, 12 May 1959.

> society and freedom, without danger to the community, the remaining embittered and desperate Mau Mau supporters.'[827]

Cabinet, in particular, was keen that lessons should be learned from the Hola massacre. In June, Gorell Barnes reported that the feeling within Cabinet had been that 'something more should be done to try and establish how the tragedy came about.'[828]

Lennox-Boyd later informed Baring of the increasing pressure under which the British Government found itself more generally due to the continuation of the emergency and, in particular, detention without trial. On 14 July 1959, he wrote to Baring that 'we are increasingly under fire here for continuing detention without trial' and indicated that a motion was tabled for debate in Parliament which condemned it 'root and branch.'[829]

That same month, Baring wrote to Lennox-Boyd to let him know that he was aware of the reaction to Hola in Britain and reassured the Colonial Secretary that these feelings were shared by the administration in Kenya. Baring assured Lennox-Boyd that:

> 'I would like to make it plain that my Government, and opinion in Kenya, particularly within the branches of the public service which have a direct responsibility for the administration of detention camps and rehabilitation, share that disquiet and are most sincerely anxious that every possible step should be taken to ensure that never again is there the risk of such a tragedy occurring.'[830]

B7.2 Attorney General's Intervention

The UK Attorney General, Reginald Manningham-Buller, was set to open the debate on Hola in the House of Commons set for the end of July 1959. Whilst drafting his speech, he sought reassurances that the higher echelons of the Kenya administration had a similar lack of

[827] TNA, FCO141/5655, Lennox-Boyd to Baring, 2 July 1959.
[828] TNA, CO822/1261, Gorell Barnes to Webber (Assistant Secretary), 4 June 1959.
[829] TNA, CAB21/2906, Lennox-Boyd to Baring 14 July 1959.
[830] TNA, CAB21/2906, Baring to Lennox-Boyd, July 1959.

knowledge as Lennox-Boyd was alleged to have had. Writing to the Kenya administration, the Attorney General suggested that

> 'you should get from the Minister of Defence, the Minister of African Affairs and from the Commission statements on the following lines if they are able to make them, namely that when they read the Cowan Plan they did not understand that Cowan was putting forward a plan which involved the use of illegal force, that is to say the beating of detainees to make them work; that they would never have approved the use of illegal methods and that by the expression 'force to carry out the task' they understood no more than that the employment of legal means to achieve the job was envisaged'.[831]

Three such statements, differently worded, would be 'very useful' in the Commons debate, Manningham-Buller wrote.

The Acting Governor responded to Manningham-Buller's request by stating that 'I must make it clear that Cowan never contemplated a plan which involved the use of illegal force and that no such plan would have been tolerated by this Government'.[832] He also included statements from the Minister of Defence, the Minister for African Affairs and the Commissioner of Prisons which all argued along similar lines that although guidelines 'might involve the use of compelling force, they did not contemplate beating force'.[833] Although the Acting Governor did respond to the Attorney General's request, he did so 'extremely reluctantly' and only because he realised 'how very difficult indeed your [the British Government] position is'.[834] Indeed, the Attorney General's correspondence with the Kenya administration caused quite a stir and the Acting Governor wrote how 'this message from Manningham-Buller has very much upset us all here'. The Kenya administration resented the implied assumptions made by Manningham-Buller that a plan of illegal force had been drawn up by Cowan.[835] Rather than aiding the Kenya Government's defence of the Cowan Plan, the Acting Governor felt that the Attorney General's statement was entirely negative and contrary to the case put forward.

[831] TNA, CO822/1261, Telegram from Colonial Secretary, 13 June 1959.
[832] TNA, CO822/1261, Acting Governor to Colonial Secretary, 14 June 1959.
[833] Ibid.
[834] Ibid.
[835] Ibid.

The Acting Governor was reassured by Lennox-Boyd, however, that 'there is no need to worry' and that they simply required 'positive statements' in order to counter arguments that were likely to be made by the Opposition during the debate.[836] The CO also assured the Acting Governor in Kenya by telegram that the Government would include a defence of rehabilitation policy and the use of legal force in the speeches.[837] This mirrors Harding's suspicions in Cyprus that the British Government was aiding the prosecution at Strasbourg rather than defending colonial rule in the territory, as explored in Chapter Three. It is further evidence of the bind that colonial governors found themselves in towards the end of the 1950s. They found that the colonial administration in London had adapted its thinking more in tune with the values and ideologies espoused by the UN and Council of Europe post-1945 and so distanced itself from traditional modes of colonial governance. This heightened their perception that they were no longer supported by the administration in Britain and the fear that they might be 'hung out to dry' by Whitehall.

The content of Manningham-Buller's speech also caused the CO some concern until it was confirmed that certain details about colonial governance would be left out. The CO worked hard on working out how to 'best to try and prevail upon' the Attorney General the view that the Cowan Plan did not sanction the use of illegal violence.[838] Furthermore, the Kenya Regulations about forced work had been found to contravene the Forced Labour Convention of 1930. The CO feared exposure of this. It was with much relief, therefore, that Lennox-Boyd was informed that, following discussions with the Legal Secretary to the Attorney General, the CO had 'been assured that the Attorney-General has no intention of publicly admitting that the Kenya Regulations are in breach of the Forced Labour Convention of 1930'.[839] Moreover, the Colonial Secretary was reassured, the Attorney General 'has no objection to it being stated that Government was advised at the time when these Regulations were made

[836] TNA, CO822/1261, Lennox-Boyd to Acting Governor, 15 June 1959.
[837] TNA, CO822/1261, Lennox-Boyd to Acting Governor (telegram 469), 15 June 1959.
[838] TNA, CO822/1261, Gorell Barnes to Colonial Secretary, 15 June 1959.
[839] TNA, CO822/1261, Note to Colonial Secretary, 16 June 1959.

that they were within the Convention and that they have never been challenged in the I.L.O'.[840]

B7.3 Colonial Secretary's Intervention

For the Secretary of State's speech, a similar approach was to be taken. Gorell-Barnes, in particular, was keen that the speech would stress the 'great importance of not doing anything to undermine the morale of the officers who have to carry out the very difficult, unpleasant and sometimes dangerous duties' involved in the detention of Kenyans.[841] He suggested also that the speech might include 'perhaps some implied aspersion' on those who both felt that someone should be held to account for the Hola Camp incident and disregarded consideration for the morale of officers in undertaking their difficult duties.[842]

The draft papers for Lennox-Boyd's speech in the House of Commons to wind up the Hola debate give an interesting insight into the government's position on the affair. Significantly, the following words did not make it into the final version of Lennox-Boyd's speech. The omitted extract from the draft speech reads:

> 'these camps are admittedly alien to our way of thinking, but the need for drastic steps in Kenya was self-evident…the Government agree that something has gone wrong in this instance, but it is not the policy or the approach of the Kenya Government that is at fault…the United Kingdom Government are not under writing (sic) what has happened nor are they in any way attempting to minimise the tragic nature of this dreadful occurrence'.[843]

B7.4 Exposure of Cowan Plan and Activist Response

The anti-colonial response to the episode at Hola was not as forgiving in respect of the Cowan Plan as the CO, the Colonial Secretary and the Attorney General had been. John Stonehouse wrote in *Gangrene*, for example, that the Cowan Plan 'breaks the principal tenets of the

[840] Ibid.
[841] TNA, CO822/1261, Note regarding Colonial Secretary's speech, 15 June 1959.
[842] Ibid.
[843] TNA, CAB21/2906, Draft winding-up speech for Hola debate, no date.

International Labour Convention on the Abolition of Forced Labour' and he asked, 'why did the British Government not ratify this Convention for Kenya when it approves of it for Britain?'[844] He also questioned whether the British Government was 'prepared to endorse methods of persuasion for African political prisoners which are vigorously condemned elsewhere?' which reflects Burr's statement that Britain was employing methods which it 'roundly condemned' elsewhere.[845] Stonehouse also suggested that the Colonial Secretary had wilfully ignored complaints about governance in Kenya pre-Hola.[846] Stonehouse's attack touched on the wider challenge facing the British Government at this time – the question of whether it was appropriate to employ different forms of governance to govern, on the one hand, the domestic population in Britain and, on the other, a colonial population in overseas territories. This dilemma was particularly stark following the publication of the Devlin Report in July 1959 which said, simply, that this was not at all, or ever appropriate.

The Hola incident provoked strong anti-colonial feeling both from within the House of Commons and outside from various organisations and individuals. Some voices in Britain were entirely unrestrained in their criticisms of the administration's handling of the Hola incident and colonial governance in Kenya generally. There is very little literature that focuses on anti-colonialism and decolonisation, with the exception of Stephen Howe's *Anticolonialism in British Politics*.[847] Howe's research, albeit very comprehensive on the British Left's anticolonial activism, pays little attention to the role of reports of excessive violence in shifting opinion on colonialism, no doubt due to the fact that the relevant archival material was not opened until after the publication of his work. This section, therefore, examines the role of colonial violence and human rights abuses in mobilising anti-colonial feeling amongst politicians, activist groups, religious leaders and the general public in Britain, particularly following the Hola incident.

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[844] J. Stonehouse, 'Kenya's Inhumanities', in J. Calder (ed), *Gangrene,* p.95.
[845] Ibid.
[846] Ibid, p.95.
[847] S. Howe, *Anticolonialism in British Politics.*

The lawyer, Peter Benenson, in *Gangrene*, for example, argued that the only way that the Cowan Plan had been justified was because in Kenya there was 'official licence to treat Mau Mau prisoners as sub-human'.[848] This policy, Benenson argued, received the explicit approval of the Colonial Secretary, although this is contradicted by the CO's position, as mentioned above. Benenson suggested that Lennox-Boyd's position as aired in a debate in the Commons following Hola on 16 June 1959, during which he argued that the compulsion for detainees to work in rehabilitation camps was to help in ending the emergency, was proof of his explicit approval of the policy.[849] It was during this debate that Lennox-Boyd argued that

> 'experience has shown, time after time, that unless hard core detainees can be got to start working, their rehabilitation is impossible. Once they have started working, there is a psychological break-through and astonishing results are then achieved'.[850]

In response to this statement, Sydney Silverman MP rather pointedly asked, 'who told the right hon Gentleman that? Stalin?'[851]

Barbara Castle claimed that the Hola incident was not simply 'a piece of personal savagery by a few men', but was representative of the wider colonial mentality because 'the Hola incident stems inevitably from the tolerance of brutality which has underlain the Kenya government's whole approach'.[852] A similar sentiment was voiced by Enoch Powell who described the events as 'a great administrative disaster' because of the authorisation in the Cowan Plan which 'was likely to have fatal results'.[853]

[848] P. Benenson, 'Introduction', p.27.
[849] Hansard, HC Debate, 16 June 1959.
[850] Ibid.
[851] Ibid.
[852] BOD, MS Castle 245, B. Castle, 'Eleven Dead Men', *New Statesman*, 16 May 1959.
[853] CA, POLL 3/1/18, Powell, House of Commons Speech, 27 July 1959.

B7.5 British Public Opinion

Some of the gravest condemnation of British methods of control came from members of the public who wrote to the Government to decry what had happened. CO files contain a handful of letters from the general public. Mr and Mrs Hitchcock wrote to Lennox-Boyd in May 1959 to say that 'the story of the Hola Camp suggests that atrocities have been committed in Kenya differing not in principle but only in number from those of the Nazis against the Jews'.[854] They asked Lennox-Boyd for a response in which he could assure them that 'you disapprove of a course of action which is making us feel as guilty as we have always maintained every German should feel for like misdeeds committed during the Nazi regime'.[855] A similar comparison was made by J.M.H. McMurray, quoted above, who claimed 'one might expect eleven prisoners to be battered to death in a Nazi concentration camp but not in a prison in a British colony'.[856] A draft response to McMurray stated that 'it is because the facts yielded despite that very thorough inquiry are so inconclusive that a sense of frustration, as I well know, overtakes us'.[857] Another member of the public wrote to Gresham Cooke MP (Conservative MP for Twickenham) and argued that

> 'while it has been easy to disagree with a number of the actions of the post-war Labour government I think it is fair to say that it is only under the Conservatives that a considerable number of Englishmen have been made to feel actually ashamed of their nationality'.[858]

The author of the letter questioned 'how can we preserve our greatest asset vis-à-vis Communism, our consciousness of moral superiority'.[859] These letters are evidence of a stirring of public interest and public anger regarding human rights abuses in Kenya, contrary to Bernard Porter's assertion that 'the British people have never been terribly interested in their empire, so a huge surge of feeling on the Kenya issue was unlikely'.[860] Similarly, Elkins

[854] TNA, CO822/1260, Ron and Hilda Hitchcock to Lennox-Boyd, 31 May 1959.
[855] Ibid.
[856] TNA, CO822/1260, J.M.H. McMurray to Lennox-Boyd, undated.
[857] TNA, CO822/1260, Draft letter to J.M.H McMurray, 19 June 1959.
[858] TNA, CO822/1260, Butlin to R. Gresham Cooke, MP, 29 May 1959.
[859] Ibid.
[860] B. Porter, 'How did they get away with it?', *London Review of Books* 27.5 (2005).

has argued how 'the real dilemma, some fifty years later, is comprehending why the British public was so silent on the issue of colonial atrocities during Mau Mau'.[861]

Andrew Thompson has, however, rightly observed that

> 'the range of issues raised by overseas expansion – the maintenance of national prestige; the protection of expatriate British communities; the use of force to counter terrorism or contain dissent; and the cost of imperial commitments to the British taxpayer – tended to touch the public nerve at different times and in different ways'.[862]

Indeed, Thompson has demonstrated that it was only following the 'third implosion of empire' from 1959 until 1964 that 'both popular and intellectual culture…became fully aware of the underlying realities of power, of the extent to which empire was over in economic, political, military and conceptual terms'.[863] Not only was empire increasingly felt to be a burden in the 1950s, but it was also regarded as an embarrassment.[864] The events of 1959 proved this absolutely to be the case.

General public awareness of empire was raised following these events. In a poll undertaken by Gallup, 90% of people polled stated that they had heard of the difficulties in Kenya and 80% had heard of events in Nyasaland.[865] In terms of support for the government's response to the Mau Mau, 41% were in support compared to 23% of people against. In contrast, regarding Nyasaland only 25% was in support of the British Government and 30% supported the African population with only 18% in support of British settlers.[866]

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[861] C. Elkins, *Britain's Gulag, p.*307.
[862] A. Thompson, *The Empire Strikes Back? The Impact of Imperialism on Britain from the Mid-Twentieth Century* (Harlow, 2005), p.207.
[863] Ibid, p.209.
[864] Ibid, p.212.
[865] Ibid, p.212. For a detailed study of British press coverage of Mau Mau during the emergency period in Kenya see J. Lewis, ''Daddy Wouldn't Buy Me a Mau Mau': The British Popular Press and the Demoralization of Empire' in E.S.A. Odhiambo and J. Lonsdale (eds), *Mau Mau and Nationhood* (Woodbridge, 2003), pp. 227-250. Significantly Lewis has demonstrated that the Hola camp massacre attracted very little attention from the popular press in Britain. In fact, ironically, at the same time as the incident at Hola, the *Daily Mail* published a four-page feature on Kenya publicising it and its neighbouring territories. See p.243. In contrast, Nyasaland attracted significantly more attention.
[866] Ibid, p.212.

In terms of the public response to Hola and abuses of human rights in general, it is difficult to draw firm conclusions. Assessing public opinion on any subject is a tricky task, as John MacKenzie has argued.[867] It has been shown by Ward, however, that the government was careful to placate the general public throughout its deliberations regarding the future of the British Empire.[868]Furthermore, and as this thesis argues, based on the evidence available in the CO files, there was more public concern for and interest in colonial affairs than has previously been estimated in the historiography, with the exception of Thompson's work.

B7.6 General Election October 1959

Such vocal criticism of the Conservative Government did not, however, affect its success in the October 1959 general election. In the run-up to the general election of October 1959, *The Economist* noted that municipal elections held in May 1959, only a few months after the Hola incident, 'brought the Government good cheer'.[869] Opinion polls carried out in August suggested that the Tories' success was set to continue. As predicted, in October 1959 the Conservatives were returned to Government. The success of the Macmillan Government in the general election did not, however, induce any hint of bullishness when it came to matters imperial. Whilst the fear that the Conservative Party would be abandoned by 'middle opinion' did not come to anything, the Government drew the appropriate lesson from the events of 3 March, to the effect that public opinion would no longer sanction strong-arm tactics, and the metropole's approach to colonial governance modified accordingly.

The backdrop of growing condemnation of British brutality demonstrates that, by the late-1950s, the British public was displaying some signs of becoming a ''human-rights-conscious'

[867] J. MacKenzie, 'The Popular Culture of Empire in Britain' in J. Brown and W.M. Roger Louis (eds.), *The Oxford History of the British Empire Vol. IV: the twentieth century* (Oxford, 1999), p.212
[868] S. Ward, 'Introduction' in Idem (ed), *British Culture and the End of Empire* (Manchester, 2001), p.2.
[869] 'Swing High to Conservative?', *The Economist,* 25 August 1959, p.514.

mankind'.[870] *The Economist* reported in June 1959, for example, that events such as Hola and the Devlin Report 'have engendered the keenest disgust and resentment in the country'.[871] The view that people became more aware of the issue of human rights in the 1950s is, however, contrary to the dominant view which holds that such notions only initially attracted attention in the 1960s and that it was not until the 1970s that they became widespread. For example, Moses Moskowitz, Head of NGO Consultative Council of Jewish Organisations, claimed in 1968 that human rights had 'yet to arouse the curiosity of the intellectual, to stir the imagination of the social and political reformer and to evoke the emotional response of the moralist'.[872] Likewise, Moyn asserts that 'the drama of human rights…emerged in the 1970s seemingly from nowhere'.[873] Nevertheless, the stirrings of concern for the rights of colonised peoples were certainly detectable in the late 1950s.

B8 Key Parliamentary Figures: Castle & Powell

B8.1 Barbara Castle

Following the enquiry into the Hola incident, it was reported that 'the Labour party is not convinced by any of this; they want Mr Lennox-Boyd's, or the Governor's, or somebody's head'.[874] Barbara Castle, in particular, along with Brockway certainly wanted 'somebody's head' and preferably Lennox-Boyd's following the abuse at Hola. Castle had already proved herself a ferocious activist, and her papers reveal that she was personally moved by the plight of detainees held in Kenya throughout the emergency.

[870] L. Zeitlin, 'Declaration of Human Rights'. See D. Goldsworthy, 'Britain and the international critics of British colonialism, 1951-56', *Commonwealth & Comparative Politics,* 29.1 (1991), pp.1-24, on earlier criticism of colonialism.
[871] 'Whose Responsibility?', *The Economist* 27 June 1959, p.1152.
[872] Moskowitz quoted by S. Moyn, *The Last Utopia,* p.3.
[873] Ibid, p.3.
[874] 'Hola Verdict', *The Economist,* 1 August 1959, pp.271-272.

Recounting the government's failure to respond to allegations of abuse, Castle later claimed, when interviewed in 1985 for example, that 'it was intrinsic in the whole attitude of the government of Kenya as blandly endorsed by the Sec. of State (*sic*) that an African life wasn't as important as a European life'.[875] She described this as a 'sub-conscious approach of those in charge'.[876] A similar point had been raised by James Johnson (Labour MP for Rugby) following the Hola incident when he prodded the Tories to answer whether if 'this had happened in this country, if 11 men had been beaten to death in England, does the Minister honestly believe that the Government would not have taken more action than this?'[877] Johnson's question went unanswered in the Commons. It is worth noting that Labour opposition was a source of anxiety for the Conservatives at this time because they feared they would 'make common cause' with the Liberals against the Tories' Africa policy, as the Colonial Secretary explained to Robert Armitage, Governor of Nyasaland, in correspondence between the two.[878]

Castle had been vocal in the British press and in the Commons about allegations of ill-treatment in Kenya (and also Cyprus) in the pre-Hola period. Castle noted in an article in the *New Statesman* in the February before the Hola incident, for example, that 'by almost every post I receive letters of complaint from Kenya detainees' and that she was 'at a loss to know what to do with them' because the range of complaints ranged from 'the more-in-sorrow-than-in-anger laments about bad conditions (inadequate rations, forced labour, faulty sanitation and water supply) to horrifying allegations of brutality and even murder'.[879] She later described the letters as 'heart rending'.[880] Not only did Castle play a key role in the exposure of abuses by British security forces (she went to Kenya to undertake her own research into allegations in 1955 following refusals by Lennox Boyd to undertake an official

[875] RHL, Mss.Brit.Emp.s.527/8 (1), End of Empire, Interview with Barbara Castle, February 1985.
[876] Ibid.
[877] Hansard, HC Debate. 14 May 1959.
[878] CO822/1334, Colonial Secretary to Armitage, 23 June 1959.
[879] BOD, MS. Castle 245, B. Castle, 'The Died Detainee', *New Statesman,* 14 February 1959, p.212.
[880] RHL, Mss.Brit.Emp.s.527/8 (1), End of Empire, Interview with Castle, February 1985.

investigation) but she also launched an attack on the Conservative Party for its inaction. Most significantly, Castle demanded change.[881] Her constant demands for Government investigation into brutality in Kenya were, however, continually rebuffed by Lennox-Boyd. Castle wrote that Lennox-Boyd resented any questions being raised in the House of Commons about abuse especially those concerning forced labour which he maintained was 'required' rather than 'forced'. Indeed, Castle recounted that on one occasion Lennox-Boyd 'snapped back at me' that 'if the honourable lady is receiving a large number of letters from detainees, it is all part of a campaign to smear the security forces and the administration in Kenya'.[882] This view had been voiced earlier in the records of the 1st Battalion of the Devonshire Regiment Record, 1953-55 which claimed that reports published in *The Daily Herald* in the early 1950s that the first soldiers to kill a Mau Mau were given £5 were an act of 'being stabbed in the back by people at home'.[883]

It was following the Hola incident, however, that Castle's anti-colonial sentiments were most vehemently expressed, especially after her demand for an enquiry into the administration of detention camps was turned down by the government just one week prior to the Hola incident.[884] In this speech, Castle demolished what Darwin has described as the 'humanitarian instincts on which the champions of empire had played so artfully for so long'.[885] In what was hailed as one of the 'most effective speeches on Hola', Castle directly criticised the Government's disregard for human rights and its hypocrisy in valuing a white man's life over that of an African.[886] She was one of the first people unequivocally to present colonial abuses as a moral issue and it was from this point that the legitimacy of 'benevolent' British rule in Kenya began to be seriously questioned.

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[881] BOD, MS. Castle 245, B. Castle, 'Justice in Kenya'.
[882] BOD, MS. Castle 245, B. Castle, 'The Died Detainee'.
[883] Imperial War Museum (hereafter IWM) 305/90/20/1, 1st Battalion the Devonshire Regiment Record, 'Mau Mau Rebellion in Kenya', 1953-55.
[884]Hansard, HC Debate, 27 July 1959.
[885] J. Darwin, *The End of the British Empire,* p.20.
[886] 'Tories more upset about Hola: serious test of party loyalty', *The Manchester Guardian,* 30 July 1959.

Castle explicitly and repeatedly mentioned that the events of Hola and the government's subsequent inaction in resolving the episode were examples of British injustice. What Castle was referring to specifically was the failure of the government to hold to account those responsible for the beatings at Hola. Despite the fact that Goudie's enquiry was quite clear that abuse had occurred and that responsibility lay with the Camp Commandant, no charges were brought. Castle challenged this outright: 'I say to hon. Members opposite that the Inquiry cannot have it both ways, yet from what we see it is trying to have it both ways, because in the end the "Old Pals' Act" has got to operate and somehow it has all got to come right in the end'.[887] Castle's reference to the 'Old Pals' Act' simply served to heighten the perception of hypocrisy and cover-up at the highest levels of government. Castle ended her speech demanding Lennox-Boyd's resignation.

B8.2 Enoch Powell

Criticism of Hola also came from within the Conservative Party. Enoch Powell's papers, held at the Churchill Archives in Cambridge, for example, reveal strikingly similar opinions to those of Barbara Castle. Powell, the former imperialist supporter and Castle, the anti-colonialist, converged in their stance on derogations of human rights in Kenya. Whilst Castle's speech was unexpected because she had never before been quite so outspoken, Powell's was unprecedented. As Powell recounted years later, 'it is a high form of corruption to sacrifice one's own opinion and judgement' in an attempt to avoid being aligned with the Opposition.[888] The political impact of Powell's speech was great. Not only was it a damning account of British behaviour in Kenya and exposed the Government's duplicity in covering-up events, but it was his own party he was criticising. *The Manchester Guardian* reported how 'the Hola debate in the Commons, after nearly falling asleep in the early hours of this

[887] Hansard, HC Debate, 27 July 1959.
[888] RHL, Mss.Brit.Emp.s.527/8 (1), Kenya Vol.3, End of Empire Interview with Powell.

morning, was jerked to life again by a remarkable speech' from Powell.[889]

Powell's speech, delivered immediately after Castle's, dealt with two main themes: first, the issue of responsibility for the atrocity at Hola and, second, Britain's duty to people in Africa. Crucially, Powell, unlike Castle, did not pinpoint particular individuals whom he believed responsible, although he implied that it was an administrative failure on the part of the Kenyan rather than the British Government. He later claimed that 'it was as a result of a perfectly deliberate decision of the Kenya Executive that those men [at Hola] were exposed to what happened to them'.[890] In contradistinction to Castle (but not surprisingly), Powell exonerated Lennox-Boyd of any responsibility for the events claiming that he 'is without any jot or tittle of blame for what happened in Kenya' because 'he could not be expected to know, that it could not be within the administrative conventions that these matters should be brought to his attention before or during the execution'.[891] Perhaps not, but Powell ignored that fact that Lennox-Boyd had refused to conduct an enquiry into the administration of detention camps just prior to the Hola incident. Still, Powell had trod a tricky line.

Powell ended his speech with a clear message that the Government's stance was unacceptable by, like Castle, presenting colonialism as a moral issue. Reflecting Castle's point that the Government 'instinctively, sincerely and genuinely' dismissed the importance of Africans' lives, Powell suggested that the same standards of humanity should be applied unconditionally throughout the world. He claimed that Britain could not 'ourselves pick and choose where and in what parts of the world we shall use this or that standard'. In response to the oft-voiced argument that conditions were different in Africa and that this legitimated different behaviour, Powell responded: 'of course they are. The question is whether the difference between taking things there and here is such that the taking of responsibility there

[889] 'Hola Blame Put at High Level: Tory ex-Minister calls it an 'administrative disaster', *The Manchester Guardian,* 28 July 1959, p.1.
[890] RHL, Mss.Brit.Emp.s.527/8 (1), Kenya Vol.3, End of Empire Interview with Powell.
[891] Hansard, HC Debate, 27 July 1959.

and here should be upon different principles'.[892] Like Castle, the end of Powell's speech returned to the notion of British justice and duty which at the time enjoyed greater currency than ideas of human rights, although underpinned by similar sentiments. He concluded that: 'we cannot, we dare not, in Africa of all places, fall below our own highest standards in the acceptance of responsibility'. The language used by Powell suggests that, as a supporter of the imperial project, he was disappointed to say the least and perhaps even shocked, that the British had veered so far from their original 'civilising mission' in Kenya despite the state's attempts to reinvigorate the civilising mission during periods of emergency. Hola had underscored that imperialism was absolutely incompatible with humanitarian or human rights concerns.

B9 Growing Awareness or Not?

B9.1 Manchester Guardian

The Manchester Guardian reported how Powell

> 'won prolonged applause from the Labour benches when he expressed bitter disapproval of any idea that some classes of men had forfeited full human rights. It was a fearful doctrine. We could not have African standards in Africa and British standards here at home. Nor could we fall below the highest standards in the acceptance of responsibility'.[893]

The particular debate during which Castle and Powell unleashed their attacks received considerable attention in the British press the following day. *The Manchester Guardian,* for example, reported that Dingle Foot opened the debate for the Opposition and was reported to have 'complained that detention without trial was becoming "almost a permanent feature of our colonial rule in East and Central Africa"'.[894]

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[892] Ibid.
[893] 'Hola Blame Put at High Level: Tory ex-Minister calls it an 'administrative disaster', *The Manchester Guardian,* 28 July 1959, p.1.
[894] Ibid, p.1.

During the debate, when John Peel, a Conservative Party member with considerable experience in the Colonial Service, started to defend the Cowan Plan, *The Manchester Guardian* reported that 'when, in defending the Cowan plan, he went on to speak of the special means called for in dealing with "desperate and sub-human individuals", there was a roar of protest and a cry of "Hitler!"'.[895]

Following the debates on Hola (and debate on the Devlin Report on the same day), *The Manchester Guardian* reported that 'there is no doubt that the Hola affair has caused more disturbance among Government supporters than the Government's decision to accept only part of the Devlin Report'.[896] The article claimed that 'one Tory estimate is that if there had been a vote at the end of the Hola debate perhaps as many as ten Tories would have felt compelled to abstain from supporting the Government.[897] This source added that Lennox-Boyd had seriously tested his party's loyalty by his stance on Hola.[898] Moreover, it reported that 'the dismay among conscientious Conservatives has perhaps been deepened, and it may percolate outwards from Parliament'.[899]

The impact of Castle's and Powell's speeches did indeed 'percolate' out from Parliament. A number of letters are included with Powell's papers in which both notable public figures and members of the general public congratulated him on his speech. Lady Bonham Carter wrote that Powell's speech 'shone out as the only ray of light from your side of the House' and noted that the whole incident at Hola 'is like a bad dream'.[900]A retired policeman from the Kenyan Police Force wrote that 'it is good to know that decency still prevails in the UK'.[901] Others were more critical of the British treatment of Africans. One member of the public, Annie

[895] Ibid, p.1.
[896] 'Hola a severe test of Tory M.P.s' loyalty', *The Manchester Guardian,* 30 July 1959, p.1.
[897] Ibid.
[898] Ibid.
[899] 'After the Debate', *The Manchester Guardian,* 30 July 1959, p.8.
[900] CA, POLL 3/1/18, Lady Bonham Carter, 31 July 1959.
[901] CA, POLL 3/1/18, Mr King, 30 July 1959.

Noble, wrote: 'how insulting is it to Africans reading that in the house they are referred to as sub-human. This could equally apply not only to many of our white enemies but to ourselves at times!'[902] Powell even garnered praise from an anonymous Conservative supporter who described himself as 'rather disillusioned'. This correspondent found it 'tremendously heartening to know that there are still Conservative M.P.s who are sufficiently brave and honest to say [his emphasis] what they believe and what is in any case transparently obvious to someone with even the most modest claim to fair-mindedness'.[903] The emphasis on the word 'say' suggests that many Conservatives might have 'thought' rather than 'said' similar sentiments to those expressed by Powell. Finally, one letter stated that many people 'have longed for some genuine expression of moral principle, particularly in response to current African affairs'[904] which suggests that people were aware of basic human rights principles and were beginning to perceive colonialism as a moral issue.

B9.2 Movement for Colonial Freedom

There is no mention of the abuse at Hola in the papers of *The Movement for Colonial Freedom* (MCF).[905] This omission is surprising given that the MCF was the largest anti-colonial organisation in Britain. Moreover, it explicitly regarded respect for human rights as its core value. In the minutes of the Executive Committee of the MCF held in 1958, for example, it is stated that:

> 'Britain should apply to all colonial territories the provisions of the Universal Declaration of Human Rights, including freedom of movement, speech, writing, association and public trial before imprisonment and detention'.[906]

Furthermore, as early as 1955, the MCF argued that:

> 'Europeans have no claim to remain in Africa unless they are prepared to do so on equal terms with Africans. That means accepting the full implications of

[902] CA, POLL 3/1/18, Annie Noble, 29 July 1959.
[903] CA, POLL 3/1/18, 'A Conservative' to Powell, 29 July 1959.
[904] CA, POLL 3/1/18, K.L.C. Strong, 28 July 1959.
[905] See S. Howe, *Anticolonialism in British Politics* for a detailed history of the *MCF.*
[906]School of Oriental and African Studies (hereafter SOAS), MCF Box 1, Executive Committee Minutes, 1958.

> democracy and Human Rights as laid down in the Universal Declaration of Human Rights. The MCF therefore demands the holding of elections based on universal adult suffrage in these territories'.[907]

Yet even in the Annual Report of 1958/9 and published after Hola (and the events in Nyasaland), for example, there is little reference to Hola (or Nyasaland) despite it having caused such a political stir at home. The only specific reference to Hola is that 'it was agreed that after the Hola Debate we should issue a statement on this subject and deliver it to the government by a deputation'.[908] No copy of this statement is included in the file, however. Instead, MCF papers are dominated by concerns peripheral to its anti-colonial aims such as the appointment of a new secretary and other administrative matters. Nevertheless, the leader of the MCF, MP Fenner Brockway, played a prominent role alongside Castle in Parliament in promoting the anti-colonial struggle; thus, the MCF had a way to publicise the organisation's agenda. Brockway later remembered the activities of the MCF as contributing 'greatly to the development of anti-colonialist conviction in Britain'.[909] He claimed that 'the Parliamentary questions which it initiated compelled the allocation of an additional day to colonial affairs'.[910]

B9.3 British Council of Churches

The response from religious bodies in Britain was similarly muted. The British Council for Churches (BCC) did keep a close watch on developments in Kenya. In the Council's records, there are numerous newspaper cuttings documenting allegations of abuse in Kenyan detention camps.[911] Yet despite the BCC's interest in humanitarian matters, it was rather restrained in commenting on such issues, particularly Hola. The BCC's General Secretary's response to a letter from a theological college which expressed 'shame and horror that things

[907] SOAS, MCF Box 84, A Policy for Colonial Freedom: Policy Statement Report of Activities and Objects and Constitution as adopted at the Annual Conference of the MCF, 30 October 1955.
[908] SOAS, MCF Box 1, Minutes of Executive Committee, 21 May 1959.
[909] F. Brockway, *The Colonial Revolution* (London, 1973), p.16.
[910] Ibid.
[911] CERC, BCC/DIA/7/2/1/10/2.

so hateful to the mind of Jesus Christ should be permitted by a people and a government so professedly Christian and with a democratic tradition' implied that the BCC sided with the Conservative Government in response to allegations levelled against them.[912] The General Secretary claimed, presumably in response to Eileen Fletcher's allegations, that there was not much evidence to confirm the 'wholesale allegations' made by 'this lady'. He did, however, acknowledge that 'it is always good to learn that there is such sensitiveness to matters of social importance among those who are entering the ministry'.[913]

B9.4 Fisher Papers

Archbishop Fisher's papers further demonstrate the ambivalent position the Church of England adopted. Fisher's response to a letter from a settler suggests that his stance was similar to that of the BCC's General Secretary. The settler stated that she was as shocked as world opinion had been at the incident at Hola and described the cover up as a 'futile fairy tale'.[914] In response, Fisher merely thanked her for her letter which 'helped to keep vividly in our minds the dreadful background of the present political discussions'. Although he did refer to 'the burning shame and horror and suffering which went with the Mau Mau outbreak and with experiences like the Hola Camp', Fisher revealed little about his personal stance.[915] Perhaps then, this confirms Stockwell's assertion that Fisher had a very ambivalent attitude towards human rights abuse in British colonies. On the one hand, he attempted to exert influence on imperial policy when sitting in the House of Lords whilst, at the same time, he strove to keep Britain's name clean in the public eye following atrocities like Hola.[916] Regarding the situation in Cyprus, Fisher wrote to Macmillan in early 1957 to say that he was becoming 'increasingly alarmed' by the situation in the territory. Despite this, he recommended that the British Government find a 'sufficiently delaying formula' in granting

[912] CERC, BCC/DIA/7/2/1/10/1, General Secretary, 15 June 1956.
[913] Ibid.
[914] LPL, Fisher 246, Mrs Eaden, February 1960.
[915] LPL, Fisher 246, Archbishop Fisher to Mrs Eaden, 11 February 1960.
[916] S. Stockwell, ''Splendidly Leading the Way'? Archbishop Fisher and Decolonisation in British Colonial Africa', *Journal of Imperial and Commonwealth History* 36.3 (2008), pp. 545-564.

self-determination to the colony.[917] Regarding Nyasaland, Fisher was reported, however, to have criticised the Government's motion on the Devlin Report and claimed that this was a 'source of fresh division'.[918]

B9.5 Voice of Free Africa

The CO was alerted to international condemnation of the events at Hola through a note sent from the BBC's Monitoring Service about an African broadcast on Hola. Entitled the 'Voice of Free Africa' the broadcast was aired in Swahili in Central and East Africa on 13 May 1959. In the broadcast the Hola camp was described as 'the hell of Kenya'.[919] The article argued that 'not a single human being in the world could deny that the murder of 11 natives in the hell of Hola camp is similar to the notorious atrocities committed in the Nazi camps where British soldiers and their allies used to be persecuted and murdered'.[920] It went on to allege that 'the British are committing the same nazi-like acts in the hell of Hola camp'.[921] The broadcast concluded with the statement: 'If the British dogs of imperialism and their colleagues really support the just UN Charter and the Human Rights Bill, let us see them implement what they have accepted and endorsed the UN Charter'.[922]

Anti-colonial feeling in Britain in the late 1950s, therefore, represented a strong wall of opposition facing Macmillan's Government, particularly following the tragedy at Hola. To what extent this pressure prompted the Government to change its colonial policy and accelerate the process of decolonisation, as Goldsworthy has argued with regards to the impact of international criticism, is difficult to say.[923] Undoubtedly, however, when

[917] LPL, Fisher 186, Fisher to Macmillan, 4 February 1957.
[918] 'Dr Fisher appeals for new idea on Nyasaland: Peer accuses commissioners of 'intellectual dishonesty', *The Manchester Guardian,* 30 July 1959, p.1.
[919] TNA, CO822/1263, 'Voice of Free Africa' in Swahili, 13 May 1959. See follow-up broadcast on 15 May 1959.
[920] Ibid.
[921] Ibid.
[922] Ibid.
[923] D. Goldsworthy, 'Britain and the international critics of British colonialism', p.1.

individuals like Castle and especially Powell cast colonialism and British abuses as a moral problem, the continued British presence in Kenya became increasingly untenable. Furthermore, for a government extremely sensitive to public opinion, when parallels to the Nazis were made and levelled against the Conservatives, this was a wake-up call for Macmillan. Although anti-colonial sentiments were not expressed in same language of human rights with which we are familiar now, these concerns were clearly underpinned by and expressed in the language of respect for human dignity.

B9.6 Appeal to ECHR

Post-Hola, potentially more worrying action came in the form of an appeal to the European Commission of Human Rights concerning the Hola incident and the question of detention without trial in Kenya. This was to be made possible through the presentation of a petition to the newly established European Court by either Iceland or Norway, as Kenya was not itself permitted to petition.[924] Iceland was 'traditionally anti-colonial'.[925] The CO's response was one of inaction.[926]

It was deemed unlikely, however, that Britain would encounter the same difficulty as they had met over Cyprus. It was suggested that affairs in Central Africa were almost immune from probing in international forums. Neale wrote that 'we may take comfort from the fact that the unique international complications which put us into the Strasbourg dock over Cyprus do not exist in this case and it therefore seems unlikely that we shall be in difficulty with the Council of Europe'.[927] The government would, however, have more to answer to from within Britain, it was predicted. Neale stated how 'our difficulties are more likely to be

[924] TNA, CO822/1333, Major Magor to Buist, 18 September 1959 and 3 November 1959.
[925] TNA, FO371/123890, J. Thyne Henderson to Selwyn Lloyd, 15 May 1956.
[926] TNA, CO822/1333, Buist to Mr Major, 20 October 1959.
[927] TNA, CO936/535, K.J. Neale (CO Principal on secondment to Cyprus) to J.C. Morgan (Head of Central African and Aden Department, CO), 13 August 1959.

domestic and there is undoubtedly a risk of public or Parliamentary challenge on the question of our obligations under the Rome Convention'.[928]

Later, in early 1960, there were efforts to raise the question of Nyasaland at Strasbourg also, again by Iceland.[929] *The Guardian* reported in February 1960 that there was 'a chance that Britain may be taken before the European Commission of Human Rights by Iceland' for infringements of the ECHR in Kenya and Nyasaland. The article listed three issues that were to be raised: Banda's detention in Nyasaland, the continued detention of the 'Hard Core' Mau Mau post-emergency in Kenya and the restriction order against Jomo Kenyatta.[930] There was, however, little cause for concern for the British administration, as the British Embassy in Reykjavik informed the FO that 'so far there has been no evidence that the Icelandic Government will do more than listen'.[931] Nothing came of this proposed action at Strasbourg and nor did the threat of it provoke much of a response within Whitehall.

The Hola massacre had an impact on colonial governance beyond the borders of Kenya, as the efforts to raise it at the ECHR suggest. Closer to home, however, the Hola incident had an effect on Kenya's nearby colonial territory, Nyasaland, most notably through the CO's rejection of John Pinney's suggestion that compulsory work be introduced in detention camps there.[932] Pinney was a senior district officer from Kenya who had been drafted in to Nyasaland to offer advice on how detention camps should be run.[933] In response to Pinney's point number 61 'it would be desirable for the hard core detainees to work compulsorily, but there will certainly be difficulties in the way of this', a CO official had simply scrawled 'HOLA!'

[928] Ibid.
[929] See TNA, DO35/7477. The matter was deemed a CO issue and there is therefore little comment on it.
[930] 'Iceland asked to act against Britain. Detainees in Africa', *The Guardian,* 19 February 1960.
[931] TNA, FO371/154538, British Embassy (Reykjavik) to FO, 24 February 1960.
[932] J. McCracken, *A History of Malawi* (Woodbridge, 2002), p.360.
[933] See TNA, CO1015/1905 for a copy of Pinney's report.

beside it.[934] Lennox-Boyd wrote to Armitage to warn that compulsory labour had to be 'consistent' with Britain's international obligations.[935] Armitage responded to assure Lennox-Boyd that he had decided that compulsory work was not 'feasible'.[936] Lessons had, after all, been learned.

[934] J. McCracken, 'In the Shadow of Mau Mau', p.545.
[935] TNA, CO1015/1905, Lennox-Boyd to Armitage, 3 June 1959.
[936] TNA, CO1015/1905, Armitage to Lennox-Boyd, 5 June 1959.

PART III: NYASALAND

> 'Although African feeling is worse as a result of the Emergency, it never reached the pitch of hatred reached in Kenya, and even a week or two after the troubles the normal cheery smiles from Africans to Europeans were apparent'.[937]

C1 Preamble

The Kenya Government's assessment of the situation in nearby Nyasaland during the emergency period in June 1959 quoted above indicates an optimistic view of events following the incident at Nkata Bay on 3 March, but by late July 1959 and with the publication of Lord Devlin's report into the disturbances it was clear that British involvement in the territory was becoming increasingly difficult to sustain. This section of the Chapter focuses on the aftermath of events that took place in nearby Nyasaland on that so-called 'fateful date'. As Martin Thomas has stated with regards to the incidents at Hola and Nkata Bay, 'two massacres in a single day; Operation Sunrise gave way to imperial sunset within a matter of hours.'[938] Incriminatory reports in the British press, in addition to international disapproval of British colonial governance, left the British Government in a spin and unsure about what to do.

This analysis is briefer than the sections which focused on Cyprus and Kenya due to the nature of the emergency period (it was considerably less protracted in Nyasaland) and also because of the territory's involvement with Whitehall. Nyasaland had a more distant relationship with authorities in London due to the nature of 'Federation'; and so enjoyed a higher degree of autonomy. By virtue of both factors, the historical trail in The National Archives is thinner. It is also, perhaps as a result of its somewhat 'peripheral' status in the wider British Empire, a trail far less travelled. It is, however, still crucial to the wider story of decolonisation as it was, as Darwin has argued, 'the storm centre' of the Central African

[937] TNA, FCO141/7185, Kenya Government, 'Nyasaland', 17 June 1959.
[938] M. Thomas, *Fight or Flight, p.*215.

Federation, despite the fact that it was the territory least dominated by whites.[939] Similarly, McCracken has argued that the impact of the nationalist movement in Nyasaland provoked a 'fundamental reassessment of British decolonisation strategies'.[940] Nevertheless, with the exception of Baker's book length study, Darwin's article and a recent edited collection of essays, Nyasaland generally and the Nyasaland Emergency, in particular, is an understudied case history in the story of British decolonisation.

The emergency period in Nyasaland generally, the events of 3 March on Nkata Bay and their consequences, mostly the impact of the Devlin Report, however, played a key role in the acceleration of the end of the British Empire. As Baker argued, 'before the emergency independence for Nyasaland appeared to be at least a decade, and probably, longer away; after the emergency it was clear that it would follow in a matter of a very few years'.[941] An article published in *The Manchester Guardian* on 5 March 1959, for example, warned of the imminence of decolonisation describing how British territories in Africa were 'moving shakily towards regimes in which it would seem that British paramountcy, in a series of rearguard actions, will give way to black paramountcy'.[942] Moreover, as Martin Thomas has argued the emergency period in Nyasaland amplified the voices of the critics of empire (African, British, and American) who had maintained for a considerable amount of time the belief that the Central African Federation was quite simply not viable.[943]

In Britain, the repercussions of 3 March in Nyasaland, had much the same effect as the events on the same day at the Hola. This thesis' story is, therefore, incomplete if it finishes with an examination of the Hola Camp massacre. For Devlin's argument that Nyasaland was a 'police state' – albeit only temporarily – had material consequences for the British colonial project.

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[939] J. Darwin, 'The central African emergency', p.221.
[940] J. McCracken, *A History of Malawi, p.*336.
[941] C. Baker, *State of Emergency*, p.vii.
[942] D. Stirling, 'Africa After Colonialism: Nationalism is Not Enough', *The Manchester Guardian,* 5 March 1959, p.8.
[943] M. Thomas, *Fight or Flight*, p.213.

As with Cyprus and Kenya, a considerable number of human rights infringements were alleged during the emergency period in Nyasaland. Baker estimates that 1300 Africans were detained, fifty-one killed and numerous wounded, thirty-one women widowed and sixty-eight orphaned.[944] In order to control the emergency, over three thousand soldiers and police officers were transferred in from neighbouring territories.[945] Although the figures are considerably fewer compared to those in Kenya and Cyprus, the methods of colonial governance and the unacceptability of these methods in the eyes of the Devlin Commission and some in Britain is central to the reconstruction of the process of decolonisation in the historiography. This section, therefore, using government papers available at The National Archives in addition to the papers of the Devlin Commission held at Rhodes House Library, assesses the role that the events in Nkata Bay and Nyasaland generally during the emergency period played in the wider process of decolonisation.

C2 NKATA BAY

The events of 3 March 1959 in Nyasaland have been well established by Colin Baker and in other historiography.[946] Just after midnight on 3 March, the Governor of Nyasaland, Sir Robert Armitage, announced the declaration of a state of emergency in an attempt to re-establish law and order following increased violence since July 1958 upon the return of Dr Banda to Nyasaland. Upon declaring the emergency, Armitage banned the Nyasaland African Congress and detained its president-general, Dr Banda, and other members including other Executive Committee Members. On the first day of the emergency, 3 March, at Nkata Bay on Lake Nyasa and during disturbances twenty African protestors were shot and killed by a detachment of the King's African Rifles. The total number of protestors killed or who later

[944] C. Baker, *State of Emergency,* p.viii.
[945] Ibid.
[946] J. Darwin, 'The central African emergency', p.224.

died from their injuries following the events at Nkata Bay has recently been revised to twenty-eight.[947]

It was from 3 March, as Darwin argues, 'that Armitage's policy would come under fierce public scrutiny in London'.[948] Indeed, in the House of Commons on 3 March, James Callaghan challenged the Colonial Secretary on the declaration of emergency, asking: 'is not this the most extraordinary state of emergency that has ever been declared?'[949] Lennox-Boyd responded that the decision to declare an emergency 'has been taken freely by the Governor of Nyasaland with the full support of Her Majesty's Government'.[950]

A letter to the editor of *The Times* called for the CO to act swiftly to prevent Nyasaland becoming another 'running sore'.'[951]After 3 March, however, as McCracken and Baker have demonstrated, the situation in Nyasaland did indeed become another 'running sore' in Britain's Empire. Further resistance against the colonial state resulted in colonial reprisals. Political attitudes, in turn, hardened.[952] Patrols were undertaken in the countryside during which houses were searched, documents confiscated and people arrested. Whilst the aim was to project an image of 'firm friendliness', as McCracken has argued, the opposite was more often than not the case. Whilst the Devlin Commission dismissed allegations that soldiers in the Misuku hills were guilty of raping and torturing the local population, it was established that houses were often burned and collective fines imposed on entire villages. McCracken has estimated that by the end of April, villagers had been fined over £30,000.[953] By mid-April, the

[947] J. McCracken, *A History of Malawi, p.*354.
[948] J. Darwin, 'The central African emergency', p.224.
[949] Hansard, HC Debate, 3 March 1959.
[950] Ibid.
[951] David Hamilton, 'Nyasaland', *The Times,* 12 March 1959, p.13.
[952] J. McCracken, *A History of Malawi*, p.356.
[953] Ibid, p.356.

number of detainees (detained without trial) was around 1300 and over 2000 had been imprisoned for political offences.[954]

C2.1 Prior Evidence of Abuse

Further research undertaken by McCracken has demonstrated the extent of the ill-treatment of detainees held in Nyasaland and Southern Rhodesia during the emergency period.[955] The focus of McCracken's study is Malawian detainees held in Gwelo and Marandellas prisons in Southern Rhodesia and also in the Kanjedza camp near Blantyre in Nyasaland, where conditions were much harsher than elsewhere.[956] McCracken described how detainees arrived at Kanjedza detention camp 'several days after their arrest, having been beaten and handcuffed in pairs in police cells or holding centres and then driven for hours in overcrowded lorries, often without food or drink'.[957] Following their arrival at Kanjedza, McCracken describes how 'they were often beaten again, then forced to wait for hours with their hands on their heads before being stripped to their shirts and trousers and consigned to a waiting cage'.[958] These methods of control, McCracken has established, were modelled upon those employed in Kenya during its emergency period.[959] A visitor to Kanjedza in late 1959, Phillip Howard of the London and Blantyre Company Ltd, recounted how upon visiting the camp, he was 'very concerned to find a great deterioration' the morale of detainees and 'a growing sense of despair and bitterness'.[960] Howard reported that this was also confirmed by a representative of the ICRC who had also visited the camp. Significantly, Howard reported also that the 'public conscience on this matter is slowly being stirred'.[961]

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954 Ibid, p.336.
955 J. McCracken, 'In the Shadow of Mau Mau: Detainees and Detention Camps during Nyasaland's State of Emergency', *Journal of Southern African Studies,* 37.3 (2011), pp. 535-550.
956 Ibid, pp. 535-550.
957 Ibid, p.543.
958 Ibid, p.543.
959Ibid, p.535.
960 CERC, BCC/DIA/7/2/1/2/9, P. Howard to Rev. D. Alan Keighley, 3 November 1959.
961 Ibid.

Indeed, the events of 3 March and the ensuing situation in Nyasaland attracted widespread comment and, at times, condemnation. From Scottish missionaries writing to *The Manchester Guardian,* to letters to the editor of *The Times,* to House of Commons' debates and correspondence from the activist group, *Justice,* the formerly marginal territory of Nyasaland provoked considerable discussion about the nature and legitimacy of British colonial governance.

C3 Parliamentary Scrutiny – Callaghan, Grimond and Benn

As news of the in Nyasaland incident reached London, Labour MP James Callaghan became increasingly exercised in the House of Commons – to the extent that he was told to calm down by the Colonial Secretary – as he described the killing of three Africans that day. The death toll was confirmed later to have reached twenty.[962] The declaration of emergency was, however, staunchly defended by Julian Amery, Under-Secretary of State for the Colonies, who argued that 'had we not taken appropriate action at the right moment there might well have been a massacre of Africans, Asians and Europeans on a Kenyan scale'.[963]

The Opposition was becoming increasingly critical of the escalation of emergencies in colonial territories. Callaghan argued that events in Nyasaland would follow the well-worn pattern that force would be employed by the colonial state: 'I see the building up there of a classical drama and a situation in which we shall use force against the nationalist movement'.[964] He pleaded with the House to accelerate the process of decolonisation and argued that those who thought Nyasaland would 'sit quietly and wait until they have attained the standards that we set before they can have responsibility for their own government' lived in a 'cloud-cuckoo-land, in the middle of the nineteenth century'.[965] Callaghan's views on the

[962] By 8:53pm that night, Jo Grimond confirmed that twenty people had been killed by the Security Forces that day. See Hansard, HC debate, 3 March 1959.
[963] Ibid.
[964] Ibid.
[965] Ibid.

use of force were reflected in the speech of Jo Grimond, Leader of the Liberal Party, during the same debate. Grimond argued that 'we now know that the British can no longer bat on this wicket' stating that Britain was 'not capable of holding down vast areas of Africa by force'.[966] Grimond described it as a 'staggering thing' that 'throughout vast areas of Africa today the ordinary process of law has had to be abrogated and emergency regulations introduced'.[967] He also questioned whether Britain was 'going on to another Cyprus situation? Are we going in for repression and eventually having to give way to force what we refuse to reason?' Grimond advocated that 'the only possible end for a democratic people in the Western world is government by the people for their own ends'.[968]

During the debate Tony Benn (Labour MP for Bristol South East) urged the House not to fall into the trap France found itself in Algeria the previous year. Referring to the 'hideous parallel' of the Algerian War, Benn warned that Britain could find itself in a similar situation to France in May 1958 in which 'far from Algeria being controlled by France, France was controlled by Algeria'.[969] Benn had previously put the Government under pressure regarding its human rights policy in the colonies by proposing a Bill in 1957 under which the Universal Declaration of Human Rights would be given statutory force in the colonies.[970] The Bill was supported by Castle and Brockway. A similar Bill had been proposed by Brockway in 1952.

In stark contrast to the 3 March debate, on the previous day parliamentary debate had focused on colonial welfare and development, the 'softer' side of colonial governance. The rhetoric of welfare and development of 2 March was entirely contradicted and discredited by the reality of violence and force exhibited by the colonial states on 3 March, however. Whilst post-3 March debates were dominated by the Opposition's criticism of the government's

[966] Ibid.
[967] Ibid.
[968] Ibid.
[969] Ibid.
[970] See TNA, CO859/1342.

toleration of hard governance methods in Kenya and Nyasaland, soft methods of good governance through the Colonial Development and Welfare Act had been lauded by Lennox-Boyd when presenting a further Bill to Parliament the previous day. On 2 March 1959, the Colonial Secretary proclaimed that there was 'no more agreeable task' for him than to request that Parliament offer more money for colonial development.[971] Describing the 'accepted doctrine of our time' to help 'underdeveloped countries to raise their living standards', Lennox-Boyd spoke of the 'world-problem' in which Britain 'plays its full part'. Describing how Britain could be 'proud of the magnitude of the efforts we have made so far', Lennox-Boyd stated that £95 million of 'new money' was to be available for development and welfare, compared to the £80 million made available in 1958.

Callaghan, however, shattered the picture Lennox-Boyd was painting of aid for all with his observation that 'when one reads the list of territories to which aid has been given, one might assume that the more political trouble there is the greater the aid the territories get'.[972] He made reference to the difference in aid allocated to British Guiana, British Honduras and Kenya, compared to Somaliland and 'the forgotten islands' in the Pacific. Callaghan suggested, therefore, that soft and hard governance went hand in hand in the effort to suppress anti-colonial forces.

C4 Response to Nkata Bay

The events at Nkata Bay prompted a quick response both within and outside Parliament. The Kingston-Upon-Hull North Labour Party wrote to Barbara Castle on 4 March 1959, for example, informing her that the Party had sent a resolution to the Colonial Secretary and Prime Minister stating that:

> 'This Constituency Labour Party calls on Her Majesty's Government to act immediately to achieve a just and liberal settlement of the unrest in Nyasaland and N. Rhodesia which will give hope of democratic dignity to all

[971] Hansard, HC Debate, 2 March 1959.
[972] Ibid.

> the peoples of these territories and so prevent a repetition of the tragedies of Kenya, Cyprus, Malaya and Algeria.'[973]

Castle had been praised prior to this, in 1958, for her interest in Africa and her publicising of African interests in the *New Statesman.* One reader wrote to Castle how:

> 'I have been feeling for a long time that the Labour Party had lost much of its fire through lack of a cause to inspire it with indignation and pity; but the cause is here all the time and you are one of its best exponents. Let us have much more of it and I am sure the electorate will respond…the British people will always be roused by injustice and oppression if the issue is put to them properly. More power to you!'[974]

This is, indeed, exactly what Castle did as events unfolded in Kenya and Nyasaland throughout early 1959. Following the events of 3 March in Nyasaland, Castle received half a dozen letters which described outrage at events in Central Africa.

C4.1 British Public Opinion and Calls for Investigation

One such letter, for example, was sent by Mr Harris, Ward Organiser for the North Haringey Ward of the Hornsey Labour Party, who wrote to Barbara Castle on 5 March 1959 asking if she would be able to get him a ticket to a Commons debate as he was interested in 'Racial problems'.[975] Harris also wrote to Castle that he was 'utterly disgusted at the Tory Party's blunt refusal to send a commission into Nyasaland' and concluded that 'it seems we are not through with Fascism and 'nigger-baiting' yet'. Immediately following the events of 3 March, there had been calls for an investigation into the disturbances to be undertaken in Nyasaland. On 4 March, for example, Callaghan proposed that an inter-parliamentary commission be sent to Nyasaland. The Colonial Secretary promptly rejected these cries for an investigation.

Others wrote to Castle congratulating her on the work she had done on Nyasaland since the declaration of emergency. Joan E. Wicken wrote to Castle on 6 March, for example, that 'first

[973] BOD, MS Castle 246, Kingston Upon Hull North Labour Party to Castle, 4 March 1959.
[974] BOD, MS Castle 246, C. Orwin to Castle, 27 February 1958.
[975] BOD, MS Castle 246, C. Harris to Castle, 5 March 1959.

may I congratulate you on the efforts you have made this last week. Its (sic) a horrifying business, but at least you have the satisfaction of putting up a good fight'.[976] Another letter from Labour Party supporter and school master Richard Snelling, wrote how he wrote to Castle because she seemed 'to be a formidable fighter for just causes, and because you fight with your head as with your heart'.[977] Snelling described the 'major tragedy' that was now 'brewing in Central Africa' and, like Harris, requested a 'full and independent enquiry' into the disturbances. Snelling also stressed that:

> 'England had, and still has, to some extent, a very fair name throughout the world as the upholder of justice and the champion of the weak. Episodes like Suez, or the behaviour in Cyprus which you so bravely criticised only do our nation harm. It is impossible to stress this aspect of the matter too strongly'.[978]

Castle became well known for discussing, as was described in a contemporary report, 'the violence for which the Tory Party is rapidly becoming famous'.[979]

Calls for an investigation were also made by prominent individuals such as Violet Bonham Carter and Gaitskell, who sent a petition on 19 March to the editor of *The Times* calling upon 'the Government to carry out their obligations towards the Protectorates of Northern Rhodesia and Nyasaland by appointing a commission to inquire into the recent disturbances'.[980] The petition argued that 'our duty towards these Protectorates must not be a Party question. We appeal to the Government to act swiftly to prevent further deterioration and to inspire confidence in British justice'. This suggestion was not welcomed in Nyasaland. As *The Times* reported on 20 March 1959, Alan Dixon, the senior elected member of the Legislative Council, said 'until the political heat over the problems in Nyasaland is removed in

[976] BOD, MS Castle 246, J.E. Wicken to Castle, 6 March 1959.
[977] BOD, MS Castle 246, R. Snelling to Castle, 20 March 1959.
[978] Ibid.
[979] BOD, MS Castle 246, Comment, 10 April 1959.
[980] 'Commission of Inquiry for Nyasaland', *The Times,* 19 March 1959, p.13.

Britain, no objective consideration of the problems here can possibly be given….I would certainly not support a political or judicial inquiry'.[981]

At the MCF's Annual National Delegate Conference on 22 March 1959, a resolution was passed which denounced the 'tyrannical acts' of the Federal authorities in Central Africa and the 'collusion of the British Government in their tyranny'.[982] It called for the ending of the state of emergency in Nyasaland and Southern Rhodesia and the establishment of a commission of enquiry into the events.[983] At the same conference it was also demanded that the Government abolish emergency regulations in Kenya. In April 1959, a 'Black Sash Vigil' was organised by the organisation and students from Oxford, Cambridge and London. The vigil took place outside Downing Street and lasted three days. During the vigil women wore black sashes in protest against the detention without trial and shooting of people in Central Africa.[984] This followed earlier protests on 14 and 21 March outside Charing Cross Hospital on the Strand in London by the MCF against the 'killing of 40 Nyasaland Africans by police gunfire', amongst other concerns.[985]

Whilst the Government came under increasing pressure to instigate an investigation, it vocally and publicly continued to defend the actions of the Nyasaland Government. On 21 March 1959, for example, Lord Home, Secretary of State for Commonwealth Relations, spoke at a public meeting in Edinburgh about violence in Nyasaland and defended government actions during the disturbances. Home stated that: 'I can only say that when the facts are revealed to Parliament, as they will be soon, they will carry complete conviction that no governor and no government could have avoided the action which was taken'.[986]

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[981] 'Escaping African Women Shot in Nyasaland Search', *The Times,* 20 March 1959, p.9.
[982] SOAS, Box 29, Minutes of 1959 Annual National Delegate Conference, 22 March 1959.
[983] This was also demanded at the 1960 Annual Delegate Conference. See SOAS, MCF Box 29, Resolutions and Amendments, 1960.
[984] SOAS, MCF Box 13, 'Black Sash Vigil', undated.
[985] SOAS, MCF Box 13, ' Protest Picket against repression in Central Africa', undated.
[986] 'Lord Home Defends Nyasaland Action', *The Times,* 21 March 1959, p.4.

C4.2 General Debate surrounding Emergency Powers

By the end of March 1959, British use of emergency powers throughout the remaining empire came under fire generally. In April 1959, it was described in a *New Statesman* article how the Tory Party was becoming 'naturally more sensitive about the accusation that they are the brutal party than they ever were that they were the stupid party'.[987] Dingle Foot, Labour MP and lawyer for both Jomo Kenyatta and Hastings Banda, made reference in *The Observer* on 22 March 1959 to the fact that in Kenya, Nyasaland and Northern Ireland, many people had been and currently were being held in detention without trial. Writing 'these are merely three examples: it would be easy to cite others', Foot highlighted the inconsistencies in British colonial governance.[988] Claiming that 'Cabinet Ministers, especially on their voyagings (sic) abroad, are never tired of proclaiming British adherence to the rule of law' and acknowledging that 'Britain is a signatory of the Universal Declaration of Human Rights and of the European Convention on Human Rights'.[989] Foot argued, however, that 'yet the fact remains that several millions of Her Majesty's subjects are now liable to imprisonment for an indefinite term, although they are not charged with any offence known to the law and have never been convicted by any court'.[990]

Foot's efforts to probe colonial governance techniques in Nyasaland intensified in May 1959 when he wrote to Armitage to inquire about the alleged ill-treatment of detainees at Kanjedza camp. Foot had recently visited Kanjedza and the prison at Zomba to take statements from detainees whom he was accompanying as they sat before the Devlin Commission.[991] Armitage responded by stating that 'we do not feel we have anything to hide' in detention camps.[992]

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[987] BOD, MS Castle 246, 'London Diary', *New Statesman,* 18 April 1959.
[988] D. Foot, 'Gaol without Trial', *The Observer,* 22 March 1959, p.16.
[989] Ibid.
[990] Ibid.
[991] TNA, CO1015/1518, Dingle Foot to Armitage, 19 May 1959.
[992] TNA, CO1015/1518, Armitage to Dingle Foot, 13 June 1959.

Following Foot's investigations into conditions at Kanjedza camp, it was proposed that an enquiry (separate from the Devlin Commission) should be undertaken into allegations of ill-treatment in detention camps in Nyasaland.[993] Writing to Lennox-Boyd, Armitage explained that 'it seems inevitable that we shall have, sooner or later, to have an inquiry into conditions at Kanjedza, if only for our own guidance. It is also clearly desirable to forestall criticisms both here and in the United Kingdom'.[994] In London on the same day, Gorell Barnes described how Lord Perth was 'worried about the position in Nyasaland generally and especially about the treatment of detainees' due to the steady stream of letters he received alleging ill-treatment.[995] Lord Perth was keen to discuss with the CO 'the question whether the time had not come to send somebody out from here to advise the Government on the running of their detention camps'.[996]

Lord Shawcross, Chairman of Justice, wrote to Lennox-Boyd on 1 June 1959 following a meeting with Dingle Foot, during which Foot recounted his impressions of conditions in detention camps in Nyasaland. Shawcross reiterated the points that Foot had raised with Armitage as listed above. He also included the allegation that 'the detainees were all made to walk about, and even to sit, with their hands on their heads', and added that 'I must say I find this last a peculiarly astonishing and, if true, deplorable allegation'.[997] Shawcross argued that:

> 'apart from the hatred and resentment which this treatment is likely to build up, my Executive Committee feels that it is quite unjustifiable to impose conditions of this kind upon people who are merely detained for security reasons without being charged, still less convicted of any offence'.[998]

Concluding his letter to Lennox-Boyd, Shawcross noted that:

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[993] TNA, CO1015/1905. The Solicitor General (Nyasaland) confirmed to the Commission that an inquiry would be undertaken. See RHL, Devlin Papers, Box 12A, Final submission by the Solicitor-General, 24-26 June 1959.
[994] TNA, CO1015/1905, Armitage to Lennox-Boyd, 16 June 1959.
[995] TNA, CO1015/1905, Gorell Barnes to Morgan, 15 June 1959.
[996] Ibid.
[997] TNA, CO1015/2097, Shawcross to Lennox-Boyd, 1 June 1959.
[998] Ibid.

> 'I think that you will agree that if these allegations are substantiated, they do disclose the most undesirable condition of affairs, and that you would wish to make the strongest representations about them to the authorities in Nyasaland and in other territories where Africans are detained'.[999]

In his reply to Shawcross, Lennox-Boyd distanced himself from governance in Nyasaland by reminding him that 'prisons are the responsibility of the Federal Government. The detention camps in Nyasaland are administered in accordance with regulations made under the Federal laws relating to prisons'.[1000] Lennox-Boyd concluded by arguing that 'there is no attempt to subject the detainees to humiliation' and assured Shawcross that any allegations of ill-treatment were investigated properly.[1001]

Questions about the treatment of detainees at Kanjedza also came up in the House of Commons. Barbara Castle, for example, asked a specific question about an alleged incident of ill-treatment at Kanjedza made by Sam Bauda, a Nyasaland detainee in the House of Commons in late July. The Governor's Deputy informed Lennox-Boyd that 'there is evidence that Banda (sic) received bruise(s) to his face as a result of blow(s) and some evidence of an abrasion. Investigations proceeding with a view to decision on criminal proceedings'.[1002]

Foot's, Shawcross' and Castle's concerns were quickly overshadowed, however, by the revelations of Clemens Michongwe who had been detained at Kanjedza. On 4 June he published a first-hand account of his time there in *Dissent,* a periodical published in Salisbury, Southern Rhodesia.[1003] Michongwe's account attracted considerable attention in Britain. As McCracken has stated, it is likely that this attracted such a volume of attention

[999] Ibid.
[1000] TNA, CO1015/2097, Lennox-Boyd to Shawcross, 26 June 1959.
[1001] Ibid.
[1002] TNA, CO1015/2097, Governor's Deputy to Colonial Secretary, 28 July 1959.
[1003] J. McCracken, 'In the Shadow of Mau Mau' (2011), p.546. *Dissent* was published by a Methodist minister and academics Terence Ranger and John Reed. See CO1015/2097 for a copy of the 4 June edition.

because it came in the wake of the Hola massacre.[1004] It prompted an editorial in the *Manchester Guardian* on 16 June and questions in the House of Commons by Fenner Brockway and Eirene White on 7 July. Lennox-Boyd brushed off the allegations during the parliamentary debate. Morgan, Head of the Central African and Aden Department, acknowledged that the article in *Dissent* was in fact representative of the type of allegations being made about Kanjedza.[1005] The worst, however, was yet to come with the publication of Lord Devlin's Report into the emergency period in Nyasaland in July 1959 which proved to be fatal to the late colonial state.

C5 DEVLIN

C5.1 Devlin Commission

On 25 March 1959, it was announced that Mr Justice Devlin had been appointed as the chairman of the commission of enquiry set up by the Government to investigate the disturbances in Nyasaland.[1006] The decision to establish the commission of enquiry was taken by the British Cabinet just two days after the incident on 3 March.[1007] The Government believed that undertaking such an enquiry would be 'safe', according to John Stonehouse.[1008] The enquiry's terms of reference were 'to inquire into the recent disturbances in Nyasaland and the events leading up to them and to report thereon'.[1009] On 6 April, the four person Commission was appointed, led by Devlin, regarded as one of the most talented lawyers of his generation.[1010] Devlin was not, however, the Government's first choice to lead the enquiry and the decision to appoint him was to have serious consequences for its colonial

[1004] Ibid, p.546.
[1005] TNA, CO1015/1905, J.C. Morgan, 17 June 1959.
[1006] 'Mr Justice Devlin to lead Nyasa inquiry: Opposition doubts about its limited nature', *The Manchester Guardian,* 25 March 1959, p 1.
[1007] See C. Baker, 'The Mechanics of Rebuttal: The British and Nyasaland Governments' Response to The Devlin Report 1959', *The Society of Malawi Journal* 60.2 (2007), p.29.
[1008] SOAS, MCF Box 39, Stonehouse, 'Central Africa After Monkton – What Next?', 15 October 1960.
[1009] 'Commission of Inquiry for Nyasaland', *The Times,* 25 March 1959, p.10.
[1010] J. McCracken, *A History of Malawi*, p.356.

reputation.[1011] Macmillan, in particular, disapproved of Devlin's appointment (it was made in his absence by David Maxwell-Fyfe, the Lord Chancellor) and famously noted his dissatisfaction at Devlin's appointment in his diary because Devlin was '(a) Irish – no doubt with that Fenian blood that makes Irishmen anti-Government on principle, (b) a lapsed Roman Catholic'.[1012]

The other members of the Commission included Sir John Primrose, former Lord Provost of Perth (said to have been chosen with Scottish opinion 'in mind'); Sir Percy Wyn-Harris, previously Governor of the Gambia; and E.T. Williams, the Warden of Rhodes House in Oxford.[1013] McCracken has described these individuals as 'fully paid-up members of the British ruling class'.[1014] The Opposition had been in favour of a parliamentary commission but Lennox-Boyd was reported to have argued that the Government believed it to be more appropriate that a group was appointed which had 'judiciary, expert, and African experience'.[1015] The government did stress, however, that it was not a judicial commission, although Devlin, a judge, had been asked to chair it.[1016] Devlin, however, later asserted that it had been a judicial enquiry and compared it to a coroner's inquest.[1017]

The members of the Commission arrived and began taking evidence in Nyasaland on 11 April 1959. In total, the Commission spent five weeks in Nyasaland and gathered evidence from 455 individual witnesses and 1300 witnesses who were heard in groups.[1018] By late May, the Devlin Commission was increasingly worrying colonial officials in Nyasaland to such an extent that they became very concerned at the possibility that the Commission would not

[1011] J. Darwin, 'The cental African emergency', p.230.
[1012] C. Baker, *State of Emergency*, p.80.
[1013] C. Baker, 'The Mechanics of Rebuttal', p.30.
[1014] J. McCracken, *A History of Malawi*, p.356.
[1015] 'Mr Justice Devlin to lead Nyasa inquiry', p 1.
[1016] C. Baker, *State of Emergency*, p.87.
[1017] Ibid, p.87.
[1018] C. Baker, 'The Mechanics of Rebuttal', p.30.

support all of the actions taken by the government.[1019] There was an element of surprise that the members of the Commission remained aloof from the colonial administration during their investigations. Armitage wrote to Lennox-Boyd in April 1959, for example, describing how 'the Commission have kept completely to themselves and have given very little opportunity for any gossip to get around as to how they are thinking and what they are doing'.[1020]

C5.2 Devlin Papers

The Devlin papers held at Rhodes House Library in Oxford offer an interesting insight into the Commission's approach and offer greater detail on its findings than is conveyed in the final published report. The papers have seldom been examined in studies on decolonisation, yet Devlin's probing and questioning and the evidence he and the Commissioners gathered further exposes the true nature and scope of harder forms of colonial governance employed both before and certainly during periods of emergency.

The Devlin Commission collected a vast range of evidence from a wide variety of individuals resident in Nyasaland. Accounts of the disturbances include those given by individuals connected to the colonial administration like Elizabeth Matthews, the wife of an administrative officer, who described how she found it:

> 'tragic that the upheaval which is shaking the whole of Africa should have come so suddenly and so violently to this small country where, until a few years ago, relations between the races were exceptionally happy'.[1021]

Such sentiments were reflected in a letter from a Missionary nursing sister, Margaret L Paterson, from the Church of Scotland Mission Hospital, who wrote to the Commission to explain that 'up until 1951 this was a happy friendly country'.[1022] Others, like Matthews, also

[1019] J. McCracken, *A History of Malawi*, p.358.
[1020] TNA, CO1015/1819, Armitage to Lennox-Boyd, 28 April 1959.
[1021] RHL, Devlin Papers, Box 2, E. Matthews, 20 May 1959.
[1022] RHL, Devlin Papers, Box 2, M. Paterson, undated.

described an idyllic co-existence in Nyasaland pre-Federation. Mrs B Fairfax-Francklin, wife of District Commissioner for the Mzimba District in the Northern Province of Nyasaland (1925-27 and 1930), wrote to the Governor of Nyasaland to explain that she was often left alone with her young sons with 'no other Europeans within 22 miles' whilst her husband was away.[1023] Fairfax-Francklin described how she was unable to lock the doors of her house because they had no keys. She was, however, 'not afraid, as there was no reason to be afraid. We trusted the Africans, and the Africans trusted us. We were friends together'. Concluding, Fairfax-Francklin wrote 'I wish to make no comment on this beyond the fact that, to my mind, that was civilization'.

The majority of letters received and the evidence from interviews, however, suggests a less rosy picture of colonial and African co-existence. A number of letters expressed gratitude to the members of the Commission that they were able to provide evidence in front of it and many also included in their letters complaints of ill-treatment at the hands of the colonial government. J.J. Kuruso, for example, wrote to the Commission questioning what warranted 'the Emergency State to be declared, shooting men, women with their children at the back, school boys, teachers and imprisoning, beating and starting many at detention camps in Blantyre?' [1024] Kuruso also attacked the integrity of British law by stating 'I don't know anything about the law but I strongly feel that if this is a pattern of British laws, it was a great mistake indeed that our forefathers agreed to be protected by them'.[1025]

The Government's policy of detention without trial came under particular fire. Evidence given by the Reverend CN Frank in front of the Commission, for example, reported that:

> 'many people writing to me from Nyasaland, both white and black, have said that they feel it wrong that these men and women should continue to be detained without trial and many of us are hoping that if they were considered

[1023] RHL, Devlin Papers, Box 3, Mrs B. Fairfax-Francklin to Armitage, 7 May 1959.
[1024] RHL, Devlin Papers, Box 2, J.J. Kuruso to the Commission, 8 May 1959.
[1025] Ibid.

> to be guilty of conspiracy that would be proved in a court of law or if not they will be released'.[1026]

It was at this very time, in London, that the CO was debating the legitimacy of the continuation of such emergency powers, as explored in the following Chapter.

Allegations made by missionaries or religious leaders were rebuffed by colonial administrators. In a provincial commissioner's report on disturbances in the Northern Province of Nyasaland written by C. Haskard, it was claimed, for example that, 'complaints of rough treatment' had been received mostly from members of the Church of Scotland Mission and although some were described as being 'reasonably factual', Haskard maintained that many were 'highly exaggerated' and accused the missionaries of exhibiting 'little inclination to present the facts objectively'.[1027] Regardless, Haskard maintained, the reports merely alleged bruising and nothing 'more serious'.[1028]

C5.3 Comparisons with Nazi Regime

Not for the first time, a significant number of the letters received compared the behaviour of the security forces to that of the Nazis, similar to those on Cyprus and Kenya discussed previously. A letter from a detainee, Thomas Karuwa, invoked a comparison to the Nazis in his statement to the Commission. Describing how he was arrested early in the morning of 3 March, Karuwa alleged that upon being taken to the police station in Blantyre and then on to Chileka aiport, 'the treatment there was a Gestapo type, ordinary Europeans kicked us and personally I was kicked for no reason at all'.[1029] The detainee claimed he was then flown to Bulawayo in Southern Rhodesia and then taken to Khami prison where they were kept inside without seeing daylight for five days.[1030]

[1026] RHL, Devlin Papers, Box 12A, Reverend CN Frank, 23 June 1959.
[1027] RHL, Devlin Papers, Box 8, Provincial Commissioner's report, 29 April 1959.
[1028] Ibid.
[1029] RHL, Devlin Papers, Box 3, T. Karuwa, 20 March 1959.
[1030] Ibid.

A letter from a group based in Johannesburg, South Africa, which described itself as 'Nyasa mourners' made a comparison between events in Nyasaland and the conduct of the Nazis during World War Two. The letter from the Nyasa mourners said that they trusted that through the Commission of Enquiry's investigations, it would be revealed 'to the Democratic Governments of the World the NAZI GERMAN (their emphasis) brutality displayed in the recent disturbances'.[1031]

These letters and statements alleging ill-treatment and concern for the welfare of those in Nyasaland given to the Devlin Commission offer key insights into perceptions of and concerns for the methods of colonial governance in Nyasaland during the emergency period amongst detainees, religious leaders and activist groups in the country. The transcripts of the Commission's interviews with senior members of the colonial administration, on the other hand, provide key insights into the rationale behind and justification for the methods of governance during this period.

C5.4 Key Interviews

C5.4.1 Solicitor General of Nyasaland

In a number of interviews, Devlin teased out confirmation from his interviewees that the governance methods used during the emergency in Nyasaland would not have been acceptable in Britain.

Interviewing the Solicitor General of Nyasaland, for example, Devlin queried the number of people who had been injured during the arrests that took place on the morning of 3 March as part of Operation Sunrise. Devlin asked 'if one were looking at proportions, what proportion

[1031] RHL, Devlin Papers, Box 3, 'Nyasa Mourners', undated.

of those who gave trouble were injured on arrest?'[1032] Devlin claimed that it was his recollection 'that everybody who gave indication of not wanting to be arrested out of the lot of them no-one emerged without injury except the man who was arrested by an African sub-Inspector'.[1033] That, Devlin asked the Solicitor General, 'would be adjudged by English standards an extremely poor percentage, would it not?'. In response, the Solicitor General conceded that 'if it were possible to apply English standards to this situation, I agree'.[1034]

Justifying the use of force, the Solicitor General in his interview with Devlin had explained that:

> 'people in the bad areas where there has been a lot of trouble had to be shown that it was the Government and not Congress who was the master of the situation. That could only be done with firmness, and of course firmness and aggressiveness are very close together and perhaps very difficult to distinguish from the point of view of the person in the village against whom the firmness is directed.'[1035]

Quoting the Operational Instructions No.2 of 7 March, however, the Solicitor General stressed that whilst firmness was permitted in re-establishing law and order, it was made explicit that this was to be done 'without brutality'.[1036] Devlin questioned the Solicitor General on the distinction between firmness and brutality, however, asking 'how far does firmness go?' to which the Solicitor General replied 'well, it would depend on the individual circumstances, really'. The Solicitor General did acknowledge that 'so far as aggression is concerned a direction for an aggressive policy would be inevitable in the circumstances'.

Regarding the difference in behaviour between a London policeman and a policeman in Nyasaland, Williams questioned whether the Solicitor General would

[1032] RHL, Devlin Papers, Box 12A, Solicitor-General, 24-26 June 1959.
[1033] Ibid.
[1034] Ibid.
[1035] Ibid.
[1036] Ibid.

> 'like to comment on a thing which has troubled me throughout all these investigations? This is with regard to the security police. You have an ordinary policeman, and since it is unlike a policeman in London, for example, he has not much discretion; he has to be told what to do. When it comes to moving along a crowd he has not got the same friendly technique as a London policeman.'[1037]

To which Roberts replied: 'of course, the London bobby is not dealing with Nyasaland crowds.'[1038]

C5.4.2 Assistant Commissioner Long

The question of comparative policing techniques in Britain also featured prominently in Devlin's interview with Assistant Commissioner Long.[1039] Devlin's questions to Long featured, amongst others, 'to what extent would you say that it was fair to apply London standards to the police in Nyasaland?' and 'the Nyasaland police seem to use the power very much more freely than the London police would do, or would you say that this is not true?'. Long did not directly answer either of these questions but in defence he stated that 'you have to divorce yourself from a disciplined body like the Metropolitan police and not compare that with the colonial service'. In response to Devlin's statement that 'what has struck me going through some of these cases is that when a man gives trouble, if he does not come quietly when he is told to come quietly the baton is used almost at once whereas in London I do not think it would be'. Long responded: 'no, Sir, you are quite right'.

C5.5 Home and Abroad: Double Standards

The point that Devlin and his fellow panel members were getting at was the question as to whether or not it was deemed acceptable to use different forms of governance in colonial territories than in Britain. As Simpson argues with regards to the final Devlin Report:

[1037] Ibid.
[1038] Ibid.
[1039] RHL, Devlin Papers, Box 14, Assistant Commissioner Long, 11 May 1959.

> 'the report posed the embarrassing question whether it was proper to react to problems of law and order in the colonies in ways which would be thought quite out of the question at home, though the text as published did not spell this out'.[1040]

Close examination of the transcripts of Devlin's interviews does, however, spell this out. This mirrored the argument made by Powell in the House of Commons with regard to the Hola camp incident and, of course, this was one of the reasons that Arthur Young had left his post as Commissioner of Police in Kenya in 1954 because he felt that differing standards of policing in the colonies and in Britain were not acceptable.[1041]

Devlin's argument that there was a complete disregard for the law during the emergency period in Nyasaland was extremely embarrassing because, as Simpson has pointed out, one of the fundamental justifications for colonial governance was that it introduced law and order into previously lawless territories.[1042] Roberts Wray, CO Legal Adviser, often repeated that law was Britain's greatest export to the colonies.[1043]

C5.6 Devlin Report

Legal historian Brian Simpson has emphasised the uniqueness of the Devlin Commission and the subsequent Devlin Report on the emergency period in Nyasaland. Never before had a British judge led a commission to investigate the conduct of a colonial government.[1044] Described in *The Observer* as 'fair but devastating' the Report was said to be 'not important only as a judicial statement; it ranks as perhaps the best study in modern colonial politics ever written'.[1045] What is particularly significant was Whitehall's decision to proceed with an

[1040] A.W.B. Simpson, 'The Devlin Commission (1959): Colonialism, Emergencies, and the Rule of Law', *Oxford Journal of Legal Studies* 22.1 (2002), p.31.
[1041] C. Elkins, *Britain's Gulag, p.*276.
[1042] A.W.B. Simpson, 'The Devlin Commission', p.35.
[1043] K. Roberts-Wray, 'The Adaptation of Imported Law in Africa', *Journal of African Law* 4.2 (1960), p.66.
[1044] A.W.B. Simpson, 'The Devlin Commission', p.17.
[1045] 'Guilt in Africa', *The Observer,* 26 July 1959, p.12.

independent enquiry into events in Nyasaland, whilst concurrently resisting such calls with regards to Kenya following the Hola massacre. Furthermore, as Simpson argues, the Devlin Commission had a 'special legal significance' because it confronted the recurrent difficulty of the relationship between, on the one hand, observance of the law and, on the other, the apparent requirement to quash a political uprising.[1046] The final report found against the colonial government's use of force in suppressing the uprising. Indeed, the Devlin Report came to be regarded 'as an expression of the values of judicial independence and commitment to the rule of law even in emergency conditions, when they are most under threat'.[1047] The publication of the Devlin Report is held as a seminal moment in the process of decolonisation by acting as a catalyst in speeding up the empire's end, particularly after Macmillan's re-election success in October 1959 and his subsequent appointment of Iain Macleod as Colonial Secretary.[1048]

Devlin's findings were, as described by Thomas, 'brief – and devastatingly blunt'.[1049] Furthermore, with Devlin's conclusion that 'Nyasaland is – not doubt only temporarily – a police state', no one could dismiss Devlin's assessment of the situation without appearing 'ridiculously out of touch', as Thomas has claimed.[1050] Devlin was in many ways revolutionary. Post-Devlin, Britain could no longer practise colonial governance in a way that ignored or departed materially from governance standards and norms in Britain, and the convention that colonies could be governed applying standards not acceptable beyond the colonies was discredited.[1051] Colonial governance had now been brought to account in the metropole. What had previously been either acceptable or simply swept under the carpet

[1046] A.W.B. Simpson, 'The Devlin Commission', p.17.
[1047] Ibid, p.19.
[1048] Ibid, p.18.
[1049] M. Thomas, *Fight or Flight*, p.216.
[1050] Ibid, p.217. See also Report of the Nyasaland Commission of Inquiry, Cmnd. 814 (London, 1959).
[1051] See N. Owen, 'The Soft Heart of the British Empire' for a discussion of the difficulty faced by Britain in applying the rule of colonial difference in the metropole to control Indian radicals, c. 1900. There was a sense of unease about this at the time. Only in 1959, did this extend to the colonial governance on the periphery.

was no longer tolerable in the post-Second World War world, even in the 'backward' communities of which Whitcombe had spoken in 1958.

C5.7 Phrase 'Police State' enters Public Lexicon

The phrase 'police state' had been used previously in relation to British colonial governance. As discussed in Chapter 3, Richard Crossman used the term 'police state' to refer to Cyprus during a debate in the House of Commons in May 1955.[1052] It had a far greater impact in the summer of 1959, however, as Simpson has argued, having been used in a judicial report rather than simply uttered by a left wing politician and journalist.[1053] Such was the impact of this particular statement that, the Commission's favourable findings that the government's declaration of an emergency and use of emergency powers was excusable was overshadowed by such a damning indictment with its connotations of the recent Nazi past.[1054] As Darwin has argued, the Devlin Report, 'dealt a fatal blow' to the Nyasaland Government and was a 'stunning shock' in London.[1055]

The British Government was given a draft copy of the Devlin Report on 13 July (it had been unclear if it would see a draft at all) and promptly set about undertaking damage limitation.[1056] The report was far more critical than it had been anticipated by some in government.[1057] This view was not shared by all. Cabinet Secretary, Norman Brook, wrote to Macmillan on 19 July 1959 to state that having read the final version of the Devlin Report, 'it is not as bad as we were led to suppose'.[1058] He explained that 'there is not much philosophising about paternalism and the rule of law; and some of the more extreme

[1052] Hansard, HC Debate, 5 May 1955.
[1053] A.W.B. Simpson, 'The Devlin Commission', p.18.
[1054] Ibid, p.17.
[1055] J. Darwin, 'The central African emergency', p.229.
[1056] J. McCracken, *A History of Malawi,* p.358.
[1057] Ibid, p.358.
[1058] TNA, PREM11/2783, Brook to Macmillan, 19 July 1959.

wording in the earlier draft seems to have been modified'.[1059] He did state, however, that with regards to the Report's statement that 'unnecessary violence was used in the initial round-up of the Congress leaders', that 'I think it will be difficult to rebut this finding'.[1060] Brook was, indeed, correct on this point as the next section demonstrates. The publication of the final Report on 23 July 1959 consequently led to a strong response from the Government which rejected the claims.[1061] The Opposition expected Lennox-Boyd to resign, although *The Manchester Guardian* correctly predicted that resignations were unlikely.[1062] In the event, Lennox-Boyd did offer his resignation but was encouraged to remain in his position by Macmillan.[1063]

In his Report, Devlin's assessment of colonial governance in Nyasaland during the emergency period ranged from his description of it as a police state and benevolent despot to his assertions that colonial law was so wide that it could be enacted arbitrarily and that 'illegal force' had been used in making arrests.[1064]

Published in the UK on 23 July 1959, the Devlin Report was accompanied by a despatch by Armitage detailing a response to the Report. The report of the disciplinary enquiry on the deaths at Hola was also published on 23 July. *The Manchester Guardian* noted how it was 'a strange coincidence' that the two reports should be published on the same day and surmised that 'it must to some extent distract attention from what would at other times have made a great stir'.[1065]

[1059] Ibid.
[1060] Ibid.
[1061] 'Commons Storm Brews on Devlin Report', *The Times,* 24 July 1959, p.6.
[1062] 'Resignations Unlikely: Tories will fight – but what?', *The Manchester Guardian,* 24 July 1959, p.1.
[1063] J. McCracken, *A History of Malawi*, p.358.
[1064] Report of the Nyasaland Commission of Inquiry.
[1065] 'Devlin and Hola', *The Manchester Guardian,* 24 July 1959, p.6.

Armitage's despatch formed the late colonial state's immediate response to the Devlin Report. In it, Armitage laid out a fairly comprehensive defence of the late colonial state. Armitage began by remarking that 'I must place on record my regret that the Commission should have felt it necessary to refer to Nyasaland as being at present a 'police state'.'[1066] Devlin later admitted in correspondence with Lord Perth, Minister of State for Colonial Affairs, that the phrase 'police state' was 'an unfortunate phrase to have used'.[1067] The damage, however, was already done. On 24 July, the phrase 'police state' made the headlines. British newspapers reported ''Police State' Charge' and ''Murder Plot' in Nyasaland Not Accepted' following the publication of Devlin's final report and this was to have lasting repercussions for the British Empire with its subsequent speedy demise.[1068]

C5.8 Reaction in Britain to the Devlin Report

C5.8.1 Press

The Observer reported on 26 July, that the Report had been 'selling rapidly' since its publication. 5,000 copies were printed and by lunchtime on publication day, the Stationary Office's main distribution centre was reported to have sold out and a further issue ordered. [1069] Margaret Herbison MP (Labour, North Lanarkshire) recounted how in Edinburgh 'never at any time was there such a run on the Stationary Office to get copies of a Report. That was because it is of particular interest to Scottish people'.[1070] On the same day, *The Observer* published extracts from the Devlin Report with the headline 'British 'Police State' which filled nine pages.[1071] *The Observer's* decision to publish extracts from the Devlin Report received a mixed response. Letters to the editor ranged from congratulations on the

[1066] Nyasaland: despatch by the Governor relating to The Report of the Nyasaland Commission of Inquiry, Cmnd. 815 (London, 1959).
[1067] TNA, CO1015/1547, Devlin to Perth, 21 September 1959.
[1068] *The Manchester Guardian,* 24 July 1959.
[1069] 'Best-Seller', *The Observer,* 26 July 1959, p.1.
[1070] Hansard, HC Debate, 28 July 1959.
[1071] 'The Devlin Report on Nyasaland: British 'Police State'', *The Observer,* 26 July 1959, p.6.

publication of the report and a feeling of satisfaction in reading the report when it was still 'hot', to letters asking the editor 'will you kindly refrain from grinding your axe at my expense?'.[1072] This particular reader wrote to the editor informing that 'I do not share an interest in African affairs. Consequently, I object strongly to the provision of space devoted to the Devlin Report'. Other letters thanked the editor for 'opening people's eyes' to the situation in Central Africa.[1073] Armitage's reply was also published. An article published on the same day claimed that:

> 'after March 3, 1959, the day on which both the killings at Hola and the emergency in Nyasaland occurred, the Government can regain the confidence of the Africans only by publicly admitting its mistakes and correcting them – not by blandly pretending that Mr Justice Devlin is wrong and that everything is for the best in the best of all possible police states'.[1074]

C5.8.2 Public Opinion

John Stonehouse who had been vocal during the Kenya Emergency recounted in 1960 that following the publication of the Devlin Report:

> 'for the first time British public opinion woke up to the fact that the tension in Central Africa was caused not by African political 'extremists' but by the Tory Government policy of imposing Federation on millions of people against their will in the interest of Sir Roy Welensky and white Government, dominated by the European settlers of Southern Rhodesia'.[1075]

C5.8.3 Movement for Colonial Freedom

The Movement for Colonial Freedom supported Devlin's findings and at its Executive Committee meeting of 23 July 1959 drafted a response to the Report which recorded that the Report was a 'damning indictment of the Government'.[1076] It also argued that the Report 'vindicates what has been said by the Labour Party, the Movement for Colonial Freedom, and other critics of the repressive policies of the Government in Nyasaland'.[1077] The MCF also called for the resignation of Lennox-Boyd and Macmillan, arguing that the 'Government is so

[1072] E. Sutcliffe to Editor; Martin J. Carter to Editor, *The Observer,* 2 August 1959, p.2.
[1073] E.S. Field to Editor, *The Observer,* 2 August 1959, p.2.
[1074] '3 March', *The Observer,* 26 July 1959, p.12.
[1075] SOAS, MCF, Box 39, J. Stonehouse, 'Central Africa After Monkton'.
[1076] SOAS, MCF Box 1, MCF Executive Committee Meeting Minutes, 23 July 1959.
[1077] Ibid.

deeply implicated that the prestige of Britain in the eyes of the world can only be restored by the Prime Minister and his colleagues resigning immediately and submitting themselves to the verdict of the British people'.[1078]

C5.8.4 House of Commons Debate 28 July 1959

The British Government attempted to refute Devlin's findings in a debate in the House of Commons on 28 July. The debate was opened by Manningham-Buller, during which the Attorney General defended the government's actions.

On 27 July, *The Manchester Guardian* reported, for example, that:

> 'the Government has put down an insufferably self-righteous motion for the Commons debate on the report of the Devlin Commission tomorrow. It takes in every point on which the report is favourable to it, and leaves out everything that is not'.[1079]

The article also alleged that 'the Government has taken the report too lightly' and 'in repudiating or shrugging off those parts of the report which tell against it, the Government weakens rather than strengthens confidence in its case'. Predicting that 'tomorrow's debate may be the last great parliamentary clash before the general election', the article argued that it was events in Nyasaland that were of greater significance. Urging the resumption of 'normal' government in Nyasaland, the article stated that:

> 'we cannot rest content with a prolonged emergency, and with a suspension of civil liberties, such that (as the commission points out) people can be imprisoned for months merely for "membership of an unlawful organisation" on no more evidence than a membership card dating to a time when it was still lawful – or indeed can be detained for no ascertainable offence at all'.[1080]

The day following the House of Commons debate, however, on 29 July, *The Manchester Guardian* led with the headline 'Government Survives the Devlin Report'.[1081] Macmillan

[1078] Ibid.
[1079] 'Devlin Debate', *The Manchester Guardian,* 27 July 1959, p.6.
[1080] Ibid.
[1081] 'Government Survives the Devlin Report', *The Manchester Guardian,* 29 July 1959, p.1.

congratulated Lennox-Boyd following the debate writing 'you really have done wonderfully well'.[1082] Macmillan, in turn, thanked Manningham-Buller for a 'splendid speech'.[1083]

The Labour Party had been less forgiving in the debate on the previous day. James Callaghan alleged that what the Government had done with the Report was to 'winnow through it, sieving out, dredging out, everything that would support their case and averting their eyes from anything which might be in the slightest degree embarrassing to them'.[1084] Concluding, Callaghan argued: 'to sum up, the Government have failed to act in accordance with the principle laid down 100 years ago by William Harrison in his Inaugural Address to the American Congress in 1841: "the only legitimate right to govern is an express grant of power from the governed"'.[1085]

Fellow Labour MP, Eirene White, also supported Devlin's conclusions and asserted that she believed that 'the Colonial Secretary is reaping where he sowed. He is now reaping the results of the policy which has been pursued under his administration in Nyasaland, as we on this side of the House have said one occasion after another, misguidedly and mistakenly'.[1086] Bevan, summing up for the Opposition, pointed to Algeria as a warning for Britain:

> 'the extent to which France is being bled, and also Algeria, and the extent to which the whole of French politics has been poisoned by the Algerian conflict, and looks like continuing to be poisoned for a long time, is itself a warning to us that we should handle the problem of Nyasaland differently from the way the French are trying to solve the Algerian problem'.[1087]

On the other side, for the Conservative Party, Dodds-Parker defended actions in Nyasaland stating that:

[1082] TNA, PREM11/2783, Prime Minister to Lennox-Boyd, 29 July 1959. See Lennox-Boyd's personal papers (BOD, MSS.Eng.C.3995) for copies of a considerable number of letters of support for him following the Hola affair and the publication of Devlin's report.
[1083] TNA, PREM11/2783, Macmillan to Manningham-Buller, 28 July 1959.
[1084] Hansard, HC Debate, 28 July 1959.
[1085] Ibid.
[1086] Ibid.
[1087] Ibid.

> 'we all regret on both sides of the House that in some instances there was misjudgement and illegal use of force, but in the circumstances which faced the Government of Nyasaland we should congratulate them on how little went wrong rather than criticise them for their shortcomings'.[1088]

Lennox-Boyd concluded the debate and, like Manningham-Buller in his opening sequence, defended the Government.

C5.8.5 House of Lords Debate 29th July 1959

The debate in the House of Lords took place the following day, on 29 July. In the Lords, the amendment was identical to that in House of Commons and was defeated by 80 votes to 34.[1089] The Government's refutation of the Devlin Report had, therefore, been met with victory in both houses.[1090]

As the debates were held in the few days just before the summer recess, this meant that the situation could not escalate into a major parliamentary debate or as the subject of heated press discussions.[1091] Interest in the matter slackened during the summer. Armitage later wrote to Lennox-Boyd in October 1959 to update him on the current emergency situation in Nyasaland, writing 'true, we are still in a State of Emergency but the extent to which recourse continues to be necessary to such powers is rapidly diminishing, save in one important aspect – namely the powers of detention and the issue of control orders'. [1092] Armitage also reported that 'some 500 Africans' were still held in detention and although their cases were reviewed every six months, the Governor wrote that he could 'at the moment see little likelihood of a flood of releases'.

[1088] Ibid.
[1089] See C. Baker, 'The Mechanics of Rebuttal', p.42.
[1090] Ibid.
[1091] Ibid.
[1092] TNA, CO1015/1839, Armitage to Lennox-Boyd, 6 October 1959.

D CONCLUSION

Despite the uproar following the events of 3 March in Kenya and Nyasaland, the Conservative Government nevertheless secured victory in the general election of October 1959. The renewal of the Conservative party's domestic hold on power, however, coincided with the demise of Britain's global power and influence, and by 1961 interest in empire had waned significantly. The Kenya Intelligence Committee reported in April 1961, for example, that non-governmental development had been reduced in Kenya due to the 'widespread belief that the game is no longer worth the candle'.[1093]

Significantly for the historical record, it was more the impact of internal initiatives such as the enquiries undertaken by Magistrate Goudie in Kenya and Lord Devlin in Nyasaland rather than any international scrutiny encouraged by the likes of the ECHR Applications that ultimately held Britain to account for the mistreatment of its colonial subjects: Britain had earlier, after all, successfully forestalled being brought to justice at the international bar. Faced with clamour and outcry at home and abroad at the killings in 1959 at Hola and Nkata Bay, the only course of political action open to Macmillan and his government was to accelerate the pace of decolonisation: there could be no recovery from Hola and Nkata Bay or the resultant political and moral fall-out. Although the end of empire – and so colonial governance – came about against the backdrop of the constant irritant of a growing human rights culture, jurisprudence and political and public awareness and the gradual erosion of any residual notions of legitimacy of the imperial project, it was not in any sense directly because of it.

[1093] TNA, CO822/2056, Kenya Intelligence Committee, April 1961.

CHAPTER FIVE

DECOLONISATION and LAW – THE INTERPLAY of LAW and POLICY

PART I

INTRODUCTION

Chapter Five narrows the institutional focus of this thesis, and examines how British lawyers responded to the imposition of emergency periods in British colonies. The particular focus is on the contributions, roles and responsibilities of government lawyers and, more specifically, their involvement in human rights issues and departmental debates during decolonisation. This examination of the role of individual lawyers and the contribution of discrete legal opinion to the decision-making process at the end of empire hopes to make a significant contribution to the historiography.

Whilst Benton and Chanock have examined the central role played by the law in the colonial project and Anghie has examined the centrality of colonialism to the development of international law, the intersection between law and, in particular, international law and the end of empire has not been examined to any great extent other than in A.W.B. Simpson's detailed legal study.[1094] Ellen Feingold's doctorate on the history of the High Court in Tanganyika and Ghai's and McAuslan's research on Kenya have provided useful insights into the makeup of the colonial legal service in the colonies.[1095] Similarly, the role of lawyers in foreign affairs has been examined to a limited extent by legal scholars such as Windsor and former government lawyers such as Fitzmaurice, but the influence of law and lawyers in specifically *colonial* affairs is almost entirely absent from the historiography on

[1094] A. Anghie, *Imperialism*, p.3. See also L. Benton, *A Search for Sovereignty* and M. Chanock, *Law, Custom and Social Order.*

[1095] E.R. Feingold, 'Decolonising Justice: A History of the High Court of Tanganyika, c. 1920-1971', University of Oxford DPhil Thesis (2012). See also Y.P. Ghai and 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* (Nairobi, London, New York, 1970).

decolonisation and from legal studies generally.[1096] *Commonwealth and Colonial Law* by the former CO Chief Legal Adviser, Kenneth Roberts-Wray, is one of the very few exceptions. Written on his retirement from government service and published in 1966, this work remains the 'textbook' on colonial law. However, Roberts-Wray fails to offer any significant insight into the inner workings of the government legal service or its interface with the machinery of policy. The only work to offer any such analysis is Marston's article on legal advice tendered to the British Government during the Suez Canal crisis in 1956.[1097] This Chapter elaborates on the role of government lawyers in policy making, as explored previously by Fitzmaurice and Marston, with specific reference to human rights law and the colonies.

A1.1 Structure and Scope of Chapter Five

This Chapter is in two parts. Part I examines the advice provided by government lawyers in the CO and FO and by the Law Officers and Attorney General and Solicitor General, and reconstructs the prevailing professional legal culture in Whitehall at the time. Five key points are addressed: first, specific issues upon which the advice of government lawyers was sought; second, how frequently government lawyers were consulted by civil servants; third, the interaction between lawyers and policy makers; fourth, the nature of substantive legal advice and how this advice was received and applied by others in the FO and CO; fifth, how frequently colonial matters involving human rights law were referred up to the Law Officers and the Judicial Committee of the Privy Council. These points are considered against the backdrop of case studies, all of which deal with Britain's obligations under the European Convention on Human Rights, and two which deal with the controversial issue of Britain's derogation from the Convention under Article 15.

[1096] See M. Windsor, 'Government Legal Advisers', pp. 117-137 and G.G. Fitzmaurice, 'Legal Advisers and Foreign Affairs', pp. 72-86.
[1097] G. Marston, 'Armed Intervention in the 1956 Suez Canal Crisis', pp. 773-817.

Part II examines the role of non-governmental lawyers, including legal academics, leading barristers and activist lawyers, in particular Peter Benenson, and broadens this focus to examine what part, if any, lawyers external to Whitehall played in the discussion of human rights in British territories.

Chapter Five is arranged in reverse chronological order, for reasons that will become clear. The first section examines the continuation of emergency powers in 1959 in, first, Nyasaland and, second, Kenya. The next section examines the role of FO Legal Advisers in the 1956 and 1957 Applications lodged by Greece on behalf of Cyprus at the European Commission: this became the most significant colonial issue in which the FO, FO lawyers and Solicitor General were increasingly heavily involved.

A1.2 Law and Policy, Governance and Change

Merry has argued that 'studying law and colonialism provides insights into how new legal regimes intersect with changing structures of state power and conceptions of authority to produce social change over time'.[1098] Chapter Five examines the legal function, with particular reference to international law, during the later stages of colonialism to test Merry's premise and provides similar insights into changes in colonial governance during the period of decolonisation. The focus is on a transitional period, when officials in London and in the colonies were no longer deemed accountable only under domestic law but also under international human rights law through the ECHR (extended to British colonies in 1953). This transition went beyond purely legal questions of jurisdiction. After 1945, Britain was subject not only to a novel jurisprudence in the form of an international human rights regime but also to an entirely new although fledgling international regime of global governance, both of which sought to place fresh and increasing constraints on British forms of colonial governance.

[1098] Merry, S.E., 'From Law and Colonialism to Law and Globalization', *Law and Social Inquiry* (2003), p.582.

PART II

GOVERNMENT LAWYERS

B1 Preamble

At a time when the idea of universal human rights came increasingly to the fore, one might have expected an expanded role and influence certainly for government lawyers but, as will become evident, lawyers (inside and outside Whitehall) were generally conspicuous by their absence in the debate about colonies during the period. Evidence of contemporary legal opinion on anything relating to human rights - and colonial governance more generally - is scant, with the exception of FO legal advice in relation to the 1956 and 1957 Greek ECHR Applications and the question of the permissibility under the ECHR of post-emergency powers towards the end of the 1950s. Much of the debate was dominated by FO lawyers. By contrast, CO legal opinion focused on the British Nationality Act of 1948 and rather more prosaic administrative matters such as the registration of births, marriages and deaths of British nationals in colonial territories.[1099]

This has as much to do with the perception of the role of government lawyers as it does with perception of the importance of questions of human rights during this period in other Whitehall departments. Outside Whitehall, the expression of contrary legal opinion was largely confined to a few legal activists. A detailed examination of contemporary legal journals such as *Law Quarterly Review, Modern Law Review* and *Public Law* indicates that emergency periods evoked little response from the wider legal community. This was the case even following 'crisis' moments such as the events of 3 March 1959 in Kenya and Nyasaland, which had a considerable effect on the internal dynamic within government at the time. Finally, it is significant that those cases that reached the Judicial Committee of the Privy

[1099] This is based on analysis of CO Legal Department files held under reference 'CO1026' at The National Archives.

Council were largely concerned with taxation and land right disputes, with the notable exception of only a handful of cases concerning the death penalty in Kenya and Cyprus.[1100]

Whilst their contribution to the policy debate on the end of empire may have been minimal, government lawyers were nevertheless involved - however actively or passively - in the policy making process, and so lawyers need to be inserted - however minimally - into the story of decolonisation. This makes for a fascinating case study because government lawyers are, as Windsor has claimed, in such 'highly charged political environments' that they risk continually oscillating 'between acting as *consigliere* and conscience in their interactions with government officials'. [1101] This Chapter examines whether legal advice was purely instrumental, intended to provide legal solutions to problems, or whether lawyers attempted to offer any broader, moral or other guidance.[1102]

B2 Structure of Government Legal Departments and Structure of Archives

Tracking the influence of CO and FO officials in the policy and decision-making process is nevertheless problematic, for two reasons. The first reason is methodological because of the structure of the FO itself and, in direct consequence, the structure of the archive at The National Archives: there was – and still is – no dedicated legal department within the FO.[1103] Furthermore, and as FO Legal Advisers Fitzmaurice and Vallat indicated in 1968 in a tribute to a former Chief Legal Adviser to the FO, Eric Beckett, it was never entirely clear whether FO Legal Advisers were specifically and exclusively appointed to the FO or were regarded as part of the Government's General Legal Service.[1104] Papers which did reach the FO were not

[1100] This is based on an electronic search of the Judicial Committee of the Privy Council Decisions, 1950-60, accessed 3 June 2014, available at http://www.bailii.org/uk/cases/UKPC/.
[1101] M. Windsor, 'Government Legal Advisers', p.118.
[1102] See work by Tobias Kelly on Guantanamo and Abu Ghraib on this. T. Kelly, 'What We Like to Talk about When We Talk about Torture', *Humanity* 2.2 (2011), pp. 327-343.
[1103] G.G. Fitzmaurice and F.A. Vallat, 'Sir (William) Eric Beckett', p.274.
[1104] Ibid, p.270.

marked as 'legal', even if largely legal in content.[1105] Rather, they were scattered across FO files and included in the papers of the political or geographical department concerned with the matter in hand.[1106] Thus, as Carty and Smith found as they researched their biography of Fitzmaurice, the structure of the archive renders problematic the task of researching and understanding the roles of FO legal advisers.[1107] Building a complete picture of past legal advice offered by the FO is, therefore, nigh impossible.

This methodological difficulty is not so evident when it comes to examining the role of CO legal advisers. The CO did have its own Legal Department and its files are catalogued under CO1026 at The National Archives. Despite the comparative ease in accessing these files, their volume and content is nevertheless limited, particularly on questions of international law and human rights abuses. Furthermore, the boundary between CO and FO legal advice and adviser was not always clear-cut. For example, the opinions of FO lawyers such as Vallat and Fitzmaurice appear frequently in CO files and more frequently at that than CO lawyers on questions of international law which is, perhaps, to be expected. Madsen's research on the development of European and international law in the post-1945 period demonstrates the extent to which this field was dominated by FO legal advisers.[1108]

The relative lack of comment on questions of human rights during decolonisation by government lawyers is, in part, also due to the nature and structure of legal advice provision. Lawyers are not, in general, pro-active but, rather, are reactive and respond only to specific cases and this is true of government lawyers too, as Carty and Richard indicate in their study of Fitzmaurice. Very rarely is legal advice given on any issue *in abstracto.* As Fitzmaurice himself remarked regarding the question of domestic jurisdiction and the United Nations in 1952, for example, that it was 'extraordinarily difficult to write in the abstract about

[1105]Ibid, p.273.
[1106] A. Carty and R. Smith, *Sir Gerald Fitzmaurice, p.*1.
[1107] Ibid, p.1.
[1108] M.R. Madsen, 'From Cold War Instrument to Supreme European Court', p.146.

domestic jurisdiction because so much depends on the particular facts of the case'.[1109] Furthermore, if and when legal advice was sought, and even if it was considered definitive or conclusive, responsibility for the final decision and consequent action lay with non-legal officials and not with the legal advisers.[1110] The same is true of the CO and its Legal Department. Given this reactive disposition and the emphasis on the function of government lawyers as being purely advisory and not executive, the volume of material in the archive is often limited. Finally, there also exists the strong likelihood that legal advice was given orally and, therefore, no written evidence may exist at all.[1111]

B3 Role of Government Lawyers Generally

It is axiomatic – to lawyers, at any rate - that the role and function of the government lawyer differs from those of lawyers not in government, and the 'standard conception' of the lawyer's role in legal ethics (made up of three principles of partisanship, neutrality and non-accountability) provides an inadequate framework within which to analyse the role of government legal adviser,[1112] because the complexity of the role of serving government requires broader professional qualities than just partisanship, neutrality and non-accountability.[1113] As Windsor argues, 'put shortly, a different game requires different rules'.[1114]

These 'different rules' were explained by Fitzmaurice in a review article published in 1965. Although writing specifically about legal advisers and foreign affairs, much of what Fitzmaurice wrote is equally applicable to colonial affairs. First and foremost, according to Fitzmaurice, of greatest importance to governments is 'accurate and judicious legal advice'

[1109] TNA, FO371/101439, G. Fitzmaurice, Extract from minutes, 25 September 1952.
[1110] A. Carty and R. Smith, *Sir Gerald Fitzmaurice,* p.2.
[1111] Marston in his work on the 1956 Suez Canal Crisis notes this practical problem and possible deficiency in evidence. See G. Marston, 'Armed Intervention in the 1956 Suez Canal Crisis', p.773.
[1112] M. Windsor, 'Government Legal Advisers', pp. 121-124.
[1113] Ibid, p.126.
[1114] Ibid, p. 126.

from people whose function it is to 'promote rather than judge' the aims of the government and whose insight into the situation allows them to give advice with 'knowledge of all its implications that no outside lawyer could normally have'.[1115]

For Fitzmaurice, legal advice 'must be realistic and helpful', and so government lawyers may be - and were, in his experience - required to stray beyond a narrow legal remit and offer suggestions of a 'political character'. Fitzmaurice opined that 'it was, within reasonable limits, entirely in order for them to do so'.[1116] Additionally, the government lawyer's duty was to inform government what courses of action might be taken 'without running foul of the law' and advise how to achieve the government's political aims whilst remaining within the law.[1117] Government lawyers were also required to 'put the best face on legal blunders or misdeeds, in cases where his advice has not been followed or perhaps has not been sought at all.'[1118] This nuanced role comes through in a number of this Chapter's case studies: government lawyers occupied difficult territory, wedged between the competing requirements of satisfying legal principle, satisfying ministers and providing politically expedient advice.

So, at least in theory, legal advice was core to the decision-making process in order that the Government did not, as Fitzmaurice described it, run 'foul of the law' but, as we shall see, legal advice was often peripheral in practice. Building on the work of Madsen, this Chapter intends to shed more light on the tension and interplay between law, diplomacy and politics by examining the delicate balancing act legal actors were required to perform in helping resolve colonial tensions.[1119]

[1115] G.G. Fitzmaurice, 'Legal Advisers', p.73.
[1116] G.G. Fitzmaurice and F.A. Vallat, 'Sir (William) Eric Beckett', p.290.
[1117] G.G. Fitzmaurice, 'Legal Advisers', p.73.
[1118] Ibid, p.74.
[1119] M.R. Madsen, 'From Cold War Instrument to Supreme European Court', pp. 137-159.

B4 Historic Legal Advice

B4.1 Pre-Emergency Periods

Government legal advice in the early 1950s in the pre-emergency period focused largely on administrative matters.

Although the CO became more interventionist in colonial affairs generally from the beginning of the twentieth century and particularly in the 1940s, this interventionism did not extend to the provision of legal advice, for reasons explored earlier in this Chapter.[1120] In the early to mid-1950s, matters which occupied CO lawyers ranged from the revision of model Standing Orders for the use of Colonial Legislative Councils to the Law Society syllabus for examinations for Colonial Solicitors and various cases involving the legitimacy of children in colonial territories in 1952-53.[1121]

Nevertheless, and at the same time, government lawyers (mainly FO lawyer, Fitzmaurice) were frequently involved in the recurring question of domestic jurisdiction (whether the United Nations could be involved with matters relating to colonial or 'domestic' matters).[1122] This debate prefigured later difficulties government (and, in particular, the FO) was to face at the height of the Cyprus Emergency when met with the Greek Applications on behalf of Cyprus. On the whole, however, the emergency periods – in Kenya and Cyprus – attracted little additional comment or involvement from the CO Legal Department than in the early 1950s. Similar matters continued to occupy the time of the lawyers such as the Industrial Property Convention and the procedures for the appointment of Queen's Counsels in colonial territories.[1123] Some time was spent, however, on the matter of the transfer of prisoners from

[1120] See M. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870-1935* (Cambridge, 2009), p.18 on increased intervention from London.
[1121] See TNA, CO1026/40, CO1026/45 and CO1026/31 on these matters.
[1122] See TNA, CO936/108, Domestic Jurisdiction and Human Rights (1951-52).
[1123] See TNA, CO1026/108 and CO1026/80.

colonial territories to Britain due to lack of space in colonies.[1124] Significantly, however, with the exception of the ECHR 1956 case on Cyprus it was not until towards the end of the emergency periods (including the short-lived emergency in Nyasaland) that there was a flurry of government legal activity concerned with the compatibility of emergency rule and international human rights law, specifically the continuation of collective punishment and detention without trial.

B4.2 Emergency Periods, the ECHR and Article 15

During the process of decolonisation, legal input was mostly concerned with questions relating to the European Convention on Human Rights and, in particular, Britain's derogation from it under Article 15. These questions arose with increasing frequency towards the end of the emergency periods in each colony. In Kenya, for example, such questions arose in 1957.[1125] In 1957, the question of the legitimacy of the continued implementation of emergency powers under the ECHR was debated. In Cyprus, in May 1959, a similar question arose.[1126] In the same month, just a short while after the beginning of the emergency period in Nyasaland, the permissibility of collective punishment and derogation under the ECHR was discussed.

Under conditions of emergency, the status of the Convention was unclear. Simpson has argued that the question of emergency powers was dealt with in an 'amateurish fashion' at the time of the drafting of the ECHR which resulted in considerable uncertainty about the status of the European Convention under emergency conditions in the mid-1950s.[1127]

Under emergency conditions, the late colonial state relied heavily on the derogation clause of the ECHR, Article 15. Derogations from international treaties such as the ECHR were, and still

[1124] See TNA, CO1026/179.
[1125] See TNA, CO822/1334.
[1126] See TNA, CO936/493.
[1127] A.W.B. Simpson, *Human Rights,* p.875 and p.877.

are, justified on the basis that they help preserve the freedom and liberty of a population during crisis periods and can be invoked during exceptional circumstances. The inclusion of a derogation clause is not unusual. National constitutions often include provisions similar to the derogation clause in the ECHR and where they do not there is a 'doctrine of necessity' which is used as an alternative legal basis for undertaking exceptional measures.[1128]

Article 15 is generally viewed as an acknowledgment that, as Simpson explains, 'states would never be willing to sign away their power to take away emergency measures, coupled with an awareness that unless their right to do so was clearly limited this would lead to serious abuse'.[1129] Limitations on state behaviour are, however, difficult to control. As Harris *et al.* have argued: 'the dilemma posed by derogation clauses is as easy to state as it is hard to resolve. Once the necessity for derogation is conceded, it becomes difficult to control abusive recourse to the power of suspending rights that the provision permits'.[1130] This was certainly the case during periods of emergency in Kenya and Cyprus, amongst other places like Malaya and, later, Nyasaland.

B4.3 CASE STUDIES

Counter-intuitively, this Chapter's case studies are considered in reverse chronological order. This is deliberate. In the previous section, various explanations were provided as to why a relative lack of legal opinion is held in the archive. Explanations ranged from difficulties in accessing the material due to the structure of the archive, to the oral provision of legal advice and advice not being given *in abstracto.* A debate which took place in the CO in May 1959 with regards to the continued use of collective punishment in Nyasaland indicates, however, that this lack of opinion may be due to another factor. This section demonstrates that policy

[1128] D.J. Harris et al (eds), *Law of the European Convention,* p.618.
[1129] A.W.B. Simpson, *Human Rights*, p.875.
[1130] D.J. Harris et al (eds), *Law of the European Convention on Human*, p.618.

makers may deliberately not have referred certain matters which strictly should have required legal attention to the Law Officers because of political and policy considerations.

B4.3.1 Collective Punishment in Nyasaland 1959

Internal exchanges over the use of collective punishment in Nyasaland in 1959 became a policy debate not just about whether such punishment was contrary to the ECHR but also whether the Law Officers should be consulted at all on the matter. It is clear from discussions that feeling within the CO was that the legal implications of collective punishment under the ECHR were of lesser concern to the Department than political and policy concerns. E.C. Burr of the CO, for example, warned his colleagues Henry Steel (CO Legal Assistant) and James Morgan (Head of Central Africa and Aden Department) that:

> 'if we seek the opinion of the Law Officers the danger, indeed likelihood, is that they will advise that collective punishment is contrary to the Convention and while then we may be able to retain it for a time in Nyasaland because of the Emergency, we shall have to repeal all provisions relating to it in other territories where there is not an emergency'.[1131]

So, it was sensed that consulting the Law Officers might result in the disappearance of an instrument of colonial governance the use of which had been widespread throughout the emergencies. Collective punishment, as Burr claimed, had been regarded as 'indispensable' not only to the British presence in Nyasaland but also in the cases 'at least' of Kenya, Somaliland and Aden.[1132] There was similar provision for collective punishment in Tanganyika, Nigeria and Northern Rhodesia.

Burr's correspondence with Steel and Morgan suggests that he was very uncomfortable on the question of whether or not to consult the Law Officers. He wrote that 'I am sorry to be in the position of having to submit as a question of policy whether we should seek clarification

[1131] TNA, CO936/535, E.C. Burr to J.C. Morgan and H. Steel, 7 May 1959.
[1132] Ibid.

of the legal situation'.[1133] Under pressure from the Governor of Nyasaland, Robert Armitage, who regarded collective punishment as 'essential' and having come under fire over the issue with regards to Cyprus a few years earlier, the CO as mediator between the interests of those in positions of power in the colonies and those in Strasbourg (the ECHR) or New York (the UN), had a cautious line to tread over collective punishment in Nyasaland, particularly following the political and public outcry over the events of 3 March 1959.

Whilst anticipating that the Law Officers' opinion would run contrary to what the CO policy-makers regarded as the 'requirements of policy', this was not necessarily a policy that Burr supported fully, and he hinted that the colonial administration's governance was draconian. In relation to Armitage's insistence that the regulation permitting collective punishment be maintained, for example, Burr wrote that 'I may say that I do not think his reasons for wanting it are very convincing since it seems a poor argument that because you haven't enough police you have to punish more people'.[1134] Burr concluded the note to Steel and Morgan by saying that he was sorry 'that we should be in the position of needing to retain a form of punishment which must be repugnant to most of us'.[1135] What is clear, then, is that towards the end of the 1950s the CO was becoming increasingly uncomfortable with the retention of collective punishment because it did not conform to the ECHR. However, because of 'policy requirements' and the demands of local governors, the CO did not escalate what was manifestly a pure question of law to the Law Officers: policy and political considerations trumped adherence to the law and, in particular, considerations of human rights.

Burr's note was addressed to Morgan, and, more significantly, to Henry Steel, a CO lawyer. The fact that such a note was sent to a CO lawyer provides an interesting insight into the place of government lawyers within the internal Whitehall dynamic, since Burr openly

[1133] Ibid.
[1134] Ibid.
[1135] Ibid.

discussed possible British circumvention of the ECHR with Steel and included in his note strategies the CO might deploy as alternatives to seeking the Law Officers' opinion. The options included, as Burr outlined, 'for us to lie low, implicitly assuming that collective punishment is not contrary to the Convention and, as a consequence, not putting in a Notice of Derogation and not repealing laws existing elsewhere'.[1136] Burr had consulted the FO on the matter but was keen that the discussion should go no further.

Steel, in his response to Burr's note, referred to FO lawyer Francis Vallat's advice that the Law Officers ought to be consulted on the matter, even though Vallat himself was said to be sympathetic to the CO's approach.[1137] Steel also made reference to the perceived dangers of consulting the Law Officers and stated that he believed he would be able to persuade Vallat not to seek the Law Officers' opinion. This difference of opinion between CO lawyers and their counterparts in the FO suggests also a differing view in between the two departments in the matter of internal governance.

If we recall here Windsor's distinction between 'consigliere' and 'conscience', the CO lawyers appear to have adopted the role of consigliere and the FO lawyers that of conscience. Not only was there a divide between civil servants and lawyers, as one might expect, but there was also a split along departmental lines within the government legal service at the level of principle: the discussion about whether to consult the Law Officers on the question of collective punishment begs the question highlighted by Wiener of just how meaningful British commitment was to the 'rule of law'?[1138] Was it the case that some lawyers within different government departments had a greater commitment to the 'rule of law' than others?

[1136] Ibid.
[1137] TNA, CO936/535, Steel, 7 May 1959.
[1138] M.J. Wiener, *An Empire on Trial,* p.2.

B4.3.2 Collective Punishment in Cyprus and Africa Compared

In the discussion of collective punishment, distinctions were made in 1959 between what might be applicable and appropriate in Cyprus and Africa. In a submission to ministers, drafted with the help of FO legal advisers, it was said that, in terms of the application of collective punishment, a distinction could be drawn between different British territories which, in turn, might determine the acceptability of using collective punishment in different areas. The draft submission stated that:

> 'the legal advisers in both Offices consider, however, that, it may be possible to distinguish between Cyprus and our African territories, particularly the more backward ones, on the ground that in the African territories communal rather than individual responsibility for crimes and delicts is an accepted concept'.[1139]

Thus, collective punishment was not permissible in Cyprus (it had been withdrawn during the proceedings at the ECHR), whereas it might be permitted in African territories. However, the submission caveated this statement since it was also said that the lawyers 'would not advise reliance on this argument' unless the procedure for determining if collective punishment could be imposed could be shown to conform to Article 6 of the Convention.[1140] Still, as late as 1959 and even following the furore generated after the killing of the detainees at Hola, it is illustrative that government lawyers considered that it might be possible to put forward a defence of the use of collective punishment in Africa based on cultural and racial distinctions and stereotypes.

By late 1959, in Nyasaland and Kenya the British Government was coming under increasing pressure because of continuing detention without trial. The Africa Committee of the Conference of British Missionary Society (CBMS), for example, tried to discuss 'constructive ways out' of using detention without trial with the Colonial Secretary.[1141] The CBMS Africa Committee described the use of detention as 'a violation of human rights' and argued that it

[1139] TNA, CO936/535, Draft submission to ministers, September 1959.
[1140] Ibid.
[1141] CERC, BCC/DIA/7/2/1/2/9, 'Detainees', 6 November 1959.

undermined 'the whole conception of justice in the minds of Africans' which, it warned, 'may have very far reaching consequences'.[1142]

B4.3.3 Kenya and Twilight Periods 1957-59 and Detention without Trial

The debate about collective punishment in Nyasaland was part of a wider debate on the continuation of emergency powers generally. Kenya was of particular concern. Questions of maintenance of law and order and continuation of emergency powers in Kenya attracted the attention and - at times concern - of CO and FO lawyers between 1957 and 1959. How to manage 'twilight' periods at the beginning and end of emergency periods was becoming increasingly important as the colonial and metropolitan administrations sought ways to bring emergencies to an end. During these twilight periods, it was thought preferable not to declare a formal emergency but still be able to enact 'special' powers, such as detention without trial.[1143] The sticking point for the CO, however, was that under the ECHR there was no provision for such 'twilight periods'.[1144]

A plan was devised under which the Governor, acting under normal Kenyan law, would be able to equip the administration with emergency powers, including powers of detention, without formally being required to declare an emergency.[1145] The FO was largely in agreement with the CO over these provisions.[1146] In 1959, the matter reached the highest echelons of the government legal service, but both the Lord Chancellor (David Maxwell-Fyfe) and the Attorney General (Reginald Manningham-Buller) were staunch in their opposition to the proposals.[1147]

[1142] Ibid.
[1143] A.W.B. Simpson, *Human Rights, p.*1066.
[1144] Ibid.
[1145] See TNA, CO822/1334.
[1146] A.W.B. Simpson, *Human Rights*, p.1067.
[1147] Ibid.

This was a debate in which policy makers and lawyers in London as well as the Governor of Kenya and Kenya's Attorney General were involved. As mentioned above, it concerned how colonial governors were to be 'equipped to deal with subversive activities' during periods when it was not strictly necessary to declare an emergency but still maintain certain emergency provisions whilst not contravening Britain's obligations under the ECHR.[1148] At one point, it was suggested that the CO look to provisions in Northern Rhodesia as a model.[1149] Henry Steel of the CO and Francis Vallat of the FO were the lawyers most closely involved. They largely agreed with one another on Whitehall's approach to the legislation.[1150]

Writing to Steel, Buist of the CO summarised the basic problem faced by the policy makers in London when he wrote that:

> 'before we pass the gist of legal advice to Kenya I would like to try and dispose of the basic problem, viz. whether it is possible definitely to bring this kind of thing under Article 15 of the HRC and in any way strengthen our position vis a vis the Convention…I would like to know if investigation of quasi-emergency powers elsewhere can give us any hope that we can get away with the sort of thing Kenya propose'.[1151]

Steel replied that Buist's questions fell outside Steel's expertise, and he directed Buist to another lawyer, Cruchley, a Temporary Senior Legal Assistant, to provide more technical legal advice, but Cruchley was on leave for much of the time the issue dominated CO discussions and was largely absent from the debate.[1152] It is illustrative, therefore, of the relative importance the government attached to questions of human rights law and its application in the colonies that Steel provided much of the legal advice on these matters despite his own admission that such matters fell outside his area of expertise.

[1148] TNA, CO822/1334, Cabinet Colonial Policy Committee by Lennox-Boyd, June 1959.
[1149] TNA, CO822/1334, Mathieson to Buist, 14 November 1957. See also S.F. Whitcombe to Watson, 21 November 1957 in which it is explained that 'Northern Rhodesia have been faced with somewhat similar problems and so far, the issue of a head-on collision with the Convention has been avoided'.
[1150] TNA, CO822/1334, Minute by H. Steel, 30 July 1957.
[1151] TNA, CO822/1334, Buist to Steel, Burr, Whitcombe and Watson, 16 August 1957.
[1152] TNA, CO822/1334, Minute by Steel, 14 October 1957.

Steel advised that the Government proceed cautiously because, for Britain to satisfy its obligations under the ECHR, there had to be an emergency threatening the life of the nation and the situation in Kenya fell short of this.[1153] Burr concurred with Steel and explained that:

> 'I agree with Mr Steel that the difficulty is that for the purpose of Article 15 of the Convention, there must be the profound state of emergency which he describes, and that anything which tends to suggest that an existing 'emergency' falls short of that standard is best avoided if we are to be square with the Convention.'[1154]

Cruchley finally provided advice, in January 1959. He simply stated that the matter had been dealt with in-depth by Vallat and 'presumably' by Steel.[1155] This appears to confirm Madsen's argument that questions of international law were largely dominated by FO lawyers in the post-1945 period.[1156]

The FO lawyers were largely in agreement with the CO, although they had reservations about certain of the provisions in derogation from the ECHR, in particular detention without trial, which was also a matter of particular concern to some in the CO.[1157] The difficulty of detention without trial under the ECHR was best summarised by Burr and not government lawyers. In a note to Whitecombe, for example, Burr explained that 'the proposals to deal with 'twilight' have, as you know, run into difficulties principally because the detention of persons without trial is repugnant to the European Convention on Human Rights'.[1158] It was noted elsewhere that such measures were 'unusual in a 'democratic' society and apply to those who are restricted but are not, as we should have to contend, 'deprived of their liberty''.[1159] Burr also argued that:

[1153] Ibid.
[1154] TNA, CO822/1334, Burr, 16 October 1957.
[1155] TNA, CO822/1334, J.H. Cruchley to Buist, 20 January 1959.
[1156] M.R. Madsen, 'From Cold War Instrument to Supreme European Court', p.146.
[1157] TNA, CO822/1334, F.A. Vallat, 16 December 1958.
[1158] TNA, CO822/1334, Burr to Whitcombe, 7 May 1959.
[1159] TNA, CO936/531 'secret note on post-emergency powers', undated.

> 'I think I can say that detention of persons without trial is repugnant to us all. In fact if one did not know that it happened in British territories one would not believe that it could'[1160]

Burr suggested that there were other means that could be employed to restrict the activities of persons who might disturb public order. For example, he proposed to restrict certain persons to a particular part of the territory and also restrict them from expressing their views. He copied the note to Steel. This topic was said, by Buist, to have placed 'heavy demands' on legal advisers, particularly Steel (although, interestingly, there is not much written legal comment by Steel in the file).[1161]

CO legal advisers wrote two long minutes summarising the legal position on pre- and post-emergency powers under international conventions. Post-emergency legislation was deemed likely to encounter difficulty with the Forced Labour Conventions in addition to the ECHR, as detailed in the minutes. These were sent to Vallat by Steel in August 1958.[1162] FO lawyers were also involved in the matter, and the Attorney General in Kenya, Eric Griffiths-Jones, in May 1959, wrote to Buist that the FO legal opinion 'reactions are encouraging'.[1163] By 'encouraging' he meant that FO views corresponded closely with those of the colonial administration.

Much of the correspondence on detention without trial, however, was dominated by policymakers. N.D. Watson, Head of the CO's Intelligence and Security Department wrote to Buist in November 1957 advising that 'we are bound to run into difficulty over the Convention; and I doubt whether any legal advice can be found which will put us in the clear', whilst explaining that:

[1160] TNA, CO822/1334, Burr to Whitcombe, 7 May 1959. Burr wrote a strikingly similarly worded on the same day regarding collective punishment in Nyasaland. See TNA, CO936/535.
[1161] TNA, CO822/1334, Buist to Gorell Barnes, 5 May 1959.
[1162] TNA, CO822/1334, Steel to F.A. Vallat, 25 August 1958.
[1163] TNA, CO822/1334, Griffiths-Jones to Buist, 11 May 1959.

> 'in short, I do not see how we can hope to maintain, on realistic and justifiable grounds that certain things are being done to prevent an emergency without opening ourselves to the comeback that, ipso facto the situation envisaged in Article 15 of the Convention has not yet arisen.' [1164]

'Nipping trouble in the bud' to prevent full-scale emergencies whilst not straying from the provisions of the ECHR was, therefore, the main challenge faced by the colonial and metropolitan administrations in the late 1950s.[1165]

B4.3.3.1 Involvement of Law Officers

The Solicitor General, Hylton-Foster, was reasonably closely involved in the discussion about the retention of governors' powers. He recommended that (a) the Emergency Powers Order in Council be amended in order that a state of emergency would not have to be declared, and (b) 'its language might be assimilated as far as possible to the wording of the Human Rights Convention'.[1166] In Hylton-Foster's suggested scheme, it was possible for a governor to enact a local ordinance.

The Colonial Secretary met with the Attorney General and Solicitor General, along with the Ministers of State for Colonial and Foreign Affairs and the Lord President of the Council on 8 May 1959 to discuss a draft paper prepared by the CO on the security powers of colonial governors.[1167] The notes from the meeting explain that 'the CO thought that there was a fair chance that the facts of any situation in which the powers envisaged were used could be demonstrated as constituting an actual threat to the life of the nation' but that 'other Ministers did not wholly agree with this'.[1168]

[1164] TNA, CO822/1334, N.D. Watson to Buist, 22 November 1957.
[1165] Ibid.
[1166] TNA, CO822/1334, Lord Perth to H. Hylton-Foster, 28 May 1959.
[1167] TNA, CO822/1334, Note of a meeting held in Colonial Secretary's room, 8 May 1959.
[1168] Ibid.

The Attorney General's position was not at all in line with that of the CO. Not only did the Attorney General believe that the draft paper was entirely 'misconceived', he argued that any derogation from the ECHR must be taken only when a public emergency existed.[1169] With regards to detention without trial, the Attorney General argued, it could only be employed when an actual emergency existed and could not be used prior to or after an emergency: Britain 'could not justify the detention of persons who had committed no offence merely because we believed that if they were released, they might start up trouble again'.[1170] During this meeting, it was stated that detention without trial was more of a pressing issue in Nyasaland than in Kenya but that in Kenya it would, nevertheless, be necessary to detain a number of Mau Mau 'sympathisers' for an indeterminate amount of time. It was also noted that 'there would be great political advantage at the present time in lifting the state of emergency in Kenya'.[1171] The meeting of 8 May did not reach any concrete conclusions about twilight emergency powers.[1172]

A further ministerial meeting was held on 28 October 1959, during which the proposals were effectively stopped dead in their tracks. This is a clear sign of a change of mood within Whitehall. Manningham-Buller felt that the proposals would give governors arbitrary powers, turn the territories into 'police states' and be 'intolerable to public opinion'.[1173] Simpson argues that Manningham-Buller's stance had undoubtedly been influenced by the Devlin Report and, certainly, his language echoed that of Devlin with his reference to 'police state'.[1174] Manningham-Buller's preference was for a 'two tier system', under which only after an official declaration could emergency powers be enacted and the powers exercised to reflect the seriousness of the emergency. This was implemented by way of ordinance in Kenya in January 1960, which mirrored the ECHR by restricting the emergency powers

[1169] Ibid.
[1170] Ibid.
[1171] Ibid.
[1172] Ibid. See also A.W.B. Simpson, *Human Rights,* p.1067.
[1173] A.W.B. Simpson, *Human Rights,* p.1068.
[1174] Ibid, p.1068.

enacted by the Governor only 'so far as appears to him to be strictly required by the exigencies of the situation in the Colony'.[1175] Notification of derogation from the ECHR was required if such powers were enacted.[1176] *Ad hoc* legislation enacted temporarily allowed for the continued detention of some Mau Mau. This approach was finally enacted under the Detained and Restricted Persons (Special Provisions) Ordinance. The same approach was adopted in Nyasaland under the Detained Persons (Special Provisions) Ordinance of May 1960; any remaining detainees were released by 27 September 1960 in Nyasaland.[1177]

B4.3.4 Cyprus and ECHR

There was considerable legal input in respect of the two Applications by the Greek Government on behalf of Cyprus at the European Commission of Human Rights. An examination of files at The National Archives indicates a significant increase in communication traffic to FO lawyers, in particular from within Whitehall, and also increased involvement from the Law Officers.

Lawyers had previously been involved in early 1956 on the question of whether the deportation of clerics from Cyprus was contrary to the European Convention on Human Rights, and there was a considerable flow of correspondence on the topic between the Attorney General, Manningham-Buller, and legal advisers for the CO, Roberts-Wray, and FO, Fitzmaurice.[1178] Matters other than the two ECHR cases also reached the Law Officers in the 1950s. These ranged from questions of defence and foreign policy (1959), the amnesty procedure for political detainees (1960) and the question of independence (in particular, matters relating to the Treaty of Establishment and the Treat of Guarantee). The Law Officers were also involved in 1960 with the question of indemnity legislation and whether security

[1175] Ibid, p.1070.
[1176] Ibid, p.1070.
[1177] Ibid, p.1070.
[1178] TNA, See LO2/869. See also LO2/509 on the question of whether it was legal to deport Makarios from Cyprus to the Seychelles and correspondence from Roberts-Wray and Fitzmaurice to Manningham-Buller and Hylton-Foster. See LO2/511 for the deportation order for Makarios.

personnel would be prosecuted by Cypriot leaders for actions during the emergency period.[1179] By comparison, matters reaching the Law Officers about Kenya and Nyasaland were fewer in number and less far-ranging. The question of boundaries between Kenya and Uganda (1963) reached the Law Officers, as did the question of subversion and sedition (1953).

The first of the two Greek Applications, lodged in May 1956, was immediately dealt with in Whitehall as a legal matter. FO lawyer Vallat explained in a minute that whilst it was up for debate within Government whether the matter should be treated purely as a legal matter, this was the approach he favoured and he nominated himself to act as an Agent, with the assistance of another Legal Adviser.[1180] Only then, he recommended, could it be decided whether the matter be dealt with politically.[1181] A.N. Galsworthy of the CO noted that the Department was in agreement with Vallat.

B5 Differing FO & CO Attitudes to ECHR Applications

Vallat then wrote to A. MacDonald of the Law Officers Department to inform him of the FO position. Vallat adopted a rather relaxed attitude. In writing to MacDonald, he indicated that 'I think that the Greeks exaggerate the urgency of the matter' and explained that 'most of the incidents to which they refer have already occurred and their implications can be considered with no undue haste'.[1182] Therefore, he advised, 'I do not think that we should allow ourselves to be rushed'.[1183] Nevertheless, and contrary to what he had opined in private, Vallat wrote to the Secretary General of the Commission on 28 May to assure its members that the Application was receiving 'urgent attention'.[1184]

[1179] TNA, LO2/79.
[1180] TNA, FO371/123889, Minute by F.A. Vallat, 11 May 1956.
[1181] Ibid.
[1182] FO317/123889, Vallat to A. MacDonald, 14 May 1956.
[1183] Ibid.
[1184] TNA, FO371/123891, W.H. Young, Greek application to the ECHR, 22 May 1956.

Assistant CO Legal Adviser, James McPetrie, however, disagreed with Vallat. McPetrie critiqued Vallat's letter to the Secretary-General of the Commission and took issue with Vallat's assurances that the British Government would cooperate with the ECHR. McPetrie wrote that:

> 'if you regard this as an indispensible courtesy we would not die in the last ditch about it, but it does seem to us to come dangerously near to admitting here and now that the application will have to be entertained. Might not the Greeks quote the assurance against us later on?' [1185]

The remainder of McPetrie's letter suggests that he was particularly cautious about the impression Vallat was giving the ECHR about British governance in Cyprus. In one paragraph, McPetrie stated that the letter 'seems to us to suggest rather too much that we do not know what is going on in Cyprus'.

B.5.1 Application 176/56 & Application 299/57

On 14 May, Vallat met with the Law Officers and was told by the Attorney General that the UK should not appear to be delaying on the matter of Application 176/56.[1186] Later that month, the Deputy Legal Adviser of the FO met with the Law Officers and the CO Legal Adviser to discuss the attitude that the British Government was to adopt towards Application 176/56.

B.5.1.1 Preliminary Challenge?

Following this meeting, it was agreed that 'the question should be treated as a legal matter at this stage, and that we should contest the admissibility of the whole or part of the Greek Application'.[1187] It was decided that only once government lawyers had examined the question of admissibility further would a Cabinet decision on the matter be sought.[1188] The Attorney General was also in agreement that there were advantages to treating it as a legal

[1185] TNA, FO371/123891, McPetrie to Vallat, 22 May 1956.
[1186] TNA, LO2/502, Handwritten note, 17 May 1956.
[1187] TNA, FO371/123891, W.H. Young, Greek application to ECHR, 22 May 1956.
[1188] Ibid. See LO2/508 for Vallat's submission to the Sub-Commission on the admissibility of the application, June 1956.

matter.[1189] The approach of the FO was praised by the Solicitor General, Hylton-Foster, who wrote to Selwyn Lloyd, Secretary of State for Foreign Affairs, that 'the greatest credit goes to those who decided – I think Vallat was largely responsible – to play the hand on the legal plane in the first instance'. [1190] The Solicitor General also made clear his disdain for the ECHR and its machinery and his appreciation for Vallat's help in negotiating the British case: 'the annoyance of the rather tyrannous way in which this Tribunal treats us is fully compensated by the pleasure of working with Vallat'.[1191]

Gerald Fitzmaurice (Vallat's superior) supported Vallat's position, but was unclear on possible outcomes in pursuing such a line of defence. Fitzmaurice commented, for example, that he was 'not clear on what eventual grounds we could contest the admissibility of the application' but added that 'if, however, there is any such ground, I think we should run it as strongly as we can, since our chances of succeeding on the merits are, in my opinion, most uncertain'.[1192]The Government decided to fight Application 176/56.[1193]

The same debate on admissibility was to crop up later with regards to Application 299/57, but this time there was a greater furore: there was now more at stake for the British administration because it faced more serious charges, including the charge of torture. Lawyers were again central to the debate. One focus of discussion was Article 26 of the ECHR and whether this could be relied upon in resisting the Sub-Commission's attempts to send an investigative team to Cyprus: Article 26 states that the Commission may only deal with matters after all domestic remedies have been exhausted and that 'within a period of six months from the date on which the final decision was taken'.[1194] The pros and cons of relying

[1189] TNA, LO2/502, Handwritten note, 17 May 1956.
[1190] LO2/502, Letter from H. Hylton-Foster to Selwyn Lloyd, 12 April 1957.
[1191] Ibid.
[1192] TNA, FO371/123890, Fitzmaurice to Vallat, 18 May 1956.
[1193] See E. Bates, *The Evolution of the European Convention*, p.196.
[1194] Article 26 of ECHR accessed 20 March 2015, available at http://www.echr.coe.int/.

upon Article 26 were summarised by Fitzmaurice.[1195] CO lawyer, McPetrie, did not support his stance, but Fitzmaurice had canvassed opinion before approaching Vallat and the Solicitor General.[1196] Vallat was also careful to communicate with Roberts-Wray on the matter, to ensure that 'the course which we propose to follow on the question of admissibility is in conformity with the views of the CO'.[1197] Vallat wrote to Roberts-Wray that:

> 'this further Application which, like its predecessor, is primarily of concern to the CO is, of course, an added burden for all of us. Unless we are able to secure rejection of the Application at this stage, I am afraid that it is going to mean a great deal of work and anxiety for both the Cyprus authorities and the CO. In my view, the Application should be rejected, but the Commission is quite unpredictable'.[1198]

This statement by Vallat is rather curious, since evidence held at The National Archives suggests that, whilst Application 299/57 may in theory have been of more concern to the CO, most of the traffic, including legal traffic, was directed to the FO and prompted most comment from the FO. This supports Madsen's assertion that questions of international law were dominated by FO legal advisers.[1199] With regards to Application 299/57, both the CO and FO faced staffing difficulties and did not have enough lawyers to collect evidence, which is when and why the proposal to appoint Gosling, as discussed in Chapter 3, was raised and agreed.[1200]

B.5.1.2 Whether to Permit Outside Investigation

One of the major internal debates surrounding both Applications was whether to permit on-the-spot investigation. The question had first cropped up in 1957 regarding Application 176/56, when Fitzmaurice of the FO had written to the Solicitor General outlining the

[1195] See TNA, CO936/495.
[1196] TNA, CO936/495, J.C McPetrie to Burr, 20 November 1957. Darwin, Assistant Legal Adviser in the FO, was also involved in this discussion.
[1197] TNA, CO936/495, Vallat to K. Roberts-Wray, 31 July 1957.
[1198] Ibid.
[1199] See M.R. Madsen, 'From Cold War Instrument to Supreme European Court', p.146.
[1200] TNA, CO936/496, McPetrie to Roberts-Wray, 18 November 1957.

departments' (CO and FO) differences of opinion on whether to allow on-the-spot investigation. Fitzmaurice wrote to Hylton-Foster to explain that:

> 'next week the Cabinet are going to be asked to consider the situation arising out of the recent decision of the European Human Rights Sub-Commission (of which you have no doubt heard) to hold a local investigation in Cyprus – our efforts and yours to prevent this having failed'.[1201]

Fitzmaurice explained that the Government was under pressure from the Commission to co-operate with them over the 'mechanics of the investigation'. The key and prior decision to be taken by the Government, however, was whether to cooperate at all. Fitzmaurice also explained that from

> 'a legal point of view I cannot myself see how, if we do not comply, we can fail to be in clear breach of the Convention. However, the Governor of Cyprus has reported very strongly against complying, on the ground inter alia that such an investigation will be likely to lead to further violence and bloodshed'.[1202]

The feeling in the FO, on the other hand, Fitzmaurice reported, was that there were not 'really any serious legal grounds on which we can contest our obligation to comply with this decision of the Sub-Commission, however much we may dislike it'.[1203] Hylton-Foster responded to Fitzmaurice by way of agreement, stating unequivocally that 'in my view there is no presentable legal argument to support a refusal of the investigation'.[1204] CO lawyers eventually leaned towards agreement with the FO position.

This particular issue and the surrounding debate reveal a range of differing and opposing views amongst key stakeholders in the administration on the subject of compliance with the ECHR. The colonial government, on the one hand, felt no obligation to the ECHR and its insistence on an on the ground investigation, as Chapter 3 demonstrated. The FO approached the question from the other end of the spectrum, in line with the Solicitor General's stance, which sought to uphold Britain's obligations under the ECHR and its machinery, however

[1201] TNA, LO2/503, Fitzmaurice to Hylton-Foster, 24 October 1957.
[1202] Ibid.
[1203] Ibid.
[1204] TNA, LO2/503, Hylton-Foster to Fitzmaurice, 28 October 1957.

unpleasant and uncomfortable that might be for the administration, both in the colony and at home. The CO wavered and hedged its bets, but in the end aligned itself with the FO. Vallat remained involved in deliberations regarding on-the-spot investigations and wrote of the 'great reluctance to allow servicemen or investigators to give evidence before an international body'.[1205] Exactly the same debate was played out over Application 299/57, as explored in Chapter Three.

Hylton-Foster also remained involved in the question of the Sub-Commission's proposed investigation. He was respectful of the Sub-Commission's 'duty' to investigate claims and advised the FO that the department should not argue against allowing an investigation on the basis alone that witnesses should not be heard because of risk of intimidation, because the explanation was wearing thin and 'I think that if persisted it will begin to stink'.[1206] Nevertheless, and despite his acceptance in principle of the Sub-Commission's duty to investigate, in correspondence with Vallat, Hylton-Foster appeared exasperated and in despair about Britain's 1953 to extend the ECHR to its colonies. The Solicitor General wrote that 'if we do not want service men to give evidence before international bodies we have no business to go signing and ratifying Conventions such as this'.[1207] He concluded his letter to Vallat by saying that, nevertheless, the question 'whether or not to break with the Sub-Commission is not for me. I dislike breaches of treaties'.[1208]

Vallat also appeared exasperated about the process, and took particular issue with Greece's inability properly to substantiate its allegations of torture. Writing in March 1958, Vallat noted how 'it is not in accordance with the normal practice of civilized states to make serious allegations against another state on behalf of individuals without first being satisfied by

[1205] TNA, CO936/532, Vallat to Hylton-Foster, 22 January 1959.
[1206] TNA, CO936/532, Hylton-Foster to Vallat, 27 January 1959.
[1207] Ibid.
[1208] Ibid.

examination of the essential evidence that the charges are justified.'[1209] Vallat was suspicious that the Greek claims were spurious. This suspicion was said to have been shared by members of the Sub-Commission, as discussed in Chapter Three.[1210]

Whilst examples from Nyasaland of civil servant-lawyer relations suggested a considerable level of tension in terms of responsibilities and outlook, the correspondence about Cyprus suggests that lawyers – or at least their words – were used as ammunition by policy-makers in Britain's fight with Greece at the ECHR. Goodall of the FO, for example, spoke of the need to be absolutely clear to the Commission that 'we are really indignant about Greek behaviour' and that this needed to be 'driven home with a sledge-hammer'.[1211] Goodall spoke of taking a 'belligerent line' by alerting the Sub-Commission to what they believed to be a slanderous campaign by Greece.[1212] J.M. Addis, Head of the Southern Department, agreed with Goodall. He remarked that 'lawyers, in these technical communications, can properly be a good deal tougher in their language than we should normally allow ourselves to be in ordinary diplomatic exchanges.'[1213] Goodall's remarks are key to understanding the function of government lawyers during decolonisation. At least in the case of Cyprus case, lawyers discharged a quasi-political function in addition to providing legal advice.

[1209] TNA, FO371/136399, Vallat to McNulty, March 1958.
[1210] TNA, FO371/136399, Note by Goodall, 4 March 1958.
[1211] Ibid.
[1212] Ibid.
[1213] TNA, FO371/136399, Note by JM Addis, 4 March 1958.

PART III

NON-GOVERNMENT LAWYERS

C1 Preamble

There was little interest in or response to colonial affairs generally, or 'crisis moments' specifically, amongst non-government lawyers during the period of decolonisation, with the exception of a few notable individuals, such as Peter Benenson.

Peter Benenson was a British barrister and co-founder of *Justice* (1957), the human rights and law reform organisation, and *Amnesty International* (1961). Benenson wrote the introduction to *Gangrene,* published by John Calder in September 1959, in which British and French human rights abuses in Kenya and Algeria were exposed and would, Benenson claimed, 'revolt, nauseate and disgust' his reader.[1214] Anticipating a mixed response to his work, Benenson wrote in his introduction:

> 'some will be angry against the men who allegedly treated fellow human-beings with such brutality; others will be angry that allegations of this sort are raised in print against public servants carrying out difficult duties in periods of stress.'[1215]

Nevertheless, Benenson argued that this was a story that had to be told to the general public. Benenson's most damning criticism of the British colonial state was that 'I have been forced to the conclusion that, in order to justify the morally difficult position of using violence against 'trust peoples', the Government has branded them as sub-human'.[1216]

Although the most vocal criticism came from Benenson, other members of *Justice* also challenged and probed the Government on human rights in the colonies. In June 1959, for example, the Chairman, Lord Shawcross, wrote to the Colonial Secretary, Lennox-Boyd, about

[1214] P. Benenson, 'Introduction', p.7.
[1215] Ibid, p.7.
[1216] Ibid, p.27.

the conditions in prisons in Nyasaland, following a visit there by Dingle Foot.[1217] *Justice* also raised the question of whether detainees were given legal aid or legal representation in Nyasaland. Shawcross highlighted a number of practices in Nyasaland's prisons deemed questionable by Dingle Foot, largely because prisoners were held in temporary prison camps although not convicted. Shawcross raised other matters: the rule that there could only be one delivery of a letter or a parcel a week; detainees who saw a clergyman, the Rev. Andrew Doig, could not receive any other visitors in that particular week; detainees' underclothes were confiscated and they were left only with shirts or trousers but no shoes; finally, detainees were forced to walk about, and even sit, with their hands on their heads. With reference to the latter practice, Shawcross said he found this:

> 'a peculiarly astonishing and, if true, deplorable allegation…This treatment was applied, it was said to all detainees alike, including teachers, members of mission staffs and educated government employees, and it was suggested to us that behind it lay a deliberate effort to inflict humiliation on the detainees'.[1218]

Colonial governance attracted criticism from other groups of lawyers during the late emergency periods. The Inns of Court Conservative and Unionist Society (now the Society of Conservative Lawyers), established in 1947 to offer advice on legal issues to the Conservative Party and to help shape Party policy and manifestos, wrote in March 1960 to Iain Macleod. In its letter, the Society questioned the passing of two Acts in Kenya - the Preservation of Public Security Act and the Detained and Restricted Persons (Special Provisions) Act, discussed at section B4.3.3.1 above. The Society reported that its members were 'rather disturbed that any British Legislature should pass such provisions into a permanent form' because 'to make permanent part of the law detention and restriction without trial or any hearing of any kind and without any right of appeal whatsoever, is wholly alien to the British concept of Justice'.[1219] Rather pointedly and tellingly, the letter went on: 'there is a suspicion that these Acts are a device to enable the United Kingdom to escape the obligations put upon it by its

[1217] TNA, DO35/7476, Shawcross to Lennox-Boyd, 1 June 1959.
[1218] Ibid.
[1219] TNA, CO822/2095, Inns of Court Conservative and Unionist Society to Macleod, 22 March 1960.

signature to the Declaration of Human Rights, European Convention'.[1220] CO Legal Adviser, Roberts-Wray, responded to the letter and reassured the Society that 'a party to the European Human Rights Convention cannot of course, evade its international obligations under the convention by the enactment of a municipal law' but he reminded the Society of the acceptability of derogation under Article 15.[1221]

The writing of such a letter by a group of lawyers usually supportive of the Conservative Party, in which it claimed to be 'rather disturbed' by the Conservative Governments' recent actions, is highly significant. Benenson's critical stance was perhaps not surprising, given his left-wing leaning and his having stood unsuccessfully as a Labour candidate in the late 1940s. Nor was *Justice's* position as an independent and all-party organisation entirely unexpected. However, the Society's blunt remarks are surprising: for a Society composed of Conservative Party lawyers to suggest that the Acts passed in 1960 were a vehicle through which the British Government could 'escape the obligations' it was required to adhere to under the ECHR, was a potentially damaging accusation against the Government.

Otherwise, colonial governance generally and human rights in particular appear to have evoked little interest, comment or response in academic circles. An examination of the major contemporary legal journals, including *Law Quarterly Review, Modern Law Review* and *Public Law* reveals that no articles at all were written on colonial matters, even following the 'crisis' events of 3 March 1959 in Kenya and Nyasaland. Nor was there any obvious contribution from solicitors or barristers in the British press to colonial debates (or, if they did contribute, they did not publically acknowledge their profession), as an examination of newspapers demonstrates. Involvement in colonial issues on the part of activist lawyers was, therefore, confined to a very few.

[1220] Ibid.
[1221] TNA, CO822/2095, Roberts-Wray.

C2 Peter Benenson's Visits to Cyprus

Peter Benenson played the lead role in championing the rights of colonised peoples during periods of emergency. Benenson established *Justice* in 1956 to campaign for fairer legal trials and the rule of law.[1222] In 1957, the organisation became the British section of the International Commission of Jurists. Whilst Benenson's name is often associated with allegations of abuse in Kenya and Algeria because of his work on *Gangrene,* his visits to Cyprus during the emergency period are far less well known. Benenson visited Cyprus on a number of occasions during the emergency period, and he even set up a legal practice there.[1223]

C2.1 1956 Visit

One of Benenson's earliest visits took place in 1956, just as colonial governance was coming under increasing international scrutiny following the lodging of Application 176/56 in May of that year.

The visit attracted some attention back in Britain, in particular from the Labour MP James Callaghan, who used the evidence gathered during Benenson's visit to encourage the administration to undertake its own investigations into allegations of ill-treatment. Benenson publicised his visit to Cyprus by publishing details of allegations in an article in *The Manchester Guardian* in February 1957, entitled 'Tension between the bar and administration in Cyprus: ill-treatment of clients alleged'.[1224] Benenson referred to the cases of Maria Lambrou, who allegedly miscarried her unborn child as the result of being beaten whilst in custody, and Joannis Christoforou, who alleged to have been beaten with iron

[1222] T. Buchanan, ''The Truth Will Set You Free': The Making of Amnesty International', *Journal of Contemporary History* 37.4 (2002), p.578.
[1223] Ibid.
[1224] P. Benenson, 'Tension between the bar and administration in Cyprus: ill-treatment of clients alleged', *The Manchester Guardian,* 19 February 1957, p.4.

bars.[1225] Upon his return to Britain, Benenson was reported to have voiced his concerns to the Colonial Secretary, but these were met with an abrupt response from Lennox-Boyd, according to Callaghan. Callaghan recounted how Benenson wrote to the Colonial Secretary and received a response which simply stated that all allegations had been investigated.[1226]

C2.2 1957 Visit

Benenson returned to Cyprus in January 1957, and this visit attracted the attention of the CO in London (his visit was tracked by Sinclair in Cyprus, who relayed information to Melville in the CO) because it was during this visit that Benenson began to offer significant assistance to Cypriot lawyers.

The purpose of Benenson's visit in January 1957 was two-fold. First, Benenson visited in order to 'follow up a number of complaints against the Security Forces made to him by John Clerides QC on behalf of a Nicosia committee of lawyers styling themselves 'The Committee on Human Rights'.' Second, Benenson was visiting to 'access the local reactions to the Radcliffe proposals'.[1227]

During Benenson's second visit, the Governor defended the record of colonial governance in Cyprus. Sinclair reported that 'in discussing the future plans for Cyprus, the Governor stressed that their 'stewardship' should 'bring credit to HMG not only locally in Cyprus, but also in the Middle East generally and in international circles interested in the island'.[1228] Ongoing development plans for the island were emphasised, including the establishment of

[1225] Ibid.
[1226] Hansard, HC Debate, 21 December 1956.
[1227] FCO141/4361, G.E. Sinclair to E. Melville (Assistant Under Secretary of State, Far Eastern; Mediterranean Department, CO), 7 January 1957.
[1228]Ibid.

secondary technical schools, the expansion of a government scholarship scheme to help people gain higher education in Britain and plans to establish a university college.[1229]

During his visit, Benenson raised representations by the Bar Council which asked: for the overturning of specific Emergency Regulations, including those that concerned the extension of the death penalty (and the making of it mandatory in some cases); that certain Press Regulations and Regulations which protected public officers from 'capricious public prosecution' be rescinded; that three Judges, rather than one, should sit in all cases involving the death sentence.[1230]

Benenson also raised complaints made against the Security Forces to which he had been alerted by Clerides. It was noted in 1957 that, with regards to allegations of ill-treatment, Benenson was 'disturbed by reports he had received; he was anxious that nothing should be allowed to take place here which would detract from Great Britain's reputation for the administration of justice'.[1231] Most of the allegations of abuse Benenson had learned about concerned the conduct of 'special police' during interrogation and not the Army. Governor Harding responded to Benenson by stating that such allegations were part of a campaign of denigration to damage 'the good name of Great Britain'. He argued that this 'propaganda' was contrived by a group of lawyers (presumably the 'Committee on Human Rights') and 'designed largely for consumption in the United Nations and the Council of Human Rights and for winning support for Enosis abroad'.[1232] Finally, Benenson also alerted the Attorney General of Cyprus, James Henry QC, to a memorandum detailing allegations of abuse concerning members of the Security Forces.[1233]

[1229]Ibid.
[1230] FCO141/4361, Sinclair to Melville, 4 January 1957.
[1231] FCO141/4361, Sinclair to Melville, 5 January 1957.
[1232] Ibid.
[1233] FCO141/4361, Unsigned note, 8 January 1957.

C2.3 After 1957

Post-1963, Benenson worked more closely with the Foreign and COs in an advisory role in relation to human rights issues during the final stages of decolonisation.[1234] To the colonial state Benenson was an ambiguous character. On the one hand, he represented a threat whose links to Clerides and the Human Rights Commission and his publications in the British press could potentially embarrass Britain's colonial record but, on the other, he was a valuable resource for the colonial state straying into the relatively unknown territory of human rights on the eve of decolonisation.

C3 Committee on Human Rights

By 12 September 1957, the Human Rights Committee had formally complained in writing to the colonial administration about forty cases of alleged ill-treatment. By December 1957 fifty-seven cases had been recorded.[1235]

'The Committee on Human Rights', or the 'Human Rights Committee' as it was also called, was set up by Greek Cypriot members of the Nicosia Bar Association on 24 October 1956.[1236] Its purpose was to highlight and investigate allegations of ill-treatment during interrogation and damage to property during searches. As Benenson reported in *The Manchester Guardian* in February 1957, 'it is no secret that this action has been bitterly resented by the Administration'.[1237] The Committee's Chairman, John Clerides QC, who had been a member of the Governor's Executive Council until Archbishop Makarios was deported, was said to be well-known in Cyprus 'throughout his long tenure of office for his pro-British views'.[1238] According to Benenson, 'that a man of his great legal experience and pro-British views should have assumed the chair of the Human Rights Commission is itself an indication of the

[1234] K. Sellars, 'Human Rights and the Colonies', p.713.
[1235] A.W.B. Simpson, *Human Rights, p.*1020.
[1236] TNA, FO371/136400, CO Submission, 'Allegations of Torture and Ill-treatment in Cyprus, 1958.
[1237] P. Benenson, 'Tension between the bar and administration'.
[1238] Ibid.

seriousness of with which he and other Cypriot lawyers considered the allegations'.[1239] Benenson also referred to the great 'sense of shame' felt by members of the Cyprus Bar. As he explained, 'trained in England, called to the Bar by an Inn of Court, they are proud of the heritage of the Common Law and are steadfast in upholding the value of Britain's greatest 'invisible export''.[1240]

The CO was highly suspicious of the Cyprus Bar, despite Benenson's assurances of its respect for Britain and English law. In a CO submission of 1958, it was argued that 'from the beginning of the terrorist campaign Greek Cypriot members of the Cyprus Bar have been implicated in the terrorist conspiracy'.[1241] The Chairman of the Human Rights Commission, John Clerides QC, was said to have expressed his sympathy for EOKA in a letter to the *Times of Cyprus* in July 1956.[1242] The Committee was described as not being 'concerned with protecting 'the human rights' of individuals' but that its only 'duty was to present allegations of ill-treatment and torture and to use the good name of their profession to give cover of respectability to the campaign of denigration which the terrorist organisation had organised.'[1243]

Benenson's 1957 visit to Cyprus was not obstructed by the authorities, although there were misgivings. The authorities cooperated with Benenson, and the Governor even met him. During this time, Benenson appears, looking at his correspondence with Clerides, to have acted as a kind of interlocutor between Clerides and the colonial administration. Yet, as the correspondence between Sinclair and Melville demonstrates, close tabs were nevertheless kept on Benenson's movements in Cyprus by the colonial administration and by Whitehall.

[1239] Ibid.
[1240] Ibid.
[1241] TNA, FO371/136400, CO Submission, 'Allegations of Torture'.
[1242] Ibid.
[1243] Ibid.

C4 Footnote to Cyprus: Visits by Members of Parliament

Visits from MPs, in comparison, were tolerated less well, in particular the visit of John Hatch in 1958.[1244] Since 1955, Lennox-Boyd had been trying to resist pressure from MPs to visit Cyprus. Writing to Harding in December 1955, Lennox-Boyd wrote about what he described as 'the unwelcome spate of visitors, particularly MPs, to Cyprus' and he assured Harding that he was 'doing my best to discourage this flow' but acknowledged that it was very difficult to do so, particularly with regards to the Opposition.[1245] Lennox-Boyd was referring specifically to a proposed visit by R.H.S. Crossman which, he predicted, would be an 'unmitigated nuisance' for Harding, but he also made reference to other visits planned by Lena Jeger, William Yates and Kenneth Robinson.

D CONCLUSION

The increasing policy traffic from 1945 in the metropole – to the exclusion of colonial officials – on matters concerning human rights was not reflected in a commensurate level of involvement by government lawyers. Adopting Windsor's distinction between the lawyer as 'consigliere' and 'conscience', Colonial Office lawyers tended to the former and Foreign Office lawyers to the latter. Even when risk and legal exposure were high, decision making was dominated by policy makers, the role of lawyers restricted and matters properly referable to the Law Officers not always escalated, suggesting that the legal function at the highest level was consciously circumvented. In relation to the involvement of external legal bodies, with one or two notable exceptions, there is little evidence that colonial matters attracted any more than passing interest.

[1244] See TNA, FCO141/4339.
[1245] TNA, CO967/288, Lennox-Boyd to Harding, 29 December 1955.

POSTSCRIPT to EMERGENCY PERIODS: HUMAN RIGHTS post-1960 – PHASE FOUR?

In 1967, Iain Macleod, recalled 3 March 1959 as 'the decisive moment' when it became evident that Britain 'could no longer continue with the old methods of government in Africa',[1246] and he described how people were 'shocked and horrified by what had happened'.[1247] The consequences of 3 March were such that the only option was 'inexorably a move towards African independence'.[1248] Not only could Britain no longer continue with the old methods of government in Africa, it could no longer sustain *any* method or form of government or governance *elsewhere* in its empire. Colonial policy was not rewritten. It was simply gradually abandoned.

End of the End

As Macleod conceded in January 1960, emergency powers could no longer be legitimated because 'public opinion could not be expected to tolerate measures such as detention without trial, in particular, except in a grave emergency'.[1249] Force was no longer an appropriate or effective means of holding onto empire, Macleod knew. Learning from de Gaulle's difficulties in Algeria, and noting that if 'a million men couldn't hold Algeria, then we couldn't hold about a third of the continent', Macleod remarked how with increasing nationalist feeling 'it was idle dreaming to think that Britain, by force, could hold her position'.[1250]

By 1960, emergency period control measures were seen as having had their day. Prisons Adviser Garratt argued in August 1960 following a visit to Kenya, for example, that 'whatever the original purpose for which detention camps were established there is no doubt in my

[1246] RHL, MSS.Afr.s.2179, Interview with Iain Macleod, 29 December 1967.
[1247] Ibid.
[1248] Ibid.
[1249] TNA, CO822/1335, Macleod to Governor Hone (Northern Rhodesia), 8 January 1960.
[1250] RHL, MSS.Afr.s.2179, Interview with Iain Macleod, 29 December 1967.

mind that to-day they are an anachronism and achieve nothing except a purely negative type of deprivation of liberty'.[1251]

Macleod's and Garratt's insights support this thesis' argument that by 1959 British policy makers and opinion formers had become increasingly doubtful about the viability, capacity to endure or legitimacy of British colonial governance, particularly against the backdrop of repeated allegations of human rights abuses and so, after March 1959, Britain re-examined its colonial policy and took steps towards independence in various colonies.

Independence for the Colonies

Independence was nevertheless not held as any failure on Britain's part. As Darwin explains, the British 'reinvented the 'Commonwealth' (understood before 1939 as the club of white dominions) as a multiracial association of Britain's ex-colonies, ready and willing – or so it was hoped – to follow Britain's lead in world affairs'.[1252] Independence, it was argued, represented the natural outcome to and success of Britain's imperial model and the beginning of a fairer 'partnership'.[1253]

Change of Posture on Human Rights?

The early 1960s witnessed a degree of internal reappraisal of Britain's human rights policies. Charles Parkinson's work on bills of rights in colonial territories has demonstrated the extent to which the CO did a U-turn on its previous policy in 1962, although it still retained its long-held scepticism.[1254] Whilst previously the CO and successive British Governments had held bills of rights up to internal derision, on the eve of independence the CO formalised a policy to insert bills of rights into the constitutions of newly formed and independent former

[1251] TNA, CO822/2722, Report by Garratt, August 1960.
[1252] J. Darwin, *Unfinished Empire, p.*343.
[1253] Ibid.
[1254] C. Parkinson, *Bills of Rights and Decolonization*, p.247.

colonial territories. However, as Parkinson has convincingly argued, this move had little to do with a desire to continue Britain's 'civilising mission' in the post-colonial era and much more to do with Britain's wish to ensure that its final exit from empire did not result in violence. This marked, nevertheless, a significant development in the Government's colonial and human rights policy.

At the same time, but now on the international stage, Britain's stance towards human rights underwent similar transformation. By 1965, British policy towards human rights was described as undergoing an 'intensive reappraisal'.[1255] This was part of a wider effort to promote human rights internationally. In contrast to the 'Deep Freeze' of the Cold War of the 1950s, when there were only limited and isolated initiatives to advance human rights, the '60s and '70s were characterised by the 'hyperactivity' of the United Nations in the advancement of human rights, as Afshari has argued.[1256] It was certainly a dramatic turnaround in policy terms. By 1965, it was acknowledged that human rights were not 'matters on which we should opt in or out certain peoples – the rights have universal application and, if we believe in them, should be made, so far as we can, to apply universally'.[1257] This was all in direct opposition to the policies advocated by CO civil servants like Whitcombe in 1958, as discussed in Chapter Four, and it contrasts with Armitage's argument that the UDHR was 'too complicated' for Africans to understand.

By 1965, in part because by then the bulk of the empire had disintegrated, Britain began to advocate the extension of universal human rights to all - the same overarching principles of the UDHR and ECHR to which Britain had subscribed in 1948 and 1950 but had subsequently sought to curtail during periods of emergency. By 1965, it was recommended that Britain adopt a 'less defensive, and hence negative attitude towards the application of human rights

[1255] TNA, CO836/886, Butler to Axworthy, 3 February 1965.
[1256] 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 (2007), p.52.
[1257] TNA, CO836/886, Butler to Axworthy, 3 February 1965.

agreements' in its remaining overseas territories.[1258] There was to be no grand proclamation of a change in British policy, however: it was proposed by the FO to 'let the fact that we have changed our attitude emerge without a specific declaration of the fact on our part'.[1259]

Further changes to British policy on human rights came about because of events external to empire, but the change was not blanket. Such a shift in British policy at the international level can be detected in the response to the Sharpeville Massacre in South Africa in 1960. Previously, Britain had voted at the UN against international intervention in 'domestic' matters, and had argued the point with regard to South Africa and the question of apartheid. At the UN Security Council in 1960, however, the British Delegation allowed inscription of an item on Sharpeville on the agenda, although it did later abstain from voting on the resolution.

This departure came at a time when there was still a strong feeling that intervention in so-called 'domestic' affairs should be avoided at all costs: it was noted, for example, that 'every member nation has one or more skeletons in the cupboard which it would not wish to have aired at the United Nations'.[1260] The Notting Hill race riots of 1958 were cited as just such a 'skeleton' Britain may wish not to have aired at the UN. Hilton Poynton recommended 'flexible tactics' by Britain at the UN from then on.[1261] UN involvement in colonial affairs was still heavily resisted, however, with one official describing the pressure to produce a UN resolution calling on Britain to set target dates for independence as 'highly embarrassing and damaging to us'.[1262]

Whilst British human rights policy at the UN was modified in 1960, albeit briefly in response to the Sharpeville massacre, material changes in policy came about only from 1965 onwards,

[1258] Ibid.
[1259] TNA, CO836/886, Axworthy, 3 March 1965.
[1260] TNA, FCO141/6736, Letter from T. Neil, undated.
[1261] TNA, FCO141/6736, Hilton Poynton to P. Renison, 29 September 1960.
[1262] TNA, FCO141/7059, Eastwood Memorandum, February 1961.

the most significant of which was Britain's acceptance at last of the right of individual petition under human rights legislation and which must be seen in the context of other significant changes in the international human rights story. The adoption of the International Bill of Human Rights in 1966 signalled the beginning of a new era in the international human rights project.[1263] Previously, Western powers had sought to protect only political and civil rights, but with the influx to the UN after 1960 of non-Western states espousing the express aim of protecting economic and social rights, the landscape of human rights protection changed for good. These changes in the mid-1960s finally made Britain catch up: Britain could no longer adopt a passive stance when it came to the promotion of universal human rights.

UDHR

At world level, the most significant change was in relation to the issue of the right of individual petition Britain had consistently disputed in the past because of fears that allowing private individuals to bring claims against sovereign states was open to abuse. In part due to the increased numbers of Afro-Asian countries at the UN, the right to individual petition was included in the International Convention on the Elimination of all Forms of Racial Discrimination (1965). African politicians such as Nkrumah and George Lamptey, both from Ghana, were instrumental in this.

ECHR

In the wake of the election of the Labour Government in 1964 – Labour favoured acceptance of the optional petition clause - Britain also accepted the individual petition clause under the ECHR, something Britain had strongly opposed since 1950. This was undoubtedly a highly significant indicator of change. Whilst the view that Britain's acceptance of the optional ECHR clauses would have little impact on domestic law is the current and dominant interpretation

[1263] R. Burke, 'From Individual Rights to National Development: the First UN International Conference on Human Rights, Tehran 1968', *Journal of World History* 19.3 (2008), p.282.

in the historiography, the question of the extent to which the adoption of the optional clauses signals a change in Britain's prioritisation of human rights is not so easily dismissed and should be probed further.[1264]

Whilst by 1965 British human rights policy had certainly changed, there is some evidence of institutional memory loss when it came to recalling – or not – earlier shortcomings in protecting human rights in the colonies. Axworthy of the CO noted in 1965, for example, that as territories became progressively independent, Britain's position at the UN would become easier. As a comfort blanket against the worry that figurative colonial skeletons might be unearthed at the UN, Axworthy noted that 'our record on human rights in colonial territories is of course very good and we could indeed argue…that we follow a general policy designed to promote human rights in the dependent territories.'[1265] Although this might just have been the case by 1965, events just six years earlier at Hola and Nkata Bay suggest otherwise. Axworthy's mild delusion appears to have been shared by his senior colleague, Thomas Jerrom, Head of the CO's International Relations Department, who noted that Britain had taken 'a reasonably full part' in the development of human rights, a development he described as 'the great European movement'.[1266] This 'progressive liberal activity', as described by Jerrom, was remembered as leading the Government 'into heavy weather' only over the ECHR and Cyprus, but a manuscript note corrects Jerrom's account by remarking that it also led the Government into heavy weather 'politically' in Kenya and Nyasaland.

[1264] E. Bates, *The Evolution of the European Convention*, p.12.
[1265] TNA, CO836/886, Axworthy, 3 March 1965.
[1266] TNA, CO836/886, Note by Jerrom, 4 March 1965.

CONCLUSION

Despite the widespread opprobrium Britain's colonial rule had attracted both inside and outside Whitehall following Hola and Nkata Bay, as explored in Chapter Four, some individuals still held firm to a blinkered faith in Britain's human rights record in the colonies, as Axworthy's and Jerrom's statements illustrate. Despite the apparent sea change in colonial governance after Hola and Nkata Bay, a skewed perception of Britain's withdrawal from empire dominated until 2005 with the publication of Anderson and Elkin's work. This thesis has gone some way to contributing further to the ongoing project of re-writing Britain's human rights record during the end of empire.

This thesis has also helped dispel any possible notion that, first, colonial governance was linear-progressive along a 'hard-soft' continuum or, second, post-1945, the emerging global human-rights consensus and the 'civilising' momentum of the white man's burden had serendipitously coalesced to reform colonial governance or empire. Despite the altered external global environment, the will to power, control and the embedded capacity to tolerate the egregious use of force still lay at the core of the imperial project of even the late colonial state. Notwithstanding Britain's signing up to universal human rights directives and then notionally extending certain selective provisions to its colonial populations, as late as 1959 Devlin described the colonial administration in Nyasaland as a 'police state'. In other British territories, governance was habitually characterised by the regular abrogation of the rule of law, the introduction of arbitrary emergency powers, systemic violence and human rights abuses.

The abandonment of the enduring governance paradigm that had countenanced and sanctioned opposing standards of official behaviour towards, on the one hand, colonial populations and, on the other, the indigenous British populace came about not by reflective

increment or any crisis of official human-rights-conscience but by the wholly unexpected and revolutionary impact and aftermath of the Devlin Report, which instantly destroyed the historic dualism.

Just as there had been no convergence between the impulse towards universal human rights and notions of colonial governance - quite the opposite, perhaps - so there was no benign, guiding or overarching influence exercised by the metropolitan legal function in respect of either process. Indeed, it might be said that some CO and FO lawyers, either by commission or omission, did their bit to frustrate and inhibit the clear direction of human rights travel.

MAJOR CONTRIBUTIONS

This thesis offers five major contributions. First, it has offered a framework for a treatment of the motif of colonial governance not previously undertaken in the historiography on British decolonisation. Moreover, it has provided a detailed overview of the seeming metamorphosis of colonial governance from the 'softer' days of the 1940s, when development and welfare programmes were to the forefront, to the 'harder' episodes of the 1950s during periods of emergency, by reference to three case studies and by identifying three key stages or phases. It has further treated Furedi's argument that reform and repression were two sides of the same coin. In so doing, it demonstrated the capacity of colonial governance to shift in time and place and according to internal and external circumstance between the tendency to the unapologetically 'hard' and physically repressive, particularly in Kenya, and the 'soft' of markedly increased spending on development, welfare and the move to self-determination.

Second, it has further elucidated the contemporary debate around human rights abuses and the end of empire, has complemented research already undertaken by various historians on Kenya and has provided a sharper metropolitan focus than the work of Anderson, Elkins and Bennett. Importantly, it has shed light on the question of human rights abuses in two other

colonial territories, Cyprus and Nyasaland, discussion of which has previously been obscured by the dominance of Kenya in the historiography. It has done this, in part, by drawing upon previously unseen archival material, the 'Hanslope Disclosure'. In particular, its treatment of Cyprus Governor Harding's fears of being held out to dry because of collusion between the British Government and investigators in Strasbourg highlights a key shift in the relationship between the metropole and the periphery during decolonisation.

Third, it has for the first time inserted into the story the role of government lawyers and demonstrated the extent to which they were only infrequently involved in matters relating to human rights and decolonisation and, where and when they were involved, their involvement was decidedly reactive rather than proactive. Despite the post-1945 global injunction of good governance which might suggest an active and heightened 'legal' input, the internal legal function was often circumvented, external legal challenge met with obfuscation and legal advice which ran counter to the prevailing political narrative ignored by policy makers.

Fourth, it has offered further insight into the 'make-up' of the late colonial state and, in particular, its metropolitan 'arm' as the British state attempted to straddle two increasingly divergent visions of governance, colonial and global, in the post-1945 period. It argued that, ultimately, Britain failed in its attempt to reconcile these competing visions of global order.

Fifth, this thesis has offer greater insight into the undercurrent of activism in Britain during the process of decolonisation through its examination of parliamentary debates, public opinion and the papers of anti-colonial organisations such as the MCF. In particular, the analysis of parliamentary debates has demonstrated the extent to which the British Government sought but inexorably failed to mediate colonial governance against the

backdrop and in the face of an increasingly uncomfortable and hostile public and parliamentary moral climate which became impossible to ignore by the late 1950s.

Finally, and beyond the historiography on the end of empire and whatever its academic value, this thesis is of particular contemporary relevance given recent and likely future litigation seeking reparation for abuse perpetrated by the British during decolonisation.

CHAPTER OVERVIEW

Chapter One offered, first, a conceptual overview of colonial governance drawing on ideas from contemporary literature on global and corporate governance. Second, it examined 'phase one' of colonial governance, characterised by the widespread introduction of development and welfare reform programmes between 1938 and 1945. Using Perham, Lugard and Hailey's writings, Chapter One offered an insight into the shift to 'softer' colonial governance in the late 1930s. Informed in part by the experience of the early years of the Second World War, the period 1938-45 witnessed significantly increased expenditure by the metropole on welfare and development schemes in the colonies which in turn signalled Britain's departure from its former laissez faire policies. In part a propaganda tool, these development and welfare programmes underpinned Britain's attempt at re-legitimating itself as a colonial power. It proved a false endeavour.

Chapter Two examined the post-war endeavour to evolve international modes of governance and Britain's attempts to reconcile its public commitment to the new progressive global order of universal human rights and its determined maintenance of the imperial *status quo*. Through an examination of government papers, this Chapter examined the overlap and tensions between countervailing notions of colonial and global governance in the immediate aftermath of the Second World War. It also examined the extent to which the adoption of inter-state treaties and protocols on human rights encouraged a change in the ethos of

colonial governance ('phase two' of colonial governance), and revealed the British Government's early scepticism about the UDHR and the ECHR and, in particular, the prospect of their legal protections being extended to colonial populations. The same attitudes characterised Britain's later response to allegations of abuse during periods of emergency. Chapter Two argued that 1945 was not the watershed claimed, since neither the UDHR nor the ECHR triggered any meaningful re-evaluation of the principle of empire or reform of imperial practice on the ground. Britain, generally speaking, tried to ride two horses but paid only lip service to the new human rights orthodoxy.

Chapters Three, Four and Five formed the crux of this thesis and examined periods of emergency with reference to three specific case studies: Cyprus (1955-59), Kenya (1952-60) and Nyasaland (1959-60). Periods of emergency exposed the inherent tensions in Britain's twin and strictly self-referential role-identity of governor and guardian. Revelations of human rights abuses came to light throughout the periods of emergency. Chapters Three and Four demonstrated how, as early as the start of the 1950s, allegations of abuse came to be aired at the United Nations by international critics of empire. It was, however, the events of 3 March 1959 at Hola in Kenya and Nkata Bay in Nyasaland, which resulted in the deaths of numerous Africans, that fatally undermined the colonial project and directly brought about the end of empire. Periods of emergency are, thus, an important lens through which to analyse changing paradigms of colonial governance. These central Chapters examined in greater detail than before the thoughts, opinions, advice and adaptive strategies of officials working in Whitehall and traced developing attitudes to human rights abuses, such that by 1958, despite past entrenched institutional resistance to human rights measures, one CO official, E.C. Burr, felt able to remark that British emergency measures were 'repugnant' to most in government. Nevertheless, and generally speaking, at no time did concern for human rights tailor, influence or modify the manner of governance in the colonies. Rather, colonial

governance much more often than not flew in the face of the human rights obligations to which Britain had signed up in the immediate aftermath of the Second World War.

Chapter Three proposed that the combination of external scrutiny of the emergency period in Cyprus and the claims lodged with the ECHR by Greece against Britain in 1956 and 1957 marked the beginning of the internationalisation of the British Empire, although to a limited extent the contentious matter of empire had been raised previously in the international arena. Chapter Three also shed light on the internationalisation of empire at the level of the UN world stage which, although ultimately unsuccessful, nevertheless highlighted the anti-colonial cause in Cyprus beyond the European theatre. Letters to the UN were particularly revealing in that the comparison was repeatedly drawn between the British colonial state and the Nazi regime. The 1956 ECHR Application faced Britain, a key and founding signatory, with the first ever inter-state case under human rights legislation. Despite mild political concern in Whitehall, Britain met the Application with genuine but ill-informed surprise, denial and obfuscation and a generally cavalier approach. Britain never budged from its stance of denial and, following the Zurich Agreements of early 1959, the general consensus within Whitehall was that Britain had done rather well in getting off lightly under the ECHR. However, the smugness was to prove short-lived, since just one month later, and following the events of 3 March, British colonial governance fell under the domestic and international spotlight once again but this time with terminal consequences and the surprisingly speedy demise of empire.

Chapter Four examined the end of empire in Kenya and Nyasaland with a particular focus on the fall-out from the episodes at Hola and Nkata Bay. This Chapter demonstrated that, following these events, the entire scheme of colonial governance came under increasing pressure from various MPs, including - significantly - Enoch Powell, in addition to pressure groups such as the MCF and even members of the public who compared Britain's conduct to

that of the Nazis. This Chapter argued that it was the cumulative effect of the ECHR Cyprus cases and prior allegations of abuse in Kenya that prompted such outrage following 3 March. Although the end of empire did not come about directly because of the pressure of explicitly human rights demands in the colonies, the final years of the imperial project were played out against the constant backdrop of a developing human rights culture, jurisprudence and political as well as a growing public awareness and antipathy, which groundswell of hostility made the continuing effort to legitimise empire increasingly difficult, whilst publication of the Devlin Report and Devlin's conclusion that Nyasaland was a 'police state' finally exposed and brought to an end the differential convention that one standard of governance could be applied in the colonies and a diametrically opposed other at home.

Chapter Five inserted a dimension of the story of decolonisation never before examined – the involvement, or more precisely the *de facto* exclusion, of government lawyers and the Law Officers in discussion on colonial issues. This Chapter showed how questions which should have demanded the involvement of lawyers seldom did so in practice. It also demonstrated that the increasing policy traffic from 1945 in the metropole on questions to do with human rights was not reflected in the volume of legal traffic, with the exception of the two ECHR cases in 1956 and 1957. When matters were escalated beyond the policy level, they were dealt with in the main by FO and not CO lawyers but, as a rule, decision-making was dominated by policy makers, and matters properly referable to the Law Officers were not escalated. Finally, Chapter Five revealed that, beyond Whitehall, interest in colonial affairs did not extend to the wider legal community to any degree and, when it did, such interest was confined only to a few legal activists, most notably Peter Benenson.

FINAL REMARKS

Ultimately, this thesis has demonstrated that British colonial governance both before and after 1938 until the end of empire was a highly complex and opaque cultural, social,

economic, political and institutional phenomenon. Britain at one and the same time doggedly maintained its position as imperial power – through coercion if necessary – constantly re-imagined and re-invented colonial governance, sponsored human rights on the international stage but failed to practice in the colonies what it preached globally. These facets of British colonial governance finally proved incompatible and irreconcilable. In the context of human rights, Labour MP Fenner Brockway offers an apposite and final aphorism: 'empires have fallen before, but this is the first time that the conscience of man has repudiated the actual existence of empires'.[1267]

[1267] F. Brockway, *The Colonial Revolution,* p.13.

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